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**STANDARDS FOR OPERATION OF YOUR LIMITED LIABILITY COMPANY**

The law takes the position that a Limited Liability Company must not only be organized as a Limited Liability Company but it must also be operated as a Limited Liability Company if it is to receive the benefit of limited liability for its members. Simply because you have obtained a certificate of organization from the State of Indiana authorizing you to operate as a Limited Liability Company does not necessarily guarantee you treatment as a Limited Liability Company.

In an effort to provide you with some guidelines for the general operation of your Limited Liability Company as well as to minimize the possibility of an attack on your limited liability status by a creditor, we have prepared the following recommended procedures. If you have any questions regarding these procedures, you should contact us.

**A. MEETINGS:**

1. Members. Members' meetings should be held each year. Each member must receive written notice of the meeting no fewer than three (3) days nor more than sixty (60) days prior to the meeting. The notice should contain the place, day and hour of the meeting and a brief description of proposals to be presented at the meeting. A member may, however, waive notice of the meeting either by signing a written notice of waiver or by actually participating in the business of the meeting. If the Operating Agreement or Articles of Organization so provide, a Members' meeting may be held through simultaneous telecommunications.

2. Managing Members/Managers (if applicable). There is no requirement for an annual Managing Members'/Managers' meeting, but we strongly recommend that such a meeting be held at least once each year. Generally, that meeting may be held immediately following your annual Members' meeting. Notice should be sent to the Managing Members/Managers of that meeting setting forth the place, day and hour of the meeting. As with the Members' meeting, the Managing Members/Managers may waive notice of the meeting by signing a written notice of waiver or by actually participating in the business of the meeting. A Managing Members'/Managers' meeting need not be in person and may be held by simultaneous telecommunications.

3. Conducting Business. A majority of the voting Members must be present at a meeting where any business is to be transacted. If there is business which must be conducted and you are aware in advance that certain of your Members may not attend, you should attempt to obtain proxies authorizing other Members to vote on their behalf or arrange for telecom. Our office can provide you with the necessary forms for those proxies.

The Managing Members/Managers/Members should document approval of certain actions taken by the Limited Liability Company. It is not a good idea to substitute informal

conversational agreements for a formal meetings. For example, all employment contracts, employee benefit plans, fringe benefit agreements, leases, securing of loans, and purchases of insurance and new equipment should be approved. Any wage or salary increases (especially large ones) should be implemented by the Managing Members/Managers/Members, preferably at the beginning of the year and the company minutes/resolutions should reflect why the decision was reached.

## **B. MINUTES AND RECORDS:**

1. Minute Book. Your company minute book is a written record of all formal action taken by Members and Managing Members. As a matter of custom, resolutions that are adopted are set out in full. All other matters are summarized. Usually a Managing Member/Manager/Member is designated secretary of a meeting and keeps and prepares the minutes, which are prepared at or about the time of the meeting. The basic purpose of the minutes is to avoid any misunderstanding as to the precise action taken by the Members or Managing Members/Managers. It should be prima facie evidence of what occurred. The minute book is also one of the first items to be examined by the IRS in the course of an audit. They will examine the minute book closely to see that the expenditures are actually authorized company expenditures and to see that, pension plans, etc. have met all formal requirements.

2. Minutes/Resolutions. The company minutes should record the date, time, and place of the meeting, the authority for holding the meeting, the names of the chairman and secretary, the persons present or represented, the reports given, the elections conducted, the resolutions adopted or defeated, and any other occurrences which may be considered worthy of permanent record. Alternatively, the Written Consents to Resolutions can also be prepared whereby those with applicable authority will sign and date indicating agreement and given the same function of minutes. If you have any questions in relation to the format of the minutes or resolutions, we can provide you with sample forms. Likewise, if you wish, our office can prepare minutes or resolutions for you if you will give us the necessary information.

3. Member Information. The Limited Liability Company must keep a record of current Members, their post office addresses, the class and number of shares they hold. This listing must be kept at the Limited Liability Company's principal office or at an agent of the Limited Liability Company. It is important that this information is updated whenever there is any transfer of shares.

4. Business Entity Report. Each domestic Limited Liability Company must deliver a Business Entity Report to the Secretary of State for filing. The report is due in even years for companies organized in even years, and odd years for companies organized in odd years. The report is due in the same month the Limited Liability Company was organized. The Secretary of State's office will send notices reminding of the need to file the reports. We will also send out a reminder to you that the report is due. The BER may be filed online and in order to encourage this, the Secretary of State's office offers a discounted filing fee for those filed online. We can take care of this filing for you, but will need you to keep us updated on any address or other changes.

### **C. ISSUING CERTIFICATES OF OWNERSHIP:**

1. Certificates of Ownership. Certificates of Ownership are not required; however, if you prefer to have them they must be signed by the Managing Members and all other Members. The transfer sheet in your company record book should be filled out showing the certificate number, the number of shares, the date the certificate is signed and the name and address of the person to whom the certificate is issued. The member should then sign the transfer sheet acknowledging his or her receipt of each certificate. The certificate can be kept by the member, but we recommend that the original be kept in the company minute book.

2. Payment for Certificates of Ownership. The amount to be paid for an ownership interest shall be fixed from time to time by the Managing Members. The shares may be paid for in whole or in part in cash, in other property whether tangible or intangible, or in labor actually performed for or services actually rendered to the Limited Liability Company. In the absence of actual fraud, the judgment of the Managing Members as to the value of this consideration or the value of the Limited Liability Company's assets will be conclusive. We do not recommend you issue any Certificates of Ownership other than for cash. If you anticipate issuing Certificates of Ownership in exchange for property or services, please be sure to discuss that matter with us and be certain that your minute book reflects the nature of the transaction giving rise to the issuance of the Certificates of Ownership.

3. Transfer of Shares. If ownership interests are transferred, the original certificate should be surrendered to the Limited Liability Company, the transfer sheet appropriately executed and the new certificate issued to the new owner.

### **D. USE OF THE COMPANY NAME:**

1. Stationery. Every item of stationery from your letterhead to your billing statements to your memo pads should have the full company name and not just the name of the particular employee or officer involved. The desire to use up your old stationery first to save the money may be penny wise and pound foolish in the long run. If nothing else, you should obtain one or two rubber stamps that have your company name including the designation "LLC". These stamps should be used liberally by all of your office personnel in substituting your company name for whatever designation may exist on your stationery and office forms.

2. Public Announcements. If your business maintains a mailing list, you should have an announcement of a change to company status prepared and mailed to everyone on the list. A copy of your printed announcement and the mailing list should be retained with your company records. It is appropriate in some situations to place a dignified announcement in the local newspaper stating that your business has been organized as a limited liability company under your company name. A copy of the newspaper containing this announcement should be retained with the company records.

3. Bank Accounts. With the guidance of your accountant, new checking accounts should be opened at the bank in the name of the limited liability company. All company receipts should be kept separate from receipts of your old practice or business.

4. Telephone Books. Your office telephone should be listed in the name of the limited liability company both in the white and yellow pages.

5. Signs. All office signs should be changed to reflect the name of the limited liability company.

6. Outside Contracts. If you have contracts with outside parties for services, they should be transferred or redrafted in the company name. Leases, purchase agreements and the like should be assigned to the limited liability company, if assignment cannot be achieved a new lease should be obtained, if possible.

7. Personnel. Personnel should be hired by the limited liability company and not by any of your employees or officers as individuals. They should understand that they are coming to work for the limited liability company rather than for any particular person. All employees salaries and wages should be paid by check from the limited liability company rather than, for example, being paid individually by customers. A central policy concerning hiring and salaries should be adopted and followed.

8. Receipts and Payments. Customers should not be encouraged to make payments to any individual, but rather to the limited liability company in its company name. Any check that might be made payable to an individual in the business should be endorsed over to the limited liability company immediately before it is deposited. Anyone who provides services to the limited liability company should be instructed to bill the limited liability company for payment. Similarly, individuals in the limited liability company should be reimbursed for their expenditures pursuant to a formally adopted plan. This plan should be strictly adhered to and the company employee should keep careful records of the items involved.

9. Liability Insurance. Type, amount and cost of liability insurance should be determined, contracted, and paid for by the limited liability company as a whole rather than by individual employees. Individual policies, however, may also have to be maintained.

#### **E. PROPER FORM OF COMPANY SIGNATURE:**

Since the limited liability company is intended to be the party to be obligated by the contract, note or other document being signed, the actual company name should be used (including the words Limited Liability Company, or an accepted abbreviation thereof). The company name should then be followed by the word "By". This indicates that someone is signing the document in his or her representative capacity on behalf of the limited liability company. The company officer should then sign and designate his or her elected title indicating authority to sign on behalf of the limited liability company. A proper company signature is illustrated as follows:

ABC WIDGETS, LLC

By: \_\_\_\_\_  
John Q. Doe, Managing Member/Member

**F. WRITTEN EMPLOYMENT CONTRACTS:**

Employment contracts between a limited liability company and its member-employees should include a clause requiring employees to devote substantially full time to the business of the limited liability company.

**G. FRINGE BENEFITS:**

In providing fringe benefits for its employees, the limited liability company must not incur a substantial cost or loss in revenue. The benefit, service, or personal property provided must be of a type that the limited liability company ordinarily provides to the public in the line of business for which the recipient employee is employed. The limited liability company in dispensing a benefit that is of such a small value that accounting for it would be impractical, must be careful to avoid providing that benefit with such a high frequency that its small value becomes suspect.

Only a present or retired employee and that employee's spouse and dependent children are eligible for fringe benefits. In determining which employees are eligible for certain benefits, the limited liability company may create reasonable categories such as seniority, full or part time employment, and job description. No category, however, should include a substantially higher number of highly paid employees than other employees. Rules on fringe benefits have been recently changed. You should consult your tax adviser.

**H. EMPLOYMENT TAX LIABILITY:**

While operating in company form is potentially a shield against most liabilities, Managing Members and certain employees maybe held personally liable for unpaid withholding, unemployment and employer's share of FICA. It is the responsibility of the employer (Limited liability company) to prepare and file payroll tax returns. If you are unclear about payroll tax compliance, please contact this office or your tax advisor immediately.

**I. EMPLOYMENT OF ILLEGAL ALIENS:**

The Immigration Reform and Control Act requires that employers check the documents of all prospective employees to make sure that they are not illegal aliens. The employee must produce a U.S. passport or a foreign passport with a valid U.S. work permit. If these are not available, the employee must present a birth certificate or social security card and a driver's

license, other state I.D., or a resident alien card (green card). If the employee does not have all the necessary documents immediately on hand, he can still begin work, but must produce them within 24 hours. There is a form "I-9" describing the documents checked for you to fill out, and the employee must sign it and certify that he is not an illegal alien.

Remember that these are general guidelines to assist you in operating your limited liability company in a manner that will achieve the benefits that you desire. If you have any major problems regarding your limited liability company you should contact us. Further, whenever you are making decisions regarding tax effects, you should make these decisions in conjunction with your advisors.