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Tenn. Code Ann. § 48-249-102

Current through 2017 Regular Session (Chapter 493).

Tennessee Code Annotated > Title 48 Corporations And Associations > Limited Liability Companies > Chapter 249 Tennessee Revised Limited Liability Company Act > Part 1 General Provisions

48-249-102. Chapter definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Annual report" means the form required by § 48-249-1017;
- (2) "Articles" or "articles of organization" means, in the case of an LLC, articles of organization or, to the extent applicable with respect to an LLC initially formed under and governed by the Tennessee Limited Liability Company Act, compiled in chapters 201-248 of this title, articles of conversion, taken together with all of the following, to the extent they modify, correct, restate or otherwise affect the articles of organization or articles of conversion: articles of amendment, articles of correction, certificates of merger and all documents required to be filed with any of the articles of amendment, articles of correction and certificates of merger, as part of the formation and continuation of an LLC. In the case of a foreign LLC, "articles" or "articles of organization" means all documents serving a similar function required to be filed with the secretary of state or other state office of the foreign LLC's jurisdiction of formation;
- (3) "Business" means every trade, occupation, profession, investment activity, and other lawful purpose for gain or the preservation of assets, whether or not carried on for profit;
- (4) "Code" means the Internal Revenue Code of 1986, compiled in 26 U.S.C., including all successor provisions to the sections referenced in this chapter;
- (5) "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued an LLC or a foreign LLC is current on all taxes and penalties to the satisfaction of the commissioner;
- (6) "Director" means an individual who is vested with authority as a director under § 48-249-401(c);
- (7) "Director-managed LLC" means an LLC that is so designated in its articles;
- (8) "Distribution" means a direct or indirect transfer of money or other property by an LLC, except for the issuance of its own membership interests or financial rights, with or without consideration, or an incurrence or issuance of indebtedness, whether directly or indirectly, including through a guaranty, to or for the benefit of any of its members or holders of financial rights, as applicable, in respect of membership interests or financial rights. A distribution may be in the form of an interim distribution under § 48-249-305 or a liquidation distribution under § 48-249-620; of a purchase, redemption, or other acquisition of its membership interests or financial rights; of a distribution of indebtedness, which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the benefit of the LLC's members or holders of financial rights, as applicable; or of any other transaction. "Distribution" does not mean amounts paid to or for the benefit of members, or holders of financial rights as compensation or benefits for services rendered by them in their capacities as members, holders, officers, managers, directors or agents;
- (9) "Entity" means, whether foreign or domestic and whether for profit or not-for-profit, limited liability companies, corporations, unincorporated associations, real estate investment trusts, statutory or

business trusts or associations, estates, general partnerships, limited partnerships, registered or unregistered limited liability partnerships, limited liability limited partnerships or similar organizations, trusts, joint ventures, two (2) or more persons having a joint or common economic interest, and local, municipal, state, United States and foreign governments;

(10) (A) "Family LLC" means an LLC in which, at the relevant time, members of the same family hold, in the aggregate, whether as members or holders of financial rights, at least fifty percent (50%) of the financial rights in the LLC. "Members of the same family," as used in this subdivision (10) means two (2) or more individuals as to one (1) of whom, referred to as the "common relative," each of the others bears one (1) of the following relationships:

- (i)** A spouse or former spouse of the common relative;
- (ii)** An ancestor or lineal descendant of the common relative;
- (iii)** An ancestor of the spouse or former spouse of the common relative;
- (iv)** A brother or sister of the common relative;
- (v)** A lineal descendant of any individual described in subdivision (10)(A)(iv);
- (vi)** A spouse or former spouse of any individual described in subdivisions (10)(A)(ii)-(v);
- (vii)** A lineal descendant of any individual described in subdivision (10)(A)(vi);

(B) (i) For the purpose of determining "members of the same family":

- (a)** Relationship by adoption shall be treated the same as relationship by blood;
- (b)** Financial rights held by any entity that is related, within the meaning of §§ 267(b) and 707(b) of the Code, codified in 26 U.S.C. §§ 267(b) and 707(b), respectively, to any individual shall be deemed to be held by such individual;
- (c)** The common relative need not be a member of or holder of financial rights in the LLC; and
- (d)** The common relative need not be living, but, if deceased, may not be more than four (4) generations removed from the youngest generation of individuals who would, but for this subdivision (10)(B)(i), be members of the same family;
- (ii)** For purposes of the proviso in subdivision (10)(B)(i)(d), a spouse, or former spouse, shall be treated as being of the same generation as the individual to whom such spouse is, or was, married;
- (iii)** For purposes of this subdivision (10), the word "fiduciary," as used in § 267(b) of the Code, shall be treated as a trust and an entity;

(11) "Financial rights" means a member's or holder's rights to:

- (A)** Share in profits and losses, as provided in § 48-249-304;
- (B)** Share in and receive distributions, as provided in § 48-249-305;
- (C)** Receive liquidation distributions, as provided in § 48-249-620; and
- (D)** Transfer the financial rights described in subdivisions (11)(A)-(C), as provided in § 48-249-507;

(12) "Foreign LLC," or an LLC that is designated as "foreign," means a limited liability company that is formed under the laws of a jurisdiction other than this state;

(13) "Governance rights" means a member's right to vote on one (1) or more matters, all of a member's other rights as a member in the LLC under the LLC documents or this chapter, other than financial rights, and the right to transfer the voting and other rights described in this subdivision (13);

- (14)** "Holder of financial rights" or "holder" means a person, other than a member, owning any financial rights in an LLC. A holder of financial rights may acquire its financial rights, either by transfer of ownership from a member or other holder, or directly from the LLC;
- (15)** "LLC," sometimes referred to as a "domestic LLC" or an LLC that is designated as "domestic," means a limited liability company formed under this chapter, or a limited liability company formed under the Tennessee Limited Liability Company Act, compiled in chapters 201-248 of this title, that has elected to be governed by this chapter, or, where expressly indicated, a limited liability company formed under and governed by the Tennessee Limited Liability Company Act;
- (16)** "LLC documents" means either, or both:
 - (A)** An LLC's articles; and
 - (B)** If the LLC has an operating agreement, whether written or oral, its operating agreement;
- (17)** "Majority vote" means, with respect to a vote of the members, managers, or directors, as applicable:
 - (A)** If voting on a per capita basis, a majority in number of the members, managers or directors, as applicable, entitled to vote on a specific matter; or
 - (B)** If voting is determined otherwise under the LLC documents, a majority in voting interest of the members, managers or directors, as applicable, entitled to vote on a specific matter, as determined under the LLC documents;
- (18)** "Manager" means a person who is vested with authority as a manager under § 48-249-401(b);
- (19)** "Manager-managed LLC" means an LLC that is so designated in its articles;
- (20)** "Member" means a person that has been admitted to an LLC as a member, as provided in § 48-249-501. With respect to a foreign LLC, "member" means a person recognized as a member of the foreign LLC, under the laws of the jurisdiction of formation of the foreign LLC;
- (21)** "Member-managed LLC" means an LLC that is so designated in its articles;
- (22)** "Membership interest" means a member's interest in an LLC, which shall consist of the member's financial rights and governance rights;
- (23)** "Officer" means an individual, who is vested with authority as an officer under § 48-249-401(e);
- (24)** "Operating agreement" means an agreement described in § 48-249-203(a);
- (25)** "Person" means an individual or an entity;
- (26)** "Personal representative" means, as to an individual, the executor, administrator, guardian, conservator, trustee or other legal representative of the individual, and, as to an entity, the legal representative or successor of the entity;
- (27)** "Principal executive office" means the office, in or out of this state, that is designated as the principal executive office of a domestic or foreign LLC in its articles or in an application for a certificate of authority, as applicable, as thereafter changed from time to time in accordance with this chapter;
- (28)** "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal;
- (29)** "Professional limited liability company," "professional LLC" or "PLLC" has the meaning set forth in § 48-249-1102;
- (30)** "Record" means information that is inscribed in a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form;
- (31)** "Registered agent" means the person designated as the registered agent of a domestic or foreign LLC in its articles or in an application for a certificate of authority, as applicable, as thereafter changed from time to time in accordance with this chapter;

- (32) "Registered office" means the office in this state that is designated as the registered office of a domestic or foreign LLC in its articles or in an application for a certificate of authority, as applicable, as thereafter changed from time to time in accordance with this chapter;
- (33) "Representative" means, as to a foreign LLC, a director, manager, officer, employee or other agent of a foreign LLC;
- (34) "Secretary of state" means the individual who holds the office of secretary of state of this state;
- (35) "State," when referring to a part of the United States other than this state, means a state, a commonwealth, the District of Columbia and a territory and insular possession of the United States, and their respective agencies and governmental subdivisions;
- (36) "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that an LLC or a foreign LLC has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties, and taxes as required by the revenue laws of this state; and
- (37) "Transfer" means an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift and transfer by operation of law.

History

Acts 2005, ch. 286, § 1; 2006, ch. 620, §§ 11-15; 2010, ch. 741, § 37; 2011, ch. 99, §§ 11-13.

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