

**322C.0405 LIMITATIONS ON DISTRIBUTION.**

Subdivision 1. **Distribution restrictions.** A limited liability company may not make a distribution if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

Subd. 2. **Basis for decision.** A limited liability company may base a determination that a distribution is not prohibited under subdivision 1 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

Subd. 3. **Effect of distribution.** Except as otherwise provided in subdivision 6, the effect of a distribution under subdivision 1 is measured:

(1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:

(i) the distribution is authorized, if the payment occurs within 120 days after that date; or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

Subd. 4. **Equivalent to unsecured creditors.** A limited liability company's indebtedness to a member incurred by reason of a distribution made according to this section is at parity with the company's indebtedness to its general, unsecured creditors.

Subd. 5. **Exclusion from calculated indebtedness.** A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subdivision 1 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

Subd. 6. **Indebtedness as distribution.** If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Subd. 7. **Compensation not distribution.** In subdivision 1, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

**History:** 2014 c 157 art 1 s 34