

489.405 Limitations on distribution.

1. A limited liability company shall not make a distribution if after the distribution any of the following applies:

a. The company would not be able to pay its debts as they become due in the ordinary course of the company's activities.

b. 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.

2. A limited liability company may base a determination that a distribution is not prohibited under subsection 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.

3. Except as otherwise provided in subsection 5, the effect of a distribution under subsection 1 is measured as follows:

a. 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.

b. In all other cases, as follows:

(1) The date that distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(2) The date that payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

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

5. 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 subsection 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. 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.

6. In subsection 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.

2008 Acts, ch 1162, §35, 155

Referred to in §489.102, 489.406, 489.408