



## PROVISIONS LIMITING CONSTITUENT LIABILITIES AND DUTIES IN PARTNERSHIP AND COMPANY AGREEMENTS

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## INTRODUCTION

To what extent may owners (members and partners) and agents (general partners, managers and members and other employees and agents, collectively, “constituents”) use the governing agreement (partnership agreement and company agreement) to control liabilities to the organization (the partnership or LLC) and the other persons (other owners and agents)?



## BASIC QUESTIONS

1. What are the duties and liabilities of the constituent in the absence of modification in the governing agreement?
2. To what extent do the parties wish to modify those duties and/or liabilities?
3. To what extent are the parties able to modify those liabilities in the governing agreement?

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## CHOICE OF LAW

- Internal affairs
- Liabilities to third parties
- Contractual obligations

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## DUTIES OF CONSTITUENTS TO ORGANIZATION

- Fiduciary duty/duty of loyalty
- ¿Fiduciary? duty/duty of care
- Duty with respect to information
- Statutory/contractual financial obligations
- Other statutory/contractual duties

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## LIABILITIES OF OWNERS TO THIRD PARTIES

- Statutory vicarious liability
- Piercing the organizational veil
- Contractual (guarantees)
- Contribution/distribution obligation
- Common law duties to third parties

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