



The **4 D's** Every Business  
Should Plan for –  
Death, Divorce,  
Disability and  
Disagreements

# Why have a Company Agreement in a Single Member LLC?

- ▶ Banks require it.
- ▶ Title companies require it.
- ▶ Useful if additional members are ever added (family members or otherwise).

# Topics to Address in the Company Agreement in a Multi-Member LLC to Avoid Disagreements

- ▶ Ownership Percentages
- ▶ Voting Rights
  - ▶ Simple Majority Decisions
  - ▶ Super Majority Decisions
    - ▶ Definition of Super Majority Percentage

# Topics to Address in the Company Agreement in a Multi-Member LLC to Avoid Disagreements

## ▶ Manager Control

- ▶ Are the managers entitled to compensation? Management fee?
- ▶ Are the Managers permitted to be involved in other business interests? Are there any limitations?
- ▶ What decisions can Managers make without Member authorization?

# Topics to Address in the Company Agreement in a Multi-Member LLC to Avoid Disagreements

- ▶ Capital Contributions
  - ▶ Initial Contributions
    - ▶ Amount and Timing
    - ▶ Cash, Land or other
  - ▶ Future Contributions
    - ▶ Required or not required
    - ▶ Failure to contribute
      - ▶ Member Loans or dilution or both
      - ▶ Rate for Member Loans

# Topics to Address in the Company Agreement in a Multi-Member LLC to Avoid Disagreements

## ▶ Distributions

- ▶ Straight percentages
- ▶ Preferred returns to one class until a certain rate of return is reached, then percentages
- ▶ Any special distributions to Managers after meeting required returns

# Topics to Address in the Company Agreement in a Multi-Member LLC to Avoid Disagreements

- ▶ Transfer Restrictions
  - ▶ General restriction against transfer
    - ▶ Requires Manager, Unanimous Consent, Super Majority or Simple Majority approval?
  - ▶ Right of First Refusal to LLC and/or other members

# Topics to address in the Company Agreement in a Multi-Member LLC to Avoid Disagreements

- ▶ Deadlock with Mediation Clause
  - ▶ Voting by Members does not result in a simple majority vote
  - ▶ Members agree to submit to mediation



# Topics to Address in the Company Agreement in a Multi-Member LLC

- ▶ Buyout Options
  - ▶ Triggers
    - ▶ Death/Disability
    - ▶ Divorce
    - ▶ Bankruptcy

# Topics to Address in the Company Agreement in a Multi-Member LLC

## ▶ Buyout Options

### ▶ Who has the option?

- ▶ Other members or first LLC then other Members
- ▶ In death/disability context, mandatory buyout or option on the LLC?

# Topics to Address in the Company Agreement in a Multi-Member LLC

- ▶ What is the price?
- ▶ How do you determine FMV of the Interest?
  - ▶ Agreement of the parties annually
  - ▶ Appraisal
  - ▶ Book Value
  - ▶ Formulaic valuation (i.e. EBITDA x multiple)
    - ▶ *Earnings Before Interest, Taxes, Depreciation and Amortization*

# Topics to Address in the Company Agreement in a Multi-Member LLC

- ▶ Financing Options if LLC Purchases Interest
  - ▶ Term and rate
  - ▶ Key man insurance to fund buyout?

# Topics to Address in the Company Agreement in a Multi-Member LLC

- ▶ Additional Provisions to Consider
  - ▶ Drag Along
    - ▶ Enables the majority membership interest holder to force a sale by minority membership interest holders, essentially dragging them along
  - ▶ Tag Along/Piggyback Rights
    - ▶ Allows the minority shareholders to require the majority membership interest to procure an offer for the minority members, allowing them to sell their shares at the same time and same price

# Topics to Address in the Company Agreement in a Multi-Member LLC

- ▶ Additional Provisions to Consider
  - ▶ Push
    - ▶ Pushing Member initiates buyout offer under certain terms
  - ▶ Pull
    - ▶ Pulled Member has the choice to accept and sell or reject and buyout Pushing Member

# Topics to address in the Company Agreement in a Multi-Member LLC

- ▶ Additional Provisions to Consider
  - ▶ Spousal consent
  - ▶ Classes of Members
    - ▶ Complete Voting Rights
    - ▶ Less Voting Rights
    - ▶ No Voting Power
  - ▶ Mechanics surrounding the amendment of a company agreement

# Topics to Address in the Company Agreement in a Multi-Member LLC

- ▶ Note on Raising Capital through outside investors
  - ▶ Subject to strict guidelines that are beyond the scope of our presentation





# Thank you....

Original Presentation Prepared by:

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Titled: The REAL Reasons You Should Have Governing Documents  
and portions of such Presentation have been modified to this topic.