



STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

*Recent Developments - Fall, 2016
See 3Q16 Closed Deals Below*

Know Your Role or Roll the Dice

Whether as part of a joint venture, or setting up a new limited liability company or partnership, it is vital to know your rights, roles and responsibilities and those of your new partners.

Arizona, like many states, differentiates limited liability companies into two big buckets: "member-managed" **and** "manager-managed". While the Arizona Limited Liability Act includes statutes applicable to both arrangements that will apply by default, absent operating agreements, in many cases, relying on the generic language of the statute can be a receipt for disaster.

John Wooden, the famed UCLA basketball coach and winner of ten NCAA national championships in twelve years, famously said that "**failing to plan is planning to fail**."

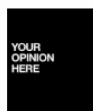
More than anything, each party needs to know their role, whether that is serving as the "silent, money guy", "deal runner", or "equal partner". We counsel our clients to have frank conversations at the onset to outline the company's management rights and responsibilities in the form of written operating agreements, which include provisions detailing the contours of the management of the company.

Important considerations include the following:

- **What are the limits on the manager's authority? How are decisions made?**
The operating agreement should indicate the various decisions and actions concerning the company that a manager may exercise and, to the extent possible, specify certain permitted activities, such as opening bank accounts, executing contracts and maintaining the books and records of the company. Different managers can certainly have different roles. Members (equity) may also wish to retain authority over certain major decisions, such as admission of new members, changing the purpose or business of the company, amending the operating agreement or dissolving the company.
- **What if there are multiple managers or managing members?** Included in the management section should be provisions for which types of decisions and actions require majority or unanimous consent and which types of decisions are reserved for each party.
- **How is a manager removed or replaced?** Considerations should be given to the circumstances in which a manager can be removed – either for intentional (bad faith, fraud, negligence) or unintended acts (disability, injury) and how the manager can be replaced.
- **Is the manager or managing-member paid? How?** Oftentimes managers or managing members are asked to devote as much time and effort as is necessary for the operations of the company and their compensation/fees must be clearly defined. Whether it is a fixed amount or a promoted interest, the agreement needs to reflect the understanding of all parties involved. Also consider under what circumstances expenses are reimbursable and whether any prior approval must be obtained over threshold amounts.

Clearly defined roles in a limited liability company are essential to smooth operations. Disputes and misunderstandings among members can and do arise, but in our experience, disagreements tend to be exacerbated by parties who've rushed into a new deal without taking pause to consider these issues. Even though it may be cumbersome to have these discussions at the outset of forming a company, that time is the best time to work through all of the kinks and nuances so that there is a meeting of the minds.

Stein Law routinely prepares and negotiates various types of company agreements. For more information as to how we can be of service, please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com.



Be sure to check out our affiliated website, www.arizonaalegalopinions.com, which is focused on our practice area dedicated to delivering attorney opinion letters for all commercial real estate lending transactions.

Stein Law, PLC is a boutique business and real estate deal firm focused on:

- Real estate acquisitions and sales, development and leasing (both tenant and landlord);
- Business transactions, operating

Below are some noteworthy 3Q16 Stein Law closed deals:

- \$38MM multi-family portfolio sale (Austin, September)
- Limited Arizona Legal Opinion in

Business Development

agreements, joint venture structuring and corporate contracts;

- Loan financings, workouts and modifications; and
- Hospitality development, management and licensing matters.

The following is a link to our Stein Law, PLC Recent Developments Archives:

[Recent Developments Archives](#)

connection with \$189MM portfolio loan (September)

- Arizona Legal Opinion for \$15MM Life Company refinance (September)
- Recently built and leased strip center sale (Mesa, September)
- Complex multi-family apartment sale and loan assignment (Tempe, September)
- Shopping center acquisition, financing and lease-up and development (Phoenix, August)



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