

**48-3a-405 Limitation on distributions.**

- (1) A limited liability company may not make a distribution, including a distribution under Section 48-3a-711, if after the distribution:
  - (a) the limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities and affairs; or
  - (b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement permits otherwise, the amount that would be needed, if the limited liability company 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 and transferees whose preferential rights are superior to those of persons receiving the distribution.
- (2) A limited liability company may base a determination that a distribution is not prohibited under Subsection (1) 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 under the circumstances.
- (3) Except as otherwise provided in Subsection (5), the effect of a distribution under Subsection (1) is measured:
  - (a) in the case of a distribution as defined in Subsection 48-3a-102(4)(a), as of the earlier of:
    - (i) the date money or other property is transferred or debt is incurred by the limited liability company; or
    - (ii) the date the person entitled to the distribution ceases to own the interest or right being acquired by the limited liability company in return for the distribution;
  - (b) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
  - (c) in all other cases, as of the date:
    - (i) the distribution is authorized, if the payment occurs not later than 120 days after that date; or
    - (ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.
- (4) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.
- (5) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.
- (6) In measuring the effect of a distribution under Section 48-3a-711, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under Section 48-3a-705, 48-3a-706, or 48-3a-707.

Enacted by Chapter 412, 2013 General Session