

Drafting Indemnity Provisions for Limited Liability Companies

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Statutory Considerations

- This presentation will focus on Texas and Delaware limited liability companies (“LLCs”)
 - Similar considerations would apply to partnership agreements governing Texas and Delaware limited partnerships
- Both Texas and Delaware statutes permit, but do not require, an LLC to indemnify members, managers, officers or other persons
 - As a result, care must be taken to clearly define the indemnification framework in the limited liability company agreement (“LLC Agreement”) governing the LLC

Key Questions

- Who is covered?
- What is covered?
- What is the standard of conduct?
- Who determines whether the standard of conduct has been met?
- Will expenses be reimbursed/advanced?

Covered Persons

- Typically includes members, directors and officers of the LLC and certain other persons.
- The members of the LLC will want to be sure that the definition is broad and covers the respective members' managers, officers, directors, shareholders, partners, members, representatives and affiliates.

Covered Person – Sample Definition

“Covered Person” means (a) each current and former (i) member and each of its affiliates, and its and their respective officers, directors, partners, stockholders, managers, members and employees, (ii) director and (iii) officer and (b) each person not identified in clause (a) of this definition who is a current or former manager, director or officer of any subsidiary of the Company or who served in such capacity for any other entity or enterprise at the request of the Company and whom the Board of Directors expressly designates as a Covered Person in a written resolution, in each case of clauses (a) or (b) of this definition, whether or not such person continues to have the applicable status.

Covered Losses

- Typically includes all:
 - losses
 - claims
 - expenses (including legal fees),
 - liabilities
 - damages
 - fines
 - etc.

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