Part 3. Operating Agreement.

§ 57D-2-30. Scope, function, and limitations of operating agreements.

(a) The operating agreement governs the internal affairs of an LLC and the rights, duties, and obligations of (i) the interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests and (ii) the company officials in relation to each other, the LLC, and the interest owners. Subject to the limitations set forth in subsections (b), (c), (d), and (e) of this section, the provisions of this Chapter and common law will apply only to the extent contrary or inconsistent provisions are not made in, or are not otherwise supplanted, varied, disclaimed, or nullified by, the operating agreement. The provisions of the operating agreement are severable and each will apply to the extent it is valid and enforceable.

(b) The operating agreement may not do any of the following:

(1) Supplant, vary, disclaim, or nullify the provisions of this Chapter or their application to the extent the provisions:

a. Concern the functions of, including the filings and payments to be made, and the manner in which they are to be made by or to the Secretary of State, the Attorney General, the courts, or any other governmental official, agency, or authority, including Articles 1 and 9 of this Chapter, G.S. 57D-2-21(a), 57D-2-22(a), 57D-2-23, 57D-2-24, 57D-2-40, 57D-6-02(1), 57D-6-03(a) through (c), 57D-6-04, 57D-6-05, 57D-6-06, the last sentence of G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the operating agreement may provide the forum in which disputes concerning the LLC or the rights and duties of interest owners and other parties to the operating agreement are to be resolved and other decisions and the manner in which decisions of interest owners and other parties to the operating agreement are to be made.

b. Apply to persons who are not parties to or otherwise bound by the operating agreement, including the extent to which G.S. 57D-5-03 may be applicable to such persons or for which they may be entitled to recovery or other relief thereunder, or the extent to which G.S. 57D-1-02, 57D-6-08(1), 57D-6-10, 57D-6-11, 57D-6-12, and 57D-6-13 are applicable to such persons.

c. Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02, 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of 57D-6-02(2), and 57D-6-07(b) and (f).

(2) Recodified as G.S. 57D-2-30(b)(1)b.

(3) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and G.S. 57D-4-06.

(4) Diminish the rights and protections of members under G.S. 57D-3-04(a), except as permitted by and otherwise subject to subsections (b) through (f) of G.S. 57D-3-04.

(5) Eliminate the right of a member to bring a derivative action under Article 8 of this Chapter unless the operating agreement provides an alternative remedy, which may include the right to bring a direct action in lieu of a derivative action or modifying the procedures provided in Article 8 of this Chapter governing derivative actions.

(6) Eliminate the right of a member to bring an action to have the LLC judicially dissolved under clause (i) in G.S. 57D-6-02(2), unless the operating agreement provides an alternative remedy.

(7) Recodified as G.S. 57D-2-30(b)(1)c.

(c) Oral or implied provisions in the operating agreement may not supplant, vary, disclaim, or nullify any contrary or inconsistent written provisions in the operating agreement to the detriment of the rights of persons who are not parties to the operating agreement to the extent that they reasonably rely on those written provisions in the operating agreement.

(d) In the event of a conflict between the operating agreement and a provision in any document of an LLC filed by the Secretary of State:

(1) The operating agreement shall prevail as to parties to the operating agreement and company officials.

(2) The document filed by the Secretary of State shall prevail as to persons who are not parties to the operating agreement and are not company officials to the extent that they reasonably rely on the document filed by the Secretary of State.

(e) Except as provided in or permitted by this Chapter or other applicable law, the laws of agency and contract, including the implied contractual covenant of good faith and fair dealing and the requirement that the terms of an operating agreement not be unconscionable at the time they are made, govern the administration and enforcement of operating agreements. (2013-157, s. 2; 2016-114, ss. 1(a), (b), (c), 2.)