

## Article 4.

### Contributions and Distributions.

#### **§ 57D-4-01. Form of contributions.**

An interest owner may make contributions to the LLC in any form, including (i) money or other property, services rendered, or any other direct or indirect benefit to the LLC and (ii) promissory notes or other obligations to transfer money or other property, perform services, or provide any other direct or indirect benefits to the LLC. (2013-157, s. 2.)

#### **§ 57D-4-02. Liability for contributions.**

If an interest owner has contributed a promissory note or other obligation to transfer money or other property, to perform services, or to provide other benefits to the LLC and the interest owner would but for this section be excused from the performance of that obligation by reason of the interest owner's death or disability or other supervening impossibility or impracticability of performance under contract or other applicable law, the LLC may require the interest owner to pay to the LLC an amount of money equal to the value of the unperformed portion of the promised performance or exercise remedies available under other applicable law. (2013-157, s. 2.)

#### **§ 57D-4-03. Interim distributions.**

Distributions to interest owners before the dissolution and winding up of the LLC or, as provided in G.S. 57D-6-08(2), after the dissolution of the LLC, may be made at such times and in such amounts as determined by the LLC in proportion to the ratios that the aggregate contribution amounts of the interest owners bear to one another, determined immediately before the time that the distributions are to be made. (2013-157, s. 2.)

#### **§ 57D-4-04. Distribution in kind.**

An LLC may distribute property other than money if the interest owners receive interests of identical character in, or units of identical character of, such property in the same proportions as if the distribution were being made in money equal to the net value of the property being distributed. (2013-157, s. 2.)

#### **§ 57D-4-05. Restrictions on making distributions.**

(a) No distribution may be made by an LLC if, after giving effect to the distribution, either of the following would occur:

- (1) The LLC would not be able to pay its debts as they become due in the ordinary course of business.
  - (2) The LLC's total liabilities would exceed the value of the LLC's assets.
- (b) For purposes of subsection (a) of this section, the following apply:
- (1) An LLC may determine the value of its assets, the amount of its liabilities, and the time payments of its liabilities are to be made using accounting practices and principles that are reasonable under the circumstances.
  - (2) The amount of a liability for which the creditor's recourse is limited to specific collateral will not exceed the value of the collateral.

(c) Except as provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured (i) in the case of any distribution of indebtedness as of the date the indebtedness is distributed and (ii) in all other cases, either as of the date the distribution is authorized if the distribution occurs within 120 days after the date authorization is made or as of the

date the distribution is made if payment occurs more than 120 days after the date authorization is made.

(d) Except as provided in subsection (e) of this section, an LLC's indebtedness issued as a distribution made in accordance with this section is a liability of the LLC to be paid under the law applicable to debtors and creditors.

(e) An LLC's indebtedness issued as a distribution is not a liability of the LLC for purposes of subsection (a) of this section if its terms provide that payment of principal and interest are to be made only to the extent that at the time of such payment a distribution to interest owners could then be made under this section. Subsection (a) of this section applies to each payment of principal or interest made under any indebtedness described in the preceding sentence and not to the issuance of the indebtedness. (2013-157, s. 2.)

**§ 57D-4-06. Liability for wrongful distributions.**

(a) If a distribution is made in violation of G.S. 57D-4-05, then each manager or other company official who alone or with other company officials had the authority to and did approve the distribution is personally liable to the LLC but not any other person for the amount of the distribution that exceeds the amount that could have been distributed without violating G.S. 57D-4-05 only if it is established that the company official did not act in compliance with G.S. 57D-3-21, without regard to any modification or elimination of such duties and standards of conduct under the operating agreement. Except as otherwise provided in G.S. 57D-11-03(d), a proceeding under this subsection is barred unless it is commenced within two years after the distribution.

(b) Each manager or other company official held liable under subsection (a) of this section for a wrongful distribution is entitled to the following:

- (1) Contribution from each other manager or other company official who could be held liable under subsection (a) of this section for the wrongful distribution.
- (2) Reimbursement from each interest owner for the amount the interest owner received knowing that the distribution was made in violation of G.S. 57D-4-05. (2013-157, s. 2.)

**§ 57D-4-07. Right to distribution.**

An interest owner who is entitled to receive a distribution has the status of and is entitled to all remedies available to a creditor of the LLC with respect to the distribution. (2013-157, s. 2.)