

## **IC 23-18-6**

### **Chapter 6. Membership**

#### **IC 23-18-6-0.5**

##### **Minimum membership**

Sec. 0.5. A limited liability company formed under this article or a foreign limited liability company admitted to transact business in Indiana under IC 23-18-11 may have at least one (1) member.

*As added by P.L.34-1997, SEC.16.*

#### **IC 23-18-6-1**

##### **Acquisition of membership**

Sec. 1. (a) Subject to subsection (b), a person may become a member in a limited liability company:

- (1) in the case of a person acquiring an interest directly from the limited liability company, upon compliance with the operating agreement or if the operating agreement does not provide in writing, upon the written consent of all members; and
- (2) in the case of an assignee of an interest, as provided in section 4 or 4.1 of this chapter.

(b) The effective time of admission of a member to a limited liability company is the later of the following:

- (1) The date the limited liability company is organized.
- (2) The time provided in the operating agreement, or if no time is provided, when the person's admission is reflected in the records of the limited liability company.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.6.*

#### **IC 23-18-6-2**

##### **Interest of member; nature**

Sec. 2. The interest of a member in a limited liability company is personal property.

*As added by P.L.8-1993, SEC.301.*

#### **IC 23-18-6-2.5**

##### **Member interest designated as transfer on death property or held in joint tenancy**

Sec. 2.5. (a) Unless otherwise limited or prohibited in a written operating agreement, any member interest in a limited liability company:

- (1) may be designated as a transfer on death property under IC 32-17-14, with:
  - (A) the member as the owner of the interest; and
  - (B) one (1) or more transfer on death beneficiaries designated; or
- (2) may be titled and held in joint tenancy with right of survivorship between two (2) or more individuals.

(b) The following apply upon the death of a person who is the

owner of a member interest designated as a transfer on death property:

(1) Each surviving transfer on death beneficiary has the status of an assignee of all or a fractional or percentage portion of the entire member interest owned by the deceased owner, depending on the number of surviving transfer on death beneficiaries, consistent with the transfer on death beneficiary designation, until that transfer on death beneficiary is admitted as a member of the limited liability company.

(2) The rights and obligations of each surviving transfer on death beneficiary with respect to the member interest are subject to all:

- (A) transfer restrictions;
- (B) redemption options; or
- (C) other provisions;

that apply to the member's interest or member interests generally under a written operating agreement.

(c) The following apply upon the death of a person who is the owner of a member interest held in joint tenancy:

(1) Each surviving joint tenant has the status of an assignee of all or a fractional or percentage portion of the entire member interest, depending on the number of surviving joint tenants, until the surviving joint tenant is admitted as a member of the limited liability company unless the surviving joint tenant was already a member under subsection (d) before the death of each other joint tenant.

(2) The rights and obligations of each surviving joint tenant with respect to the member interest are subject to all:

- (A) transfer restrictions;
- (B) redemption options; or
- (C) other provisions;

that apply to the member interest generally under a written operating agreement.

(d) If a member interest in a limited liability company is originally and initially issued in joint tenancy form to two (2) or more individuals, each joint tenant has the voting rights of a member unless otherwise provided in the written operating agreement. If an individual member:

- (1) receives and holds a member interest as the sole owner; and
- (2) at a later date, makes a lawful transfer of the member interest to be held in joint tenancy between the member and one (1) or more other persons;

then, unless otherwise provided in a written operating agreement, each other person, while all joint tenants are alive, has the status of an assignee of a fractional part of the member interest until the other person is admitted as a member of the limited liability company.

*As added by P.L.40-2013, SEC.10. Amended by P.L.63-2014, SEC.33.*

### **IC 23-18-6-3**

#### **Assignment of interest; companies existing on or before June 30, 1999**

Sec. 3. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as provided in a written operating agreement:

- (1) an interest is assignable in whole or in part;
- (2) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
- (3) an assignment of an interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;
- (4) until the assignee of an interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the other members' right to remove the assignor under section 5(a)(3)(B) of this chapter;
- (5) until an assignee of an interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and
- (6) the assignor of an interest is not released from liability as a member solely as a result of the assignment.

(c) Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the interest of a member is not an assignment and does 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.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.7.*

### **IC 23-18-6-3.1**

#### **Assignment of interest; companies formed after June 30, 1999**

Sec. 3.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as provided in a written operating agreement:

- (1) an interest is assignable in whole or in part;
- (2) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
- (3) an assignment of an interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member;
- (4) until an assignee of an interest becomes a member, the assignee has no liability as a member solely as a result of the

assignment; and

(5) the assignor of an interest is not released from liability as a member solely as a result of the assignment.

(c) Unless otherwise provided in an operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the interest of a member is not an assignment and does 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.

*As added by P.L.269-1999, SEC.8. Amended by P.L.14-2000, SEC.54.*

#### **IC 23-18-6-4**

#### **Assignee membership; companies existing on or before June 30, 1999**

Sec. 4. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Except as otherwise provided in a written operating agreement, an assignee of an interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of a specification, consent must be evidenced by a written instrument, dated and signed by the member.

(c) An assignee who becomes a member:

(1) has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement, and this article; and

(2) is liable for any obligations of the member's assignor for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7.

However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from a written operating agreement.

(d) Whether or not an assignee of an interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7 that are solely a result of the assignment.

(e) Unless otherwise provided in a written operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when an assignee of the member's interest becomes a member with respect to the assigned interest.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.9.*

#### **IC 23-18-6-4.1**

##### **Assignee membership; companies formed after June 30, 1999**

Sec. 4.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Except as otherwise provided in a written operating agreement, if a limited liability company has at least two (2) members, an assignee of an interest may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of a specification, consent must be evidenced by a written instrument, dated and signed by the member. If a limited liability company has one (1) member, an assignee of an interest may become a member in accordance with the terms of an agreement between the assignor and the assignee.

(c) An assignee who becomes a member:

- (1) has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of a member under the articles of organization, any operating agreement, and this article; and
- (2) is liable for any obligations of the member's assignor for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7.

However, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from a written operating agreement.

(d) Whether or not an assignee of an interest becomes a member, the assignor is not released from the assignor's liability to the limited liability company for unpaid contributions under IC 23-18-5-1 or for any wrongful distributions under IC 23-18-5-7 that are solely a result of the assignment.

(e) Unless otherwise provided in a written operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member.

*As added by P.L.269-1999, SEC.10.*

#### **IC 23-18-6-5**

##### **Cessation of membership**

Sec. 5. (a) A person ceases to be a member of a limited liability company upon the occurrence of any of the following events:

- (1) The person withdraws from the limited liability company as provided in section 6 of this chapter.
- (2) The person ceases to be a member as provided in section 4(e) or 4.1(e) of this chapter.
- (3) The person is removed as a member:
  - (A) in accordance with the operating agreement; or
  - (B) unless otherwise provided in a written operating agreement, by the affirmative vote, approval, or consent of

a majority in interest of the members after the member has assigned the member's entire interest in the limited liability company.

(4) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member who is an individual, the individual's death.

(5) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee.

(6) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is a partnership, limited partnership, or another limited liability company, the dissolution and commencement of winding up of the partnership, limited partnership, or limited liability company.

(7) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation.

(8) Unless otherwise provided in a written operating agreement or with the written consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

(b) A written operating agreement may provide for other events that result in a person ceasing to be a member of the limited liability company, including insolvency, bankruptcy, and adjudicated incompetency.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.11.*

#### **IC 23-18-6-6**

#### **Withdrawal of member; companies existing on or before June 30, 1999**

Sec. 6. (a) Unless otherwise provided in a written operating agreement, a limited liability company existing under this article on or before June 30, 1999, is governed by this section.

(b) Unless a written operating agreement provides that a member does not have the power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving thirty (30) days written notice to the other members or other notice required under the operating agreement. If the member has the power to withdraw but the withdrawal is a breach of the operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may recover from the withdrawing member damages for breach of the operating agreement, including the reasonable cost of obtaining the replacement of services that the withdrawn member was obligated to perform. The limited

liability company may offset the damages against amounts otherwise distributable to the withdrawn member, in addition to pursuing any remedies provided for in the operating agreement or available under applicable law.

(c) Unless otherwise provided in a written operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of the term is a breach of the operating agreement.

*As added by P.L.8-1993, SEC.301. Amended by P.L.269-1999, SEC.12.*

#### **IC 23-18-6-6.1**

##### **Withdrawal of member; companies formed after June 30, 1999**

Sec. 6.1. (a) A limited liability company formed under this article after June 30, 1999, is governed by this section.

(b) Unless otherwise provided in a written operating agreement, a member may not withdraw from a limited liability company before the dissolution and winding up of the limited liability company. A member may withdraw from a limited liability company only at the time or upon the occurrence of events specified in the operating agreement and in accordance with the operating agreement.

*As added by P.L.269-1999, SEC.13.*

#### **IC 23-18-6-7**

##### **Judgment creditors of members; rights**

Sec. 7. (a) On application to a court with jurisdiction by a judgment creditor of a member, the court may charge the interest of the member in the limited liability company with the payment of the unsatisfied amount of the judgment with interest.

(b) To the extent the court charges under subsection (a), the judgment creditor has only the rights of an assignee of the member's interest in the limited liability company.

(c) This article does not deprive a member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.

*As added by P.L.8-1993, SEC.301.*