

Why Is The LLC Operating Agreement So Important?

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A Nuclear Private Document. The most important LLC document is the Operating Agreement (OA). It is the nuclear, governing instrument...mandating LLC business operations. Simply put, it is the *heart* of the LLC.

The OA Versus the Articles. The articles of organization, which is necessary for the filing of the LLC formation, is not a substitute for an OA by which the members govern the LLC business and their financial interest in the LLC. Moreover, the articles of organization is a public document, while an OA is private document. Therefore using the articles of organization as a substitute for an OA would surrender a great deal of privacy which is an essential part of total asset protection. Because the LLC's articles of organization are available to the public, any provisions that are not required to be in the articles should *not* be, but can be in the OA, because it is not a public document, it's private. However, any

provision that the OA contains should not be in conflict with the formation state's articles of organization. A properly designed OA would do this. Also, if there is a choice by state statute between amending the OA or the articles of organization, when such amendment is required, amend the OA not the articles, again for reason of privacy.

What An Effective OA Should Contain... Specifically For Real Estate Investments.

__ Be very comprehensive for its intended business purpose (real estate investing) containing all of the essential provisions relating to legal, tax, accounting, including the administration and regulation of the LLC's affairs and the members' rights and powers.

-- Document that your LLC is a separate entity where the LLC affairs are separate from the affairs of the members.

Following its provisions will give its members limited liability protection, therefore making it difficult for any court to pierce its entity veil.

-- Related to the above, give the best defense against an attack on the use of a state statutory business entity by always

treating the LLC as a separate entity. As long as it can be clearly shown that the members respected the entity separateness, the LLC existence should not be disregarded by the courts. It is not the size of the entity, but rather the existence of complete LLC documents (especially this OA) which provides the protection from liability for the members of the LLC. It is crucial to recognize this vital element in operating an LLC.

-- Some of the more specific provisions that can help accomplish the above limited liability protection are those that cover: LLC declaration of being separate and apart from its members; specific business purpose of LLC; member capitalization of the LLC in accordance with membership percentage ownership; prohibited unilateral acts of members; indemnification of members; transfers of member interests (right of first refusal with buy-sell provision); arbitration of member disputes; specific duties of members accomplishing the LLC business purpose (including what duties certain members should not be doing).

<p><u>NOTE – FORMALITIES:</u> Also to attain limited liability protection and avoid the piercing of the LLC</p>
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veil, adhere to entity formalities, such as: Keeping minutes, filing of all tax returns, no co-mingling of funds with a *separate business* checking account which should not be used for personal expenditures, etc.

The OA should also...

-- Support and helps to document numerous tax saving strategies and elections to be an effective defense in the event of an IRS audit, as this statutory LLC entity (separate from its members) via this legal document (the OA), formally authorizes these tax saving strategies and elections. This is powerful! You will feel much more assured and comfortable that your tax strategies are legally supported by this legal entity (LLC) via this legal document (OA). (See prior article - *Real Estate Investors... Can An LLC Create And Support Tax Deductions?*)

To sum up, use an effective comprehensive OA to protect you; support tax-saving strategies; defend you against the IRS; and more... protecting your family wealth.

To learn more about the hidden powers of LLC's and save \$1,000's on legal documentation go to:

<https://TractionREIA.com/al>