

State of Arizona  
Senate  
Fifty-first Legislature  
First Regular Session  
2013

# SENATE BILL 1233

AN ACT

AMENDING SECTION 29-632, ARIZONA REVISED STATUTES; AMENDING TITLE 29, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 29-732.01; RELATING TO LIMITED LIABILITY COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 29-632, Arizona Revised Statutes, is amended to  
3 read:

4 29-632. Articles of organization

5 A. The articles of organization shall state:

6 1. The name of the limited liability company.

7 2. The name, street address in this state and signature of the agent  
8 for service of process required to be maintained by section 29-604.

9 3. The address of the LIMITED LIABILITY company's known place of  
10 business in this state, if different from the street address of the company's  
11 statutory agent.

12 4. The latest date, if any, on which the limited liability company  
13 must dissolve.

14 5. Either of the following statements:

15 (a) Management of the limited liability company is vested in a manager  
16 or managers.

17 (b) Management of the limited liability company is reserved to the  
18 members.

19 6. The name and address of either of the following:

20 (a) If management of the limited liability company is vested in a  
21 manager or managers, each person who is a manager of the limited liability  
22 company and each member who owns, EITHER SEPARATELY OR AS A CO-OWNER WITH  
23 OTHERS, a twenty per cent or greater interest in the capital or profits of  
24 the limited liability company.

25 (b) If management of the limited liability company is reserved to the  
26 members, each person who is a member of the limited liability company.

27 B. The articles of organization may include any other provision that  
28 is consistent with law, including any provisions under this chapter that are  
29 required or permitted to be set out in an operating agreement of the limited  
30 liability company.

31 C. It is not necessary to set out in the articles of organization any  
32 of the powers enumerated in this chapter.

33 Sec. 2. Title 29, chapter 4, article 6, Arizona Revised Statutes, is  
34 amended by adding section 29-732.01, to read:

35 29-732.01. Ownership of interest in limited liability company  
36 in joint tenancy or community property with right  
37 of survivorship

38 A. EXCEPT AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, AN  
39 INTEREST IN A LIMITED LIABILITY COMPANY MAY BE HELD BY TWO OR MORE NATURAL  
40 PERSONS AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR BY A MARRIED COUPLE AS  
41 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP. EXCEPT AS OTHERWISE PROVIDED  
42 IN THIS SECTION OR IN AN OPERATING AGREEMENT, AN ASSIGNMENT OR ISSUANCE OF AN  
43 INTEREST IN A LIMITED LIABILITY COMPANY TO TWO OR MORE NATURAL PERSONS  
44 CREATES A TENANCY IN COMMON, EXCEPT AN ASSIGNMENT OR ISSUANCE TO A MARRIED  
45 COUPLE.

1           B. A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP IS CREATED WHEN A  
2 WRITTEN OPERATING AGREEMENT EXPRESSLY DECLARES THAT TWO OR MORE NATURAL  
3 PERSONS HOLD AN INTEREST IN A LIMITED LIABILITY COMPANY AS JOINT TENANTS WITH  
4 RIGHT OF SURVIVORSHIP OR IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP. EXCEPT  
5 AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, A JOINT TENANCY WITH  
6 RIGHT OF SURVIVORSHIP MAY ALSO BE CREATED BY A WRITTEN ASSIGNMENT OF AN  
7 INTEREST IN A LIMITED LIABILITY COMPANY TO TWO OR MORE NATURAL PERSONS, WHO  
8 MAY INCLUDE ONE OR MORE ASSIGNORS, OR BY THE ARTICLES OF ORGANIZATION OF THE  
9 LIMITED LIABILITY COMPANY IF THE WRITTEN ASSIGNMENT OR THE ARTICLES OF  
10 ORGANIZATION HAVE BEEN SIGNED BY EACH JOINT TENANT AND CONTAIN THE EXPRESS  
11 WRITTEN DECLARATION THAT THE JOINT TENANTS HOLD THE ASSIGNED INTEREST AS  
12 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR IN JOINT TENANCY WITH RIGHT OF  
13 SURVIVORSHIP.

14           C. AN ESTATE IN COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IS  
15 CREATED WHEN A WRITTEN OPERATING AGREEMENT EXPRESSLY DECLARES THAT A MARRIED  
16 COUPLE HOLDS AN INTEREST IN A LIMITED LIABILITY COMPANY AS COMMUNITY PROPERTY  
17 WITH RIGHT OF SURVIVORSHIP. EXCEPT AS PROHIBITED OR RESTRICTED IN AN  
18 OPERATING AGREEMENT, AN ESTATE IN COMMUNITY PROPERTY WITH RIGHT OF  
19 SURVIVORSHIP MAY ALSO BE CREATED BY A WRITTEN ASSIGNMENT OF AN INTEREST IN A  
20 LIMITED LIABILITY COMPANY TO A MARRIED COUPLE, WHO MAY INCLUDE ONE OR BOTH  
21 ASSIGNOR SPOUSES, OR BY THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY  
22 COMPANY IF THE WRITTEN ASSIGNMENT OR THE ARTICLES OF ORGANIZATION HAVE BEEN  
23 SIGNED BY EACH SPOUSE AND CONTAIN THE EXPRESS WRITTEN DECLARATION THAT THE  
24 MARRIED COUPLE HOLDS THE ASSIGNED INTEREST AS COMMUNITY PROPERTY WITH RIGHT  
25 OF SURVIVORSHIP.

26           D. ALL CO-OWNERS OF AN INTEREST IN A LIMITED LIABILITY COMPANY HELD AS  
27 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AS COMMUNITY PROPERTY OR AS  
28 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP SHALL OWN AN EQUAL UNDIVIDED  
29 INTEREST IN THE INTEREST. EACH CO-OWNER OF AN INTEREST IN A LIMITED  
30 LIABILITY COMPANY, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT  
31 TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY  
32 WITH RIGHT OF SURVIVORSHIP, SHALL HAVE ONLY THE RIGHTS OF AN ASSIGNEE WITH  
33 RESPECT TO THE INTEREST, BOTH DURING THE LIFETIME AND FOLLOWING THE DEATH OF  
34 ANY OTHER CO-OWNER, UNLESS AND UNTIL THE CO-OWNER IS ADMITTED AS A MEMBER IN  
35 ACCORDANCE WITH SECTION 29-731.

36           E. IF AN INTEREST IN A LIMITED LIABILITY COMPANY IS HELD BY TWO OR  
37 MORE PERSONS IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP OR BY A MARRIED  
38 COUPLE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, AFTER THE DEATH OF A  
39 CO-OWNER OF THE INTEREST:

40           1. THE SURVIVING CO-OWNER OR CO-OWNERS OF THE INTEREST SHALL SUCCEED  
41 TO THE OWNERSHIP OF THE DECEDENT'S INTEREST IN THE LIMITED LIABILITY COMPANY  
42 WITHOUT FURTHER ACTION BY THE LIMITED LIABILITY COMPANY OR THE OTHER MEMBERS,  
43 AND SHALL HAVE ONLY THE RIGHTS OF AN ASSIGNEE WITH RESPECT TO THE INTEREST,  
44 UNLESS AND UNTIL THE CO-OWNER IS ADMITTED AS A MEMBER IN ACCORDANCE WITH  
45 SECTION 29-731.

1           2. THE INTEREST IN THE LIMITED LIABILITY COMPANY IN THE HANDS OF THE  
2 SURVIVING CO-OWNER OR CO-OWNERS SHALL CONTINUE TO BE SUBJECT TO ALL  
3 OBLIGATIONS AND LIABILITIES TO WHICH THAT INTEREST WAS SUBJECT IMMEDIATELY  
4 BEFORE THE DEATH UNDER THE TERMS OF THE OPERATING AGREEMENT OR OTHER  
5 AGREEMENT AMONG ONE OR MORE MEMBERS OR THIRD PARTIES.

6           3. IF THERE IS MORE THAN ONE SURVIVING CO-OWNER OF AN INTEREST HELD IN  
7 JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, AFTER THE DEATH OF A CO-OWNER THE  
8 SURVIVING CO-OWNERS SHALL CONTINUE TO OWN THE INTEREST IN EQUAL SHARES AS  
9 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP.

10          F. EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT:

11           1. THE DISTRIBUTION, VOTING, APPROVAL AND OTHER MANAGEMENT RIGHTS WITH  
12 RESPECT TO AN INTEREST IN A LIMITED LIABILITY COMPANY THAT IS CO-OWNED BY TWO  
13 OR MORE PERSONS, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT  
14 TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY  
15 WITH RIGHT OF SURVIVORSHIP, SHALL BE THE SAME AS IF THE INTEREST WERE HELD BY  
16 ONLY ONE PERSON.

17           2. EACH CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY WHO HAS  
18 BEEN ADMITTED AS A MEMBER MAY EXERCISE ALL VOTING, APPROVAL AND OTHER  
19 MANAGEMENT RIGHTS OF A MEMBER, INCLUDING THE RIGHT TO APPROVE AN AMENDMENT TO  
20 THE OPERATING AGREEMENT, WITH RESPECT TO AN INTEREST HELD AS TENANCY IN  
21 COMMON, JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR  
22 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.

23           3. THE LIMITED LIABILITY COMPANY IS ENTITLED TO RELY IN GOOD FAITH ON  
24 THE ACT OF A MEMBER THAT PURPORTS TO BE TAKEN IN THE EXERCISE OF ANY VOTING,  
25 APPROVAL OR OTHER MANAGEMENT RIGHT, INCLUDING THE RIGHT TO APPROVE AN  
26 AMENDMENT TO THE OPERATING AGREEMENT RELATING TO AN INTEREST IN A LIMITED  
27 LIABILITY COMPANY THAT IS CO-OWNED BY THE MEMBER WITH ONE OR MORE OTHER  
28 PERSONS, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT TENANTS  
29 WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY WITH  
30 RIGHT OF SURVIVORSHIP.

31          G. IF A CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY HELD AS  
32 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR COMMUNITY PROPERTY WITH RIGHT OF  
33 SURVIVORSHIP TRANSFERS PART OR ALL OF THE CO-OWNER'S SHARE OF THAT INTEREST,  
34 THE RIGHT OF SURVIVORSHIP IS EXTINGUISHED AND THE CO-OWNERS OF THE INTEREST  
35 AFTER THE TRANSFER HOLD THEIR SHARES OF THE INTEREST AS TENANTS IN COMMON,  
36 EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT. IN THE CASE OF  
37 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, THE RIGHT OF SURVIVORSHIP IS  
38 ALSO EXTINGUISHED AS PROVIDED IN SECTION 14-2803 OR 14-2804 OR ON THE  
39 DELIVERY TO THE LIMITED LIABILITY COMPANY, AT THE ADDRESS OF ITS KNOWN PLACE  
40 OF BUSINESS IN THE RECORDS OF THE COMMISSION, OF AN AFFIDAVIT ENTITLED  
41 "AFFIDAVIT TERMINATING RIGHT OF SURVIVORSHIP" THAT IS EXECUTED BY EITHER  
42 SPOUSE UNDER OATH STATING THE SPOUSE'S INTENT TO TERMINATE THE RIGHT OF  
43 SURVIVORSHIP AND DESCRIBING THE AFFECTED INTEREST IN THE LIMITED LIABILITY  
44 COMPANY. THE DELIVERY OF THE AFFIDAVIT SHALL NOT EXTINGUISH THE COMMUNITY  
45 PROPERTY INTEREST OF EITHER SPOUSE.

1           H. EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT, A LIMITED  
2 LIABILITY COMPANY DOES NOT NEED TO GIVE EFFECT TO ANY CREATION OR  
3 EXTINGUISHMENT OF A RIGHT OF SURVIVORSHIP UNTIL THE LIMITED LIABILITY COMPANY  
4 HAS RECEIVED WRITTEN NOTICE OF THE CHANGE IN THE FORM OF OWNERSHIP OR OF THE  
5 CREATION OR THE EXTINGUISHMENT OF A RIGHT OF SURVIVORSHIP AT THE ADDRESS OF  
6 ITS KNOWN PLACE OF BUSINESS IN THE RECORDS OF THE COMMISSION.

7           I. WITH RESPECT TO AN INTEREST IN A LIMITED LIABILITY COMPANY OWNED IN  
8 JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, TENANCY IN COMMON OR COMMUNITY  
9 PROPERTY WITH OR WITHOUT RIGHT OF SURVIVORSHIP, IF A CHARGING ORDER FROM A  
10 COURT OF COMPETENT JURISDICTION IS OBTAINED AGAINST A CO-OWNER'S SHARE OF THE  
11 INTEREST, IT SHALL ATTACH ONLY TO THAT CO-OWNER'S SHARE OR PORTION OF THE  
12 INTEREST AND NOT TO THE SHARE OR PORTION OF THE OTHER CO-OWNER OR CO-OWNERS.