



**TRELLIS**

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## **Adding an LLC Member**

*Remember, this outline is a general guide.*

*Be sure to contact an attorney if you have questions or specific issues.*

As your business grows and develops, you may have considered adding new members (owners) to your limited liability company (LLC). This can be an exciting next step but has some important legal implications. The purpose of this resource is to provide you with some considerations that may arise as you add a new member to your LLC and key legal steps.

- 1. Talk to a Lawyer.** It is important to talk to a lawyer about any legal or regulatory requirements that are related to bringing in new owners. For example, adding new members may trigger certain considerations surrounding federal and/or state securities laws. Talking to a lawyer will help you navigate these laws and provide you with guidance as you think about adding new members to your LLC. A lawyer can also help you update or draft your operating agreement and membership purchase agreement and make sure it contains the specific information you need unique to your business or the person you are bringing on. This is one area where it is worth spending extra on an attorney.
- 2. Draft a Membership Interest Purchase Agreement.** A membership interest purchase agreement will outline the ownership interest you are transferring to the new member, any conditions of being an owner, as well as the capital that they will give to the company in return for that interest. Remember that adding a new member is like a reconfiguration of the LLC where either existing members are selling a portion of their existing interests to a new member, or the new member buys outstanding company interests and ownership percentages are changed based on the new allocation.
- 3. Update Your Operating Agreement.** Because adding a member to your LLC is a major change in ownership, it is important that this change is reflected in your operating agreement through an amendment or new operating agreement. The amendment should include information such as the new member's name, any of their capital contributions, their percent interest in the LLC, and the percentage of profits and losses to be allocated to them. You should also consider if the addition might result in changes to how you make decisions, add or remove future members, or pay owners. If your LLC is already structured as a multi-member LLC, it is important that this amendment is voted upon by the existing members and documented in either the meeting minutes or in a resolution. After you update your operating agreement, be sure to provide it to your accountant and to your bank.

If you don't happen to have an existing operating agreement, you should consider drafting one. Luckily, Trellis offers a multi-member LLC operating agreement in our Template Library! Check it out here: <https://www.trellispgh.com/product-page/llc-member-managed-operating-agreement>

- 4. Pass Resolutions.** Now that there are more owners in your company, you may want to put decisions in writing, through resolutions. Resolutions are written decisions of the company based on the voting process detailed in your operating agreement. Matters like how compensation will be decided between owners, how duties are to be allocated, a code of conduct, or what types of decisions of the company require a true vote. Putting these in writing can help you and your new partner(s) think through the new relationship and avoid issues down the road.
- 5. Add New Members to LLC Accounts.** When adding a new member, you might have agreed to give them access to different financial accounts that are relevant to your LLC. If this is the case, then it is important to communicate this to all relevant financial institutions to add the new member to each respective account. Remember that if you are in a multi-member LLC that all the current members should agree to let this new member have access to these accounts, and that this agreement should be memorialized in a resolution.
- 6. Talk to Your Accountant.** Talk to your accountant about whether you need to change your tax election and other considerations. If you are going from one member taxed as a sole proprietorship to two or more, you will need to change your tax election to a partnership or maybe an S-corp. Multi-member LLCs are taxed by default as partnerships. You should ask your accountant about filing the proper paperwork with the proper entities and any other tax or wage/owner payment implications. You should also talk to your accountant about how to properly account for any buy-in funds or whether you need a capital account for the new member.
- 7. If Needed, Change Your LLC's Name.** Adding a new member may result in a change in your LLC's name, if this is something you agreed upon with your new member. For example, if your LLC was called "Smith Services LLC" and you add a new member named Jones, you could change your name to "Smith and Jones Services LLC". If you do agree to change your business name after adding a new member, you will need to file the relevant paperwork with the state and federal government and pass a resolution. You will also need to update all business documents and assign existing contracts to the new name so all outside parties are aware of the change. A lawyer can help with this if needed. You may also want to speak to your accountant about the tax filing implications a name change may have on your business.