

322B.40 AUTHORIZATION, FORM AND ACCEPTANCE OF CONTRIBUTIONS.

Subdivision 1. **Board of governors may authorize.** Subject to any restrictions in the articles of organization or a member control agreement and only when authorized by the board of governors or pursuant to a member control agreement, a limited liability company may accept contributions under subdivisions 2 and 3, make contribution agreements under section 322B.42, and make contribution allowance agreements under section 322B.43.

Subd. 2. **Permissible forms.** A person may make a contribution to a limited liability company:

(1) by paying money or transferring the ownership of an interest in property to the limited liability company, or rendering services to or for the benefit of the limited liability company; or

(2) through a written obligation signed by the person to pay money or transfer ownership of an interest in property to the limited liability company or to perform services to or for the benefit of the limited liability company.

Subd. 3. **Acceptance of contributions.** No purported contribution is to be treated or considered as a contribution, unless:

(1) the board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution, including terms of future performance, if any, and states the value being accorded to the contribution; and

(2) the fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

Subd. 4. **Valuation.** The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 322B.42, and a contribution allowance agreement in section 322B.43, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subdivision.

Subd. 5. **Terms of membership interests.** All the membership interests of a limited liability company must:

(1) be of one class, without series, unless the articles of organization or a member control agreement establish, or authorize the board of governors to establish, more than one class or series within classes;

(2) be ordinary membership interests entitled to vote as provided in section 322B.356, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization or a member control agreement have fixed the relative rights and preferences of different classes and series; and

(3) share profits and losses as provided in section 322B.326, and be entitled to distributions as provided in sections 322B.50, 322B.51, and 322B.873, subdivision 1, clause (3).

Subd. 6. Procedure for fixing terms. (a) Subject to any restrictions in the articles of organization or a member control agreement, the power granted in subdivision 5 may be exercised by a resolution or resolutions establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles of organization, in a member control agreement, or by resolution of the board of governors:

(1) may be made dependent upon facts ascertainable outside the articles of organization, or outside the resolution or resolutions establishing the class or series, if the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles of organization or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company in connection with the establishment of the class or series if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member control agreement. However, where the members have received notice of the creation of membership interests with rights or preferences not set forth in the articles of organization or a member control agreement before the acceptance of the contributions with respect to the membership interests, the statement may be filed any time within one year after the acceptance of contributions. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the acceptance of contributions, on the date of its adoption by the governors.

(c) Filing a statement with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles of organization for purposes of sections 322B.15, 322B.155, and 322B.383. Filing an amendment of such a statement with the secretary of state is considered an amendment of the articles for purposes of sections 322B.15, 322B.155, and 322B.383.

Subd. 7. Specific terms. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

(1) subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;

(2) entitling the members to cumulative, partially cumulative, or noncumulative distributions;

(3) having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

(4) convertible into membership interests of any other class or any series of the same or another class; or

(5) having full, partial, or no voting rights, except as provided in section 322B.155.

History: *1992 c 517 art 2 s 52; 1996 c 361 s 30; 1999 c 85 art 2 s 44-46; 2004 c 199 art 14 s 45*