

AN ACT concerning business.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Limited Liability Company Act is amended by changing Sections 1-5, 1-10, and 15-5 and adding Section 1-26 as follows:

(805 ILCS 180/1-5)

Sec. 1-5. Definitions. As used in this Act, unless the context otherwise requires:

"Anniversary" means that day every year exactly one or more years after: (i) the date the articles of organization filed under Section 5-5 of this Act were filed by the Office of the Secretary of State, in the case of a limited liability company; or (ii) the date the application for admission to transact business filed under Section 45-5 of this Act was filed by the Office of the Secretary of State, in the case of a foreign limited liability company.

"Anniversary month" means the month in which the anniversary of the limited liability company occurs.

"Articles of organization" means the articles of organization filed by the Secretary of State for the purpose of forming a limited liability company as specified in Article 5.

"Assumed limited liability company name" means any limited

liability company name other than the true limited liability company name, except that the identification by a limited liability company of its business with a trademark or service mark of which it is the owner or licensed user shall not constitute the use of an assumed name under this Act.

"Bankruptcy" means bankruptcy under the Federal Bankruptcy Code of 1978, Title 11, Chapter 7 of the United States Code.

"Business" includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

"Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, that a person contributes to the limited liability company in that person's capacity as a member.

"Court" includes every court and judge having jurisdiction in a case.

"Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code, a comparable order under a successor statute of general application, or a comparable order under federal, state, or foreign law governing insolvency.

"Distribution" means a transfer of money, property, or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's distributional interest.

"Distributional interest" means all of a member's interest

in distributions by the limited liability company.

"Entity" means a person other than an individual.

"Federal employer identification number" means either (i) the federal employer identification number assigned by the Internal Revenue Service to the limited liability company or foreign limited liability company or (ii) in the case of a limited liability company or foreign limited liability company not required to have a federal employer identification number, any other number that may be assigned by the Internal Revenue Service for purposes of identification.

"Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of this State that afford limited liability to its owners comparable to the liability under Section 10-10 and is not required to register to transact business under any law of this State other than this Act.

"Insolvent" means that a limited liability company is unable to pay its debts as they become due in the usual course of its business.

"Limited liability company" means a limited liability company organized under this Act.

"L3C" or "low-profit limited liability company" means a for-profit limited liability company which satisfies the requirements of Section 1-26 of this Act and does not have as a significant purpose the production of income or the appreciation of property.

"Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under Section 13-5.

"Manager-managed company" means a limited liability company which is so designated in its articles of organization.

"Member" means a person who becomes a member of the limited liability company upon formation of the company or in the manner and at the time provided in the operating agreement or, if the operating agreement does not so provide, in the manner and at the time provided in this Act.

"Member-managed company" means a limited liability company other than a manager-managed company.

"Membership interest" means a member's rights in the limited liability company, including the member's right to receive distributions of the limited liability company's assets.

"Operating agreement" means the agreement under Section 15-5 concerning the relations among the members, managers, and limited liability company. The term "operating agreement" includes amendments to the agreement.

"Organizer" means one of the signers of the original articles of organization.

"Person" means an individual, partnership, domestic or foreign limited partnership, limited liability company or foreign limited liability company, trust, estate, association, corporation, governmental body, or other juridical being.

"Registered office" means that office maintained by the limited liability company in this State, the address, including street, number, city and county, of which is on file in the office of the Secretary of State, at which, any process, notice, or demand required or permitted by law may be served upon the registered agent of the limited liability company.

"Registered agent" means a person who is an agent for service of process on the limited liability company who is appointed by the limited liability company and whose address is the registered office of the limited liability company.

"Restated articles of organization" means the articles of organization restated as provided in Section 5-30.

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

"Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift.

(Source: P.A. 90-424, eff. 1-1-98.)

(805 ILCS 180/1-10)

Sec. 1-10. Limited liability company name.

(a) The name of each limited liability company as set forth in its articles of organization:

(1) shall contain the terms "limited liability company", "L.L.C.", or "LLC", or, if organized as a

low-profit limited liability company under Section 1-26 of this Act, shall contain the term "L3C";

(2) may not contain a word or phrase, or an abbreviation or derivation thereof, the use of which is prohibited or restricted by any other statute of this State unless the restriction has been complied with;

(3) shall consist of letters of the English alphabet, Arabic or Roman numerals, or symbols capable of being readily reproduced by the Office of the Secretary of State;

(4) shall not contain any of the following terms: "Corporation," "Corp.," "Incorporated," "Inc.," "Ltd.," "Co.," "Limited Partnership" or "L.P.";

(5) shall be the name under which the limited liability company transacts business in this State unless the limited liability company also elects to adopt an assumed name or names as provided in this Act; provided, however, that the limited liability company may use any divisional designation or trade name without complying with the requirements of this Act, provided the limited liability company also clearly discloses its name;

(6) shall not contain any word or phrase that indicates or implies that the limited liability company is authorized or empowered to be in the business of a corporate fiduciary unless otherwise permitted by the Commissioner of the Office of Banks and Real Estate under Section 1-9 of the Corporate Fiduciary Act. The word "trust", "trustee", or

"fiduciary" may be used by a limited liability company only if it has first complied with Section 1-9 of the Corporate Fiduciary Act; and

(7) shall contain the word "trust", if it is a limited liability company organized for the purpose of accepting and executing trusts.

(b) Nothing in this Section or Section 1-20 shall abrogate or limit the common law or statutory law of unfair competition or unfair trade practices, nor derogate from the common law or principles of equity or the statutes of this State or of the United States of America with respect to the right to acquire and protect copyrights, trade names, trademarks, service marks, service names, or any other right to the exclusive use of names or symbols.

(c) (Blank).

(d) The name shall be distinguishable upon the records in the Office of the Secretary of State from all of the following:

(1) Any limited liability company that has articles of organization filed with the Secretary of State under Section 5-5.

(2) Any foreign limited liability company admitted to transact business in this State.

(3) Any name for which an exclusive right has been reserved in the Office of the Secretary of State under Section 1-15.

(4) Any assumed name that is registered with the

Secretary of State under Section 1-20.

(5) Any corporate name or assumed corporate name of a domestic or foreign corporation subject to the provisions of Section 4.05 of the Business Corporation Act of 1983 or Section 104.05 of the General Not For Profit Corporation Act of 1986.

(e) The provisions of subsection (d) of this Section shall not apply if the organizer files with the Secretary of State a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of that name in this State.

(f) The Secretary of State shall determine whether a name is "distinguishable" from another name for the purposes of this Act. Without excluding other names that may not constitute distinguishable names in this State, a name is not considered distinguishable, for purposes of this Act, solely because it contains one or more of the following:

(1) The word "limited", "liability" or "company" or an abbreviation of one of those words.

(2) Articles, conjunctions, contractions, abbreviations, or different tenses or number of the same word.

(Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)

(805 ILCS 180/1-26 new)

Sec. 1-26. Low-profit limited liability company.

(a) A low-profit limited liability company shall at all times significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c)(2)(B), or its successor, and would not have been formed but for the relationship to the accomplishment of such charitable or educational purposes.

(b) A limited liability company which intends to qualify as a low-profit limited liability company pursuant to the provisions of this Section shall so indicate in its articles of organization, and further state that:

(1) no significant purpose of the company is the production of income or the appreciation of property; however, the fact that a person produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and

(2) no purpose of the company is to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. 170(c)(2)(D), or its successor.

(c) A company that no longer satisfies the requirements of this Section 1-26 continues to exist as a limited liability company and shall promptly amend its articles of organization so that its name and purpose no longer identify it as a

low-profit limited liability company or L3C.

(d) Any company operating or holding itself out as a low-profit limited liability company in Illinois, any company formed as a low-profit limited liability company under this Act, and any chief operating officer, director, or manager of any such company is a "trustee" as defined in Section 3 of the Charitable Trust Act.

(e) Nothing in this Section 1-26 prevents a limited liability company that is not organized under it from electing a charitable or educational purpose in whole or in part for doing business under this Act.

(805 ILCS 180/15-5)

Sec. 15-5. Operating agreement.

(a) All members of a limited liability company may enter into an operating agreement to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this Act governs relations among the members, managers, and company. Except as provided in subsection (b) of this Section, an operating agreement may modify any provision or provisions of this Act governing relations among the members, managers, and company.

(b) The operating agreement may not:

(1) unreasonably restrict a right to information or

access to records under Section 10-15;

(2) vary the right to expel a member in an event specified in subdivision (6) of Section 35-45;

(3) vary the requirement to wind up the limited liability company's business in a case specified in subdivisions (3) or (4) of Section 35-1;

(4) restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest, under this Act;

(5) restrict the power of a member to dissociate under Section 35-50, although an operating agreement may determine whether a dissociation is wrongful under Section 35-50, and it may eliminate or vary the obligation of the limited liability company to purchase the dissociated member's distributional interest under Section 35-60;

(6) eliminate or reduce a member's fiduciary duties, but may;

(A) identify specific types or categories of activities that do not violate these duties, if not manifestly unreasonable; and

(B) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate these duties; ~~or~~

(6.5) eliminate or reduce the obligations or purposes a

low-profit limited liability company undertakes when organized under Section 1-26; or

(7) eliminate or reduce the obligation of good faith and fair dealing under subsection (d) of Section 15-3, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

(c) In a limited liability company with only one member, the operating agreement includes any of the following:

(1) Any writing, without regard to whether the writing otherwise constitutes an agreement, as to the company's affairs signed by the sole member.

(2) Any written agreement between the member and the company as to the company's affairs.

(3) Any agreement, which need not be in writing, between the member and the company as to a company's affairs, provided that the company is managed by a manager who is a person other than the member.

(Source: P.A. 92-33, eff. 7-1-01.)