

TITLE 4: ECONOMIC RESOURCES
DIVISION 4: CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

§ 4804. Effect of Operating Agreement; Nonwaivable Provisions.

(a) Except as otherwise provided in subsection (b) and (c), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this Act governs relations among the members, managers, and company.

(b) The operating agreement may not:

(1) Unreasonably restrict a right to information or access to records under section 4858;

(2) Eliminate the duty of loyalty under section 4859(b) or 4883(b)(3), but the agreement may:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(3) Unreasonably reduce the duty of care under section 4859(c) or 4883(b)(3);

(4) Eliminate the obligation of good faith and fair dealing under section 4859(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(5) Vary the right to expel a member in an event specified in section 4881(6);

(6) Vary the requirement to wind up the limited liability company's business in a case specified in section 4901(a)(3) or (a)(4);

(7) Restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest, under this Act; or

(8) Limit or amend in any way the requirements of (c) or 4 CMC 4823(d).

(c) The operating agreement of any limited liability company which has applied for or been granted by the Commonwealth Lottery Commission or Commonwealth Casino Commission a casino gaming license or any other license which is now or in the future subject to regulation by the Commonwealth Casino Commission must be in writing and shall include any language required by the Commonwealth Casino Commission by regulation as well as language substantially as follows:

(1) Notwithstanding anything to the contrary expressed or implied in the articles or this agreement, the sale, assignment, transfer, pledge or other disposition of any interest in the limited-liability company is ineffective unless approved in advance by the Commonwealth Casino Commission. If at any time the Commission finds that a member which owns any such interest is unsuitable

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to hold that interest, the Commission shall immediately notify the limited liability company of that fact. The limited-liability company shall, within 10 days from the date that it receives the notice from the Commission, return to the unsuitable member the amount of his capital account as reflected on the books of the limited-liability company. Beginning on the date when the Commission serves notice of a determination of unsuitability, pursuant to the preceding sentence, upon the limited-liability company, it is unlawful for the unsuitable member:

- (i) To receive any share of the distribution of profits or cash or any other property of, or payments upon dissolution of, the limited liability company, other than a return of capital as required above;
- (ii) To exercise directly or through a trustee or nominee, any voting right conferred by such interest;
- (iii) To participate in the management of the business and affairs of the limited-liability company; or
- (iv) To receive any remuneration in any form from the limited-liability company, for services rendered or otherwise.

(2) Any member that is found unsuitable by the Commission shall return all evidence of any ownership in the limited-liability company to the limited-liability company, at which time the limited-liability company shall within 10 days, after the limited-liability company receives notice from the Commission, return to the member in cash, the amount of his capital account as reflected on the books of the limited-liability company, and the unsuitable member shall no longer have any direct or indirect interest in the limited-liability company.

Source: PL 14-11, § 2 (103), modified; amended PL 21-38 § 28 (Jan. 7, 2021), modified.

Commission Comment: The Commission made conforming changes to the above subsection pursuant to 1 CMC § 3806. See the comment to 4 CMC § 4801 regarding PL 14-11.

In codifying PL 21-38, the Commission renumbered subsection (c)(1)(A) to (D) pursuant to 1 CMC 3806(a).

See also, Commission comment to 4 CMC § 2305.