

Form:

Checklist for Drafting LLC Operating Agreements

Description:

This is a summary checklist to review when drafting an LLC Operating Agreement.

**CHECKLIST FOR DRAFTING
LLC OPERATING AGREEMENTS**

GENERAL.

1. Under what state law will the LLC be formed?
2. What is the name of the LLC?
3. Has the name been checked with the Secretary of State?
4. What is the purpose of the LLC?
5. What is the term of the LLC?
6. Is the LLC member managed or manager managed?
7. Who is the manager if manager managed?
8. Who is the agent for service of process?
9. Is the manager a limited liability entity? (You want to avoid an individual being the manager for liability reasons.)

CAPITAL CONTRIBUTIONS.

1. What is the initial capital contribution of the managing member?
2. What is the initial capital contribution of the other members?
3. Will members be required to make additional contributions if necessary?
4. What happens if a member fails to make a required capital contribution?
5. What approvals are required to add new members?
6. Are members allowed to withdraw their capital contributions? If so, under what circumstances?
7. Is a member entitled to interest on his or her capital contributions?
8. Does any member have any priority on distributions over any other members?

ALLOCATIONS.

1. How are distributions to be divided among the members?
2. How are tax allocations made?
3. When are distributions to be made?
4. Will there be special distributions required to be made to at least pay for tax on each member's pro rate income from the LLC?

MANAGEMENT OF THE LLC.

1. How broad are the management powers of the manager?
2. What limitations are there on the powers of the manager?
3. If there is more than one manager, what actions require the consent of all of the managers?
4. Is the manager obligated to devote any particular amount of time to LLC matters?
5. Is the manager and its affiliates free to engage in other activities?
6. Is there any limit on the manager's right to form other entities?
7. Will the manager be broadly protected from liability?
8. Will the manager be indemnified for acts taken on behalf of the LLC?
9. Under what circumstances might the manager be liable to the members for acts or omissions?
10. What specific duties does the manager have?
11. Will the LLC have officers?

COMPENSATION TO THE MANAGER.

1. What fees is the manager entitled to?
2. What reimbursements is the manager entitled to?
3. Is the manager entitled to incentive compensation or a carried interest?

BOOKS, RECORDS, ACCOUNTS AND REPORTS.

1. What books and records are to be maintained by the LLC?
2. What access rights will the members have to books and records?
3. What reports will the members be required to receive?
4. Who will be the tax matters partner?

VOTING RIGHTS.

1. What voting rights will the members have?
2. What major actions can the manager take without other members' approval?

MEETINGS.

1. Where will meetings be held?
2. How can meetings be called?
3. What notices for meetings must be given?
4. What quorum is necessary for meetings?
5. Can actions be taken by written consent of the members?

ASSIGNMENT OF INTERESTS.

1. Do the members have the right to assign their interest in distributions?
2. What rights does an assignee of a member's interest get?
3. In what situations will assignment be prohibited?
4. What are the procedures for substitution of members?
5. What happens on the death, incompetency or bankruptcy of a member?
6. Is there a right of first offer or first refusal on transfers of interests?

TERMINATION OF A MANAGER.

1. Under what circumstances can the manager voluntarily withdraw as the manager of the LLC?
2. What are the events that will result in the manager ceasing to be the manager of the LLC?
3. Under what circumstances can the members remove the manager?
4. What happens to the manager's interest when it has ceased to be the manager?

DISSOLUTION AND TERMINATION OF THE LLC.

1. Under what circumstances will the LLC be dissolved?
2. Under what circumstances can the LLC continue notwithstanding a technical dissolution?
3. How are distributions to be made on liquidation of the LLC?

MISCELLANEOUS.

1. Which amendments to the Operating Agreement can be effected solely by the manager, without the consent of the members?
2. How are other amendments to the Operating Agreement to be effected?
3. When will amendments to the LLC's Certificate of Organization have to be made?
4. What power of attorney is granted to the manager?
5. Is there an arbitration clause that governs any disputes among the members?
6. Are the members liable in circumstances other than for their capital contributions?
7. What competitive activities may the members engage in?