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Time to Take Action

“THE BEST TIME TO TAKE ACTION AND MOVE FORWARD IN YOUR LIFE AND CAREER WAS YESTERDAY. THE SECOND BEST TIME IS TODAY!”

That’s a quote from the book *“Take Action and Move Forward in Your Career”* by Michael P. Kelly. The book was published in April 2023; it’s available on Amazon. Mr. Kelly is a highly respected former colleague although “former” isn’t quite accurate as we keep in touch – his input and advice is always welcome.

When a business owner makes the decision to sell, more often than not because the owner is looking forward to the next step in both life and career. Actually, it’s the same for a buyer, particularly a first time business buyer – it’s time to move forward in life and career.

The business owner / seller will have a transition period to work with the buyer after the sale. After transition, the seller will have the opportunity to do different things. That could include spending more time with family, travel, hobbies, or whatever the seller wants to do that perhaps there wasn’t time or opportunity to do when running the business. It should be something to look forward to and embrace. We do keep in touch with a lot of sellers and

OPERATING AGREEMENTS FOR LLC'S

Many of our clients and businesses I work with have chosen to structure their companies under the protection of an LLC. While no state actually requires an LLC to have an Operating Agreement, it’s an essential document for managing the company upon inception and in the years ahead. The Operating Agreement is much like corporate bylaws: it sets the rules for how the company will be governed; it spells out how decisions will be made and everyone’s roles and responsibilities. By doing so, it can help prevent conflict and misunderstandings among owners. To be more specific, An operating agreement is a key document used by LLCs because it outlines the business' financial and functional decisions, including rules, regulations, and provisions. The purpose of the document is **to govern the internal operations of the business in a way that suits the specific needs of the business owners.**

Whether you hastily drew up your Operating Agreement when you first launched your business, or you carefully reflected on every word with a lawyer, the fact is that any business evolves over its lifetime, and situations will change. You must ensure that your original Operating Agreement is continually updated to reflect these changes.

Changing Your LLC Operating Agreement

In this article, we’ll discuss when and how you should modify your LLC’s Operating Agreement. This is one of those administrative tasks that is great to knock out before the end of the year:

When do you need to modify an LLC’s Operating Agreement?

You need to amend your Operating Agreement whenever there’s a change to your business arrangement, such as ...

it's interesting to hear comments like "I read a lot, exercise more, feel great", and "I'm busy with the grandkids – how did I ever find time to work?", and "We are vacationing and will be away for a month". Can we recall sellers that said they sold too soon? Can't think of any! Have we heard sellers say they waited too long – oh yes, we have heard that on numerous occasions.

The buyer, particularly a first time business owner – will have a significant change. It takes time to learn the intricacies of any business and that can take a lot more than the typical full time 40 hours per week. Buying a business obviously includes the risk of it being successful. The buyer needs the support of family. Operating a business is rarely if ever less than a full time commitment. Balancing that with family / personal needs and goals can be at times a daunting undertaking. We do find it interesting that we rarely hear from buyers that they regret buying a business.

It's a huge commitment for a business owner to sell, and an equally huge commitment for a buyer to acquire a business. Fortunately, after a sale and purchase, both the seller and buyer are more often than not pleased that it happened. We've been involved in the sale / purchase process of hundreds of businesses. We are available to answer questions, discuss issues and provide perspectives learned from prior transactions.

We look forward to hearing from both business owners and prospective business owners.

Morgan Vaive, Vice President
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- A new member is added, or a current member leaves
- The timing of the distributions changes
- You want to change the percentage allocation of the distributions
- You add more capital to the business
- You change your governance from member-managed to manager-managed (or vice versa)
- You make any other managerial/financial changes that are spelled out in the original Operating Agreement

How Do You Change Your Operating Agreement?

Amending your LLC's Operating Agreement is a pretty straightforward task: members need to approve the change and then you need to document it. Amendments don't need to be filed with the state; you just need to keep the amendment with your Operating Agreement as an internal document.

Vote On/Approve the Change

Your Operating Agreement may have spelled out the procedure for making changes. For example, the Operating Agreement might stipulate that unanimous consent of members (100 percent) is required to make a change, a super majority (e.g. two-thirds), or just a majority (over 50 percent). You'll need to make sure you follow these rules; otherwise, your amendment won't be valid, and a member might sue.

If you didn't define the procedure in your Operating Agreement, then you'll need to follow the laws of the state. Some states require all members to approve the amendment, while other states just require a majority. You can check with your state's Secretary of State office to determine the rules for your particular state. Creating your amendment is simple. You'll want a written document that states that it is modifying the existing Operating Agreement. Then, write out the entire amendment as clearly as possible... you don't have to worry about making it sound "legal"; it's more important that it's easy to understand and there's little to no room for misinterpretation. Be sure to refer specifically to the sections of the original

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NEXT ISSUE

**JULY 2023 - BROKER
INSIGHTS**

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agreement that you are amending. Have each member (or approving member) sign the amendment. Again, you do not need to file this amendment with the state. Just keep it at your place of business along with your other official company documents.

In addition to amending your Operating Agreement from time to time, you may also need to amend your LLC's Articles of Organization. This is the document you initially filed with the state to form your LLC. Some of the most common reasons to amend your Articles of Organization are if you officially change your LLC's name, address, or registered agent. Keeping your LLC documentation up to date is a simple task that can take just minutes to complete. It's easy to overlook these administrative duties in the midst of running a growing business, but they're important steps to staying compliant with the state, as well as avoiding any conflicts, even lawsuits, from members.



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