

# Preventing Legal Issues and Disputes



OSORIO INTERNACIONAL

ATTORNEYS • ABOGADOS • ADVOGADOS

[www.osorioint.com](http://www.osorioint.com)

305-900-4103



**Brazilian-American**  
Chamber of Commerce of Florida

EST. 1981

*“Dormientibus non succurrit jus.”*

“O direito não socorre aos que dormem.”

“The law does not aid the sleeping.”

# Fiduciary Duty

## Duty of Care

- Act with the care that a reasonably prudent person would take in similar circumstances.
- Make informed decisions and exercise independent judgment.

## Duty of Loyalty

- Act in good faith and in the best interest of the company.
- Avoid conflicts of interest and self-dealing.

## Duty of Good Faith and Fair Dealing

- Act honestly and fairly in all transactions.
- Ensure transparency and full disclosure to all members.

## Legal Implications

- Breach of Fiduciary Duty: Can result in legal consequences, including damages and loss of position.

- Importance of Proper Documentation

Foundation for Compliance: Ensures adherence to laws and regulations.

Clarity and Structure: Clearly outlines roles, responsibilities, and processes within the organization.

Protection of Interests: Safeguards the rights of shareholders, members, and partners.



# Essential Corporate Documents

- Articles of Incorporation/Organization
- Bylaws/Operating Agreements
- Partnership Agreements

## Articles of Incorporation/Organization

---

- **Establishes the entity's existence**
- **Filed with the state**

# Operating Agreements

**Purpose:** Governs internal operations and management.

**Key Elements:**

## Membership

- Define members' rights, responsibilities, and ownership percentages.
- Procedures for adding or removing members.

## Management Structure

- Detail the powers and duties of managers.

## Capital Contributions

- Outline initial capital contributions from members.
- Procedures for additional contributions and ownership adjustments.

## Distributions and Profits

- Define how profits and losses will be allocated among members.
- Timing and methods of distributions.

# Operating Agreements

## Meetings and Voting

- Establish rules for member meetings and voting procedures.
- Quorum requirements for decision-making.

## Transfer of Interests

- Conditions and procedures for transferring ownership interests.

## Dispute Resolution

- Outline processes for resolving disputes among members.
- Mediation and arbitration options.

## Amendments

- Procedures for amending the operating agreement.

## Dissolution

- Conditions under which the LLC may be dissolved.
- Distribution of assets upon dissolution.



# Best Practices for Document Preparation

- **Regular Review and Updates:**

Ensure documents reflect current operations and comply with changes in law.

- **Consult Legal Experts:**

Engage attorneys for drafting and reviewing to avoid pitfalls.

- **Employee Training:**

Train staff on the importance of compliance and the implications of corporate documents.

- **Accessibility:**

Maintain easily accessible records for all stakeholders.

# Case Study: Ownership Dispute

## ▶ Overview

- ▶ **Parties:** Two partners invest in a shopping mall in Florida.
- ▶ **Issue:** No operating agreement in place.

- ▶ **Key Issues:** After a few years, managing partner starts withholding financial information; no distribution of profits; mismanagement; etc.

## ▶ Dispute:

- ▶ Managing partner claims it was just a loan; the other partner insists on shared ownership.

- ▶ **Litigation:** Years of costly legal battles due to unclear ownership terms.

- ▶ **Settlement** reached after extensive litigation.

- ▶ **Conclusion:** This case highlights the importance of written operating agreements in preventing disputes.



# Conclusion

- Role of essential documents in the prevention of disputes.
- Ongoing compliance as a business strategy



# Questions & Discussion

