



# Operating Agreement LLC

## Tips to Ensure You End Up with a Proper LLC Agreement

This Publication compiles teaching articles written by A. McDaniel about the LLC Operating Agreement. A. McDaniel is a co-founder of TheLLCExpert.com and is a leading authority about the limited liability company and its use as a vehicle for operating a business.

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## ARTICLE I:

# An Operating Agreement for LLC Is Necessary for Protection

An Operating Agreement for LLC provides an LLC business is not only needed as a guide for running the business but also serves three important protection purposes.

### Personal Liability Protection Support

It is well established that a limited liability company provides business owners with personal asset protection.

Every state has a law that makes clear that an owner of this kind of legal entity is not personally liable for the debts and obligations of the business entity merely because he or she is a member.

What is less known is that this liability protection is not absolute and can be challenged. The official name of a challenge to this what is called piercing the LLC veil. This is when a party suing your business attempts to get a court of law to set aside the LLC protection and still hold owners personally liable.

One way that people have succeeded with a piercing claim is by convincing the judge that he owners themselves did not treat the business entity as one independent from themselves and that the owners were really operating in their individual capacities. This can occur if the owners ignored the LLC and did not follow LLC formalities.

LLC formalities are usually found in an operating agreement. Accordingly, the best way to challenge this kind of claim and to preserve LLC protection is by having an official operating agreement for LLC and following the provisions in that agreement as you operating the limited liability company business.

An operating agreement gives the legal entity its own personality and its own set of rules. Once adopted and followed, the owners become independent owners and agents of the separate business entity. This is what is required to ensure they remain personally protected against liability for business debts and obligations.

### Ensuring Smooth Business Operations

An LLC only exists because the law says it does. Once an LLC is formed, it is a shell legal entity. It still needs to adopt a set of rules for how it will be managed.

These rules are usually evidenced in the operating agreement. By having one, the owners, managers and employees will know what is allowed and not allowed and what needs to be authorized when running the day to day business.

Without one, there will be a lot of uncertainty and potentially business disruption if there are disagreements or confusions.

Plus, third parties may avoid doing business with the LLC if it too is uncertain about whether the LLC is authorized to do business with them. The agreement resolves all these potential problems.

The operating agreement will also help to avoid any disputes or misunderstandings among the business owners themselves.

### Summary

As you can see, the adoption of an operating agreement for LLC is very important to any business. You should never settle for anything other than a professional operating agreement for LLC as this document is the fundamental agreement governing the major matters of a business.

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## ARTICLE II:

### Limited Liability Company Operating Agreement Essentials

The Limited Liability Company Operating Agreement is important for every LLC business. Knowing what absolutely must be addressed in this document can avoid business disputes and possible business failure. You are making an investment of money and time in your new business.

Make sure your business is based on a solid foundation. This is assured by having a proper agreement for your limited liability company.

**ESSENTIAL #1: Always Have a Written Limited Liability Company Operating Agreement.**

If an LLC fails to adopt an operating agreement, it is subjecting itself to a set of default operational and governance rules set forth in the laws. It is quite clear that every body of law assumes a limited liability company will have a written agreement with operating details. It only provides default provisions to address the situation where an LLC fails to adopt one.

Don't place the fate of your business at risk by subjecting it and its owners to a generic set of rules. You will find that most default provisions will not be suitable to your

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business. For example, some LLC laws say that each member shares EQUALLY in the profits of the limited liability company regardless of how much each contributes in terms of money and services. This is usually not the intention.

#### ESSENTIAL #2: Every Member and the LLC Itself Must Sign the Limited Liability Company Operating Agreement

An Operating Agreement for a limited liability company is the primary document between and among the owners of the business entity. In most cases, the LLC itself is also a party to this document. First, you must always be sure that every Member and the company itself signs the Agreement.

A big mistake made is when one goes through the effort preparing an LLC Agreement but then fail to have every relevant person sign it. Every member and an officer of the LLC must sign it.

#### ESSENTIAL #3: The Limited Liability Company Operating Agreement Grants LLC Authority

When it comes to a multi-member limited liability company, one common issue that arises as an LLC business grows and evolves is that at some point there becomes too many cooks in the kitchen. In other words too many people who have authority to act on behalf of and bind the business entity.

At the very beginning of the life of a limited liability company, the management structure must be decided. Generally, there are two options: member managed and manager managed.

A member managed structure gives every member the authority and right to manage and conduct business on behalf of the limited liability company. While the member managed structure is the most common and is generally appropriate for a single member LLC, it does have limitations as more members are admitted to the limited liability company.

Think early whether it is always going to be the case that every person admitted as a member will be active and executive level managers of the LLC. If not, use a manager managed structure. This will save you a lot of time and headaches later.

#### ESSENTIAL #4: The Limited Liability Company Operating Agreement Must Evidence the Breakdown of Ownership

You would be surprised how many times people get together and orally agree on who will own what in a business venture. They then set up a limited liability company to run the venture and they never document, in writing, the relative ownership.

Later, as memories fade and the business gets prosperous, the owners disagree on the ownership. This causes a lot of time and money spent on nonproductive activity. Remember, once disputes and then litigation ensue, everyone loses except the lawyer.

Always, always, always document the specific and relative ownership of each Member in the LLC Agreement and keep this up to date as new members come in or additional ownership units are issued to existing members.

The Limited Liability Company Operating Agreement is the most important document for an LLC business. Take the time and effort to make sure it is properly customized for your situation and signed by all proper parties. Then, on a continuing basis, make sure it is properly amended and updated as the LLC business evolves.

For Free LLC Expert Information about the Limited Liability Company Operating Agreement, visit The Learning Center at <http://www.TheLLCExpert.com>

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## ARTICLE III:

### Separating Good Sample Operating Agreements from the Bad Ones

The Operating Agreement for an LLC is the most important document for your business. Do not make the mistake of using a sample operating agreement that has improper, incomplete or worse yet, provisions that are not protective to you or your business. Learn about the absolute essentials of what is needed.

#### THE OPERATING AGREEMENT NEEDS TO ADDRESS A VARIETY OF KEY MATTERS

Generally, I look for the shortest and most concise contract form for a particular legal matter. However, when it comes to operating agreements for an LLC, the document must be long enough to address the multiple major issues of membership, governance, tax, voting and other key matters.

These documents are practical agreements that serve as a user's manual for the operators of a business. Stay away from sample operating agreements that are way too short. There brevity means they are not complete enough to meet its required purpose.

#### THE SAMPLE OPERATING AGREEMENT MUST NOT BE A NEGOTIATED AGREEMENT

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Many business owners think they can find a form used by another LLC business and adopt it as their operating agreement. This is the worst mistake you can make. Every LLC agreement needs to be tailored and customized for a particular business. If you take one from another business, you have no idea what was negotiated, who it might favor or whether there are in sufficient or additional provisions that are detrimental to you and your business. Never use a final documents actually signed by another LLC. Start off with a model agreement form.

#### **INSIST ON THE DRAFTER NOT ONLY BEING A LAWYER BUT A LAWYER EXPERIENCED IN LLC MATTERS**

I am so surprised at the lack of quality and professionalism in most legal contract forms being sold on the Internet. Many do say they were drafted by lawyers, but it is evident from just looking at them, that they were not properly drafted by the right lawyer and would never be used by a competent attorney in his or her practice.

Unfortunately, it is difficult for a lay person to tell the difference. The best way to guard against this is to insist on only using a sample operating agreements that are drafted by LLC experienced lawyers and are actually used in legal practices.

#### **GET LAWYER REVIEW OF YOUR CONTEMPLATED OPERATING AGREEMENT**

It is a fact that the great majority of new LLC businesses will not make use of a business attorney in their start up efforts. However, if there is one area where you would get your money's worth, it is in having a competent lawyer experienced in business organizations and LLC law review the contemplated operating agreement for your LLC prior to you and other members signing it.

A benefit of a limited liability company is that it is so flexible and can be customized for particular business circumstances. This can also cause some complexity. In order to avoid later member disputes and misunderstandings and have peace of mind that your document addresses all the matters properly for you, you need to seek professional advice.

Of course, if resources are limited and you cannot afford a lawyer, take the time to learn about the specific issues in an operating agreement and thoroughly prepare and review your operating agreement prior to adopting it.

For More Information about the Essential Requirements for an Operating Agreement, visit The LLC Learning Center at <http://www.TheLLCExpert.com>

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## **ARTICLE IV**

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## The Limited Liability Company Agreement is Like a User Manual For Your LLC Business

After I create my LLC, what do I do now? Many create this special kind of legal entity for their business. But once formed, they have no idea what to do next when it comes to governance and operations. The Limited Liability Company Agreement is essential for many reasons but one practical reason is it gives the owners and operators a user manual for how to operate.

The Limited Liability Company Agreement is a written agreement signed by the business entity and its Members. The agreement first evidences the ownership and sets forth what each Member's rights and responsibilities are. However, the written agreement also serves another very important purpose. A well written Limited Liability Company Agreement should include a set of rules for how the business will be run.

Every member, manager or officer should have a good practical understanding of how the business will be managed. Matters like appointing officers and giving them authority or obtaining the required votes or approvals from Members for actions are typically addressed in the Limited Liability Company Agreement. One great thing is that the law acknowledges that there is no one size fits all solution to how a limited liability company can be operated. Accordingly, the law generally allows for every specific business to determine and approve its own set of rules depending on what the Members think are most appropriate.

Just the exercise of preparing and formalizing a Limited Liability Company Agreement is beneficial to an LLC and its Members as it forces each owner to determine, learn and follow the rules. This alone makes it much more smooth sailing for the venture.

The best way to have and adopt the right written operating Agreement is to retain the services of a competent business attorney. However, many business owners do not have the resources to hire an attorney. In such cases, insist on starting out with a professional form agreement that addresses all the major issues. The only way to know what those issues are is to insist on obtaining the form from a reputable company that understands limited liability companies.

Access Free Attorney Written Articles and Reports about the Limited Liability Company Agreement at The LLC Learning Center of The LLC Expert:  
<http://www.TheLLCExpert.com>

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## ARTICLE V:

### LLC Agreements - 5 Things That Third Parties Look For in an LLC Agreement

An LLC cannot conduct business for long without someone asking to review its LLC Agreement for a valid business reason. Learn the 10 reasons for this so that you can be sure your LLC Agreement properly addresses these matters from the beginning. By failing to include these in your document, you risk significant delays in doing business and possibly losing customers or business deals.

#### One: Identity of Members

The LLC Agreement is where the identity of the members of the limited liability company is established. It is good practice to use this document to keep up to date records of the name, current address and how much each member owns.

#### Two: Proof of Contributions

What cash, property and services has each member contributed to the limited liability company in exchange for his membership interest? The LLC Agreement provides evidence of the exchange required for the issuance of membership interests and third parties will want to know what this was and establish that these contributions have been made to the LLC business

#### Three: Additional Contributions

If a member is required to make additional contributions to the limited liability company, most LLC laws require that this obligation be in writing typically in the LLC Agreement. Third parties look to ensure that an LLC business is adequately capitalized and so these obligations may be important to an outside party.

Plus, if the business is relying on future contributions from members, the only way to legally enforce these obligations is to have them in writing signed by the members agreeing to make such additional capital contributions.

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#### Four: Identity of the managers

Who are the persons who have the authority to manage and run the day to day business? The LLC Agreement establishes a management structure and should also include what rules the LLC and its members must comply with in order to ensure the validity of the manager's appointments. These provisions are more extensive for a manager managed LLC.

#### Five: Power and Authority for LLC to Enter into a Transaction

This is the most important third party purpose of LLC Agreements. Parties who want to do business with your limited liability company will sometimes want or need to see proof that the transaction they are entering into with the LLC is validly authorized.

In order to determine this, they must review the provisions that show who has the authority to sign on behalf of the limited liability company, what specific steps, if any, that members need to take in order to authorize the person to sign a transaction and proof that these steps have been taken.

When it comes to adopting a proper LLC Agreement for your LLC business, make sure that your document addresses these important issues.

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Other Free Reports Offered include WHAT IS AN LLC AND HOW DOES IT BENEFIT ME.

Also, The LLC Expert, Sponsors the LLC Answers Website which Contains Answers to Actual Questions asked about the LLC by LLC owners. Visit the [LLC Answers Site](#) Now.

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