

**AMENDMENTS RELATED TO LIMITED
LIABILITY COMPANIES**

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO LIMITED LIABILITY COMPANIES; DEFINING TERMS;
AMENDING REQUIREMENTS FOR ARTICLES OF ORGANIZATION; AMENDING
PROVISIONS FOR AMENDING ARTICLES OF ORGANIZATION; ADDRESSING
MEMBERS' CONTRIBUTION AT TIME THE MEMBER'S INTEREST IS TERMINATED;
AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

48-2b-102, as last amended by Chapter 10, Laws of Utah 1997

48-2b-103, as last amended by Chapter 159, Laws of Utah 1997

48-2b-104, as enacted by Chapter 258, Laws of Utah 1991

48-2b-116, as last amended by Chapter 159, Laws of Utah 1997

48-2b-121, as last amended by Chapter 176, Laws of Utah 1996

48-2b-126, as last amended by Chapter 159, Laws of Utah 1997

48-2b-132, as enacted by Chapter 258, Laws of Utah 1991

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **48-2b-102** is amended to read:

48-2b-102. Definitions.

(1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah insolvency law.

(2) "Business" includes every trade, occupation, or profession.

(3) "Division" means the Division of Corporations and Commercial Code of the Department of Commerce.

(4) "Foreign limited liability company" means a limited liability company organized under the laws of any other jurisdiction.

(5) "Limited liability company" or "company" means a business entity organized under this chapter.

(6) "Person" means an individual, general partnership, limited partnership, limited liability company, limited association, domestic or foreign trust, estate, association, or corporation.

(7) "Professional services" means the personal services rendered by:

(a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

(b) an attorney granted the authority to practice law by the Supreme Court of the state of Utah as provided in Title 78, Chapter 51;

(c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractic;

(d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentists and Dental Hygienists Practice Act, and any subsequent laws regulating the practice of dentistry;

(e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act;

(f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

(g) a nurse licensed under Title 58, Chapter 31, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

(i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(j) a pharmacist holding a license under Title 58, Chapter 17a, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

(k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(l) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapist

Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of chiropody;

(n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, Division of Real Estate, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a ~~[clinical or certified social worker]~~ mental health therapist holding a license under Title 58, Chapter 60, ~~[Part 2, Social Worker Licensing]~~ Mental Health Professional Practice Act, and any subsequent laws regulating the practice of ~~[social work]~~ mental health therapy; and

(r) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.

(8) "Regulating board" means the board organized pursuant to state law that is charged with the licensing and regulation of the practice of the profession that a limited liability company is organized to render.

(9) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(10) "Successor limited liability company" means the surviving or resulting limited liability company existing pursuant to a merger or consolidation of two or more limited liability companies.

Section 2. Section **48-2b-103** is amended to read:

48-2b-103. Formation.

(1) A limited liability company may be formed by delivering to the division articles of organization for the limited liability company:

(a) meeting the requirements of Section 48-2b-116; and

(b) executed as required by Section 48-2b-134.

(2) (a) A limited liability company shall ~~[at formation of the limited liability company and at all times]~~ have at least one member;

(i) at the time of formation; and

(ii) at all times after its formation.

(b) Any person may be a member of a limited liability company.

(c) Failure to maintain at least one member shall be an event of dissolution, subject to Section 48-2b-137.

Section 3. Section **48-2b-104** is amended to read:

48-2b-104. Scope -- Definitions.

(1) Except as otherwise provided by the laws of this state, a limited liability company may conduct or promote any lawful business [or purpose which a partnership, general corporation, or professional corporation may conduct or promote].

(2) For purposes of this section, "lawful business" includes any lawful purpose, activity, or business.

Section 4. Section **48-2b-116** is amended to read:

48-2b-116. Articles of organization.

(1) The articles of organization of a limited liability company shall set forth:

(a) the name of the limited liability company;

(b) the period of its duration, which shall not exceed 99 years from the date of filing with the division;

(c) the business purpose or purposes for which the limited liability company is organized;

(d) the street address of its registered office in the state;

(e) the name and signature of its initial registered agent at that address, as required by

Section 48-2b-123;

(f) if the limited liability company is to be managed by a manager or managers:

(i) a statement that the company is to be managed ~~[in that fashion]~~ by a manager or managers; and

(ii) the names and street addresses of the managers who are to serve until the first meeting

of members or until their successors are elected;

(g) if the management of a limited liability company is reserved to the members, the names and street addresses of the members; and

(h) any other provision, not inconsistent with law, that the members choose to include in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provision that is required or permitted to be included in the operating agreement of the limited liability company under this chapter.

(2) It is not necessary to include in the articles of organization any of the powers enumerated in this chapter.

(3) If a limited liability company is to be managed by one or more managers, the articles of organization do not need to state the name or address of any member.

(4) If the articles of organization of a limited liability company do not specify a period of duration as required by Subsection (1)(b), the period of duration for that limited liability company is 99 years from the date of filing the articles of organization with the division.

Section 5. Section **48-2b-121** is amended to read:

48-2b-121. When amendments to the articles of organization are required.

(1) The articles of organization of a limited liability company shall be amended when:

(a) there is a change in the name of the limited liability company;

(b) there is a change in the character of the business of the limited liability company specified in the articles of organization;

(c) there is a false or erroneous statement in the articles of organization;

(d) there is a change in the time~~[-as stated in the articles of organization,]~~ for the dissolution of the limited liability company that is:

(i) stated in the articles of organization; or

(ii) provided for in Subsection 48-2b-116(4);

(e) there is a change in:

(i) who is a manager of the limited liability company; or~~;~~

(ii) if the limited liability company is managed by its members, [a change in] who is a

member of the limited liability company; or

~~[(f) the members determine to fix a time, not previously specified in the articles of organization, for the dissolution of the limited liability company; or]~~

~~[(g)]~~ (f) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among ~~[them]~~ the members.

(2) Each limited liability company shall file with the division a copy of any amendment to the articles within 60 days after the adoption of the amendment.

Section 6. Section **48-2b-126** is amended to read:

48-2b-126. Operating agreements.

(1) An operating agreement may be adopted with the unanimous consent of the members.

(2) An operating agreement may be altered, amended, or repealed as provided in the operating agreement of the limited liability company.

(3) The operating agreements may provide for:

(a) the regulation and management of the affairs of the limited liability company in any manner not inconsistent with law or the articles of organization;

(b) the removal of a manager or managers; and

(c) the termination of a member's interest in the limited liability company.

~~[(4) If a member's interest in the limited liability company is terminated pursuant to the operating agreement, the member may rightfully demand a return of the member's contribution pursuant to Section 48-2b-132.]~~

~~[(5)]~~ (4) A written declaration or written guidelines adopted by the sole member of a limited liability company constitutes an operating agreement for purposes of this chapter if:

(a) the limited liability company has only one member; and

(b) the member designates in the written declaration or guidelines that the written declaration or guidelines is the operating agreement.

Section 7. Section **48-2b-132** is amended to read:

48-2b-132. Conditions for distribution of property -- Return of contribution.

(1) A member ~~[shall]~~ may not receive ~~[no]~~ a distribution of limited liability company property on account of any member's contribution to capital until:

(a) all liabilities of the limited liability company, except liabilities to members on account of their contributions to capital, have been paid or sufficient property of the company remains to pay them; and

(b) the consent of all members is obtained, unless the return of the contribution to capital may be rightfully demanded as provided in:

(i) this chapter~~[-]~~;

(ii) the articles of organization~~[-]~~; or

(iii) the operating agreement.

(2) Subject to Subsection (1), a member may rightfully demand the return of the member's contribution:

(a) upon the dissolution of the limited liability company;

(b) when the date an event specified in the articles of organization for the return of the contribution has arrived; or

(c) ~~[after the member has given all other members of the limited liability company six months' prior notice in writing, if no other time period is specified in the articles of organization for the dissolution of the limited liability company]~~ unless otherwise provided in the operating agreement, if the member's interest in the limited liability company is terminated under the operating agreement.

(3) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the limited liability company, a member, irrespective of the nature of the member's contribution, has only the right to demand and receive cash in return for the member's contribution to capital.