Your Company's Rulebook: Operating Agreements, Bylaws, and the State's Default Rules

Every company has a rulebook, whether or not anyone wrote one. If you did not write yours, your state did.

Filing articles of organization or incorporation creates a company. It does not decide who runs it, who gets paid, what happens when an owner wants out, or how a tie gets broken. Those questions get answered either way. The only choice is whether the owners answer them in writing or the state answers them by default.

Think of it like a marriage. The articles are the marriage certificate: proof the relationship exists, and not much else. The state's default rules are divorce law, which decides everything the couple never addressed. A template agreement is the standard vows. Custom terms the owners actually negotiated are the prenup.

What the Rulebook Is Called

Limited liability company. The rulebook is the operating agreement. Some states call it a limited liability company agreement. It covers management, voting, money, transfers, and exits.

Corporation. The rulebook comes in layers. Bylaws set the mechanics: directors, officers, meetings, quorum, and voting. A shareholder agreement covers the deal among the owners: transfer restrictions, buy-sell terms, who sits on the board, and what happens when a shareholder leaves. Bylaws run the machine. The shareholder agreement protects the owners from each other.

In many states, any agreement among all the members about the company's affairs counts as part of the operating agreement, whatever its title. A side letter or "partnership agreement" signed by every member may be part of your rulebook whether you meant it to be or not.

The State Fills Every Gap

Every state's company statute contains default rules: answers that apply automatically to anything the owners did not decide for themselves. Most of them can be changed by agreement. Few owners read them before they apply.

Depending on the state, the defaults may:

- **Split profits** by capital contributed, or equally per member, regardless of who does the work.
- **Require unanimous consent** to admit a new member, amend the operating agreement, or

act outside the ordinary course of business.
- **Give a departing member nothing** until the company dissolves, or let them keep their economic rights indefinitely while losing their vote.
- **Let any member bind the company** in a member-managed limited liability company.
- **Leave deadlock unresolved,** with dissolution by court order as the only exit.

None of these is unreasonable in the abstract. The problem is that nobody chose them, and they rarely match the deal the owners think they have.

Is a Written Agreement Required?

Mostly no. A few states say otherwise, and the popular lists of those states are often wrong.

- **New York** is the one state whose statute requires a written operating agreement. Members must adopt one before, at the time of, or within 90 days after filing the articles of organization (N.Y. LLC Law § 417).
- **Maine, Missouri, and Delaware** require that an operating agreement exist, but allow it to be oral or implied. Maine defines the agreement to include one that is written, oral, or implied (31 M.R.S. §§ 1502, 1531). Missouri allows an oral agreement among all members, though a single member's declaration must be in writing (RSMo §§ 347.015, 347.081). Delaware says an agreement must be "entered into or otherwise existing," and defines that agreement to include one that is written, oral, or implied (6 Del. C. §§ 18-101, 18-201). Delaware appears on many lists of states that "require a written agreement." It requires an agreement, not a written one.

Corporations are different. Corporation statutes generally call for bylaws, and the statute supplies the gaps where the bylaws are silent. Shareholder agreements are optional everywhere.

Whatever the statute requires, the practical answer is the same. Banks, title companies, lenders, and buyers ask for the written agreement. An oral rulebook is one nobody can prove.

What the Template Probably Says

Most operating agreements and bylaws supplied by formation services are templates. Many do little more than restate the state's defaults in longer sentences. That is not a criticism. A template has to work for everyone, so it decides almost nothing that is specific to you.

A template signed by one owner for a single-member company is often fine. A template signed by three owners who each put in different money and do different work is the standard vows read at a wedding where nobody discussed the prenup.

What to Check in Yours

Pull out your operating agreement or bylaws and look for each of these. If a topic is missing, the state's default rule governs it.

- **Management.** Member-managed or manager-managed. Who may sign contracts, open

accounts, hire, and borrow, and the dollar limits on that authority.
- **Voting.** Which decisions need a vote, and what threshold each needs: majority, supermajority, or unanimous. Whether votes count by head or by percentage.
- **Money and distributions.** How profits and losses are allocated, when cash is distributed, who decides, and whether the company makes tax distributions so owners can pay tax on income they did not receive in cash.
- **Capital calls.** Whether owners can be required to contribute more, who decides, and what happens to an owner who does not pay: dilution, a loan from the others, or loss of the interest.
- **Transfers and buy-sell.** Whether an owner may sell or give away an interest, who must consent, rights of first refusal, and what happens on death, divorce, disability, or bankruptcy.
- **Exits.** Whether an owner may withdraw, how the interest is valued, and how the buyout is paid: lump sum or installments, with or without interest and security.
- **Deadlock.** What happens when equal owners disagree: a tie-breaker, a mediator, a buy-sell trigger, or nothing.
- **Tax matters.** The company's tax classification and, for a limited liability company taxed as a partnership, who serves as partnership representative with authority over IRS audits. That person can bind every owner in an audit, so name one deliberately.
- **Records.** Who keeps the books, what reports owners receive, and each owner's right to inspect the records.

When the Paper and the Practice Disagree

The most common problem is not a bad agreement. It is an agreement nobody follows. Ownership percentages that changed without an amendment. A manager-managed company where every member signs everything. A capital call nobody made and a contribution nobody recorded.

Courts read the document. If the company stopped following it years ago, the document still governs, and the owners are left arguing about which version of the deal they meant. Amend the agreement when the deal changes, and keep the signed amendments with the company records.

The Law That Governs It

The company law of the state where the company is formed governs its internal affairs, regardless of where the owners live or where the business operates. A Wyoming limited liability company owned by Colorado residents is governed by Wyoming's statute, and its operating agreement is read against Wyoming's default rules. A clause choosing some other state's law generally does not change that.

That is why customizing a company's rulebook is a question for someone who knows the formation state's company law.

Related reading at bjoffrionconsult.com/blog: "Do you need an operating agreement if you're the

only member?" and "The three questions your operating agreement probably doesn't answer."

If You Want Your Rulebook Checked

Document Review — from $650. A written review of your operating agreement, bylaws, or shareholder agreement: what it actually says, where it is silent and the state's defaults govern, and specific recommended revisions.

Document Review & Revision — from $1,400. The revised text itself, rather than a list of suggestions. Where a revision turns on the company law of a state where I am not licensed, you engage an attorney licensed there, at your own expense, to advise on that question, and I build their advice into the document.

The fee for a consultation is credited in full toward any written work you commission within 30 days.

Full service list and current pricing: www.bjoffrionconsult.com/services

1500 N Grant St Ste N, Denver, CO 80203 · brandi@bjoffrionconsult.com · www.bjoffrionconsult.com
General information only, not legal or tax advice for your situation. Brandi L. Joffrion is licensed to practice law in Colorado. Receiving this guide does not create an attorney-client relationship.
© 2026 B. Joffrion Consulting, LLC