

Sunsets 1/1/2016

48-2c-611 Distributions concerning a series.

- (1) Subject to an operating agreement, at the time a member associated with a series becomes entitled to receive a distribution with respect to the series, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.
- (2) An operating agreement may provide for the establishment of a record date for allocations and distributions concerning a series.
- (3) Notwithstanding Section 48-2c-1005, a limited liability company may make a limited distribution with respect to a series only.
- (4) No distribution may be made by a company under this section with respect to a series if, after giving effect to the distribution:
 - (a) the series would not be able to pay its debts as they become due in the usual and regular course of its business; or
 - (b) the value of the series' total assets would be less than the sum of:
 - (i) its total liabilities; and
 - (ii) unless the articles of organization or the operating agreement permit otherwise, the amount that would be needed, if the series were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of members receiving the distribution.
- (5) The company may base a determination that a distribution is not prohibited under Subsection (4) either on:
 - (a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or
 - (b) a fair valuation or other method that is reasonable in the circumstances.
- (6) For purposes of this section, amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program do not constitute a distribution.
- (7) A member who receives a distribution in violation of this section is liable to the series for the amount of the distribution.
- (8) Subject to Section 48-2c-1006, this section does not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.