

Topic: Question for the filing office of Texas, Re: the Texas LLC act
 Question by: Professor Daniel S. Kleinberger
 Jurisdiction: William Mitchell College of Law, Minnesota
 Date: March 18, 2012

Jurisdiction	Section 101.251 of Texas' new, awesomely comprehensive Business Code states: § 101.251. Governing Authority The governing authority of a limited liability company consists of: (1) the managers of the company, if the company's certificate of formation states that the company will have one or more managers; or (2) the members of the company, if the company's certificate of formation states that the company will not have managers.	
	If a certificate delivered to the filing office is silent on this issue, will the office reject the filing	If not, what will be the LLC's governance structure?
Manitoba		
Corporations Canada		
Alabama		
Alaska		
Arizona	In Arizona, the LLC must choose (per statute) whether it will be member-managed or manager-managed, and this choice must be stated in the Articles of Organization. If the document does not specify, it is a reject.	
Arkansas		
California		

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	If a certificate delivered to the filing office is silent on this issue, will the office reject the filing	If not, what will be the LLC's governance structure?
Colorado		
Connecticut		
Delaware		
District of Columbia		
Florida		
Georgia		
Hawaii		
Idaho		
Illinois		
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana		
Maine		
Maryland		

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Massachusetts		
Michigan	<p>If the Articles of Organization do not explicitly state the LLC is managed by a manager, the management will be vested in the members. I have attached the link to the section of the statute for your possible reference.</p> <p>Link: http://legislature.mi.gov/doc.aspx?mcl-450-4401</p>	
Minnesota		
Mississippi		
Missouri		
Montana	<p>Montana's applications require that they indicate whether the entity is managed by managers or managed by members. If this is not indicated the application will be rejected.</p>	
Nebraska		
Nevada		
New Hampshire		

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	If a certificate delivered to the filing office is silent on this issue, will the office reject the filing	If not, what will be the LLC's governance structure?
New Jersey		
New Mexico		
New York		
North Carolina	<p>To answer your question, no the document will not be rejected, but the member structure is to be determined and entered on the first annual report listing of members/managers.</p> <p>See below for additional comments.</p>	
North Dakota		
Ohio		
Oklahoma		
Oregon		
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		

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	If a certificate delivered to the filing office is silent on this issue, will the office reject the filing	If not, what will be the LLC's governance structure?
Tennessee		
Texas		
Utah		
Vermont		
Virginia		
Washington		
West Virginia		
Wisconsin		
Wyoming		

Additional comments:

NORTH CAROLINA:

Good morning Dan,
 Organization of an LLC in North Carolina requires one or more initial members. However, if initial members are not identified in the articles of Organization, the organizers shall hold one or more meetings to identify initial members. The Articles must state however if the entity is to be member managed or manager managed.

To answer your question, no the document will not be rejected, but the member structure is to be determined and entered on the first annual report listing of members/managers.

Cheri

Cheri L. Myers
Director of Corporations
NC Office of the Secretary of State
919-807-2050
919-807-2294 fax

ADDITIONAL COMMENTS FROM DAN:

Thanks, Julia. One of the unusual aspects of the TX LLC Act is that the Act has no “default mode” for governance. The Michigan approach is the more typical. (But heck, even when I was 6 I knew Texas was special. They had the Texas Rangers (law officers, not baseball players).

Dan

Thanks, Patricia.

There are some states in which the private document (typically called the operating agreement) can switch or establish the default structure.

Full text of email:

Hi,

Section 101.251 of Texas’ new, awesomely comprehensive Business Code states:

§ 101.251. Governing Authority

The governing authority of a limited liability company consists of:

- (1) the managers of the company, if the company's certificate of formation states that the company will have one or more managers; or
- (2) the members of the company, if the company's certificate of formation states that the company will not have managers.

If a certificate delivered to the filing office is silent on this issue, will the office reject the filing? If not, what will be the LLC's governance structure?

Thanks.

Dan

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