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How Delaware LLCs Can Protect Themselves Against Abusive and Illegitimate Information Requests by Members or Managers

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Knowledge is power, they say. In the context of a Delaware limited liability company (“LLC”), knowledge about the company's finances, governance, operations, and affairs is found in the company's books and records. But like any power, the power of a Delaware LLC's members and managers to obtain information and knowledge about their LLC can be abused. A disgruntled, difficult, or disruptive member or manager can use their information rights as a cudgel against the LLC and its management, harassing them with burdensome or redundant requests for information and records for no legitimate reason.

But a member's or manager's right to LLC information is not absolute. The Delaware Limited Liability Act (the “Act”) establishes limits on why and how a member or manager can request and obtain LLC documents and information. However, those limits may not prevent bad actors' abuse of those rights. Fortunately, the Act allows an LLC to further tailor and restrict members' and managers' information rights in its limited liability company agreement. Given the disruption, burdens, costs, and animosity involved in illegitimate or abusive information requests, Delaware LLCs should thoughtfully consider the information rights provisions they include in their organizing documents.

Information Rights Under the Delaware LLC Act

As set forth in [Section 18-305](#) of the Act, members and managers can make a reasonable, written demand for information from the LLC if the stated purpose of the request is “reasonably related to” either the member's interest as a member of the LLC or the position of manager and the requested information is “necessary and essential to achieving that purpose.” This information includes:

- True and full information regarding the status of the LLC's business and financial condition.

- A copy of the LLC's federal, state, and local income tax returns for each year (promptly after becoming available).
- A current list of each member and manager's name and last known business, residence, or mailing address.
- A copy of any written LLC agreement, certificate of formation, and all amendments and executed copies of any powers of attorney pursuant thereto.
- True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member.
- Other information regarding the affairs of the LLC as is just and reasonable.

While an LLC must *provide* company documents and information so long as the request is "necessary and essential" for a legitimate purpose relating to the requestor's role as a member or manager, [Delaware courts have held](#) that an LLC is under no obligation to *create* documents, explanations, summaries, or commentary.

Seemingly, the Act's requirements of a proper purpose and limitation of requests to only "necessary and essential" documents would be sufficient to prevent the abuse of information rights. But that is not necessarily the case. A member or manager determined to cause havoc through abusive requests still has plenty of leeway to do so under the Act, including dragging the LLC through costly litigation about the legitimacy or scope of their demand if the LLC refuses to produce the requested information. But LLCs can and should establish more robust protections against using information rights as a weapon.

Further Narrowing Information Rights in a Limited Liability Company Agreement

Like many other rights and obligations in the Act, the provisions in [Section 18-305](#) regarding access to LLC information are default rules. That is, they apply in the absence of any corresponding provisions in the limited liability company agreement or the absence of any limited liability company agreement at all. As explained in that section, "the rights of a member or manager to obtain or examine information as provided in this section may be expanded or restricted in an original limited liability company agreement or in any subsequent amendment approved or adopted by all of the members or in compliance with any applicable requirements of the limited liability company agreement."

To keep information rights from being abused, LLC managers and directors should consider drafting or amending their limited liability company agreement to include language providing that:

- Any sensitive information requested, including customer lists, financial records, and other proprietary information, shall remain confidential and not be disclosed to others pursuant to detailed confidentiality and non-disclosure provisions.
- Information will be shared with members only on a "need-to-know" basis, meaning that only those members who require the information to perform their duties or make informed decisions will have access to it.
- Access to detailed financial information, such as tax returns, bank statements, and investor agreements, is restricted to a subset of members, such as managers or designated financial officers.
- Information rights may be terminated upon the withdrawal or expulsion of a member from the LLC.

If you have questions or concerns about information rights in a Delaware LLC or would like assistance preparing or amending a limited liability company agreement to prevent the potential abuse of those rights, please contact your Bodman attorney or one of the authors, Kenneth R. Powell or DeVaughn J. Swanson. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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