

**The New York Law Journal**  
**Trends in Litigation, Part 1: ‘Business Divorces’ for LLCs**  
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**By Adrienne B. Koch**

*In her four-part series, Adrienne Koch will examine developments in the case law respecting various topics relevant to real estate transactions, and offer suggestions for structuring contracts to best anticipate how New York’s courts will apply the law in the event of a dispute. This first article in the series addresses what happens when the owners of a limited liability company (LLC) find themselves unable to work together and therefore seek a “business divorce.”*

Parties entering into a transaction might prefer not to focus on what could happen if things go wrong. But at that juncture, when the prospect of a dispute is only hypothetical, the parties are best-situated to come to a workable agreement about what will happen if a dispute actually happens —thus minimizing the possibility of surprises or expensive litigation in the future.

As a result, the body of case law generated through litigation continues to be among the key drivers of best practices in contract negotiation.

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### **Supremacy of the Operating Agreement**

The LLC is a form of entity that is commonly used in real estate transactions because it offers greater flexibility than a corporation and requires less formality. But while those features are attractive, they also mean that the parties must exercise care in planning for what might happen if they cease to get along: courts are reluctant to intervene to help members of an LLC end their relationship other than as specifically provided in the operating agreement.

The best way to understand this is by contrasting LLCs with corporations. New York’s Business Corporation Law (BCL) contains a provision entitled “Petition in case of deadlock among directors or shareholders,” under which a court may dissolve a corporation upon a petition by “the holders of shares representing one-half of the votes of all outstanding shares of a corporation entitled to vote in an election of directors” if (a) “the directors are so divided respecting the management of the corporation’s affairs that the votes required for action by the board cannot be obtained”; (b) “the shareholders are so divided that the votes required for the election of directors cannot be obtained”; or (c) “there is internal dissension and two or more

factions of shareholders are so divided that dissolution would be beneficial to the shareholders.” BCL §1104(a).

For LLCs, however, there is no equivalent: although New York’s Limited Liability Company Law (LLCL) provides for judicial dissolution “whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement” (see LLCL §702), this has been expressly held *not* to authorize judicial dissolution based solely on deadlock. See *In re 1545 Ocean Avenue, LLC*, 72 A.D.3d 121, 126-29 (2d Dept. 2010) (noting that because the LLCL’s language differs from that of the BCL, “it would be inappropriate...to import dissolution grounds from [the BCL]” in determining whether dissolution is warranted under the LLCL).

Rather, a member of an LLC petitioning for dissolution “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.” *Id.* at 131 (emphasis added).

## **Case Law**

Under this standard, courts deciding whether to dissolve an LLC focus on the company’s formation documents.

In one recent case, for example, the court found judicial dissolution appropriate where an LLC’s articles of organization provided that the company’s management “shall be vested in one or more managers” but “no operating agreement was ever executed and no manager ha[d] ever been appointed by the members.” *Amici v. Mazza*, 234 A.D.3d 1170, 1176 (3d Dep’t), *lv. denied*, 44 N.Y.3d 902 (2025).

The court reasoned that because no one actually had “legal authority to act on behalf of the LLC,” it was “not reasonably practicable for the LLC to carry on its business.” *Id.* Dissolution has similarly been found appropriate where an LLC’s operating agreement permitted it to act only with the unanimous consent of its members, and it was “undisputed that the [m]embers [were] unable to effectively communicate with each other or reach an agreement.” *176 West 87th Leasehold LLC v. Rudd*, 2025 WL 3172786, \*1-2 (Sup. Ct. N.Y. Cnty. Nov. 10, 2025).

On the other hand, dissolution based on a claimed deadlock has been denied where an LLC’s operating agreement provides a mechanism for resolving disagreements among members or managers. See, e.g., *TZ Vista, LLC v. Helmer*, 235 A.D.3d 691, 693 (2d Dept. 2025). This has also been the case where the LLC’s articles of organization permitted the company to be managed by a single member and did “not require a majority vote to effectuate the purpose of the LLC”: under those circumstances, a dispute among the members (however heated) would not prevent the company from acting. *In the Matter of the Petition for Dissolution Pursuant to NY LLC Law v. Ruham*, 2024 WL 2155156, \*2 (Sup. Ct. N.Y. Cnty. May 14, 2024).

And in some cases, the mere fact that the LLC was functioning was held to preclude a finding that the necessary conditions for dissolution were met. See, e.g., *Lignel v. Butler*, 2025 WL 1412750, \*2 (Sup. Ct. N.Y. Cnty. May 15, 2025); *Goldstein v. Goldstein*, 2024 WL 2978591, \*3 (Sup. Ct. N.Y. Cnty. Jun. 12, 2024); accord *1545 Ocean Avenue*, 72 A.D. 3d at 130.

What is more, because a dissolution petition under the LLCL requires a court to determine as a matter of *fact* whether “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 “continuing the entity is financially unfeasible,” sometimes such a petition results in neither a dismissal nor an immediate award of dissolution.

If the court finds issues of fact concerning whether there is a reasonable path to viability for the company, it can order discovery and even a trial. See, e.g., *Chernomordik v. Ocean Sand Development, LLC*, 2022 WL 16924081, \*2 (Sup. Ct. Kings Cnty. Nov. 22, 2022); *Chen v. 697 Dekalb LLC*, 2022 WL 2870138, \*2 (Sup. Ct. Kings Cnty. Jul. 18, 2022).

### **Take-Aways**

Litigation over the availability of a judicial dissolution for an LLC is expensive, regardless of the results. If the court finds dissolution appropriate, it can appoint a receiver and order an accounting. See *176 West 87th*, 2025 WL 3172786, \*2.

If it finds issues of fact, it can direct a trial (as in *Chernomordik* and *Chen, supra*)—with all of the time and expense that entails. And if it dismisses the dissolution petition, the parties are left just as they were before—with nothing to show for the time and money spent on the litigation.

Collectively, these cases underscore the importance of careful drafting when setting up an LLC. The operating agreement can obviate the need for any determination of whether the predicates for judicial dissolution are present, by simply providing a mechanism for resolving deadlocks or other disagreements among members or managers. See, e.g., *TZ Vista*, 235 A.D.3d at 693 (noting that the LLC’s operating agreement provided that in the event of a deadlock either managing member could offer in writing to sell his interest to the other, and setting forth “subsequent procedures that will take place if such an offer is made”). One of the advantages of an LLC is that it allows the members themselves to make these decisions.

The outset of the relationship—when the parties are presumably *not* deadlocked or otherwise in disagreement—may not be the most comfortable time to think about what will happen if things go awry. But it is unquestionably better to do so at that juncture than to be left to the vagaries of litigation later.

***Adrienne B. Koch co-chairs the litigation department at Katsky Korins.***

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