

§ 608.407 (6) The articles of organization may also, but need not, identify one or more persons authorized to serve as a manager or managing member and may describe any limitations upon the authority of a manager or managing member, provided a provision in the articles of organization limiting the authority of a manager or managing member to transfer real property held in the name of the limited liability company is not notice of the limitation, to a person who is not a member or manager of the limited liability company, unless the limitation appears in an affidavit, certificate, or other instrument that bears the name of the limited liability company and is recorded in the office for recording transfers of such real property.

§ 608.701 Application of corporation case law to set aside limited liability.--In any case in which a party seeks to hold the members of a limited liability company personally responsible for the liabilities or alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under the law of this state

§ 608.422 Management of the limited liability company.--

(1) Unless otherwise provided in its articles of organization or the operating agreement, the limited liability company shall be a member-managed company.

(2) In a member-managed company, unless otherwise provided in its articles of organization or operating agreement:

(a) Management shall be vested in its members or elected managing members in proportion to the then-current percentage or other interest of members in the profits of the limited liability company owned by all of the members or elected managing members.

(b) Except as otherwise provided in subsection (3) or in this chapter, the decision of a majority-in-interest of the members or elected managing members shall be controlling.

(3) If the articles of organization or the operating agreement provide for the management of the limited liability company by a manager or managers, the management of the limited liability company shall be vested in a manager or managers and the limited liability company shall be a manager-managed company.

(4) In a manager-managed company, unless otherwise provided in its articles of organization or operating agreement:

(a) Each manager has equal rights in the management and conduct of the limited liability company's business.

(b) Except as otherwise provided in subsection (3) or in this chapter, any matter relating to the business of the limited liability company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers.

(c) A manager:

1. Must be designated, appointed, elected, removed, or replaced by a vote, approval,

or consent of a majority-in-interest of the members; and

2. Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(5) Action requiring the consent of members or managers under this chapter may be taken without a meeting, subject to the limitations of s. 608.4231.

(6) Unless otherwise provided in the articles of organization or operating agreement, a member, managing member, or manager may appoint a proxy to vote or otherwise act for the member, managing member, or manager by signing an appointment instrument, either personally or by the member's, managing member's, or manager's attorney-in-fact.

(7) Unless otherwise provided in the articles of organization or operating agreement, a member, managing member, or manager may also hold the offices and have such other responsibilities accorded to them by the members and set out in the articles of organization or the operating agreement of the limited liability company.

§ 608.4225 General standards for managers and managing members.--

(1) Subject to ss. 608.4226 and 608.423, each manager and managing member shall owe a duty of loyalty and a duty of care to the limited liability company and all of the members of the limited liability company.

(a) Subject to s. 608.4226, the duty of loyalty is limited to:

1. Accounting to the limited liability company and holding as trustee for the limited liability company any property, profit, or benefit derived by such manager or managing member in the conduct or winding up of the limited liability company business or derived from a use by such manager or managing member of limited liability company property, including the appropriation of a limited liability company opportunity.

2. Refraining from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.

3. Refraining from competing with the limited liability company in the conduct of the limited liability company business before the dissolution of the limited liability company.

(b) The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(c) Each manager and managing member shall discharge the duties to the limited liability company and its members under this chapter or under the articles of organization or operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

(d) A manager or managing member does not violate a duty or obligation under this chapter or under the articles of organization or operating agreement merely because the manager's or managing member's conduct furthers such manager's or managing member's own interest.

(e) A manager or managing member may lend money to and transact other business with the limited liability company. As to each loan or transaction, the rights and obligations of the manager or managing member are the same as those of a person who is not a member, subject to other applicable law.

(f) This section applies to a person winding up the limited liability company business as

the personal or other legal representative of the last surviving member as if such person were a manager or managing member.

(2) In discharging a manager's or managing member's duties, a manager or managing member is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more members or employees of the limited liability company whom the manager or managing member reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, public accountants, or other persons as to matters the manager or managing member reasonably believes are within the persons' professional or expert competence; or
- (c) A committee of managers, members, or managing members of which the affected manager or managing member is not a participant if the manager or managing member reasonably believes the committee merits confidence.

(3) In discharging a manager's or managing member's duties, a manager or managing member may consider such factors as the manager or managing member deems relevant, including the long-term prospects and interests of the limited liability company and its members, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the limited liability company, the communities and society in which the limited liability company operates, and the economy of the state and the nation.

(4) A member, manager, or managing member is not acting in good faith if the member, manager, or managing member has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(5) A manager or managing member is not liable for any action taken as a manager or managing member, or any failure to take any action, if the manager or managing member performed the duties of the manager's or managing member's position in compliance with this section.

§ 608.4226 Conflicts of interest.--

(1) No contract or other transaction between a limited liability company and one or more of its members, managers, or managing members or any other limited liability company, corporation, firm, association, or entity in which one or more of its members, managers, or managing members are managers, managing members, directors, or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such members, managers, or managing members are present at the meeting of the members, managers, or managing members or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because their votes are counted for such purpose, if:

- (a) The fact of such relationship or interest is disclosed or known to the managers or managing members or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested members, managers, or managing members;
- (b) The fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve, or ratify such contract or transaction by

vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the limited liability company at the time it is authorized by the managers, managing members, a committee, or the members.

(2) For purposes of paragraph (1)(a) only, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the managers or managing members, or of the committee, who have no relationship or interest in the transaction described in subsection (1), but a transaction may not be authorized, approved, or ratified under this section by a single manager of a manager-managed company or a single managing member of a member-managed company, unless the company is a single member limited liability company. If a majority of the managers or managing members who have no such relationship or interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager or managing member with such relationship or interest in the transaction does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in that subsection, but such presence or vote of those managers or managing members may be counted for purposes of determining whether the transaction is approved under other sections of this chapter.

(3) For purposes of paragraph (1)(b) only, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority-in-interest of the members entitled to be counted under this subsection. Membership interests owned by or voted under the control of a manager or managing member who has a relationship or interest in the transaction described in subsection (1) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under paragraph (1)(b). The vote of those membership interests, however, is counted in determining whether the transaction is approved under other sections of this act. A majority-in-interest of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

§ 608.4227 Liability of members, managing members, and managers.--

(1) Except as provided in this chapter, the members, managers, and managing members of a limited liability company are not liable, solely by reason of being a member or serving as a manager or managing member, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company;

(2) Any such member, managing member, manager, or other person acting under the articles of organization or operating agreement of a limited liability company is not liable to the limited liability company or to any such other member, managing member, or manager for the member's, managing member's, manager's, or other person's good faith reliance on the provisions of the limited liability company's articles of organization or operating agreement; and

(3) The member's, managing member's, manager's, or other person's duties and liabilities may be expanded or restricted by provisions in a limited liability company's articles of organization or operating agreement.

§ 608.4228 Limitation of liability of managers and managing members.--

(1) A manager or a managing member shall not be personally liable for monetary damages to the limited liability company, its members, or any other person for any statement, vote, decision, or failure to act regarding management or policy decisions by a manager or a managing member, unless:

(a) The manager or managing member breached or failed to perform the duties as a manager or managing member; and

(b) The manager's or managing member's breach of, or failure to perform, those duties constitutes any of the following:

1. A violation of the criminal law, unless the manager or managing member had a reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against a manager or managing member in any criminal proceeding for a violation of the criminal law estops that manager or managing member from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the manager or managing member from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that such conduct was unlawful.

2. A transaction from which the manager or managing member derived an improper personal benefit, either directly or indirectly.

3. A distribution in violation of s. 608.426.

4. In a proceeding by or in the right of the limited liability company to procure a judgment in its favor or by or in the right of a member, conscious disregard of the best interest of the limited liability company, or willful misconduct.

5. In a proceeding by or in the right of someone other than the limited liability company or a member, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term "recklessness" means acting, or failing to act, in conscious disregard of a risk known, or so obvious that it should have been known, to the manager or managing member, and known to the manager or managing member, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or failure to act.

(3) A manager or managing member is deemed not to have derived an improper personal benefit from any transaction if the transaction and the nature of any personal benefit derived by the manager or managing member are not prohibited by state or federal law or the articles of organization or operating agreement and, without further limitation, the transaction and the nature of any personal benefit derived by a manager or managing member are disclosed or known to the members, and the transaction was authorized, approved, or ratified by the vote of a majority-in-interest of the members other than the managing member, or the transaction was fair and reasonable to the

limited liability company at the time it was authorized by the manager or managing member, notwithstanding that a manager or managing member received a personal benefit.

(4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the existence of other circumstances under which a manager will be deemed not to have derived an improper benefit.

§ 608.4229 Indemnification of members, managers, managing members, officers, employees, and agents.--

(1) Subject to such standards and restrictions, if any, as are set forth in its articles of organization or operating agreement, a limited liability company may, and shall have the power to, but shall not be required to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(2) Notwithstanding subsection (1), indemnification or advancement of expenses shall not be made to or on behalf of any member, manager, managing member, officer, employee, or agent if a judgment or other final adjudication establishes that the actions, or omissions to act, of such member, manager, managing member, officer, employee, or agent were material to the cause of action so adjudicated and constitute any of the following:

(a) A violation of criminal law, unless the member, manager, managing member, officer, employee, or agent had no reasonable cause to believe such conduct was unlawful.

(b) A transaction from which the member, manager, managing member, officer, employee, or agent derived an improper personal benefit.

(c) In the case of a manager or managing member, a circumstance under which the liability provisions of s. 608.426 are applicable.

(d) Willful misconduct or a conscious disregard for the best interests of the limited liability company in a proceeding by or in the right of the limited liability company to procure a judgment in its favor or in a proceeding by or in the right of a member.

§ 608.423 Limited liability company operating agreement; nonwaivable provisions.--

(1) Except as otherwise provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the limited liability company and the conduct of its business, establish duties in addition to those set forth in this chapter, and to govern relations among the members, managers, and company. Any inconsistency between written and oral operating agreements shall be resolved in favor of the written agreement. The members of a limited liability company may enter into an operating agreement before, after, or at the time the articles of organization are filed, and the operating agreement takes effect on the date of the formation of the limited liability company or on any other date provided in the operating agreement. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and limited liability company.

- (2) The operating agreement may not:
- (a) Unreasonably restrict a right to information or access to records under s. 608.4101;
 - (b) Eliminate the duty of loyalty under s. 608.4225, but the agreement may:
 - 1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - 2. Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
 - (c) Unreasonably reduce the duty of care under s. 608.4225;
 - (d) Eliminate the obligation of good faith and fair dealing under s. 608.4225, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
 - (e) Vary the requirement to wind up the limited liability company's business in a case specified in this chapter; or
 - (f) Restrict rights of a person, other than a manager, member, or transferee of a member's distributional interest, under this chapter.
- (3) The power to adopt, alter, amend, or repeal the operating agreement of a limited liability company shall be vested in the members of the limited liability company unless vested in the manager or managers of the limited liability company by the articles of organization or operating agreement, provided that any amendment to a written operating agreement shall be in writing. The operating agreement adopted by the members or by the manager or managers may be repealed or altered; a new operating agreement may be adopted by the members; and the members may prescribe in any operating agreement made by them that such operating agreement may not be altered, amended, or repealed by the manager or managers.
- (4) Unless the articles of organization or the operating agreement provides otherwise, if the management of the limited liability company is vested in a manager or managers, the managers may adopt an operating agreement to be effective only in an emergency as defined in subsection (7). The emergency operating agreement, which is subject to amendment or repeal by the members, may make all provisions necessary for managing the limited liability company during an emergency, including procedures for calling a meeting of the managers and designation of additional or substitute managers.
- (5) All provisions of the regular operating agreement consistent with the emergency regulations remain effective during the emergency. The emergency operating agreement is not effective after the emergency ends.
- (6) Actions taken by the limited liability company in good faith in accordance with the emergency operating agreement have the effect of binding the limited liability company and may not be used to impose liability on a manager, employee, or agent of the limited liability company.
- (7) An emergency exists for purposes of this section if the limited liability company's managers cannot readily be assembled because of some catastrophic event.