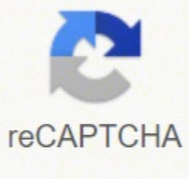




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Real estate llc operating agreement pdf texas map template

As a general principle, the more detailed and forward-looking an Operating Agreement can be about the following potential flash points, the lower the likelihood that litigation will arise around them:Membership and Voting: An Operating Agreement can set the requirements for becoming a Member of an LLC, and tailor the voting rights of Members. These provisions, when forward-thinking, tend to be particularly useful in avoiding dispute over material business events, such as when and how an LLC can dispose of capital assets or take on debt.Fiduciary Duties: An Operating Agreement can spell out the extent of the fiduciary duties that Members, Managers, or Officers owe to the LLC and/or to one another. We proudly serve a range of individuals and businesses throughout Houston and the state of Texas.Page 3Construction contract disputes are as old as construction itself. Without such provisions, predictable changes in the life or circumstances of a Member can cause considerable difficulty.Dissolution: An Operating Agreement should also provide for the specific conditions and procedures under which the LLC dissolves, including events that automatically trigger dissolution, a dispute resolution mechanism for determining if a dissolution event has occurred, and a waterfall for distribution of LLC assets or ownership of trade secrets and other intellectual property. Litigation is always an option as well. In all of these situations, it is critical to have expert legal advice to ensure that the resolution process results in a favorable result.Call us if we can help you resolve a dispute that is negatively impacting your construction project. This type of reorganization involves only one corporation, and focuses on reconfiguring the company's capital structure. This reorganization typically applies when companies change business names, the state where they do business, or make changes to its articles of incorporation (corporate charter), and where there is a transfer from the prior company to the new corporation.Type G: Transfer of AssetsThese reorganizations involving transferring all or some assets of a company that must file bankruptcy to a new corporation. Some can be beyond the control of the parties (bad weather, unexpected shortages of necessary material) whereas others, such as unrealistic bidding, or disputes over change orders, can be attributed to one party trying to get advantage over the other.Defective work: The parties can either disagree over whether the work meets the agreed-upon specifications or over responsibility for the acknowledged construction flaw.Payment disputes: Under certain circumstances, a developer may withhold payment if a contractor fails to meet a deadline or deliver a substandard product. Even with top-notch planning complications are bound to arise in a project as complex as a major construction effort. Conducting business through an LLC shields the assets of the LLC's "Members" from liability for the LLC's business obligations, in the same manner as corporate shareholders. As mentioned above, some basic protections that the law provides to members of any business entity cannot be waived, such as rights to access to records, and protections against fraud and criminality.At Hendershot Cowart P.C., we focus not only in business litigation, but also in crafting Operating Agreements to help you avoid litigation in the first place. Call (713) 909-7323 or contact us online to see how our team can guide and protect your organization's restructuring.The IRS Revenue Code (Section 368) identifies seven different types of corporation reorganization.Type A: Mergers and ConsolidationsA statutory merger or acquisition is based on one corporation acquiring another's assets.Type B: Acquisition (Target Corporation Subsidiary)A Type B reorganization involves one corporation acquiring another's stock, which then becomes a subsidiary of the acquiring company. An acquisition carried out in this type of reorganization occurs in a short period of time, such as within a year.Type C: Acquisition (Target Corporation Liquidation)Target corporations are required to liquidate in Type C acquisition, unless requirements are waived by the IRS. Contact our Houston Business law firm to schedule a consultation.Page 2Contact UsCorporations (businesses) typically reorganize for one of two reasons: To improve efficiency or to increase revenue. The benefit of organizing your business as an LLC is that the Operating Agreement can cover a diverse range of topics, including ones that are unique to the particular business or Members involved. In other instances, a contractor may place a mechanic's lien on the property, which complicates -- or prevents -- any transaction related to the property (such as a sale) until payment is made.Change Orders and Extra Work: As the project progresses and the development company wants changes to the plans to achieve its vision, disputes can arise over whether the changes are within the original scope of work or whether the developer should pay an additional fee.There are complex laws and regulations that govern the construction industry and provide the framework for resolving disputes. Sometimes the initial contract will specify whether the architect has the final say or if the dispute will be submitted to a Dispute Resolution Board of construction industry experts. In Texas, the formation and operation of LLCs is governed by Title 3 of the Business Organizations Code.LLCs are popular as a business entity because they combine the liability-limiting protections of a corporation with the operational flexibility of a partnership. If however, a contractor does not follow the required procedures exactly, the claim can become void. Cost overruns and delays probably even plagued the pharaohs of ancient Egypt: the Great Pyramid at Giza drained the Pharaoh Khufu's treasury and would cost \$5 billion to duplicate today, even using modern construction techniques. Under Texas law, that agreement is formally known as the "Company Agreement," but it is more commonly referred to as the "Operating Agreement." Litigation-Avoidance Provisions of a Texas LLC Operating AgreementThe Operating Agreement is the defining characteristic of an LLC. While the transaction may be made solely to acquire voting stock, it can also be one of several transactions that make up a larger plan for acquiring control. Because it is a significant undertaking that impacts a business' bottom line, it also requires consideration, planning, and the foresight of experienced professionals who can guide you through the process.Corporate reorganizations can be complicated; finding legal help doesn't have to be. With the recent passage of a tax overhaul giving preferential income tax treatment to members of limited liability companies ("LLCs"), understanding how an LLC operates, and how it can avoid pitfalls that lead to litigation, are more important than ever. Type D rules for distribution are used to distribute the controlling company's stock and securities to the former company's shareholders.Find an attorney with the right experience.Businesses are entities prone to change, and successful businesses are those with the fluidity to adapt and address those changes effectively, and the wherewithal to trust proven attorneys in matters and transactions critical to their future success.If you have questions about corporate restructuring and reorganization and how our award-winning Houston business lawyers at Hendershot Cowart P.C. can help you, call (713) 909-7323 to request an initial consultation. Without clarity on these and related points, many dissolutions turn into nasty fights.The above is far from a complete list. The lawyers at Hendershot Cowart P.C. understand the ins and outs of the mechanic's lien process and can help a developer defend against a claim for nonpayment as well as analyze the dispute to identify counter-claims for defective work or construction delays.Not only is it important to have an experienced business litigator analyze the dispute, but choosing a forum for resolving the dispute is also an important strategic decision. Importantly, that means that an Operating Agreement can address areas that, in the absence of specific agreement, commonly lead to disputes among business owners. Subject to a few statutory exceptions, it can contain a virtually unlimited variety of provisions "concerning the affairs or conduct of the business" of the LLC. But, unlike the rigid strictures state law imposes on corporations and their shareholders, Members of an LLC also are entitled to agree among themselves exactly how the LLC will be operated and governed. Any shareholders that have a stake in the company will also have a stake in the acquiring company. In this article we will cover the basics of what an LLC is, and how certain provisions of a well-drafted Operating Agreement can safeguard against disputes that could otherwise lead to costly litigation.What is an LLC?An LLC is a form of business entity authorized under state law, and can be formed in Texas for virtually any business purpose save for banking- and insurance-related businesses, title companies and certain cemetery services. For example, Article XVI, Section 37 of the Texas Constitution creates a right for contractors to claim an interest in the building they constructed for the value of their labor and materials. Examples of this type of reorganization include plans stock-for-stock recapitalization, bonds-for-bonds moves, and transactions involving stocks-for-bonds.Type F: Identity ChangeThe IRS defines Type F reorganization as one corporation changing its identity, form, or place of organization. According to the 2008 CIOB (the Chartered Institute of Building) study, Managing the Risk of Delayed Completion in 21st Century, 31% of high-rise and 33% of power generation projects finish more than three months late. Precise drafting of these provisions avoids disputes over, for example, whether a corporation can be a Member, whether Membership is contingent on making a capital contribution, and what voting rights a Membership interest carries under any number of specific conditions.Economic Rights/Obligations, and Distributions: An Operating Agreement can contain specific provisions detailing what rights Members have to share in business assets, whether, when and how Members can be required to make contributions to the business, and the circumstances under which the LLC can (or must) distribute assets to the Members - all common areas of discord among business owners in the absence of clarity.Management: An Operating Agreement typically names a Manager and Officers (who may or may not be Members), and details their powers, including those that may be exercised at the Manager's or Officer's discretion, and those that must be approved by the Members. The potential areas for dispute are as diverse as construction projects themselves but tend to cluster in four general areas:Delayed performance: there are many reasons that a project can get delayed. Other options include mediation, in which a trained facilitator helps the parties resolve their dispute, or arbitration, in which a neutral arbiter, often a retired judge, issues a binding decision. "Corporate reorganization," then, refers to any change to a company's internal or departmental structure aimed at one or both of these objectives.Reorganization happens, for example, when businesses need to address major problems, or when they look to overhaul strategies for management structure or market focus.Whether it arises from new leadership or even bankruptcy, restructuring focuses largely on increased efficiency and profitability. (Conversely, without an Operating Agreement, or with an incomplete one, an LLC's operation and governance are dictated by the (relatively bare-bones) provisions of state law.) And, of course, an Operating Agreement is not a panacea against all business owner disputes. Reorganization provisions concern tax consequences, not liquidation rules.Type D: Transfers, Spinoffs, & Split-offsType D transfers are a form of corporate restructuring which can include both corporate split-offs or spinoffs.Type E: RecapitalizationRecapitalization transactions involve a company's shareholders exchanging stocks and securities for new stocks, securities, or both. Chapter 53 of the Texas Property Code provides a detailed procedure to enforce a mechanic's lien claim. Importantly, the Operating Agreement can limit these duties dramatically, closing off the paths to dispute over issues such as conflicts of interest, management discretion, and related-party transactions that are otherwise common sources of conflict.Admissions and Withdrawals: An Operating Agreement should spell out if and how Members can join the LLC after execution of the Operating Agreement, the procedures and economic consequences when Members withdraw or are forced from the LLC, whether Membership interests can be sold or transferred, and the survival of Membership interests when a Member dies or dissolves.

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