

489.105 Operating agreement — scope, function, and limitations.

1. Except as otherwise provided in [subsections 3 and 4](#), 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 and affairs of the company and the conduct of those activities and affairs.

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

2. To the extent the operating agreement does not 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 the law applicable under [section 489.104](#).

b. Vary a limited liability company's capacity under [section 489.109](#) to sue and be sued in its own name.

c. Vary any requirement, procedure, or other provision of [this chapter](#) pertaining to any of the following:

(1) Registered agents.

(2) The secretary of state, including provisions pertaining to records authorized or required to be delivered to the secretary of state for filing under [this chapter](#).

d. Vary the provisions of [section 489.204](#).

e. Alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in [subsection 4](#).

f. Eliminate the contractual obligation of good faith and fair dealing under [section 489.409](#), [subsection 4](#), but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured.

g. Relieve or exonerate a person from liability for conduct except as provided in [subsection 6](#).

h. Unreasonably restrict the duties and rights under [section 489.410](#), but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

i. Vary the causes of dissolution specified in [section 489.701](#), [subsection 1](#), paragraph "d".

j. Vary the requirement to wind up the limited liability company's activities and affairs as specified in [section 489.702](#), [subsection 1](#); [subsection 2](#), paragraph "a"; and [subsection 5](#).

k. Unreasonably restrict the right of a member to maintain an action under [subchapter VIII](#).

l. Vary the provisions of [section 489.805](#), but the operating agreement may provide that the limited liability company shall not have a special litigation committee.

m. Vary the right of a member to approve a merger, interest exchange, conversion, or domestication under [section 489.1023](#), [subsection 1](#), paragraph "b"; [section 489.1033](#), [subsection 1](#), paragraph "b"; [section 489.1043](#), [subsection 1](#), paragraph "b"; or [section 489.1053](#), [subsection 1](#), paragraph "b".

n. Vary the required contents of a plan of merger under [section 489.1022](#), [subsection 1](#); plan of interest exchange under [section 489.1032](#), [subsection 1](#); plan of conversion under [section 489.1042](#), [subsection 1](#); or plan of domestication under [section 489.1052](#), [subsection 1](#).

o. Except as otherwise provided in [sections 489.106](#) and [489.107](#), [subsection 2](#), restrict the rights under [this chapter](#) of a person other than a member or manager.

4. Subject to [subsection 3](#), paragraph "g", without limiting other terms that may be included in an operating agreement, all the following rules apply:

a. The operating agreement may do all of the following:

(1) 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.

(2) Alter the prohibition in [section 489.405](#), [subsection 1](#), paragraph "b", so that the

prohibition requires only that the limited liability company’s total assets not be less than the sum of its total liabilities.

b. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member otherwise would have under [this chapter](#) and imposes the responsibility on one or more other members, the agreement also may eliminate or limit any fiduciary duty of the member relieved of the responsibility which would have pertained to the responsibility.

c. If not manifestly unreasonable, the operating agreement may do all of the following:

(1) Alter or eliminate the aspects of the duty of loyalty stated in [section 489.409, subsections 2 and 9](#).

(2) Identify specific types or categories of activities that do not violate the duty of loyalty.

(3) Alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law.

(4) Alter or eliminate any other fiduciary duty.

5. The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under [subsection 3](#), paragraph “f”, or [subsection 4](#), paragraph “c”. All of the following shall 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, activities, and affairs of the limited liability company, it is readily apparent that any of the following apply:

(1) The objective of the term is unreasonable.

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

6. An 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.

[2008 Acts, ch 1162, §10, 155](#)

[C2009, §489.110](#)

[2013 Acts, ch 30, §114, 115; 2023 Acts, ch 152, §9, 143, 161](#)

[C2024, §489.105](#)

Former §489.105 transferred to [§489.109](#); [2023 Acts, ch 152, §143, 161](#)

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