



California Corporate & Securities Law

What To Do When Your Business Entity Has Been Wrongfully Terminated

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People make mistakes. Some mistakes, such as dialing a wrong number, can be fixed with no lasting damage. Other mistakes, such as Fred Merkle's base running error in 1908, can never be undone.

What if your business entity has been terminated by mistake? Is this a correctable or a permanent error?

In *Catalina Investments v. Jones*, 98 Cal.App. 4th 1 (2002), the Court of Appeal concluded that the [Secretary of State](#) had no legal duty to accept for filing a purported certificate of revocation by a dissolved corporation. The Court also found that the proffered certificate of revocation did not meet the criteria to constitute a certificate of correction (Corporations Code § 109) because there was no showing of any factual misstatement or other defect in the certificate of dissolution that required correction.

Mistakes can come in many forms. In *Catalina Investments*, the mistake was in the motivation for the filing of the certificate of dissolution, not the statements in the certificate itself. After the certificate had been filed, it was learned that if the dissolution were not reversed, the corporation's sole shareholder would incur approximately \$300,000 in taxes and fees.

In 2006, the Secretary of State's office sponsored legislation, [AB 2588 \(Runner\)](#), to provide some relief to business entities that have been *wrongfully* (not mistakenly) terminated. To obtain relief, however, a court order is required. The court may reinstate a business entity for any of the following three reasons:

- The factual representations by a shareholder, member, partner, or other person that are required for the termination document are materially false;
- The submission of the termination document to the Secretary of State for filing is fraudulent; or
- Other grounds exist warranting reinstatement of the business entity.

Government Code § 12261. One of my partners recently put the statute to the test and successfully obtained relief on behalf of one our clients.

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This relief isn't perfect, however. For example, a business entity may be required to change its name if the Secretary of State determines that a name conflict exists.

So we end where we began. Some mistakes, such as errors of purpose, can't be corrected. Other mistakes, such as fraudulent filings, can be corrected.

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