

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL NO. 838

By: Dahm

6 AS INTRODUCED

7 An Act relating to limited liability companies;
8 authorizing operating agreements to establish a
9 series of members, managers, transferable interests
10 or assets; specifying requirements for an operating
11 agreement establishing a particular series; stating
12 when limitations of liability apply; prohibiting
13 certain restrictions; providing powers of series once
14 established; stating certain discretionary powers of
15 an operating agreement establishing a series;
16 providing method of management for a series;
17 providing certain method for an entitled
18 distribution; authorizing a limited liability company
19 to make certain distributions under certain
20 conditions; defining certain term; allowing
21 termination of a series; clarifying status of entity;
22 stating method of termination; providing that persons
23 winding up affairs of a series to take certain
24 actions; specifying persons who may wind up affairs
of a series; providing method of a foreign limited
liability company to establish series; providing for
codification; and providing an effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 2101 of Title 18, unless there
23 is created a duplication in numbering, reads as follows:
24

1 A. An operating agreement may establish or provide for the
2 establishment of one (1) or more designated series of members,
3 managers, transferable interests or assets. This section shall
4 govern any matter with respect to a series to the extent not
5 otherwise provided in the operating agreement.

6 B. Subject to subsection C of this section, if an operating
7 agreement establishes or provides for the establishment of a
8 particular series:

9 1. The debts, obligations or other liabilities of the
10 particular series, whether arising in contract, tort or otherwise,
11 shall be enforceable against the assets of the series only and not
12 against:

- 13 a. the assets of the limited liability company generally
14 or any other series thereof, or
- 15 b. any member of the limited liability company;

16 2. The debts, obligations or other liabilities of the limited
17 liability company generally or any other series thereof, whether
18 arising in contract, tort or otherwise, shall not be enforceable
19 against the assets of the particular series.

20 C. The limitations on liabilities in subsection B of this
21 section shall only apply if:

22 1. The records for the particular series that account for the
23 assets of the series are separately maintained from the records that
24 account for the assets of the limited liability company or any other

1 series thereof. Records that reasonably identify the assets of a
2 particular series, including by specific listing, category, type,
3 quantity, computational or allocational formula or procedure such as
4 a percentage or share of assets or by any other method where the
5 identity of the assets is objectively determinable, shall be deemed
6 to account for the assets of the particular series separately from
7 the assets of the limited liability company or any other series
8 thereof;

9 2. The operating agreement specifically provides for the
10 limitations on liabilities; and

11 3. Notice of the limitations on liabilities of the particular
12 series is included in the articles of organization. Notice under
13 this paragraph shall be sufficient whether or not the limited
14 liability company has established or referenced any particular
15 series in the notice.

16 D. Nothing in this section, an operating agreement or articles
17 of organization shall restrict:

18 1. A series or limited liability company on behalf of a series
19 from agreeing in the operating agreement or otherwise that any or
20 all of the debts, obligations or other liabilities of the limited
21 liability company generally or any other series thereof shall be
22 enforceable against the assets of the series;

23 2. A limited liability company from agreeing in the operating
24 agreement or otherwise that any or all of the debts, obligations or

1 other liabilities of a series shall be enforceable against the
2 assets of the limited liability company generally; or

3 3. Notwithstanding any other provision of law, a member or
4 manager from agreeing in the operating agreement or otherwise to be
5 personally liable for any or all of the debts, obligations or other
6 liabilities of a series.

7 E. A series established under this section shall have the power
8 and capacity to, in its own name, contract, hold title to assets
9 including real, personal and intangible property, grant liens and
10 security interests and sue and be sued. A series may:

11 1. Have separate rights, powers or duties with respect to
12 specified property or obligations of the limited liability company
13 or profits and losses associated with specified property or
14 obligations;

15 2. Carry on any lawful purpose regardless of whether for
16 profit, except for the purpose of acting as a financial institution
17 or acting as an insurer as may be defined in law;

18 3. Hold assets directly or indirectly, including in the name of
19 the series or the name of the limited liability company.

20 F. An operating agreement that establishes or provides for the
21 establishment of a series may:

22 1. Provide for classes or groups of members or managers of the
23 series having the relative rights, powers and duties specified in
24 the operating agreement;

1 2. Provide for and specify the future creation of additional
2 classes or groups of members or managers of the series having the
3 relative rights, powers and duties as may be established, including
4 rights, powers and duties senior to existing classes and groups of
5 members or managers of the series;

6 3. Provide for the taking of an action, including the amendment
7 of the operating agreement, without the vote or approval of any
8 member or manager or class or group of members or managers of the
9 series;

10 4. Provide that any member or class or group of members of a
11 series shall have no voting rights;

12 5. Grant to all or certain identified members or managers or
13 class or group of members or managers of the series the right to
14 vote on any matter separately or with all or any class or group of
15 members or managers of the series. Voting by members or managers
16 may be on a per capita, number, financial interest, class, group or
17 other basis.

18 G. The management of a series shall be vested as follows:

19 1. A member shall cease to be a member of a series upon the
20 divestment of all of the member's transferable interests of the
21 series. The fact that a person ceases to be a member of a
22 particular series shall not by itself cause the person to cease to
23 be a member of the limited liability company or any other series
24

1 thereof or cause the termination of the series, regardless of
2 whether the person was the last remaining member of the series; or

3 2. If the operating agreement provides for the management of
4 the series in whole or in part by a manager, the management shall be
5 vested in one (1) or more managers who shall be chosen as provided
6 in the operating agreement and who shall hold the offices and have
7 the responsibilities as specified in the agreement. A manager shall
8 cease to be a manager of a series as provided in an operating
9 agreement. The fact that a person ceases to be a manager of a
10 particular series shall not by itself cause the person to cease to
11 be a manager of the limited liability company or any other series
12 thereof.

13 H. Notwithstanding any other provisions of law and subject to
14 subsections I and K of this section, if a member of a series becomes
15 entitled to receive a distribution, the member has the status of,
16 and is entitled to all remedies available to, a creditor of the
17 series with respect to the distribution. An operating agreement may
18 provide for the establishment of a record date for allocations and
19 distributions associated with a series.

20 I. Notwithstanding any other provision of law, a limited
21 liability company may make a distribution with respect to a series
22 that has been established under this section unless the total assets
23 of the series after the distribution would be less than the sum of
24 its total liabilities plus the amount that would be needed, if the

1 series were to be dissolved, wound up and terminated at the time of
2 the distribution, to satisfy the preferential rights upon winding up
3 and termination of members whose preferential rights are superior to
4 those of the persons receiving the distribution. A member that
5 receives a distribution knowing that the distribution was made in
6 violation of this subsection is personally liable to the series for
7 the amount of the distribution. This subsection shall not affect
8 any obligation or liability of a member under an agreement or other
9 applicable law for the amount of a distribution. For purposes of
10 this subsection, "distribution" does not include amounts
11 constituting reasonable compensation for present or past services or
12 reasonable payments made in the ordinary course of business under a
13 bona fide retirement plan or other benefits program.

14 J. A series established under this section may be terminated
15 and its affairs wound up without causing the dissolution of the
16 limited liability company. The termination of the series shall not
17 affect the limitations on liabilities of the series as provided in
18 subsection B of this section. A series is terminated and its
19 affairs shall be wound up upon the occurrence of any of the
20 following:

21 1. The dissolution of the limited liability company pursuant to
22 this title;

23 2. The time or happening of events specified in the operating
24 agreement;

1 3. The vote or consent of members of the series who own more
2 than two-thirds (2/3) of the interests in the profits of the series;
3 or

4 4. On application by a member or manager of the series, the
5 entry of a court order terminating the series on the grounds that it
6 is not reasonably practicable to carry on the purposes of the series
7 in conformity with the operating agreement.

8 K. A person winding up the affairs of a series may, in the name
9 of the limited liability company and for and on behalf of the
10 limited liability company and the series, take all actions with
11 respect to the series as authorized by this title. The person shall
12 provide for the claims and obligations of the series and distribute
13 the assets of the series as provided in this title. Actions taken
14 in accordance with this subsection shall not affect the liability of
15 members and shall not impose liability on a liquidating trustee
16 appointed in accordance with this subsection. Notwithstanding any
17 other provision of law, the following persons may wind up the
18 affairs of a series:

19 1. A manager of the series who has not wrongfully terminated
20 the series;

21 2. If the series has no manager who qualifies under paragraph 1
22 of this subsection, the members of the series or a person approved
23 by the members;

1 3. The members who own more than fifty (50%) percent of the
2 interests in the profits of the series;

3 4. On application of a member or manager of the series or any
4 personal representative or assignee of the member or manager, and
5 upon cause shown, a court or a liquidating trustee appointed by the
6 court.

7 L. A foreign limited liability company doing business in this
8 state and governed by an operating agreement that establishes or
9 provides for the establishment of one (1) or more designated series
10 of members, managers, transferable interests or assets shall state
11 the following on its certificate of authority:

12 1. That the operating agreement of the foreign limited
13 liability company establishes or provides for the establishment of
14 series having separate rights, powers or duties with respect to
15 specified property or obligations of the foreign limited liability
16 company or profits and losses associated with specified property or
17 obligations;

18 2. If any of the debts, obligations or other liabilities of any
19 particular series, whether arising in contract, tort or otherwise,
20 shall be enforceable against the assets of the particular series
21 only and not against the assets of the foreign limited liability
22 company generally or any other series thereof; and

23 3. If any of the debts, obligations or other liabilities of the
24 foreign limited liability company generally or any other series

1 thereof, whether arising in contract, tort or otherwise, shall be
2 enforceable against the assets of the particular series.

3 SECTION 2. This act shall become effective November 1, 2019.
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