JUDICIAL DISSOLUTION OF THE LIMITED LIABILITY COMPANY: A STATUTORY ANALYSIS

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INTRODUCTION

The limited liability company ("LLC") is a noncorporate business structure that provides its owners, known as "members," with several benefits: (1) limited liability for the obligations of the venture, even if a member participates in the control of the business; (2) pass-through income tax treatment; and (3) contractual freedom to arrange the internal operations of the venture. Because of this favorable combination of attributes, the LLC has emerged as the preferred business structure for many closely held businesses.[1]

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[1] As one commentator noted:

> The [LLC] is now undeniably the most popular form of new business entity in the United States. . . . Rising from near obscurity in the 1990s, the LLC has now taken its place as the new "king-of-the-hill" among business entities, utterly dominating its closest rivals. As the research reported in this article indicates, the number of new LLCs formed in America in 2007 now outpaces the number of new corporations formed by a margin of nearly two to one. In several "bellwether" states, the numbers are even more impressive. . . . Other business forms have fared no better against the LLC. While data for hybrid and newer business structures is more difficult to compile, the data in this Article relating to limited partnerships (LPs) demonstrate that the LLC's dominance of these entities is even more staggering. For example, the number of new LLCs formed in 2007 outpaced the number of new LPs formed in that same year by a margin of over 34 to 1.

The LLC was the product of innovative professionals creating solutions when the legal system failed to meet client needs. Hamilton Brothers Oil Company had been involved in international oil and gas exploration using foreign business organizations, primarily the Panamanian "limitada."[2] Limitadas provided limited liability for all owners and the ability to secure partnership classification for tax purposes.[3] Because no similar domestic entity existed in the United States, representatives of Hamilton Brothers suggested legislation that authorized the creation of an unincorporated domestic entity that resembled the limitada. An initial effort to obtain enactment in Alaska failed, but the same legislation was enacted in Wyoming on March 4, 1977, apparently without controversy.[4] The critical question then became whether the Internal Revenue Service would permit partnership taxation for an unincorporated entity that provided limited liability to all of its owners. A favorable ruling on the question was obtained in 1988.[5] Once the tax issue was resolved, states quickly adopted LLC statutes to take advantage of the flexibility of the new business form. By the end of 1994, forty-seven states and the District of Columbia had adopted an LLC statute, and by the end of 1996, all 50 states had done so.[6]

Rodney D. Chrisman, *LLCs are the New King of the Hill*, 15 FORDHAM J. OF CORP. & FIN. L. 459, 459–62 (2010).

[2] *See* Susan Pace Hamill, *The Origins Behind the Limited Liability Company*, 59 OHIO ST. L.J. 1459, 1463 (1998).

[3] *See id.*; *see also* Douglas K. Moll, *Minority Oppression & the Limited Liability Company: Learning (or Not) from Close Corporation History*, 40 WAKE FOREST L. REV. 883, 922 & n.132 (2005).

[4] *See* Hamill, *supra* note 2, at 1464–65.

[5] *See* Rev. Rul. 88–76, 1988–2 C.B. 360 (classifying LLCs as partnerships for federal income tax purposes so long as certain criteria were met); *see also* Robert B. Keatinge, *New Gang in Town*, BUS. L. TODAY 5, 6 (Mar./Apr. 1995) ("In Revenue Ruling 88-76, the [IRS] . . . ruled that an LLC created according to the Wyoming act would be treated as a partnership for tax purposes. The ruling marked a significant shift in the IRS' policy with respect to entities in which the liability of the owners is limited to the owners' investment.").

[6] *See* Hamill, *supra* note 2, at 1476–77 & n.74.

Because of concerns that diversity in state law might create serious problems for interstate LLCs, attempts to develop prototype or uniform LLC statutes began after the LLC's tax status was recognized.[7] The rush by states to enact LLC legislation was underway, however, and many states enacted an LLC statute before efforts to develop standardized statutes came to fruition. As a result, LLC statutes tend to be less uniform than statutes governing other business forms.[8]

One example of this non-uniformity involves the statutory grounds available to members who seek judicial dissolution of an LLC. This article catalogs each jurisdiction's grounds and explores a few selected issues raised by the diverse approaches. Part I summarizes the methodology used and highlights the frequency of various statutory provisions. Part II analyzes two particular provisions—dissolution if it is not reasonably practicable to carry on the LLC's business in conformity with its governing documents, and dissolution as a result of oppressive conduct by those in control. With respect to the "not reasonably practicable" language, the article argues that the impracticability of carrying on the business in conformity with either the certificate or the operating agreement should result in dissolution, but there is confusion over which statutory articulation is consistent with this result. With respect to the oppressive conduct ground, this article provides some possible explanations for why oppression-related dissolution statutes are less common in the LLC setting than in the corporation context.

I. THE STATUTORY GROUNDS

To begin with methodology, I used Westlaw to examine the statutory grounds available to members who seek judicial dissolution of an LLC in all fifty states plus the District of Columbia. My searches were conducted over a one-week time period from August 7–13, 2017. I also examined the judicial dissolution grounds in five model statutes: the 1992

[7] *See id.* at 1471 (noting "the formation of a working group to draft a prototype LLC statute" and "the solicitation of the Uniform Law Commissioners to open a study project for a Uniform LLC Act").

[8] *See* UNIF. LTD. LIAB. CO. ACT (UNIF. LAW COMM'N 1996) (prefatory note) (noting that "state limited liability company acts display a dazzling array of diversity").

Prototype LLC Act ("Prototype"), the 2011 Revised Prototype LLC Act ("Revised Prototype"), the 1996 Uniform LLC Act ("ULLCA"), the 2006 Revised Uniform LLC Act ("RULLCA"), and the 2013 Revised Uniform LLC Act ("RULLCA (2013)"). Thus, my total sample was fifty-six statutes—i.e., fifty states, the District of Columbia, and five model provisions. Only judicial dissolution grounds available to members were examined; thus, grounds available to a transferee, the state, or the LLC itself were ignored (unless, of course, that same ground was available to a member).

The most common judicial dissolution ground in the sample is when the court decides that it is not reasonably practicable to carry on the business in conformity with the LLC's governing documents. Fifty-four statutes include some version of this language.[9] Interestingly, this ground is articulated in several different ways. Twenty-three of the fifty-four statutes allow for judicial dissolution if a court decides that "[i]t is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization *and* the operating agreement."[10] Another sixteen statutes provide for judicial dissolution if a

[9] *See infra* Appendix 1, 2. Alaska and Kansas are the two statutes in the sample without some version of this language. *See id.* That said, Alaska allows for judicial dissolution when "the court determines that is impossible for the company to carry on the purposes of the company." ALASKA STAT. § 10.50.405. That ground is similar to the "it is not reasonably practicable to carry on the company's activities and affairs" language used by three statutes that were included in the "not reasonably practicable" count. *See infra* note 13 and accompanying text. In other words, one might make a case for including Alaska in the "not reasonably practicable" count because its statutory language is comparable. *See also infra* note 32 (noting that reasonable minds could disagree with some of the categorization choices made in this article).

[10] *See, e.g.*, IOWA CODE § 489.701(1)(d)(2) (emphasis added); REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(4)(B) (2006) (emphasis added); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). The language of these twenty-three statutes may differ slightly, but not in a material way.

The Texas statute allows for dissolution if "it is not reasonably practicable to carry on the entity's business in conformity with its governing documents." TEX. BUS. ORGS. CODE ANN. § 11.314. The statute defines "governing documents" as the certificate of formation and "the other documents or agreements *adopted by the entity* under this code to govern the formation or the internal affairs of the entity." *Id.* § 1.002(36) (emphasis added). If the LLC itself is not a signatory to the operating agreement, one might argue

court decides that "[i]t is not reasonably practicable to carry on the business in conformity with the certificate of formation *or* the operating agreement."[11] An additional twelve statutes allow a court to dissolve upon a finding that "it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the limited

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that the agreement is not a "governing document" because it was not adopted by the entity. Texas recently amended its statute, however, to provide that "[a] company agreement is enforceable by or against the limited liability company, regardless of whether the company has signed or otherwise expressly adopted the agreement." *Id.* § 101.052(f). Because the LLC is bound by the operating agreement, the agreement will presumably be considered a "governing document" under Texas law (although the fact that the LLC did not "adopt" the agreement still leaves some room for argument). For purposes of Appendix 2, Texas was counted as one of the twenty-three statutes with a certificate of organization *and* operating agreement construction. *See infra* Appendix 2.

[11] *See, e.g.*, MISS. CODE § 79-29-803(1)(a) (emphasis added); 7 R.I. GEN. LAWS § 7-16-40 (emphasis added); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). The language of these sixteen statutes may differ slightly, but not in a material way.

Tennessee has two judicial dissolution statutes. Section 48-245-902 is applicable to every domestic LLC formed before January 1, 2006 that has not elected to be governed by chapter 249 of the Tennessee Code. *See* TENN. CODE ANN. §§ 48-245-902, 48-249-1002(c). It provides for dissolution "whenever it is not reasonably practicable to carry on the business in conformity with the articles and/or the operating agreement." *Id.* § 48-245-902. For purposes of Appendix 2, this language was considered to be a certificate of organization *or* operating agreement construction. *See infra* Appendix 2.

Section 48-249-617 is applicable to every domestic LLC formed on or after January 1, 2006, and any domestic LLC formed before that date that has elected to be governed by chapter 249. *See id.* §§ 48-249-617, 48-249-1002(a)–(b). It provides for dissolution "whenever it is not reasonably practicable to carry on the business in conformity with the LLC documents." *Id.* § 48-249-617(a). Although this language seems like a certificate of organization *and* operating agreement construction, the Tennessee statute defines "LLC documents" as "*either, or both*: (A) [a]n LLC's articles; and (B) [i]f the LLC has an operating agreement . . . its operating agreement." *Id.* § 48-249-102(16) (emphasis added). Thus, for purposes of Appendix 2, it too was considered to be a certificate of organization *or* operating agreement construction. *See infra* Appendix 2. Although Tennessee could have been counted twice in my sample in light of its two existing judicial dissolution statutes, it was counted only once in Appendix 2 as one of sixteen statutes (rather than two of seventeen statutes) with a certificate of organization *or* operating agreement construction. *See infra* Appendix 2.

liability company agreement."[12] Three more states allow for dissolution when a court concludes that "it is not reasonably practicable to carry on the company's activities and affairs."[13] Finally, one state provides for dissolution when a court concludes that "it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter."[14]

The next most common judicial dissolution ground in the sample is the presence of unlawful, illegal, or fraudulent conduct by members, managers, or the LLC itself. Twenty-nine statutes include some version of this language.[15] The most prevalent formulation is to provide one ground that focuses on the company's activities ("the conduct of all or substantially all of the company's activities is unlawful")[16] and another

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[12] *See, e.g.*, ALA. CODE § 10A-5A-7.01(d); ARIZ. REV. STAT. ANN. § 29-785(A)(1); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). The language of these twelve statutes may differ slightly, but not in a material way.

The Wisconsin statute allows for dissolution when the LLC "is not acting in conformity with an operating agreement," and it additionally provides for dissolution when "it is not reasonably practicable to carry on the business of the limited liability company." WIS. STAT. § 183.0902(1), (2). As a result, it is counted twice in the data—once as one of the twelve statutes with a "not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the limited liability company agreement" construction, and once as one of the three statutes with a "not reasonably practicable to carry on the company's activities and affairs" construction. *See infra* note 13 and accompanying text.

[13] *See, e.g.*, CONN. GEN. STAT. § 34-267(a)(4)(B); N.H. REV. STAT. ANN. § 304-C:134(I)(a); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). The language of these three statutes may differ slightly, but not in a material way. It should be noted that the Wisconsin statute is double-counted in the data. *See supra* note 12.

[14] N.C. GEN. STAT. § 57D-6-02(2)(i); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). An astute reader may notice that the listed categories add up to fifty-five statutes (23+16+12+3+1) rather than the fifty-four number stated in the text. *See supra* text accompanying note 9. The discrepancy is due to the fact that Wisconsin is double-counted in the data. *See supra* note 12.

[15] *See infra* Appendix 1, 2.

[16] *See, e.g.*, VT. STAT. ANN. tit. 11, § 4101(a)(4)(A); REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(4)(A) (2006); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

ground that focuses on the behavior of the managers or members ("the managers . . . or those members in control of the company . . . have acted, are acting, or will act in a manner that is illegal or fraudulent").[17] Some statutes, however, limit the focus exclusively to the conduct of the managers or members in control.[18]

Dissolution on the grounds of oppressive conduct by managers or members is included in twenty-four statutes in the sample.[19] Most statutes articulate this ground by using the term "oppressive" or "unfairly prejudicial" action by the managers or members in control of the company.[20] A very small number of statutes speak of conduct that is an "abuse of authority,"[21] and a few refer to dissolution when necessary to protect the "rights and interests" of the petitioning member.[22] I included all of these variations in this category.

Ten statutes provide for judicial dissolution when the economic purpose of the company cannot be accomplished.[23] Most statutes articulate this ground by providing that "the economic purpose of the [LLC] is

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[17] *See, e.g.*, N.D. CENT. CODE § 10-32.1-50(1)(e)(1); REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(5)(A) (2006); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[18] *See, e.g.*, UNIF. LTD. LIAB. CO. ACT § 801(4)(v) (1996); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). If the company's activities are unlawful, those in control of the company are presumably acting in a manner that is illegal. The absence of an independent ground that focuses on the company's activities, therefore, may not make much of a difference.

[19] *See infra* Appendix 1, 2.

[20] *See, e.g.*, UNIF. LTD. LIAB. CO. ACT § 801(4)(v) (1996); REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(5)(B) (2006); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[21] *See, e.g.*, CAL. CORP. CODE § 17707.03(b)(5); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[22] *See, e.g.*, N.C. GEN. STAT. § 57D-6-02(2)(ii); *see also* CAL. CORP. CODE § 17707.03(b)(2) ("rights or interests"); *infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[23] *See infra* Appendix 1, 2.

likely to be unreasonably frustrated."[24] One statute provides for dissolution when a court determines "that it is impossible for the company to carry on the purposes of the company,"[25] while another is triggered when the "business of the limited liability company has been abandoned."[26] I included all of these variations in this category.

Other grounds for judicial dissolution include the following: (1) member conduct that makes it not reasonably practicable to carry on the company's business with that member (seven statutes);[27] (2) failure to purchase the petitioner's distributional interest when required (five statutes);[28] (3) member or manager deadlock (five statutes);[29] (4) waste or misapplication of assets (four statutes);[30] (5) abuse of power by the LLC

[24] *See, e.g.*, OHIO REV. CODE ANN. § 1705.47(B)(1); UNIF. LTD. LIAB. CO. ACT § 801(4)(i) (1996); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[25] ALASKA STAT. § 10.50.405; *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[26] CAL. CORP. CODE § 17707.03(b)(3); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[27] *See, e.g.*, HAW. REV. STAT. § 428-801(4)(B); UNIF. LTD. LIAB. CO. ACT § 801(4)(ii) (1996); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[28] Upon a dissociation that does not result in dissolution, ULLCA § 701(a) requires the company to purchase the distributional interest of the dissociated member. Failure to effectuate the purchase can result in dissolution. *See* UNIF. LTD. LIAB. CO. ACT § 801(4)(iv) (1996). This dissolution ground is also present in the statutes that follow ULLCA. *See, e.g.*, W. VA. CODE § 31B-8-801(b)(5)(iv); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[29] *See, e.g.*, ARIZ. REV. STAT. ANN. § 29-785(A)(2); KAN. STAT. ANN. § 17-76,117(b); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[30] *See, e.g.*, FLA. STAT. § 605.0702(1)(b)(4); MISS. CODE ANN. § 79-29-803(1)(b); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

contrary to the public policy of the state (one statute);[31] and (6) "other circumstances [that] render dissolution equitable" (one statute).[32]

II. ANALYSIS OF SELECTED GROUNDS

A. In Conformity With . . . ?

As mentioned, the most common judicial dissolution ground is when a court decides that it is not reasonably practicable to carry on the business in conformity with the LLC's governing documents.[33] In prac-

[31] *See* N.H. REV. STAT. ANN. § 304-C:134(III)(d); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

[32] *See* WASH. REV. CODE § 25.15.274(2); *see also infra* Appendix 1, 2 (summarizing the data and providing the statutory language). This broad "circumstances [that] render dissolution equitable" ground is unique to Washington. The 1914 Uniform Partnership Act included the same ground in its judicial dissolution section, see UNIF. P'SHIP ACT § 32(1)(f) (1914), which may be the origin of the Washington provision. In fact, the ground was formerly a part of the Washington general partnership statute. *See* WASH. REV. CODE § 25.04.320(1)(f) (1998).

Reasonable minds could disagree with some of the categorization choices made in this article. For example, a statute providing for dissolution when it is not reasonably practicable to carry on the business in conformity with the governing documents is similar to a statute allowing for dissolution when the economic purpose of the company cannot be accomplished. *See supra* notes 9–14, 23–26 and accompanying text. Indeed, judicial decisions grappling with the "not reasonably practicable" language have granted dissolution when the purpose of the company has been frustrated. *See infra* note 37 and accompanying text. Thus, perhaps these two categories should be combined. As another example, a statute providing for dissolution when member conduct makes it not reasonably practicable to carry on the company's business with that member, or a statute authorizing dissolution under equitable circumstances, may very well cover the same ground as a statute allowing for dissolution when a member in control has acted oppressively. *See supra* notes 19–22, 27, 32 and accompanying text; *infra* notes 89–91 and accompanying text. Perhaps they too should not be thought of as separate categories.

[33] *See supra* text accompanying note 9. From a Uniform Act standpoint, this language appears to have originated in the 1976 Revised Uniform Limited Partnership Act, as § 802 of that act allowed for judicial dissolution "whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement." (Notice that the certificate of limited partnership is not mentioned.) The first time that two documents were mentioned—the public filing and the private agreement of the owners—appears to have been in the 1996 ULLCA (§ 801(4)(iii)). That two-document structure was then followed by the 2006 RULLCA (§ 701(a)(4)(B)) and the 2013

tice, what circumstances might trigger this ground? In *Fisk Ventures, LLC v. Segal*,[34] the Delaware Court of Chancery provided the following guidance:

> Section 18-802 has the "obvious purpose of providing an avenue of relief when an LLC cannot continue to function in accordance with its chartering agreement."
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> In interpreting § 18-802, this Court has by analogy often looked to the dissolution statute for limited partnerships, 6 *Del. C.* § 17-802. In so doing, the Court has found that "the test of § 17-802 is whether it is 'reasonably practicable' to carry on the business of a limited partnership, and not whether it is impossible." To decide whether to dissolve a partnership pursuant to § 17-802, the courts have historically looked to the "business of the partnership and the general partner's ability to achieve that purpose in conformity with the partnership agreement." …
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> The text of § 18-802 does not specify what a court must consider in evaluating the "reasonably practicable" standard, but several convincing factual circumstances have pervaded the case law: (1) the members' vote is deadlocked at the Board level; (2) the operating agreement gives no means of navigating around the deadlock; and (3) due to the fi-

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RULLCA (§ 701(a)(4)(B)). Interestingly, although the 2001 Uniform Limited Partnership Act followed prior uniform limited partnership acts by only mentioning conformity with the partnership agreement (§ 802), the 2013 Uniform Limited Partnership Act adopted a two-document structure by requiring conformity "with the certificate of limited partnership and partnership agreement" (§ 801(a)(6)(B)).

[34] Civ. A. No. 3017-CC, 2009 WL 73957 (Del. Ch. Jan. 13, 2009).

> nancial condition of the company, there is effectively no business to operate.
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> These factual circumstances are not individually dispositive; nor must they all exist for a court to find it no longer reasonably practicable for a business to continue operating. In fact, the Court in *Haley v. Talcott* found that although the limited liability company was "technically functioning" and "financially stable," meaning that it received rent checks and paid a mortgage, it should be dissolved because the company's activity was "purely a residual, inertial status quo that just happens to exclusively benefit one of the 50% members." If a board deadlock prevents the limited liability company from operating or from furthering its stated business purpose, it is not reasonably practicable for the company to carry on its business.[35]

On the facts before it, the *Fisk Ventures* court concluded that "[w]hen … a company has no office, no employees, no operating revenue, no prospects of equity or debt infusion, and when the company's Board has a long history of deadlock as a result of its governance structure, more than ample reason and sufficient evidence exists to order dissolution."[36] Other decisions grappling with the "not reasonably practicable" language have granted dissolution when the purpose of the company has been frustrated.[37]

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[35] *Id.* at *3–4 (internal citations omitted).

[36] *Id.* at *1.

[37] *See, e.g.*, *In re* Silver Leaf, L.L.C., No. Civ. A. 20611, 2005 WL 2045641, at *10–11 (Del. Ch. Aug. 18, 2005) (granting dissolution under DLLCA § 18–802: "Silver Leaf was formed for the specific purpose of marketing the vending machines of Tasty Fries . . . . Thus, at the time the dispute between the parties began, the only asset of Silver Leaf was the SMA [a sales and marketing agreement giving Silver Leaf the right to market the vending machines] . . . . Now, the SMA is no longer an asset of Silver Leaf because

Tasty Fries terminated that contract . . . . Clearly, the business of marketing Tasty Fries's machines no longer exists for Silver Leaf . . . . The vote of the members is deadlocked and the Operating Agreement provides no means around the deadlock. Moreover, Silver Leaf has no business to operate. Therefore, upon application of a member . . . the court dissolves Silver Leaf."); *In re* Arrow Inv. Advisors, LLC, C.A. No. 4091-VCS, 2009 WL 1101682, at *2 (Del. Ch. Apr. 23, 2009) ("[D]issolution is reserved for situations in which the LLC's management has become so dysfunctional or its business purpose so thwarted that it is no longer practicable to operate the business, such as in the case of a voting deadlock or where the defined purpose of the entity has become impossible to fulfill."); *id.* at *3 ("Dissolution of an entity chartered for a broad business purpose remains possible upon a strong showing that a confluence of situationally specific adverse financial, market, product, managerial, or corporate governance circumstances make it nihilistic for the entity to continue. In other words, a petitioner might obtain dissolution by making a convincing showing that the perpetuation of the entity, irrespective of its managers' intentions to pursue a business line allowed by its governing instrument, was obviously futile and would not result in business success."); *id.* ("One need not speculate on exactly what circumstances of that type might suffice to make that showing in order to confidently conclude that Hamman cannot state a claim for dissolution by simply alleging that a two-year-old LLC with a broad purpose clause has experienced some adversity and therefore ought to be dissolved. By that standard, investors could state a claim for dissolution against virtually all entities on a regular basis, especially in years of economic turbulence like this one."); *In re* 1545 Ocean Ave., LLC, 893 N.Y.S.2d 590, 597–98 (App. Div. 2010) ("After careful examination of the various factors considered in applying the 'not reasonably practicable' standard, we hold that for dissolution of a limited liability company . . . the petitioning member must establish, in the context of the terms of the operating agreement or articles of incorporation, that (1) the management of the entity is unable or unwilling to reasonably permit or promote the stated purpose of the entity to be realized or achieved, or (2) continuing the entity is financially unfeasible."); McConnell v. Hunt Sports Enters., 725 N.E.2d 1193, 1220, 1222 (Ohio Ct. App. 1999) ("[T]he evidence does support the trial court's conclusion that it was no longer practicable to carry on the business of CHL [an LLC formed for the purpose of obtaining a National Hockey League franchise in Columbus, Ohio] . . . . The above evidence shows that the cause of it being no longer practicable to carry on the business of CHL was the fact that CHL was not the ownership group awarded the NHL franchise . . . . June 9, 1997 was the deadline for the ownership group to be identified. This ownership group was not CHL. Hence, as of June 9, 1997, the reason for CHL's existence was gone."); *cf.* Dunbar Group, LLC v. Tignor, 593 S.E.2d 216, 219 (Va. 2004) (concluding that serious disagreement between the members does not necessarily meet the dissolution standard, as even with discord, it may still be reasonably practicable to carry on the business: "Although Tignor's actions [as a member and manager of Xpert, the LLC] had created numerous problems in the operation of Xpert, his expulsion as a member changed his role from one of an active participant in the management of Xpert to the more passive role of an investor in the company.

While case law has provided some guidance on the circumstances that might lead to dissolution under this ground, the differences in the statutory articulations are puzzling. Why, for example, do twenty-three statutes allow for dissolution if it is not reasonably practicable to carry on the business in conformity with the certificate *and* the operating agreement, while another sixteen statutes provide for dissolution only if it is not reasonably practicable to carry on the business in conformity with the certificate *or* the operating agreement? Is this a meaningful distinction? Given that the members, the managers, and the LLC itself are constrained by provisions in both the certificate and the operating agreement,[38] one would think that the impracticability of carrying on the business in conformity with either one of those governing documents should be enough for dissolution.

For example, assume that the certificate of an LLC contains a broad purpose clause allowing the LLC to engage in any lawful business. The operating agreement, however, states the purpose of the venture in much narrower terms—to operate a particular fast-food franchise. After years of mismanagement, the franchisor revokes the franchise. This seems like a good case for dissolution, as the purpose of the company

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The record fails to show that after this change in the daily management of Xpert, it would not be reasonably practicable for Xpert to carry on its business pursuant to its operating authority.").

[38] If the LLC itself is not a signatory to the operating agreement, one might argue that the LLC is not constrained by the provisions of the agreement. *Compare* Bubbles & Bleach, LLC v. Becker, No. 97 C 1320, 1997 WL 285938, at *4–6 (N.D. Ill. May 23, 1997) (holding that an arbitration clause in an LLC operating agreement was not binding on the LLC because it was not a party to the agreement), *with* Elf Atochem N. Am., Inc. v. Jaffari, 727 A.2d 286, 293 (Del. 1999) (rejecting the argument that an arbitration provision in an LLC agreement was inapplicable to the LLC because it failed to sign the agreement). In some jurisdictions, this issue is now handled by statute. *See, e.g.*, DEL. CODE ANN. tit. 6, § 18-101(7) ("A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement."); TEX. BUS. ORGS. CODE ANN. § 101.052(f) ("A company agreement is enforceable by or against the limited liability company, regardless of whether the company has signed or otherwise expressly adopted the agreement."); REVISED UNIF. LTD. LIAB. CO. ACT § 106(a) (2006) (amended 2013) ("A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.").

has been frustrated (i.e., the LLC can no longer operate a franchise of this particular restaurant). An "or" statute may very well reach this dissolution result, as it is not reasonably practicable to carry on the business in conformity with the operating agreement (and its more narrow purpose).[39] That said, it is still possible to operate the business in conformity with the certificate, as any other lawful business may be pursued. Under an "and" statute, therefore, dissolution may be unavailable, as it is reasonably practicable to carry on the business in conformity with the certificate.[40]

Of course, this argument assumes that an "and" statute would be interpreted to result in dissolution only (A) if it is not reasonably practicable to carry on the business in conformity with the certificate, *and* (B) if it is not reasonably practicable to carry on the business in conformity with the operating agreement. Under this "double-condition" construction, both (A) and (B) have to be met to result in dissolution. Conversely, the practicability of carrying on the business in conformity with *either* the certificate *or* the operating agreement will prevent dissolution from occurring. There is, however, another reasonable construction. Perhaps an "and" statute should be interpreted to mean that dissolution results only if it is not reasonably practicable to carry on the business in conformity with the certificate and the operating agreement as a set. Under this "single-condition" construction, the sole condition for dissolution is if it is not reasonably practicable to carry on the business in conformity with both of the governing documents. Conversely, if it is reasonably practicable to carry on the business in conformity with both of the governing documents, then dissolution is denied. Under this interpretation, our example above would result in dissolution because it is not reasonably practicable to carry on the business in conformity with both of the governing documents; instead, it is reasonably practicable to carry on the business with only one of the governing documents (the certificate).[41]

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[39] This assumes a double-condition construction of an "or" statute. *See infra* text accompanying note 42.

[40] This assumes a double-condition construction of an "and" statute. *See infra* text accompanying note 41.

[41] *See supra* text accompanying notes 39–40.

This interpretive issue is present with "or" statutes as well. Should the statute receive a double-condition construction—i.e., dissolution occurs only (A) if it is not reasonably practicable to carry on the business in conformity with the certificate, *or* (B) if it is not reasonably practicable to carry on the business in conformity with the operating agreement? Under such a construction, either (A) or (B) has to be met to result in dissolution. Conversely, the practicability of carrying on the business in conformity with both the certificate and the operating agreement will prevent dissolution from occurring. Alternatively, perhaps the statute should receive a single-condition construction where dissolution results only if it is not reasonably practicable to carry on the business in conformity with the certificate or the operating agreement as a set. The sole condition for dissolution, in other words, is if it is not reasonably practicable to carry on the business in conformity with the certificate or the operating agreement. Conversely, if it is reasonably practicable to carry on the business in conformity with the certificate or the operating agreement, then dissolution is denied. Using our example in the text (it is not reasonably practicable to carry on the business in conformity with the operating agreement, but it is reasonably practicable to carry on the business in conformity with the certificate), notice that the double-condition construction would result in dissolution, while the single-condition construction would not.[42]

The key point from this discussion is that the impracticability of carrying on the business in conformity with either the certificate or the operating agreement should result in dissolution, as the members, the managers, and the LLC itself are constrained by provisions in both documents.[43] Nevertheless, there is some confusion over which statutory articulation is consistent with this result. Depending on how courts construe the statutes, it may be that both "and" and "or" statutory articulations will reach this preferred outcome. An "and" statute with a single-condition construction does, as does an "or" statute with a double-

[42] *See supra* text accompanying notes 39–40.

[43] *But see supra* note 38 (stating that if the LLC itself is not a signatory to the operating agreement, one might argue that the LLC is not constrained by the provisions of the agreement).

condition construction. Indeed, it may very well be that drafters of both "and" and "or" statutes (whether legislatures or uniform organizations) were all trying to reach this result, but the "and" drafters were thinking of a single-condition construction, while the "or" drafters were thinking of a double-condition construction. Of course, depending on what courts do, it is possible that neither statutory articulation will reach the preferred outcome (e.g., an "and" statute with a double-condition construction, and an "or" statute with a single-condition construction).

An additional twelve statutes allow a court to dissolve upon a finding that "it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the limited liability company agreement."[44] Under this formulation, the operating agreement is the only document that matters. This also seems problematic given that the business of the LLC has to be conducted in conformity with the provisions of the certificate.[45] While it is true that most LLC certificates will not include any provisions beyond the minimum statutory requirements, there is nothing preventing an LLC from including numerous substantive provisions in its certificate, including provisions that would typically be found in an operating agreement.[46] For example, modifying our earlier hypothetical slightly, suppose an LLC's certificate stated a narrow purpose for the business—i.e., to operate a particular fast-food franchise—and suppose further that the franchisor revokes the franchise. Once again, this seems like a good case for dissolution, as the purpose of the company has been frustrated (i.e., the LLC can no longer operate a franchise of this particular restaurant). Indeed, given that the narrow

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[44] *See supra* note 12 and accompanying text.

[45] *Cf.* N.Y. LTD. LIAB. CO. LAW § 417(a) ("Subject to the provisions of this chapter, the members of a limited liability company shall adopt a written operating agreement that contains any provisions not inconsistent with law *or its articles of organization* . . . ." (emphasis added)).

[46] *See, e.g.*, REVISED UNIF. LTD. LIAB. CO. ACT § 201(c) (2006) (amended 2013) (noting that "[a] certificate of organization may contain statements as to matters other than those required"); *see also* UNIF. LTD. LIAB. CO. ACT § 203(b) (1996) (stating that "[a]rticles of organization of a limited liability company may set forth . . . provisions permitted to be set forth in an operating agreement . . . or . . . other matters not inconsistent with law").

purpose clause was in the certificate, any post-revocation activities of the LLC are arguably ultra vires.[47] Nevertheless, under a statutory formulation that looks only at a lack of conformity with the provisions of the operating agreement, dissolution may be unavailable.

Of course, a court might find an implied provision in the operating agreement that the business must be conducted in accordance with the certificate. The inability to operate the franchise, therefore, would make it not reasonably practicable to carry on the LLC's business in conformity with the operating agreement (i.e., the operating agreement requires conformity with the certificate, and the narrow purpose provision in the certificate cannot be complied with). Alternatively, given that "operating agreement" is usually defined broadly to encompass any agreement of the members regarding the LLC,[48] perhaps a court would characterize the certificate as a form of operating agreement.[49] After all, to the extent that the members are bound by the provisions of the certif-

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[47] An act outside the scope of an organization's stated purpose is "ultra vires." The doctrine is typically associated with corporation law, but it would presumably apply to an LLC as well. *See generally* DOUGLAS K. MOLL & ROBERT A. RAGAZZO, CLOSELY HELD CORPORATIONS § 2.08 (LexisNexis 2016) (discussing the ultra vires doctrine).

[48] *See, e.g.*, DEL. CODE ANN. tit. 6, § 18-101(7) (defining "limited liability company agreement" as "any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its business").

[49] *Cf.* REVISED UNIF. LTD. LIAB. CO. ACT § 107 cmt. (2006) (amended 2013) (stating that "language in an LLC's certificate of organization . . . might be evidence of the members' agreement and might thereby constitute or at least imply a term of the operating agreement").

The Delaware statute provides for dissolution when "it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement." DEL. CODE ANN. tit. 6, § 18-802. In *In re Seneca Investments LLC*, 970 A.2d 259 (Del. Ch. 2008), the court stated that "[i]n determining whether it is reasonably practicable to carry on the business of the LLC, the Court must look to the purpose clause set forth in the governing agreements, *in this case, the charter*." *Id.* at 263 (emphasis added). The court denied dissolution, at least in part because the LLC's charter had a broad "any lawful act" purpose clause. *See id.* No mention was made of the fact that the Delaware statute, on its face, is limited to a consideration of the limited liability company agreement. *See id.*

icate, we might characterize the certificate as a "deemed agreement" of the members. By doing so, the revocation of the franchise would result in the inability to carry on the LLC's business in conformity with an operating agreement. The need to stretch to make these arguments, however, demonstrates that a statutory formulation considering only the operating agreement is misguided. Once again, statutes allowing for dissolution when it is not reasonably practicable to carry on the business in conformity with either the certificate or the operating agreement seem more sensible.[50]

B. Whither Oppression

In general, the oppression doctrine protects minority owners from the abusive exercise of majority control.[51] Common examples of oppressive conduct include the termination of a minority owner's employment, the removal of a minority owner from a management position, the refusal to make distributions, and the denial of access to company information.[52] The oppression problem originated in the closely held corporation setting as a result of four factors that are present in that con-

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[50] The North Carolina statute allows for judicial dissolution when "it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter." N.C. GEN. STAT. § 57D-6-02(2)(i); *see supra* note 14 and accompanying text. The "Chapter" (the North Carolina Limited Liability Company Act) requires articles of organization to be filed, *see* N.C. GEN. STAT. § 57D-2-21, and the provisions of the articles are presumably binding on the managers, members, and the LLC itself. Thus, it would seem that the North Carolina statute can be analogized to statutes allowing for dissolution when it is not reasonably practicable to carry on the LLC's business in conformity with the certificate and the operating agreement. *See supra* note 10 and accompanying text.

Three statutes allow for judicial dissolution when it is not reasonably practicable to carry on the company's activities and affairs. *See supra* note 13 and accompanying text. These statutes have no limiting "in conformity with" language. This approach seems to give flexibility to courts to dissolve in any situation involving frustration of the purpose of the business.

[51] *See, e.g.*, Douglas K. Moll, *Shareholder Oppression and the New Louisiana Business Corporation Act*, 60 LOY. L. REV. 461, 462 (2014); *see generally* MOLL & RAGAZZO, *supra* note 47, ch. 7 (providing an in-depth discussion of the oppression doctrine); *id.* ch. 8 (providing an in-depth discussion of remedies for oppression).

[52] *See, e.g.*, MOLL & RAGAZZO, *supra* note 47, § 7.01[A], at 7-5.

text—the lack of exit rights, the norm of majority rule, the deference of the business judgment rule, and the absence of advance planning.[53] Those same factors are present in the LLC setting as well:

> Although generalizations are dangerous due to the wide variety of LLC statutes, the "seeds" of oppression are, in many jurisdictions, present in the LLC setting. The same combination of "no exit" and majority rule—a combination that has left minority shareholders vulnerable in the close corporation for decades—exists in the LLC. Further, the deference of the business judgment rule and the likely absence of contractual safeguards will stymie most minority efforts to obtain relief. Given this setting, and based on the close corporation experience, it is inevitable that some majority owners will abuse their control at the expense of minority investors. Just as in the close corporation,

[53] As I have written elsewhere:

> In the close corporation setting, four primary factors form the "seeds" of the oppression problem—the lack of exit rights, the norm of majority rule, the deference of the business judgment rule, and the absence of advance planning. Standing alone, the existence of any one of these factors in a particular business setting might be insufficient to warrant a special remedial doctrine. In combination, however, the existence of all of these factors in the same business context creates a great potential for abuse of minority investors. Undoubtedly, the presence of these factors in the close corporation environment spurred the need for judicial oversight and prompted the development of the modern-day shareholder oppression doctrine.

Moll, *supra* note 3, at 916–17.

> legitimate judicial scrutiny of majority conduct is needed. The oppression doctrine, in other words, has a place in the LLC structure as well.[54]

Despite these similarities, judicial dissolution statutes in the corporation setting are far more likely to include oppression-related protection than similar statutes in the LLC context. Corporation statutes in forty states provide for dissolution or other relief on the grounds of "oppressive actions" (or similar term) by "directors or those in control."[55] In contrast, LLC statutes in only twenty-one states provide similar oppression-related protection.[56] Given that the oppression problem can arise in both forms of business organization, what might explain this difference? Some thoughts are presented below.

1. Exit Rights[57]

Exit rights for the owners of any business organization are useful in two major respects. First, an exit allows an owner to liquidate his investment and to recover the value of his invested capital.[58] Second, the threat of exit in large numbers tends to restrain managers from taking action that harms the interests of owners.[59] Significantly, without exit

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[54] *Id.* at 956–57.

[55] *See* MOLL & RAGAZZO, *supra* note 47, § 7.01[D][1][b][i], at 7-72 n.192.

[56] Along with the twenty-one states, three uniform acts (ULLCA, RULLCA, and RULLCA (2013)) provide oppression-related protection in the LLC setting. *See supra* notes 19–22 and accompanying text (noting that twenty-four statutes in the sample provide for dissolution on the grounds of oppressive conduct by managers or members).

[57] Portions of this sub-section are taken from Moll, *supra* note 3, at 896–97.

[58] *See, e.g.*, Donahue v. Rodd Electrotype Co., 328 N.E.2d 505, 514 (Mass. 1975) (observing that a market exit allows a shareholder to "sell his stock in order to extricate some of his invested capital").

[59] Many commentators have argued that the existence of a market helps to combat the abusive exercise of control. Professors Hetherington & Dooley, for example, state the following:

> Market restraints are most visible and workable in the case of publicly held corporations. If manage-

rights, an owner's invested capital is indefinitely "locked-into" the entity

> ment is inefficient, indulges its own preferences, or otherwise acts contrary to shareholder interests, dissatisfied shareholders will sell their shares and move to more attractive investment opportunities. As more shareholders express their dissatisfaction by selling, the market price of the company's shares will decline to the point where existing management is exposed to the risk of being displaced through a corporate takeover . . . . The mere threat of displacement, whether or not realized, is a powerful incentive for managers of publicly held corporations to promote their shareholders' interests so as to keep the price of the company's shares as high and their own positions as secure as possible.

J.A.C. Hetherington & Michael P. Dooley, *Illiquidity and Exploitation: A Proposed Statutory Solution to the Remaining Close Corporation Problem*, 63 VA. L. REV. 1, 39–40 (1977) (footnote omitted). Similarly, as Professor Bahls observes:

> A public market creates significant and powerful incentives for managers to manage corporations in a way that maximizes profits and owners' returns. A public market for stock allows dissatisfied shareholders to sell their shares. Sales of a significant number of shares depress stock prices, making way for new owners (sometimes corporate raiders) to buy stock and oust incompetent incumbent management. Similarly, the management of publicly held corporations is more carefully monitored by persons outside the corporation, including independent directors, accountants, and investment bankers. As a result, the market creates incentives for managers to align their interests with the interests of shareholders.

Steven C. Bahls, *Application of Corporate Common Law Doctrines to Limited Liability Companies*, 55 MONT. L. REV. 43, 76–77 (1994) (footnote omitted); *see also* Rosenfield v. Metals Selling Corp., 643 A.2d 1253, 1262 n.18 (Conn. 1994) ("The market for corporate control serves to constrain managers' conduct that does not maximize shareholder wealth. It therefore serves to align the interests of managers more closely with the interests of shareholders in publicly traded corporations. The market for corporate control does not affect, however, the incentives of managers of closely held corporations.").

and, in general, the capital can be used as the controlling owner sees fit.[60] When exit rights are absent, therefore, oppressive conduct can result in the "effective confiscation" of the minority's investment.[61] Not surprisingly, a number of commentators have asserted that the lack of exit rights is the primary cause of the oppression problem and is the factor driving the need for judicial oversight.[62]

In the closely held corporation, the lack of exit rights is a reality. For all practical purposes, minority shareholders in closely held corporations are unable to sell, unable to demand a buyout, and unable to cause a

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[60] *See, e.g.*, Charles W. Murdock, *The Evolution of Effective Remedies for Minority Shareholders and its Impact Upon Valuation of Minority Shares*, 65 NOTRE DAME L. REV. 425, 447 (1990) ("[T]he primary vulnerability of a minority shareholder is the spectre of being 'locked-in,' that is, having a perpetual investment in an entity without any expectation of ever receiving a return on that investment."); *infra* note 61 (observing that oppressive conduct allows the majority to use the minority's investment for the majority's own purposes).

[61] Edwin J. Bradley, *An Analysis of the Model Close Corporation Act and a Proposed Legislative Strategy,* 10 J. CORP. L. 817, 840 (1985) ("Never should the minority participant [in an oppression context] be understood as assenting to the effective confiscation of his or her investment. . . ."); *see, e.g.*, Douglas K. Moll, *Shareholder Oppression in Close Corporations: The Unanswered Question of Perspective*, 53 VAND. L. REV. 749, 817 n.267 (2000) ("In this [oppression] context, the majority shareholder should be viewed as simply appropriating a portion of the minority's investment to further the majority's own interests."); F. Hodge O'Neal, *Close Corporations: Existing Legislation and Recommended Reform*, 33 BUS. LAW. 873, 887 (1978) ("Not to provide a remedy in [oppressive] circumstances of this kind is to permit the majority shareholders to exploit the minority shareholder's investment solely for their own benefit.").

[62] *See, e.g.*, Laurel Wheeling Farrar & Susan Pace Hamill, *Dissociation from Alabama Limited Liability Companies in the Post Check-the-Box Era*, 49 ALA. L. REV. 909, 924 n.64 (1998) (noting that "the most significant problem faced by the shareholders [of a close corporation]" is "that of no liquidity of shares"); Daniel S. Kleinberger, *Why Not Good Faith? The Foibles of Fairness in the Law of Close Corporations*, 16 WM. MITCHELL L. REV. 1143, 1149 (1990) ("More than any other characteristic, this 'no exit' phenomenon has pushed the law into developing special rules for shareholders in close corporations."); Robert B. Thompson, *Corporate Dissolution and Shareholders' Reasonable Expectations*, 66 WASH. U. L. Q. 193, 225 (1988) ("Once a corporation's shares are publicly traded, minority shareholders, even if they are also employees, are not subjected to the risks that are common to the close corporation and which inspired the modern legislative and judicial remedies.").

dissolution of the company.[63] In the LLC, however, some statutes still provide members with the right to exit the venture and to "cash out" of the company. These statutes are modeled after ULLCA and generally provide for a fair value buyout upon a member's dissociation that does not result in dissolution of the company.[64] Member dissociation, in other words, will provide liquidity either through a buyout or dissolution. When exit rights are present, there is little need for explicit oppression-related protection, as minority owners can protect themselves from abusive majority conduct by simply dissociating and cashing out.[65] Thus, jurisdictions providing such exit rights may simply have believed that oppression-related dissolution provisions were unnecessary.

Unfortunately, this explanation has a critical weakness—it simply does not fit the data. Only four state statutes provide exit rights,[66] and all four *additionally* provide an oppression-related dissolution ground.[67] Put differently, not a single jurisdiction stands for the proposition that state statutes offer exit rights in lieu of oppression provisions. As a result, an argument that exit rights explain the smaller number of LLC statutes with

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[63] *See* Moll, *supra* note 3, at 897–905.

[64] *See* HAW. REV. STAT. § 428-701(a); MONT. CODE ANN. § 35-8-808(1); S.C. CODE ANN. § 33-44-701; W. VA. CODE § 31B-8-701(a); UNIF. LTD. LIAB. CO. ACT § 701(a) (1996).

In an at-will LLC, the buyout is at fair value determined as of the date of dissociation. *See, e.g.*, UNIF. LTD. LIAB. CO. ACT § 701(a)(1) (1996). In a term LLC, the buyout is at fair value determined as of the date of the expiration of the specified term. *See id.* § 701(a)(2). A buyout in a term LLC, therefore, may take substantially longer to complete. If the LLC fails to make the required purchase of the membership interest, a court can judicially dissolve the company. *See supra* note 28 and accompanying text.

[65] *See supra* note 62 and accompanying text (noting that a number of commentators have asserted that the lack of exit rights is the primary cause of the oppression problem and is the factor driving the need for judicial oversight).

[66] *See supra* note 64 and accompanying text.

[67] *See* HAW. REV. STAT. § 428-801(4)(E); MONT. CODE ANN. § 35-8-902(1)(e); S.C. CODE ANN. § 33-44-801(4)(e); W. VA. CODE § 31B-8-801(b)(5)(v); *see also* UNIF. LTD. LIAB. CO. ACT § 701(a) (1996) (providing for dissolution on oppression-related grounds); *infra* Appendix 1, 2 (summarizing the data and providing the statutory language).

oppression-related dissolution provisions seems more theoretical than real.

Perhaps the argument can be resuscitated, at least in part, with a historical view of exit rights in the LLC. Consider the following observations:

> When the first LLC statutes were passed, most included provisions that provided liquidity to members if they chose to exit the business. These provisions took two forms. First, the majority of LLC statutes provided that members had the power to withdraw from the business in the absence of a contrary provision in the operating agreement. Upon withdrawal, the member was entitled to be paid the fair value of its ownership interest less any damages caused by a wrongful withdrawal. Second, most of the LLC statutes provided for dissolution of the LLC upon the member's withdrawal or other dissociation from the venture (e.g., dissociation due to a member's death, bankruptcy, or incompetency). An actual liquidation of the business could be avoided, however, if all (or a majority under some statutes) of the remaining members elected to continue the venture. Even if liquidation were averted, the withdrawing member was still entitled to a buyout of its ownership interest.
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> The inclusion of these provisions in the statutory scheme of the LLC was no accident. Before 1997, the IRS applied the "corporate resemblance" test to determine whether an LLC would be classified as a partnership or a corporation for tax purposes. Under that test, an LLC was "taxed like a partnership unless it possesse[d] three or

> more of the four corporate characteristics, including continuity of life, centralized management, limited liability, and free transferability of interests." Because LLCs possess limited liability, a state's statutory scheme needed to deny two of the remaining corporate characteristics to insure partnership tax status. Many statutes provided for manager-managed LLCs if the members desired, raising at least the possibility that centralized management would be found. Thus, the LLC statutes needed to deny the free transferability of interests and continuity of life characteristics possessed by the traditional corporation.
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> . . . . [T]he provisions calling for the LLC's dissolution upon the member's withdrawal or other dissociation from the business were designed to resist a continuity of life finding. Treasury Regulations at the time provided that "[i]f the death, insanity, bankruptcy, retirement, resignation, or expulsion of any member will cause a dissolution of the organization, continuity of life does not exist." As a result, most LLC statutory schemes included a dissolution provision with triggers that closely tracked the language of the Treasury Regulations.
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> In the first wave of LLC statutes, therefore, the inclusion of withdrawal and dissolution provisions provided exit rights and accompanying liquidity to LLC investors. The withdrawal provisions obviously provided liquidity by typically stating that a member would receive the fair value of its ownership interest upon withdrawal. The dissolution provisions provided liquidity by requiring

> the company to be sold (in the event of liquidation) and by allocating to each member its proportionate share of the company's sale value. If liquidation were avoided, the minority member was still entitled to its buyout upon withdrawal.[68]

As this passage reveals, exit rights were prevalent when the first wave of LLC statutes were passed, and little attention may have been paid to explicit oppression-related dissolution provisions as a result. As mentioned, when exit rights are present, minority owners can protect themselves from oppressive majority conduct; there is little need for a judicial remedy.[69] In late 1996, however, the IRS scrapped the corporate resemblance test in favor of the more easily administered "check the box" regulations. Under the new regulations, an LLC automatically receives pass-through partnership income tax treatment unless it affirmatively elects otherwise.[70] Following the passage of the regulations, there was no longer a tax-driven need to deny certain "corporate" characteristics to LLCs. In response, and spurred further by estate and gift tax concerns, many states restricted or eliminated the exit rights that had served to combat a continuity of life finding.[71]

Given this historical background, one might argue that legislatures, preoccupied with federal income tax changes affecting the LLC and related estate and gift tax concerns, simply overlooked the connection between exit rights and protection from oppressive conduct. After all, the statutory presence of exit rights largely eliminated any prior legislative need to focus on the oppression problem. Under this thinking, attention to the issue might be all that is needed to prompt states to add oppression-related dissolution provisions. That attention might come in

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[68] Moll, *supra* note 3, at 926–31 (footnotes omitted).

[69] *See supra* note 62 and accompanying text (noting that a number of commentators have asserted that the lack of exit rights is the primary cause of the oppression problem and is the factor driving the need for judicial oversight).

[70] *See* Moll, *supra* note 3, at 931–32 & n.167.

[71] *See id.* at 932–40.

the form of RULLCA and RULLCA (2013), which both include such protection.[72] As states continue to reconsider their LLC statutes in light of these modern uniform acts, the need for an oppression provision to offset the absence of exit rights may become apparent. Some support for this argument can be drawn from the fact that the number of states with oppression-related dissolution provisions appears to have increased from eight to twenty-one over the past sixteen years.[73]

In short, the initial prevalence of exit rights in the LLC setting may explain why legislatures were not focused on the oppression issue when LLC statutes were first enacted. Now that exit rights have largely been eliminated, it may simply be a matter of time before states realize that their past elimination of exit rights contributes to the present vulnerability of minority members. Under this thinking, one would expect that the number of oppression-related judicial dissolution provisions will continue to increase with the passage of time.

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[72] *See* REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(5)(B) (2006); REVISED UNIF. LTD. LIAB. CO. ACT § 701(a)(4)(C)(ii) (2006) (amended 2013). Interestingly, neither the 1992 Prototype LLC Act nor the 2011 Revised Prototype LLC Act includes an oppression-related judicial dissolution provision. Both acts were drafted by a committee of the American Bar Association, and both provide only one judicial dissolution ground—when it is not reasonably practicable to carry on the business of the LLC in conformity with the operating agreement. *See infra* Appendix 1 (providing the statutory language).

[73] *Compare* Sandra K. Miller, *What Buy-Out Rights, Fiduciary Duties, and Dissolution Remedies Should Apply in the Case of the Minority Owner of a Limited Liability Company?*, 38 HARV. J. ON LEGIS. 413, 460–61 & n.245–46 (2001) (stating that "a growing number of states provide the remedy of a judicial dissolution upon a showing of certain majority misconduct," and citing the LLC statutes of Alaska, California, Florida, Idaho, Kansas, Maine, Minnesota, and Ohio), *with supra* note 56 and accompanying text (noting that LLC statutes in twenty-one states provide oppression-related protection).

On the other hand, some states adopting RULLCA or RULLCA (2013) have explicitly removed the oppression-related dissolution ground that is present in the Uniform Acts. *See, e.g.*, FLA. STAT. § 605.0702; S.D. CODIFIED LAWS § 47-34A-801 (stating nevertheless, in the "historical and statutory notes," that "[t]his section is similar to § 801 of the Uniform Limited Liability Company Act (1996) and § 701 of the Revised Uniform Limited Liability Company Act (2006)"). South Dakota does have an oppression-related dissolution provision in its corporation statute. *See* S.D. CODIFIED LAWS § 47-1A-1430(2)(b). Florida does not. *See* FLA. STAT. § 607.1430.

2. Fiduciary Duty

In the closely held corporation setting, traditional principles of fiduciary duty may not protect minority owners from oppressive majority conduct. At least part of the reason for this lack of protection is due to the conventional notion that fiduciary duties run to the corporation (or to the shareholders collectively), but do not run to individual shareholders.[74] Consequently, a minority shareholder can have difficulty challenging, for example, a termination of employment or a removal from management on traditional fiduciary duty grounds, as a court usually requires that harm to the corporation—rather than harm merely to the minority shareholder—be shown.[75] Dissolution for oppression statutes are needed in the closely held corporation setting, therefore, because they focus

[74] *See, e.g.*, Gearhart Indus., Inc. v. Smith Int'l, Inc., 741 F.2d 707, 721 (5th Cir. 1984) (observing that "directors' duties of loyalty and care run to the corporation, not to individual shareholders or even to a majority of the shareholders"); Ritchie v. Rupe, 443 S.W.3d 856, 885 n.53 (Tex. 2014) ("But a corporate officer or director's duty is to the corporation and its shareholders collectively, not any individual shareholder or subgroup of shareholders, even if that subgroup represents a majority of the ownership."); Hoggett v. Brown, 971 S.W.2d 472, 488 n.13 (Tex. App. 1997) (stating that "a majority shareholder's fiduciary duty ordinarily runs to the corporation"); McLaughlin v. Schenck, 220 P.3d 146, 153 (Utah 2009) ("These corporate duties have been interpreted to coincide with the common law understanding that officers and directors owe these duties to the corporation and shareholders collectively, not individually." (citation omitted)); Lynch v. Patterson, 701 P.2d 1126, 1136 (Wyo. 1985) ("The duty of the directors . . . is a duty to the corporation and not a duty to the stockholder instituting the action."); Hetherington & Dooley, *supra* note 59, at 12 & n.30 (mentioning the traditional view that duties run "solely between the majority and the corporation," and observing that the "notion that the fiduciary obligations of management run only to the corporation provides the minority in close corporations virtually no protection against oppression and exploitation by the control group").

[75] *See* Hetherington & Dooley, *supra* note 59, at 12 ("[C]ourts undoubtedly . . . have been influenced by traditional common law attitudes emphasizing . . . proof of harm to the corporation as distinguished from the interests of individual shareholders."); *cf.* Donahue v. Rodd Electrotype Co., 328 N.E.2d 505, 513 & n.14 (Mass. 1975) (noting, while discussing traditional fiduciary duty principles, that "in practice, the plaintiff will find difficulty in challenging dividend or employment policies," and observing that it "would be difficult for the plaintiff in the instant case to establish breach of a fiduciary duty *owed to the corporation*, as indicated by the finding of the trial judge").

on harm to an individual minority owner in a way that traditional fiduciary duty principles do not.[76]

In the LLC setting, many statutes explicitly impose a fiduciary duty on managers (in manager-managed LLCs) and members (in member-managed LLCs) that is owed to an individual minority member.[77] That duty allows a minority member to bring a breach of fiduciary duty action in response to managerial conduct that is harmful to the member (rather than to the company).[78] Perhaps legislatures believed that a judicial dissolution provision was less necessary in the LLC context because oppressive conduct could instead be remedied through an individual breach of fiduciary duty action.[79]

Although this argument seems plausible, it should be noted that under some statutory articulations, the fiduciary duty language may be less useful for combatting oppression. Even though the statute explicitly provides that a fiduciary duty is owed to a member, the scope of the duty may be limited to company-related harms.[80] In addition, with oppres-

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[76] *See, e.g.*, MODEL BUS. CORP. ACT § 14.30 cmt. 2 (noting that "'oppressive' behavior in [the judicial dissolution statute] generally describes action directed against a particular shareholder").

[77] *See, e.g.*, 805 ILL. COMP. STAT. 180/15-3; FLA. STAT. § 605.04091; UNIF. LTD. LIAB. CO. ACT § 409 (1996); REVISED UNIF. LTD. LIAB. CO. ACT § 409 (2006); REVISED UNIF. LTD. LIAB. CO. ACT § 409 (2006) (amended 2013).

[78] *But see infra* note 80 and accompanying text (noting that under some statutory articulations, the scope of the fiduciary duty may be limited to company-related harms).

[79] That said, both RULLCA and RULLCA (2013) (and the states that follow them) impose a fiduciary duty owed to a member that is not limited to company-related harms, and they *additionally* provide an oppression-related dissolution provision. *See, e.g.*, REVISED UNIF. LTD. LIAB. CO. ACT §§ 409 & cmt., 701(a)(5)(B) (2006); REVISED UNIF. LTD. LIAB. CO. ACT §§ 409 & cmt., 701(a)(4)(C)(ii) (2006) (amended 2013); *see also infra* note 80 and accompanying text (noting that under some statutory articulations, the scope of the fiduciary duty may be limited to company-related harms).

[80] *See, e.g.*, CAL. CORP. CODE § 17704.09(b) (stating that the duty of loyalty is "limited to" listed company-related obligations); UNIF. LTD. LIAB. CO. ACT § 409(b) (1996) (same). Consider the following observations from a comment to the analogous provision of the 2013 Revised Uniform Partnership Act:

sion-based dissolution provisions, buyouts and other useful alternative remedies are well-established.[81] Whether such remedies are available in a breach of fiduciary duty action is more of an open question.[82] Finally, while a substantial amount of precedent makes clear that an owner's participatory rights (e.g., employment and management rights) can be protected under the oppression doctrine,[83] it is less clear whether such rights would be viewed as within the scope of a conventional fiduciary duty action.[84]

> . . . . The 2011 and 2013 Harmonization amendments made one major substantive change; they "un-cabined" fiduciary duty. UPA (1997) § 404 had deviated substantially from UPA (1914) by purporting to codify all fiduciary duties owed by partners. This approach had a number of problems. Most notably, the exhaustive list of fiduciary duties left no room for the fiduciary duty owed by partners to each other—*i.e.*, "the punctilio of an honor the most sensitive." *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928). Although UPA (1997) § 404(b) purported to state "[a] partner's duty of loyalty to the partnership *and the other partners*" (emphasis added), the three listed duties each protected the partnership and not the partners.

REVISED UNIF. LTD. LIAB. CO. ACT § 409 cmt. (2006) (amended 2013).

[81] *See generally* MOLL & RAGAZZO, *supra* note 47, ch. 8 (providing an in-depth discussion of remedies for oppression).

[82] Although breach of fiduciary duty is considered an equitable cause of action, *see, e.g.*, MOLL & RAGAZZO, *supra* note 47, § 8.01, at 8-7, the availability of a buyout as a remedy is much less established in the fiduciary duty case law than it is in the oppression area. *See, e.g.*, Brodie v. Jordan, 857 N.E.2d 1076, 1080 (Mass. 2006) (rejecting a buyout award in a breach of fiduciary duty action); *see also* MOLL & RAGAZZO, *supra* note 47, § 8.02[B][1], at 8-17 (noting that "[a] buyout is the most common remedy for oppression").

[83] *See, e.g.*, MOLL & RAGAZZO, *supra* note 47, § 7.01[C][1]–[2], at 7-22 to 7-30.

[84] *See, e.g.*, Douglas K. Moll, *Of Donahue and Fiduciary Duty: Much Ado About . . . ?*, 33 W. NEW ENG. L. REV. 471, 491 (2011) (noting that "under traditional corporate law principles, employment and management positions are not ordinarily viewed as part of one's rights as a shareholder; thus, terminations of employment and removals from management do not generally invoke a fiduciary duty analysis"); *see also* Berman v. Phys-

3. Other Dissolution Grounds

Perhaps the smaller number of LLC statutes with oppression-related dissolution provisions can be explained by the inclusion of other judicial dissolution grounds that are broad enough to encompass oppressive conduct. For example, and as mentioned, fifty-four statutes provide for dissolution when it not reasonably practicable to carry on the business in conformity with the LLC's governing documents.[85] In some situations, this language might be useful to combat oppressive conduct, such as when the majority is denying the minority certain financial or participatory rights that are promised in the certificate or operating agreement. Such guaranteed rights are rare,[86] however, and the statutory language seems too indirect to squarely deal with the myriad forms of oppressive behavior.[87] Indeed, the case law addressing the language has

ical Med. Assocs., 225 F.3d 429, 433 (4th Cir. 2000) (stating that "any injury caused by the termination decision itself would be an injury to his interests as an employee, not as a stockholder").

[85] *See supra* note 9 and accompanying text.

[86] *Cf.* Moll, *supra* note 3, at 952–56 (arguing that the typical member of an LLC is unlikely to effectively contract for protection from abusive majority conduct).

[87] *See, e.g.*, *In re* Seneca Investments LLC, 970 A.2d 259, 263 (Del. Ch. 2008) (stating that, under the Delaware judicial dissolution statute, "the inquiry must focus on whether it is now impracticable for Seneca [the LLC] to fulfill its business purpose"); *id.* ("Petitioner argues that dissolution is proper because Seneca has failed to comply with certain provisions of the Operating Agreement that allegedly require, among other things, that the Company make certain cash distributions, provide reports to the Company's stockholders, and continue to allow Tierney to serve as a director. Even assuming that Seneca is in violation of some provisions of its operating agreement, such violations are not grounds for this Court to order dissolution of an LLC. The role of this Court in ordering dissolution under § 18-802 is limited, and the Court of Chancery will not attempt to police violations of operating agreements by dissolving LLCs."); *cf.* Dennis S. Karjala, *Planning Problems in the Limited Liability Company*, 73 WASH. U. L. Q. 455, 471 (1995) ("[I]n [some states], a court may order dissolution in an action by a member if it is established that it is 'not reasonably practicable to carry on the business' according to the articles or an operating agreement. Yet it is often possible to carry on the business while freezing a minority interest out of any return." (footnote omitted)).

As to the "myriad forms of oppressive behavior," see MOLL & RAGAZZO, *supra* note 47, § 7.01[C][8], at 7-44 & n.106 (noting that "oppressive conduct can present itself in a wide variety of forms").

focused more on the frustration of the company's purpose than on the unfair treatment of a minority member.[88]

Some statutes provide for dissolution when there is member conduct that makes it not reasonably practicable to carry on the company's business with that member.[89] Perhaps that language could be used by a court to provide a remedy against an oppressive majority whose behavior is repeatedly abusive towards minority owners. Unfortunately, only seven statutes include such language.[90] The ability to dissolve when "other circumstances render dissolution equitable" could certainly be used to remedy oppressive majority conduct, but that ground is only present in one statute.[91]

At bottom, while it is possible that other judicial dissolution grounds might be used to remedy oppressive conduct in the LLC, the "fit" of some of this language is questionable. Moreover, some of the more appealing grounds are simply not present in enough statutes. Given that a sizable body of oppression case law (on both liability and remedy issues) already exists,[92] it seems somewhat pointless to make litigants and courts reinvent the wheel. Put differently, an explicit judicial dissolution ground for oppressive conduct seems more effective than compelling litigants and courts to stretch other grounds to cover oppressive behavior.

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[88] *See supra* notes 35–37, 87 and accompanying text.

[89] *See supra* note 27 and accompanying text.

[90] *See supra* note 27 and accompanying text. In addition, five of these seven statutes (Hawaii, Montana, South Carolina, West Virginia, and ULLCA) also provide an oppression-related dissolution provision. Under these statutes, therefore, the "not reasonably practicable to carry on the company's business with that member" ground is not serving as a substitute for an oppression-related provision.

[91] *See supra* note 32 and accompanying text.

[92] *See generally* MOLL & RAGAZZO, *supra* note 47, ch. 7 (providing an in-depth discussion of the oppression doctrine); *id.* ch. 8 (providing an in-depth discussion of remedies for oppression).

4. The Vagueness of the Oppression Doctrine

Perhaps the smaller number of oppression-related dissolution provisions in the LLC context stems from a disapproval of the oppression doctrine itself. In many jurisdictions, oppression is defined in terms that require courts to ascertain whether there has been "burdensome, harsh and wrongful conduct" or a frustration of the minority's "reasonable expectations."[93] Such terms may be considered too vague to guide business owners and to produce consistent judicial results. The smaller number of oppression-related statutes, therefore, may be due to a conscious legislative rejection of the oppression doctrine in the LLC setting.

A few responses might be made to this argument. First, the number of jurisdictions with oppression-related dissolution statutes in the corporation setting has not decreased.[94] If conscious legislative rejections of the doctrine were occurring, one would expect to see changes in the corporation statutes as well. Second, and as mentioned, a sizable body of oppression case law exists that helps to mitigate any perceived vagueness or uncertainty surrounding the doctrine.[95] Third, the oppression doctrine seems no more vague than the notion of a fiduciary duty of loyalty owed to individual members, which many jurisdictions embrace.[96] Such manager-to-member or member-to-member duties are not defined by statute,[97] and courts will likely define such duties in generalized "good

[93] *See, e.g.*, *id.* § 7.01[D][1][b][i], at 7-75 to 7-76.

[94] In fact, it has increased. Effective January 1, 2015, Louisiana became the fortieth state in the country to provide statutory relief for oppressive conduct. *See* Moll, *supra* note 51, at 462 & n.5.

[95] *See supra* note 92 and accompanying text.

[96] *See supra* notes 77–79 and accompanying text.

[97] *See, e.g.*, REVISED UNIF. LTD. LIAB. CO. ACT § 409 (2006); *id.* § 409 cmt. (stating that "it is impracticable to cabin all LLC-related fiduciary duties within a statutory formulation," and indicating that the act "codifies the core of the fiduciary duty of loyalty . . . but . . . does not purport to discern every possible category of overreaching"); REVISED UNIF. LTD. LIAB. CO. ACT § 409 (2006) (amended 2013); *id.* § 409 cmt. (stating that the statute "recognizes two core managerial duties but, unlike some earlier uniform acts, does not purport to state all managerial duties").

faith"[98] or "fairness"[99] terms—terms that are arguably just as vague as "burdensome, harsh and wrongful conduct" and "reasonable expectations."

CONCLUSION

Judicial dissolution provisions in the LLC setting vary widely, although the existence of modern uniform acts are likely to lessen these jurisdictional variations over time. This article has attempted to catalog the statutory differences and to explore a few selected issues raised by the diverse approaches. With respect to dissolution when it is not reasonably practicable to carry on the business in conformity with the governing documents—the most common judicial dissolution ground—this article has argued that the impracticability of carrying on the business in conformity with either the certificate or the operating agreement should result in dissolution. Nevertheless, there is confusion over which of the various statutory articulations reaches that result. With respect to dissolution on the grounds of oppressive conduct, this article has provided some explanations for why oppression-related dissolution statutes are less common in the LLC setting than in the corporation context. As states continue to reconsider their LLC statutes in light of the modern uniform acts, they may realize that their past elimination of exit rights has contributed to the present vulnerability of minority members. As a result, the number of oppression-related dissolution provisions in the LLC setting will, ideally, increase.

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[98] *See, e.g.*, VGS, Inc. v. Castiel, No. C.A. 17995, 2000 WL 1277372, at *1, 4–5 (Del. Ch. Aug. 31, 2000) (stating that managers owed a duty of loyalty to the LLC's "investors," and ultimately concluding that managers "failed to discharge their duty of loyalty . . . *in good faith*" (emphasis added)); *infra* note 99.

[99] *Cf.* STATE BAR OF TEXAS, TEXAS PATTERN JURY CHARGES PJC 104.2 (2012) (stating that to comply with a fiduciary duty, the defendant must show, in part, that "the transaction[s] in question [was/were] fair and equitable to [Plaintiff]," and that "[Defendant] acted in the utmost good faith and exercised the most scrupulous honesty toward [Plaintiff]" (italics omitted)).

Appendix 1
Statutory Language

State	Citation	Dissolution Ground(s)
Alabama	ALA. CODE § 10A-5A-7.01 *See also* § 10A-5A-7.02	"(d) On application by a member, the entry of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the limited liability company agreement, which order is entered by the circuit court for the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then by the circuit court for the county in which the limited liability company's most recent registered office is located."
Alaska	ALASKA STAT. § 10.50.405 *See also* § 10.50.400	"On application by or for a member of a limited liability company, the superior court may order the company dissolved if the court determines that it is impossible for the company to carry on the purposes of the company."
Arizona	ARIZ. REV. STAT. ANN. § 29-785	"A. On application by or for a member, the superior court in the county in which the known place of business of the limited liability company is located may decree dissolution of a limited

	See also § 29-781	liability company on judicial determination of any of the following: 1. It is not reasonably practicable to carry on the limited liability company business in conformity with an operating agreement. 2. Unless otherwise provided in an operating agreement, the members or managers are deadlocked in the management of the limited liability company and irreparable injury to the limited liability company is threatened or being suffered or the business of the limited liability company cannot be conducted to the advantage of the members generally because of the deadlock. 3. Unless otherwise provided in an operating agreement, the members or managers of the limited liability company have acted or are acting in a manner that is illegal or fraudulent with respect to the business of the limited liability company. 4. Unless otherwise provided in an operating agreement, substantial assets of the limited liability company are being wasted, misapplied or diverted for purposes not related to the business of the limited liability company."
Arkansas	ARK. CODE. ANN. § 4-32-902 *See also* § 4-32-901	"On application by or for a member, a circuit court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement."

California	CAL. CORP. CODE § 17707.03 *See also* § 17707.01	"(a) Pursuant to an action filed by any manager or by any member or members of a limited liability company, a court of competent jurisdiction may decree the dissolution of a limited liability company whenever any of the events specified in subdivision (b) occurs. (b)(1) It is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement. (2) Dissolution is reasonably necessary for the protection of the rights or interests of the complaining members. (3) The business of the limited liability company has been abandoned. (4) The management of the limited liability company is deadlocked or subject to internal dissension. (5) Those in control of the limited liability company have been guilty of, or have knowingly countenanced, persistent and pervasive fraud, mismanagement, or abuse of authority."
Colorado	COLO. REV. STAT. § 7-80-810 *See also* § 7-80-801	"(2) A limited liability company may be dissolved in a proceeding by or for a member or manager of the limited liability company if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement of said company."

Connecticut	CONN. GEN. STAT. § 34-267	"(a) A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following: . . . (4) On application by a member, the entry by the Superior Court for the judicial district where the principal office of the limited liability company is located, or if none in this state, where its registered agent is located, of an order dissolving the company on the grounds that: (A) The conduct of all or substantially all of the company's activities and affairs is unlawful; or (B) it is not reasonably practicable to carry on the company's activities and affairs; (5) On application by a member, the entry by the Superior Court for the judicial district where the principal office of the limited liability company is located, of an order dissolving the company on the grounds that the managers or those members in control of the company: (A) Have acted, are acting or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant . . . ."
Delaware	DEL. CODE ANN. tit. 6, § 18-802 *See also* § 18-801	"On application by or for a member or manager the Court of Chancery may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with a limited liability company agreement."

District of Columbia	D.C. CODE § 29-807.01	"(a) A limited liability company is dissolved, and its activities and affairs shall be wound up, upon the occurrence of any of the following: . . . (4) On application by a member, the entry by Superior Court of an order dissolving the company on the grounds that: (A) The conduct of all or substantially all of the company's activities and affairs is unlawful; or (B) It is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement. (5) On application by a member, the entry by Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company: (A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
Florida	FLA. STAT. § 605.0702(1)	"(b) In a proceeding by a manager or member if it is established that: 1. The conduct of all or substantially all of the company's activities and affairs is unlawful;

	See also §§ 605.0701, 605.0705	2. It is not reasonably practicable to carry on the company's activities and affairs in conformity with the articles of organization and the operating agreement; 3. The managers or members in control of the company have acted, are acting, or are reasonably expected to act in a manner that is illegal or fraudulent; 4. The limited liability company's assets are being misappropriated or wasted, causing injury to the limited liability company, or in a proceeding by a member, causing injury to one or more of its members; or 5. The managers or the members of the limited liability company are deadlocked in the management of the limited liability company's activities and affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered."
Georgia	GA. CODE. ANN. § 14-11-603 *See also* § 14-11-602(b)	"(a) On application by or for a member, the court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or a written operating agreement."
Hawaii	HAW. REV. STAT. § 428-801	"(4) On application by a member or a dissociated member, upon entry of a judicial decree that: (A) The economic purpose of the company is likely to be unreasonably frustrated;

		(B) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (C) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; (D) The company failed to purchase the petitioner's distributional interest as required by section 428-701; or (E) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . ."
Idaho	IDAHO CODE § 30-25-701(a)	"(4) On application by a member, the entry by the district court of an order dissolving the company on the grounds that: (A) The conduct of all or substantially all the company's activities and affairs is unlawful; or (B) It is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or (C) The managers or those members in control of the company: (i) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or (ii) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant . . . ."

Illinois	805 ILL. COMP. STAT. 180/35-1(a)	"(4) On application by a member or a dissociated member, upon entry of a judicial decree that: (A) the economic purpose of the company has been or is likely to be unreasonably frustrated; (B) the conduct of all or substantially all of the company's activities is unlawful; (C) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement. (5) On application by a member or transferee of a distributional interest, upon entry of a judicial decree that the managers or those members in control of the company: (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
Indiana	IND. CODE § 23-18-9-2 *See also* § 23-18-9-1.1	"On application by or for a member, the circuit or superior court of the county in which the limited liability company's principal office, or if there is none in Indiana, in which the registered office is located, may decree dissolution of the limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement."

Iowa	IOWA CODE § 489.701(1)	"d. On application by a member, the entry by a district court of an order dissolving the company on the grounds that any of the following applies: (1) The conduct of all or substantially all of the company's activities is unlawful. (2) It is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement. e. On application by a member or transferee, the entry by a district court of an order dissolving the company on the grounds that the managers or those members in control of the company have done any of the following: (1) Have acted, are acting, or will act in a manner that is illegal or fraudulent. (2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
Kansas	KAN. STAT. ANN. § 17-76,117	"(b) If the business of the limited liability company is suffering or is threatened with irreparable injury because the members of a limited liability company, or the managers of a limited liability company having more than one manager, are so deadlocked respecting the management of the affairs of the limited liability company that the requisite vote for action cannot be obtained and the members are unable to terminate such deadlock, then any member or members in the aggregate owning at

		least 25% of the outstanding interests in either capital or profits and losses in the limited liability company may file with the district court a petition stating that such member or members desire to dissolve the limited liability company and to dispose of the assets thereof in accordance with a plan to be agreed upon by the members or as determined by the district court in the absence of such agreement."
Kentucky	KY. REV. STAT. ANN. § 275.290 *See also* § 275.285	"(1) The Circuit Court for the county in which the principal office of the limited liability company is located, or, if none, in the county of the registered office, may dissolve a limited liability company in a proceeding by a member if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement."
Louisiana	LA. STAT. ANN. § 12:1335	"On application by or for a member, any court of competent jurisdiction may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement."
Maine	ME. STAT. tit. 31, § 1595(1)	"D. On application by a member, the entry by the Superior Court of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities in conformity with the limited liability company agreement;

		E. On application by a member, the entry by the Superior Court of an order dissolving the limited liability company on the grounds that the members in control of the limited liability company have acted, are acting or will act in a manner that is illegal or fraudulent . . . ."
Maryland	MD. CODE ANN., CORPS. & ASS'NS § 4A-903 *See also* § 4A-902	"On application by or on behalf of a member, the circuit court of the county in which the principal office of the limited liability company is located may decree the dissolution of the limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or the operating agreement."
Massachusetts	MASS. GEN. LAWS ch. 156C, § 44 *See also* § 43	"On application by or for a member or manager the superior court department of the trial court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on its business in conformity with the certificate of organization or the operating agreement."
Michigan	MICH. COMP. LAWS § 450.4802 *See also* § 450.4801	"Upon application by or for a member, the circuit court for the county in which the registered office of a limited liability company is located may decree dissolution of the company whenever the company is unable to carry on business in conformity with the articles of organization or operating agreements."
Minnesota	MINN. STAT. § 322C.0701	"(4) on application by a member, the entry by appropriate court of an order dissolving the company on the grounds that:

		(i) the conduct of all or substantially all of the company's activities is unlawful; or (ii) it is not reasonably practicable to carry on the company's activities in conformity with the articles of organization and the operating agreement; (5) on application by a member, the entry by appropriate court of an order dissolving the company on the grounds that the managers, governors, or those members in control of the company: (i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant . . . ."
Mississippi	MISS. CODE ANN. § 79-29-803	"(1) On application by or for a member, the chancery court for the county in which the principal office of the limited liability company is located, or the Chancery Court of the First Judicial District of Hinds County, Mississippi, if the limited liability company does not have a principal office in this state, may decree dissolution of a limited liability company: (a) Whenever it is not reasonably practicable to carry on the business in conformity with the certificate of formation or the operating agreement; [or] (b) Whenever the managers or the members in control of the limited liability company have been guilty of or have knowingly

		countenanced persistent and pervasive fraud or abuse of authority, or the property of the limited liability company is being misapplied or wasted by such persons . . . ."
Missouri	MO. REV. STAT. § 347.143 *See also* § 347.137	"2. On application by or for a member, the circuit court for the county in which the registered office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the operating agreement."
Montana	MONT. CODE ANN. § 35-8-902	"(1) On application by or for a member or a dissociated member, a district court may order dissolution of a limited liability company, or other appropriate relief, when: (a) the economic purpose of the company is likely to be unreasonably frustrated; (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member; (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; (d) the company failed to purchase the petitioner's distributional interest as required by 35-8-805; or

		(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner."
Nebraska	NEB. REV. STAT. ANN. § 21-147(a)	"(4) on application by a member, the entry by the district court of an order dissolving the company on the grounds that: (A) the conduct of all or substantially all of the company's activities is unlawful; or (B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or (5) on application by a member, the entry by the district court of an order dissolving the company on the grounds that the managers or those members in control of the company: (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
Nevada	NEV. REV. STAT. § 86.495	"1. Upon application by or for a member, the district court may decree dissolution of a limited-liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement."
New Hampshire	N.H. REV. STAT. ANN. § 304-C:134	"I. Unless the operating agreement provides otherwise, upon application by a member, the superior court may decree the

dissolution of a limited liability company in any of the following circumstances:

(a) It is not reasonably practicable for the limited liability company to carry on its business.

(b) A voting deadlock has occurred among the members and, upon the occurrence of the deadlock, the members have been unable to break the deadlock; and because of the deadlock, either irreparable injury to the limited liability company is threatened or being suffered or the limited liability company's business and internal affairs can no longer be conducted to its advantage.

. . .

III. A member shall have the right to apply to the superior court to decree the dissolution of a limited liability company, and the superior court may issue such a decree, in any of the following circumstances:

(a) The limited liability company has procured its certificate of formation through fraud.

(b) The limited liability company has exceeded or abused its lawful authority under this act.

(c) The limited liability company has carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner.

		(d) The limited liability company has abused its power contrary to the public policy of the state."
New Jersey	N.J. STAT. ANN. § 42:2C-48(a)	"(4) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that: (a) the conduct of all or substantially all of the company's activities is unlawful; or (b) it is not reasonably practicable to carry on the company's activities in conformity with one or both of the certificate of formation and the operating agreement; or (5) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company: (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (b) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
New Mexico	N.M. STAT. ANN. § 53-19-40	"On application by or for a member, a court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on its business in conformity with its articles of organization or operating agreement."
New York	N.Y. LTD. LIAB. CO. LAW § 702	"On application by or for a member, the supreme court in the judicial district in which the office of the limited liability company is located may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on

		the business in conformity with the articles of organization or operating agreement . . . ."
North Carolina	N.C. GEN. STAT. § 57D-6-02	"The superior court may dissolve an LLC in a proceeding brought by either of the following: . . . (2) A member, if it is established that (i) it is not practicable to conduct the LLC's business in conformance with the operating agreement and this Chapter or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member."
North Dakota	N.D. CENT. CODE. § 10-32.1-50(1)	"d. On application by a member, the entry by appropriate court of an order dissolving the company on the grounds that: (1) The conduct of all or substantially all of the activities of the company are unlawful; or (2) It is not reasonably practicable to carry on the activities of the company in conformity with the articles of organization and the operating agreement; e. On application by a member, the entry by appropriate court of an order dissolving the company on the grounds that the managers, governors, or those members in control of the company: (1) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or (2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."

Ohio	OHIO REV. CODE ANN. § 1705.47	"On application by a member of a limited liability company, the tribunal may declare a limited liability company dissolved, and the limited liability company's business shall be wound up upon the occurrence of any of the following events: (A) An event that makes it unlawful for all or substantially all of the business of the limited liability company to be continued, but a cure of illegality within ninety days after notice to the limited liability company of the event is effective retroactively to the date of the event for purposes of this section; (B) A determination by the tribunal that any of the following is true: (1) The economic purpose of the limited liability company is likely to be unreasonably frustrated. (2) Another member has engaged in conduct relating to the limited liability company's business that makes it not reasonably practicable to carry on the business with that member. (3) It is not otherwise reasonably practicable to carry on the limited liability company's business in conformity with the operating agreement."
Oklahoma	OKLA. STAT. tit. 18, § 2038	"On application by or for a member, the district court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement."

Oregon	OR. REV. STAT. § 63.661	"(2) In a proceeding by or for a member if it is established that it is not reasonably practicable to carry on the business of the limited liability company in conformance with its articles of organization or any operating agreement."
Pennsylvania	15 PA. CONS. STAT. § 8871(a)	"(4) On application by a member, the entry by the court of an order dissolving the company on the grounds that: (i) the conduct of all or substantially all the company's activities and affairs is unlawful; (ii) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or (iii) the managers or those members in control of the company: (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is or will be directly harmful to the applicant."
Rhode Island	7 R.I. GEN. LAWS § 7-16-40	"On application by or on behalf of a member, the superior court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement."
South Carolina	S.C. CODE ANN. § 33-44-801	"(4) on application by a member or a dissociated member, upon entry of a judicial decree that:

		(a) the economic purpose of the company is likely to be unreasonably frustrated; (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; (d) the company failed to purchase the petitioner's distributional interest after giving effect to provisions of the operating agreement modifying or superseding the provisions of Section 33-44-701; or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . ."
South Dakota	S.D. CODIFIED LAWS § 47-34A-801(a)	"(4) On application by a member or a dissociated member, upon entry of a judicial decree that: (i) The economic purpose of the company is likely to be unreasonably frustrated; (ii) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

		(iii) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; or (iv) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal or fraudulent."
Tennessee	TENN. CODE ANN. § 48-245-902 (LLC formed before 1/1/06)	"(a) On application by the attorney general and reporter or by or for a member, the court may decree dissolution, winding up and termination of an LLC whenever it is not reasonably practicable to carry on the business in conformity with the articles and/or the operating agreement."
	TENN. CODE ANN. § 48-249-617 (LLC formed 1/1/06 or later)	"(a) Judicial Decree. On application by the attorney general and reporter, or by or for a member, the court may decree dissolution, winding up and termination of an LLC whenever it is not reasonably practicable to carry on the business in conformity with the LLC documents."
Texas	TEX. BUS. ORGS. CODE ANN. § 11.314	"A district court in the county in which the registered office or principal place of business in this state of a domestic partnership or limited liability company is located has jurisdiction to order the winding up and termination of the domestic partnership or limited liability company on application by an owner of the partnership or limited liability company if the court determines that:

		. . . (3) it is not reasonably practicable to carry on the entity's business in conformity with its governing documents."
Utah	UTAH CODE ANN. § 48-3a-701	"(4) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that: (a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or (b) it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the certificate of organization and the operating agreement; (5) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company: (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant . . . ."
Vermont	VT. STAT. ANN. tit. 11, § 4101(a)	"(4) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that: (A) the conduct of all or substantially all of the company's activities is unlawful; or

		(B) it is not reasonably practicable to carry on the company's activities in conformance with the certificate of organization and the operating agreement; or (5) on application by a member, the entry by the Superior Court of an order dissolving the company on the grounds that the managers or those members in control of the company: (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
Virginia	VA. CODE ANN. § 13.1-1047	"A. On application by or for a member, the circuit court of the locality in which the registered office of the limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement."
Washington	WASH. REV. CODE § 25.15.274	"On application by a member or manager the superior courts may order dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the limited liability company's activities in conformity with the certificate of formation and the limited liability company agreement; or (2) other circumstances render dissolution equitable."
West Virginia	W. VA. CODE § 31B-8-801(b)	"(5) On application by a member or a dissociated member, upon entry of a judicial decree that:

		(i) The economic purpose of the company is likely to be unreasonably frustrated; (ii) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (iii) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; (iv) The company failed to purchase the petitioner's distributional interest as required by section 7-701; or (v) The managers or members in control of the company have acted, are acting or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner . . . ."
Wisconsin	WIS. STAT. § 183.0902	"In a proceeding by or for a member, the circuit court for the county where the limited liability company's principal office, or, if none in this state, its registered office, is or was last located may order dissolution of a limited liability company if any of the following is established: (1) That it is not reasonably practicable to carry on the business of the limited liability company. (2) That the limited liability company is not acting in conformity with an operating agreement. (3) That one or more managers are acting or will act in a manner that is illegal, oppressive or fraudulent.

		(4) That one or more members in control of the limited liability company are acting or will act in a manner that is illegal, oppressive or fraudulent. (5) That limited liability company assets are being misapplied or wasted."
Wyoming	WYO. STAT. ANN. § 17-29-701(a)	"(iv) On application by a member, the entry of a court order dissolving the company on the grounds that: (A) The conduct of all or substantially all of the company's activities is unlawful; or (B) It is not reasonably practicable to carry on the company's activities in conformity with the articles of organization and the operating agreement; or (v) On application by a member or dissociated member, the entry of a court order dissolving the company on the grounds that the managers or those members in control of the company: (A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
Prototype LLC Act	PROTOTYPE LTD. LIAB. CO. ACT § 902 (1992)	"On application by or for a member, the [designate the appropriate court] may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the

		business of the limited liability company in conformity with the operating agreement."
Revised Prototype LLC Act	REVISED PROTOTYPE LTD. LIAB. CO. ACT § 706 (2011)	"(e) on application by a member, the entry by the [appropriate court] of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities in conformity with the limited liability company agreement."
ULLCA	UNIF. LTD. LIAB. CO. ACT § 801 (1996)	"(4) on application by a member or a dissociated member, upon entry of a judicial decree that: (i) the economic purpose of the company is likely to be unreasonably frustrated; (ii) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (iii) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; (iv) the company failed to purchase the petitioner's distributional interest as required by Section 701; or (v) the managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner . . . ."
RULLCA	REVISED UNIF. LTD. LIAB. CO.	"(4) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that:

	ACT § 701(a) (2006)	(A) the conduct of all or substantially all of the company's activities is unlawful; or (B) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or (5) on application by a member, the entry by [appropriate court] of an order dissolving the company on the grounds that the managers or those members in control of the company: (A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."
RULLCA (2013)	REVISED UNIF. LTD. LIAB. CO. ACT § 701(a) (2006) (Amended 2013)	"(4) on application by a member, the entry by [the appropriate court] of an order dissolving the company on the grounds that: (A) the conduct of all or substantially all the company's activities and affairs is unlawful; (B) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or (C) the managers or those members in control of the company: (i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or (ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant . . . ."

Appendix 2
Data Summary

1. **<u>Purpose of the company cannot be accomplished</u>** **10 statutes**

a. Impossible to carry on the purposes of the company

AK							

b. Economic purpose likely to be unreasonably frustrated

HI	IL	MT	OH	SC	SD	WV	ULLCA

c. Business has been abandoned

CA							

2. **<u>Not reasonably practicable to carry on the business in conformity with the governing documents</u>** **54 statutes (WI listed twice)**

a. Not reasonably practicable to carry on business in conformity with the LLC agreement/operating agreement

AL	AZ	AR	CO	DE	KY	ME	MO
OH	WI	Proto-type	Revised Prototype				

b. Not reasonably practicable to carry on business in conformity with the articles of organization OR operating agreement

CA	GA	IN	LA	MA	MD	MI	MS
NJ	NM	NV	NY	OK	OR	RI	TN
"one or both"							"and/or"; "in conformity with the LLC documents," defined as either or both

c. Not reasonably practicable to carry on business in conformity with the articles of organization AND operating agreement

DC	FL	HI	IA	ID	IL	MN	MT
ND	NE	PA	SC	SD	TX	UT	VA
					"in conformity with its governing documents"		
VT	WA	WV	WY	ULLCA	RULLCA	RULLCA (2013)	

d. Not reasonably practicable to carry on business in conformity with the operating agreement and this Chapter

NC							

e. Not reasonably practicable to carry on business

CT	NH	WI					
		also LLC "not acting in conformity with an operating agreement"					

3. <u>Member or manager deadlock</u> **5 statutes**

AZ	CA	FL	KS	NH			

4. **<u>Unlawful, illegal, or fraudulent conduct by members, managers, or company</u>** **29 statutes**

AZ	CA	CT	DC	FL	HI	IA	ID
	also mis-manage-ment ground				manag-ers and members only		
IL	ME	MN	MS	MT	ND	NE	NH
	members in control only		persis-tent and perva-sive fraud or abuse of authority	manag-ers and mem-bers only			LLC pro-cured cer-tificate through fraud; or exceeded its lawful au-thority un-der the Act; also persis-tently fraudulent or illegal conduct

NJ	OH	PA	SC	SD	UT	VT	WI
	unlawful for the business of the LLC to be contin-ued						managers and mem-bers only
WV	WY	ULLCA	RULLCA	RULLCA (2013)			
managers and mem-bers only		managers and mem-bers only					

5. <u>Waste or misapplication of assets</u> **4 statutes**

AZ	FL	MS	WI				

6. Oppression — 24 statutes (CA listed twice)

a. Conduct that is oppressive or unfairly prejudicial to the petitioner

CT	DC	HI	IA	ID	IL	MN	MT
ND	NE	NJ	PA	SC	UT	VT	WI
WV	WY	ULLCA	RULLCA	RULLCA (2013)			

b. Dissolution necessary to protect rights or interests of complaining member

CA	NC						
"rights or interests"	"rights and interests"						

c. Abuse of authority by managers or members

CA	MS						
	persistent and perva-sive fraud or abuse of author-ity						

7. **Member conduct that makes it not reasonably practicable to carry on the company's business with that member** — **7 statutes**

HI	MT	OH	SC	SD	WV	ULLCA	

8. **Failure to purchase petitioner's distributional interest when required** — **5 statutes**

HI	MT	SC	WV	ULLCA			

9. **Other circumstances render dissolution equitable** — **1 statute**

WA							

10. **LLC has abused its power contrary to public policy of this state** — **1 statute**

NH							