



Oklahoma Small Business  
Development Center

## Limited Liability Company Basics



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Limited Liability Companies as with Corporations insulate personal assets of owners. LLC's can be a company of one or more. Owners of LLC's invest money or property in the LLC and in return receive a capital interest or % in the company. This capital interest is represented by a certain amount of "membership units" much like stock in a corporation or it is divided and represented by a percentage of ownership.

Most LLC's divide profits and or losses by this ownership, but have the option of dividing it in other ways as long as the IRS approves. The IRS considers the LLC as a pass through entity – this means that profits and or losses pass through to the individual's tax return. (We recommend a CPA help you with reporting forms and bookkeeping).

LLC's can be managed by their members (member management) or can be managed by manager hired by the members.

LLC's can be set up to function like a partnership or a corporation depending upon the needs of forming members and the operating agreement that is adopted by the members.

The LLC structure is not the structure to use if it needs to attract outside investors, since a corporate structure with stock available for sale lends itself to this use.

LLC's are responsible for personally guaranteed debt, can be held responsible for financial loss caused by careless behavior, and members **can** be liable for breach of duty to the LLC. They can lose their limited liability if they don't act fairly and legally (misrepresentation or fraud), don't fund the LLC adequately, or keep the LLC business and personal business separate.

Certain occupations like banking, insurance, trusts are prohibited from forming LLC's. Other occupations like accountants, doctors; consultants are required to form Professional LLC's.

To form a LLC, you file" Articles of organization" with the Oklahoma Secretary of States office and pay \$100.00. (See Appendix for more information) Once the "articles are filed, it is essential you create a "LLC Operating Agreement" that should include:

- a) Members capital interest
- b) Rights and responsibilities of members
- c) Allocation of profits and losses
- d) Management of LLC
- e) Voting power of members and mangers
- f) Rules for holding meetings and taking votes
- g) Buy – sell provisions.

A sample " Operating Agreement " is attached.

Once this is done, and your name has been chosen, you should create a record keeping binder, hold the LLC's first meeting to adopt the "Operating Agreement" and elect officers if that has been set up as a provision in the "Operating Agreement". Then you should file for Employer Identification Number with the IRS. A checking account in name of company should then be taken out. Finally the company should also obtain liability insurance.

Example  
Of  
Articles of organization  
For  
Bill's  
Laundry

The undersigned natural persons, of the age of 18 years or more, acting as organizers of a limited liability company under the Oklahoma limited liability company act, adopt the following articles of organization for such limited liability company.

Articles 1. *Name of Limited Liability Company.* The name of this limited liability company is Bill's Laundry.

Articles 2. *Registered Office and Registered Agent.* The initial registered office of this limited liability company and the name of its initial registered agent at this address are: Bill Smith, 1515 Main Street, any city, Oklahoma, 00000.

Articles 3. *Statement of purposes.* The purposes for which this limited liability company is organized are: to operate a commercial laundry and to engage in any other lawful business for which limited liability company's may be organized in the state.

Articles 4. *Management and Names and Addresses of Initial Members.* The management of this limited liability company is reserved to the members. The names and addresses of its initial members are:

Bill Smith, 1515 Main Street, any city, Oklahoma, 00000  
Judy Smith, 1515 Main Street, any city, Oklahoma, 00000  
Gregory Lex, 3021 Main Street, any city, Oklahoma, 00000

Article 5. *Principal Place of Business of the Limited Liability Company.* The principal place of business of the limited liability company shall be: 1515 Main Street, any city, Oklahoma, 00000.

Article 6. *Period of Duration of the Limited Liability Company.* The period of duration of the limited liability company shall be: perpetual.

*In witness whereof, the undersigned organizer of this Limited Liability Company has signed these Articles of Organization on the date indicated.*

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_, Organizer

The limited Liability Company should also have an Operating Agreement something like the following.

Sample operating agreement

# Operating Agreement Of Bill's Laundry, L. L. C.,

A Member—Managed Limited Liability Company

## A. Preliminary Provisions

### 1. Effective Date

This operating agreement on Bill's laundry shop L. L. C., effective on the date of signing is adopted by the members who signatures appear the end of this agreement.

### 2. Formation

This limited liability company, L. L. C., was formed by filing articles of organization, or a similar organizational document with the state of Oklahoma's Secretary of State's office on January 1, 2002. The legal existence of this L. L. C. commenced on the date of such filing. A copy of this organizational document has been placed in the L. L. C.'s record book.

### 3. Name

The formal name of this L. L. C. is as stated above. However, this L. L. C. may do business under a different name by complying with the state's fictitious or assumed business name statutes and procedures.

#### 4. Registered Office and Registered Agent

The registered office address of this L. L. C. is:

1515 Main Street  
Any City, Oklahoma 00000

The Registered Agent of this L. L. C. is:

Bill Smith

The Registered Agent and/or office of this L. L. C. may be changed from time to time as the members see fit, by filing a change of registered agent or office statement with the

state L. L. C. filing office. It will not be necessary to amend this provision of the operating agreement if and when such changes are made.

## **5. Business Purpose**

The specific business purposes and activities contemplated by the founders of this L. L. C. at the time of initial signing of this agreement consist of the following:

Operate A Commercial Laundry

It is understood that the foregoing statement of powers shall not serve as a limitation on the powers or abilities of this L. L. C., which shall be permitted to engage in any and all lawful business activities. If this L. L. C. intends to engage in business activities outside the state of its formation that require the qualification of the LLC in other states, it shall obtain such qualification before engaging in such out-of-state activities.

## **6. Duration of L. L. C.**

The duration of this L. L. C. shall be perpetual. This L. L. C. shall terminate when a proposal to dissolve the LLC is adopted by the membership of this LLC or when this LLC is otherwise terminated in accordance with law.

### **B. Membership Provisions**

## **1. Nonliability of Members**

No member of this L. L. C. shall be personally liable for the expenses, debts, obligations or liabilities of the LLC, or for claims made against it.

## **2. Reimbursement for Organizational Cost**

Members shall be reimbursed by the LLC for organizational expenses paid by the members. The LLC shall be authorized to elect to deduct organizational expenses and start up expenditures ratably over a period of time as permitted by the Internal Revenue Code and S. may be advised by the L. L. C.'s tax advisor.

## **3. Management**

This L. L. C. shall be managed exclusively by all of its members.

## **4. Members Capital Interests**

A member's capital interest in this LLC shall be computed as a fraction, the numerator of which is the total of the members capital account and the denominator of which is the total of all capital accounts of all members. This fraction shall be expressed in this agreement as a percentage, which shall be called each members "capital interest" in this LLC.

## **5. Membership Voting**

Except as otherwise may be required by the Articles of Organization, or a similar organizational document or under the laws of the state, each members shall vote on any matter submitted to the membership for approval by the managers of this LLC in

proportion to the members capital interest in this LLC. Further, unless otherwise stated In another provision of This Operating Agreement, the phrase “majority of members “means a majority of members whose combined capital interest in this LLC represent more than 50 percent of the capital interest of all members in this LLC, and a majority of members, so defined, may approve any item of business brought before the membership for a vote.

## 6. Compensation

Members shall not be paid its members of the LLC for performing any duties associated with such membership, including management of the LLC. Members may be paid, however, for any services rendered in any other capacity for the LLC, whether as officers, employees, independent contractors or otherwise.

## 7. Members Meetings

The LLC shall not provide for regular members meetings. However, any member may call a meeting by communicating his or her wish to schedule a meeting to all the members. Such notification may be made by any form of communication reasonably expected to be received by member and the other members shall then agree, by any form of communication to meet at a mutually acceptable time and place. Notice of the business to be transacted at the meeting need not be given to members by the members calling the meeting, and any business may be discussed and conducted at the meeting.

If all members cannot attend a meeting, it shall be postponed to a date and time when all members can attend. If a meeting is postponed for a second time, the second postponed meeting may be held without the attendance of all members as long as a majority of the capital interest of the membership of this LLC is in attendance at the second postponed meeting. Written notice of the decisions or approvals made at this second meeting shall be mailed or delivered to each non-attending member promptly after the holding of the second postponed meeting.

Written minutes of the discussions and proposals presented at a members meeting, and the votes taken and matters approved at such meeting, shall be taken by one of the members or a person designated at the meeting. A copy of the minutes of the meeting shall be placed in the LLC’s record book after the meeting.

## 8. Membership Certificates

This L. L. C. shall be authorized to obtain and each certificates shall state the name of the LLC and the name of the member, and shall state that the person named is a member of the LLC and is entitled to all the rights granted members of the LLC under the articles of organization, or a similar organizational document, or this operating agreement and provisions of law. Each membership certificate shall be consecutively numbered and signed by each of the current members of this LLC.

In addition to the above information, all membership certificates shall bear a prominent legend on their face or reverse side stating or summarizing any transfer restrictions apply to memberships in this L. L. C. under the articles of organization, or a similar organizational document and/or this operating agreement, and the address for where a member may obtain a copy of these restrictions upon request from this LLC.

The record books of this LLC shall contain a list of the names and addresses of all persons to whom certificates have been issued, show the date of issuance of each certificate, and record the date of all cancellations or transfer of membership certificates by members of the LLC.

## **9. Other Business by Members**

Each members shall agree not to own and interest in, manage or work for another business, enterprise or endeavor, if such ownership or activities would compete with this LLC's business goals, mission, profitability or productivity, or would diminish or impair the members ability to provide maximum effort and performance in accomplishing the business objectives and, if applicable, managing the business of this LLC.

## **10. Admission of New Members**

Except as otherwise provided in this agreement, a person or entity shall not be admitted into membership in this LLC unless each member consents in writing to the admission of the new member. The admission of new members into this LLC who have been transferred, or wish to be transferred, a membership interest in this LLC by a existing member of this LLC is covered by separate provisions In this Operating Agreement.

### **C. Tax and Financial Provisions**

#### **1. Tax Classification of LLC**

The members of this LLC intend that this LLC be initially classified as a partnership for federal and, if applicable, state income tax purposes. It is understood that all members may agree to change the tax treatment of this LLC by signing, or authorizing the signature of, IRS Form 8832, Entity Classification Election, and filing it with the IRS and, if applicable the state tax department within the prescribed time limits.

#### **2. Tax Year and Accounting Method**

The tax Year of this LLC shall end on the last day of the month of December. The LLC shall use the cash method of accounting. Both the tax Year and the accounting period of the LLC may be changed with the consent of all members if the LLC qualifies for such change.

#### **3. Tax Matters Partner**

If This LLC Is Required under IRS Provisions or Regulations, It Shall Designate from among Its Members a "Tax Matters Partner "in Accordance with IRS Code Section 6231(a)(7) and Corresponding Regulations, Who Will Fulfill This Role by Being a Spokesperson for the LLC in Dealings with the IRS As Required by the Code and Regulations, and Who Will Report to the Members on the Progress and Outcome of These Dealings.

#### **4. Annual Income Tax Returns and Reports**

Within 60 days after the end of each tax year of the LLC, a copy of the LLC state and federal income tax returns for the preceding tax year shall be mailed or otherwise

provided to each member of the LLC, together with any additional information and forms necessary for each member to complete his or her individual state and federal income tax returns.

## 5. Bank Accounts

The LLC shall designate one or more banks or other institutions for the deposit of the funds of the LLC, and shall establish savings, checking, investment and other such accounts as are reasonable and necessary for its business and investments. One or more members of the LLC shall be designated with the consent of all members to deposit and withdraw funds, and to direct the investment of funds into and among such accounts. The funds of the LLC, however and wherever deposited or invested, shall not be commingled with the personal funds of any member of the LLC.

## 6. Title to Assets

All personal and real property of this LLC shall be held in the name of the LLC, not in the name of individual members.

### D. Capital Provisions

#### 1. Capital Contributions by Members

Members shall make the following contributions of cash property or services to the LLC, on or by specified dates as shown next each members named below. The fair market value of items or property or services has agreed between the LLC and contributing members are also shown below:

Name of Member: \_\_\_\_\_  
Description of Payment: \_\_\_\_\_  
Value of Capital: \_\_\_\_\_  
Date of Payment: \_\_\_\_\_

#### 2. Additional Contributions by Members

The members may agree, from time to time by unanimous vote, to require the payment of additional capital contributions by the members, on or by a mutually agreeable date.

#### 3. Failure to Make Contributions

If a member fails to make a required capital contribution within the time agreed for a members contributions, the remaining members may by unanimous vote agree to reschedule the time for payment of the capital contribution by late paying member, setting any additional repayment terms as the remaining members decide. Alternatively, the remaining members may, by unanimous vote, agree to cancel the membership of the delinquent member.

#### 4. No Interest on Capital Contributions

No interest shall be paid on funds or property contributed as capital to this LLC, or on funds reflected in the capital accounts of the members.



## **5. Capital Accounts Bookkeeping**

Capital accounts shall be set up and maintained on the books of the LLC for each member. It shall reflect each members capital contribution to the LLC, increased by each member share profits in the LLC or decreased by each member share of losses and expenses of the LLC. It shall be adjusted as required in accordance with applicable provisions of the IRS code and corresponding income tax regulations.

## **6. Consent to Capital Contributions Withdrawal and Distributions**

Members shall not be allowed to draw any part of their capital contributions or to receive distributions except as otherwise allowed by this agreement and only if such withdrawal is made with the written consent of all members.

## **7. Allocation of Profits and Losses**

The profits and losses of the LLC and all items of its income, gain, loss, deduction and credit shall be allocated to members according to each member's capital interest in this LLC.

## **8. Allocation and Distribution of Cash to Members**

Cash from business operations as well as cash from a sale or other disposition of capital assets, may be allocated and distributed from time to time to members in accordance with each members capital interest in the LLC, as may be decided by a majority of the capital interest of the members.

## **9. Allocation of Non-cash Distributions**

If proceeds consist of property other than cash, the members shall decide the value of the property and allocate such value among the members in accordance with each members capital interest in the LLC.

## **10. Allocation and Distribution of Liquidation Proceeds**

Regardless of any other provisions in this agreement, if there's a distribution in liquidation of this LLC, or when any member's interest is liquidated, all items of income and loss shall be allocated to the members capital accounts, and all appropriate credits and deductions shall then be made to these capital accounts before any final distribution is made. A final distribution shall be made to members only to the extent of, and in proportion to, any positive balance in each member's capital account.

### **E. Membership Withdrawal and Transfer Provisions**

## 1. Withdrawal of Members

A member may withdraw from this LLC by getting written notice to all other members at least 90 days before the date the withdrawal is to be effective. In the event of such withdrawal, the LLC shall pay the departing member the fair value of his or her LLC interest, less any amounts owed by the member to the LLC. The departing member and remaining member shall agree at the time of departure on the fair value of the departing members interest and the scheduled payments to be made by the LLC to the departing member. In case of disagreement, the parties shall select an appraiser who shall determine the current value of the departing members interest. This then shall form the basis of the amount to be paid to the departing member.

## 2. Restrictions on the Transfer of Membership

Notwithstanding any other provision of this agreement, and member shall not transfer his or her membership in the LLC unless all of the non-transferring LLC members first agree in writing to approve the admission of the transferee into this LLC. Further no member may encumber a part or all of his or her membership in the LLC by mortgage, pledge, granting of a security interest, lien or otherwise, unless this encumbrance has first been approved in writing by all other members of the LLC.

Notwithstanding the above provision, any member shall be allowed to assign an economic interest in his or her membership to another person without the approval of the other members. Such assignment shall not include a transfer of the members voting or management right in this LLC, and the assignee shall not become a member of the LLC.

### F. Dissolution Provisions

## 1. Events That Trigger Dissolution of the LLC

The following events shall trigger dissolution of the LLC, except as provided:

- a. Disassociation of Member—the disassociation of a member, which means the death, incapacity, bankruptcy, retirement, resignation or expulsion of a member, or any other event that terminates the continued membership of a member shall cause a dissolution of this LLC only if and has provided below:
  1. If a vote Must Be Taken under State Law to Avoid Dissolution—if under provision of State Law a vote of the remaining LLC members is required to continue the existence of this LLC after the disassociation of a member, the remaining member shall affirmatively vote to continue the existence of this LLC within the period, and by the votes of remaining members, that may be required under such provisions. If such a vote is required to the period or number of votes required is not specified under such provisions, all remaining members must affirmatively vote to a continuation of this LLC within 90 days from the date of the date of the disassociation of the member or this LLC shall dissolve under the appropriate procedures specified under State Law.
  2. If a vote is not required under State Law to Avoid Dissolution—if State Law does not require such a vote to continue the existence and/or business of the LLC after

the disassociation of a member, and/or allow the provision of this operating agreement to take precedence over State Law provisions relating to the continuance of the LLC following the disassociation of the member, then this LLC shall continue its existence and business following such disassociation of a member without the necessity of taking a vote of the remaining members. Notwithstanding the above, if the LLC is left with fewer members than required under State Law for the operation of an LLC following said disassociation, the LLC shall elect or appoint a member in accordance with any provisions of State Law regarding such election or appointment. If such election or appointment is not made within the time period specified under State Law, or, if no time period is specified and the LLC makes no election or appointment within 90 days following the date of disassociation, the LLC shall dissolve under the appropriate procedures specified under State Law.

- b. Expiration of LLC Term—the expiration of the term of existence of the LLC if such term is specified in the articles organization, or similar organizational document, or this operating agreement shall cause dissolution of this LLC.
- c. Written Agreement to Dissolve—the written agreement of all members to dissolve the LLC shall cause dissolution of this LLC.
- d. Entry of Decree—the entry of a decree of dissolution of the LLC under State Law shall cause the dissolution of this LLC.

## G. General Provisions

### 1. Officers

The LLC may designate one or more officers, such as a President, Vice President, Secretary and Treasurer. Persons Who Fill These Positions Need Not Be Members of the LLC. Such positions may be compensated or noncompensated according to the nature and extent of the services rendered for the LLC as a part of the duties in each office.

### 2. Records

The LLC shall keep at its principal business address a copy of all proceedings of membership meetings, as well as books of accounts of the LLC's financial transactions. A list of the names and addresses of the current membership in the LLC also shall be maintained at this address, with notation so many transfers of member's interest to nonmembers or persons being admitted into membership in the LLC.

Copies of the LLC's articles organization, similar organizational documents, a signed copy of this operating agreement and the LLC's tax returns for the preceding three tax years shall be kept at the principal business address of the LLC. All financials of the LLC shall also be kept at this address. Any member may inspect any and all records maintained by the LLC upon reasonable notice to the LLC.

### **3. All Necessary Acts**

The members and officers of this LLC are authorized to perform all acts necessary to perfect organization of this LLC and to carry out its business operations expeditiously and efficiently. The Secretary of the LLC, or other officers, or all members of the LLC may certify to other businesses, financial institutions and individuals as to the authority of one or more members or officers of this LLC to transact specific items of business on behalf of the LLC.

### **4. Mediation and Arbitration of Disputes among Members**

In any dispute over the provisions of this operating agreement and other disputes among members that cannot be resolved, the matter shall be submitted to mediation. Terms and procedures for mediation shall be arranged by the parties to the dispute. If good-faith mediation proves impossible or cannot be obtained by the members who are parties to the dispute, the dispute may be submitted to arbitration in accordance with the rules of the American Arbitration Association. Any party may commence arbitration by sending a written request for arbitration to all other parties to the dispute. The request shall state the nature of the dispute to be resolved by arbitration and if all parties to the dispute agree to arbitration, arbitration shall be commenced as soon as practical after such parties receive a copy of the written request. All parties shall initially share the cost of arbitration, but the prevailing parties are parties may be awarded attorney fees, costs and other expenses of arbitration. All arbitration decisions shall be final, binding and conclusive on all the parties to arbitration, and legal judgment may be entered based upon such decision in accordance with applicable law any court having jurisdiction to do so.

### **5. Entire Agreement**

This operating agreement represents the entire agreement among the members of this LLC, and it shall not be amended, modified, or replaced except by a written instrument executed by all the parties to this agreement who are current members of the LLC as well as any and all additional parties who became members of this LLC after the adoption of this agreement. This agreement replaces and supersedes all prior written or oral agreements among any and all members of this LLC.

### **6. Severability**

If any provision of this agreement is determined by a court or arbitrator to be invalid, unenforceable or otherwise ineffective, that provision shall be severed from the rest of this agreement, and the remaining provision shall remain in effect and enforceable.

#### **H. Signatures of Members and Spouses of Members**

### **1. Execution of Agreement**

In witness whereof, the members of this LLC sign and adopt this agreement as the Operating Agreement of this LLC.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## 2. Consent of Spouses

The undersigned, if any, are spouses of the above-signed members of this LLC. The spouses have read this agreement and agree to be bound by its terms in any matter in which they have a financial interest, including restrictions on the transfer of membership and the terms under which membership in this LLC may be sold or otherwise transferred.