

## **IC 23-18-4**

### **Chapter 4. Rights and Duties of Members and Managers**

#### **IC 23-18-4-1**

##### **Authority of members or managers**

Sec. 1. (a) Unless the articles of organization provide for a manager or managers, management of the business or affairs of the limited liability company is vested in the members. Subject to any provisions in the operating agreement or this article restricting or enlarging the management rights and duties of any person or group or class of persons, the members have the right and authority to manage the affairs and make all decisions of the limited liability company.

(b) If the articles of organization provide for a manager or managers, except to the extent that the operating agreement reserves the authority to any members or class or group of members, the manager or managers have the authority to manage the business or affairs of the limited liability company. Unless otherwise provided in a written operating agreement, a manager or managers:

- (1) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority in interest of the members;
- (2) do not need to be members of the limited liability company or natural persons; and
- (3) unless they have been earlier removed or have earlier resigned, shall act as managers until their successors have been elected and qualified.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-2**

##### **Acts and omissions liability; trustee for personal benefits derived through company; duties of member in company providing for manager**

Sec. 2. (a) Unless otherwise provided in a written operating agreement, a member or manager is not liable for damages to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company, unless the act or omission constitutes willful misconduct or recklessness.

(b) Unless otherwise provided in a written operating agreement, each member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager or member without the consent of a majority of the disinterested managers or members or other persons participating in the management of the business or affairs of the limited liability company from:

- (1) a transaction connected with the conduct or winding up of the limited liability company; or

(2) any use by the manager or member of the limited liability company's property, including confidential or proprietary information of the limited liability company or other matters entrusted to the manager or member because of the manager's or member's status as manager or member.

(c) Unless otherwise provided in a written operating agreement, a member of a limited liability company in which the articles of organization provide for a manager or managers and who is not a manager has no duties to the limited liability company or to the other members solely by reason of acting in the capacity as a member.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-3**

#### **Affirmative vote, approval, or consent; requirements**

Sec. 3. (a) Unless the articles of organization provide for a manager or managers, and except as otherwise provided in a written operating agreement or this article and subject to subsection (c), the affirmative vote, approval, or consent of a majority in interest of the members is required to decide a matter connected with the business or affairs of the limited liability company.

(b) If the articles of organization provide for more than one (1) manager and except as provided otherwise in a written operating agreement or this article, the affirmative vote, approval, or consent of a majority of the managers shall be required to decide any matter that requires the approval of the managers.

(c) Except as provided otherwise in a written operating agreement, the affirmative vote, approval, or consent of all members is required to do the following:

(1) Amend the operating agreement.

(2) Authorize a manager, a member, or another person to do an act on behalf of the limited liability company that contravenes the operating agreement, including a written provision of the operating agreement that expressly limits the purpose, business, affairs, or conduct of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-4**

#### **Written operating agreement**

Sec. 4. (a) A written operating agreement may do one (1) or more of the following:

(1) Modify, increase, decrease, limit, or eliminate the duties (including fiduciary duties) or the liability of a member or manager for breach of the duties set forth in section 2(a) of this chapter.

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which a person is a party because the person is or was a member or manager.

(3) Provide for officers of a limited liability company that is:

(A) managed by a manager or managers; or

(B) managed by a member or members;

by specifying the title, powers, duties, and term of office (either perpetual or for a specific term) for each officer and the means by which each officer is to be appointed, elected, or reelected, or by authorizing in the written operating agreement the authority of the manager or managers of a manager-managed limited liability company or the member or members of a member-managed limited liability company to otherwise establish officers and the titles, powers, duties, and terms of office of the officers.

(4) Provide that one (1) or more persons who are not members or managers have the right to approve or disapprove any of one (1) or more specified actions with respect to the limited liability company, including:

(A) voluntary dissolution;

(B) merger; or

(C) amending the written operating agreement.

(b) If a person who is not a member or manager is given the right to approve or disapprove specified actions as permitted by subsection (a)(4), the person does not have the general right to vote with the members or managers regarding any matters unless specifically provided otherwise in the written operating agreement.

*As added by P.L. 8-1993, SEC.301. Amended by P.L. 40-2013, SEC.8; P.L. 63-2014, SEC.32.*

#### **IC 23-18-4-5**

##### **Operating agreements; objectives**

Sec. 5. Members may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability company or the relations of the members and managers, if any, including provisions establishing the following:

(1) The manner in which the business and affairs of the limited liability company shall be managed, controlled, and operated, which may include the granting of exclusive authority to manage, control, and operate the limited liability company to managers who are not members.

(2) The manner in which the members will share in distributions of the assets and the profits or losses of the limited liability company.

(3) The rights of members to assign all or a portion of their interests in the limited liability company.

(4) Classes or groups of at least one (1) member having certain relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the operating agreement, of additional classes or groups of members having certain relative rights, powers, or duties,

including voting rights, expressed either in the operating agreement or at the time the classes or groups are created, including rights, powers, or duties senior to those of at least one (1) existing class or group of members.

(5) Classes or groups of at least one (1) manager having certain relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the operating agreement, of additional classes or groups of managers having certain relative rights, powers, or duties, including voting rights, expressed either in the operating agreement or at the time the classes or groups are created, including rights, powers, or duties senior to those of at least one (1) existing class or group of managers.

(6) The circumstances in which an assignee of a member's interest may be admitted as a member of the limited liability company.

(7) The procedure for the following:

(A) The right to have a member's interest in the limited liability company evidenced by a certificate issued by the limited liability company.

(B) Assignment, pledge, or transfer of an interest represented by the certificate.

(C) Any other provisions dealing with the certificate.

(8) The method by which the operating agreement may be amended.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-6**

##### **Initial operating agreement; amendments; power of attorney**

Sec. 6. (a) The initial operating agreement must be agreed to by all persons who are members at the time the initial agreement is accepted.

(b) An amendment to an oral operating agreement must be approved by the unanimous consent of all members.

(c) An amendment to a written operating agreement must be in writing and must, unless otherwise provided in the operating agreement before the amendment, be approved by the unanimous consent of all members.

(d) A copy of any written amendment to an operating agreement must be delivered to each member who did not consent to the amendment and to each assignee who has not been admitted as a member.

(e) A person may sign articles of organization, an operating agreement, or an amendment to articles of organization or an operating agreement as an attorney in fact. A power of attorney relating to the signing of a document under this subsection by an attorney in fact may but is not required to be:

(1) sworn to, verified, or acknowledged;

- (2) signed in the presence of a notary public;
- (3) filed with the secretary of state; or
- (4) included in another written agreement.

However, the power of attorney must be retained in the records of the limited liability company.

*As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.27.*

#### **IC 23-18-4-7**

##### **Enforcement of operating agreement; injunctive or other relief**

Sec. 7. (a) A court may enforce an operating agreement by injunction or by granting other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(b) As an alternative to injunctive or other equitable relief, when the provisions under IC 23-18-9-2 are applicable, the court may order dissolution of the limited liability company.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-8**

##### **Records; inspection; full disclosure; omissions**

Sec. 8. (a) A limited liability company must keep at its principal office the following records and information:

- (1) A list with the full name and last known mailing address of each member and manager, if any, of the limited liability company from the date of organization.
- (2) A copy of the articles of organization and all amendments.
- (3) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years, or if the returns and statements were not prepared, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the same period.
- (4) Copies of any written operating agreements and all amendments and copies of any written operating agreements no longer in effect.
- (5) Unless otherwise set forth in a written operating agreement, a writing setting out the following:
  - (A) The amount of cash, if any, and a statement of the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which any additional contributions agreed to be made by each member are to be made.
  - (B) The events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up.
  - (C) Other writings, if any, required by the operating agreement.

(b) A member may, at the member's own expense, inspect and copy the limited liability company records described in subsection (a) where the records are located during ordinary business hours if the member gives the limited liability company written notice of the member's request at least five (5) business days before the date on which the member wishes to inspect and copy the records.

(c) Unless greater rights of access to records or other information are provided in a written operating agreement, members or managers, if any, shall give to the extent the circumstances allow just, reasonable, true, and full information of all things affecting the members to any member or to the legal representative of any deceased member or of any member under legal disability upon reasonable demand for any purpose reasonably related to a member's interest as a member of the limited liability company.

(d) If a limited liability company is managed by one (1) or more managers, a member or the legal representative of a deceased member or a member under a legal disability may obtain information under subsection (c) only if:

- (1) the member makes the request at least five (5) business days before the date on which the member wishes to obtain the information;
- (2) the member makes the request in good faith and for a proper purpose;
- (3) the member describes with reasonable particularity the member's purpose and the information that the member wishes to obtain; and
- (4) the information is directly connected to the member's purpose.

(e) Failure of the limited liability company to keep or maintain the records or information required by this section is not grounds for imposing liability on any member for the debts and obligations of the limited liability company.

*As added by P.L.8-1993, SEC.301. Amended by P.L.130-2006, SEC.28; P.L.1-2007, SEC.163.*

#### **IC 23-18-4-9**

##### **Managerial omissions; penalties or consequences**

Sec. 9. If set forth in writing, an operating agreement may provide that:

- (1) a manager who fails to perform and comply with the terms and conditions of the operating agreement is subject to penalties or consequences specified in the operating agreement; and
- (2) at the time or upon the happening of events specified in the operating agreement, a manager is subject to penalties or consequences specified in the operating agreement.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-4-10**

### **Good faith reliance on records by members or managers; liability**

Sec. 10. A member or manager of a limited liability company is not liable when relying in good faith upon the records of the limited liability company and on the information, opinions, reports, or statements presented to the limited liability company by its other managers, members, agents, or employees, or by any other person, concerning matters the member or manager reasonably believes are within the other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements concerning the value and amount of the assets, liabilities, profits, or losses of the limited liability company or other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-11**

#### **Resignation of manager**

Sec. 11. (a) A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in an operating agreement and in accordance with the operating agreement.

(b) A written operating agreement may provide that a manager does not have the right to resign as a manager of a limited liability company. Notwithstanding any provision in an operating agreement to the contrary, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates the operating agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the operating agreement and offset the damages against the amount payable to the resigning manager.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-12**

#### **Business between company and member or manager**

Sec. 12. Except when prohibited in a written operating agreement, a member or manager may lend money to and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect to the transaction as a person who is not a member or manager.

*As added by P.L.8-1993, SEC.301.*

### **IC 23-18-4-13**

#### **Policy**

Sec. 13. The policy of this article is to give the maximum effect to the principle of freedom of contract and to the enforceability of

operating agreements of limited liability companies.  
*As added by P.L.40-2013, SEC.9.*