

Model Company Agreements

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Introduction and Overview

- Why did we create these models?
 - In 2016 approximately 150,000 LLCs formed in Texas.
 - By analogy to IRS records, approximately 135,000 had one or two members.
- Three models:
 - Manager-managed, multi-member
 - Member-managed, multi-member
 - Single member
- Models are not forms to copy and fill in the blanks.
- Use care and consideration.

Updates and Changes

- BOC § 101.052 was amended in 2017 to provide that company agreement is enforceable by or against the company, regardless of whether company has signed or adopted the agreement.
 - Model agreements specify the persons (including the Company itself) that are bound by, and beneficiaries of, the Company Agreement.
 - That provision also states that creditors are not third-party beneficiaries.

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Updates and Changes

- BOC § 101.503(b) was amended in 2017 to add two bases for denying access to books and records (already in model agreements):
 - Person has improperly used information obtained through a prior examination of records of company or another entity;
 - Request is made in bad faith or for an improper purpose.
- Model Agreements require request to state proper purpose (statute requires proper purpose but does not require purpose to be specified in request).
- *Davis v. Highland Coryell Ranch, LLC* indicates once a member always a member. Model Agreements clarify that membership and accompanying rights end.

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Updates and Changes (cont'd.)

- Membership interests held by an entity:
 - Do transfer restrictions apply to sale or change in control of the member entity?
 - Does a sale or change in control of member entity trigger buy-sell provisions?
 - What constitutes change in control?
 - What is the purchase price for the membership interest when the entire member entity is sold?
 - Is there privity of contract with the owners of the member entity?
 - What if the owners of the member entity are in turn other entities?

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Updates and Changes (cont'd.)

- Exculpation and indemnification provisions revised: “any loss, damages or claim incurred by the Covered Person by reason of the fact that the Covered Person is or was a Covered Person.”
- Uppercase, boldface type and explicit reference to “negligence” in the exculpation and indemnification provisions.

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