Wolters Kluwer

CT

ESSENTIAL COMPLIANCE INSIGHTS

GETTING YOUR BUSINESS BACK IN GOOD STANDING

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Remaining in "good standing" is a prerequisite for success for virtually any business. Yet it is also a designation that's challenging to maintain. Rules of compliance are often exacting—and always evolving. Just about every aspect of starting, financing, growing and even scaling back a business involves complying with state or local statutes or regulations that take time, energy and money. For example, corporation and LLC statutes require those entities to meet certain obligations - such as filing an annual report - in order to maintain the power to do business in the state. And most businesses are required by federal, state or local laws to obtain and maintain a variety of licenses and permits in order to lawfully conduct business.

Organizations that fail to maintain compliance face repercussions that may include loss of access to the legal system, difficulties in securing financing and capital, involuntary dissolution of the business and personal liability.

Because of the serious nature of these penalties, it's important for business leaders to understand how the compliance process works, and how businesses can get back into compliance in the event of loss in good standing.

HOW DO BUSINESSES LOSE GOOD STANDING?

Any entity that wishes to conduct business within a state (whether corporation, LLC or LP) must meet the legal and regulatory terms of the governing jurisdiction. By doing so, these entities remain "in good standing" in terms of compliance. Fail to meet these requirements, and that good standing designation can be removed and replaced with other designations, including "delinquent," "void," "suspended" or "dissolved."

The main reasons a corporation, LLC or LP would lose its good standing status are a failure to file an annual report by its due date and the late or non-payment of franchise taxes. If the non-compliance continues for a certain length of time the state can begin proceedings to administratively dissolve a domestic entity or revoke the authority to do business as a foreign entity. There are also some states with other grounds to begin dissolution or revocation proceedings – such as a failure to properly maintain a registered agent and office in the state.

For businesses that require a license or permit, failing to renew those licenses or permits can also cost them the right to do business. However, unlike non-compliance with a corporation or LLC law, which will result in a corporation or LLC not being able to conduct any business – or even the termination of its existence, non-compliance with licensing laws means it cannot conduct the business for which the license was required.

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There are a variety of reasons why organizations fail to maintain compliance. Some of the more common ones include the following:

- Failing to stay current with evolving state requirements. States regularly change fees, deadlines and forms, and it's incumbent on businesses to keep up with such changes.
- Change in entity status. Events such as mergers, acquisitions, or expansions into new geographic locations may lead to new annual report or franchise tax requirements.

Checking state-run online databases—a process called a "business search" or "business entity search"—is the simplest way to determine whether an organization is in good standing. It's important to remember, however, to conduct the search using the entity name that's registered with the state (the legal name rather than the trade name).

If an organization has allowed its good standing designation to lapse, there are a few steps that can be taken to rectify the situation and limit potential damage.

HOW TO REGAIN GOOD STANDING

While there are a variety of remedies to pursue once a business is out of compliance, these remedies depend on a few different variables, including the type of violation, where it occurred and the duration of the compliance lapse. Generally speaking, good standing can be achieved again by taking steps to address the specific issue or issues that led to non-compliance.

The process typically involves identifying why the organization lapsed from good standing status, then addressing this by filing delinquent forms and paying any outstanding fees or penalties.

To ensure this process runs smoothly, it's also possible to work with an advisor to achieve the restoration of good standing. Along with identifying any potential problems, the right advisor can help calculate any fees or penalties, acquire, audit and submit the appropriate forms to the state and send a notification once good standing has been restored.

It's also important to note that there is typically a limited time frame to seek restoration of good standing. Once this period has elapsed, the state may choose to administratively dissolve a domestic company or revoke the right of a foreign company to do business, potentially exposing the owner to liability.

Here are two real-life examples of organizations that were able to attain good standing after falling out of compliance:

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Example 1: An East Coast-based medical association was scheduled to present a two-day seminar to 50 people who had paid to attend the seminar at a Midwestern university. Each attendee would receive credit and a certificate for attending. Weeks beforehand, it was discovered that the association had fallen out of good standing, and the university was not willing to move forward without the status being corrected. CT was contacted, and with expedited handling of the past-due reports that needed be filed, the association was able to quickly show they were in good standing, and the seminar remained scheduled as planned.

Example 2: A CT Account Manager was working with a Midwestern architectural firm that had a highly contested project. The firm had some Secretary of State and licensing issues which CT was able to assist with correcting and then maintain throughout the process. There were several parties trying to halt the project by discrediting or "digging up dirt" on the firm which meant current licensing and filings being accurate were vital. The firm secured the business, worked it to a successful completion, and credited CT for making that possible.

WHAT HAPPENS IF YOUR BUSINESS IS DISSOLVED?

The consequences of administrative dissolution are quite serious. Should a Secretary of State take this step as the result of non-compliance, a business entity may lose its rights

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under the law, its power and authority and even its name. Tens of thousands of business entities are dissolved in this manner each year, with many of the owners of these entities being unaware that the administrative dissolution even occurred.

It is possible to reverse an administrative dissolution by applying for the reinstatement of a dissolved business entity. Many business owners or managers in this situation choose to work with a legal services provider to better navigate the reinstatement process.

In order to successfully reinstate a dissolved corporation, LLC or other business entity, the circumstances that caused it to become non-compliant must be addressed and resolved. Additionally, all taxes, penalties and fees must be paid, including interest. An application for reinstatement may then be filed with the state administrator.

It's important to understand that there is a limited window to reinstate a dissolved business entity. While the time period for reinstatement varies among states, it is generally between two and five years.

HOW TO STAY WITHIN COMPLIANCE

There are a variety of options available for an organization to maintain good standing. These include everything from web-based, do-it-yourself tools to a partnership with an expert, legal services provider who can help create customized best practices.

As businesses grow, their compliance needs grow with them. Businesses operating in multiple states can quickly see their compliance complexity grow exponentially, making it much more difficult to ensure good standing.

By consulting with specialized service providers, compliance problems can be prevented before they occur, as compliance professionals will be empowered to proactively manage risks, helping businesses continuing to remain in good standing.