

LLC OPERATING AGREEMENT

When forming a business structure that includes more than one owner, such as a partnership, a corporation, or a limited liability company (LLC), it is extremely important to prepare a written agreement spelling out the relationships among the owners, to include their respective responsibilities and obligations. One important future event to provide for is what to do when one owner decides to leave the enterprise and sell his/her interest to somebody else. This is also known as a buy/sell agreement, providing that the departing owner must first offer to sell his interest to the other owners, and then to the company itself, before being able to sell it to a third party. This prevents you from suddenly having a stranger as your business partner in the event one Member loses interest in the business, or moves to Hawaii, or dies. (The owners of a partnership are called partners, the owners of a corporation are called shareholders, the owners of a LLC are called members.) In the case of a partnership, the agreement is called a partnership agreement; in a corporation, a shareholders agreement; and in a LLC, an operating agreement. All of these agreements are similar, with slight variations. Because of its complexity and importance, such an agreement should be prepared by a lawyer. In a LLC, a written operating agreement should cover the following topics as a minimum:

- The identity of the members;
- The business to be conducted;
- The name to be used for the enterprise;
- The contributions, both initial and future, to be made by each member and how they will be valued (i.e. capital);
- The percentage interest of each member in the LLC, and distributions and allocations of profits and losses;
- Management, whether by members or a manager, including any salaries or draws paid to members, and the keeping of books and accounts;
- Any authorized borrowings;
- In a 50/50 ownership, a tie-breaking mechanism to avoid deadlock
- How any new members will be admitted;
- Assignment of membership interests, including upon death of a member, and payments to withdrawing or deceased members;
- Procedure for buying out a member's interest;
- Dissolution and termination of the LLC;
- Any desired dispute resolution mechanisms (e.g. mediation or arbitration) in lieu of litigation between members;
- Requirements to amend the operating agreement.