



# Limited Liability Companies:

## How Will Florida's New LLC Law Changes Effect Your Business?

Earlier this year, Florida's legislature revised Florida's limited liability company law. The Florida Revised Limited Liability Company Act ("New Act"), becomes effective on January 1, 2014 but existing LLCs will not be subject to the New Act until January 1, 2015 unless they affirmatively elect to be subject to it earlier. LLCs created on or after January 1, 2014 are subject to the New Act. This newsletter highlights some of the most critical features of the New Act.

1. Your LLC's operating agreement is still valid. An operating agreement is an agreement of the members that governs the business and affairs of the LLC as well as the rights and duties of the members. An operating agreement is similar to the by-laws of a corporation or a partnership agreement for a partnership. The New Act does not invalidate an existing operating agreement and in fact expands existing law to allow operating agreements which are implied or stored in an electronic record, such as email.
2. The New Act contains mostly default provisions which may be modified in an operating agreement. However, there are several "non-waivable" provisions in the New Act, many of which are additions to the prior LLC law. Pursuant to the New Act, an operating agreement may not:
  - a. Vary the LLC's ability to sue and be sued;
  - b. Eliminate the duties of loyalty, care, good faith, or fair dealing;
  - c. Exonerate a member for acting in bad faith, willful or intentional misconduct, or violation of the law;
  - d. Vary the right of a member to dissociate or approve a merger or interest exchange;
  - e. Unreasonably restrict a member from maintaining an action against another member, manager, or the company;
  - f. Indemnify a member for bad faith, improper self-dealing, or breach of fiduciary duty; or
  - g. Vary the grounds for dissolution of the company or the requirement to wind up the company's business.



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3. The New Act does not use the term “managing member” and an existing LLC that has this management structure is deemed member-managed. The default management structure under the New Act is management by the members or “member managed.” If the operating agreement does not expressly vest management in the managers, the LLC is deemed managed by the members.
4. An LLC is now permitted to file a Statement of Authority which provides notice to third parties regarding a person’s authority to bind the LLC. A Statement of Authority may also expressly limit a person’s power with respect to the LLC. If a Statement of Authority relates to real property transactions, it must also be recorded in the real property records.
5. An LLC may not distribute any asset other than cash except where each member receives a proportionate interest in the asset. Distributions may only be made while the LLC is solvent. A member or manager may be personally liable if he or she consents to an improper distribution and fails to comply with certain standards of conduct. These provisions, as mentioned above, may be modified in the operating agreement.

There are many other provisions of the New Act that should be considered in creating a new LLC or in reviewing an existing operating agreement. If you have questions about how the New Act may affect your rights in an LLC, you should consult with qualified legal counsel.

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