

**489.110 Operating agreement — scope, function, and limitations.**

1. Except as otherwise provided in [subsections 2 and 3](#), the operating agreement governs all of the following:

a. Relations among the members as members and between the members and the limited liability company.

b. The rights and duties under [this chapter](#) of a person in the capacity of manager.

c. The activities of the company and the conduct of those activities.

d. The means and conditions for amending the operating agreement.

2. To the extent the operating agreement does not otherwise provide for a matter described in [subsection 1](#), [this chapter](#) governs the matter.

3. An operating agreement shall not do any of the following:

a. Vary a limited liability company's capacity under [section 489.105](#) to sue and be sued in its own name.

b. Vary the law applicable under [section 489.106](#).

c. Vary the power of the court under [section 489.204](#).

d. Subject to [subsections 4](#) through [7](#), eliminate the duty of loyalty, the duty of care, or any other fiduciary duty.

e. Subject to [subsections 4](#) through [7](#), eliminate the contractual obligation of good faith and fair dealing under [section 489.409](#), [subsection 4](#).

f. Unreasonably restrict the duties and rights stated in [section 489.410](#).

g. Vary the power of a court to decree dissolution in the circumstances specified in [section 489.701](#), [subsection 1](#), paragraphs "d" and "e".

h. Vary the requirement to wind up a limited liability company's business as specified in [section 489.702](#), [subsection 1](#), and [subsection 2](#), paragraph "a".

i. Unreasonably restrict the right of a member to maintain an action under [article 9](#).

j. Restrict the right to approve a merger, conversion, or domestication under [section 489.1014](#) to a member that will have personal liability with respect to a surviving, converted, or domesticated organization.

k. Except as otherwise provided in [section 489.112](#), [subsection 2](#), restrict the rights under [this chapter](#) of a person other than a member or manager.

4. If not manifestly unreasonable, the operating agreement may do any of the following:

a. Restrict or eliminate the duty to do any of the following:

(1) As required in [section 489.409](#), [subsection 2](#), paragraph "a", and [subsection 8](#), to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity.

(2) As required in [section 489.409](#), [subsection 2](#), paragraph "b", and [subsection 8](#), to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company.

(3) As required by [section 489.409](#), [subsection 2](#), paragraph "c", and [subsection 8](#), to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

b. Identify specific types or categories of activities that do not violate the duty of loyalty.

c. Alter the duty of care, except to authorize intentional misconduct or knowing violation of law.

d. Alter any other fiduciary duty, including eliminating particular aspects of that duty.

e. Prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under [section 489.409](#), [subsection 4](#).

5. The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

6. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under [this chapter](#) and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the

responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

7. The operating agreement may alter or eliminate the indemnification for a member or manager provided by [section 489.408, subsection 1](#), and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for any of the following:

a. A breach of the duty of loyalty.

b. A financial benefit received by the member or manager to which the member or manager is not entitled.

c. A breach of a duty under [section 489.406](#).

d. Intentional infliction of harm on the company or a member.

e. An intentional violation of criminal law.

8. The court shall decide any claim under [subsection 4](#) that a term of an operating agreement is manifestly unreasonable. All of the following apply:

a. The court shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time.

b. The court may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that any of the following applies:

(1) The objective of the term is unreasonable.

(2) The term is an unreasonable means to achieve the provision's objective.

2008 Acts, ch 1162, §10, 155

Referred to in [§489.102](#), [489.112](#), [489.408](#)