

REMOVING A MANAGER OF A LIMITED LIABILITY COMPANY UNDER TEXAS LAW

Introduction

I am discussing limited liability company as this is, by far, the most frequently utilized corporate entity by our clients. The governance and management structure of a limited liability company (“LLC”) often depends on the terms set forth in the company's operating agreement (“OA”). However, when the OA is silent or unclear, Texas law provides a default framework. One common issue faced by members of a LLC is the removal of a manager. Not surprisingly, given the stresses in many markets due to the economy, this issue has come up numerous times. This article delves into the how and when you can remove a manager of a LLC under Texas law.

NOTE, IT IS STRONGLY SUGGESTED YOU REACH OUT TO CORPORATE COUNSEL FOR A LEGAL DETERMINATION AS TO WHAT IS OR IS NOT IN YOUR OA AND/OR ANY OTHER RELEVANT DOCS. THIS ARTICLE IS NOT TO BE CONSTRUED AS LEGAL ADVICE.

1. Refer to the Operating Agreement

Before turning to Texas statutes, one should first consult the OA, with counsel, which might have specific provisions regarding the removal of a manager. This agreement may specify:

- Grounds for removal (e.g., malfeasance, non-performance, breach of fiduciary duties)
- The required vote or consensus for removal
- The process by which the removal takes place
- Relevant notice requirements

If the OA clearly lays out the removal process and circumstances under which it can occur, then its terms will typically govern the removal process.

2. Default Rules under Texas Law

If the OA is silent on the issue, Texas law provides default rules. This simply means that if your OA is silent as to the removal of a manager, the default laws under the Texas Business Organizations Code (“TBOC”), shall govern:

- **Without Cause:** Managers of Texas LLCs can be removed with or without cause if removal is approved by more than a majority of the members.
- **Court-Ordered Removal:** In certain circumstances, a court in Texas can order the removal of a manager. This typically happens when the manager's conduct is deemed harmful to the LLC or when the manager has willfully or persistently committed a breach of the OA and/or their fiduciary duties.

3. Ensure Proper Process

Even if the grounds for removal are clear, it's crucial to ensure that the removal process adheres to any procedural requirements outlined in the OA or, in its absence, the BOC (again, the strong suggestion that your corporate counsel is involved in the entire process). This might involve:

- Giving the manager proper notice
- Allowing the manager a chance to respond or defend themselves
- Holding a formal vote among members

Failing to follow the correct procedure could lead to legal challenges and complications for the LLC.

4. Amend or Amend and Restate your OA

Once the manager has been removed, you want to make sure that your OA properly reflects the new manager(s) as well as a set of minutes that follows corporate formalities describing the “who, what, when and why” of the removal.

5. Update State Records with the Texas Secretary of State

After successfully removing a manager, the LLC might need to update its records with the Texas Secretary of State, especially if the removed manager was listed in any official filings. A change in management might necessitate the filing of an amendment to the LLC's certificate of formation.

Conclusion

The removal of an LLC manager in Texas, while potentially challenging, is governed by both the terms of the LLC's OA and the default rules of the TBOC. Adhering to the correct process and understanding the legal landscape is essential to ensure that removal is done correctly and effectively.

Disclaimer: This article is provided for informational purposes only and does not constitute legal advice. Always consult with an attorney before taking any actions based on this or any other legal information.

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