

CHAPTER 6-MEMBERS AND MEMBERSHIP

601. NATURE OF MEMBERSHIP INTEREST

A membership interest in the limited liability company is personal property. A member has no interest in specific property of the limited liability company.

602. ADMISSION OF MEMBERS

(a) A person becomes a member of a limited liability company on the later of:

- (1) the effective date of the initial articles of organization; or
- (2) the date as of which the person becomes a member pursuant to this section or the operating agreement; provided, however, that if such date is not ascertainable, the date stated in the records of the limited liability company.

(b) After the effective date of a limited liability company's initial articles of organization, a person may be admitted as a member:

- (1) in the case of a person acquiring a membership interest directly from the limited liability company, upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the vote or written consent of a majority in interest of the members; or
- (2) in the case of an assignee of a membership interest of a member who has the power, as provided in the operating agreement, to grant the assignee the right to become a member, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power; or
- (3) unless otherwise provided in an agreement of merger or consolidation or the operating agreement, in the case of a person acquiring a membership interest in a surviving or resulting limited liability company pursuant to a merger or consolidation approved in accordance with subdivision (b) of section one thousand one of this Code, at the time provided in and upon compliance with the operating agreement of the surviving or resulting limited liability company.

603. ASSIGNMENT OF MEMBERSHIP INTEREST

(a) Except as provided in the operating agreement,

- (1) a membership interest is assignable in whole or in part;

- (2) an assignment of a membership interest does not dissolve a limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;
 - (3) the only effect of an assignment of a membership interest is to entitle the assignee to receive, to the extent assigned, the distributions and allocations of profits and losses to which the assignor would be entitled; and
 - (4) a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her membership interest. Unless otherwise provided in the operating agreement, the pledge of, or the granting of a security interest, lien or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.
- (b) The operating agreement may provide that a member's interest may be evidenced by a certificate issued by the limited liability company any may also provide for the assignment or transfer of any of the interest represented by such a certificate. A member's interest may be certificated security or an uncertificated security within the meaning of section 8-102 of the New York Uniform Commercial Code if the requirements of such section are met, and if the requirements are not met such interest shall, for purposes of the uniform commercial Code, be deemed to be a general intangible asset. The existence of the restrictions on the sale or transfer of a membership interest, as contained in this Code and, if applicable, in the operating agreement, shall be noted conspicuously on the face or back of every certificate representing a membership interest issued by a limited liability company. Any sale or transfer in violation of such restrictions shall be void.
- (c) Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, until the time, if any, that an assignee of a membership interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment.

604. RIGHTS OF ASSIGNEE TO BECOME A MEMBER

- (a) Except as provided in the operating agreement, an assignee of a membership interest may not become a member without the vote or written consent of at least a majority in interest of the members, other than the member who assigned or proposes to assign such membership interest.
- (b) An assignee who has become a member has, to the extent assigned, the rights, powers, preferences and limitations and is subject to the restrictions and liabilities, of a member under the articles of organization, the operating agreement and this Code. Notwithstanding the foregoing, unless otherwise provided in the operating agreement, an assignee who become a member is liable for the obligations of his or her assignor to make contributions as provided in section five hundred two of this Code, but shall not be liable for the obligations of his or her assignor under section six hundred six and five hundred eight of this Code. However, the

assignee is not obligated for (i) liabilities, including the obligations of his or her assignor to make contributions as provided in section five hundred two of this Code, unknown to the assignee at the time he or she becomes a member and that could not be ascertained from the operating agreement or (ii) any accrued liabilities of the assignor at the time of assignment unless the assignee specifically assumes such liabilities.

605. LIABILITY UPON ASSIGNMENT

Whether or not an assignee of a membership interest becomes a member, the assignor of a membership interest is not released from any liability under this Code or the operating agreement, except liabilities that arise after the effectiveness of the assignment and are pursuant to section two hundred ten of this Code, section five hundred eight of this Code or, in the event the assignee becomes a member, unless otherwise provided in the operating agreement, section five hundred two of this Code.

606. WITHDRAWAL OF A MEMBER

A member may withdraw as a member of a limited liability company at the time or upon the happening of any of the events specified in the operating agreement and in accordance with the operating agreement or unless otherwise provided in the operating agreement, with the vote or written consent of at least two-thirds in interest of the members, other than the member who proposes to withdraw as a member of the limited liability company. If such consent is not given, and if the operating agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may, unless prohibited by the operating agreement, withdraw upon not less than six months' prior written notice to the limited liability company. If such withdrawal violates the provisions of the operating agreement, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement, which may be determined as set forth in the operating agreement, and offset the damages against the amount otherwise distributable to him or her. Notwithstanding anything to the contrary set forth in this Code or under applicable law, an operating agreement may provide that a member may not withdraw from a limited liability company or assign his or her membership interest prior to the dissolution and winding up of the limited liability company.

607. RIGHTS OF CREDITORS OF MEMBERS

- (a) On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest. This Code does not deprive any member of the benefit of any exemption laws applicable to his or her membership interest.
- (b) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

608. POWERS OF ESTATE OF A DECEASED OR INCOMPETENT MEMBER

If a member who is a natural person dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the member's executor, administrator, guardian, conservator or other legal representative may exercise all of the member's rights for the purpose of settling his or her estate or administering his or her property, including any power under the operating agreement of an assignee to become a member. If a member is a corporation, trust or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

609. LIABILITY OF MEMBERS, MANAGERS AND AGENTS

- (a) Neither a member of a limited liability company, a manager of a limited liability company managed by a manager or managers nor an agent of a limited liability company (including a person having more than one such capacity) is liable for any debts, obligations or liabilities of the limited liability company or each other, whether arising in tort, contract or otherwise, solely by reason of being such member, manager or agent or acting (or omitting to act) in such capacities or participating (as an employee, consultant, contractor or otherwise) in the conduct of the business of the limited liability company.
- (b) Notwithstanding the provisions of subdivision (a) of this section, all or specified members of a limited liability company may be liable in their capacity as members for all or specified debts, obligations or liabilities of a limited liability company if (1) a statement to such effect is specifically contained in the articles of organization of the limited liability company and (2) any such member so liable shall have (i) specifically consented in writing (A) to the adoption of such provisions or (B) to be bound by such provision or (ii) specifically voted for the adoption of such provision. The absence of either such statement in the articles of organization or such consent or vote of any such member shall in no way affect or impair the ability of a member to act as a guarantor or a surety for, provide collateral for or otherwise be liable for, the debts, obligations or liabilities of a limited liability company as authorized pursuant to section six hundred eleven of this Code.

610. PARTIES TO ACTIONS

A member of a limited liability company is not a proper party to proceedings by or against a limited liability company, except where the object is to enforce a member's right against or liability to the limited liability company.

611.BUSINESS TRANSACTIONS OF A MEMBER WITH THE LIMITED LIABILITY COMPANY

Except as may be provided in the operating agreement, a member may lend money to, borrow money from, act as a guarantor or surety for, provide collateral for the obligations of and transact other business with the limited liability company and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a member.