



Ohio Revised Code

Section 1706.08 Limited liability company operating agreements.

Effective: April 12, 2021

Legislation: Senate Bill 276 - 133rd General Assembly

(A) Except as otherwise provided in divisions (B) and (C) of this section, both of the following apply:

(1) An operating agreement governs relations among the members as members and between the members and the limited liability company.

(2) To the extent that an operating agreement does not otherwise provide for a matter described in division (A)(1) of this section, this chapter governs the matter.

(B)(1) To the extent that, at law or in equity, a member, manager, or other person has duties, including fiduciary duties, to the limited liability company, or to another member or to another person that is a party to or is otherwise bound by an operating agreement, those duties may be expanded or restricted or eliminated by a written operating agreement. However, an operating agreement may not eliminate the implied covenant of good faith and fair dealing.

(2) A written operating agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including breach of fiduciary duties, of a member, manager, or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by an operating agreement. However, an operating agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing.

(3) A member, manager, or other person shall not be liable to a limited liability company or to another member or to another person that is a party to or is otherwise bound by an operating agreement for breach of fiduciary duty for the member's or other person's good faith reliance on the operating agreement.

(4) An operating agreement may provide either or both of the following:



(a) That, a member or assignee who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement shall be subject to specified penalties or specified consequences;

(b) That at the time or upon the happening of events specified in the operating agreement, a member or assignee may be subject to specified penalties or consequences.

(5) A penalty or consequence that may be specified under division (B)(4) of this section may include any of the following:

(a) Reducing or eliminating the defaulting member's or assignee's proportionate interest in a limited liability company;

(b) Subordinating the member's or assignee's membership interest to that of nondefaulting members or assignees;

(c) Forcing a sale of the member's or assignee's membership interest;

(d) Forfeiting the defaulting member's or assignee's membership interest;

(e) The lending by other members or assignees of the amount necessary to meet the defaulting member's or assignee's commitment;

(f) A fixing of the value of the defaulting member's or assignee's membership interest by appraisal or by formula and redemption or sale of the membership interest at that value;

(g) Any other penalty or consequence.

(C) An operating agreement shall not do any of the following:

(1) Vary the nature of the limited liability company as a separate legal entity under division (A) of section 1706.04 of the Revised Code;



- (2) Except as otherwise provided in division (B) of section 1706.082 of the Revised Code, restrict the rights under this chapter of a person other than a member, dissociated member, or assignee;
- (3) Vary the power of a court under section 1706.171 of the Revised Code;
- (4) Eliminate the implied covenant of good faith and fair dealing;
- (5) Eliminate or limit the liability of a member or other person for any act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing;
- (6) Waive the requirements of division (A) of section 1706.281 of the Revised Code;
- (7) Waive the prohibition on issuance of a certificate of a membership interest in bearer form under division (D) of section 1706.341 of the Revised Code;
- (8) Waive the requirements of division (B) of section 1706.761 of the Revised Code.