

CHAPTER 322B

LIMITED LIABILITY COMPANIES

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322B.03 DEFINITIONS.

[For text of subds 1 to 17a, see M.S.1996]

Subd. 18. **Filed with the secretary of state.** "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by a filing fee of \$35, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person who delivered it for filing.

[For text of subds 19 to 44, see M.S.1996]

Subd. 45. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the governors as required by section 322B.653 or the members as required by section 322B.346.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

[For text of subds 45a to 51, see M.S.1996]

History: 1997 c 10 art 4 s 6,7

322B.11 MEMBER REQUIREMENT.

A limited liability company shall have one or more members.

History: 1997 c 10 art 2 s 1

322B.115 ARTICLES OF ORGANIZATION.

Subdivision 1. **Required provisions.** The articles of organization must contain:

- (1) the name of the limited liability company;
- (2) the address of the registered office of the limited liability company and the name of its registered agent, if any, at that address;
- (3) the name and address of each organizer; and
- (4) a statement of the period of existence for the limited liability company if different from the 30-year period set forth in section 322B.20, subdivision 2.

[For text of subds 2 and 3, see M.S.1996]

Subd. 4. **Optional provisions and specific subjects.** The provisions in clauses (1), (7), (15), (16), and (18) may be included in the articles of organization or a member control agreement under section 322B.37.

The provisions in clauses (2) to (6), (8) to (14), and (17) may be included in the articles of organization, a member control agreement under section 322B.37 or the operating agreement:

- (1) the persons to serve as the first board of governors may be named in the articles of organization (section 322B.606, subdivision 1);
- (2) a manner for increasing or decreasing the number of governors may be provided (section 322B.61);
- (3) additional qualifications for governors may be imposed (section 322B.613);
- (4) governors may be classified (section 322B.626);
- (5) the day or date, time, and place of board of governors meetings may be fixed (section 322B.643, subdivision 1);
- (6) absent governors may be permitted to give written consent or opposition to a proposal (section 322B.646);
- (7) a larger than majority vote may be required for board of governor action (section 322B.653);
- (8) authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the chief manager (section 322B.673, subdivision 2);
- (9) additional managers may be designated (section 322B.676);
- (10) additional powers, rights, duties, and responsibilities may be given to managers (section 322B.676);
- (11) a method for filling vacant offices may be specified (section 322B.686, subdivision 3);
- (12) the day or date, time, and place of regular member meetings may be fixed (section 322B.333, subdivision 3);
- (13) certain persons may be authorized to call special meetings of members (section 322B.336, subdivision 1);
- (14) notices of member meetings may be required to contain certain information (section 322B.34, subdivision 3);
- (15) a larger than majority vote may be required for member action (section 322B.346);
- (16) voting rights may be granted in or pursuant to the articles of organization to persons who are not members (section 322B.356, subdivision 3);
- (17) limited liability company actions giving rise to dissenter rights may be designated (section 322B.386, subdivision 1, paragraph (e)); and
- (18) a governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles (section 322B.663, subdivision 4).

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the operating agreement under this subdivision without including it in the operating agreement, unless it is required to be included in the operating agreement by another provision of this chapter.

[For text of subds 5 and 6, see M.S. 1996]

History: 1997 c 10 art 2 s 2; art 4 s 8

322B.12 LIMITED LIABILITY COMPANY NAME.

Subdivision 1. Requirements and prohibitions. The limited liability company name must:

- (1) be in the English language or in any other language expressed in English letters or characters;
- (2) contain the words "limited liability company," or must contain the abbreviation "LLC" or, in the case of an organization formed pursuant to section 319A.03 or chapter 319B, must meet the requirements of section 319A.07 or 319B.05 applicable to a limited liability company;

(3) not contain the word corporation or incorporated and must not contain the abbreviation of either or both of these words;

(4) not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose; and

(5) be distinguishable upon the records in the office of the secretary of state from the name of each domestic limited liability company, limited liability partnership, corporation, and limited partnership, whether profit or nonprofit, and each foreign limited liability company, limited liability partnership, corporation, and limited partnership authorized or registered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of organization, reserved as provided for in sections 302A.117, 317A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the articles of organization one of the following:

(i) the written consent of the domestic limited liability company, limited liability partnership, corporation, or limited partnership or the foreign limited liability company, limited liability partnership, corporation, or limited partnership authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;

(ii) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(iii) the applicant's affidavit that the limited liability company, corporation, or limited partnership with the name that is not distinguishable has been organized, incorporated, or on file in this state for at least three years prior to the affidavit, if it is a domestic limited liability company, corporation, or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign limited liability company, corporation, or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, that the limited liability company, corporation, or limited partnership or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the limited liability company, corporation, or limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the limited liability company or corporation or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee limited liability company, corporation, or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the limited liability company, corporation, or limited partnership with the name that is not distinguishable in the county in which is located the registered office of the limited liability company, corporation, or limited partnership shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the limited liability company, corporation, or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

[For text of subds 2 to 6, see M.S.1996]

History: 1997 c 10 art 4 s 9; 1997 c 22 art 2 s 4

322B.20 POWERS.

[For text of subd 1, see M.S.1996]

Subd. 2. **Duration.** A limited liability company has a limited duration of 30 years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer period of duration, which may be perpetual.

[For text of subs 3 to 24, see M.S.1996]

History: 1997 c 10 art 2 s 3

322B.313 ASSIGNMENT OF GOVERNANCE RIGHTS.

[For text of subd 1, see M.S.1996]

Subd. 2. **When unanimous consent required.** Subject to subdivision 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Except as otherwise set forth in the articles of organization or a member control agreement, any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent. Subject to subdivision 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subdivision. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subdivision. If a secured party has a security interest in both a member's financial rights and governance rights, including a security interest in a complete membership interest, this subdivision's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

[For text of subs 3 to 7, see M.S.1996]

History: 1997 c 10 art 2 s 4

322B.33 PREEMPTIVE RIGHTS.

[For text of subs 1 to 9, see M.S.1996]

Subd. 10. **Contractual rights.** A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company to members, persons who have entered into contribution agreements, or other persons before accepting contributions or making contribution allowance agreements with any other person.

History: 1997 c 10 art 4 s 10

322B.346 ACT OF MEMBERS.

[For text of subd 1, see M.S.1996]

Subd. 2. **Voting by class or series.** In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests present of that class or series, or of the total outstanding membership interests of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or operating agreement in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 322B.353.

History: 1997 c 10 art 4 s 11

322B.356 VOTING RIGHTS.

Subdivision 1. **Determination.** The board of governors may fix, or authorize a manager to fix, a date not more than 60 days, or a shorter time period provided in the articles of organi-

zation or operating agreement, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

[For text of subds 2 to 5, see M.S.1996]

History: 1997 c 10 art 4 s 12

322B.363 PROXIES.

Subdivision 1. **Authorization.** A member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member. Any copy, facsimile, telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

[For text of subds 2 to 8, see M.S.1996]

History: 1997 c 10 art 4 s 13

322B.37 MEMBER CONTROL AGREEMENTS.

Subdivision 1. **Authorization and scope.** A written agreement among persons who are then members, including a sole member, or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subdivision 2. 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) or in the operating agreement, 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 waive, in whole or in part, a member's dissenting rights under sections 322B.383 and 322B.386, but may not waive dissenters' rights under section 322B.873, subdivision 2, clause (1).

[For text of subd 2, see M.S.1996]

Subd. 3. **Enforceability and copies.** (a) An 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 agreement. A copy of the 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 control agreement may waive dissenters' rights, subject to section 322B.873, subdivision 3.

(d) 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.

[For text of subds 4 and 5, see M.S.1996]

History: 1997 c 10 art 2 s 5,6

322B.383 RIGHTS OF DISSENTING MEMBERS.

Subdivision 1. **Actions creating dissenters' rights.** Subject to a member control agreement under section 322B.37, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

(1) an amendment of the articles of organization that materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(i) alters or abolishes a preferential right of the membership interests;

(ii) creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

(iii) alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(iv) excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(v) changes a member's right to resign or retire;

(vi) establishes or changes the conditions for or consequences of expulsion;

(vii) changes a statement that was required under section 322B.115, subdivision 1, regarding the power of remaining members to avoid dissolution by giving dissolution avoidance consent, if the statement was required under the law when the articles of organization were executed;

(viii) changes a statement that was required under section 322B.115, subdivision 1, regarding the power of members to enter into a business continuation agreement, if the statement was required under the law when the articles of organization were executed; or

(2) a sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval in section 322B.77, subdivision 1, or a disposition in dissolution described in section 322B.813, subdivision 4, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

(3) a plan of merger to which the limited liability company is a party, except as provided in section 322B.873, subdivision 2, clause (1)(i) and subject to section 322B.873, subdivision 3;

(4) a plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

(5) any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, the operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or

(6) a resolution of the board of governors under section 322B.873, subdivision 2, to implement a business continuation agreement.

[For text of subd 2, see M.S.1996]

Subd. 3. Rights not to apply. If a date is fixed according to section 322B.356, subdivision 1, for the determination of members entitled to receive notice of and to vote on an action described in subdivision 1, only members as of the date fixed may exercise dissenters' rights.

History: 1997 c 10 art 2 s 7; art 4 s 14

322B.386 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.*[For text of subds 1 and 2, see M.S.1996]*

Subd. 3. Notice of dissent. If the proposed action must be approved by the members, a member who is entitled to dissent under section 322B.383 and who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

*[For text of subds 4 to 9, see M.S.1996]***History:** 1997 c 10 art 4 s 15**322B.699 INDEMNIFICATION.***[For text of subds 1 to 8, see M.S.1996]*

Subd. 9. Indemnification of other persons. Nothing in this section must be construed to limit the power of the limited liability company to indemnify persons other than a governor, manager, member, employee, or member of a committee of the board of the limited liability company, by contract or otherwise.

History: 1997 c 10 art 4 s 16**322B.70 MERGER, EXCHANGE, TRANSFER.**

Subdivision 1. Merger. With or without a business purpose, a limited liability company may merge:

- (1) with another limited liability company pursuant to a plan of merger approved in the manner provided in sections 322B.71 to 322B.75;
- (2) with a domestic corporation under a plan of merger approved in the manner provided in sections 322B.71 to 322B.75, and in chapter 302A; and
- (3) with any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 322B.76.

Subd. 2. Exchange. (a) A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75.

(b) A limited liability company may acquire all of the ownership interests of one or more classes or series of a domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75, and in chapter 302A.

(c) A domestic corporation may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in sections 322B.71 to 322B.75, and in chapter 302A.

(d) A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 322B.76.

*[For text of subds 3 and 4, see M.S.1996]***History:** 1997 c 10 art 3 s 14,15**322B.72 PLAN APPROVAL.***[For text of subd 1, see M.S.1996]*

Subd. 2. Approval by owners. (a) At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in paragraph (b), a class or series of ownership interests of the orga-

nization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the ownership interests of the class or series if the plan of merger effects a cancellation of all ownership interests of the organization of all classes and series that are existing immediately before the merger and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their shares under section 322B.383 in the event of the merger.

Subd. 3. Approval by constituent domestic corporation. If the merger or exchange is with a domestic corporation, the plan of merger or exchange must also be approved in the manner provided in chapter 302A.

History: 1997 c 10 art 3 s 16,17

322B.74 ABANDONMENT.

Subdivision 1. By owners or plan. After a plan of merger or exchange has been approved by the owners entitled to vote on the approval of the plan as provided in section 322B.72, and before the effective date of the plan, it may be abandoned:

(1) if the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 322B.72 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote and, if the owners of a constituent organization are not entitled to vote on the approval of the plan under section 322B.72, the governing board of that limited liability company has approved the abandonment by the affirmative vote of a majority of the board members present, and the abandonment has been approved in the manner provided in chapter 302A by any constituent organization that is a domestic corporation;

(2) if the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(3) pursuant to subdivision 2.

Subd. 2. By the governing board. A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the governing board of any constituent organization that is a limited liability company abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the board members present, subject to the contract rights of any other person under the plan. Abandonment by the board of a constituent organization that is a domestic corporation may be accomplished as provided in chapter 302A.

[For text of subd 3, see M.S.1996]

History: 1997 c 10 art 3 s 18,19

322B.80 DISSOLUTION.

Subdivision 1. Dissolution events. A limited liability company dissolves upon the occurrence of any of the following events:

(1) when the period fixed in the articles of organization for the duration of the limited liability company expires;

(2) by order of a court pursuant to sections 322B.833 and 322B.843;

(3) by action of the organizers pursuant to section 322B.803;

(4) by action of the members pursuant to section 322B.806;

(5) except as otherwise provided in the articles of organization or a member control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:

(i) death of any member;

(ii) retirement of any member;

- (iii) resignation of any member;
 - (iv) redemption of a member's complete membership interest;
 - (v) assignment of a member's governance rights under section 322B.313 which leaves the assignor with no governance rights;
 - (vi) a buy-out of a member's membership interest under section 322B.833 that leaves that member with no governance rights;
 - (vii) expulsion of any member;
 - (viii) bankruptcy of any member;
 - (ix) dissolution of any member;
 - (x) a merger in which the limited liability company is not the surviving organization;
 - (xi) an exchange in which the limited liability company is not the acquiring organization; or
 - (xii) the occurrence of any other event that terminates the continued membership of a member in the limited liability company,
- but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if (A) there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the remaining members obtained no later than 90 days after the termination of the continued membership, or (B) if the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member; or
- (6) when terminated by the secretary of state according to section 322B.960.

[For text of subs 2 and 3, see M.S.1996]

History: 1997 c 10 art 2 s 8

322B.92 AMENDMENTS TO THE CERTIFICATE OF AUTHORITY.

If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the secretary of state:

(1) in the case of a change in its name, a termination or a merger, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized;

(2) in the case of a change in the name or address of the registered agent required to be maintained by section 322B.925, an amendment to the certificate of authority signed by an authorized person; or

(3) in the case of an election, rescission, or change in the specification of professional services under section 319B.04, a notice which:

- (i) states the election, rescission, or change in specification;
- (ii) has been approved in accordance with the foreign limited liability company's generally applicable governing law, as that term is defined in section 319B.02, subdivision 8; and
- (iii) has been signed on behalf of the foreign limited liability company.

The fee for filing the document is the same as for filing an amendment.

History: 1997 c 22 art 2 s 5