

48-3a-409 Standards of conduct for members and managers.

- (1) A member of a member-managed limited liability company owes to the limited liability company and, subject to Subsection 48-3a-801(1), the other members the duties of loyalty and care stated in Subsections (2) and (3).
- (2) The duty of loyalty of a member in a member-managed limited liability company includes the duties:
 - (a) to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member:
 - (i) in the conduct or winding up of the limited liability company's activities and affairs;
 - (ii) from a use by the member of the limited liability company's property; or
 - (iii) from the appropriation of a limited liability company opportunity;
 - (b) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities and affairs as or on behalf of a person having an interest adverse to the limited liability company; and
 - (c) to refrain from competing with the limited liability company in the conduct of the company's activities and affairs before the dissolution of the limited liability company.
- (3) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the limited liability company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
- (4) A member shall discharge the duties and obligations under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.
- (5) A member does not violate a duty or obligation under this chapter or under the operating agreement solely because the member's conduct furthers the member's own interest.
- (6) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.
- (7) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.
- (8) If, as permitted by Subsection (6) or (9)(f) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by Subsection (2)(b), the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.
- (9) In a manager-managed limited liability company, the following rules apply:
 - (a) Subsections (1), (2), (3), and (7) apply to the manager or managers and not the members.
 - (b) The duty stated under Subsection (2)(c) continues until winding up is completed.
 - (c) Subsection (4) applies to managers and members.
 - (d) Subsection (5) applies only to members.
 - (e) The power to ratify under Subsection (6) applies only to the members.
 - (f) Subject to Subsection (4), a member does not have any duty to the limited liability company or to any other member solely by reason of being a member.

Enacted by Chapter 412, 2013 General Session