

Is This Really the Law?

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1. Withdrawal

LLC

- Member may not withdraw. TBOC § 101.107

LP

- GP may withdraw. TBOC § 151.154(b)
- LP may not withdraw. TBOC § 153.110

How to Address

- Address in the LLC/LP Agreement or be sure parties understand the consequences of the default provisions

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2. Buy-Sell Agreements & Purchase Events

LLC & LP

- Transferees are “assignees.”

How to Address

- Thoughtful drafting of buy/sell provisions required.

3. Voting

LLC – TBOC default is:

- Unanimous vote to amend LLC Agreement, admit members, etc.
- Majority vote for fundamental business decisions.
- Each member has one vote.

LP – TBOC default is:

- Unanimous vote to admit partners, capital contribution release, etc.

How to Address

Specific voting provisions in the LLC/LP Agreement.

4. Indemnification

LLC

- Permissive indemnification of members, managers, officers or assignees. TBOC § 101.402

LP

- Indemnification of GP mandatory upon successful defense. TBOC § 8.051(a)
- Permissive indemnification of GP with approval of majority of disinterested LP's. TBOC § 8.103(d)

How to Address

- Mandatory indemnification in LLC/LP Agreement.
- Reference criteria of TBOC § 8.101.
- Include insurance provisions in LLC/LP Agreement.
- Make entity obligation to fund secondary to insurance.

5. Fiduciary Duties

LLC

- TBOC silent on duties.
- No duties among members. *ETRG Invs., LLC v. Hardee*

LP

- GP has duty of care and duty of loyalty. TBOC § 152.204(a)
- LP's have no duties absent control. *Strebel v. Wimberly*

How to Address

- Specify duties in LLC Agreement.
- Consider limiting duties in LLC/LP Agreement.

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[Is This Really the Law? TBOC Provisions that May Surprise You](#)

First appeared as part of the conference materials for the
33rd Annual LLCs, LPs and Partnerships session

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