

2019 Kansas Statutes

17-7685a. Division of a limited liability company. (a) As used in this section, and K.S.A. 2019 Supp. 17-76,150, and amendments thereto, and K.S.A. 17-7675, and amendments thereto:

(1) "Dividing company" means the domestic limited liability company that is effecting a division in the manner provided in this section.

(2) "Division" means the division of a dividing company into two or more domestic limited liability companies in accordance with this section.

(3) "Division company" means a surviving company, if any, and each resulting company.

(4) "Division contact" means, in connection with any division, a natural person who is a Kansas resident, any division company in such division or any other domestic limited liability company or other domestic entity as defined in K.S.A. 2019 Supp. 17-78-102, and amendments thereto, which division contact shall maintain a copy of the plan of division for a period of six years from the effective date of the division and shall comply with subsection (g)(3).

(5) "Organizational documents" means the articles of organization and operating agreement of a domestic limited liability company.

(6) "Resulting company" means a domestic limited liability company formed as a consequence of a division.

(7) "Surviving company" means a dividing company that survives the division.

(b) Pursuant to a plan of division, any domestic limited liability company may, in the manner provided in this section, be divided into two or more domestic limited liability companies. The division of a domestic limited liability company in accordance with this section and, if applicable, the resulting cessation of the existence of the dividing company pursuant to a certificate of division shall not be deemed to affect the personal liability of any person incurred prior to such division with respect to matters arising prior to such division, nor shall it be deemed to affect the validity or enforceability of any obligations or liabilities of the dividing company incurred prior to such division; except that such obligations and liabilities shall be allocated to and vested in, and valid and enforceable obligations of, such division company or companies to which such obligations and liabilities have been allocated pursuant to the plan of division, as provided in subsection (l). Each resulting company in a division shall be formed in compliance with the requirements of the Kansas revised limited liability company act and subsection (i).

(c) If the operating agreement of the dividing company specifies the manner of adopting a plan of division, the plan of division shall be adopted as specified in the operating agreement. If the operating agreement of the dividing company does not specify the manner of adopting a plan of division and does not prohibit a division of the limited liability company, the plan of division shall be adopted in the same manner as is specified in the operating agreement for authorizing a merger or consolidation that involves the limited liability company as a constituent party to the merger or consolidation. If the operating agreement of the dividing company does not specify the manner of adopting a plan of division or authorizing a merger or consolidation that involves the limited liability company as a constituent party and does not

prohibit a division of the limited liability company, the adoption of a plan of division shall be authorized by the consent or approval of members who own more than 50% of the then-current percentage or other interest in the profits of the dividing company owned by all of the members. Notwithstanding prior consent or approval, a plan of division may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of division.

(d) Unless otherwise provided in a plan of division, the division of a domestic limited liability company pursuant to this section shall not require such limited liability company to wind up its affairs under K.S.A. 17-76,118, and amendments thereto, or pay its liabilities and distribute its assets under K.S.A. 17-76,119, and amendments thereto, and the division shall not constitute a dissolution of such limited liability company.

(e) In connection with a division under this section, rights or securities of, or interests in, the dividing company may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving company or any resulting company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, an entity as defined in K.S.A. 2019 Supp. 17-78-102, and amendments thereto, that is not a division company, or may be canceled or remain outstanding, if the dividing company is a surviving company.

(f) (1) A plan of division adopted in accordance with subsection (c):

(A) May effect: (i) Any amendment to the operating agreement of the dividing company if it is a surviving company in the division; or (ii) the adoption of a new operating agreement for the dividing company if it is a surviving company in the division; and

(B) shall effect the adoption of a new operating agreement for each resulting company.

(2) Any amendment to an operating agreement or adoption of a new operating agreement for the dividing company, if it is a surviving company in the division, or adoption of a new operating agreement for each resulting company made pursuant to this subsection shall be effective at the effective time or date of the division. Any amendment to an operating agreement or adoption of an operating agreement for the dividing company, if it is a surviving company in the division, shall be effective notwithstanding any provision in the operating agreement of the dividing company relating to amendment or adoption of a new operating agreement, other than a provision that by its terms applies to an amendment to the operating agreement or the adoption of a new operating agreement, in either case, in connection with a division, merger or consolidation.

(g) If a domestic limited liability company is dividing under this section, the dividing company shall adopt a plan of division that shall set forth:

(1) The terms and conditions of the division, including:

(A) Any conversion or exchange of the limited liability company interests of the dividing company into or for limited liability company interests or other securities or obligations of any division company or cash, property, or rights or securities or obligations of or interests in an entity as defined in K.S.A. 2019 Supp. 17-78-102, and amendments thereto, that is not a division company, or that the limited liability company interests of the dividing company shall remain outstanding or be canceled, or any combination of the foregoing; and

(B) the allocation of assets, property, rights, series, debts, liabilities, and duties of the dividing company among the division companies;

(2) the name of each resulting company and, if the dividing company will survive the division, the name of the surviving company;

(3) the name and business address of a division contact, which shall have custody of a copy of the plan of division. The division contact, or any successor division contact, shall serve for a period of six years following the effective date of the division. During such six-year period, the division contact shall provide, without cost, to any creditor of the dividing company, within 30 days following the division contact's receipt of a written request from any creditor of the dividing company, the name and business address of the division company to which the claim of such creditor was allocated pursuant to the plan of division; and

(4) any other matters that the dividing company determines to include therein.

(h) If a domestic limited liability company divides under this section, the surviving company, if any, or any other division company shall file a certificate of division executed by one or more authorized persons on behalf of such division company in the office of the secretary of state in accordance with K.S.A. 2019 Supp. 17-7910, and amendments thereto, and articles of organization that comply with K.S.A. 17-7673, and amendments thereto, for each resulting company executed by one or more authorized persons in accordance with K.S.A. 2019 Supp. 17-7908(b), and amendments thereto. The certificate of division shall state:

(1) The name of the dividing company and, if it has been changed, the name under which its articles of organization were originally filed and whether the dividing company is a surviving company;

(2) the name of each division company;

(3) the name and business address of the division contact required by subsection (g)(3);

(4) the future effective date or time, which shall be a date or time certain, of the division if it is not to be effective upon the filing of the certificate of division;

(5) that the division has been consented to or approved in accordance with this section;

(6) that the plan of division is on file at a place of business of such division company as is specified therein, and shall state the address thereof; and

(7) that a copy of the plan of division will be furnished by such division company as is specified therein, on request and without cost, to any member of the dividing company.

(i) The certificate of division and each articles of organization for each resulting company required by subsection (h) shall be filed simultaneously in the office of the secretary of state and, if such certificate and articles of organization are not to become effective upon their filing, then each such certificate shall provide for the same effective date or time in accordance with K.S.A. 2019 Supp. 17-7911, and amendments thereto. Concurrently with the effective date or time of a division, the operating agreement of each resulting company shall become effective.

(j) A certificate of division shall act as a certificate of cancellation for a dividing company that is not a surviving company.

(k) An operating agreement may provide that a domestic limited liability company shall not have the power to divide as set forth in this section.

(l) Upon the division of a domestic limited liability company becoming effective:

(1) The dividing company shall be subdivided into the distinct and independent resulting companies named in the plan of division, and, if the dividing company is not a surviving company, the existence of the dividing company shall cease.

(2) For all purposes of the laws of the state of Kansas, all of the rights, privileges and powers, and all the property, real, personal, and mixed, of the dividing company and all debts due on whatever account to it, as well as all other things and other causes of action belonging to it, shall without further action be allocated to and vested in the applicable division company in such a manner and basis and with such effect as is specified in the plan of division, and the title to any real property or interest therein allocated to and vested in any division company shall not revert or be in any way impaired by reason of the division.

(3) Each division company shall, from and after effectiveness of the certificate of division, be liable as a separate and distinct domestic limited liability company for such debts, liabilities and duties of the dividing company as are allocated to such division company pursuant to the plan of division in the manner and on the basis provided in subsection (g)(1)(B).

(4) Each of the debts, liabilities and duties of the dividing company shall without further action be allocated to and be the debts, liabilities and duties of such division company as is specified in the plan of division as having such debts, liabilities and duties allocated to it, in such a manner and basis and with such effect as is specified in the plan of division, and no other division company shall be liable therefor, so long as the plan of division does not constitute a fraudulent transfer under applicable law, and all liens upon any property of the dividing company shall be preserved unimpaired, and all debts, liabilities and duties of the dividing company shall remain attached to the division company to which such debts, liabilities and duties have been allocated in the plan of division, and may be enforced against such division company to the same extent as if such debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic limited liability company.

(5) In the event that any allocation of assets, debts, liabilities and duties to division companies in accordance with a plan of division is determined by a court of competent jurisdiction to constitute a fraudulent transfer, each division company shall be jointly and severally liable on account of such fraudulent transfer notwithstanding the allocations made in the plan of division, except that the validity and effectiveness of the division are not otherwise affected thereby.

(6) Debts and liabilities of the dividing company that are not allocated by the plan of division shall be the joint and several debts and liabilities of all of the division companies.

(7) It shall not be necessary for a plan of division to list each individual asset, property, right, series, debt, liability or duty of the dividing company to be allocated to a division company so long as the assets, property, rights, series, debts, liabilities or duties so allocated are reasonably identified by any method where the identity of such assets, property, rights, series, debts, liabilities or duties is objectively determinable.

(8) The rights, privileges, powers, and interests in property of the dividing company that have been allocated to a division company, as well as the debts,

liabilities and duties of the dividing company that have been allocated to such division company pursuant to a plan of division, shall remain vested in each such division company and shall not be deemed, as a result of the division, to have been assigned or transferred to such division company for any purpose of the laws of the state of Kansas.

(9) Any action or proceeding pending against a dividing company may be continued against the surviving company as if the division did not occur and against any resulting company to which the asset, property, right, series, debt, liability or duty associated with such action or proceeding was allocated pursuant to the plan of division by adding or substituting such resulting company as a party in the action or proceeding.

(m) In applying the provisions of the Kansas revised limited liability company act on distributions, a direct or indirect allocation of property or liabilities in a division is not deemed a distribution.

(n) The provisions of this section shall not be construed to limit the means of accomplishing a division by any other means provided for in an operating agreement or other agreement or as otherwise permitted by the Kansas revised limited liability company act or as otherwise permitted by law.

(o) All limited liability companies formed on and after July 1, 2019, shall be governed by this section. All limited liability companies formed prior to July 1, 2019, shall be governed by this section, except that if the dividing company is a party to any written contract, indenture or other agreement entered into prior to July 1, 2019, that, by its terms, restricts, conditions or prohibits the consummation of a merger or consolidation by the dividing company with or into another party, or the transfer of assets by the dividing company to another party, then such restriction, condition or prohibition shall be deemed to apply to a division as if it were a merger, consolidation or transfer of assets, as applicable.

History: L. 2019, ch. 47, § 2; July 1.