

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2730

By: Toure

AS INTRODUCED

An Act relating to limited liability companies;

amending Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993, Section 5, Chapter 148, O.S.L. 1992, Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993, Section 9, Chapter 148, O.S.L. 1992, as amended by Section 5, Chapter 366, O.S.L. 1993, Section 11, Chapter 148, O.S.L. 1992, as amended by Section 6, Chapter 366, O.S.L. 1993, Section 14, Chapter 148, O.S.L. 1992, Section 15, Chapter 148, O.S.L. 1992, as amended by Section 7, Chapter 366, O.S.L. 1993, Section 16, Chapter 148, O.S.L. 1992, as amended by Section 8, Chapter 366, O.S.L. 1993, Section 17, Chapter 148, O.S.L. 1992, Section 18, Chapter 148, O.S.L. 1992, as amended by Section 9, Chapter 366, O.S.L. 1993, Section 19, Chapter 148, O.S.L. 1992, Section 20, Chapter 148, O.S.L. 1992, as amended by Section 10, Chapter 366, O.S.L. 1993, Section 21, Chapter 148, O.S.L. 1992, as amended by Section 12, Chapter 366, O.S.L. 1993, Section 25, Chapter 148, O.S.L. 1992, as amended by Section 14, Chapter 366, O.S.L. 1993, Section 34, Chapter 148, O.S.L. 1992, as amended by Section 17, Chapter 366, O.S.L. 1993, Section 36, Chapter 148,

O.S.L. 1992, as amended by Section 19, Chapter 366, O.S.L. 1993, Section 37, Chapter 148, O.S.L. 1992, as amended by Section 20, Chapter 366, O.S.L. 1993, Section 38, Chapter 148, O.S.L. 1992, as amended by Section 21, Chapter 366, O.S.L. 1993, Section 40, Chapter 148, O.S.L. 1992, as amended by Section 22, Chapter 366, O.S.L. 1993 and Section 43, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1995, Sections 2001, 2004, 2005, 2008, 2010, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2024, 2033, 2035, 2036, 2037, 2039 and 2042), which relate to the Oklahoma Limited Liability Company Act; modifying reference; modifying effect of filing of certain instrument; modifying required content of articles of organization; authorizing use of trade names; conforming terminology; modifying permissible content of articles of organization; modifying standard of care required of managers; modifying effect of membership interest assignment; modifying requirement for certain affirmative vote; deleting provision related to dissolution of entity; providing for applicability of law to foreign entities; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2001), is amended to read as follows:

Section 2001. As used in this act, unless the context otherwise requires:

1. "Articles of organization" means documents filed under Section ~~20~~ 2004 of this ~~act~~ title for the purpose of forming a limited liability company;

2. "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state insolvency act;

3. "Business" means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;

4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

5. "Capital interest" means the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals;

6. "Corporation" means a corporation formed under the laws of this state or a foreign corporation as defined in this section;

7. "Event of dissociation" means an event that causes a person to cease to be a member, as provided in Section 2036 of this title;

8. "Court" includes every court and judge having jurisdiction in the case;

9. "Foreign corporation" means a corporation formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

10. "Foreign limited liability company" means an entity that is:

a. an unincorporated association,

- b. organized under the laws of a state other than the laws of this state or organized under the laws of any foreign country,
- c. organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and
- d. not required to be registered or organized under any statute of this state other than this act;

11. "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

12. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association having two or more members that is organized and existing under the laws of this state;

13. "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership as defined in this section;

14. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

15. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

16. "Membership interest" or "interest" means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;

17. "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

18. "Person" means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity; and

19. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 2. AMENDATORY Section 5, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1995, Section 2004), is amended to read as follows:

Section 2004. A. Two or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of State.

B. 1. When the Office of the Secretary of State files the articles of organization, the proposed organization becomes a limited liability company ~~under the name and subject to the purposes, conditions, and provisions stated in the articles.~~

2. Filing of the articles by the Office of the Secretary of State is conclusive evidence of the formation of the limited liability company.

SECTION 3. AMENDATORY Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2005), is amended to read as follows:

Section 2005. A. The articles of organization shall set forth:

1. The name of the limited liability company;

2. The latest date on which the limited liability company is to dissolve; and

3. ~~The street address of its principal place of business in this state and the~~ name and address of its resident agent in this state.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

SECTION 4. AMENDATORY Section 9, Chapter 148, O.S.L. 1992, as amended by Section 5, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2008), is amended to read as follows:

Section 2008. A. The name of each limited liability company as set forth in its articles of organization:

1. Shall contain either the words "limited liability company" or "limited company" or the abbreviations "L.L.C." or "L.C." The word "limited" may be abbreviated as "LTD." and the word "Company" may be abbreviated as "CO."; and

2. a. May not be the same as or indistinguishable from:

- (1) names upon the records in the Office of the Secretary of State of then existing limited liability companies whether organized pursuant to the laws of this state or licensed or registered as foreign limited liability companies, or
- (2) names upon the records in the Office of the Secretary of State of corporations organized under the laws of this state or of foreign corporations registered in accordance with the laws of this state then existing or which existed at any time during the preceding three (3) years, or
- (3) names upon the records in the Office of the Secretary of State of limited partnerships formed under the laws of this state or of foreign limited partnerships registered in accordance with the laws of this state, or

(4) trade names, fictitious names, or other names reserved with the Secretary of State.

b. The provisions of subparagraph a of this paragraph shall not apply if one of the following is filed with the Secretary of State:

(1) the written consent of the other limited liability company, corporation, limited partnership, or holder of the trade name, fictitious name or other reserved name to use the same or indistinguishable name with the addition of one or more words, numerals, numbers or letters to make that name distinguishable upon the records of the Secretary of State, except that the addition of words, numerals, numbers or letters to make the name distinguishable shall not be required where such written consent states that the consenting entity is about to change its name, cease to do business, withdraw from the state or be wound up, or

(2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such limited liability company or holder of a limited liability company name to the use of such name in this state.

B. A limited liability company may use a trade name that is available under subsection A if it files the trade name with the Office of the Secretary of State and pays any applicable fees.

SECTION 5. AMENDATORY Section 11, Chapter 148, O.S.L. 1992, as amended by Section 6, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2010), is amended to read as follows:

Section 2010. A. Each limited liability company shall continuously maintain in this state:

~~1. A principal office; and~~

~~2. A a resident agent for service of process on the limited liability company that is an individual resident of this state, or a domestic or qualified foreign corporation, limited liability company, or limited partnership.~~

B. 1. A limited liability company may designate or change its resident agent or ~~principal office~~ the address of its resident agent by filing with the Office of the Secretary of State a statement authorizing the designation or change and signed by any manager.

~~2. A limited liability company may change the address of its resident agent by filing with the Office of the Secretary of State a statement of the change signed by any manager.~~

~~3. A designation or change of a ~~principal office~~ or resident agent or address of the resident agent for a limited liability company under this subsection is effective when the Office of the Secretary of State files the statement.~~

C. 1. A resident agent who changes his address in the state may notify the Office of the Secretary of State of the change by filing with the Office of the Secretary of State a statement of the change signed by him or on his behalf.

2. The statement shall include:

- a. the name of the limited liability company for which the change is effective,
- b. the new address of the resident agent, and
- c. the date on which the change is effective, if to be effective after the filing date.

~~3. If the new address of the resident agent is the same as the new address of the principal office of the limited liability company, the statement may include a change of address of the principal office if:~~

- ~~a. the resident agent notifies the limited liability company of the change in writing, and~~

~~b. the statement recites that the resident agent has done so.~~

4. Unless otherwise provided in the statement, the change of address of the resident agent ~~or principal office~~ is effective when the Office of the Secretary of State files the statement.

D. 1. A resident agent may resign by filing with the Office of the Secretary of State a counterpart or photocopy of the signed resignation.

2. Unless a later time is specified in the resignation, it is effective thirty (30) days after it is filed.

SECTION 6. AMENDATORY Section 14, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1995, Section 2013), is amended to read as follows:

Section 2013. A. Except as otherwise provided in the ~~articles of organization,~~ operating agreement, or this act, a limited liability company shall be managed by or under the authority of one or more managers who may but need not be members.

B. The ~~articles of organization or~~ operating agreement may prescribe qualifications for managers.

C. The number of managers shall be specified in or fixed in accordance with the ~~articles of organization or~~ operating agreement.

SECTION 7. AMENDATORY Section 15, Chapter 148, O.S.L. 1992, as amended by Section 7, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2014), is amended to read as follows:

Section 2014. Unless otherwise provided in the ~~articles of organization or~~ operating agreement:

1. The election of managers shall be by majority vote of the members; and

2. Any or all managers may be removed, with or without cause, by the written consent of the members.

SECTION 8. AMENDATORY Section 16, Chapter 148, O.S.L. 1992, as amended by Section 8, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2015), is amended to read as follows:

Section 2015. ~~The articles of organization or~~ operating agreement may provide that the business of the limited liability company shall be managed without designated managers. So long as such provision continues in effect:

1. The members shall be deemed to be managers for purposes of applying provisions of this act, unless the context clearly requires otherwise;

2. The members shall have and be subject to all duties and liabilities of managers; and

3. A member signing on behalf of the limited liability company shall sign as a manager.

SECTION 9. AMENDATORY Section 17, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1995, Section 2016), is amended to read as follows:

Section 2016. Subject to the provisions of Section ~~18~~ 2017 of this act title:

1. ~~A manager shall discharge his duties as a manager in good faith, with the care an ordinary prudent person in a like position could exercise under similar circumstances, and in the manner he reasonably believes to be in the best interests of the limited liability company~~ member or manager shall not be liable, responsible or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence or willful misconduct;

2. In discharging his duties, a manager may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- a. one or more employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented,
- b. legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence, or
- c. a committee of managers of which he is not a member if the manager reasonably believes the committee merits confidence;

3. A ~~manager is not acting in good faith~~ manager's reliance is unwarranted if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph 2 of this section unwarranted;

4. A manager is not liable for any action taken as a manager, or any failure to take any action, if he performed the duties of his office in compliance with this section; and

5. Except as otherwise provided in the articles of organization or operating agreement, every manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by the manager without the informed consent of the members from any transaction connected with the conduct or winding up of the limited liability company or from any personal use by him of its property.

SECTION 10. AMENDATORY Section 18, Chapter 148, O.S.L. 1992, as amended by Section 9, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2017), is amended to read as follows:

Section 2017. A. Subject to subsection B of this section, the ~~articles of organization or~~ operating agreement may:

1. Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in Section 2016 of this title; and

2. Provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in any proceeding because he is or was a member or manager.

B. No provision permitted under subsection A of this section shall limit or eliminate the liability of a manager for:

1. Any breach of the manager's duty of loyalty to the limited liability company or its members;

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

3. Any transaction from which the manager derived an improper personal benefit.

SECTION 11. AMENDATORY Section 19, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1995, Section 2018), is amended to read as follows:

Section 2018. Except as otherwise provided in the ~~articles of organization or~~ operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be made by majority vote of the managers.

SECTION 12. AMENDATORY Section 20, Chapter 148, O.S.L. 1992, as amended by Section 10, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2019), is amended to read as follows:

Section 2019. A. Every manager is an agent of the limited liability company for the purpose of its business, and the act of every manager, including the execution in the limited liability company name of any instrument for apparently carrying on the business of the limited liability company of which he is a manager, binds the limited liability company, unless the manager so acting lacks the authority to act for the limited liability company in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority. The unauthorized acts of the manager shall bind the limited liability

company as to persons acting in good faith who have no knowledge of the fact that the manager had no such authority.

B. Subject to the provisions of subsection A of this section and Section ~~30~~ 2019.1 of this ~~act~~ title, instruments and documents providing for the acquisition, mortgage, or disposition of real or personal property of the limited liability company shall be valid and binding upon the limited liability company if executed by one or more of its managers.

SECTION 13. AMENDATORY Section 21, Chapter 148, O.S.L. 1992, as amended by Section 12, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2020), is amended to read as follows:

Section 2020. A. Unless otherwise provided in the ~~articles of organization or~~ operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Unless the context otherwise requires, references in this act to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as required in this act, and unless otherwise provided in the ~~articles of organization or~~ operating agreement, a majority vote of the members shall be required to approve the following matters:

1. The dissolution and winding up of the limited liability company;

2. The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited liability company;

3. Merger of the limited liability company with another domestic limited liability company or other business entity; and

4. An amendment to the articles of organization or operating agreement.

C. ~~The articles of organization or~~ operating agreement may alter the above voting rights and provide for any other voting rights of members.

SECTION 14. AMENDATORY Section 25, Chapter 148, O.S.L. 1992, as amended by Section 14, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2024), is amended to read as follows:

Section 2024. A. 1. Except as otherwise provided in the ~~articles of organization or the~~ operating agreement, a member is obligated to the limited liability company to perform any written promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or other reason.

2. If a member does not make the required contribution of property or services, he is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value, as stated in the operating agreement, of the stated contribution that has not been made.

B. 1. The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only upon compliance with the operating agreement, or, if the operating agreement does not so provide, with the unanimous consent of the members.

2. A compromise shall not impair the right of any creditor to enforce the obligation or to require the obligation to be enforced if:

- a. such creditor relied upon the obligation and the absence in the operating agreement of the limited liability company's authority to compromise the obligation, or

b. a duty to the creditor was breached in the making of the compromise.

C. An operating agreement may provide that the capital interest of a member who fails to make any contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's capital interest in the limited liability company, subordinating the defaulting member's capital interest in the limited liability company to that of the nondefaulting members, a forced sale of the capital interest in the limited liability company, forfeiture of the capital interest in the limited liability company, the lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's capital interest in the limited liability company by appraisal or by formula and redemption and sale of the member's capital interest in the limited liability company at that value, or other remedy or consequences.

SECTION 15. AMENDATORY Section 34, Chapter 148, O.S.L. 1992, as amended by Section 17, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2033), is amended to read as follows:

Section 2033. A. Unless otherwise provided in the ~~articles of organization or an~~ operating agreement:

1. A membership interest is assignable in whole or in part;
2. An assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or become or to exercise any rights or powers of a member;
3. An assignment entitles the assignee to receive such distribution or distributions to which the assignor was entitled to the extent assigned;
4. Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have

the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to Section 2036 of this title, and the removal of an assignor shall not itself cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from his liability as a member solely as a result of the assignment.

B. ~~The articles of organization or an~~ operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such certificates.

C. ~~A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his membership interest.~~ Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

SECTION 16. AMENDATORY Section 36, Chapter 148, O.S.L. 1992, as amended by Section 19, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2035), is amended to read as follows:

Section 2035. A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. ~~The articles of organization or an~~ operating agreement provides; or

2. The members consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under ~~the articles of organization,~~ any operating agreement and this act. However, unless otherwise provided in the ~~articles of organization,~~ an operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of his assignor to make contributions as provided in Section 2024 of this title, but shall not be liable for the obligations of his assignor under Section 2031 of this title. However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time he became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from his liability to the limited liability company under Sections 2024 and 2031 of this title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns his entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of his interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or

2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

SECTION 17. AMENDATORY Section 37, Chapter 148, O.S.L. 1992, as amended by Section 20, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2036), is amended to read as follows:

Section 2036. A. A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

1. The member withdraws by voluntary act from the limited liability company as provided in subsection C of this section;

2. The member ceases to be a member of the limited liability company as provided in Section ~~2034~~ 2035 of this title;

3. The member is removed as a member either:

- a. in accordance with the operating agreement, or
- b. except as provided in writing in the operating agreement, when the member assigns all of his interest in the limited liability company, by an affirmative vote ~~of a majority in number~~ of the members who have not assigned their interests;

4. Subject to contrary written provision in the operating agreement, or written consent of ~~all~~ the other members:

a. when the member:

- (1) makes an assignment for the benefit of creditors,
- (2) files a voluntary petition in bankruptcy,
- (3) is adjudicated as bankrupt or insolvent,
- (4) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation,

- (5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature, or
 - (6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties,
- b. after one hundred twenty (120) days from the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated,
- c. ~~when,~~ in the case of a member who is an individual:
- (1) his death, or
 - (2) the entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate,
- d. ~~when,~~ in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee,
- e. ~~when,~~ in the case of a member that is a separate limited liability company, the dissolution and

commencement of winding up of the separate limited liability company,

f. ~~when,~~ in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its charter, or

g. ~~when,~~ in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

B. The members may provide in writing in the operating agreement for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

C. Unless the operating agreement specifically denies in writing the power to withdraw voluntarily, a member may withdraw at any time by giving ninety (90) days' written notice to the other members or the notice required by the operating agreement. Unless the operating agreement specifically provides in writing a right to withdraw voluntarily, or if the withdrawal occurs as a result of otherwise wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising his power to withdraw unless such power was denied in the operating agreement.

D. If a member who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the member's executor, administrator, guardian, conservator, or other legal representative has all of the rights of an assignee of the member's interest.

SECTION 18. AMENDATORY Section 38, Chapter 148, O.S.L. 1992, as amended by Section 21, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2037), is amended to read as follows:

Section 2037. ~~A.~~ A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The time or the occurrence of events specified in writing in the ~~articles of organization or~~ operating agreement;

2. The written consent of ~~all of~~ the members;

3. An event of dissociation of a member, unless the limited liability company is continued either by the ~~unanimous~~ consent of the remaining members within ninety (90) days following the occurrence of any such event or as otherwise provided in writing in the operating agreement; or

4. Entry of a decree of judicial dissolution under Section 2038 of this title.

SECTION 19. AMENDATORY Section 40, Chapter 148, O.S.L. 1992, as amended by Section 22, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2039), is amended to read as follows:

Section 2039. A. Except as otherwise provided in the ~~articles of organization or~~ operating agreement:

1. The business or affairs of the limited liability company may be wound up in one of the following ways:

a. by the managers, or

b. if one or more of the members or managers have engaged in conduct that casts reasonable doubt on their ability to wind up the business or affairs of the limited liability company, or upon other cause shown,

by the district court on application of any member,
his legal representative, or assignee; and

2. The persons winding up the business or affairs of the limited liability company may, in the name of, and for and on behalf of, the limited liability company:

- a. prosecute and defend suits,
- b. settle and close the business of the limited liability company,
- c. dispose of and transfer the property of the limited liability company,
- d. discharge the liabilities of the limited liability company, and
- e. distribute to the members any remaining assets of the limited liability company.

B. Except as provided in subsections C and D ~~and E~~ of this section, after an event causing dissolution of the limited liability company any manager can bind the limited liability company:

1. By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

2. By any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

~~C. The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for purposes of paragraph 2 of subsection B of this section.~~

~~D.~~ An act of a manager or member that is not binding on the limited liability company pursuant to subsection B of this section is binding if it is otherwise authorized by the limited liability company.

~~E.~~ D. An act of a manager or member that would be binding under subsection B or would be otherwise authorized but that is in

contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

SECTION 20. AMENDATORY Section 43, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1995, Section 2042), is amended to read as follows:

Section 2042. A. Subject to the Constitution of this state:

1. The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers and members; and

2. A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

B. A foreign limited liability company holding a valid registration in this state shall have no greater rights and privileges than a domestic limited liability company. The registration shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

C. The provisions of this section shall apply to limited liability partnerships and other entities formed under the laws of another state or jurisdiction, if the nature of such partnership or entity is comparable to a limited liability company formed under the Oklahoma Limited Liability Company Act.

SECTION 21. This act shall become effective November 1, 1996.

45-2-8808

MAH