

PARTNERSHIP AND LLC OPERATING AGREEMENTS

Checklist of Points to be Considered in Partnership and LLC Operating Agreements:

A partnership (a dual member Limited Liability Company (LLC) is similar to a traditional partnership) is a person or an association of persons with the purpose of forming and operating a business enterprise. Like corporate by-laws, the central legal document for a partnership, a Partnership Agreement, or an LLC Members' Operating Agreement, governs the workings of the business, and provides a clear outline of the rights and responsibilities of all of the Partners (Members).

A Partnership/Operating Agreement allows you to structure your financial and working relationships with your co-owners in a way that suit your business. In the agreement, you and your co-owners establish each owner's percentage of ownership in the business, his or her share of profits (or losses), his or her rights and responsibilities, and what will happen to the business if one of you leaves.

While an operating agreement may not be required by state law, it is an important business tool. An operating agreement will help protect an LLC's limited liability status, clarify financial and management policies, and let your business be governed by your rules – not the default rules of the state.

An LLC operating agreement helps ensure that courts will respect your limited personal liability. This is particularly important for a single member LLC where the agreement will lend credibility to your LLC's separate existence instead of having it appear to be a sole proprietorship.

(See page 4 for a sample LLC Operating Agreement for a Single Member LLC)

Dual member LLCs need to document their decision making process; procedures for changes in the number of members; and a formula for distributing net income. Many states have a default rule requiring owners to divide up LLC profits and losses equally, regardless of each member's investment. This is not fair if the members invest equal amounts in the LLC and an operating agreement avoids this outcome.

Finally, the process of negotiating the details of the operating agreement is a valuable preview of how it is going to be to work together as co-owners when making decisions under the pressures of business.

Items and issues that should be covered by the agreement include:

A. BUSINESS FORMATION/STRUCTURE

1. Name and location of the enterprise.
2. Duration of the enterprise - Number of years or "Until Dissolved". Define method of termination.
3. Scope of activities, purpose and goals of the business.

B. ROLE, DUTIES, RESPONSIBILITIES, ADMISSION, SEPARATION OF PARTNERS (MEMBERS):

4. Capital contribution of each partner, timing and conditions.
5. Can a partner make additional contributions, and, if required to sustain the business, what if one partner refuses to contribute?

6. What amount of money must be maintained in the Capital Accounts of the Partners?
7. How will each partner participate in profits and losses?
8. Will partners draw a wage (guaranteed distribution) for working in the business? Amount, timing and tax treatment of guaranteed distributions.
9. Duties, responsibilities, sphere of activity, authority limits of each partner.
10. Hours each partner will work at the business: vacation, sick, leave of absence policies.
11. Prohibition on partners' outside business activity that would compete with the enterprise.
12. Will the enterprise be managed by the partners or appointed managers? If by the partners, who will be the managing partner, and whose decision will prevail in case of a dispute? If by appointed managers, how will they be selected, appointed and directed?
13. Procedure for admitting additional partners.
14. How a partner's share of the business is to be valued: on the book value of the business? By what the going business is worth on the open market? By an outside valuation?
15. How to determine the value of Goodwill in the business, in case of incompetence, death, or withdrawal of a partner or dissolution of the enterprise for any other reason.
16. How to liquidate the interest of a deceased or retiring partner.
17. Process for continuing the business if a partner dies or wants to retire from the business.
18. Age at which a partner must withdraw from active participation; arrangements for adjusting his salary and equity at this time.
22. Length of time before a withdrawing partner may work in a competing business.
23. Basis for expulsion of a partner, method of notification of expulsion, and the disposition of any losses that arise from the delinquency of such a partner.
24. How the protracted disability of a partner will be handled.
25. Prohibiting partners or their heirs from pledging, selling, disposing or transferring their interest in the enterprise except to other owners who have the right of first refusal to acquire such interest. Valuation and payment terms need to be specified. (Owner buyout provisions should be drafted with legal assistance.)

C. FINANCIAL OPERATIONS

27. Will financial accounts be kept on a Cash or on an Accrual basis?
28. The Fiscal Year of the enterprise – in most instances, this must be the calendar year.
29. Procedures for borrowing money and providing collateral for these debts.
30. Will interest be paid on debit and credit balances in the partners' accounts?
31. Where will the enterprise's cash be deposited? Who may sign checks?
32. Will all partners have full access to the accounting records?
Note: Partnerships must keep a separate "Partner's Capital Ledger" which provides a record, by partner, of all contributions, withdrawals, and each partner's share of profit/loss.

D. LIMITED PARTNERSHIPS

33. Under what conditions may Limited Partners be accepted into the enterprise.
34. Who shall be designated as the General partner(s), recognizing that General Partners have unlimited liability for the liabilities of the partnership.

E. GENERAL PROVISIONS

35. Legal and proprietary statements, such as: compliance with state laws, the all-inclusiveness of the Agreement, the binding effect upon all successors/inheritors, miscellany.
36. Control of trade secrets, patents, copyrights, trademarks, and business name.

REFERENCE

[SCORE Brief 02.00](#) on LLC and other business structures.

LLC Operating Agreement for Single-Member LLC

1. Names. This operating agreement is made by _____ a limited liability company, the Company, and _____, the Member.

2. Formation. The Company has been formed under the (State) _____ statute authorizing the formation of limited liability companies. The purpose of the Company is stated in the articles of organization.

3. Offices. The Company will have one or more offices at places the Member designates. The initial registered office of the Company is located at _____ and the Member is the resident agent.

4. Management. The Member has the right to manage the Company's business. The Member may delegate to another person the authority to perform specified acts on behalf of the Company.

If the Member dies or is unable to act, the Company will be managed by _____ or by the person the Member last designates in writing to manage the Company. That person will have full authority to manage the Company until the Member can do so.

5. Capital Contributions. In exchange for the Member's interest in the Company, the Member will contribute to the Company:

\$ _____

the following property: _____.

The Member will not be paid interest on this capital contribution.

6. Taxes. For federal tax purposes, the Company will be taxed

as a sole proprietorship, with profits and losses passing through to the Member.

as a corporation.

7. Funds. The Member will determine the financial institution that will hold Company funds and will determine the authorized signatures on Company accounts.

8. Additional Members. The Company may admit one or more additional members upon such terms as are determined by the Company and the Member. If new members are admitted, the articles of organization and this operating agreement will be appropriately amended.

9. Distributions. The Member will determine when and how cash and other assets of the Company will be distributed.

Dated: _____

Name of Business: _____, a _____

By: _____

Printed Name: _____, Member

Address: _____

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