

**322B.37 MEMBER CONTROL AGREEMENTS.**

Subdivision 1. **Authorization and scope.** A member control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subdivision 2 and enforceable as provided in subdivision 3. A member control agreement valid under subdivision 2 may relate to, without limitation, the management of the limited liability company's business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members and others by the limited liability company, the relations among members and persons who have signed contribution agreements (including the termination of continued membership), the dissolution, termination, and liquidation of the limited liability company (including the continuation of the limited liability company's business through a successor organization or individual), and the arbitration of disputes. Wherever this chapter provides that a particular result may or must be obtained through a provision in the articles of organization (other than a provision required by section 322B.115, subdivision 1, to be contained in the articles), in the bylaws, or by an act of the board, the same result can be accomplished through a member control agreement valid under this section or through a procedure established by a member control agreement valid under this section. A member control agreement may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 322B.383 and 322B.386.

Subd. 2. **Method of approval.** A member control agreement as described in subdivision 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise all the members of the limited liability company (regardless of voting power), and all persons who are party to contribution agreements that on that date have not yet been fully performed (regardless of whether those parties will, when members, have voting power). A member control agreement may also include as parties persons who are neither members nor parties to a contribution agreement. A member control agreement may provide for its amendment through nonunanimous means.

Subd. 3. **Enforceability and copies.** (a) A member control agreement valid under subdivisions 1 and 2 is enforceable by persons who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the member control agreement. A copy of the member control agreement must be filed with the limited liability company. The limited liability company shall note in its required records that the members' interests are governed by a member control agreement entered into under this section.

(b) A member control agreement valid under subdivisions 1 and 2 is specifically enforceable.

(c) A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member control agreement from the limited liability company at the company's expense.

Subd. 4. **Liability.** If a member control agreement authorized under this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the member control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that

authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

Subd. 5. **Other agreements.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

**History:** 1992 c 517 art 2 s 46; 1997 c 10 art 2 s 5,6; 1999 c 85 art 2 s 38