

CHAPTER 5-CONTRIBUTIONS AND DISTRIBUTIONS

501. FORM OF CAPITAL CONTRIBUTIONS

The contributions of a member to the capital of a limited liability company may be in cash, property or services rendered or a promissory note or other obligation to contribute cash or property or to render services, or any combination of the foregoing.

502. LIABILITY FOR CONTRIBUTIONS

- (a) Except as provided in the operating agreement, a member is obligated to the limited liability company to perform any promise to contribute cash or property or to perform services that is otherwise enforceable in accordance with applicable law, even if he or she is unable to perform because of death, disability or other reason. Except as provided in the operating agreement, if a member does not make any required contribution of property or services, he or she is obligated at the option of the limited liability company to contribute cash equal to that portion of the value, as stated in the records of the limited liability company, if so stated, of the contribution that he or she has not made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the operating agreement or applicable law.
- (b) Unless otherwise provided in the operating agreement and except as provided in section six hundred five of this Code, the obligation of a member to make a contribution or to return money or other property paid or distributed in violation of this Code may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit in reliance on the obligation of any member may enforce the original obligation to the extent he or she reasonably relied on such obligation after the member signed a writing which reflects the obligation and the creditor extended credit before the compromise. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company or a member prior to the time the call occurs.
- (c) The operating agreement may provide that the membership interest of any member who fails to make any required contribution shall be subject to specified consequences of such failure. Such consequences may include, but are not limited to, reduction or elimination of the defaulting member's interest, subordination of the defaulting member's interest to that of non-defaulting members, a forced sale of the defaulting member's interest, forfeiture of the defaulting member's interest, the lending by the other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of the defaulting member's interest by appraisal or by formula and redemption or sale of such member's interest at such value, or other consequences.

503. SHARING OF PROFITS AND LOSSES

The profits and losses of a limited liability company shall be allocated among the members, and among the classes of members, if any, in the manner provided in the operating agreement. If the operating agreement does not so provide profits and losses shall be allocated on the basis of the value, as stated in the records of the limited liability company if so stated, of the contributions of each member, but not including defaulted obligations to make contributions, to the extent they have been received by or promised to the limited liability company and have not been returned to any such member.

504. SHARING OF DISTRIBUTIONS

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, if any, in the manner provided in the operating agreement, which may, among other things, establish record dates for distributions. If the operating agreement does not so provide, distributions shall be allocated on the basis of the value, as stated in the records of the limited liability company, if so stated, of the contributions of each member, but not including defaulted obligations to make contributions, to the extent they have been received by or promised to the limited liability company and have not been returned to any such member.

505. DISTRIBUTIONS IN KIND

- (a) Except as provided in the operating agreement, a member, regardless of the nature of his or her contribution, has no right to demand and receive any distribution from the limited liability company in any form other than cash.
- (b) Except as provided in the operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to him or her exceeds a percentage of that asset that is equal to the percentage in which he or she shares in distributions from the limited liability company.

506. RIGHT TO DISTRIBUTION

Subject to sections five hundred eight and seven hundred four of this Code, at the time a member becomes entitled to receive a distribution, such member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

507. INTERIM DISTRIBUTIONS

Except as provided in this Code, to the extent and at the times or upon the happening of events specified in the operating agreement, a member is entitled to receive distributions from a limited liability company before his or her withdrawal from the limited liability company and before the dissolution and winding up of the limited liability company.

508. LIMITATIONS ON DISTRIBUTIONS

- (a) A limited liability company shall not make a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their membership interests and liabilities for which recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the assets of the limited liability company, except that the fair market value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of such property exceeds such liability.
- (b) A member who receives a distribution in violation of subdivision (a) of this section, and who knew at the time of distribution that the distribution violated subdivision (a) of this section, shall be liable to the limited liability company for the amount of the distribution. A member who receives a distribution in violation of subdivision (a) of this section, and who did not know at the time of the distribution that the distribution violated subdivision (a) of this section, shall not be liable for the amount of the distribution. Subject to subdivision (c) of this section, this subdivision shall not affect any obligation or liability of a member under the operating agreement or other applicable law for the amount of a distribution.
- (c) Unless otherwise agreed, a member who receives a wrongful distribution from the limited liability company shall have no liability under this Code or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution.

509. DISTRIBUTION UPON WITHDRAWAL

Except as provided in this Code, upon withdrawal as a member of the limited liability company, any withdrawing member is entitled to receive any distribution to which he or she is entitled under the operating agreement and, if not otherwise provided in the operating agreement, he or she is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her membership interest in the limited liability company as of the date of withdrawal based upon his or her right to share in distributions from the limited liability company.