

## ORAL OPERATING AGREEMENTS

STATUTE	GENERAL PROVISION	PROVISIONS REQUIRING A WRITING
Utah Act	<p>“Operating Agreement” means a <u>written</u> agreement of the members. § 48-2c-102(15).</p> <p>The initial operating agreement of a company, if one is adopted, shall be adopted by <u>unanimous</u> consent of the members. § 48-2c-501.</p>	<p>A company's articles of organization or operating agreement may not vary any requirement under this chapter that a particular action or provision be reflected <u>in writing</u>. § 48-2c-120</p> <p>A member or manager may not delegate to one or more other persons the member's or manager's, as the case may be, authority and power to manage the business and affairs of the company unless such delegation is <u>in writing</u>. § 48-2c-805.</p>
Revised Act	<p>“Operating Agreement” means the agreement, whether or not referred to as an operating agreement and <u>whether oral, in record, implied, or in any combination thereof</u>, of all the members of the limited liability company. § 102(13).</p>	None
Prototype Act	<p>“Limited Liability Company Agreement” means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), <u>written, oral or implied</u>, of the member or members. § 102(12).</p>	<p>A promise by a member to make a contribution to a limited liability company is not enforceable unless set forth <u>in a writing</u> signed by the member. § 403(a)</p> <p>A limited liability company agreement may not waive the requirement of Section 403(a) that a contribution obligation be <u>in writing</u>. § 110(c)(8)</p> <p>To the extent that, at law or in equity, a member or other person has duties (including fiduciary duties) to the limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or other person's duties may be expanded or restricted or eliminated by provisions in the <b>[a written]</b> limited liability company agreement; provided, that the implied contractual covenant of good faith and fair dealing may not be eliminated. § 110(b)</p> <p>A <b>[written]</b> limited liability company agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a member or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement; provided, that a limited liability company agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing. § 110(c)</p>

Delaware Act	Identical to Prototype Act. <u>Section</u> 101(7).	In a <u>written</u> limited liability company agreement or <u>other writing</u> , a manager or member may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State of Delaware, or the exclusivity of arbitration in a specified jurisdiction or the State of Delaware, and to be served with legal process in the manner prescribed in such limited liability company agreement or other writing. § 18-109(d)
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