

*Member Managed vs. Manager Managed...
Do you know which provides more asset
protection benefits?*

BURNS AND BURNS, P.C. IS AN AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

Management Rights in a Limited Liability Company

LLC Ownership and Management Rights

An LLC can either be managed by its members or managers. Management in an LLC is presumed to be reserved in all the members of the LLC unless the articles of organization set forth that the management of the LLC is to be vested in one or more of the LLC's managers. However, it is important to understand that regardless of the management structure chosen, such rights can be either limited or expanded depending on the provisions contained in the LLC's operating agreement. A well drafted operating agreement provides checks and balances among and between LLC member(s) and manager(s).

Types of Management

Generally, an LLC should have its management powers vested in one or more managers and not leave such powers to be vested in the members. This way management decisions are vested in those persons best skilled to handle them. Further, when management is vested in a few managers, the managers can generally act more quickly to handle the time sensitive issues that arise. Lastly, manager managed LLCs provide asset protection benefits when compared to member manager LLCs.

Management Structures

If management of an LLC is vested in its managers, each manager is an agent for the LLC for the purpose of carrying on the LLC's usual business. Thus, each manager has the ability to bind the LLC (i.e. in contracts or the like) in matters related to the LLC's normal course of business and such action by a manager will be binding on the LLC unless the manager did *not* have the authority to act in such a manner (i.e. their powers were limited in the LLC's operating agreement) or the individual with whom they were dealing *was aware* that the manager did *not* have the authority to bind the LLC in that particular matter.

If management of an LLC is reserved to its members, each member of the LLC can act as an agent for the LLC for the purpose of carrying on the LLC's usual business and such action by the member will be binding on the LLC, unless the member in fact did *not* have the authority to act in this particular way and the individual with whom they were dealing *was aware* that the member did *not* have the authority to act.

Member/ Manager Liability

In any case, including those presented immediately above, when a member's or manager's actions exceeded their powers, so long as the individual with whom they were dealing *was aware* that the member's or manager's actions *exceeded their powers* authorized by the LLC's operating agreement, the member or manager will be held liable for decisions that were knowingly beyond their scope of authority.

About the Author

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Scott F. Burns, Esq. is an Arizona attorney whose clientele include professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

For Additional Information
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