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# **Overview**

This information summarizes how a limited liability company operates and what needs to be done to preserve the limited liability company status once the documents have been filed by the State and an organizational meeting has been held. To insure the continued existence of the separate limited liability company entity, the following considerations should be reviewed and observed by the limited liability company employees, managers, and members. The managers or members should devise an operating agreement to govern the operations of the limited liability company, and should maintain proper records consistent with the forms contained herein.

A limited liability company is neither a corporation nor a partnership. It is instead a distinct type of entity mingling the characteristics and powers of a corporation and a partnership. The owners of an LLC are called “members,” not partners or shareholders. Unlike a corporation, which has Articles of Incorporation accompanied by By‑Laws, an LLC uses an “Operating Agreement” that details how the entity will be run.

# **Management of the Limited Liability Company**

The LLC will be a member-managed company, unless the Articles of Organization or the Operating Agreement state otherwise. In a member-managed company, management is vested in the members in proportion to the current percentage of the company owned by all the members. If the LLC determines that management should be allocated otherwise, the Articles of Organization or the Operating Agreement should so state. The decision of a majority-in-interest of the members shall be controlling. The members may vote in person or by proxy.

If the LLC is to be managed by managers, the Articles of Organization or the Operating Agreement must indicate that the LLC is a manager-managed company. In a manager-managed company, the decision of the manager (if only one manager) or a majority of the managers (if more than one manager) shall be controlling. The managers may vote in person or by proxy.

**Managers' Responsibilities**

Principal officers and managers of every limited liability company must be mindful of the following specific and important duties and responsibilities:

Payments of Salaries to Employees. Officers responsible for the payment of salaries must see that those salaries are paid by the limited liability company. Managers establish salaries for officers.

Payroll Taxes. All payroll taxes must be paid by the limited liability company. Nonpayment may result in personal, civil or criminal liability to the officers and managers.

Duty to Inspect. Managers have the absolute right to inspect all company record books, records, documents and property at any time. If they do not exercise that right, they may be held liable for negligence in the event that the company suffers loss or its creditors suffer loss by reason of failure to exercise diligence in such matters.

# **Members’ Rights**

The limited liability company must allow the members to access company records. Additionally, the company must provide each member with information necessary for the exercise of the member’s duties under the operating agreement. This requirement cannot be waived in the Operating Agreement.

# Meetings, Minutes, and Acting by Unanimous Consent

Actions of the managers or members may be taken at an actual meeting or by unanimous written consent. Whenever a meeting is held, written minutes must be created documenting the actions taken at the meeting. The written minutes should include at least the following information: (1) the type of meeting, (2) the date, time, and place of the meeting, (3) whether or not the meeting had a special or specific purpose, (4) the name and title of the persons who acted as chairperson and secretary of the meeting, (5) whether (if required by the operating agreement) the meeting was held pursuant to notice or that notice had been waived by those entitled to receive it, (6) a listing of members present either in person or by proxy and their voting power, (7) whether managers will vote at the meeting and identification of those present and voting and whether a quorum was present, (8) identity of any other persons present at the meeting, (9) whether minutes from a previous meeting were distributed and approved or approved as corrected, (10) a description of any reports presented and identification of the presenters, (11) any resolutions or other votes presented, discussed, approved, disapproved, etc., (12) any other business presented, and (13) time of adjournment. Ideally, minutes should be prepared by the secretary within a few days of a meeting taking place and copies should be distributed before the next meeting so they can be reviewed.

Actions may be taken using a unanimous written consent action embodying the desired resolutions. Unanimous written consent actions must be executed by all of the members or managers entitled to vote on the matters contained therein. If a limited liability company has relatively few managers and members, it is generally simpler and more convenient to take action by unanimous written consent rather than through actual meetings.

If the limited liability company proposes to engage in a transaction affecting the basic structure or existence of the limited liability company, such as a merger or conversion with or an acquisition of another limited liability company, a reorganization in another state, or a dissolution of the company, it is strongly recommended that counsel be consulted to insure that all of the necessary documents and consents are prepared, executed, and where necessary, filed with the appropriate governmental authorities. Failure to execute the proper documents and make the filings required by law could result in any such transaction being void and ineffective.

# **Limited Liability Company Formalities Must be Followed**

It is extremely important to maintain the formal integrity of the limited liability company entity. The LLC is considered by the law to be a separate person, apart from its members and organizers. This structure, and the limited personal liability that goes with it, must be protected. To ensure proper adherence to limited liability company formalities, it is vital that all important transactions in the business be reflected in written minutes of meetings of managers or members, even where there is only one member. The following items should always be acted upon formally and evidenced by written minutes:

All major contracts, including employment contracts, buy-sell agreements, profit sharing plans, pension plans, insurance plans, trust agreements, loans, leases, purchase contracts, and limited liability brokerage and investment accounts should be made in the name and on behalf of the limited liability company and with the required approval.

The establishment and adjustment of all salaries and bonuses of officers and employees of the limited liability company.

Any change in membership interest, including issuing additional interests or any transfers of interests. Such changes should not only be reported to the company’s accountant but should also be entered on the certificates of membership interest and the membership register in the limited liability company minute book.

Placing restrictions on the ability to transfer membership interests.

Accepting the resignation, terminating, or appointing managers.

Changing the LLC name, registered office, or registered agent.

Changing bank accounts.

Any other significant LLC activities.

Whenever people sign on behalf of or for the limited liability company, they should add their title next to the signature so that it will be clear that they are acting as an agent of the company rather than in their individual capacity. For instance, if you sign a contract with just your name and do not state your relationship to the limited liability company next to your name in the contract, you may be held personally liable for the contract. An example of a correct signature would be:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | ABC Farms, L.L.C. |  |
|  |  |  |  |
|  |  | By: ­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
|  |  | John Smith, Manager |  |

Any LLC bank and checking accounts should also reflect the company name. If necessary, a new bank account should be opened in the name of the limited liability company. This transaction should be accomplished easily by completing a limited liability company resolution that authorizes the company to open a bank account.

Any loans or banking activities should be conducted in the company's name rather than in the name of any individual or that individual could become personally liable for the obligations. If a loan is made and the lender requires someone to endorse or guarantee the loan personally, such an action should be approved by the managers and reflect the approval in an appropriately drafted resolution that is adopted and inserted into the company's minute book.

# Tax Issues

Federal Taxes – Default Treatment as a Partnership

Once an LLC has been successfully formed under state law, if the LLC does not elect its classification, it will automatically be classified as a partnership (for a multi‑member LLC) or a sole proprietorship (for a single-member LLC) for federal income tax purposes. Regulation 301, 26 CFR Part 1. Absent an election to be taxed like a corporation, an LLC will be required to file the same federal tax forms as a partnership or sole proprietorship and can take advantage of the tax allocation methods used for partnerships. Partnerships and LLCs specify in their partnership or operating agreement how the profits and losses of the company will be allocated among the members. This allows members to customize their allocations and not base them solely upon the percentage of ownership they possess in the company. Profits and losses from the LLC that are passed through to the members are reported on their individual income tax forms and paid at their individual tax rate.

An LLC may elect to be treated and taxed as a corporation by the IRS. The LLC’s members or managers should consult a tax professional regarding the consequences and/or benefits of such an election.

Other Federal Taxes

Funds collected by a limited liability company as FICA taxes and payroll withholding taxes must be paid as provided by law, or the persons responsible for not doing so may be held personally liable. This liability is separate from that imposed upon the LLC as an employer. The statutes imposing such liability are broad in scope and may be enforced against all officers or other personnel whose duties relate to the withholding function.

# Accounting Procedures

The managers and officers of the limited liability company are responsible for making certain that the LCC follows accounting practices and auditing procedures customarily followed by similar businesses and that these procedures are properly carried out in a timely fashion. Furthermore, certain types of LLCs may be prohibited from using the cash method of accounting, and must use the accrual method of accounting.

Accordingly, the LLC’s tax professional should be kept informed about all of the limited liability company's business activities. All assets transferred to the limited liability company should be appropriately entered in the company's books, and any such assets become the property of the limited liability company. A tax professional should also advise the company regarding whether the company’s fiscal year should end on a date other than the calendar year end, whether any tax elections should be made, and how to prepare and file required tax returns.