

30-6-110. OPERATING AGREEMENT -- SCOPE, FUNCTION AND LIMITATIONS. (1) Except as otherwise provided in subsections (2) and (3) of this section, the operating agreement governs:

(a) Relations among the members as members and between the members and the limited liability company;

(b) The rights and duties under this chapter of a person in the capacity of manager;

(c) The activities of the company and the conduct of those activities; and

(d) The means and conditions for amending the operating agreement.

(2) To the extent the operating agreement does not otherwise provide for a matter described in subsection (1) of this section, this chapter governs the matter.

(3) An operating agreement may not:

(a) Vary a limited liability company's capacity under section 30-6-105, Idaho Code, to sue and be sued in its own name;

(b) Vary the law applicable under section 30-6-106, Idaho Code;

(c) Vary the power of the court under section 30-6-204, Idaho Code;

(d) Subject to subsections (4) through (7) of this section, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

(e) Subject to subsections (4) through (7) of this section, eliminate the contractual obligation of good faith and fair dealing under section 30-6-409(4), Idaho Code;

(f) Unreasonably restrict the duties and rights stated in section 30-6-410, Idaho Code;

(g) Vary the power of a court to decree dissolution in the circumstances specified in sections 30-6-701(1)(d) and (e), Idaho Code;

(h) Vary the requirement to wind up a limited

liability company's business as specified in sections 30-6-702(1) and (2)(a), Idaho Code;

(i) Unreasonably restrict the right of a member to maintain an action under part 9 of this chapter;

(j) Restrict the right to approve a merger, conversion or domestication under chapter 18, title 30, Idaho Code, to a member that will have personal liability with respect to a surviving, converted or domesticated organization; or

(k) Except as otherwise provided in section 30-6-112(2), Idaho Code, restrict the rights under this chapter of a person other than a member or manager.

(4) If not manifestly unreasonable, the operating agreement may:

(a) Restrict or eliminate the duty:

(i) As required in sections 30-6-409(2)(a) and (7), Idaho Code, to account to the limited liability company and to hold as trustee for it any property, profit or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(ii) As required in sections 30-6-409(2)(b) and (7), Idaho Code, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(iii) As required by sections 30-6-409(2)(c) and (7), Idaho Code, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(b) Identify specific types or categories of activities that do not violate the duty of loyalty;

(c) Alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(d) Alter any other fiduciary duty, including

eliminating particular aspects of that duty; and

(e) Prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under section 30-6-409(4), Idaho Code.

(5) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one (1) or more disinterested and independent persons after full disclosure of all material facts.

(6) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one (1) or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(7) The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 30-6-408(1), Idaho Code, and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

- (a) Breach of the duty of loyalty;
- (b) A financial benefit received by the member or manager to which the member or manager is not entitled;
- (c) A breach of a duty under section 30-6-406, Idaho Code;
- (d) Intentional infliction of harm on the company or a member; or
- (e) An intentional violation of criminal law.

(8) The court shall decide any claim, under subsection (4)(a) of this section, that a term of

an operating agreement is manifestly unreasonable.
The court:

(a) Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(b) May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(i) The objective of the term is unreasonable; or

(ii) The term is an unreasonable means to achieve the provision's objective.

History:

[30-6-110, added 2008, ch. 176, sec. 1, p. 484.]

30-6-111. OPERATING AGREEMENT -- EFFECT ON LIMITED LIABILITY COMPANY AND PERSONS BECOMING MEMBERS -- PREFORMATION AGREEMENT. (1) A limited liability

company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(2) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(3) Two (2) or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One (1) person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

History:

[30-6-111, added 2008, ch. 176, sec. 1, p. 486.]

30-6-112. OPERATING AGREEMENT -- EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(2) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under section 30-6-503(2)(b), Idaho Code, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(3) If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under section 30-6-110(3), Idaho Code, if contained in the operating agreement, the provision is likewise ineffective in the record.

(4) Subject to subsection (3) of this section, if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

(a) The operating agreement prevails as to members, dissociated members, transferees and managers; and

(b) The record prevails as to other persons to the extent they reasonably rely on the record.

History:

[30-6-112, added 2008, ch. 176, sec. 1, p. 486.]