

Right To Control A Virginia LLC

If you own a Virginia closely-held limited liability company (LLC) with one or more partners, you might not be aware that under Virginia law the right to control the LLC can change without any active intent on the part of any of the owners. Unless the voting percentages of all members of the LLC are stated in either the company's articles of organization or in a written operating agreement, members are considered to vote in proportion to their "contributions" to the LLC. Since contributions can range from cash or property given to the LLC to services rendered to the LLC, the amount of a member's contributions change over time. This means that which owner has the right to control the LLC can be debatable-----and that means it can be litigated.

Many owners of LLCs, lulled by the simplicity of forming the company, fail to fully understand how LLC management differs by operation of law from management of a corporation. Corporations are owned by shareholders, whose ownership and, therefore, management rights are proportionate to the amount of stock each owns. While a shareholder may buy or sell shares over time, the amount of stock owned by each is clearly defined and readily known. In a limited liability company, there is no stock. Ownership is therefore defined by each member's "contribution," described above, unless the articles of organization or a written operating agreement provide otherwise. Related economic and management rights in LLCs may also vary from member to member.

Problems arise when relationships among the owners break down, often over how the company should be run. If voting percentages or other management rights were not set out in either the articles of organization or a written operating agreement, the only way to determine who has the right to control and manage the company is to analyze the value of the contributions made by each member. It's fair game to then claim that services performed for the company (like writing marketing materials or handling the bookkeeping) or the "donation" of personal property being used by the company have come to outweigh initial cash contributions when the company was formed. It's easy to see how these types of disputes are not only expensive and contentious, but how they can leave one or more of the co-owners out in the cold-----or in a courtroom.

The bottom line is in order to avoid disputes over the right to control the LLC, members need to address control rights, e.g. voting percentages in a written agreement, signed by all members. Avoidance of problems before they occur is immensely preferable to disputes later, especially when arguments drain money, time and focus from the place they're needed the most: the business itself.

References: VA Limited Liability Company Act, Sec. 13.1-1022(b) and 1027.