

**322B.115 ARTICLES OF ORGANIZATION.**

Subdivision 1. **Required provisions.** The articles of organization must contain:

- (1) the name of the limited liability company;
- (2) the address of the registered office of the limited liability company and the name of its registered agent, if any, at that address;
- (3) the name and address of each organizer; and
- (4) a statement of the period of existence for the limited liability company if different from the period set forth in section 322B.20, subdivision 2.

Subd. 2. **Statutory provisions that may be modified only in articles of organization or a member control agreement.** The following provisions govern a limited liability company unless modified in the articles of organization or a member control agreement under section 322B.37:

- (1) a limited liability company has general business purposes (section 322B.10);
- (2) a limited liability company has certain powers (section 322B.20);
- (3) the power to adopt, amend, or repeal the bylaws is vested in the board of governors (section 322B.603);
- (4) a limited liability company must allow cumulative voting for governors (section 322B.63, subdivision 2);
- (5) the affirmative vote of a majority of governors present is required for an action of the board of governors (section 322B.653);
- (6) a written action by the board of governors taken without a meeting must be signed by all governors (section 322B.656);
- (7) the board may accept contributions, make contribution agreements, and make contribution allowance agreements (sections 322B.40, subdivision 1; 322B.42; and 322B.43);
- (8) all membership interests are ordinary membership interests entitled to vote and are of one class with no series (section 322B.40, subdivision 5, clauses (1) and (2));
- (9) all membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (section 322B.40, subdivision 5, clause (2));
- (10) the value of previous contributions is to be restated when a new contribution is accepted (section 322B.41);

(11) a member has certain preemptive rights, unless otherwise provided by the board of governors (section 322B.33);

(12) the affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a plurality of the votes cast (section 322B.63, subdivision 1) or a majority of the voting power of all membership interests entitled to vote (section 322B.35, subdivision 1);

(13) the voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 322B.356);

(14) members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 322B.50);

(15) members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 322B.326);

(16) a written action by the members taken without a meeting must be signed by all members (section 322B.35);

(17) members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 322B.52);

(18) a member is not subject to expulsion (section 322B.306, subdivision 2);

(19) unanimous consent is required for the transfer of governance rights to a person not already a member (section 322B.313, subdivision 2);

(20) for limited liability companies whose existence begins before August 1, 1999, unanimous consent is required to avoid dissolution (section 322B.80, subdivision 1, clause (5)(i));

(21) the termination of a person's membership interest has specified consequences (section 322B.306); and

(22) restrictions apply to the assignment of governance rights (section 322B.313).

**Subd. 3. Statutory provisions that may be modified either in articles of organization, a member control agreement, or in the bylaws.** The following provisions govern a limited liability company unless modified in the articles of organization, a member control agreement under section 322B.37 or in the bylaws:

(1) governors serve for an indefinite term that expires at the next regular meeting of members (section 322B.616);

- (2) the compensation of governors is fixed by the board of governors (section 322B.623);
- (3) a certain method must be used for removal of governors (section 322B.636);
- (4) a certain method must be used for filling board of governor vacancies (section 322B.64);
- (5) if the board of governors fails to select a place for a board meeting, it must be held at the principal executive office (section 322B.643, subdivision 1);
- (6) the notice of a board of governors meeting need not state the purpose of the meeting (section 322B.643, subdivision 3);
- (7) a majority of the board of governors is a quorum for a board meeting (section 322B.65);
- (8) a committee consists of one or more persons, who need not be governors, appointed by affirmative vote of a majority of the governors present (section 322B.66, subdivision 2), and a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to the subcommittee any or all of the authority of the committee (section 322B.66, subdivision 3);
- (9) the board may establish a special litigation committee (section 322B.66);
- (10) the chief manager and treasurer have specified duties, until the board of governors determines otherwise (section 322B.673);
- (11) managers may delegate some or all of their duties and powers, if not prohibited by the board of governors from doing so (section 322B.689);
- (12) regular meetings of members need not be held, unless demanded by a member under certain conditions (section 322B.333);
- (13) in all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members (section 322B.34, subdivision 2);
- (14) for a quorum at a members' meeting there is required a majority of the voting power of the membership interests entitled to vote at the meeting (section 322B.353);
- (15) the board of governors may fix a date up to 60 days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting (section 322B.356, subdivision 1);
- (16) indemnification of certain persons is required (section 322B.699);

(17) the board of governors may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement (section 322B.54, subdivision 1); and

(18) members have no right to interim distributions except as provided through the bylaws or an act of the board of governors (section 322B.51).

**Subd. 4. Optional provisions and specific subjects.** The provisions in clauses (1), (7), (15), (16), and (18) may be included in the articles of organization or a member control agreement under section 322B.37.

The provisions in clauses (2) to (6), (8) to (14), and (17) may be included in the articles of organization, a member control agreement under section 322B.37 or the bylaws:

(1) the persons to serve as the first board of governors may be named in the articles of organization (section 322B.606, subdivision 1);

(2) a manner for increasing or decreasing the number of governors may be provided (section 322B.61);

(3) additional qualifications for governors may be imposed (section 322B.613);

(4) governors may be classified (section 322B.626);

(5) the day or date, time, and place of board of governors meetings may be fixed (section 322B.643, subdivision 1);

(6) absent governors may be permitted to give written consent or opposition to a proposal (section 322B.646);

(7) a larger than majority vote may be required for board of governor action (section 322B.653);

(8) authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the chief manager (section 322B.673, subdivision 2);

(9) additional managers may be designated (section 322B.676);

(10) additional powers, rights, duties, and responsibilities may be given to managers (section 322B.676);

(11) a method for filling vacant offices may be specified (section 322B.686, subdivision 3);

(12) the day or date, time, and place of regular member meetings may be fixed (section 322B.333, subdivision 3);

(13) certain persons may be authorized to call special meetings of members (section 322B.336, subdivision 1);

(14) notices of member meetings may be required to contain certain information (section 322B.34, subdivision 3);

(15) a larger than majority vote may be required for member action (section 322B.346);

(16) voting rights may be granted in or pursuant to the articles of organization to persons who are not members (section 322B.356, subdivision 3);

(17) limited liability company actions giving rise to dissenter rights may be designated (section 322B.386, subdivision 1, paragraph (e)); and

(18) a governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited.

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the bylaws under this subdivision without including it in the bylaws, unless it is required to be included in the bylaws by another provision of this chapter.

**Subd. 5. Optional provisions generally.** The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

**Subd. 6. Powers need not be stated.** It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

**Subd. 7. Dependence on facts outside the articles.** Except for provisions included pursuant to subdivision 1, any provision of the articles of organization may:

(1) be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

(2) incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**History:** 1992 c 517 art 2 s 7; 1993 c 137 s 23,24; 1996 c 361 s 2-4; 1997 c 10 art 2 s 2; art 4 s 8; 1999 c 85 art 2 s 5-7,96; 1999 c 249 s 1; 2004 c 199 art 14 s 38; 2006 c 250 art 2 s 10,11