

# ATTACHMENT

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**Chapter 3a Utah Revised Uniform Limited Liability Company Act**

**Part 1 General Provisions**

**Section 112 Operating agreement -- Scope, functions, and limitations.**

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**48-3a-112. Operating agreement -- Scope, functions, and limitations.**

(3) An operating agreement may not:

- (a) vary a limited liability company's capacity under Section 48-3a-105 to sue and be sued in its own name;
- (b) vary the law applicable under Section 48-3a-106;
- (c) vary any requirement, procedure, or other provision of this chapter pertaining to:
  - (i) registered agents; or
  - (ii) the division, including provisions pertaining to records authorized or required to be delivered to the division for filing under this chapter;
- (d) vary the provisions of Section 48-3a-204;
- (e) eliminate the duty of loyalty or the duty of care, except as otherwise provided in Subsection (4);
- (f) eliminate the contractual obligation of good faith and fair dealing under Subsection 48-3a-409(4), but the operating agreement may prescribe the standards, if not unconscionable or against public policy, by which the performance of the obligation is to be measured;
- (g) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;
- (h) unreasonably restrict the duties and rights under Section 48-3a-410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
- (i) vary the causes of dissolution specified in Subsections 48-3a-701(4)(a) and (5);
- (j) vary the requirement to wind up the limited liability company's activities and affairs as specified in Subsections 48-3a-703(1), (2)(a), and (5);
- (k) unreasonably restrict the right of a member to maintain an action under Part 8, Action by Members;
- (l) vary the provisions of Section 48-3a-805, but the operating agreement may provide that the limited liability company may not have a special litigation committee;
- (m) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Subsections 48-3a-1023(1)(b), 48-3a-1033(1)(b), 48-3a-1043(1)(b), or 48-3a-1053(1)(b); or
- (n) except as otherwise provided in Section 48-3a-113 and Subsection 48-3a-114(2), restrict the rights under this chapter of a person other than a member or manager.

**48-3a-201. Formation of limited liability company -- Certificate of organization.**

- (1) One or more persons may act as organizers to form a limited liability company by delivering to the division for filing a certificate of organization.
- (2) A certificate of organization must state:
  - (a) the name of the limited liability company, which must comply with Section 48-3a-108;
  - (b) the street and mailing address of the limited liability company's principal office;
  - (c) the information required by Subsection 16-17-203(1);
  - (d) if the limited liability company is a low-profit limited liability company, a statement that the limited liability company is a low-profit limited liability company;
  - (e) if the limited liability company is a professional services company, the information required by Section 48-3a-1103; and
  - (f) if the limited liability company is to have one or more series in which the liabilities of the series are to be limited as contemplated by Subsection 48-3a-1201(2), notice of the limitation on liability in accordance with Section 48-3a-1202.
- (3) A certificate of organization may contain statements as to matters other than those required by Subsection (2), but may not vary or otherwise affect the provisions specified in Subsection 48-3a-112(3) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.
- (4) A limited liability company is formed when the limited liability company's certificate of organization becomes effective and at least one person becomes a member.

**48-3a-401. Becoming a member.**

- (1) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.
- (2) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.
- (3) After formation of a limited liability company, a person becomes a member:
  - (a) as provided in the operating agreement;
  - (b) as the result of a transaction effective under Part 10. Merger, Interest Exchange, Conversion, and Domestication;
  - (c) with the consent of all the members; or
  - (d) as provided in Subsection 48-3a-701(3).
- (4) A person may become a member without:
  - (a) acquiring a transferable interest; or
  - (b) making or being obligated to make a contribution to the limited liability company.

**48-3a-407. Management of limited liability company.**

- (1) A limited liability company is a member-managed limited liability company unless the operating agreement:
  - (a) expressly provides that:
    - (i) the limited liability company is or will be "manager-managed";
    - (ii) the limited liability company is or will be "managed by managers"; or
    - (iii) management of the limited liability company is or will be "vested in managers"; or
  - (b) includes words of similar import.
- (2) In a member-managed limited liability company, the following rules apply:
  - (a) Except as otherwise provided in this chapter, the management and conduct of the limited liability company are vested in the members.
  - (b) Each member has equal rights in the management and conduct of the limited liability company's activities and affairs.
  - (c) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company shall be decided by a majority of the members.
  - (d) An act outside the ordinary course of the activities and affairs of the limited liability company may be undertaken only with the affirmative vote or consent of all members.
  - (e) The affirmative vote or consent of all members is required to approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication.
  - (f) The operating agreement may be amended only with the affirmative vote or consent of all members.
- (3) In a manager-managed limited liability company, the following rules apply:
  - (a) Except as expressly provided in this chapter, any matter relating to the activities and affairs of the limited liability company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.
  - (b) Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs.
  - (c) The affirmative vote or consent of all members is required to:
    - (i) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
    - (ii) undertake any act outside the ordinary course of the limited liability company's activities and affairs; or
    - (iii) amend the operating agreement.
  - (d) A manager may be chosen at any time by the consent of a majority of the members and 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. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
  - (e) A person need not be a member to be a manager, but 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.
  - (f) 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.
- (4) An action requiring the vote or consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.
- (5) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a manager.
- (6) A limited liability company shall reimburse a member for an advance to the limited liability company beyond the amount of capital the member agreed to contribute.

- (7) A payment or advance made by a member which gives rise to an obligation of the limited liability company under Subsection (6) or Subsection 48-3a-408(1) constitutes a loan to the limited liability company which accrues interest from the date of the payment or advance.
- (8) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

**48-3a-502. Transfer of transferable interest.**

- (1) Subject to Subsection 48-3a-503(6), a transfer, in whole or in part, of a transferable interest:
  - (a) is permissible;
  - (b) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities and affairs; and
  - (c) subject to Section 48-3a-504, does not entitle the transferee to:
    - (i) participate in the management or conduct of the limited liability company's activities and affairs; or
    - (ii) except as otherwise provided in Subsection (3), have access to records or other information concerning the limited liability company's activities and affairs.
- (2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.
- (3) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.
- (4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.
- (5) A limited liability company need not give effect to a transferee's rights under this section until the limited liability company knows or has notice of the transfer.
- (6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having knowledge or notice of the restriction at the time of transfer.
- (7) Except as otherwise provided in Subsection 48-3a-602(5)(b), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.
- (8) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Section 48-3a-403 and Subsection 48-3a-406(3) known to the transferee when the transferee becomes a member.

**48-3a-602. Events causing dissociation.**

A person is dissociated as a member when:

- (1) the limited liability company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the limited liability company had notice, on that later date;
- (2) an event stated in the operating agreement as causing the person's dissociation occurs;
- (3) the person's entire interest is transferred in a foreclosure sale under Subsection 48-3a-503(6);
- (4) the person is expelled as a member pursuant to the operating agreement;
- (5) the person is expelled as a member by the unanimous consent of the other members if:
  - (a) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;
  - (b) there has been a transfer of all the person's transferable interest in the limited liability company, other than:
    - (i) a transfer for security purposes; or
    - (ii) a charging order in effect under Section 48-3a-503 which has not been foreclosed;
  - (c) the person is a corporation, and:
    - (i) the limited liability company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation; and
    - (ii) not later than 90 days after the notification the statement of dissolution or the equivalent has not been revoked or its charter or right to conduct business has not been reinstated; or
  - (d) the person is an unincorporated entity that has been dissolved and whose business is being wound up;
- (6) on application by the limited liability company or a member in a direct action under Section 48-3a-801, the person is expelled as a member by judicial order because the person:
  - (a) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited liability company's activities and affairs;
  - (b) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under Section 48-3a-409; or
  - (c) has engaged or is engaging in conduct relating to the limited liability company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member;
- (7) in the case of an individual:
  - (a) the individual dies; or
  - (b) in a member-managed limited liability company:
    - (i) a guardian or general conservator for the individual is appointed; or
    - (ii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this chapter or the operating agreement;
- (8) in a member-managed limited liability company, the person:
  - (a) becomes a debtor in bankruptcy;
  - (b) executes an assignment for the benefit of creditors; or
  - (c) 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;
- (9) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;
- (10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed, but not merely by reason of substitution of a successor personal representative;

- (11) in the case of a person that is not an individual, corporation, unincorporated entity, trust, or estate, the existence of the person terminates;
- (12) the limited liability company participates in a merger under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and:
  - (a) the limited liability company is not the surviving entity; or
  - (b) otherwise as a result of the merger, the person ceases to be a member;
- (13) the limited liability company participates in an interest exchange under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the interest exchange, the person ceases to be a member;
- (14) the limited liability company participates in a conversion under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
- (15) the limited liability company participates in a domestication under Part 10, Merger, Interest Exchange, Conversion, and Domestication, and, as a result of the domestication, the person ceases to be a member; or
- (16) the limited liability company dissolves and completes winding up.

#### **48-3a-603. Effect of dissociation.**

- (1) If a person is dissociated as a member:
  - (a) the person's right to participate as a member in the management and conduct of the company's activities and affairs terminates;
  - (b) if the limited liability company is member-managed, the person's duties and obligations under Section 48-3a-409 as a member end with regard to matters arising and events occurring after the person's dissociation; and
  - (c) subject to Section 48-3a-504 and Part 10, Merger, Interest Exchange, Conversion, and Domestication, 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.
- (2) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

#### **48-3a-701. Events causing dissolution.**

A limited liability company is dissolved, and its activities and affairs must be wound up, upon 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 90 consecutive days during which the limited liability company has no members unless:
  - (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;
- (4) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that:
  - (a) the conduct of all or substantially all of the limited liability company's activities and affairs is unlawful; or
  - (b) it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the certificate of organization and the operating agreement;
- (5) on application by a member, the entry by the district court of an order dissolving the limited liability company on the grounds that the managers or those members in control of the limited liability company:
  - (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
  - (b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will be directly harmful to the applicant;or
- (6) the signing and filing of a statement of administrative dissolution by the division under Subsection 48-3a-708(3).