The Louisiana Limited Liability Company (LLC) Law

Title 12 Chapter 22
La. R.S. 12:1301-1369
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§1301. Definitions

"Articles of organization" means documents filed under R.S. 12:1304 for the purpose of forming a limited liability company and those documents as amended or restated.

Only put things in that have to be in the articles of organization. It is a public document.
§1301. Definitions

"Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership.
§1301. Definitions

Capital Contribution Includes:

- Cash
- Property
- Services rendered
- Promissory note
- Binding obligation to contribute the above
§1301. Definitions

"Constituent entity" means each limited liability company, partnership, partnership in commendam, limited partnership, or corporation which is party to an agreement of merger or consolidation
§1301. Definitions

"New entity" means the entity into which constituent entities consolidate.
§1301. Definitions

“Foreign Corporation” or Partnership or LLC, etc. means it was formed under the laws of another State or Country.
§1301. Definitions

"Low-profit limited liability company" or "L3C" means a limited liability company organized for the purposes set forth in R.S. 12:1302(C).
§1301. Definitions

"Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in its articles of organization.

If the LLC is going to have managers, provisions must be put in the articles of organization.
§1301. Definitions

"Member" means a person with a membership interest in a limited liability company with the rights and obligations specified under this Chapter.
§1301. Definitions

"Membership interest" or "interest" means a member's rights in a limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management.
§1301. Definitions

"Operating agreement" means any agreement, written or oral, of the members as to the affairs of a limited liability company and the conduct of its business.

This is the other “managing document,” like the Articles of Organization, but it is a private, unrecorded document.
§1301. Definitions

"Person" means a natural person OR corporation, partnership, limited partnership, domestic or foreign limited liability company, joint venture, trust, estate, or association.
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§1302. Purpose

may conduct business for any lawful purpose

unless a more limited purpose is stated in its articles of organization

not for the purpose of insurance underwriting

Consider suggesting a limited purpose to avoid future conflicts of interest.
A limited liability company organized as a low-profit limited liability company shall set forth in its articles of organization a business purpose that satisfies each of the following requirements:
§1302 (C) (1) – L3C's

(a) The entity significantly **furthers the accomplishment** of one or more charitable or educational purposes.
§1302 (C) (1) – L3C's

(b) No significant purpose of the entity is the production of income or the appreciation of property.
(c) **No** purpose of the entity is to accomplish one or more **political or legislative purposes**.
If a company ceases to satisfy any one of the requirements, it shall immediately cease to be an L3C, but may continue to exist as an LLC.

The name shall be changed to be in conformance with R.S. 12:1306.
§1303. Powers

All limited liability companies shall have the powers, rights, and privileges provided for

a corporation organized under the Business Corporation Law (R.S. 12:1 et seq.), and

a partnership organized under Title XI of Book III of the Louisiana Civil Code.
§1303. Powers

Every limited liability company shall have **perpetual existence**, unless a limited period of duration is stated in the articles of organization.
§1304. Formation

One or more persons capable of contracting may form by filing the articles of organization and the initial report with the secretary of state.
§1304. Formation

The articles of organization and initial report may be delivered to the secretary of state in advance for filing as of any specified date and time within thirty days after the date of delivery.
§1304. Formation

If the secretary of state finds that the articles of organization and initial report are in compliance and after all fees have been paid, the secretary of state shall issue a certificate of organization which shall show the date (and, if required, the hour) of filing.
§1304. Formation

The certificate of organization shall be conclusive evidence the LLC has been duly organized.
§1304. Formation

Upon the issuance of the certificate of organization, the LLC shall be duly organized, and its separate existence shall begin as of the time of filing of the articles of organization with the secretary of state.
§1304. Formation

5 Day Retroactivity

If the articles were filed within five days, exclusive of legal holidays, after acknowledgment or execution thereof as an authentic act, the limited liability company shall be duly organized, and its separate existence shall begin, as of the time of such acknowledgment or execution.
§1305. Articles of organization; initial report

- The articles of organization **shall be written English language**
- Shall be **executed by at least one person**, who need not be a member or manager of the limited liability company.
§1305. Articles of organization; initial report

The articles of organization shall be acknowledged by the person or one of the persons who signed the articles of organization or may be executed by authentic act.
§1305. Articles of organization; initial report

The articles of organization **must** set forth:

1. The **name** of the limited liability company.

2. The **purposes** for which the limited liability company is formed or that its purpose is **to engage in any lawful activity**.

3. Whether the company is an **L3C**.
§1305. Articles of organization; initial report

The articles of organization may set forth the following:

(1) **limitations on the authority** of members to bind the limited liability company or that such limitations are contained in a written operating agreement.

(2) whether and to what extent the LLC will be managed by managers.
§1305. Articles of organization; initial report

(3) restrictions on the authority of managers or that such restrictions are contained in a written operating agreement.

(4) The latest date, if any, on which the limited liability company is to dissolve.
§1305. Articles of organization; initial report

(5) A statement that persons dealing with the LLC may rely upon a certificate of one or more named certifying officials, to

- establish the membership of any member
- the authenticity of any records, or
- the authority of any person to act on behalf of the LLC.

(6) Any other legal provision
§1305. Articles of organization; initial report

The initial report shall be signed by each person who signed the articles of organization, or by his agent.
§1305. Articles of organization; initial report

The initial report must include the following:

(1) The location and municipal address, if any, not a post office box only, of the limited liability company's registered office.

(2) The full name and municipal address, if any, not a post office box only, of each of its registered agents.
§1305. Articles of organization; initial report

(3) A notarized affidavit of acknowledgment and acceptance signed by each registered agent.

(4) The names and municipal addresses, not a post office box only, of the first managers, or the members (if member-managed).
§1305. Articles of organization; initial report

If the initial managers, (or members, if member-managed), are not named in the initial report, a supplementary report setting forth their names and addresses and signed by each person who signed the articles of organization must be filed as soon as they have been selected.
There are two documents that spell out how the LLC is organized: the **Articles of Organization** and the **Operating Agreement** (if there is one).

The Articles are a **PUBLIC** document, so we think they shouldn't have anything more in them than absolutely necessary.

Everything you need that **can** be in the Operating Agreement **should** be.

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**ARTICLES OF ORGANIZATION**

FOR

[**name of company here**]

(under the provisions of La. R.S. 12:1301 et seq.)

STATE OF LOUISIANA  PARISH OF [**name of parish here**]

**Name**
The name of this limited liability company is: [**name of company here**]

**Purpose**
This company is formed for the purpose of: engaging in any lawful activity for which limited liability companies may be formed.

**Duration**
The duration of this limited liability company is: perpetual.

**Management**
This company will be managed by a manager or managers who shall be selected by the Members. The initial manager(s) shall be [**name of manager[s]**].

**Third-Party Assurances**
Persons dealing with the limited liability company may rely upon a certificate of [**names of one or more managers, members, or other certifying officials**] to establish the membership of any Member, the authenticity of any records of the limited liability company, or the authority of any person to act on behalf of the limited liability company, including but not limited to:

1. The dissolution and winding up of the limited liability company.
2. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company.
3. The merger or consolidation of the limited liability company.
4. The incurrence of indebtedness by the limited liability company other than in the ordinary course of its business.
5. The alienation, lease, or encumbrance of any immovables of the limited liability company.
6. An amendment to the articles of organization or an operating agreement.
Consider limiting the purpose of the LLC, especially if more than one person is involved. There could be a conflict of interest if any member is involved in another business, since an unlimited LLC could conceivably be in competition with anything.
If you plan on using a manager or managers, you need to mention it here. You don't need to have managers, though.

The LLC will be member-managed if this is left out.
This section is also optional. It can be convenient, since it allows the named individuals to take care of business without having to jump though extra hoops, but it gives the named people a lot of power.
ARTICLES OF ORGANIZATION
FOR
[name of company here]
(under the provisions of La. R.S. 12:1301 et seq.)

STATE OF LOUISIANA
PARISH OF [name of parish here]

Name
The name of this limited liability company is: [name of company here]

Purpose
This company is formed for the purpose of: engaging in any lawful activity for which limited liability companies may be formed.

Duration
The duration of this limited liability company is: perpetual.

Management
The names of one or more managers, members, or other certifying officials to establish the membership of any Member, the authenticity of any records of the limited liability company, or the authority of any person to act on behalf of the limited liability company, including but not limited to:

1. The dissolution and winding up of the limited liability company.
2. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company.
3. The merger or consolidation of the limited liability company.
4. The incurrence of indebtedness by the limited liability company other than in the ordinary course of its business.
5. The alienation, lease, or encumbrance of any immovables of the limited liability company.
6. An amendment to the articles of organization or an operating agreement.
These powers are pretty strong. They basically mean the person can effectively **destroy the business**. They have a duty NOT to, of course, but still...
§1306. Name

Shall contain the words "limited liability company", the abbreviation "L.L.C.", or the abbreviation "L.C."

For low-profit limited liability companies, shall contain the words "low-profit limited liability company", the abbreviation "L3C", or the abbreviation "l3c"
§1306. Name

Shall contain the words "limited liability company", the abbreviation "L.L.C.", or the abbreviation "L.C."

For low-profit limited liability companies, shall contain the words "low-profit limited liability company", the abbreviation "L3C", or the abbreviation "l3c"
§1306. Name

Shall **not** contain any word or phrase which **indicates or implies** that it is organized for any **unlawful purpose** or **contrary to its articles** of organization.

Shall **not** contain the phrase "**doing business as**" or the abbreviation "**d/b/a**".

Shall **not** imply that the company is an **administrative agency** of any parish or of this state or of the United States.
§1306. Name

Must not include in its name any words which deceptively or falsely suggest a charitable or nonprofit nature.
§1306. Name

Must give notice to the Louisiana Professional Engineering and Land Surveying Board to use "engineer", "engineering", "surveyor", or "surveying"

Must have written approval from the commissioner of the office of financial institutions to use "bank", "banker", "banking", "savings", "safe deposit", "trust", "trustee", "building and loan", "homestead", or "credit union"
§1306. Name

Shall be **distinguishable** from the name of any corporation or other limited liability company, any name which is reserved, or any trade name registered with the secretary of state, **unless**: 
§1306. Name

(a) The other business is about to change its name, to cease doing business, is being liquidated, or is about to withdraw from doing business in this state, and written consent has been given and is filed with the articles of organization.
§1306. Name

(b) The business has been authorized to do business in this state for more than **two years** and has **never actively engaged** in business in this state.

The failure of a corporation to file a Louisiana corporate franchise tax return for **two consecutive years** will be rebuttable evidence.
§1306. Name

(c) The corporation or other limited liability company has **failed to pay the taxes** due by it to the state for the preceding **five consecutive years**.

(d) The corporation, if it is a **foreign corporation**, has **not been authorized** to do business in the state and has **not filed** a Louisiana corporate franchise **tax return for two consecutive years**.
§1306. Name

(e) The charter of the corporation has been revoked by the secretary of state and that corporation has not filed a Louisiana corporate franchise tax return for two consecutive years.

(f) The other corporation or limited liability company filed for dissolution or withdrawal prior to the preceding five years and has not received the tax clearances required for final dissolution or withdrawal.
§1306. Name

The LLC's name is subject to the laws as to unfair competition or unfair practice in the use of trade names.
§1306. Name

A name in violation of this Section does not affect the existence of the LLC, but any court having jurisdiction may enjoin an LLC from doing business under that name.
§1307. Reservation of name; transfer of reserved name

A person may reserve a name by filing a signed application.

If the secretary of state finds that the name is available for use, he shall reserve the name for the applicant for up to sixty days.

The secretary of state may, for good cause, extend the reservation for an additional thirty days, but only twice.
§1307. Reservation of name; transfer of reserved name

The right to use a reserved name may be transferred to another person by filing a notice of the transfer that

- specifies the name and address of the transferee
- is signed by the applicant for whom the name was reserved
§1308. Registered office and registered agent

Each LLC must continuously maintain:
- A registered **office** in this state
- At least one registered **agent**
§1308. Registered office and registered agent

The agent must be one of the following:

- A citizen of Louisiana who resides in Louisiana.
- A partnership or professional law corporation, which is authorized to practice law in Louisiana.
§1308. Registered office and registered agent

Or a domestic corporation, domestic LLC, or foreign corporation

- **authorized** by its articles or certificate of incorporation **to act as the agent**
- **has on file** with the secretary of state a **certificate** stating the name of at least **two individuals** at its address in Louisiana authorized to receive any process served upon it.
§1308. Registered office and registered agent

Legal process and other notices or demands may be served on the LLC by service upon this agent and, if the agent is a partnership, upon any partner.

Practice Tip!

Consider suggesting an attorney or law firm to act as registered agent so that a response to a law suit can be as quick as possible.
§1308. Registered office and registered agent

An LLC may change its registered agent, the address of an agent, or its registered office by filing a statement authorizing the change and signed by

- a manager of the LLC, or
- at least one member, if management is reserved to the members
§1308. Registered office and registered agent

Any change of **registered agent** shall be accompanied by a **notarized affidavit of acknowledgment and acceptance signed by the new agent.**
§1308. Registered office and registered agent

A registered agent may change his address by filing a statement of the change signed by him or on his behalf.

The statement shall include the name of the LLC for which the change is effective and the new address of the registered agent.
§1308. Registered office and registered agent

The statement by the agent may include a change of address of the registered office.

The old and new addresses of the agent must be the same as the old and new addresses of the registered office of the LLC.

The agent must notify the LLC in writing and the statement must recite that the agent has done so.
§1308. Registered office and registered agent

A registered agent may resign by providing written notice to the LLC and the secretary of state.

A successor agent must be appointed and the successor agent's address filed within thirty days.
§1308. Registered office and registered agent

If no statement of change is filed within thirty days, the office of the secretary of state is treated as the registered agent.
§1308.1. Annual report

On or before the anniversary date of organization, a manager (or member if member-managed) **must file** an annual report stating:

- The municipal address (not a post office box only) of its **registered office**.
- The name and municipal address (not a post office box only) of each **registered agent**.
§1308.1. Annual report

The name and municipal address (not a post office box only) of each manager (or member if member-managed)
§1308.2. Failure to file annual report; etc.

The secretary of state shall **revoke** the articles of organization of a domestic LLC if it **fails to file** an annual report for **three consecutive years** according to the records of the secretary of state.
§1308.2. Failure to file annual report; etc.

At least **thirty days** prior to revoking the articles of organization, the secretary of state **shall give notice** to the affected LLC.

He is to send the notice to the last designated **registered agent**.

If there is no registered agent of record, the notice shall be directed to the LLC at its **registered office**.
§1308.2. Failure to file annual report; etc.

The articles of organization **shall be reinstated** if each of the following is filed with the secretary of state within **three years**:

- An application for reinstatement, signed and acknowledged by a member or manager.
- The current annual report of the LLC.
- The fee for reinstatement proceedings.
§1308.2. Failure to file annual report; etc.

Upon reinstatement, the secretary of state shall furnish a certificate of reinstatement to the LLC. The certificate of reinstatement and articles of organization shall be retroactive, and the articles of organization shall continue in existence as though the revocation had not occurred.
§1308.3. Conversion of state of organization

Unless prohibited by the laws of the other state:

- A domestic LLC may convert its state of organization from Louisiana to any other state.

- A foreign LLC may convert its state of organization from any other state to Louisiana.
§1308.3. Conversion of state of organization

Must follow the rules of this Section

Must be authorized by a majority of the members, or

Authorized by such larger vote as the articles of organization or an operating agreement may require.
§1308.3. Conversion of state of organization

Must file a written request containing:

(1) The name of the LLC

(2) The full name and municipal address of each current manager or each of the current members (if member-managed)
§1308.3. Conversion of state of organization

(3) A statement that

- LLC is converting its state of organization from another named state to Louisiana and is continuing its existence in and under the laws of Louisiana, or

- is converting its state of organization from Louisiana to another named state and is continuing its existence in and under the laws of such other named state.
§1308.3. Conversion of state of organization

(4) A statement that a majority of the members, or such larger vote as the articles of organization or the operating agreement may require, has approved the conversion of the state of organization.

(5) The manner and basis of converting the interests of the members of the LLC into the interests of the members in the converted LLC.
§1308.3. Conversion of state of organization

(6) A statement that the LLC, in changing its state of organization, has **complied with the laws** and requirements of both the prior and new state of organization.

(7) **Any other provision**, attachment, or exhibit, not inconsistent with law, that **the members elect to set forth** or include in the certificate of conversion.
§1308.3. Conversion of state of organization

(8) If the LLC is converting from another state to Louisiana:

- The location and municipal street address (not PO box only) of the LLC's registered office.

- The location and municipal street address (not PO box only) of each of the LLC's registered agents.
§1308.3. Conversion of state of organization

a notarized affidavit of acknowledgment and acceptance signed by each agent.
§1308.3. Conversion of state of organization

The request for conversion may be delivered for filing as of any specified date and time within thirty days after the date of delivery.
§1308.3. Conversion of state of organization

If the request for conversion is in compliance and fees paid, the secretary of state shall record the request for conversion and any attachments or exhibits.

Thereafter, the secretary of state shall either issue a certificate of conversion or advise the LLC why it has denied the request.
§1308.3. Conversion of state of organization

An LLC converting from Louisiana to another state

will be deemed to be organized solely under the laws of the other state.

The LLC continues to exist without interruption in its organizational form.

All rights, interests, obligations, and liabilities of the LLC continue without impairment.
§1308.3. Conversion of state of organization

Any proceeding pending by or against the LLC or its members or managers may be continued without the need for substituting a new party. The LLC will be deemed to have appointed the secretary of state in Louisiana as its agent for service of process for an obligation against the LLC arising or existing before the conversion.
§1308.3. Conversion of state of organization

A foreign LLC converting to Louisiana will be deemed to be organized solely under the laws of Louisiana.

Continues to exist without interruption in its organizational form.

All rights, interests, obligations, and liabilities continue.
§1308.3. Conversion of state of organization

Any proceeding pending by or against the LLC or its members or managers may be continued without the need for substituting a new party.

The certificate of conversion is conclusive evidence of the fact that the LLC has been duly organized under the laws of Louisiana.
§1308.3. Conversion of state of organization

A domestic LLC converting to another state must also **file a certified copy of the certificate** of organization or other official certificate from the other state showing it was organized under the laws of such state.

Such certified copy shall be filed **not later than thirty days** after issuance of the other state's certificate.
§1309. Amendment of articles of organization

You must amend the articles when:

- There is a change in the name
- There is an incorrect statement in the articles
- The members want a change in any in order to accurately represent their agreement
- The company ceases to be a low-profit LLC.
§1309. Amendment of articles of organization

After an amendment has been adopted, articles of amendment setting forth the amendment, the date, and manner of adoption thereof must be executed in the LLC's name by a manager or by at least one member (if member-managed).
§1309. Amendment of articles of organization

The articles of amendment must be **acknowledged** by at least one of the persons who signed them or may be **executed** by authentic act.
§1309. Amendment of articles of organization

The articles of amendment must be filed with the secretary of state.

They may be delivered to the secretary of state for filing as of any specified date and time within thirty days after the date of delivery.
§1309. Amendment of articles of organization

If the articles of amendment were so filed within five days, exclusive of legal holidays, the amendment shall be effective as of the time of the acknowledgment or execution.
§1310. Certificates of correction

Any instrument filed may be corrected by the filing of a certificate of correction. It needs:

- The title of the instrument being corrected
- The name of each party to the instrument
- The date the instrument was filed.
- The provision in the instrument as previously filed and as corrected. If execution was defective, the manner in which it was defective.
§1310. Certificates of correction

A certificate of correction can make other changes only if they would have complied with the requirements of the LLC law at the time the original was filed.
§1310. Certificates of correction

It is not allowed to change the **effective date** of the instrument being corrected.

A **right** or **liability** incurred before the filing:

- Can only be affected if it was incurred **because** of what is being corrected
- Will be **extinguished** if the person having the right has **not detrimentally relied** on the original.
§1310. Certificates of correction

Must be executed by a manager or one member (if member-managed).

Must be acknowledged by at least one of the persons who signed it or may be an authentic act.
§1310. Certificates of correction

A multiple original of the certificate, or a copy certified by the secretary of state, must be filed for record in each office of the recorder of conveyances, if any, in which the instrument corrected thereby was required to be filed by this Chapter.
§1310. Certificates of correction

If it corrects a merger or consolidation, a copy of the certificate must be mailed to each member or former member of any party to the merger or consolidation whose property rights are affected by the correction within twenty days after filing.
§1310.1. Retroactivity

When *immovable property* is acquired in the name of any LLC which has *not been issued a certificate* of organization, and the LLC is *subsequently issued a certificate*, the LLC's *existence shall be retroactive* to the date of acquisition, but such retroactive effect shall be *without prejudice* to third party rights acquired in the interim.
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§1311. Management by members

Unless otherwise stated in the articles of organization, the LLC shall be managed by the members, subject to any provision in a written operating agreement.

If you want to have managers, you have to say so in the articles!
§1312. Managers

The articles of organization may provide for managers. They don't need to be members.

The articles of organization or an operating agreement may prescribe qualifications.
§1312. Managers

The **number** of managers must be **fixed** in the articles of organization or an operating agreement.

If a manager is listed, a **municipal address**, (not a post office box only), must be indicated.
§1313. Election and removal of managers

Unless otherwise provided in the articles of organization or an operating agreement:

(1) Election of managers to fill initial positions or vacancies shall be by plurality vote of the members.

(2) Any or all managers may be removed by a vote of a majority of the members, with or without cause, at a meeting called expressly for that purpose.
§1314. Duties of members and managers

Has a fiduciary relationship to the LLC and its members

Must discharge duties in good faith, with the diligence, care, judgment, and skill which an ordinary prudent person in a like position would exercise under similar circumstances.
§1314. Duties of members and managers

Is fully protected in relying in good faith upon the records of the LLC and upon such information, opinions, reports, or statements presented to the LLC by

- members, managers, or any committee thereof
- any legal counsel, appraiser, engineer, etc. selected with reasonable care
§1314. Duties of members and managers

**BUT is not** protected if he **has knowledge** concerning the matter in question that makes such reliance **unwarranted**.

Will **not be liable** for any action taken (or failure to take action) on behalf of the LLC if he followed these rules.
§1314. Duties of members and managers

Must account to the LLC and hold as trustee for it any profit or benefit derived from any transaction connected with the conduct or winding up of the LLC from any personal use by him of its property.
§1314. Duties of members and managers

Must account unless:

- has informed consent of a majority of the uninterested members
- proves under strict judicial scrutiny the fairness of the transaction to the LLC.
§1314. Duties of members and managers

A member or manager won't have to pay monetary damages to the LLC or the members unless:

- acted in a grossly negligent manner
- did something worse, including intentional tortious conduct or intentional breach of his duty of loyalty.
§1314. Duties of members and managers

A business judgment in good faith fulfills the duty of diligence, care, judgment, and skill if:

(1) No conflict of interest

(2) Is informed about the subject of the judgment to the extent reasonably believed to be appropriate under the circumstances.

(3) Rationally believes that the judgment is in the best interests of the LLC and its members.
§1315. Limitation of liability and indemnification of members and managers

The articles of organization or a written operating agreement may:

(1) Eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty in 12:1314.

(2) Provide for indemnification of a member or manager for judgments, settlements, penalties, fines, or expenses incurred because he is or was a member or manager.
§1315. Limitation of liability and indemnification of members and managers

No provision permitted above shall limit or eliminate the liability of a member or manager for the amount of a financial benefit received but not entitled to, or for a criminal act.
§1316. Voting by managers

Except as otherwise provided in the articles of organization or an operating agreement:

- each manager gets one vote
- all decisions made by majority vote
§1317. Agency power of managers or members

Each member (if member-managed), or manager, is a mandatory of the LLC for all matters in the ordinary course of its business other than the alienation, lease, or encumbrance of its immovables, unless restricted or enlarged in the articles of organization (NOT in the operating agreement) or

member or manager lacks the authority to act for the LLC and the third party know it.
§1317. Agency power of managers or members

Third parties dealing with the LLC shall be deemed to have knowledge of restrictions on the authority of a member or manager contained in a written operating agreement if the articles of organization of the LLC contain a statement that such restrictions exist.
§1317. Agency power of managers or members

Persons dealing with a LLC may rely on a certificate of any person named in the articles of organization as being able to provide one or, if no person is named, of one or more managers or members, to establish

- the membership of any member
- the authenticity of any records of the LLC
- the authority of any person to act on behalf of the LLC.
§1317.1. Company representation; state entities

If the LLC has five or fewer members, and needs a representative in front of a state agency, board, or commission:

- must have the consent of a majority interest of the members
- evidence of the consent by authentic act
§1318. Voting rights of members

Default rule: each member gets one vote. All decisions made by majority vote.

Can be changed by the articles of organization or a written operating agreement.
§1318. Voting rights of members

Unless changed by the articles of organization or a written operating agreement, the members have to approve of these things (by majority vote) even if there are managers:
§1318. Voting rights of members

- **Dissolution** and winding up
- Getting rid of **all of the assets**
- **Merger** or consolidation
- Taking on **debt** other than in the ordinary course of business
- Selling, leasing, or encumbering **immovables**
- **Amending** the articles of organization or operating agreement
§1318. Voting rights of members

The articles of organization or a written operating agreement may provide for any other voting rights of members.
§1319. Records and information

The LLC must keep at its registered office:

- a current list of the **full name and last known business address** of each member and manager

- copies of records to determine the relative **voting rights** of the members

- a copy of the **articles of organization**

- federal and state **income tax returns** for the three most recent years
§1319. Records and information

- a copy of the written operating agreement (if there is one)
- financial statements of the LLC for the three most recent years
§1319. Records and information

Unless changed by the articles of organization or an operating agreement, a member may:

- inspect and copy any LLC record upon reasonable request during ordinary business hours
- demand a formal accounting if is just and reasonable.
§1319. Records and information

obtain from the LLC upon reasonable demand:

- complete information regarding the state of the business and financial condition

- a copy of the LLC's federal and state income tax returns for each year promptly as they become available

- other reasonable information
§1319. Records and information

**obtain** from the LLC upon reasonable demand:

- complete information regarding the state of the business and financial condition

- a copy of the LLC's federal and state income tax returns for each year promptly as they become available

- other reasonable information
§1319. Records and information

Even if the LLC receives actual notice to the contrary, it (and members, managers, etc.) may treat a person who is registered on its records as a member

as a member for all purposes

as the person exclusively entitled to act as a member

This rule may be changed by the articles of organization or operating agreement.
§1320. Liability to third parties of members and managers

The **liability** of members, managers, employees, or agents, are determined solely and **exclusively** by the provisions of the LLC law.

**General rule: no liability.** No member, manager, employee, or agent of a LLC is liable in such capacity for a debt, obligation, or liability of the LLC.
§1320. Liability to third parties of members and managers

A member, manager, employee, or agent of a LLC is *not a proper party* to a proceeding by or against a LLC, *except* when the object is to *enforce their rights* against or *liability to* the LLC.
§1320. Liability to third parties of members and managers

Exceptions:
- Fraud
- Breach of professional duty
- Other negligent or wrongful act
§1321. Contributions to capital

Contributions of a member to a LLC may be:

- Cash
- Property
- Services rendered
- Promissory note
- Binding obligation to contribute cash or property or to perform services
§1322. Liability for contribution

Must be in writing to be enforceable

Obligation is not discharged for any reason, including death or disability. May be changed in operating agreement.

- He or personal representative may substitute cash for property or performance, or may forfeit interest.

- A creditor who relied on the obligation may enforce the obligation for whatever the LLC won't pay.
§1322. Liability for contribution

A member's obligation to make a contribution or return money or other property owed to the LLC may be compromised only with the unanimous consent of the members.

A creditor who acted in reliance on the obligation can still enforce an obligation against the member for whatever the LLC won't pay.

May be changed in operating agreement.
§1323. Sharing of profits and losses

Profits and losses are allocated equally among the members.

May be changed in operating agreement.
§1324. Interim distributions

**General rule:** distributions are controlled by the *operating agreement* or *authorization* of the members.

Distributions are made *equally* to the members. *May be changed in operating agreement.*
§1325. Distributions upon withdrawal

A withdrawing member is entitled to receive the fair market value of the member's interest as of the date of withdrawal within a reasonable time after withdrawal.

May be changed in operating agreement.
§1325. Distributions upon withdrawal

A member of a LLC not entered into for a term(perpetual) may resign or withdraw with thirty days written notice to the LLC and to each member and manager.

May be changed in operating agreement.
§1325. Distributions upon withdrawal

If an LLC is for a term, a member may withdraw without the consent of the other members prior to the expiration of the term, if there is just cause due to the failure of another member to perform an obligation.
§1326. Distribution in kind

A member has **no right** to receive any distribution from a LLC in any form **other than cash**.

The LLC **can** make a member take a distribution of an asset **in kind** to the extent that the percentage of the asset is **less than or equal** to the percentage the member shares in distributions.
§1327. Restrictions on making distributions

No distribution shall be made if:

(1) The LLC would not be able to pay its debts as they become due.

(2) It would go against restrictions contained in the articles of organization or a written operating agreement.
§1327. Restrictions on making distributions

(3) The LLC's total assets would be less than total liabilities plus the amount that would be needed if the LLC were to be dissolved at the time of the distribution to satisfy the superior rights of other members. May be changed in operating agreement.
§1327. Restrictions on making distributions

The effect of a distribution is measured as of

the date **authorized** if the payment occurs **within one hundred twenty days** after authorization, or

the date payment is **made** if more than one hundred twenty days
§1328. Liability upon wrongful distribution

Each member (if member-managed), or manager, who knowingly, or without the exercise of reasonable care and inquiry, assents to a distribution in violation of the articles of organization, an operating agreement, or the LLC Law shall be jointly and severally liable to the LLC for the amount of the distribution that exceeds the amount that could have been distributed without the violation.
§1328. Liability upon wrongful distribution

Each member is liable to the LLC for the amount which the member received in violation.
§1328. Liability upon wrongful distribution

Each member or manager liable is entitled to a contribution from each other member or manager who could be held liable.
§1328. Liability upon wrongful distribution

An action to enforce liability must be brought within **two years** from the date of which the effect of the **distribution** is measured.

A member or manager held liable **solely because of having assented** to an unlawful distribution may bring an action to enforce his right of contribution within two years from the date of their payment due to such liability.
§1328. Liability upon wrongful distribution

These time limits shall not be subject to suspension on any ground, nor to interruption except by timely suit.
PART I. DEFINITIONS
PART II. FORMATION
PART III. MANAGEMENT
PART V. DISTRIBUTIONS
PART VI. ASSIGNMENT
PART VII. DISSOLUTION
PART VIII. FOREIGN LLC's
PART IX. MERGER
PART X. MISCELLANEOUS
§1329. Nature of membership interest

A membership interest is an **incorporeal movable**.

A member has **no interest** in LLC property.
§1330. Assignment of membership interest

A membership interest is assignable in whole or in part.

May be changed in the articles of organization or operating agreement.
§1330. Assignment of membership interest

An assignment of a membership interest **doesn't entitle** the assignee to **become** or to **exercise any rights** or powers of a **member** until such time as he is **admitted**. Only entitles assignee (to the extent assignor was entitled) to:

- receive distributions
- share in profits and losses
- receive allocation of income or loss
§1330. Assignment of membership interest

Granting of a security interest, lien, or other encumbrance against the membership interest shall not cause the member to cease to be a member or to have the power to exercise any rights or powers of a member.

May be changed in the articles of organization or operating agreement.
§1330. Assignment of membership interest

Until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member solely as a result of such assignment beyond what was assigned.

May be changed in the operating agreement.
§1331. Rights of judgment creditor

On application to a court by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the judgment.

The judgment creditor would have only the rights of an assignee of the membership interest.
§1332. Right of assignee to become a member

An assignee of an interest in a LLC *can't become a member* or participate in the management of the LLC unless the other members *unanimously consent* in writing.

May be changed in the articles of organization or operating agreement.
§1332. Right of assignee to become a member

An assignee who becomes a member also will be **liable for any obligations** of his assignor to make contributions.

May be changed in the articles of organization or operating agreement.

However, the assignee **will not be liable** for liabilities **unknown to the assignee** at the time that he became a member.
§1333. Powers of estate of a deceased or incompetent member

If a member dies or a court adjudges him to be incompetent, the member's membership ceases and the member's legal representative is treated as an assignee of such member's interest in the LLC.

This also applies if the member is a corporation, trust, or other entity and is dissolved or terminated.
§1334. Dissolution

An LLC is dissolved and its affairs must be wound up upon:

- The occurrence of events specified in the articles of organization or operating agreement.
- The consent of its members
- Entry of a decree of judicial dissolution

May be changed in the articles of organization or operating agreement.
§1335. Judicial dissolution

On application by a member, a court may decree dissolution of a LLC whenever it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.
§1335.1. Dissolution by affidavit

If an LLC is no longer doing business and owes no debts,
It may be dissolved by filing an affidavit with the secretary of state
executed by the members (or organizer if there are no members) attesting to such facts and requesting that the LLC be dissolved.
§1335.1. Dissolution by affidavit

Thereafter, the members (or organizer) will be **personally liable** for any debts or other claims against the LLC **in proportion to their ownership interest** in the company.
§1335.1. Dissolution by affidavit

The secretary of state shall reinstate an LLC that has been dissolved by affidavit only upon receipt of an order by a court directing him to do so.
§1336. Winding up

Upon dissolution the members must wind up the LLC's affairs. The windup of the LLC's affairs may be conducted by appointment of one or more liquidators to conduct the windup and liquidation.

May be changed in the articles of organization or operating agreement.
§1336. Winding up

An appointment of a liquidator is **not operative until:**

- **Notice** of authorization of the dissolution published at least once in a newspaper of general circulation in the parish in which the LLC's **registered office** is located

- A **copy** of the notice, with the **affidavit of the publisher** of the newspaper **filed** with the secretary of state.
§1336. Winding up

Notice must state that

- the LLC is to be **liquidated out of court**
- the name and post office address of each **liquidator**

**Articles of dissolution** have been **filed**
with the secretary of state
§1336. Winding up

However, a court of competent jurisdiction may wind up the LLC's affairs on application of

- any member or his legal representative
- assignee or
- any liquidator.
§1337. Distribution of assets

Any assets remaining after paying or adequately providing for the payment of all debts and liabilities of the LLC will be distributed as follows:
§1337. Distribution of assets

(1) to members or former members in satisfaction of liabilities for distributions
(2) the return of capital contributions
(3) in proportion to the members share in distributions
§1338. Claims against LLC in liquidation; peremption

After the proceeding for dissolution is started, notice thereof must be:

- Given by registered or certified mail to
  - all known creditors of the LLC
  - those believed to have valid and subsisting claims against the LLC
  - persons having unfulfilled contracts with the LLC
§1338. Claims against LLC in liquidation; peremption

Published once a week for two successive weeks in a newspaper in the parish where the LLC's registered office is located.

Notice will call on them to present their claims in writing and in detail, at a specified place and by a specified date not less than six months after the notice was mailed.
§1338. Claims against LLC in liquidation; peremption

The giving of notice won't be an

- acknowledgment of the validity of a claim
- waiver of any defense or setoff
- interruption of prescription, or
- revival of any claim
§1338. Claims against LLC in liquidation; peremption

If those who get this notice **don't present their claims** as prescribed in the notice, or filed suit in court before the final date prescribed in the notice, **they lose their claims** (Other than liens). The court **may allow** their claims against any remaining **undistributed assets** of the LLC if the claimant had some **valid excuse** for failure to present it on time.
§1338. Claims against LLC in liquidation; peremption

All claims (other than liens) are barred after three years regardless.
§1339. Articles of dissolution

Upon dissolution and the starting of winding up, **Articles of dissolution** must be filed stating:

- The **name** of the LLC.
- The **date** of filing of its **articles of organization** and all amendments.
- The **reason** for filing the articles of dissolution.
§1339. Articles of dissolution

- The **effective date** of the articles of dissolution (if they are not to be effective upon filing).

- Any **other information** which the members or managers filing the certificate determine.
§1339. Articles of dissolution

If the notice to possible creditors (from 12:1336) has not been published, a notice of authorization of the dissolution must be published:

- stating that the LLC is to be liquidated out of court
- published at least once in a newspaper in the parish where the LLC's registered office is located.
§1339. Articles of dissolution

a copy, with the affidavit of the publisher, filed with the secretary of state
§1339. Articles of dissolution

The Articles must be

- **signed** by one or more managers, or
- one or more **members** (if member managed)

- **acknowledged** by one of the persons executing the articles and

- **filed** with the secretary of state
§1340. Certificate of dissolution; assets omitted from liquidation; post-dissolution proceedings

When a LLC has been liquidated completely:

- One or more members or the liquidator shall sign and acknowledge a certificate stating that the LLC has been liquidated and dissolved.

- If supervised by the court, the court shall make an order declaring the LLC to be dissolved.
The certificate is filed and the secretary of state issues the **certificate of dissolution**.

- Upon issuance of the certificate of dissolution, the **separate existence** shall cease.

- Any **property omitted** from the liquidation shall vest in the members conducting the liquidation or liquidator, for the benefit of the persons entitled to it, and be **distributed accordingly**.
Following cessation of the separate existence, the members conducting the liquidation or liquidator still have power to take all action required to preserve the interests of the LLC, its creditors, and members.

The court shall have power to appoint a liquidator or new liquidator for any proper purpose in case of the death, disability, or unwillingness to serve of the last previous liquidator or last member.
§1341. Liability of members of dissolved limited liability companies

A member of a dissolved LLC, which has followed these procedures will only be liable for a claim against the LLC up to their pro rata share of the claim or the amount distributed to him, whichever is less. Their total liability is only up to the amount distributed to them.
Members of an LLC have complete freedom of contract in drafting an Operating Agreement.

Nothing here is “carved in stone.” Consider this a suggestion. You and your client can change practically anything you want!
Consider changing the shares/voting power of members, especially if they have different levels of contribution. If there is no provision, each member has one vote and an equal share of profits/losses.
This section lists manager powers. If the LLC is member-managed, change the language to talk about members.
Meetings should be at LEAST once a year. Consider holding them more often.
There should be a provision for emergency meetings, but the notice provisions can be tailored to the client's tastes.
This allows a manager to be removed or replaced by a majority vote of the members.
Note that these “majority vote” provisions require a majority of ALL of the members, not just the ones that might be at a meeting.
It's a good idea to have some things only be done by the consent of ALL of the members. This is a common list of those things.

(f) Major Actions. Notwithstanding the Agreement, the following actions may be taken by the Members entitled to vote:

(i) Any amendment or change to the Company’s Articles of Organization or any amendment or change to this Agreement.

(ii) The discontinuation of the Company’s business or the dissolution of the Company.

(iii) The sale, encumbrance, or other disposition of any interest in the Company’s real estate.

(iv) A merger, consolidation, or similar reorganization of the Company.

(v) The conversion of the Company to a corporation.

(vi) The admission of new Members.

(vii) The borrowing of any funds by or on behalf of the Company.
This only makes sense when the LLC is being taxed as a partnership AND there is more than one member. Take this out otherwise. (You might want to take it out anyway.)
This section assumes flow-through taxation like a partnership. Suggest your client consult an accountant about these provisions.
4. Allocation of Profit and Loss

Profits and losses for any fiscal year shall be allocated among the Members in proportion to their respective ownership interest in the Company.

5. Distributions

(a) Company Expenses and Debt Service. The Company’s assets shall first be applied to: (i) the payment of expenses of the Company and debt service on loans; and (ii) the maintenance reserves (determined by the Manager) for working capital, current or budgeted capital expenditures.

(b) Tax Distributions. Except as otherwise provided, assets remaining after satisfaction of the expenses, debt service, and maintenance reserves distributed to the Members in an amount not less than the highest marginal federal and Louisiana income tax rates applicable during that fiscal year, multiplied by (ii) each Member’s proportionate pass through share of income, gains, losses, deductions, and credits of the Company for the fiscal year. Such payments shall be made in four installments, each payment of which quarterly estimated tax payments are due for federal and Louisiana income tax purposes. The tax rate used to determine a Member’s tax liability will be the highest marginal rate for individuals, treating each Member as if the Member were a Louisiana resident, taking into account the deductibility of state income tax payments for federal income tax purposes.

(c) Distribution of Remaining Assets. Any assets remaining after satisfaction of the provisions above shall be distributed from time to time as determined by the Manager to the Members on the same basis on which it allocates profits and losses.

(d) No Distributions Contrary to the Act. Notwithstanding any other provision of this Agreement, no distribution shall be made if it is not permitted to be made under the Act.

Without this provision, each member gets an equal share, no matter what their contributions.
6. Restrictions on Transfers

(a) General. Except as otherwise provided in this Agreement, a Member (a “Transferor”) may not sell, gift, assign, bequeath, pledge, or otherwise encumber, divest, dispose of, or transfer ownership or control of all, any part, or any interest in, whether voluntarily or by operation of law, either inter vivos or upon death (a “Transfer”), his, her or its Membership Interest to any Person (a “Transferee”), unless consented to by all of the Members, which consent may be withheld by any Member in its sole and absolute discretion. Any Transfer, attempted Transfer, or purported Transfer in violation of the terms and conditions of this Agreement shall be null and void.

(b) Status of Transferees. Except to the extent provided in “(c) Voting After Transfers” and “(d) Voting After Transfers”, the Transferee of a membership interest in the Association is not entitled to vote at any meeting of the Members.

Without this provision, a member can freely assign their interest (though not member-related powers).

This provision means they can only assign interest with the consent of all the other members.
You should leave this provision alone. The law requires all this stuff anyway, so this provision just serves as a reminder.
8. **Indemnification**

(a) General. Any person made, or threatened to be made, a party to any action or proceeding, whether civil, criminal, administrative, or otherwise, regardless of the fact that he, she, or it may be or have been a member or an employee of the Company (collectively, the “Indemnified Person”), is indemnified by the Company for any loss suffered by the Indemnified Person in reason of any action or proceeding, whether civil, criminal, administrative, or otherwise, and the Company shall, to the extent permitted by law, indemnify the Indemnified Person against any expense (including attorneys’ fees), judgment, fines, penalties, or liability incurred by the Indemnified Person in connection with any such action or proceeding, or any appeal therefore, or in connection with any proceeding or threat of proceeding, whether civil, criminal, administrative, or otherwise, to which the Indemnified Person is or is threatened to be made a party.

The duty of the Company to indemnify the Indemnified Person shall not extend to actions or omissions of such Person which were grossly negligent, involve fraud, misrepresentation, or misfeasance, or are in breach or violation of the Person’s duties owed to the Company and the Members.