

**FORMATION OF
MULTI-MEMBER LIMITED LIABILITY COMPANY**

CHECKLIST

I. GENERAL.

- A. *Name.* The name must include "limited liability company", "LLC", "L.L.C.", "Limited", "ltd." or "ltd". Cannot include "Corp." etc.

- B. *Formation Date.* _____

- C. *Effective Date of Operating Agreement.* _____

- D. *Members.* Please provide the full name, address, fax number, email address and taxpayer identification number of each member.

See Interaction Under: _____

See below

Name	Street Address	Phone Number(s) and Email Address	Tax ID No.
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E. *Term.*

Perpetual

Other

F. *Address/Principal Place of Business.* Please provide the address and county of principal place of business of company.

See I.D above.

See below.

G. *Statutory Agent.* Please provide the name and address for the Statutory Agent.

See Interaction Under: _____

See below.

H. *Nature of Business.* What is the nature of the business?

Real Estate

Investments

Other _____

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I. *Non-compete Issues.*

- (1) Are there any restrictions on the ability of members to compete or carry on other business activities?

Yes

No

- (2) If yes, what are the terms of the non-compete, including the business geographic area and time frame.

J. *Capital Contribution.* How much and in what form? (See II.F.)

\$ _____

Cash

Real Property

Other _____

K. *Member Loans.* Any required loans?

Yes

No

If yes, what are the terms (interest rate, payment schedule, maturity date, subordination and transfer ability)?

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L. *Additional Capital Contributions.*

(1) Are additional capital contributions required?

Yes

No

(2) Are they voluntary?

Yes

No

(3) If required, what are the consequences if such contributions are not made?

(4) Are future contributions expected? (Consider book up issues.)

Yes

No

M. *Timing of Cash Distributions.*

(1) Timing and amount of cash distributions determined by:

Majority of Members

Manager

Other (explain)

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(2) Do you want to include an obligation to distribute cash to the members in an amount equal to maximum tax liability of any member?

Yes

No

(3) Will the distribution be:

Quarterly to match estimated payments

Annually by March 1st

Other Time Period: _____

(4) Other cash distribution provision.

N. *Management.*

Manager Managed

Member Managed

(1) Name, address, email, fax number and tax I.D. number of Manager.

See _____ above

See Interaction Under: _____

Other

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(2) Can a Manager be removed?

Yes

No

(3) If so, for cause or without cause?

For Cause

Without Cause

(4) What percent vote of the other Members is required to remove the Manager or select a new Manager?

_____ %

(5) Must the Manager be a Member?

Yes

No

(6) If member managed, governed by Majority in Interest?

Yes

No

(7) If not majority, then how?

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(8) Who are the officers to be?

P. Use:

Detailed Description of Authority (use if you have “*investor*” members)

Brief Description of Authority

Q. *Consent.*

Unanimous Consent

Supermajority Consent

(1) Consent for Major Actions:

Majority

Super Majority (____%)

Unanimous

R. *Compensation.*

(1) Will members be compensated for their services?

Yes

No

(2) If yes, who and how much?

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S. *Are there any Affiliated Transactions?*

Yes

No

(1) If yes, what are they?

T. *Who can call a meeting?*

Any Member

Majority in Interest

Manager

Other _____

U. *Do you want Actions in Writing only, with no specific provision for meetings?*

Yes

No

V. *Who is necessary to sign significant documents like deeds, mortgages, etc?*

Any Member

Any Manager

Two or more Members or Managers

Any Officer

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W. *Will financials be:*

- Audited
- Compiled
- Reviewed
- Prepared Internally

X. *How often will financials be supplied to members?*

Y. *Who is the accountant?*

- See Interaction Under: _____
- See below

Z. *Who can require an audit?*

- Member
- Majority in Interest of Members
- None

AA. *If so, who pays?*

- Company
- Requesting Party
- Other: _____

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BB. *Who is the tax matters partner?* Must be a member.

See _____ above

Other _____

CC. *Buy-Sell Provisions.*

(1) Transfers during life. Absolute restriction unless consent by:

Other Members

Manager

(2) Right of first refusal?

Yes

No

(3) Transfers to family and related entities without consent?

Yes

No

(4) Trigger events such as:

Death

Disability

Termination of employment with Company or related entities

Involuntary Transfers

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(5) Method of determination of purchase price.

Formula

Appraisal

Internal Decision

Other _____

(6) Redemption or cross purchase?

Redemption

Cross Purchase

(7) Voluntary or mandatory?

Buyer:

Voluntary

Mandatory

Seller:

Voluntary

Mandatory

(8) Insurance funding.

Yes

No

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(9) Payment terms.

Payment amounts over time (describe)

At closing

DD. *Deadlock (50/50 Deals).*

(1) What is the tie-breaker in the event that members do not agree on an action to be taken by the company?

King Solomon Provision

Coin Flip

Other (explain)

EE. *Drag Along/Tag Along, or both?*

Drag Along

Tag Along

Both

Neither

FF. *Who has power of attorney from Members for Company filings?*

See _____ above

Other _____

GG. *Arbitration or Court?*

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Arbitration

Court

HH. *Both local?*

Yes

No

II. *SS-4 Needed?*

Yes

No

(1) SS-4 prepared by:

Attorney

Accountant

Other _____

(2) If _____ is to prepare, please provide us with the number of employees expected in the next twelve months for purposes of completing the Form SS-4 - Application for Employer Identification Number.

II. TAX AND ALLOCATION ISSUES.

A. *Are allocations pro rata based on capital contribution?*

Yes

No

B. *Is there a non-contributing member?** [profit and loss allocation and income tax issues].

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Yes

No

C. *What is the percentage interest for each member?*

D. *Are there special cash distributions, return preferences, or capital repayment?*

Special cash distributions

Return preferences

Capital repayment

E. *If there are special distributions, when and from what source?*

Annually

Upon sale of assets

Other: _____

Operations

Capital Transaction

Both

F. *Value and form of capital contribution (cash, property, etc.)* [Contribution of real property raises tax issues*.]

Contribution made

To be made

G. *Are any Members guaranteeing LLC debt?**

Yes

No

* Special allocation language required.

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H. *If special allocations, have examples run by accountants based on projected financial results.*

I. *Self-Employment Tax Issues.*

- (1) If members are actively involved in the business, their allocation of profit will be subject to self-employment tax (up to the wage base limit except for the Medicare tax (2.9%) which has no wage base limit.)
- (2) If have a manager managed LLC not in the consulting business with passive members owning 20% or more, consider bifurcation of Manager return. (See proposed Reg. §1.1402(a)-(z))

J. *Fiscal Year.*

- (1) Will fiscal year be calendar year?

Yes

No

- (2) If not, what fiscal year end? _____

K. *Accounting Method.*

- (1) Will the entity use:

Accrual

Cash Basis