



PROVISIONS LIMITING CONSTITUENT LIABILITIES AND DUTIES IN PARTNERSHIP AND COMPANY AGREEMENTS

Christine Hurt
Robert Keatinge



INTRODUCTION

To what extent may owners (members and partners) and agents (general partners, managers and members and other employees and agents, collectively, “constituents”) use the governing agreement (partnership agreement and company agreement) to control liabilities to the organization (the partnership or LLC) and the other persons (other owners and agents)?



BASIC QUESTIONS

1. What are the duties and liabilities of the constituent in the absence of modification in the governing agreement?
2. To what extent do the parties wish to modify those duties and/or liabilities?
3. To what extent are the parties able to modify those liabilities in the governing agreement?

3



CHOICE OF LAW

- Internal affairs
- Liabilities to third parties
- Contractual obligations

4



DUTIES OF CONSTITUENTS TO ORGANIZATION

- Fiduciary duty/duty of loyalty
- ¿Fiduciary? duty/duty of care
- Duty with respect to information
- Statutory/contractual financial obligations
- Other statutory/contractual duties

5



LIABILITIES OF OWNERS TO THIRD PARTIES

- Statutory vicarious liability
- Piercing the organizational veil
- Contractual (guarantees)
- Contribution/distribution obligation
- Common law duties to third parties

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Provisions Limiting Constituent Liabilities and Duties in Partnership and Company Agreements

Also available as part of the eCourse

[Answer Bar: LLCs and Partnerships Formation](#)

First appeared as part of the conference materials for the
30th Annual LLCs, LPs and Partnerships session

"Provisions Limiting Liability and Duties in Partnership and Company Agreements"