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April 20, 2017

DRAFTING AND UNDERSTANDING LLC OPERATING AGREEMENTS

LEARNING OBJECTIVE –

This course will provide an overview of issues and the legal scrivener will face when drafting Operating Agreement for Limited Liability Companies

CONTINUING EDUCATION CREDIT –

CPAs – 2.0 Hours of Group Internet Based or Interactive Self Study Credit

Attorneys – 2.0 Hours of Live Webcast Credit in jurisdictions in which Youronlineprofessor.net is an accredited provider of CPE and CLE

FIELD OF STUDY – Business Law

DRAFTING AND UNDERSTANDING LLC OPERATING AGREEMENTS

PROGRAM KNOWLEDGE LEVEL

Basic

ADVANCE PREPARATION

No advance preparation is required of the course participant.

COURSE DEVELOPMENT AND REVIEW

Course material for this course was developed and updated by
Edward L. Perkins, JD, LL.M.(Tax), CPA
3/25/2021

Reviewed by
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3/26/2021

Created and Presented by

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-

Founder - YourOnlineProfessor.net



Attorneys at Law

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610 565 1708



Attorneys at Law

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This course will provide an overview of issues and the legal scrivener will face when drafting Operating Agreement for Limited Liability Companies

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FIELD OF STUDY – Business Law

The Limited Liability Company



The Limited Liability Company

- ✓ The limited liability company is a statutory creation.
- ✓ Effective April 1, 2017, all limited liability companies in Pennsylvania are governed by Uniform Limited Liability Company Act of 2016



The Limited Liability Company

- ✓ A “limited liability company” is a hybrid form of business organization
- ✓ It combines some of the most advantageous attributes of a partnership with those of a corporation
- ✓ Owners are designated as “members” and hold “membership interests” in the LLC
- ✓ An entity distinct from its members
- ✓ It has perpetual duration
- ✓ The members may manage the company or delegate their authority to “managers”

S Corp v. LLC

- ✓ LLCs and S Corps both provide **limited liability**
- ✓ LLCs and S Corps both offer **Pass-through Taxation**
- ✓ LLCs can be taxed as an S Corporation
- ✓ LLC owners pay **Self Employment Tax**
- ✓ S Corps can only have **100 owners**; all must be **individuals**

Alternative - LLC taxed as an S Corporation

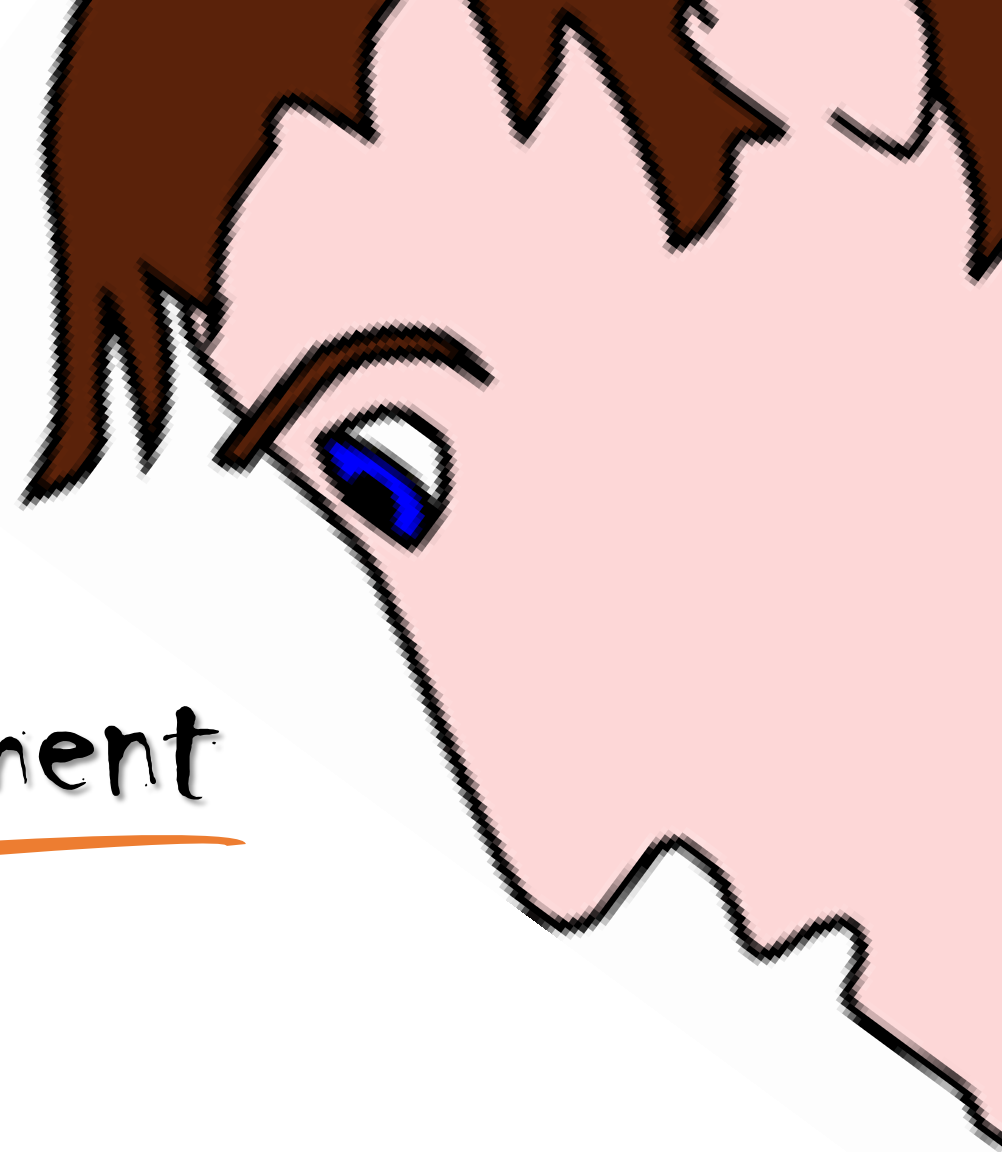


The Limited Liability Company

- > A domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and elects to be treated as a corporation.
- > For income tax purposes, an LLC with only one member is treated as an entity disregarded as separate from its owner, unless it files Form 8832 and affirmatively elects to be treated as a corporation.
- > If the owner is an individual, the activities of the LLC will generally be reflected Schedule C, Profit or Loss from Business (Sole Proprietorship)



The Operating Agreement

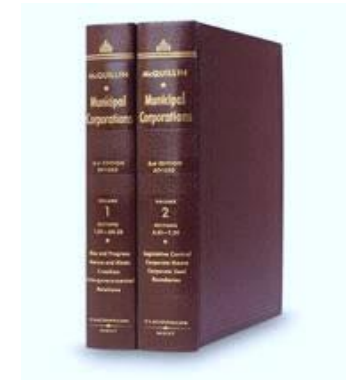


The Limited Liability Company

The operation of a limited liability company is controlled by:

- ✓ Its Certificate of Organization
- ✓ The Uniform Limited Liability Company Act of 2016, and
- ✓ The Operating Agreement

A sample Certificate of Organization form for a Domestic Limited Liability Company (LLC) from the Nevada Department of State, Corporations Bureau. The form includes fields for Name, Date, and Registered Office, and a section for the organizer's signature and address.



The Operating Agreement – Binding Affect

- ✓ A limited liability company is bound by and may enforce the operating agreement

.....whether or not the company has itself manifested assent to the agreement

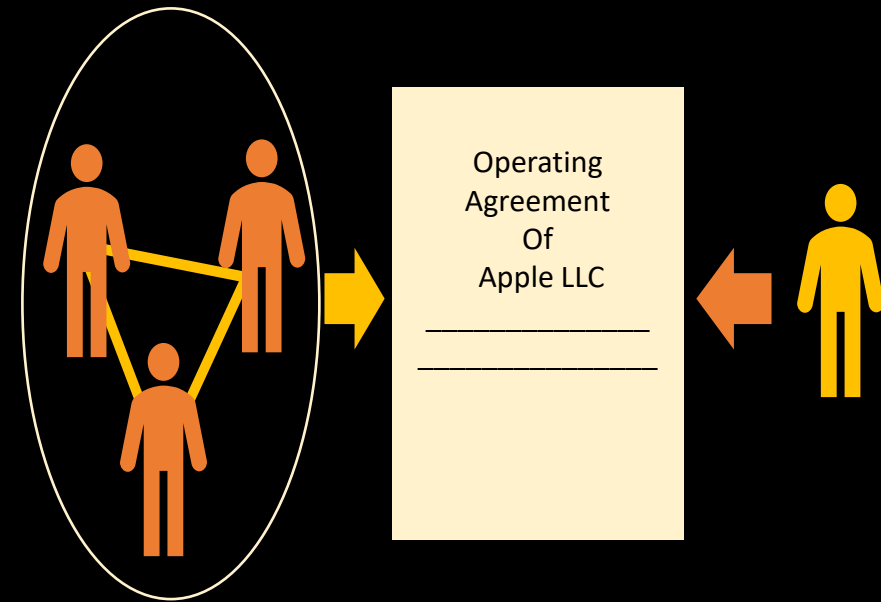
- ✓ A person that becomes a member of a limited liability company is deemed to assent to the operating agreement



The Operating Agreement – Function and Content

As defined in the Uniform Limited Liability Company Act, the “operating agreement, is the agreement of all the members of the limited liability company relating to the following matters:

- ✓ The relations among the members as members
- ✓ Between the members and the limited liability company;
- ✓ The management of a limited liability company
- ✓ The rights and duties of a person in the capacity of a member or manager;
- ✓ The activities and affairs of the company and the conduct of those activities and affairs;
- ✓ The means and conditions for approving a transaction under Chapter 3 transaction (i.e., a merger, interest exchange, conversion, division or domestication)



The Operating Agreement – Statutory Limitations

The Act places the following limitations on the Operating Agreement the Operating Agreement may not :

1. Vary a provision of Chapter 1 – relating to general provisions of the Act
2. Vary Subchapter A of Chapter 2 – relating to names.
3. Vary the right of a member to approve a merger, interest exchange, conversion, division or domestication or vary the required contents of such a plan.
6. Vary the provisions related to the application of the Act.
7. Vary the law applicable relating to governing law
8. Vary the law relating to characteristics of limited liability company.
9. Vary a provision to powers of the LLC.
10. Vary any requirement, procedure or other provision of this title pertaining to:
 - a. registered offices; or
 - b. the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

The Operating Agreement – Statutory Limitations

The Act places the following limitations on the Operating Agreement the Operating Agreement may not :

11. Provide indemnification or exoneration in violation of the limitations the Act.
12. Eliminate the duty of loyalty or the duty of care of a member in a member-managed company
13. Eliminate the duty of loyalty or the duty of care of a manager
14. Vary the contractual obligation of good faith and fair dealing under the Act
15. Restrict the duties and rights relating to rights to information
16. Vary the causes of dissolution
17. Vary the requirements to wind up the company's activities and affairs.
18. Unreasonably restrict the right of a member to maintain an action by members.
19. Vary the provisions relating to special litigation committee, except that the operating agreement may provide that the company may not have a special litigation committee.
20. Restrict the rights under this title of a person other than a member or manager.

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19. Vary the provisions relating to special litigation committee, except that the operating agreement may provide that the company may not have a special litigation committee.
20. Restrict the rights under this title of a person other than a member or manager.

The Operating Agreement – Statutory Limitations

If not manifestly unreasonable, the operating agreement may:

- (1) Alter the aspects of the duty of loyalty;
- (2) Prescribe the standards, if not manifestly unreasonable, by which the performance of the contractual obligation of good faith and fair dealing is to be measured;
- (3) Identify specific types or categories of activities that do not violate the duty of loyalty;
- (4) Alter the duty of care; and
- (5) Alter or eliminate any other fiduciary duty

Duty of loyalty. — The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

- To account to the company and to hold as trustee for it any property, profit or benefit derived by the member:
 - in the conduct or winding up of the company's activities and affairs.
 - from a use by the member of the company's property; or
 - from the appropriation of a company opportunity.
- To refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and
- To refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

Duty of Care — The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in gross negligence, recklessness, willful misconduct or knowing violation of law.

The Operating Agreement – Statutory Limitations

If not manifestly unreasonable, the operating agreement may:

- (1) Alter the aspects of the duty of loyalty;
- (2) Prescribe the standards, if not manifestly unreasonable, by which the performance of the contractual obligation of good faith and fair dealing is to be measured;
- (3) Identify specific types or categories of activities that do not violate the duty of loyalty;
- (4) Alter the duty of care; and
- (5) Alter or eliminate any other fiduciary duty

Drafting the Operating Agreement



Start with an Organized Plan

LLC Checklist

1. Name and contact information for each organizer.
 - a. For each individual organizer: name, address, phone numbers, fax number, e-mail address.
 - b. For each business entity that is organizer: name and type of entity, address of principal office, name and contact information of person authorized to do business for entity.
2. Proposed name of limited liability company.
3. Period of existence.
4. Specific business or businesses in which company will engage.
5. Limitations or restrictions, if any, on business or powers of company.
6. Location and mailing address of company's principal place of business.
7. Location of company's registered office, including either:
 - a. Complete address, including street and number, of initial registered office in Pennsylvania.
 - b. Name and address of commercial registered office provider [see § 42.33].
8. Number of initial and ongoing members.
9. Names and addresses of, and contact information for, members.
10. If company is to be manager-managed: Number of initial and ongoing managers of company.



Consent to Joint Representation

- † In drafting an Operating Agreement, the attorney should recognize that there may be an inherent conflict of interest.
- † The parties should be asked to acknowledge and waive the conflict.



Consent to Joint Representation

The Members and the Company acknowledge that the Company's counsel, Edward L. Perkins, Esq. and the law firm of Gibson & Perkins, PC, prepared this Agreement on behalf of and in the course of his representation of the Company, and that:

- i. THE PARTIES HAVE BEEN ADVISED BY MR. PERKINS THAT A CONFLICT EXISTS AMONG THEIR INDIVIDUAL INTERESTS; AND
- ii. THE PARTIES HAVE BEEN ADVISED BY MR. PERKINS TO SEEK THE ADVICE OF INDEPENDENT COUNSEL; AND
- iii. THE PARTIES HAVE HAD THE OPPORTUNITY TO SEEK THE ADVICE OF INDEPENDENT COUNSEL.



Agreement Outline

- I. Introductory Paragraphs
- II. Formation
- III. Management and Operations
- IV. Members Rights and Obligations
- V. Distributions
- VI. Allocations
- VII. Transfers of Membership Interests
- VIII. Dissolution
- IX. Accounting and Tax Matters
- X. General Provisions



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Management and Operations

- Member managed or manager managed
- Who has the authority?
- What is the level of authority?
- When is Member approval required?

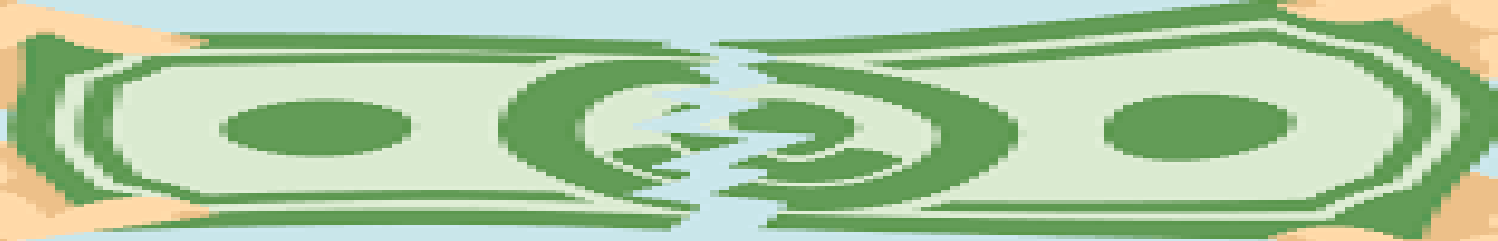


Members Rights and Obligations

- Voting Rights
- Right to current distributions
- Right to distributions in liquidation
- Obligation to make capital contributions
- Define the aspects of the duty of loyalty;
- Prescribe the standards by which the performance of the contractual obligation of good faith and fair dealing is to be measured;
- Identify specific types or categories of activities that do not violate the duty of loyalty;
- Alter the duty of care; and
- Alter or eliminate any other fiduciary duty

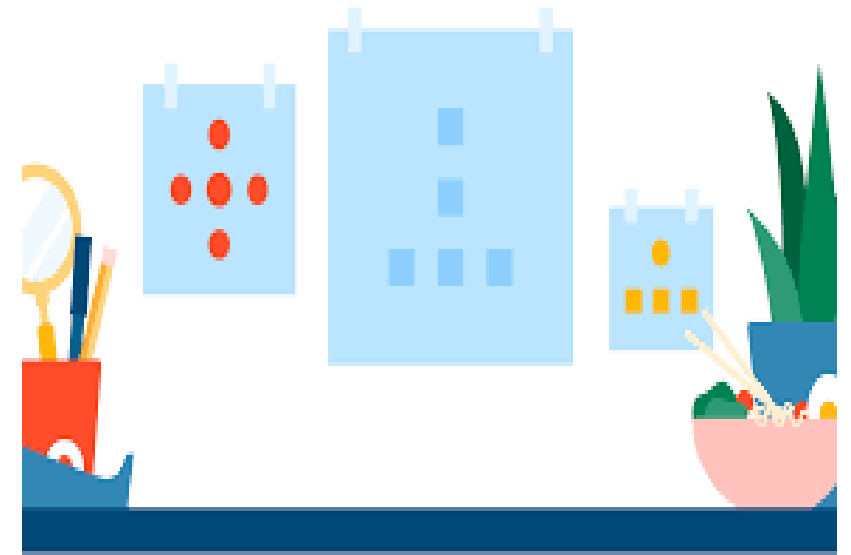
Distributions

- Define the source of distributions
- When distributions are made
- Who decides
- Define the Member's right to current distributions
- Define the Member's right to distributions in liquidation



Transfer of Membership Interests

- Define restrictions on transfer
- Options or obligations of the Company in the event of transfer
- Options or obligations of the transferor in the event of transfer
- Options and obligations of the other Members
- Define the rights of the transferee





Ted Perkins Tax News

VERIFY YOUR ATTENDANCE

Please type “present” into the chatbox on your screen and hit ENTER.

This is an important step which verifies your attendance and assures that your credit is received.

Thank you.

Introductory Paragraphs



| Agreement Outline

I. Introductory Paragraphs

II. Formation

III. Management and Operations

IV. Members Rights and Obligations

V. Distributions

VI. Allocations

VII. Transfers of Membership Interests

VIII. Dissolution

IX. Accounting and Tax Matters

IX. General Provisions

I. Introductory Paragraphs and Formation

1. Name and contact information for each organizer.
 - a. For each individual organizer: name, address, phone numbers, fax number, e-mail address.
 - b. For each business entity that is organizer: name and type of entity, address of principal office, name and contact information of person authorized to do business for entity.
2. Time when certificate of organization is to be effective, if different from filing date, including hour, if any, and month, day, and year.
3. Proposed name of limited liability company.
4. Period of existence.
5. Specific business or businesses in which company will engage.
6. Limitations or restrictions, if any, on business or powers of company.
7. Location and mailing address of company's principal place of business.
8. Location of company's registered office, including either:
 - a. Complete address, including street and number, of initial registered office in Pennsylvania.
 - b. Name and address of commercial registered office provider .

OPERATING AGREEMENT OF
APPLE, LLC

This Operating Agreement is entered into effective as of April 1, 2017 by and between THOMAS SMITH, Managing Member, "Managing Member"), and WILLIAM JONES "Non-managing Member". The Managing Member and Non-managing Members are referred to collectively in this Agreement as the "Members" and individually as a "Member."

WHEREAS, the Members desire to form a limited liability company under the laws of the Commonwealth of Pennsylvania and to set forth their respective rights and obligations with respect to such limited liability company;

NOW, THEREFORE, in consideration of the promises and mutual covenants stated in this Agreement, the parties agree as follows:

Formation



The proper name of a domestic limited liability company or registered foreign limited liability company must contain the term “company,” “limited” or “limited liability company,” or an abbreviation of one of those terms

One or more persons may act as organizers to form a limited liability company by delivering to the Department of State for filing a certificate of organization [15 Pa. Cons. Stat. § 8821(a)].

2.1. Formation. The Members join together pursuant to this Agreement as a “Limited Liability Company” as of the Effective Date. The Managing Member shall deliver or cause to be delivered to the Department of State for filing a certificate of organization as soon as reasonably possible after the execution of this Agreement. The Limited Liability Company shall conduct business as a limited liability company pursuant to the provisions of all applicable law.

A limited liability company (LLC) is required to have and continuously maintain a registered office in Pennsylvania. The office may, but need not, be the same as its place of business. A limited liability company has the power to do all things necessary or convenient to carry on its activities and affairs [15 Pa. Cons. Stat. § 8819(a)], and it has the capacity to sue and be sued in its own name

2.2. Name. The business and affairs of the Limited Liability Company shall be conducted under the name APPLE, LLC and such name shall be used at all times in connection with the business of the Limited Liability Company.

2.3. Office. The Limited Liability Company shall maintain its principal office at such location as may be designated by the Managing Member.

2.4. Purpose. The purpose of the Limited Liability Company shall be to engage in any business or activity that Limited Liability Companies are permitted to engage in under the laws of the Commonwealth of Pennsylvania.

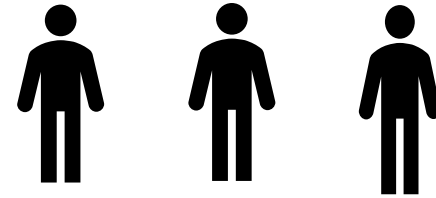
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Management and Operations



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Member Managed
or
Manager Managed?

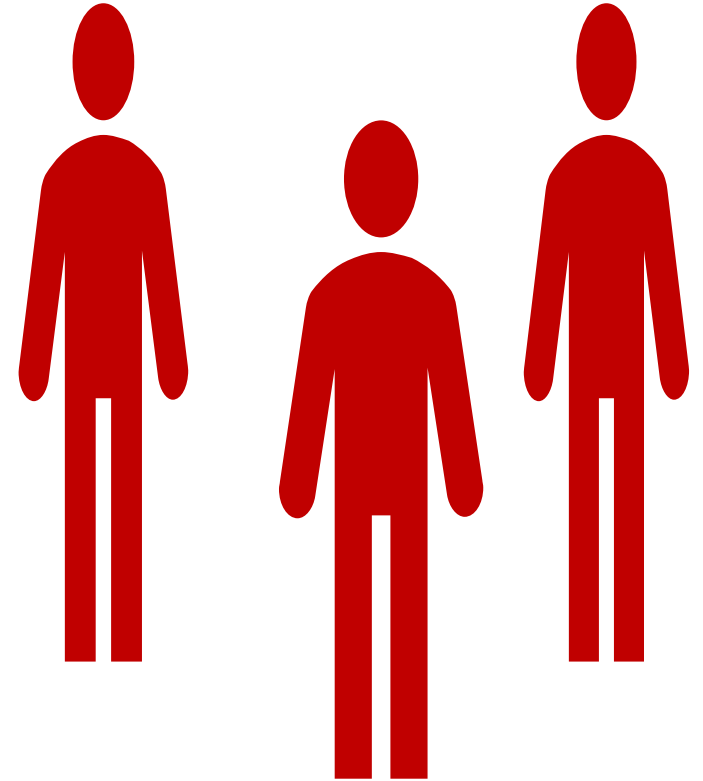


Member Managed LLCs

Member Managed LLCs

In a member-managed limited liability company, the following rules apply:

1. Except as expressly provided, the management and conduct of the company are vested in the members.
2. Each member has equal rights in the management and conduct of the company's activities and affairs.
3. A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.



The duty of loyalty of a member in a member-managed limited liability company includes the duties:

- (1) To account to the company and to hold as trustee for it any property, profit or benefit derived by the member: (i) in the conduct or winding up of the company's activities and affairs; (ii) from a use by the member of the company's property; or (iii) from the appropriation of a company opportunity;
- (2) To refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and
- (3) To refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

5. The certificate of organization may be amended by affirmative vote or consent of all members.

6. The operating agreement may be amended only by vote or consent of all members.

7. A member of a member-managed limited liability company owes to the company and the other members the duties of loyalty and standard of care.

The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in gross negligence, recklessness, willful misconduct or knowing violation of law.



Manager Managed LLCs

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Manager Managed LLC

- 1. If company is to be manager-managed: Number of initial and ongoing managers of company.
- 2. Names and addresses of, and contact information for, managers.
- 3. Facts related to managers:
 - a. Extent of management powers relative to members.
 - b. Qualifications for managers, including any residence and membership requirements.
 - c. Classes of managers.
 - d. Conditions for removal of managers.
 - e. Calling meeting of members for purpose of removing managers.
- 4. Facts related to managers' meetings:
 - a. Location and time of regular meetings.
 - b. Whether notice is required for regular meeting.
 - c. Notice required for special meetings.
 - d. Whether notice must specify purpose of meeting.
 - e. Number of managers to constitute quorum.
 - f. Number of managers required to act.
 - g. Committees of managers and action by committee.
- 5. Extent to which company will indemnify managers, officers, employees, or agents.
- 6. Designation of officers:
 - a. Number and titles.
 - b. Powers and duties.
 - c. Compensation.

Manager Managed LLCs

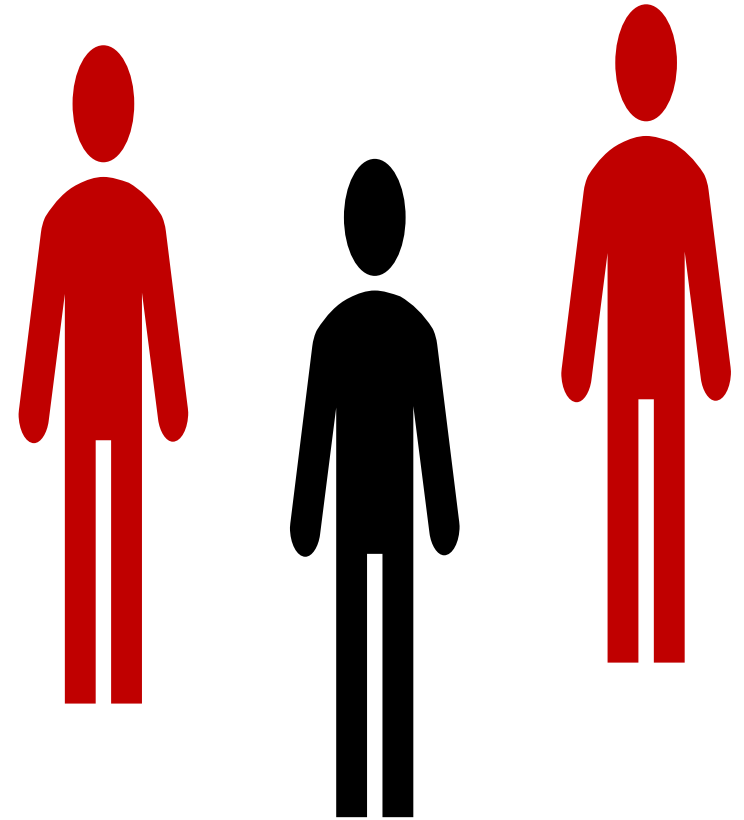
In a manager-managed limited liability company, the following rules apply:

1. A limited liability company is a manager-managed liability company only if the operating agreement expressly provides for management by managers

2. If the company is manager-managed, certain rules apply.

(1) Except as expressly provided by statute, any matter relating to the activities and affairs of the company is decided exclusively by the manager, or,

(2) If there is more than one manager, by a majority of the managers, and each manager has equal rights in the management and conduct of the company's activities and affairs



Manager Managed LLCs

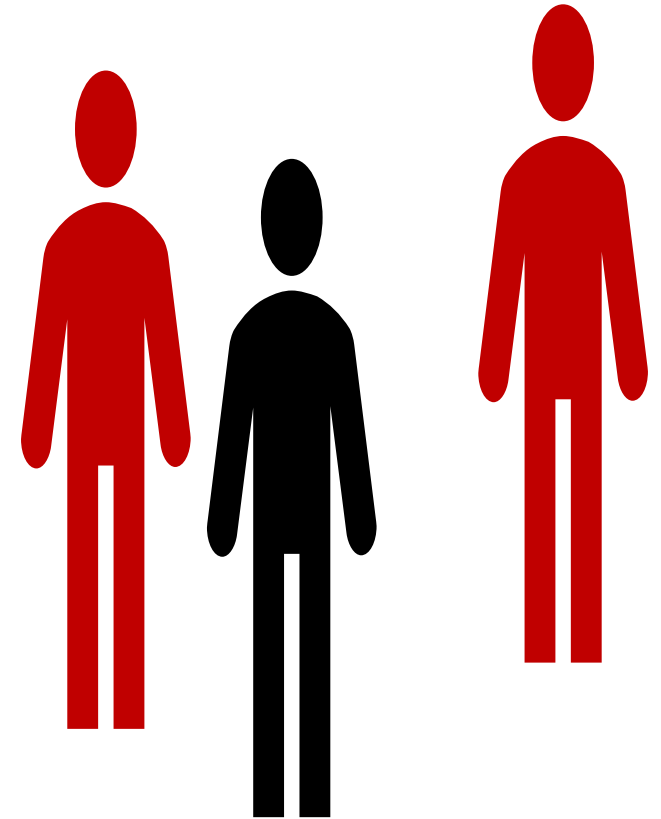
In a manager-managed limited liability company, the following rules apply:

(3) The affirmative vote or consent of all members is still required:

(a) With respect to a Chapter 3 transaction (i.e., a merger, interest exchange, conversion, division or domestication), to undertake an act outside the ordinary course of the activities and affairs of the company y

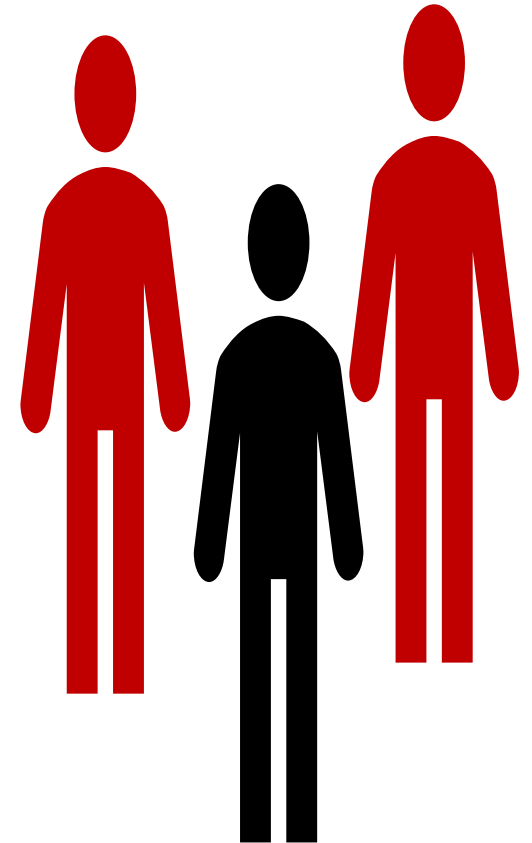
(b) To amend the company's certificate of, or

(c) To amend the company's operating agreement



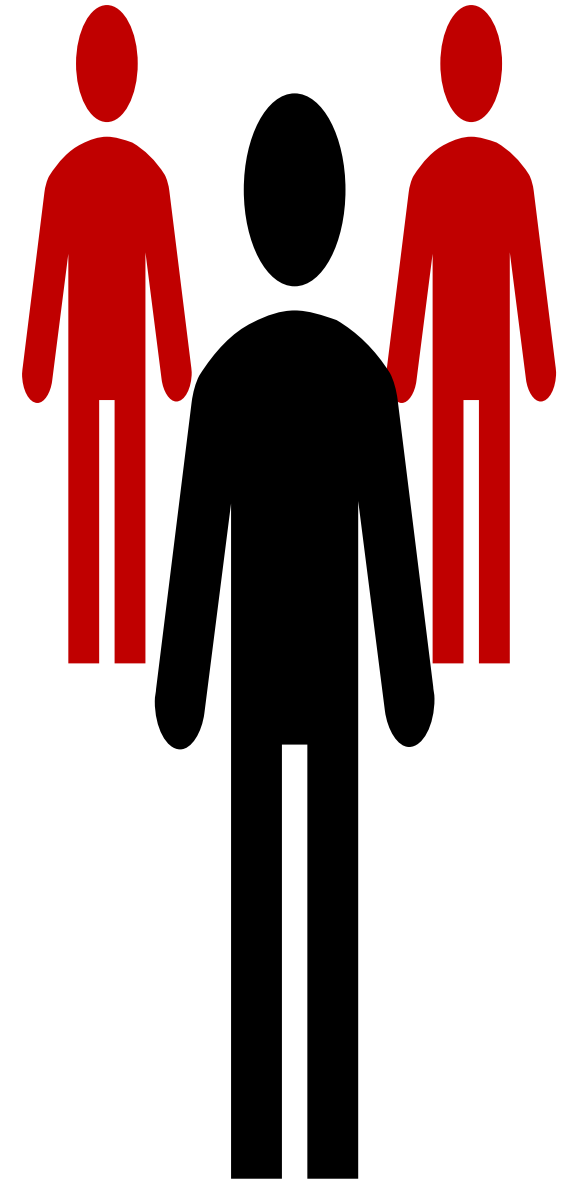
Selectionn of Manager

1. A manager may be chosen at any time by the affirmative vote or consent of a majority of the members [15 Pa. Cons. Stat. § 8847(c)(4)].
2. A person need not be a member to be a manager.
3. However, the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member
4. Once chosen, a manager remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed or dies, or, in the case of a manager that is not an individual, terminates.
5. A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause
6. A person's ceasing to be a manager does not discharge any debt, obligation or other liability to the limited liability company or members which the person incurred while a manager



Standard of Conduct

1. A manager of a manager-managed limited liability company owes to the company and the other members the duties of loyalty and care as defined by statute
2. In addition, a manager is required to discharge the statutory duties of a manager set forth by law or under the operating agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing



Appointment and Removal

4.1. Managing Member. DONALD SMITH ("Manager") is hereby designated, and accepts such designation, as the "manager" of the Limited Liability Company.

4.2 Except as otherwise provided in this Agreement, the Manager shall be responsible for the operation of the Limited Liability Company's business in the ordinary course of business, and shall have the authority to do all things, without the consent of the Members, that it determines, in its sole discretion, to be in furtherance of the purpose of the Limited Liability Company.

4.3 The Manager shall have all rights, powers and privileges available to a "manager" under the Act.

4.4 The Manager shall have the right to enter into and execute all contracts, documents and other agreements on behalf of the Limited Liability Company and shall thereby fully bind the Limited Liability Company.

Appointment and Removal

5.6 Tenure.

(a) Term. The Manager will serve until the earlier of (1) the Manager's resignation; (2) the Manager's removal; (3) as to a Manager who is a natural person, the Manager's death or adjudication of incompetency; and (4) as to a Manager that is an Entity, the Manager's dissolution. In any such event, Members representing a majority of the Units outstanding shall promptly elect a successor as Manager; provided, however if the then Manager desires to appoint an Affiliate as the new Manager, then such Affiliate may become the Manager without Member approval.

(b) Resignation. The Manager at any time may resign for any reason (or no reason) by written notice delivered to the Members at least thirty (30) days prior to the effective date of the resignation.

(c) Removal. The Members may remove the Manager, upon the written approval of a majority of the outstanding Units, but only if (i) the Manager commits an act of gross negligence or willful misconduct which materially adversely damages the LLC, or (ii) the Manager enters Bankruptcy, and such proceeding is not dismissed within ninety (90) days of its initial filing. Prior to such removal being effective, the Members must provide the Manager with thirty (30) days' written notice of their intention to remove the Manager pursuant to the foregoing. The notice to the Manager shall contain a detailed description of the acts and omissions of the Manager that constitute the basis for the proposed removal of the Manager.

Authority

4.1 Except as otherwise provided in this Agreement, the Managing Member shall be responsible for the operation of the Limited Liability Company's business in the ordinary course of business, and shall have the authority to do all things, without the consent of the Members, that it determines, in its sole discretion, to be in furtherance of the purpose of the Limited Liability Company.

4.2 The Managing Member shall have all rights, powers and privileges available to a "manager" under the Act. The Managing Member shall have the right to enter into and execute all contracts, documents and other agreements on behalf of the Limited Liability Company and shall thereby fully bind the Limited Liability Company.

Limitations on Authority

5.1 Limitation on Powers.

(a) Supermajority Interest Consent. Except by the written consent of a Supermajority Interest, neither a Manager nor any officer of the LLC shall have the authority to:

- (i) enter into any agreement, contract, or commitment on behalf of the LLC which would obligate any Member to fund additional capital, to guarantee a loan, or to increase a Member's personal liability either to the LLC or to a third party;
- (ii) perform any action that is contrary to this Agreement;
- (iii) place title to any LLC asset or property in the name of a nominee or sell, lease, pledge, hypothecate, or grant a security interest in any LLC asset or property, except for the benefit of the LLC;
- (iv) commingle LLC funds with the funds of any other person or entity;
- (v) materially alter the business of the LLC, deviate from any approved business plan of the LLC as set forth in this Agreement, or perform any action which would make it impossible to carry on the business of the LLC;
- (vi) confess a judgment against the LLC;
- (vii) incur any Company indebtedness in excess of \$10,000.00, other than in the ordinary course of business as contemplated in the Company's business plan;
- (viii) mortgage, pledge or encumber the Company's assets, particularly any rights to trademarks, having a value in excess of \$10,000, except in the ordinary course of business;

5.2. Approval. The Managing Member and the Members shall not do any of the following without the express written consent of the Members (other than the Defaulting Members):

1. Obtain financing from an Affiliate of a Member, except as otherwise provided in Section 3.5.

2. Pay fees, commissions or other compensation to a Member, or an Affiliate of a Member, except as otherwise provided in Section 4.4.

Increase the Reserves in an amount greater than the increase permitted by Section 7.3.

3. Dissolve or wind up the Limited Liability Company.

Amend this Agreement.

4. Admit any other Members to the Limited Liability Company.

5. Sell, assign or otherwise transfer or dispose of any of the assets of the Limited Liability Company, other than in the ordinary course of the Limited Liability Company's business.

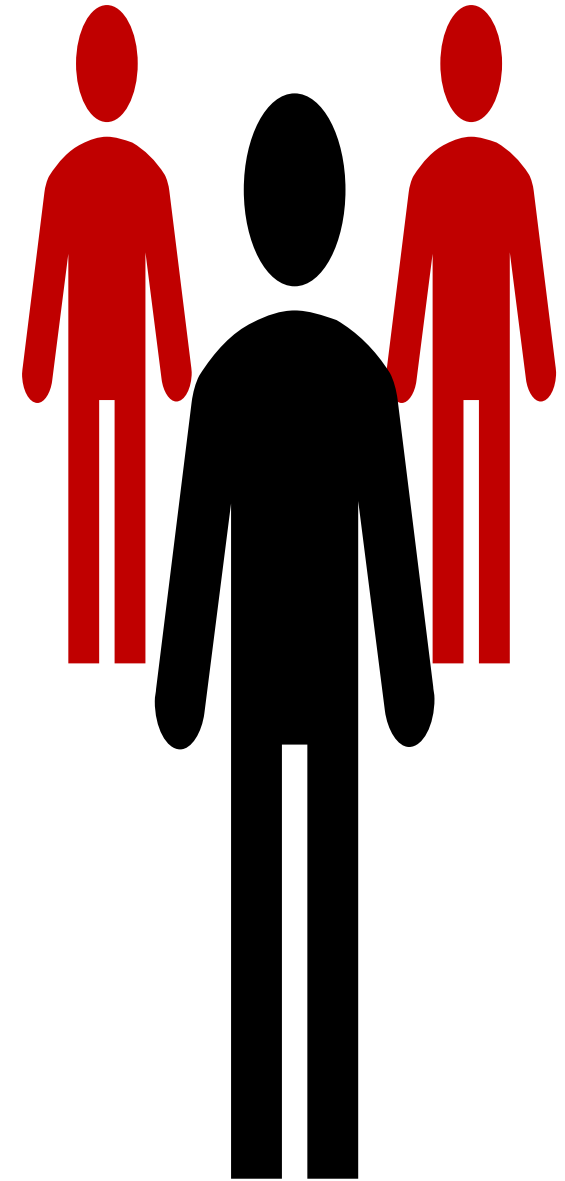
6. Transfer a Limited Liability Company Interest, except as provided in Section 9.1.

7. Resign, dissolve or otherwise withdraw from the Limited Liability Company, except as provided in Section 9.2."

Certificate of Authority

- > In order to clarify the authority of members or managers, a limited liability company may deliver to the Department of State for filing a *certificate of authority*
- > With respect to *any position* that exists in or with respect to the company, the certificate may state the authority, or limitations on the authority, of all persons holding the position to: (i) *transfer real property held in the name of the company, including signing an instrument of transfer*; or (ii) *enter into other transactions on behalf of, or otherwise act for or bind, the company*

Similarly, with respect to any *specific person*, the certificate may state authority, or limitations on the authority, of a specific person to: (i) transfer real property held in the name of the company, including signing an instrument of transfer; or (ii) enter into other transactions on behalf of, or otherwise act for or bind, the company



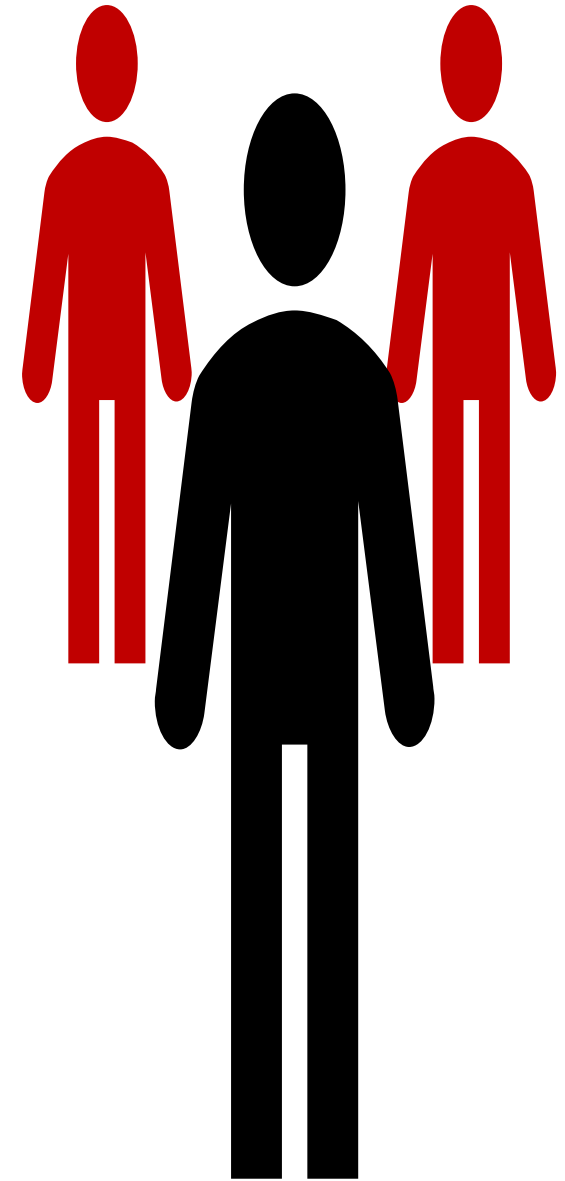
Reimbursement, Indemnification, and Insurance

1. A limited liability company is required to reimburse a member of a member-managed company or manager of a manager-managed company for any payment made by the member or in the course of the member's or manager's activities on behalf of the company.
2. Reimbursement is only required if the member or manager complied with the applicable provisions of Uniform Limited Liability Act related to management of the company, standards of conduct for members, or standards of conduct for managers
3. In the ordinary course of its activities and affairs, a limited liability company may advance expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager. Advancement may only be made on the condition that the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified
4. With regard to insurance, a limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status

Certificate of Denial

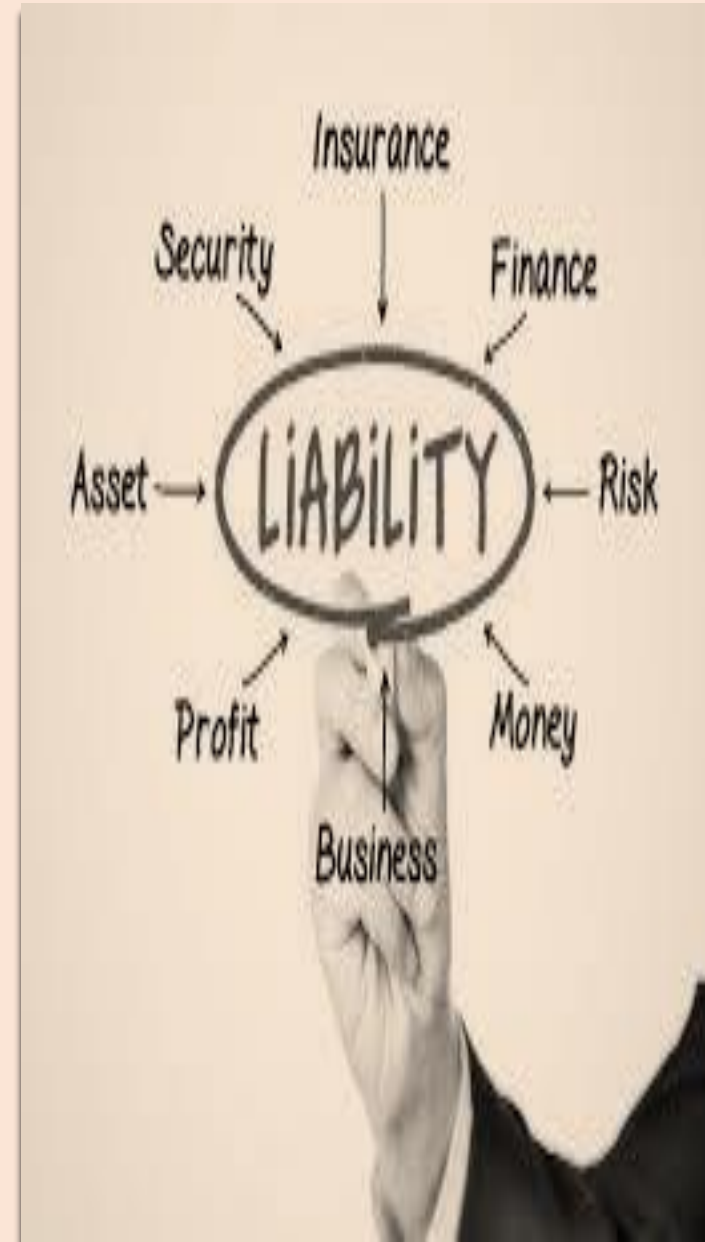
A person named in a filed certificate of authority granting that person authority may deliver to the department for filing a **certificate of denial** that:

- (1) states:
 - (i) the name of the limited liability company;
 - (ii) the address, including street and number, if any, of the registered office of the company; and
 - (iii) the date the certificate of authority to which the certificate of denial pertains was filed; and
- (2) denies the grant of authority.



Personal Liability of Members and Managers

1. As a general rule, any debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company.
2. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the company solely by reason of being or acting as a member or manager [15 Pa. Cons. Stat. § 8834(a)].
3. This freedom from liability applies regardless of whether the company has a single member or multiple members; and regardless of the dissolution, winding up, or termination of the company.
4. There is no shield from professional malpractice claims.



Indemnification

4.6. Limited Liability Company Indemnification. The Limited Liability Company shall indemnify the Managing Member and the Members for, and shall hold the Managing Member and the Members harmless from and against, any liability of the Manager or the Members to any Person arising or incurred in connection with the good faith discharge of the Manager's or the Members' obligations under this Agreement, except for liability imposed on the Managing Member or the Members as a result of any fraudulent, criminal, or grossly negligent act or omission of or breach of this Agreement by the Managing Member or the Members or any of the shareholders, officers, agents or employees of the Manager or the Members.

Delegation

5.01. Management by Manager.

(b) Delegation . The Manager may delegate the right, power and authority to manage the day-to-day business, affairs, operations and activities of the Company to any officer, employee or agent of the Company, subject to the ultimate direction, control and supervision of the Manager. If the Manager appoints an officer of the Company with a title that is commonly used for officers of a business corporation; the assignment of such title shall constitute the delegation of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made by the Manager. Any number of offices may be held by the same Person. The salaries and other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Manager.

Officers

Section 8.1 Elected Officers .

The officers of the Company shall serve at the pleasure of the Board. Such officers shall have the authority and duties delegated to each of them, respectively, by the Board from time to time. The elected officers of the Company shall be a Chairman of the Board, a Chief Executive Officer, a President, a Chief Financial Officer, a Secretary, a Treasurer and such other officers (including, without limitation, Executive Vice Presidents, Senior Vice Presidents and Vice Presidents) as the Board from time to time may deem proper. The Chairman of the Board shall be chosen from among the Directors. All officers elected by the Board shall each have such powers and duties as generally pertain to their respective offices, subject to the specific provisions of this Article VIII. The Board or any committee thereof may from time to time elect or appoint, as the case may be, other officers (including one or more Assistant Secretaries and Assistant Treasurers) and agents, as may be necessary or desirable for the conduct of the business of the Company. Such other officers and agents shall have such duties and shall hold their offices for such terms as shall be provided in this Agreement or as may be prescribed by the Board or such committee, as the case may be.

Members Rights and Obligations



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- V. Distributions
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- VII. Transfers of Membership Interests
- VIII. Dissolution
- IX. Accounting and Tax Matters
- IX. General Provisions

Members Rights and Obligations

1. Number of initial and ongoing members.
2. Names and addresses of, and contact information for, members
3. Extent of limitation on member liability.
4. Manner in which interest of each member will be determined.
5. Facts related to members:
 - a. Number and qualifications.
 - b. Powers and duties.
 - c. Contribution requirements.
 - d. Admission of new members.
 - e. Extent of member's liability for obligations of company.
6. Facts related to members' meetings:
 - a. Notice of meetings.
 - b. Quorum requirements.
 - c. Number of members necessary to take action.
 - d. Circumstances allowing action by consent without meeting.
 - e. Calling special meetings of members.
7. Consequences of member's failure to make contribution to company.
8. Compromise or release of member's obligation.
9. Whether to issue membership interest certificates.

Nature of Membership Interest

Nature of a Membership Interest

50/50

Mr. A

What are their relative ownership interests in the LLC?

50
\$150,000.



Defining the Membership Interest

- ✓ Obligation to Make Capital Contributions
- ✓ Voting Rights
- ✓ Authority to Act
- ✓ Right to Current Distributions
- ✓ Right to Proceeds in Liquidation
- ✓ Right to Transfer and Disassociate
- ✓ Share of Tax Allocations
- ✓ Right to Information



Nature of a Membership Interest

- › A “member” of a limited liability company (LLC) is a person who has been admitted to membership in a limited liability company and who has not dissociated from the company
- › The interest of a member in a limited liability company is personal property and is a transferable interest



Nature of a Membership Interest

Obligation to Make Capital Contributions

1. The contribution of each member to the limited liability company may consist of property transferred to, services performed for, or another benefit provided to the limited liability company, or an agreement to transfer property to, perform services for or provide another benefit to the company
2. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution that has not been made
3. The obligation to make a contribution is not excused by the person's death, disability, termination or other inability to perform personally
4. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the members.



Nature of a Membership Interest

Voting Rights

1. Under the Act a difference arising among members matter in the ordinary course of the activities and affairs company may be decided by a majority of the members
2. An act outside the ordinary course of the activities affairs of the company may be undertaken only with the affirmative vote or consent of all members.
3. The certificate of organization may be amended on the affirmative vote or consent of all members.
4. The operating agreement may be amended only with affirmative vote or consent of all members.



Nature of a Membership Interest

Authority to Act

1. A member is not an agent of a limited liability company solely by reason of being a member.
2. In a member-managed limited liability company, except as expressly provided in this title, the management and conduct of the company are vested in the members. and
3. Each member has equal rights in the management and conduct of the company's activities and affairs.



Nature of a Membership Interest

Right to Current Distributions.

1. Each member is entitled to share in distributions of the limited liability company.
2. No person has the right to demand or receive a distribution from a company in any form other than money.
3. Any distribution made by a limited company before its dissolution and winding up must be in equal shares among members and persons dissociated as members

Events of Dissolution

A limited liability company is dissolved, and its activities and affairs must be wound up, by the consent of all the members.



Nature of a Membership Interest

Right to Transfer and Dissociate

A membership interest of a transferable interest:

A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will



Nature of a Membership Interest

Right to Information

1. In a member-managed limited liability company, a member may inspect and copy any record maintained by the company regarding the company's activities, affairs, financial condition and other circumstances.
2. The inspection is available on reasonable notice during regular business hours, at a reasonable location specified by the company.
3. In a manager-managed company, this right of inspection applies to the managers and not the members.



Nature of a Membership Interest

50/50

Mr. A

What are their relative ownership interests in the LLC?

\$150,000.



Nature of a Membership Interest

“Membership Interest” as opposed to a
“Unit” as opposed to a “Percentage Interest”

“Unit” means a Member’s ownership interest
in the LLC, which consists:

- Of the member’s right to share in profits, and receive Distributions,
- Participate in the LLC’s governance and approve the LLC’s acts
- Participate in the designation and removal of the Manager and
- Receive information pertaining to the LLC’s affairs.



Nature of a Membership Interest

“Membership Interest” as opposed to a
“Unit” as opposed to a “Percentage Interest”

Mr. A contributes \$50,000 = 25% of the Contributed Capital

Ms. B contributes \$150,000 = 75% of the Contributed Capital

25 Units

Percentage Interest 25%

75 Units

Percentage Interest 75%



A Membership Unit is an artificial construct

(w) "Unit" means a Member's percentage interest in the LLC, which consists of the member's right to share in profits, receive Distributions, participate in the LLC's governance and approve the LLC's acts under Article 5.7 hereof, participate in the designation and removal of the Manager and receive information pertaining to the LLC's affairs.

Units do not represent any fixed or absolute percentage interest representing ownership in the LLC, but instead Units represent an interest in the LLC and the amount of any Member's actual percentage interest representing ownership in the LLC shall generally be determined by the number of Units that such Member owns divided by the total number of Units outstanding (it being understood that such total number of Units outstanding may fluctuate and change from time to time).

The Units of the initial Member(s) are set forth herein. Changes in Units after the Effective Date, including, but not limited to, those changes necessitated by the admission and Dissociation of Members, will be reflected in the LLC's records. The allocation of Units as reflected in the LLC's records from time to time is presumed to be correct for purposes of this Agreement and the Act.

Nature of a Membership Interest

“Membership Interest” as opposed to a
“Unit” as opposed to a “Percentage Interest”

25 Units

Percentage Interest 12.5%

Percentage Interest 25%

Mr. C contributes \$50,000 =
25% of the Contributed Capital
He receives 100 Units

Percentage Interest based on Capital 25%
Percentage Interest based on Units 50%

75 Units

Percentage Interest 37.5%



A Membership Unit is an artificial construct

(w) "Unit" means a Member's percentage interest in the LLC, which consists of the member's right to share in profits, receive Distributions, participate in the LLC's governance and approve the LLC's acts under Article 5.7 hereof, participate in the designation and removal of the Manager and receive information pertaining to the LLC's affairs.

Units do not represent any fixed or absolute percentage interest representing ownership in the LLC, but instead Units represent an interest in the LLC and the amount of any Member's actual percentage interest representing ownership in **the LLC shall generally be determined by the number of Units that such Member owns divided by the total number of Units outstanding (it being understood that such total number of Units outstanding may fluctuate and change from time to time).**

The Units of the initial Member(s) are set forth herein. Changes in Units after the Effective Date, including, but not limited to, those changes necessitated by the admission and Dissociation of Members, will be reflected in the LLC's records. The allocation of Units as reflected in the LLC's records from time to time is presumed to be correct for purposes of this Agreement and the Act.

Obligation to Make Capital Contributions

Contributions

"ARTICLE III CAPITAL CONTRIBUTIONS

3.1. Initial Contributions. On the execution of this Agreement, the Members shall make the following initial capital contributions to the Limited Liability Company as provided on Exhibit A, hereto

3.2. Additional Contributions. From time to time after the Effective Date, the Managing Member may request the Non-managing Members to make additional contributions and the Non-managing Members shall make all such contributions within ten days after the request until the Non-managing Members have contributed an aggregate of \$200,000 each pursuant to this Section 3.2.

3.3. No Other Contributions. No Member shall be required to make any additional capital contributions to the Limited Liability Company not specifically required by Section 3.1 and 3.2.

3.4. No Interest. The Members shall not receive interest on any capital contribution at any time made to the Limited Liability Company or on the balance of their respective Capital Accounts."

Capital Contributions

Obligation to Make Capital Contributions

1. The contribution of each member to the limited liability company may consist of property transferred to, services performed for, or another benefit provided to the limited liability company, or an agreement to transfer property to, perform services for or provide another benefit to the company
2. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution that has not been made
3. The obligation to make a contribution is not excused by the person's death, disability, termination or other inability to perform personally
4. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the members.

Voting Rights

Voting Rights

1. Under the Act a difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.
2. An act outside the ordinary course of the activities and affairs of the company may be undertaken only with the affirmative vote or consent of all members.
3. The certificate of organization may be amended only with the affirmative vote or consent of all members.
4. The operating agreement may be amended only with the affirmative vote or consent of all members.

Voting Rights

(a) Each holder of a Unit shall be entitled to one (1) vote for all matters which are subject to approval by the Members.

(a) Each holder of a Class A Unit shall be entitled to one (1) vote for all matters which are subject to approval by the Members.

(b) Holder of Class B Units shall not be entitled to vote on any matter requiring approval of the Members

(c) In regard to all other rights and obligations hereunder Class A and Class B Members shall be entitled to the same rights and shall be required to perform the same obligations without distinction as to Class of Membership Unit.



Ted Perkins Tax News

VERIFY YOUR ATTENDANCE

Please type “present” into the chatbox on your screen and hit ENTER.

This is an important step which verifies your attendance and assures that your credit is received.

Thank you.

Distributions



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Distributions

1. Manner of distribution of company's cash and assets to members.
2. Who Decides?
3. What's the source?
4. When?
5. How much?
6. Mandatory Distributions and Preferences

Right to Distributions

Right to Current Distributions

1. Each member is entitled to share in distributions of the limited liability company.
2. A "distribution" is defined in the Uniform Limited Liability Company Act as a direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability company to a person on account of a transferable interest or in the person's capacity as a member
3. A person has a right to a distribution before the dissolution and winding up of a company only if the company decides to make an interim distribution
- d. Any distribution made by a limited company before its dissolution and winding up must be in equal shares among members and persons dissociated as members
- e. No person has the right to demand or receive a distribution from a company in any form other than money

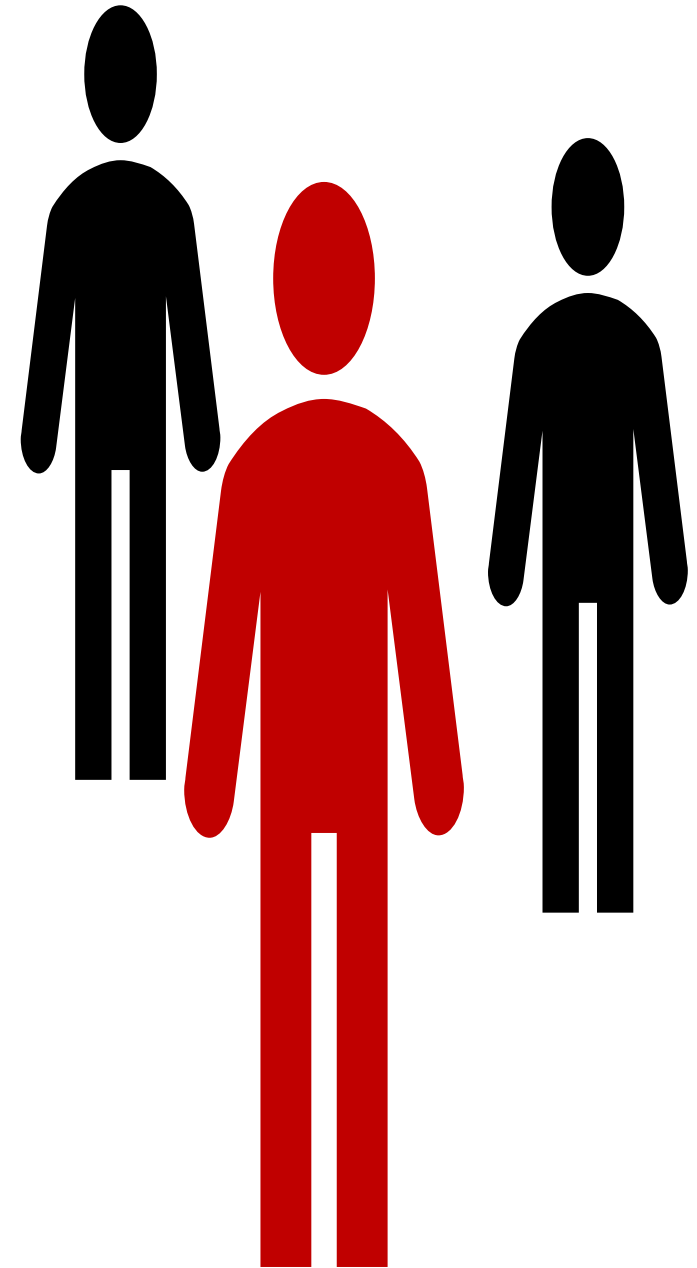
Limitation on Current Distributions

1. No distribution may be made if after the distribution the limited liability company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs
2. Moreover, no distribution may be made if after the distribution the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights of members and transferees whose preferential rights are superior to the rights of persons receiving the distribution



Who Decides

4.5. Distributions. Distributions will be made in the sole discretion of the Managing Manager (to the extent that the Manager elects to make a distribution) to Members on a pro-rata basis (based on the proportionate number of Units held by each Member) within ninety (90) calendar days from the date that the Manager declares any distribution.



What's the Source?

7.2. Distributions of Cash Flow. From time to time, but no less frequently than once a year, the Managing Member shall cause the Limited Liability Company to distribute the Cash Flow of the Limited Liability Company to the Members.

7.3 The distributions shall be made in proportion to the Members respective positive Capital Account balances, determined immediately prior to such distributions. Notwithstanding the foregoing, distributions made on the termination or dissolution of the Limited Liability Company shall be made in accordance with Section 10.2 of this Agreement.

7.4. Reserves. Notwithstanding anything to the contrary contained in Section 7.2, the Managing Member may defer the distribution of the Excess Cash Flow and use such Excess Cash Flow to establish reserves (the "Reserves") for the payment of Limited Liability Company expenses, debt payments, capital improvements, replacements, distributions, contingencies and all other purposes all as determined by the Managing Member.



What's the Source

(c) "Sale" or "Refinancing" mean, as the case may be, any Company transaction (other than the receipt of Capital Contributions) not in the ordinary course of its business, including, without limitation, sales, exchanges or other dispositions of real or personal property, condemnations, recoveries or damage awards and insurance proceeds (other than business or rental interruption insurance proceeds) or any borrowing or mortgage refinancing.

(d) "Sale Proceeds" or "Refinancing Proceeds" means all cash funds resulting from a Sale or Refinancing, as the case may be, less (i) expenses incurred in the Sale or Refinancing, (ii) debts and obligations related to the Sale or Refinancing, (iii) other payments for Company expenses (including costs and improvements or additions to properties and amounts as may be required to purchase underlying land or any joint venture interest) and (iv) additions to Reserves in the discretion of the Manager."

How Much?

† On what basis is the distribution made?

† Member Contributions

† A

† R

† P

† Reserves

7.3 The distributions shall be made in proportion to the Members **respective Percentage Interest**, determined immediately prior to such distributions. Notwithstanding the foregoing, distributions made on the termination or dissolution of the Limited Liability Company shall be made in accordance with Section 10.2 of this Agreement.

† Payment of Third Party Loans

Minimum Distributions

4.6 Minimum distribution . With respect to any taxable year of the Company in which Members are allocated taxable income for Federal income tax purposes (and for this purpose all items of income, gain, loss or deduction required to be separately stated pursuant to Section 703 of the Code shall be included in the calculation of taxable income (other than the amount, if any, by which capital losses exceed capital gains)), the Company shall attempt to distribute to the Members, within 90 days after the close of that taxable year, no less than the amount determined by multiplying the Company's- taxable income (computed as set forth in this sentence) by the highest composite Federal, state and local income tax rate applicable to any Member. For purposes of the preceding sentence, the Company's taxable income for a year shall be reduced by any net loss of the Company in prior years that has not previously been so taken into account under this Section 4.06(b) .

Tax Allocations



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Do you need special allocation provisions?

Do you know what IRC Sec. 704 is all about?

Allocation of Profits and Losses

"Profits" and "Losses" shall mean amounts equal to the corresponding items of income, gain, deductions and losses computed for federal income tax purposes, except that:

(a) Such items of income, gain, deductions and losses with respect to assets contributed by a Member to the Limited Liability Company or owned by the Limited Liability Company if and when the Members' Capital Accounts are revalued, shall be computed by reference to such assets' fair market value, determined by the Members, at the time of such contribution or revaluation, all as provided in the Treasury Regulations under Section 704(b) of the Code;

(b) Profits shall also include tax-exempt income of the Limited Liability Company under Code Section 705(a)(1)(B); and

(c) Losses shall include expenditures of the Limited Liability Company described in Code Section 705(a)(2)(B) and expenditures which are characterized as Section 705(a)(2)(B) expenditures pursuant to Regulation Section 1.704-1(b) or any successor thereto. The Managing Member shall determine such Profits and Losses with the assistance of the Accountants.

Tax Allocations

25 Units

Percentage Interest 25%



Year 1 of the LLC an \$100,000 loss is incurred

Mr. A reports a loss of \$25,000; and
Ms. B reports a loss of \$75,000
on their respective tax returns

75 Units

Percentage Interest 75%



Straight Allocation

8.1. Allocations. Except as otherwise provided in Sections 8.2, 8.3 and 8.4, all items of Profits and Losses shall be allocated to the Members, to all of the Members in proportion to their Percentage Interests.

Tax Allocations

25 Units

Percentage Interest 25%



75 Units

Percentage Interest 75%



Year 1 of the LLC an \$100,000 loss is incurred
Ms. B reports wants to report the full \$100,000
on her tax returns

IRC Sec 704

- ✓ IRC Sec 704 allows for "special allocations" as long as they meet the "substantial economic effect" test
- ✓ Capital Accounts maintained in accordance with Reg Sec. 1.704 – 1(b)(2)(iv)
- ✓ Upon liquidation distributions are based on positive account balances
- ✓ Member has the obligation to restore negative capital account balances

Allocation

4.04. Profits and Losses.

Subject to the provisions of Article IX, Profits and Losses of the Company, as defined in Section 1.11(tt), shall be allocated to the Members as follows:

(a) Profits together with each item of income and gain which must be separately stated pursuant to Code Section 702(a) shall be allocated to the Members in the percentage determined by the Managing Member and agreed to by a majority of the Members.

(b) Losses together with each item of deduction or credit which must be separately stated pursuant to Code Section 702(a) shall be allocated to the Members in the percentage determined by Managing Member and agreed to by a majority of the Members.

The foregoing notwithstanding, Losses and separately stated items allocated pursuant to this Section 4.04(b) shall not exceed the maximum amount permitted under Section 1.704 of the Regulations or any other controlling statute, rule or regulation.

Capital Accounts

6.6. Capital Accounts. An account ("Capital Account") shall be established and maintained for each Member in accordance with Treasury Regulations Section 1.704-1(b). Accordingly, each Member's Capital Account shall be increased by (i) the amount of money contributed by such member to the Limited Liability Company, (ii) the fair market value (as determined by the Members) of property contributed by such Member to the Limited Liability Company (net of the liabilities secured by such contributed property that the Limited Liability Company is considered to assume or take subject to under Code Section 752), and (iii) allocations to such Member of Profits; and shall be decreased by (iv) the amount of money distributed to such Member by the Limited Liability Company, (v) the fair market value (as determined by the Members) of the property distributed to such Member by the Limited Liability Company (net of liabilities secured by such distributed property that such Member is considered to assume or take subject to under Code Section 752), and (vi) allocations to such Member of Losses.

Capital Deficit

(5) Capital Account Deficit. For purposes of this Section 8.2, a Member shall be considered to be obligated to restore a deficit in its Capital Account by: (i) the amount that such Member is required to restore pursuant to this Agreement; (ii) the amount such Member is deemed to be obligated to restore pursuant to the Minimum Gain chargeback provisions set forth in Regulations Section 1.704-2(g); and (iii) the amount such Member would be deemed obligated to restore if deductions relating to Member Nonrecourse Debts were treated as deductions relating to Nonrecourse Debts and the Minimum Gain was computed with respect to such Member Nonrecourse Debts.

Positive Capital Accounts

Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding on the Members until such time as the Company Property has been distributed pursuant to this Section 13.02 and the Certificate has been canceled in accordance with the Act. The Liquidator shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof unless the Members unanimously consent to distributions of all or any part of the Property in kind, and shall cause the Property or the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

- (a) First, to creditors other than the Managing Member(s) in satisfaction of all of the Company's debts and liabilities;
- (b) Second, to the payment and discharge of all of the Company's debts and liabilities to the Managing Member(s);
- (c) The balance, if any, to the Members in accordance with their positive Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods however, that no distribution shall be made pursuant to this Section 8.02(c) that creates or increases an Adjusted Capital Account Deficit for any Member that exceeds such Member's obligation (deemed and actual) to restore such deficit, determined as follows: Distributions shall first be determined tentatively pursuant to this Section 8.02(c) without regard to the Members' Capital Accounts, and then the allocation provisions of Articles III, IV and IX shall be applied tentatively as if such tentative distributions had been made. If any Member shall thereby have an Adjusted Capital Account Deficit that exceeds his obligation (deemed and actual) to restore such deficit, the actual distribution to such Member pursuant to this Section 8.02(c) shall be equal to the tentative distribution to such Member less the amount of the excess to such Member; and

Admission of New Members

New Members

1. The LLC may initially have one or more members. If the company is to have only one initial member, the person becomes a member as agreed to by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons.
2. If the initial member and the organizer are different persons, the organizer acts on behalf of the initial member [15 Pa. Cons. Stat. Ann. § 8841(a)]. If the company is initially to have more than one member, those persons become members as agreed by those persons and the organizer before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons [15 Pa. Cons. Stat. Ann. § 8841(b)],
3. After formation of a LLC, a person may become a member by action of the organizer if the company does not have any members; as provided in the operating agreement; as the result of a Chapter 3 transaction (i.e., a merger, interest exchange, conversion, division or domestication); or with the affirmative vote or consent of all the members [15 Pa. Cons. Stat. Ann. § 8841(d)].
4. A person may also become a member if admitted to prevent dissolution of the company [see in connection with a dissolution [15 Pa. Cons. Stat. Ann. § 8841(b)]; see 15 Pa. Cons. Stat. Ann. § 8871(a)(3); see also § 42.70].

Admission of New Member

A. Admission of Members

In order to admit a new Member who is not an assignee, transferee, donee, legatee or distributee of an existing Member, the consent of the Manager and the Members holding 75% of the Membership Interests held by all Members shall be required and such Person shall execute and deliver a copy of this Agreement, as amended, and such other documents and take such other actions as the Managers shall reasonably deem necessary or advisable to cause him to become a Member, make any required Capital Contribution as determined by the Managers, and pay all reasonable expenses required by the Managers to be paid in connection therewith, which may include, without limitation, the cost of preparing and filing an amended Certificate of Organization. In all cases, the Managers shall have the right to withhold its consent for any reason in its sole discretion.

Transfers of Membership Interest



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Transfers of Membership Interest

- 1. Restrictions on transfer
- 2. Triggering Events
- 3. Option or Obligation
- 4. Determination of the Purchase Price
- 5. Terms
- 6. Funding
- 7. Characterization of Payments

Restrictions on Transfer

Nature of a Membership Interest

A transfer, in whole or in part, of a transferable interest:
is permissible;

- > Does not by itself cause the dissociation of the transferor as a member, or
- > A dissolution and winding up of the limited liability company's activities and affairs; and
- > Does not entitle the transferee to: (i) participate in the management or conduct of the company's activities and affairs; or (ii) have access to records or other information concerning the company's activities and affairs.



Restriction on Transfer

3.2 Restrictions on Transfer.

(c) Permitted Transfers. A Member may at any time Transfer one or more Units to a Permitted Transferee if, as of the date the Transfer takes effect, the LLC is reasonably satisfied that all of the following conditions are met:

(1) the Transferee is a person with the same investor and Member qualifications as the original Member;

(2) the Transfer, alone or in combination with other Transfers, will not result in the LLC's termination for federal income tax purposes or a change in the tax status of the LLC;

(3) the Transfer is the subject of an effective registration under, or exempt from the registration requirements of, applicable state and federal securities laws and regulations;

(4) the LLC receives from the Transferee the information and agreements reasonably required to permit it to file federal and state income tax returns and reports; and

(5) the LLC receives payment from the Transferee of a reasonable transfer fee for each Transferee. Where Transferees hold title together, as joint tenants, tenants in common, Members or otherwise, a Transfer to them shall only incur one transfer fee.

Restriction on Transfer

9.1. Transfers of Limited Liability Company Interests. No Member may transfer all or any part of its Limited Liability Company Interest (including without limitation any transfer between Members) unless and until such transfer has been approved in writing by all of the Members (other than Defaulting Members).

Any purported transfer made in violation of this Section 9.1 shall be void ab initio and without effect. Any Member who purports to transfer all or any part of its Limited Liability Company Interest in violation of this Section 9.1 shall be deemed to be a "Defaulting Member."

Transfer of Membership Interest

10.3. Right To Transfer Membership Interest

Except by operation of law, no Member shall have the right to Transfer its Membership Interest except as follows:

- (1) A Member who wishes to make any Voluntary Transfer or
- (2) Who has any information that would reasonably lead him or her to expect that an Involuntary Transfer is foreseeable, must promptly send a Notice of Transfer to the Managing Member and the other Members, or
- (3) In the event of the death of a Member, must promptly send a Notice of Transfer to the Managing Members and to the Members.

Transferor's Status

If a Member Transfers less than all of his, her, or its Units, the Member's rights with respect to the transferred portion of the Unit, including the right to vote or otherwise participate in the LLC's governance and the right to receive Distributions, will terminate as of the effective date of the Transfer.

However, the Member will remain liable for any obligation with respect to the transferred portion that existed prior to the effective date of the Transfer, including (without limitation) any costs or damages resulting from the Member's breach of this Agreement.

If the Member Transfers all of his, her or its Units, the Transfer will constitute an event of Dissociation.

Sale's Price

In the event a Managing Membership Interest or Membership Interest is to be offered for purchase under either Section 10.2, or 10.3, above, the Sale Price shall be determined by the following procedure:

- A. The Sale Price to be paid for the offered Membership Interest shall be the “fair market value” of such Membership Interest.
- B. “Fair market value” of such Membership Interest will be determined in a manner consistent with the methods used for determining such Membership Interest’s value for federal estate tax purposes, ignoring any alternate valuation date (under Internal Revenue Code Section 2032) or special use valuation (under Internal Revenue Code Section 2032A).
- C. If the purchasing party or parties and the offering Member are unable to agree mutually upon the “fair market value” of the Membership Interest within sixty (60) days from the date of the final acceptance of the offer, the fair market value of the interest will be determined by one or more Qualified Appraisers, selected under the procedures set forth in this Section 10.4.

Sales Terms

10.5. The Sales Terms

In the event a Managing Membership Interest or Membership Interest is to be offered for purchase under either Section 10.2 or 10.3, above, the Sale Terms shall be as follows:

A. Within fifteen (15) days of the final determination of the fair market value of the offered Membership Interest, the purchasing party or parties, as the case may be, shall tender to the Member or Personal Representative of a deceased Member who has offered the offered Membership Interest a promissory note in the amount of the fair market value determined pursuant to Section 10.4.

Right to Disassociate

Disassociation

Power to dissociate.— A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 8861(1) (relating to events causing dissociation).

Wrongful dissociation.— A person's dissociation as a member is wrongful only if the dissociation is in breach of an express provision of the operating agreement



Disassociation

A person is dissociated as a member when any of the following occurs:

- › The limited liability company knows or has notice of the person's express **will to withdraw as a member**, except that, if the person specified a withdrawal date later than the date the company knew or had notice, on that later date.
- › An **event stated in the operating agreement** as causing the person's dissociation occurs.
- › The person's entire interest is transferred in a **foreclosure sale relating to charging order**.
- › The person is **expelled as a member pursuant to the operating agreement**.

Disassociation

- › The person is expelled as a member by the affirmative vote or consent of all the other members if:
 - (i) it is unlawful to carry on the company's activities and affairs with the person as a member; or
 - (ii) there has been a transfer of all the person's transferable interest in the company, other than:
 - (A) a transfer for security purposes; or
 - (B) charging order in effect under section 8853 which has not been foreclosed;

Disassociation

- > On application by the company or a member in a direct action **under section 8881 (relating to direct action by member)**, the person is expelled as a member by judicial order because the person:
 - has **engaged or is engaging in wrongful conduct** that has affected adversely and materially, or will affect adversely and materially, the company's activities and affairs;
 - has **committed willfully or persistently**, or is committing willfully or persistently, **a material breach of the operating agreement** or a duty or obligation under relating to standards of conduct for members; or
 - has **engaged or is engaging in conduct** relating to the company's activities and affairs which makes it **not reasonably practicable to carry on the activities and affairs with the person as a member**.

Disassociation

- > In the case of an individual the individual dies; or a guardian for the individual is appointed; or a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this title or the operating agreement.

- > In a member-managed limited liability company, the person –
 - becomes a debtor in bankruptcy;
 - executes an assignment for the benefit of creditors; or
 - seeks, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property.

Damages for Wrongful Dissociation

- › A person that **wrongfully dissociates** as a member is liable to the limited liability company and, subject to section 8881 (relating to direct action by member), to the other members for damages caused by the dissociation.
- › The liability is in addition to any debt, obligation or other liability of the member to the company or the other members.



Effects of Dissociation

General rule.— If a person is dissociated as a member:

- › The person's rights as a member terminate;
- › If the company is member-managed, the person's duties and obligations relating to standards of conduct for members as a member end with regard to matters arising and events occurring after the person's dissociation; and
- › Any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.
- › Existing obligations not discharged.— A person's dissociation as a member does not of itself discharge the person from any debt, obligation or other liability to the company or the other members which the person incurred while a member.

Withdrawal

3.10 Resignation of a Member. A Member may resign from the LLC at any time by giving written notice to the LLC at least sixty (60) days prior to the effective date of resignation.

9.2. Withdrawals. No Member may resign, dissolve or otherwise withdraw from the Limited Liability Company unless and until such resignation, dissolution or withdrawal has been approved in writing by all of the Members (other than Defaulting Members).

Any other provision of this Agreement to the contrary notwithstanding, if a Member resigns, dissolves or otherwise withdraws from the Limited Liability Company without such approval, such Member shall thereafter be deemed to be a "Defaulting Member."

Defaulting Member

10.4. Default. If a Member fails to perform any of its obligations under this Agreement or violates any of the terms of the Agreement (an "Event of Default") the other Members shall have the right (in addition to all of their other rights and remedies under this Agreement, at law or in equity) to give the Member written notice of such default at any time prior to the curing of such default. Unless the Member cures such default within ten days after receipt of such notice, then the Member shall be a "Defaulting Member" under this Agreement. Notwithstanding the foregoing, in the event that a Member violates the terms of this Agreement and such violation constitutes gross negligence or willful misconduct, then such Member shall immediately be deemed to be a "Defaulting Member" and shall not be entitled to receive notice of such default or an opportunity to cure such default. If a Member is a Defaulting Member as that term is defined in this Section or elsewhere in this Agreement, the other Member may do one or more of the following, at the same or different times, in addition to all of its or their other rights and remedies:

Defaulting Member

- (1) Bring any proceeding in the nature of specific performance, injunction or other equitable remedy, it being acknowledged by each of the Members that damages at law may be an inadequate remedy for an Event of Default under this Agreement and the Defaulting Member may be compelled to cure such default;
- (2) Bring any action at law by or on behalf of the Member or the Limited Liability Company, individually or collectively, as may be permitted in order to recover damages, and the Defaulting Member shall be liable for all damages suffered by the Limited Liability Company and the other Members as a result of such default; and/or
- (3) Require, by written notice from such other Members to the Limited Liability Company, that any amount otherwise payable from the Limited Liability Company to the Defaulting Member shall be paid to the other Members or the Managing Member in an amount equal to the amount (including damages) owing from the Defaulting Member to the other Members, the Managing Member or to this Limited Liability Company.

Pre-Emptive Rights

(c) Subject to Section 8(d) and the receipt of all required regulatory approvals and compliance with applicable Laws, Investor has the right (the "**Anti-Dilution Right**"), upon receipt of a Subsequent Offering Notice, to subscribe for and to be issued, on a private placement basis, and on the same terms and conditions of such Subsequent Offering:

(i) In the case of a Subsequent Offering of Membership Interests, such number of Units of Membership Interests that will allow the Investor to maintain a ten (10%) percent ownership interest in Apple LLC, on a fully diluted basis; and

(ii) In the case of a Subsequent Offering of Subject Securities, such number of Subject Securities that will (assuming conversion or exchange of all of the convertible or exchangeable Subject Securities issued in connection with the Subsequent Offering and the convertible or exchangeable Subject Securities issuable pursuant to this Section 8 allow the Investor to maintain a ten (10%) percent ownership interest in Apple LLC, on a fully diluted basis.

Take Along Provisions

"8.1 Take-Along.

8.1.1 If, at any time, Shareholders owning not less than a majority of the then issued and outstanding Shares (the "Majority Shareholders") decide to sell all of the Class A and Class B Shares held by such Shareholder, in a single transaction, or in a series of related transactions, to a third party, whether in a stock sale, share exchange, merger, consolidation or any other stock based transaction, the Majority Shareholders shall have the right, subject to the provisions of this Section 8.1, to require each of the other Shareholders who are not Majority Shareholders (the "Other Shareholders") to sell all of the Shares held by such Shareholders on the same terms and conditions as those on which the Majority Shareholders are selling their Shares to such third party (the "Proposed Third Party Sale"), including but not limited to, the per share purchase price and payment terms."



Tag Along

"8.2 Tag-Along.

8.2.1 Exercise of Right.

8.2.1.1 If any Offered Shares are not purchased pursuant to either Section 2.3.2 or Section 8.1.2, above, and thereafter are to be sold to a Proposed Transferee (such Offered Shares, the "Transfer Shares"), each respective Shareholder (other than the Selling Shareholder) who has not elected to purchase Offered Shares pursuant to either Section 2.3.2 or Section 8.1.2, shall have a right to tag-along in such sale."

Right to Information

Reports

6.3. Reports. The Managing Member shall provide the Members with a quarterly report of the Limited Liability Company's operations, which shall include income statements of the Limited Liability Company for such quarter and for the year to date, by no later than the end of the month succeeding such calendar quarter. All such reports provided by the Managing Member shall be at the expense of the Limited Liability Company. Each Member and its respective attorneys, accountants and other advisors, shall have the right at all times during usual business hours and on reasonable notice, to examine, review, audit, and make copies of the books and records of the Limited Liability Company. Each Member shall maintain all information relating to the Limited Liability Company contained in such reports and books and records in strict confidence. Each Member making such examination, review, audit or copying shall bear all of the expenses incurred by such Member, the Managing Member and the Limited Liability Company in any such examination, review, audit and copying.

Dissolution





Ted Perkins Tax News

VERIFY YOUR ATTENDANCE

Please type “present” into the chatbox on your screen and hit ENTER.

This is an important step which verifies your attendance and assures that your credit is received.

Thank you.

| Agreement Outline

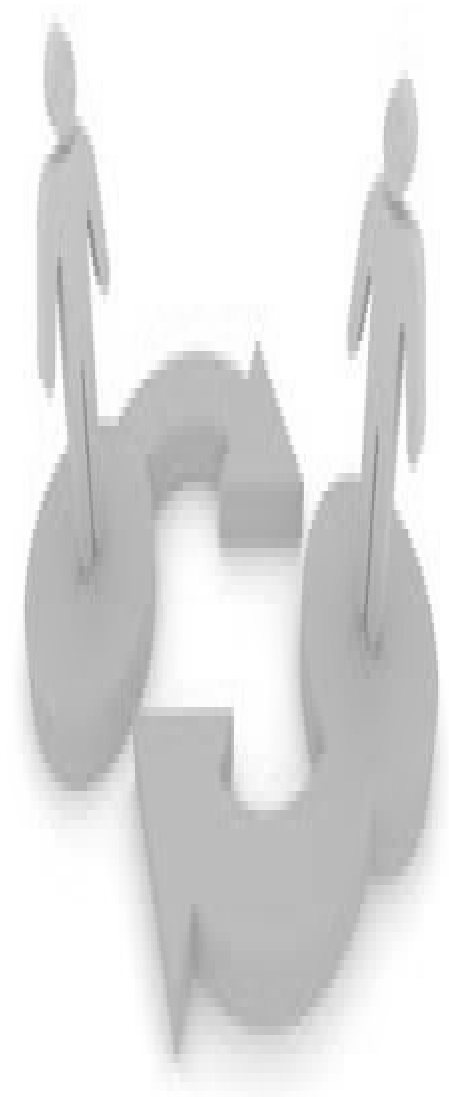
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Events of Dissolution
Distributions in Liquidation

Events of Dissolution

A limited liability company is dissolved, and its activities and affairs must be wound up, on the occurrence of any of the following:

1. An event or circumstance that the operating agreement states causes dissolution.
2. The consent of all the members.
3. The passage of 180 consecutive days after the company ceases to have any members unless before the end of the period consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and at least one person becomes a member in accordance with the consent.
4. Court order of dissolution



Events of Dissolution

The limited liability company is required to apply its assets to discharge the limited liability company's obligations to creditors, including members that are creditors. After payments to creditors have been satisfied, any surplus must be distributed in the following order (subject to any charging order in effect):

- (1) to each owner of a transferable interest that reflects contributions made and not previously returned, **an amount equal to the value of the unreturned contributions**; and
- (2) among owners of transferable interests **in proportion to their respective rights to share in distributions** immediately before the dissolution of the limited liability company
- (3) If the company does not have sufficient surplus to comply with the statutory order of distribution, any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions. All surplus distributions must be paid in money.



Event of Dissolution

10.1. Events of Dissolution. The Limited Liability Company shall continue until dissolved on the earliest to occur of the following events (the "Events of Dissolution"):

- (1) _____ [Specific date].
- (2) The sale, exchange, or other disposition by the Limited Liability Company of all or substantially all of the Limited Liability Company's assets.
- (3) The agreement of all of the Members (other than Defaulting Members) to terminate and dissolve the Limited Liability Company.
- (4) On the Bankruptcy of the Managing Member, or of one of the Non-managing Members if the Managing Member so elects.
- (5) When there is only one Member and no other member is admitted to the Limited Liability Company for a period of 90 days following the date the Company first had only one member.
- (6) The passage of 180 consecutive days after the company ceases to have any members unless before the end of the period: (a) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and (b) at least one person becomes a member in accordance with the consent.

Liquidating Distributions

10.2. Liquidating Distributions. In the Event of Dissolution, the Managing Member or, if there is no Managing Member, a Person designated by the Managing Member (the "Liquidating Trustee") shall take full account of the assets and liabilities of the Limited Liability Company as of the date of such Event of Dissolution and shall proceed with reasonable promptness to liquidate the Limited Liability Company's assets and terminate its business.

The cash proceeds from such liquidation, together with any other net assets of the Limited Liability Company, shall be applied first to the payment of items described in Section 4.2, including all items relating to such liquidation and all reserves that the Liquidating Trustee determines, in its discretion, to be appropriate.

Capital Deficit

(5) Capital Account Deficit. For purposes of this Section 8.2, a Member shall be considered to be obligated to restore a deficit in its Capital Account by: (i) the amount that such Member is required to restore pursuant to this Agreement; (ii) the amount such Member is deemed to be obligated to restore pursuant to the Minimum Gain chargeback provisions set forth in Regulations Section 1.704-2(g); and (iii) the amount such Member would be deemed obligated to restore if deductions relating to Member Nonrecourse Debts were treated as deductions relating to Nonrecourse Debts and the Minimum Gain was computed with respect to such Member Nonrecourse Debts.

Positive Capital Accounts

Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants contained in this Agreement and obligations provided for in this Agreement shall continue to be fully binding on the Members until such time as the Company Property has been distributed pursuant to this Section 13.02 and the Certificate has been canceled in accordance with the Act. The Liquidator shall be responsible for overseeing the winding up and dissolution of the Company, shall take full account of the Company's liabilities and Property, shall cause the Company Property to be liquidated as promptly as is consistent with obtaining the fair value thereof unless the Members unanimously consent to distributions of all or any part of the Property in kind, and shall cause the Property or the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed in the following order:

- (a) First, to creditors other than the Managing Member(s) in satisfaction of all of the Company's debts and liabilities;
- (b) Second, to the payment and discharge of all of the Company's debts and liabilities to the Managing Member(s);
- (c) The balance, if any, to the Members in accordance with their positive Capital Accounts, after giving effect to all contributions, distributions, and allocations for all periods however, that no distribution shall be made pursuant to this Section 8.02(c) that creates or increases an Adjusted Capital Account Deficit for any Member that exceeds such Member's obligation (deemed and actual) to restore such deficit, determined as follows: Distributions shall first be determined tentatively pursuant to this Section 8.02(c) without regard to the Members' Capital Accounts, and then the allocation provisions of Articles III, IV and IX shall be applied tentatively as if such tentative distributions had been made. If any Member shall thereby have an Adjusted Capital Account Deficit that exceeds his obligation (deemed and actual) to restore such deficit, the actual distribution to such Member pursuant to this Section 8.02(c) shall be equal to the tentative distribution to such Member less the amount of the excess to such Member; and

Accounting and Tax Matters



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Accounting
Reports
Tax Matters Member

Accounting

6.1. Fiscal Year. The fiscal year of the Limited Liability Company shall be the calendar year.

6.2. Accounting Method. The books and records of the Limited Liability Company shall be maintained on the method of accounting chosen by the Managing Member and in accordance with generally accepted accounting principles consistently applied and shall show all items of income and expense. The Managing Member shall maintain at the Limited Liability Company's principal office full and accurate books and records of the Limited Liability Company's business.

Tax Matters

6.4. Tax Status. Each of the members hereby recognizes that the Limited Liability Company will be recognized as a Company for Federal and state tax purposes. The Managing Member shall use all reasonable efforts to cause the Accountants to prepare and make timely filings of all tax returns and statements which the Accountants determine must be filed on behalf of the Limited Liability Company with any taxing authority. The Managing Member shall use all reasonable efforts to provide a copy of such returns and statements to each Member prior to thirty days before the due date (computed without regard to any extensions) and actual filing of such return.

6.5. Tax Matters Member. The Managing Member shall be the "tax matters member" for purposes of the Code and shall notify the Non-managing Members of any audit or other matters of which the Managing Member is notified or becomes aware.

Tax Matters

Partnership Representative.

The Members shall take all reasonable actions to avoid the application to the Company of the centralized partnership audit provisions of sections 6221 through 6241 of the Code, as amended by the Bipartisan Budget Act of 2015. If, however, such provisions are found to apply to the Company, a member of the Manager or another appointed individual shall act as the Partnership Representative for the purposes of IRS Code section 6221 through 6241. In the event the member of the Manager is no longer a Member in the Company, and no other individual has been appointed as the Partnership Representative, the Partnership Representative shall be the Majority Interest owner from amongst the Members. If the Majority Member is unable or unwilling to serve, the Partnership Representative shall be appointed from amongst the remaining Members by a Majority of Interests of the Members.

The Partnership Representative shall be authorized and required to represent the Company with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings. The Partnership Representative shall have the sole authority to (1) sign consents, enter into settlement and other agreements with such authorities with respect to any such examinations or proceedings and (ii) to expend the Company's funds for professional services incurred in connection therewith.

The Partnership Representative shall have the final decision-making authority with respect to all federal income tax matters involving the Company. The Members agree to cooperate with the Partnership Representative and to do or refrain from doing any or all things reasonably required by the Partnership Representative to conduct such proceedings. Any reasonable direct out-of-pocket expense incurred by the Partnership Representative in carrying out its obligations hereunder shall be allocated to and charged to the Company as an expense of the Company for which the Partnership Representative shall be reimbursed.

General Provisions



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- ✓ Covenant Not to Compete
- ✓ Non-Disclosure
- ✓ Amendment
- ✓ Arbitration
- ✓ Governing Law

Covenant Not to Compete

9.2 Non-compete; Non-solicit.

(a) Non-compete . In light of each Member's access to Confidential Information and position of trust and confidence with the Company, each Member hereby agrees that, so long as such Member owns Units (the "Restricted Period"), such Member shall not (i) render services or give advice to, or affiliate with (as employee, Member, consultant or otherwise), or (ii) directly or indirectly through one or more of any of their respective Affiliates, own, manage, operate, control or participate in the ownership, management, operation or control of, any Competitor or any division or business segment of any Competitor; provided , that nothing in this Section 9.2(a) shall prohibit such Member from acquiring or owning, directly or indirectly, up to 2% of the aggregate voting securities of any Competitor that is a publicly traded Person; and provided, further , that the restrictions of this Section 9.2 shall cease to apply to a Service Provider who, within six months after a Sale of the Company, ceases to be a Service Provider of the Company by reason of (i) the Company's termination of the Service Provider's employment with, or other service to, the Company without Cause, or (ii) the Service Provider's termination of his employment with, or other service to, the Company for Good Reason.

Covenant Not to Compete

(b) Non-solicit of Employees . In light of each Member's access to Confidential Information and position of trust and confidence with the Company, each Member further agrees that, during the Restricted Period, he shall not, directly or indirectly through one or more of any of their respective Affiliates, hire or solicit, or encourage any other Person to hire or solicit, any individual who has been employed by the Company within one (1) year prior to the date of such hiring or solicitation, or encourage any such individual to leave such employment. This Section

(c) Non-solicit of Customers . In light of each Member's access to Confidential Information and position of trust and confidence with the Company, each Member further agrees that, during the Restricted Period, he shall not, directly or indirectly through one or more of any of their respective Affiliates, solicit or entice, or attempt to solicit or entice, any customers or suppliers of the Company for purposes of diverting their business from the Company.

(d) Blue Pencil . If any court of competent jurisdiction determines that any of the covenants set forth in this Article IX , or any part thereof, is unenforceable because of the duration or geographic scope of such provision, such court shall have the power to modify any such unenforceable provision in lieu of severing such unenforceable provision from this Agreement in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Article IX or by making such other modifications as it deems warranted to carry out the intent and agreement of the parties as embodied herein to the maximum extent permitted by applicable law. The parties hereto expressly agree that this Agreement as so modified by the court shall be binding upon and enforceable against each of them.

Non-Disclosure

6.3 Non-Disclosure . Each Member agrees that, except as otherwise consented to by the board of the Managing Member of the Managing Member (the " Board ") in writing, all non-public and confidential information furnished to it pursuant to this Agreement regarding the Tallgrass Group will be kept confidential and will not be disclosed by such Member, or by any of its agents, representatives or employees, in any manner whatsoever (other than to any member of the Tallgrass Group, another Member or any Person designated by the Company), in whole or in part, except that (a) each Member shall be permitted to disclose such information to those of its agents, representatives and employees who need to be familiar with such information in connection with such Member's investment in the Company (collectively, " Representatives ") and are apprised of the confidential nature of such information, (b) each Member shall be permitted to disclose information to the extent required by law, legal process or regulatory requirements, so long as such Member shall have used its reasonable efforts to first afford the appropriate member of the Tallgrass Group with a reasonable opportunity to contest the necessity of disclosing such information, (c) each Member shall be permitted to disclose such information to possible purchasers of all or a portion of the Member's Membership Interest, provided that such prospective purchaser shall execute a suitable confidentiality agreement in a form approved by the Company containing terms not less restrictive than the terms set forth herein,

Arbitration

25. Arbitration . Each of the Parties agrees that any dispute, controversy or claim arising out of, or relating to, this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including, without limitation, the determination of the scope or applicability of this clause, shall be determined by arbitration in Philadelphia, Pennsylvania before one arbitrator. The arbitration shall be administered by the American Arbitration Association pursuant to its rules, then in effect. The expense of the arbitrator shall be borne equally between the Parties. Judgment on the arbitral award may be entered in any court having jurisdiction. This clause shall not preclude the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Amendment

8.6. Amendment. The Members shall consent to any amendment to this Article VIII proposed by the Managing Member which the Manager reasonably determines to be in the best interests of the Members and to be necessary or advisable to comply with the requirements of the Code or the Regulations regarding the allocation of Profits and Losses and all tax items including items of income, gain, deduction, loss or credit.

11.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the parties to this Agreement executed this Agreement effective as of the Effective Date.

MANAGING MEMBER

_____ [NAME OF MANAGING MEMBER]
By _____ [signature]
_____ [typed name and title]

NON-MANAGING MEMBERS

_____ [signature]
_____ [typed name]
_____ [signature]
_____ [typed name]

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QUESTIONS

If you have questions after the presentation, please email me at:

tedperkins@gibperk.com

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