

## EXCLUDED MANAGER AND MISCELLANEOUS CHANGES

**Section 47-34A-304.** That a NEW SECTION be added:

**47-34A-304. Appointment of excluded manager.**

The Operating Agreement may provide that the duties the manager(s) of a manager-managed LLC or the member(s) of a member-managed LLC are divided to provide that certain powers may only be exercised by certain manager(s) or certain member(s) to the exclusion of other managers or other members.

“Excluded Manager” shall mean the manager(s) or managing-member(s) not holding a power and “Manager” shall mean the manager(s) or managing member(s) holding such power. The combined limited powers or responsibilities set forth in the operating agreement of the Excluded Manager may not exceed the powers of the Manager(s).

An Excluded Manager is not liable, at law or in equity, either individually or as a fiduciary, for any duties or responsibilities that belong to a Manager which do not belong to the Excluded Manager.

Absent contrary provisions in the operating agreement, the Excluded Manager has no duty to communicate with or warn or apprise any manager, member, or third-party concerning actions or inactions of the Manager.

The actions of the Excluded Manager, pertaining to matters directed by the Manager holding a power to direct, constitute administrative actions. Such administrative actions do not constitute an undertaking by the Excluded Manager to monitor, participate, or otherwise take any fiduciary responsibility for actions within the scope of authority of the Manager.

In an action against an Excluded Manager pursuant to the provisions of this section, the burden to prove the matter by clear and convincing evidence is on the person seeking to hold the Excluded Manager liable.

**Section 47-34A-404.1.** That a CURRENT SECTION be amended:

**47-34A-404.1. Management of limited liability company.**

(a) Unless otherwise specified in the operating agreement, in a member-managed company:

- (1) Each member has equal rights in the management and conduct of the company's business;  
and
- (2) Except as otherwise provided in subsection (c), any matter relating to the business of the company may be decided by a majority of the members.

(b) Unless otherwise specified in the operating agreement, in a manager-managed company:

- (1) Each manager has equal rights in the management and conduct of the company's business;
- (2) Except as otherwise provided in subsection (c), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and
- (3) A manager:
  - (i) Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and
  - (ii) Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(c) Unless otherwise specified in the operating agreement, the following matters of a member- or manager-managed company's business require the consent of all of the members are:

- (1) The amendment of the operating agreement under § 47-34A-103;
- (2) The authorization or ratification of acts or transactions under § 47-34A-103(b)(2)(ii) which would otherwise violate the duty of loyalty;
- (3) An amendment to the articles of organization under § 47-34A-204;
- (4) The compromise of an obligation to make a contribution under § 47-34A-402(b);
- (5) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
- (6) The making of interim distributions under § 47-34A-405(a), including the redemption of an interest;
- (7) The admission of a new member;
- (8) The use of the company's property to redeem an interest subject to a charging order;
- (9) The consent to dissolve the company under § 47-34A-801(a)(2);
- (10) A waiver of the right to have the company's business wound up and the company terminated under § 47-34A-802(b);
- (11) The consent of members to merge with another entity under § 47-34A-904(c)(1); and
- (12) The sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without goodwill.

(d) Action requiring the consent of members or managers under this chapter may be taken without a meeting.

(e) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

(f) An Excluded Manager under § 47-34A-304 may be excluded from voting should the operating agreement so provide.

(g) To the extent that, at law or in equity, a member or manager has duties to a limited liability company or another member or manager that is a party to or is otherwise bound by the operating agreement, the member's or manager's duties may be expanded or restricted or eliminated by provisions in the operating agreement, provided that the operating agreement may not eliminate the duties as required under § 47-34A-103.

(h) Unless otherwise provided in the operating agreement, a member or manager shall not be liable to a limited liability company or to another member or manager that is a party to or is otherwise bound by the operating agreement for breach of fiduciary duty for the member's or manager's good faith reliance on the provisions of the operating agreement.