

CHAPTER 263

CORPORATIONS AND ASSOCIATIONS

HOUSE BILL 04-1399

BY REPRESENTATIVE(S) Williams T., Carroll, and Hall;
also SENATOR(S) Kester.

AN ACT

**CONCERNING STATUTORY PROVISIONS GOVERNING LIMITED LIABILITY COMPANIES CONTAINED IN
TITLE 7 OF THE COLORADO REVISED STATUTES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 7-80-102 (11) (a), Colorado Revised Statutes, is amended to read:

7-80-102. Definitions. As used in this article, unless the context otherwise requires:

(11) (a) "Operating agreement" means any agreement of all of the members ~~or all of the members and the company~~ as to the affairs of a limited liability company and the conduct of its business. Except as otherwise provided in this article or as otherwise required by a written operating agreement, the operating agreement need not be in writing. ~~The AN~~ operating agreement may contain any provisions required or permitted by section 7-80-108 (1). An operating agreement includes any amendments ~~agreed to by all of the members or adopted in such other manner as may be provided in a written~~ TO THE operating agreement.

SECTION 2. 7-80-104 (1) (k), Colorado Revised Statutes, is amended to read:

7-80-104. Powers. (1) Each limited liability company formed and existing under this article may:

(k) Indemnify a member or manager or former member or manager of the limited liability company as provided in section ~~7-80-410~~ 7-80-407;

SECTION 3. 7-80-108 (2) and (3), Colorado Revised Statutes, as 7-80-108 (2) (d) will become effective July 1, 2004, are amended, and the said 7-80-108 is further

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

amended BY THE ADDITION OF A NEW SUBSECTION, to read:

7-80-108. Effect of operating agreement - nonwaivable provisions. (2) An operating agreement may not:

(a) Unreasonably ~~restrict a member's right of access to books and records under section 7-80-411 or 7-80-712~~ REDUCE THE DUTY OF CARE UNDER SECTION 7-80-404 (2);

(b) Unreasonably ~~reduce the duty of care under section 7-80-406~~ RESTRICT THE RIGHTS OF MEMBERS AND MANAGERS UNDER SECTION 7-80-408;

(c) (I) ~~EXCEPT AS PERMITTED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (c), eliminate the obligation to perform duties in good faith under section 7-80-406; except that the members by agreement may determine the standards by which the performance of the obligation is to be measured, if such standards are not manifestly unreasonable~~ ANY OF THE DUTIES SPECIFIED IN SECTION 7-80-404 (1), BUT:

(A) THE OPERATING AGREEMENT MAY IDENTIFY TYPES OR CATEGORIES OF ACTIVITIES THAT DO NOT VIOLATE ANY OF THE DUTIES SPECIFIED IN SECTION 7-80-404 (1) (a) OR (1) (b) IF THE TYPES OR CATEGORIES IDENTIFIED ARE NOT UNREASONABLE; AND

(B) ALL OF THE MEMBERS OR A NUMBER OR PERCENTAGE SPECIFIED IN THE OPERATING AGREEMENT MAY AUTHORIZE OR RATIFY, AFTER FULL DISCLOSURE OF ALL MATERIAL FACTS, AN ACT OR TRANSACTION THAT OTHERWISE WOULD VIOLATE ANY OF THE DUTIES SPECIFIED IN SECTION 7-80-404 (1) (a) OR (1) (b) IF THE NUMBER OR PERCENTAGE IS NOT UNREASONABLE.

(II) AN OPERATING AGREEMENT MAY ELIMINATE OR MODIFY, IF THE ELIMINATION OR MODIFICATION IS NOT UNREASONABLE:

(A) THE DUTIES SPECIFIED IN SECTION 7-80-404 (1) (c); AND

(B) THE DUTY SPECIFIED IN SECTION 7-80-404 (1) (a) TO ACCOUNT TO THE LIMITED LIABILITY COMPANY AND HOLD AS TRUSTEE FOR IT ANY PROPERTY, PROFIT, OR BENEFIT DERIVED FROM THE MEMBER'S APPROPRIATION OF AN OPPORTUNITY OF THE LIMITED LIABILITY COMPANY.

(d) ~~Vary any filing requirement under this title~~ ELIMINATE THE OBLIGATION OF GOOD FAITH AND FAIR DEALING UNDER SECTION 7-80-404 (3); EXCEPT THAT THE MEMBERS, BY AGREEMENT, MAY DETERMINE THE STANDARDS BY WHICH THE PERFORMANCE OF THE OBLIGATION IS TO BE MEASURED, IF SUCH STANDARDS ARE NOT UNREASONABLE; or

(e) Restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, and the limited liability company without the consent of such persons.

(3) Unless contained in a written operating agreement or other writing approved in accordance with a written operating agreement, no operating agreement may:

(a) ~~Vary the requirement under section 7-80-702 (1) that, if all of the other members of the limited liability company other than the member proposing to dispose of the member's interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member;~~

(b) (Deleted by amendment, L. 97, p. 1503, § 12, effective June 3, 1997.)

(c) ~~Vary the requirement under section 7-80-701 that, after the filing of a limited liability company's original articles of organization, a person may be admitted as an additional member upon the written consent of all members;~~

(d) Vary any requirement under this article that a particular action or provision be reflected in a writing.

(4) IT IS THE INTENT OF THIS ARTICLE TO GIVE THE MAXIMUM EFFECT TO THE PRINCIPLE OF FREEDOM OF CONTRACT AND TO THE ENFORCEABILITY OF OPERATING AGREEMENTS.

SECTION 4. Part 1 of article 80 of title 7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

7-80-109. Construction of article. THE RULE THAT STATUTES IN DEROGATION OF THE COMMON LAW ARE TO BE STRICTLY CONSTRUED SHALL HAVE NO APPLICATION TO THIS ARTICLE.

SECTION 5. 7-80-209 (1.5), Colorado Revised Statutes, is amended to read:

7-80-209. Amendment of articles of organization. (1.5) ~~Unless otherwise provided in a written operating agreement;~~ An amendment to the articles of organization is invalid unless approved by ~~written consent of all members~~ ALL OF THE MEMBERS OR IN SUCH OTHER MANNER AS MAY BE PROVIDED IN THE OPERATING AGREEMENT.

SECTION 6. Part 4 of article 80 of title 7, Colorado Revised Statutes, including 7-80-410 (3) and the introductory portion to 7-80-411 (1) as they will become effective July 1, 2004, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

PART 4 MANAGEMENT

7-80-401. Management of limited liability company. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, DECISIONS WITH RESPECT TO A LIMITED LIABILITY COMPANY SHALL BE MADE BY A MAJORITY OF THE MEMBERS OR, IF THE ARTICLES OF ORGANIZATION PROVIDE THAT THE LIMITED LIABILITY COMPANY IS TO BE MANAGED BY MANAGERS AND THE LIMITED LIABILITY COMPANY HAS ONE OR MORE MANAGERS, BY A MAJORITY OF THE MANAGERS.

(2) THE CONSENT OF EACH MEMBER IS NECESSARY TO:

(a) AMEND THE ARTICLES OF ORGANIZATION;

(b) AMEND THE OPERATING AGREEMENT; AND

(c) AUTHORIZE AN ACT OF THE LIMITED LIABILITY COMPANY THAT IS NOT IN THE ORDINARY COURSE OF THE BUSINESS OF THE LIMITED LIABILITY COMPANY.

7-80-402. Election and term of managers. A LIMITED LIABILITY COMPANY, THE ARTICLES OF ORGANIZATION OF WHICH PROVIDE THAT IT IS TO BE MANAGED BY MANAGERS, MAY APPOINT ONE OR MORE PERSONS TO BE MANAGERS. A MANAGER WHO IS AN INDIVIDUAL SHALL BE EIGHTEEN YEARS OF AGE OR OLDER. MANAGERS MAY BE SELECTED AND REMOVED BY THE CONSENT OF A MAJORITY OF THE MEMBERS.

7-80-403. Other agents. (1) A LIMITED LIABILITY COMPANY MAY APPOINT ONE OR MORE PERSONS TO BE OFFICERS OR OTHER AGENTS OTHER THAN MANAGERS, WITH SUCH DUTIES AND DESIGNATIONS AS THE LIMITED LIABILITY COMPANY MAY DETERMINE. AN AGENT WHO IS AN INDIVIDUAL SHALL BE EIGHTEEN YEARS OF AGE OR OLDER. EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, AGENTS OTHER THAN MANAGERS MAY BE SELECTED AND REMOVED, AND THEIR DUTIES AND DESIGNATIONS MAY BE ESTABLISHED, BY THE CONSENT OF A MAJORITY OF THE MEMBERS OR, IF THE ARTICLES OF ORGANIZATION PROVIDE THAT THE LIMITED LIABILITY COMPANY IS TO BE MANAGED BY MANAGERS AND THE LIMITED LIABILITY COMPANY HAS ONE OR MORE MANAGERS, BY A MAJORITY OF THE MANAGERS.

(2) AGENTS MAY BE GIVEN AUTHORITY TO DO ANY ACT THAT IS NOT IN THE ORDINARY COURSE OF THE BUSINESS OF THE LIMITED LIABILITY COMPANY ONLY WITH THE CONSENT OF ALL OF THE MEMBERS.

7-80-404. Duties of members and managers. (1) IN ADDITION TO THE DUTIES ESTABLISHED ELSEWHERE IN THIS ARTICLE, THE DUTIES THAT A MEMBER IN A LIMITED LIABILITY COMPANY IN WHICH MANAGEMENT IS NOT VESTED IN MANAGERS AND A MANAGER OWE TO THE LIMITED LIABILITY COMPANY INCLUDE THE DUTIES TO:

(a) ACCOUNT TO THE LIMITED LIABILITY COMPANY AND HOLD AS TRUSTEE FOR IT ANY PROPERTY, PROFIT, OR BENEFIT DERIVED BY THE MEMBER OR MANAGER IN THE CONDUCT OR WINDING UP OF THE LIMITED LIABILITY COMPANY BUSINESS OR DERIVED FROM A USE BY THE MEMBER OR MANAGER OF PROPERTY OF THE LIMITED LIABILITY COMPANY, INCLUDING THE APPROPRIATION OF AN OPPORTUNITY OF THE LIMITED LIABILITY COMPANY;

(b) REFRAIN 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;

(c) REFRAIN FROM COMPETING WITH THE LIMITED LIABILITY COMPANY IN THE CONDUCT OF THE LIMITED LIABILITY COMPANY BUSINESS BEFORE THE DISSOLUTION OF THE LIMITED LIABILITY COMPANY; AND

(d) COMPLY WITH THE PROVISIONS OF THE OPERATING AGREEMENT.

(2) A MEMBER OR MANAGER OWES TO THE LIMITED LIABILITY COMPANY A DUTY OF CARE IN THE CONDUCT AND WINDING UP OF THE BUSINESS OF THE LIMITED LIABILITY COMPANY, WHICH SHALL BE LIMITED TO REFRAINING FROM ENGAGING IN GROSSLY NEGLIGENT OR RECKLESS CONDUCT, INTENTIONAL MISCONDUCT, OR A KNOWING VIOLATION OF LAW.

(3) A MEMBER OR MANAGER SHALL DISCHARGE THE MEMBER'S OR MANAGER'S DUTIES TO THE LIMITED LIABILITY COMPANY AND EXERCISE ANY RIGHTS CONSISTENTLY WITH THE OBLIGATION OF GOOD FAITH AND FAIR DEALING.

(4) A MEMBER OR MANAGER DOES NOT VIOLATE A DUTY OR OBLIGATION TO THE LIMITED LIABILITY COMPANY SOLELY BECAUSE THE MEMBER'S OR MANAGER'S CONDUCT FURTHERS THE MEMBER'S OR MANAGER'S OWN INTEREST.

7-80-405. Members and managers as agents of the limited liability company.

(1) IF THE ARTICLES OF ORGANIZATION PROVIDE THAT THE LIMITED LIABILITY COMPANY IS TO BE MANAGED BY MANAGERS:

(a) A MEMBER HAS NO AUTHORITY TO BIND THE LIMITED LIABILITY COMPANY SOLELY BY VIRTUE OF BEING A MEMBER; AND

(b) AN ACT OF A MANAGER, INCLUDING THE EXECUTION OF AN INSTRUMENT IN THE NAME OF THE LIMITED LIABILITY COMPANY, FOR APPARENTLY CARRYING ON IN THE ORDINARY COURSE THE BUSINESS OF THE LIMITED LIABILITY COMPANY OR BUSINESS OF THE KIND CARRIED ON BY THE LIMITED LIABILITY COMPANY BINDS THE LIMITED LIABILITY COMPANY, UNLESS THE MANAGER HAD NO AUTHORITY TO ACT FOR THE LIMITED LIABILITY COMPANY IN THE PARTICULAR MATTER AND THE PERSON WITH WHOM THE MANAGER WAS DEALING HAD NOTICE THAT THE MANAGER LACKED AUTHORITY.

(2) IF THE ARTICLES OF ORGANIZATION PROVIDE THAT THE LIMITED LIABILITY COMPANY IS TO BE MANAGED BY MEMBERS, AN ACT OF A MEMBER, INCLUDING THE EXECUTION OF AN INSTRUMENT IN THE NAME OF THE LIMITED LIABILITY COMPANY, FOR APPARENTLY CARRYING ON IN THE ORDINARY COURSE THE BUSINESS OF THE LIMITED LIABILITY COMPANY OR BUSINESS OF THE KIND CARRIED ON BY THE LIMITED LIABILITY COMPANY BINDS THE LIMITED LIABILITY COMPANY, UNLESS THE MEMBER HAD NO AUTHORITY TO ACT FOR THE LIMITED LIABILITY COMPANY IN THE PARTICULAR MATTER AND THE PERSON WITH WHOM THE MEMBER WAS DEALING HAD NOTICE THAT THE MEMBER LACKED AUTHORITY.

7-80-406. Business transactions of member or manager with the limited liability company. A MEMBER OR A MANAGER MAY LEND MONEY TO, ACT AS SURETY FOR, AND TRANSACT OTHER BUSINESS WITH THE LIMITED LIABILITY COMPANY AND, SUBJECT TO OTHER APPLICABLE LAW, HAS THE SAME RIGHTS AND OBLIGATIONS WITH RESPECT THERETO AS A PERSON WHO IS NOT A MEMBER OR MANAGER; EXCEPT THAT THIS SECTION SHALL NOT BE CONSTRUED TO RELIEVE A MANAGER FROM ANY OF SUCH PERSON'S DUTIES AS SPECIFIED IN SECTION 7-80-404.

7-80-407. Reimbursement and indemnification of members and managers. A LIMITED LIABILITY COMPANY SHALL REIMBURSE A MEMBER OR MANAGER FOR PAYMENTS MADE, AND INDEMNIFY A MEMBER OR MANAGER FOR LIABILITIES

INCURRED BY THE MEMBER OR MANAGER, IN THE ORDINARY CONDUCT OF THE BUSINESS OF THE LIMITED LIABILITY COMPANY OR FOR THE PRESERVATION OF ITS BUSINESS OR PROPERTY IF SUCH PAYMENTS WERE MADE OR LIABILITIES INCURRED WITHOUT VIOLATION OF THE MEMBER'S OR MANAGER'S DUTIES TO THE LIMITED LIABILITY COMPANY.

7-80-408. Access to and confidentiality of information - records. (1) EACH MEMBER OF A LIMITED LIABILITY COMPANY HAS THE RIGHT, SUBJECT TO SUCH REASONABLE STANDARDS AS MAY BE ESTABLISHED BY THE MEMBERS OR MANAGERS PURSUANT TO SECTION 7-80-401 (1), TO INSPECT AND COPY AT THE EXPENSE OF THE REQUESTING MEMBER THE FOLLOWING RECORDS OF THE LIMITED LIABILITY COMPANY FROM TIME TO TIME UPON REASONABLE DEMAND FOR ANY PURPOSE REASONABLY RELATED TO THE MEMBER'S INTEREST AS A MEMBER OF THE LIMITED LIABILITY COMPANY:

(a) TRUE AND FULL INFORMATION REGARDING THE BUSINESS AND FINANCIAL CONDITION OF THE LIMITED LIABILITY COMPANY, INCLUDING WRITTEN RESOLUTIONS AND MINUTES, IF ANY, OF THE LIMITED LIABILITY COMPANY;

(b) A COPY OF THE LIMITED LIABILITY COMPANY'S FEDERAL, STATE, AND LOCAL INCOME TAX RETURNS FOR EACH YEAR;

(c) A CURRENT LIST OF THE NAME AND LAST-KNOWN BUSINESS, RESIDENCE, OR MAILING ADDRESS OF EACH MEMBER AND MANAGER;

(d) A COPY OF THE LIMITED LIABILITY COMPANY'S ARTICLES OF ORGANIZATION AND ALL AMENDMENTS THERETO, AND A COPY OF ANY WRITTEN OPERATING AGREEMENT OF THE LIMITED LIABILITY COMPANY, TOGETHER WITH EXECUTED COPIES OF ANY WRITTEN POWERS OF ATTORNEY PURSUANT TO WHICH THE OPERATING AGREEMENT AND ANY ARTICLES OF ORGANIZATION AND ALL AMENDMENTS THERETO HAVE BEEN EXECUTED;

(e) TRUE AND FULL INFORMATION REGARDING THE AMOUNT OF CASH AND A DESCRIPTION AND STATEMENT OF THE AGREED VALUE OF ANY OTHER PROPERTY OR SERVICES CONTRIBUTED BY EACH MEMBER AND THAT EACH MEMBER HAS AGREED TO CONTRIBUTE IN THE FUTURE, AND THE DATE ON WHICH EACH BECAME A MEMBER; AND

(f) OTHER INFORMATION REGARDING THE AFFAIRS OF THE LIMITED LIABILITY COMPANY AS IS JUST AND REASONABLE.

(2) EACH MANAGER SHALL HAVE THE RIGHT TO EXAMINE ALL OF THE INFORMATION DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION FOR A PURPOSE REASONABLY RELATED TO THE POSITION OF MANAGER.

(3) THE MANAGER, OR IN THE CASE OF A LIMITED LIABILITY COMPANY MANAGED BY MEMBERS, THE MEMBERS, OF A LIMITED LIABILITY COMPANY SHALL HAVE THE RIGHT TO KEEP CONFIDENTIAL FROM THE MEMBERS, FOR SUCH PERIOD OF TIME AS THE MANAGER OR MEMBERS DEEM REASONABLE, ANY INFORMATION THAT THE MANAGER OR MEMBERS REASONABLY BELIEVE TO BE IN THE NATURE OF TRADE SECRETS OR THAT THE LIMITED LIABILITY COMPANY IS REQUIRED BY LAW OR BY AGREEMENT WITH A THIRD PARTY TO KEEP CONFIDENTIAL.

(4) A LIMITED LIABILITY COMPANY MAY MAINTAIN ITS RECORDS IN OTHER THAN A WRITTEN FORM IF SUCH FORM IS CAPABLE OF CONVERSION INTO WRITTEN FORM WITHIN A REASONABLE TIME.

(5) ANY DEMAND BY A MEMBER UNDER THIS SECTION SHALL BE IN WRITING AND SHALL STATE THE PURPOSE OF THE DEMAND.

SECTION 7. 7-80-501, Colorado Revised Statutes, is amended to read:

7-80-501. Form of contribution. The contribution of a member may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services. A PERSON MAY BE ADMITTED TO A LIMITED LIABILITY COMPANY AS A MEMBER OF THE LIMITED LIABILITY COMPANY AND MAY RECEIVE A MEMBERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY WITHOUT MAKING A CONTRIBUTION OR BEING OBLIGATED TO MAKE A CONTRIBUTION TO THE LIMITED LIABILITY COMPANY. UNLESS OTHERWISE PROVIDED IN A LIMITED LIABILITY COMPANY AGREEMENT, A PERSON MAY BE ADMITTED TO A LIMITED LIABILITY COMPANY AS A MEMBER OF THE LIMITED LIABILITY COMPANY WITHOUT ACQUIRING A MEMBERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY. UNLESS OTHERWISE PROVIDED IN A LIMITED LIABILITY COMPANY AGREEMENT, A PERSON MAY BE ADMITTED AS THE SOLE MEMBER OF A LIMITED LIABILITY COMPANY WITHOUT MAKING A CONTRIBUTION OR BEING OBLIGATED TO MAKE A CONTRIBUTION TO THE LIMITED LIABILITY COMPANY OR WITHOUT ACQUIRING A MEMBERSHIP INTEREST IN THE LIMITED LIABILITY COMPANY.

SECTION 8. 7-80-502 (1), Colorado Revised Statutes, is amended to read:

7-80-502. Liability for contributions. (1) A member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ THE MEMBER is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, ~~he~~ THE MEMBER is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the limited liability records required to be kept by section ~~7-80-411~~ 7-80-408, of such contribution that has not been made.

SECTION 9. 7-80-503, Colorado Revised Statutes, is amended to read:

7-80-503. Sharing of profits and losses. The profits and losses of a limited liability company shall be allocated among the members and among classes of members on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section ~~7-80-411~~ 7-80-408, of the contributions made by each member.

SECTION 10. 7-80-504, Colorado Revised Statutes, is amended to read:

7-80-504. Sharing of distributions. Distributions of cash or other assets of a limited liability company shall be allocated among the members and among classes of members on the basis of the value, as stated in the limited liability company records required to be kept pursuant to section ~~7-80-411~~ 7-80-408, of the contributions made by each member.

SECTION 11. 7-80-602, Colorado Revised Statutes, is amended to read:

7-80-602. Resignation of member. ~~Unless prohibited in a written operating agreement;~~ A member may resign from a limited liability company at any time by giving ~~written~~ notice to the other members, but, if the resignation violates the operating agreement, the limited liability company may recover from the resigning member damages for breach of the operating agreement and offset the damages against the amount otherwise distributable to ~~him~~ THE RESIGNING MEMBER.

SECTION 12. 7-80-607 (2) and (3), Colorado Revised Statutes, are amended to read:

7-80-607. Liability upon return of contribution. (2) If a member has received the return of any part of ~~his~~ THE MEMBER'S contribution in violation of the operating agreement or this article, ~~he~~ THE MEMBER is liable to the limited liability company for a period of six years thereafter for the amount of the contribution wrongfully returned.

(3) A member receives a return of ~~his~~ THE MEMBER'S contribution to the extent that a distribution to ~~him~~ THE MEMBER reduces ~~his~~ THE MEMBER'S share of the fair value of the net assets of the limited liability company below the value, as set forth in the records required to be kept pursuant to section ~~7-80-411~~ 7-80-408, of ~~his~~ THE MEMBER'S contribution ~~which~~ THAT has not been distributed to ~~him~~ THE MEMBER.

SECTION 13. 7-80-701, Colorado Revised Statutes, is amended to read:

7-80-701. Admission of members. After the filing of a limited liability company's original articles of organization, a person may be admitted as an additional member upon the ~~written~~ consent of all members.

SECTION 14. 7-80-702, Colorado Revised Statutes, is amended to read:

7-80-702. Interest in limited liability company - transferability of interest. (1) The interest of each member in a limited liability company constitutes the personal property of the member and may be transferred or assigned. However, if all of the other members of the limited liability company other than the member proposing to dispose of ~~his or its~~ THE MEMBER'S interest do not approve of the proposed transfer or assignment by ~~unanimous written~~ consent OF ALL MEMBERS, the transferee of the member's interest shall have no right to participate in the management of the business and affairs of the limited liability company or to become a member. The transferee shall only be entitled to receive the share of profits or other compensation by way of income and the return of contributions to which that member would otherwise be entitled.

(2) A substituted member is a person admitted to all the rights of a member who has died or has assigned ~~his~~ SUCH MEMBER'S interest in a limited liability company with the approval of all the members of the limited liability company. ~~by unanimous written consent.~~ The substituted member has all the rights and powers and is subject to all the restrictions and liabilities of ~~his~~ THE MEMBER'S assignor; except that the substitution of the assignee does not release the assignor from liability to the limited liability company under section 7-80-502.

SECTION 15. Repeal. 7-80-707, Colorado Revised Statutes, including 7-80-707 (1) and (4) (b) as they will become effective July 1, 2004, is repealed as follows:

~~7-80-707. Meetings of members. (1) Meetings of members may be held at such place, either within or without this state, as may be stated in or fixed in accordance with the operating agreement. If no other place is stated or so fixed, all meetings shall be held at the principal office of the limited liability company:~~

~~(2) An annual meeting of the members shall be held at such time as may be stated or fixed in accordance with the operating agreement. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the limited liability company:~~

~~(3) Special meetings of the members may be called by any manager or managers or by not less than one-tenth of all the members entitled to vote at the meeting:~~

~~(4) (a) Any court of competent jurisdiction in the state of Colorado may summarily order a meeting to be held:~~

~~(i) On application of any member of the limited liability company, if an annual meeting was not held within six months after the end of the limited liability company's fiscal year or fifteen months after its last annual meeting, whichever is earlier; or~~

~~(ii) On application of a member who participated in a proper call for a special meeting, if:~~

~~(A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the manager or managers of the limited liability company; or~~

~~(B) The special meeting was not held in accordance with the notice.~~

~~(b) The court may fix the time and place of the meeting, fix a date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for a meeting or direct that the interests represented at the meeting constitute a quorum for the meeting, and enter other orders necessary to permit the meeting to be held:~~

SECTION 16. Repeal. 7-80-708, Colorado Revised Statutes, is repealed as follows:

~~7-80-708. Quorum of members - vote required. A majority of the members entitled to vote shall constitute a quorum at the meeting of members. If a quorum is present, the affirmative vote of the majority of the members represented at the meeting and entitled to vote on the subject matter shall be the act of the members. If a quorum is not represented at any meeting of the members, such meeting may be adjourned for a period not to exceed sixty days at any one adjournment:~~

SECTION 17. Repeal. 7-80-709, Colorado Revised Statutes, is repealed as follows:

7-80-709. Notice of members' meetings. ~~(1) Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose for which the meeting is called shall be delivered not less than ten days nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of any manager or person calling the meeting to each member of record entitled to vote at such meeting.~~

~~(2) Notice to members, if mailed, shall be deemed delivered as to any member when deposited in the United States mail, addressed to the member, with postage prepaid, but, if three successive letters mailed to the last-known address of any member are returned as undeliverable, no further notices to such member shall be necessary until another address for such member is made known to the limited liability company.~~

~~(3) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the limited liability company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty days, a notice of the adjourned meeting shall be given to each member entitled to vote at the meeting.~~

SECTION 18. Repeal. 7-80-710, Colorado Revised Statutes, is repealed as follows:

7-80-710. Waiver of notice. ~~(1) When any notice is required to be given to any member of a limited liability company under the provisions of this article or under the provisions of the articles of organization or the operating agreement of the limited liability company, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.~~

~~(2) By attending a meeting, a member:~~

~~(a) Waives objection to lack of notice or defective notice of such meeting unless the member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting;~~

~~(b) Waives objection to consideration at such meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.~~

SECTION 19. Repeal. 7-80-711, Colorado Revised Statutes, including 7-80-711 (1) as it will become effective July 1, 2004, is repealed as follows:

7-80-711. Action by members without a meeting. ~~(1) Action required or permitted by this article to be taken at a members' meeting may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each member entitled to vote. Action taken under this subsection (1) is effective when all members entitled to vote have signed the consent, unless the consent states a different effective date.~~

~~(2) Written consent of the members entitled to vote has the same force and effect as a unanimous vote of such members and may be stated as such in any document.~~

SECTION 20. Repeal. 7-80-712, Colorado Revised Statutes, including the introductory portion to 7-80-712 (1) (b) as it will become effective July 1, 2004, is repealed as follows:

7-80-712. Information and accounting. ~~(1) A member of a limited liability company shall have the right to:~~

~~(a) Inspect and copy limited liability company records, as provided by section 7-80-411;~~

~~(b) Obtain from the manager or managers from time to time, subject to such reasonable standards as may be stated in the operating agreement or otherwise established by the manager or managers, upon reasonable demand for any purpose reasonably related to the member's interest as a member:~~

~~(f) True and full information regarding the state of the business and financial condition of the limited liability company and any other information regarding the affairs of the limited liability company; and~~

~~(H) Promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax returns for each year; and~~

~~(c) Have a formal accounting of limited liability company affairs whenever circumstances render it just and reasonable.~~

SECTION 21. 7-80-801, Colorado Revised Statutes, as it will become effective July 1, 2004, is amended to read:

7-80-801. Dissolution. ~~(1) A limited liability company formed under this article shall be dissolved upon the occurrence of any of the following events: AGREEMENT OF ALL MEMBERS.~~

~~(a) By the unanimous written agreement of all members;~~

~~(b) At the time or upon the occurrence of events stated in writing in an operating agreement.~~

SECTION 22. 7-80-808 (1) and (2), Colorado Revised Statutes, as they will become effective July 1, 2004, are amended to read:

7-80-808. Procedure for and effect of administrative dissolution. (1) If the secretary of state determines that one or more grounds exist under section 7-80-807 for dissolving a limited liability company, the secretary of state shall ~~mail~~ DELIVER written notice of the determination, stating such ground or grounds, to the limited liability company.

(2) If the limited liability company does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the secretary of state that each ground

determined by the secretary of state does not exist, within sixty days after ~~mailing~~ DELIVERY of the notice contemplated in subsection (1) of this section, the secretary of state may administratively dissolve the limited liability company. The secretary of state shall ~~mail~~ DELIVER written notice of the administrative dissolution, stating the effective date thereof, to the principal office address of the dissolved limited liability company's principal office and shall ~~mail~~ DELIVER a copy of ~~such~~ THE notice to the registered agent address of the dissolved limited liability company's last registered agent.

SECTION 23. Effective date - applicability. This act shall take effect July 1, 2004, and shall apply to actions occurring with regard to limited liability companies on or after said date.

SECTION 24. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 21, 2004