Primer: Nuts and Bolts of LLCs, LPs and Partnerships-
Drafting a Company Agreement

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Overview

- Formation Documents
- Elements of a Company Agreement
- Drafting Considerations
- Terminology

Formation Documents

Formation Documents

- What happens if you don't file anything?
  - General partnership (no filing required to form)
    - However, an assumed name certificate should be filed in each county in which a business office is maintained
- All other business types require a filing with the TX SOS
    - Certificate of Formation
      - publicly filed document
      - basic forms available from Secretary of State website

Formation Documents

- Certificate of Formation - Requirements for a Texas LLC
  - Name of the entity and type of entity
  - Purpose (can be any lawful purpose)
  - Duration (default is perpetual unless you state otherwise)
  - Registered agent and registered address
  - Member or Manager Managed?
    - Name/address of governing persons (initial members or initial managers)
  - Name/address of organizer (can be any authorized person)

Formation Documents

- Company Agreement
  - Substantive provisions are typically in the company agreement rather than the certificate of formation
  - If there is no company agreement, or if company agreement is silent, the statute (Texas Business Organizations Code for Texas entities) provides a default rule
    - With a few limited exceptions, any provision of the TBOC applicable to LLCs may be waived or modified in the company agreement
      - What provisions cannot be waived or modified? (TBOC § 101.054)
        - » An LLC must have at least one member
        - » A distribution is prohibited when it would leave liabilities greater than assets
        - » Cannot unreasonably restrict a person's right to access records and information
    - Freedom of contract

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