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Beware Of Section Cross-References

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Legal documents often seem to go out of their way to be complex and confusing. One tool in the complexity toolbox consists of numerical section cross-references, where the document refers to some other section of the document by number. Those cross-references distract the reader without helping to explain what's actually going on in the document. They also will always sound right, even if they're wrong. [A recent New York case](#) demonstrated just how wrong a section cross-reference can be and the consequences that can follow.

The litigation involved a mostly ordinary operating agreement of a small limited liability company. Article 8, Paragraph 1 said the company would be dissolved—shut down and terminated—if one of four events occurred. Article 8, Paragraph 2, the very next paragraph, said, however, that the “events specified in Article 7 paragraph 1” would not cause dissolution unless certain members of the company voted to dissolve.

The cross-reference to “Article 7 paragraph 1” was probably supposed to refer to the immediately previous paragraph, the paragraph that listed

events that would cause dissolution. That was paragraph 1 of Article 8, not Article 7. If, however, the language did in fact refer to Article 7, paragraph 1, then the events in Article 8, Paragraph 1 would automatically cause dissolution and no one could stop it. Conversely, if the cross-reference was supposed to refer to paragraph 1 of Article 8, then paragraph 1 didn't really mean what it said, because any of those four events couldn't cause dissolution unless the parties voted to dissolve.

The matter went into litigation, which lasted about a year – an extraordinarily short timeline for New York commercial litigation. The members of the limited liability company who wanted to continue the business argued that the cross-reference to Article 7 really referred to Article 8. They made arguments based on limited liability company law, other provisions of the company's operating agreement, logic, and the context of the cross-reference.

The court agreed with them, treating the bad cross-reference as a “scrivener's error.” It still took a year of litigation, the cost of which may well have exceeded the genuine dollars at issue in the dispute.

Of possible interest, the correction of scriveners' errors in contracts is ordinarily done through an action for “reformation” of a contract. Under New York law, such an action ordinarily needs to be started within six years after the contract was signed. The operating agreement at issue here was signed in 2014. The litigation began (and, amazingly, also ended) in 2022. If anyone wanted to have the contract “reformed,” they were out of time, but no one was trying to do that. Instead, the plaintiff was trying to enforce it based on its literal words, and the defendants successfully asserted “scrivener's error” as a defense. Perhaps that's why the six-year time limit didn't apply.



The members of the limited liability company could have avoided the whole adventure by creating the term “Dissolution Triggers” to refer to the events in Article 8, paragraph 1. Then, when they wanted to refer to those events, they could have referred to “Dissolution Triggers” rather than a section number. Words with meaning are relatively easy to get right. Cross-references could, however, very well be wrong. No one will know unless someone exercises the initiative to affirmatively check them, or the document goes into litigation.

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I help buyers, sellers, borrowers, lenders, tenants, property owners, and other commercial real estate market participants identify and achieve their business goals. To do that, I need to understand risk, security, numbers, value, financeability, flexibility, and exit strategy. Some legal issues matter a lot and many don't. It's important to know the difference. I write extensively on commercial real estate law and practice – over 300 articles and five books on leasing, lending, and other areas, with some emphasis on ground leases. I occasionally serve as an arbitrator or expert witness in complex real estate disputes. That lets me see how transactions go wrong. Often, the problems could have been avoided by keeping it simple and following the money, but everyone got sidetracked. As a Forbes contributor, I try to tell stories that teach worthwhile lessons for real estate deals. **Read Less**