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Ten Discussion Topics for Virginia LLC Startups

The Virginia limited liability company (“LLC”) has become a popular choice of entity among small business owners and entrepreneurs for the simplicity, flexibility, limited liability protection, pass-through tax treatment, and other benefits afforded by law. Prudent LLC owners will enter into a written Operating Agreement soon after forming an LLC to memorialize their agreement on a variety of issues. The purpose of this article is to provide an initial list of questions that should be discussed among business partners (and their advisors). The answers to these questions will provide the necessary content for key provisions of the Operating Agreement.

1. **Business Purpose.** Why are we forming this LLC? Should the LLC be allowed to engage in any lawful business, or should its purpose be specifically limited?
2. **Contributions.** Who is contributing what to the LLC (e.g., cash, property, services, etc.)? What should happen if the LLC needs more capital in the future?
3. **Management and Control.** Who will control the decision-making process on a day-to-day basis? What sort of voting rights should apply for major business decisions—majority, super-majority, unanimous approval? Do we want to adopt a particular officer structure similar to a corporation? How can managers/officers be removed?
4. **Compensation.** Do we want to memorialize any special compensation terms for an owner providing services to the LLC? Any special fees to owners or their affiliates?
5. **Distributions.** How will cash available from business operations or capital events (e.g., a sale of assets or a refinance) be distributed?
6. **Tax Allocations.** How will profits and losses be allocated among the owners for tax purposes?

***This article is for informational purposes only and is not intended to be considered as legal advice or create an attorney-client relationship.*

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7. **Ownership Transfers.** What sort of transfer restrictions do we want to impose on one another to preserve the integrity of the ownership group? Do we want include succession planning provisions to address what happens upon the death, disability, or retirement of an owner?
8. **Liquidation.** How do we want to handle the process of dissolving and liquidating the business?
9. **Resolving Disputes.** How do we want to resolve disagreements that arise among owners? Litigation, arbitration, mediation, negotiation?
10. **Entity Maintenance.** Who will serve as registered agent of the LLC and coordinate payment of State Corporation Commission annual fees, etc.?

Conclusion

This is not intended to be an exhaustive list of all the issues to consider when starting a new business, but I hope it will provide some helpful guidance during those initial brainstorming sessions among business partners.