

LLC Document Drafting Checklist

(a) General Background Information.

- (1) The names, addresses and occupations of the members.
- (2) The name of the proposed Limited Liability Company.
- (3) A description of the proposed Limited Liability Company business.
- (4) The states or counties in which the Limited Liability Company business is to be conducted.
- (5) The term of the Limited Liability Company.

(b) Capitalization of the Limited Liability Company.

- (1) The amount in cash to be contributed by each member.
- (2) Amounts to be lent the Limited Liability Company by some of the members or by third parties.
- (3) Property to be contributed to the Limited Liability Company by members.
 - (A) Current market value.
 - (B) Basis for tax purposes.
 - (C) Possible tax consequences of contributions, and of subsequent disposition of contributed property by Limited Liability Company.
 - (D) Assumption of liabilities by Limited Liability Company.
- (4) Property to be lent to the Limited Liability Company by members.
 - (A) Identification.
 - (B) Obligation of care, maintenance, insurance, etc.
 - (C) Rental payments.
- (5) Future capital needs.
 - (A) Borrowing capacity of business and members.
 - (B) Mandatory or voluntary future contributions or loans by members.
 - (C) Should portion of profits be retained in business?

(c) Membership Tax Status. If the Limited Liability Company is to be organized in a state where it is not clear if the company will be accorded partnership tax treatment, which two of the following three tax attributes will be drafted into the articles of organization to insure partnership taxation: (i) limited transferability of interests; (ii) no centralization of management; and (iii) no continuity of life.

(d) Return to Members.

- (1) Interest on contributions.
- (2) Salaries or guaranteed payments.
- (3) Manner of allocating profits.
- (4) Drawing accounts and distributions in advance of year-end.
- (5) Expense and entertainment accounts.

(e) Accounting and Bookkeeping.

- (1) Who has responsibility for establishing and maintaining accurate books and records.

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- (2) General accounting questions.
 - (A) Fiscal or tax year of Limited Liability Company.
 - (B) Accrual or cash basis accounting.
 - (C) Creation of reserves for possible contingencies.
 - (D) Establishment of members' drawing and capital accounts.
- (3) Financial statements.
 - (A) Frequency. Time of annual report on which members' shares are to be determined.
 - (B) Outside audits.
- (4) Availability of books for inspection by members.

(f) Management.

- (1) Who are general members?
- (2) Definition of duties and rights.
- (3) Surety bonds for persons having access to funds.
- (4) How are salary changes to be determined?
- (5) Who is to sign checks?
- (6) Are members to meet at regular intervals?
- (7) Are members to devote full time to business?
- (8) To what extent, if any, may they compete with Limited Liability Company?

(g) Resolution of Disputes, e.g. by Majority, Majority in Interest, Managing Members, Arbitration. Which disputes should be resolved by all members? A majority of members? Should certain members have the right to make the final determination of particular disputes? Should there be an outside arbitration of all or certain types of disputes?

(h) Prohibitions on Members.

- (1) Are certain general members to be prohibited from participating in management or dealing with third persons.
- (2) Are certain acts to be entered into only with the consent of all members or with the consent of specific members.
 - (A) Guarantees of indebtedness of another.
 - (B) Loans from Limited Liability Company assets.
 - (C) Pledges of Limited Liability Company property.
 - (D) Hiring or discharging employees.
 - (E) Transactions involving amounts in excess of specified sum.
- (3) Are members to be prohibited from entering into certain personal transactions, such as assigning or pledging their interest in the Limited Liability Company.

(i) Death, Retirement, Withdrawal, and Expulsion.

- (1) May a member be expelled.
 - (A) By whom, on what vote and on what grounds?
 - (B) What rights does an expelled member have?
- (2) May a disabled member be compelled to retire or be expelled?

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- (A) How long must the disability continue?
- (B) Who is to determine the fact of disability?
- (3) Withdrawal or retirement.
 - (A) What notice should be given by retiring or withdrawing member?
 - (B) Should there be a prohibition against competing with Limited Liability Company for reasonable period of time?
 - (C) The rights of a retiring or withdrawing member against the Limited Liability Company, including possible forfeitures of a portion of the interest of such member.
- (4) Continuation of business.
 - (A) Under what circumstances may remaining members continue business?
 - (B) Who may continue business?
 - (C) If business is continued, need notice be given to withdrawing and other members?
 - (D) Disposition of interest of departing member.
 - (a) Is interest to be acquired by Limited Liability Company or by other members?
 - (i) Tax consequences.
 - (ii) Proportionate interest of remaining members.
 - (b) Is interest in Limited Liability Company to be retained by withdrawing member?
 - (i) For what period?
 - (c) How is value of interest to be determined?
 - (i) Capital invested.
 - (ii) Book value.
 - (iii) Appraisal.
 - (iv) Other formulae.
 - (v) Treatment of goodwill.
 - (vi) Contingent liabilities.
 - (d) How is payment to be made?
 - (i) Lump sum. Financed by life insurance or reserves.
 - (ii) Installments.
 - (iii) From profits, if and when earned.
 - (e) Deferred payments.
 - (i) Promissory notes or contractual obligation.
 - (ii) Security for payment.
 - (iii) Rights of holder to examine books, etc.
 - (iv) Treatment of losses while obligation is outstanding.
 - (E) Incorporation of business.

(j) Life Insurance on Members.

- (1) Is insurance to be owned by Limited Liability Company or other members?
- (2) Amount.
- (3) What if one or more members are uninsurable?

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(k) Admission of New Members.

- (1) Is consent of all members to be necessary?

(l) Winding Up.

- (1) What events should cause business to be wound up?
 - (A) Death or withdrawal of specific members.
 - (B) Bankruptcy or assignment for creditors of member.
 - (C) Insanity or incapacity.
- (2) Who is to liquidate business? Salary?
- (3) Are assets to be sold or distributed to members?
 - (A) May some members buy at sale?
 - (B) Is sale to be public?
 - (C) Should specific assets be distributed to specific members?
- (4) Order of distribution.

About the Author:

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