

LLC OPERATING AGREEMENTS: KEY PROVISIONS

Whether starting a new business or operating a long-standing company, one of a LLC's most important steps will be to formulate a meaningful and complete operating agreement. An Operating Agreement will determine various components of the company's operation and define and detail the relationship among the members of the company. The following represent several key considerations and provisions in an LLC's Operating Agreement:

1. Membership Interests.

In order to clarify ownership matters, an LLC Operating Agreement should specify the percentage ownership interest of each member of the company, together with the amount of their initial capital contribution. Furthermore, the agreement should contain specific rights and restrictions with respect to the redemption of members' interest by the company, the admission of new members to the LLC and the voluntary withdrawal of members from the company. Many of these matters can be critical to the company's long-term growth and are best determined from the outset.

2. Restrictions of Transferability of Membership Interests.

A well-drafted Operating Agreement will place some clear restrictions on the transfer of members' ownership interests. Similarly, certain types of transfers may be specifically permitted without requiring any type of member vote or approval (transfers among existing members, transfers to the company, transfer's to a member's trust, etc.) Transfer restrictions or absolute prohibitions often include restrictions on transfers to outside parties without majority approval and prohibitions on transfers to creditors. Furthermore, certain provisions can be included to protect the company in the event of a member's bankruptcy, divorce or death.

3. Management of the Company.

In conjunction with the LLC's Articles of Organization the Operating Agreement, should indicate who is authorized to make the day-to-day decisions of the company. Typically, this would be either a designated "Manager" or one or more of the members of the LLC, called a "Managing Member." Additionally, the duties and obligations of the manager or managing member(s) should be clearly described in the Operating Agreement, including such matters as their potential liability, the company's indemnification of such member/manager and whether they are compensated for their work.

4. Additional Capital Contributions.

As mentioned above, the Operating Agreement should delineate the specific capital contribution of each of the members. Additionally, an operating agreement should clarify if and when

additional contributions will be required and whether majority or unanimous consent will necessary to require such additional capital contributions.

5. Membership Voting.

An Operating Agreement should clearly define how membership votes are calculated, who has voting rights and what sort of approval (majority, super-majority, unanimous) is required for certain decision or actions of the company.

**Jim Schleiffarth practices in the areas of business law, business planning and corporate operation. Mr. Schleiffarth's practice emphasizes superior client service, straightforward legal counsel and reasonable fees. Schleiffarth Law Firm represents businesses ranging from small start-ups to thriving mid-sized companies and is always anxious to begin working with new clients.*

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