

Part 12

Series Limited Liability Companies

48-3a-1201 Series of transferable interests.

- (1) An operating agreement may establish or provide for the establishment of a designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series.
- (2) Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally or any other series, if all of the following apply:
 - (a) the series is established by or in accordance with the operating agreement;
 - (b) separate and distinct records are maintained for the series;
 - (c) the assets associated with the series are held and accounted for separately from the other assets of the limited liability company, including another series;
 - (d) the operating agreement or the agreement establishing the series provides for the limitation on liabilities of the series; and
 - (e) notice of the limitation on liability of the series is set forth in the limited liability company's certificate of organization in accordance with Section 48-3a-1202.
- (3) A series meeting all of the conditions of Subsection (2) shall:
 - (a) be treated as a separate entity to the extent set forth in the certificate of organization; and
 - (b) have the power and capacity to, in its own name, contract, hold title to property, grant liens and security interests, and sue and be sued.
- (4) Notwithstanding the other provisions of this section:
 - (a) property and assets of a series may not be transferred to the limited liability company generally or another series if the transfer impairs the ability of the series releasing the property or assets to pay its debts existing at the time of the transfer unless fair value is given to the transferring series for the property or assets transferred; and
 - (b) a tax or other liability of the limited liability company generally or of a series may not be assigned by the series against which the tax or other liability is imposed to the limited liability company generally or to another series within the limited liability company if the assignment impairs a creditor's right and ability to fully collect an amount due when owed.
- (5) Notwithstanding the other provisions of this part:
 - (a) a professional services company may not designate a series of transferable interests; and
 - (b) a limited liability company may not form a professional services company as a series of the limited liability company.
- (6) Except to the extent modified by this part, the provisions of this chapter which are generally applicable to a limited liability company, and its managers, members, and transferees, shall be applicable to each series with respect to the operations of such a series.

Enacted by Chapter 412, 2013 General Session

48-3a-1202 Notice of limitation on liability of a series.

- (1)
 - (a) Notice in a limited liability company's certificate of organization of the limitation on liabilities of a series as referenced in Subsection 48-3a-1201(2)(e) is sufficient for all purposes of this part whether or not the limited liability company has established a series at the time the notice is included in the certificate of organization.
 - (b) For a certificate of organization or an amendment to a certificate of organization made to include notice of series that is filed on or after May 12, 2015, notice in a company's certificate of organization is sufficient for purposes of Subsection (1) only if the notice of series appears immediately following the provision stating the name of the company.
- (2) The notice of a limitation on liability of a series as referenced in Subsection 48-3a-1201(2)(e) is not required to reference a specific series.
- (3) The filing by the division of the certificate of organization containing a notice of the limitation on liabilities of a series constitutes notice of the limitation on liabilities of the series.

Amended by Chapter 227, 2015 General Session

48-3a-1203 Agreement to be liable.

Notwithstanding Section 48-3a-304, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

Enacted by Chapter 412, 2013 General Session

48-3a-1204 Series related provisions in operating agreement.

- (1) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide.
- (2) The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series.
- (3) An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding.
- (4) An operating agreement may provide that any member or class or group of members associated with a series does not have voting rights.
- (5) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on any basis including:
 - (a) a per capita basis;
 - (b) a number basis;
 - (c) on the basis of a financial interest; or
 - (d) by class or group.

Enacted by Chapter 412, 2013 General Session

48-3a-1205 Management of a series.

- (1) A series is member-managed unless the operating agreement:
 - (a) expressly provides that:
 - (i) the series is or will be "manager-managed";
 - (ii) the series is or will be "managed by managers"; or
 - (iii) management of the series is or will be "vested in managers"; or
 - (b) includes words of similar import.
- (2) In a member-managed series, unless modified pursuant to Section 48-3a-1204, the following rules apply:
 - (a) The management and conduct of the series are vested in the members of the series.
 - (b) Each series member has equal rights in the management and conduct of the series' activities.
 - (c) A difference arising among series members as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the series members.
 - (d) An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.
 - (e) The operating agreement may be amended only with the consent of all members of the series.
- (3) In a manager-managed series, the following rules apply:
 - (a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the series is decided exclusively by the managers of the series.
 - (b) Each series manager has equal rights in the management and conduct of the activities of the series.
 - (c) A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the managers of the series.
 - (d) Unless modified pursuant to Section 48-3a-1204, the consent of all members of the series is required to:
 - (i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities;
 - (ii) approve a transaction under Part 10, Merger, Interest Exchange, Conversion, and Domestication;
 - (iii) undertake any other act outside the ordinary course of the series' activities; and
 - (iv) amend the operating agreement as it pertains to the series.
 - (e) A manager of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.
 - (f) A person need not be a series member to be a manager of a series, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager of the series, that cessation does not by itself dissociate the person as a member of the series.
 - (g) A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.
- (4) An action requiring the consent of members of a series under this chapter may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or

otherwise act for the series member by signing an appointing record, personally or by the series member's agent.

- (5) The dissolution of a series does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.
- (6) This chapter does not entitle a member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1206 Series distributions.

- (1) Any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except to the extent necessary to comply with any transfer effective under Section 48-3a-502 and any charging order in effect under Section 48-3a-503.
- (2) A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation with respect to a series does not entitle the person to a distribution.
- (3) A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in Subsection 48-3a-711(3), a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
- (4) If a series member or transferee becomes entitled to receive a distribution, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. However, the series' obligation to make a distribution is subject to offset for any amounts owed to the series by the member or a person dissociated as a member on whose account the distribution is made.
- (5) A series may not make a distribution if after the distribution:
 - (a) the series would not be able to pay its debts as they become due in the ordinary course of the series' activities; or
 - (b) the series' total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.
- (6) A series may base a determination that a distribution is not prohibited under Subsection (5) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.
- (7) Except as otherwise provided in Subsection (9), the effect of a distribution under Subsection (5) is measured:
 - (a) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the series, as of the date money or other property is transferred or debt incurred by the series; or
 - (b) in all other cases, as of the date:
 - (i) the distribution is authorized, if the payment occurs within 120 days after that date; or

- (ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.
- (8) A series' indebtedness to a series member incurred by reason of a distribution made in accordance with this section is at parity with the series' indebtedness to its general, unsecured creditors.
- (9) A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of Subsection (5) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.
- (10) Except as otherwise provided in Subsection (11), if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the series for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this section.
- (11) To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in Subsection (10) applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.
- (12) A person that receives a distribution from a series knowing that the distribution to that person was made in violation of this section is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this section.
- (13) A person against which an action is commenced because the person is liable under Subsection (10) may:
 - (a) implead any other person that is liable under Subsection (10) and seek to compel contribution from the person; and
 - (b) implead any person that received a distribution in violation of Subsection (12) and seek to compel contribution from the person in the amount the person received in violation of Subsection (12).
- (14) An action under this section is barred if not commenced within two years after the distribution.

Enacted by Chapter 412, 2013 General Session

48-3a-1207 Events causing dissociation from a series.

- (1) Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the power to exercise a right or power of a member with respect to the series upon the assignment of all of the member's transferable interest in the limited liability company with respect to the series.
- (2) Unless otherwise provided in an operating agreement, an event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:
 - (a) cause the member to cease to be associated with another series;
 - (b) terminate the continued membership of a member in the limited liability company; or
 - (c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.

Enacted by Chapter 412, 2013 General Session

48-3a-1208 Dissolution of a series.

- (1) Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company.
- (2) The dissolution of a series does not affect the limitation on liabilities of the series under Section 48-3a-1201.
- (3) A series is dissolved and its affairs shall be wound up upon the dissolution of the limited liability company under Section 48-3a-701 or upon the occurrence of any of the events described in Section 48-3a-701, as applied to the series.
- (4) Notwithstanding Section 48-3a-703, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of a dissolved series:
 - (a) a manager associated with a series who has not wrongfully caused the dissolution of the series;
 - (b) if there is no manager that satisfies the requirements of Subsection (4)(a), the members associated with the series who have not wrongfully caused the dissolution of the series or a person approved by the members associated with the series who have not wrongfully caused the dissolution of the series; or
 - (c) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who have not wrongfully caused the dissolution of the series, and either:
 - (i) own more than 50% of the transferable interests of the series owned by members associated with the series who have not wrongfully caused the dissolution of the series; or
 - (ii) own more than 50% of the transferable interests of each class or group associated with the series owned by members associated with the series who have not wrongfully caused the dissolution of the series.
- (5) The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series as are permitted under Section 48-3a-703 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in Section 48-3a-711 for a limited liability company and distribute the assets of the series as provided in Section 48-3a-711 for a limited liability company. An action taken pursuant to this Subsection (5) may not affect the liability of a member and may not impose liability on a liquidating trustee.

Enacted by Chapter 412, 2013 General Session

48-3a-1209 Foreign limited liability company -- Series.

A foreign limited liability company that is registered to do business in this state that is governed by an operating agreement that establishes or provides for the establishment of a series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the foreign registration statement filed by the division. In addition, the foreign limited liability company shall state on the foreign registration statement whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally or any other series. Notice in a foreign limited liability company's foreign registration statement of

the limitation on liability of a series as referenced in this section shall have the same effect found in Section 48-3a-1202 as a notice of limitation on liability of a series set forth in a limited liability company's certificate of organization.

Enacted by Chapter 412, 2013 General Session