

Model Company Agreements for Simple LLCs

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Introduction and Overview

- Why did we create these forms?
- Why did we focus on simple LLCs?
 - In 2015 approximately 135,000 LLCs formed in Texas.
 - By analogy to IRS records, over 120,000 had one or two members.
- Agreements for simple LLCs may not be so simple to draft.
 - Models are not forms to copy and fill in the blanks.
 - Use care and consideration.

Updates and Revisions

- Member/ Assignee distinctions clarified.
- Alternative provisions for certificated units revised.
 - Not intended to create free transferability like stock.
- Provisions for examination of books and records more detailed.
 - Requester must state a proper purpose in a written request.
 - May be denied if prior misuse.
 - Protection of confidential information.
 - Note: Recovery of attorneys' fees not addressed (BOC is also silent as to non-governing persons).

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Updates and Revisions (cont'd.)

- Tax Matters Partner provision removed.
 - § 6231(1)(7) of the Code provides exception to requirement for tax matters partner if:
 - ✦ Less than 10 partners;
 - ✦ All partners are natural persons, estates or corporations; and
 - ✦ No partners are trusts, partnerships or single member LLCs.

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Updates and Revisions (cont'd.)

- Alternative provision included regarding Bipartisan Budget Act of 2015.
 - Replaced “tax matters partner” with “partnership representative” for years after 2017.
 - Partnership audits and adjustments focused on partnership level determinations.
 - Small-partnership election may be made requiring determinations at the partner level.
- Added provisions to apply if property in liquidation is not sufficient to discharge all obligations.

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Updates and Revisions (cont'd.)

- Definition of “Writing” and “Written” added.

... means an expression of words, letters, characters, numbers, symbols, figures or other textual information that is inscribed on a tangible medium or that is stored in electronic or other medium that is retrievable in a perceivable form. Unless the context requires otherwise, the term: (1) includes stored or transmitted electronic data, electronic transmissions, and reproductions of Writings; and (2) does not include sound or video recordings of speech other than transcriptions that are otherwise “Writings.”

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