

# News Alert

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## Florida Adopts New LLC Act

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The 2013 Florida Legislature adopted a new LLC act and the governor is expected to sign it shortly. The new law creates Chapter 605 of the Florida Statutes, which will be effective January 1, 2014. Generally speaking, until January 1, 2015, LLCs formed in Florida before January 1, 2014 will continue to be subject to current law (Chapter 608), unless they elect to be governed by the new law earlier than that date. In addition, all records filed on or after January 1, 2014 with the Department of State by a Florida or foreign LLC must comply with the filing requirements of the new law. On January 1, 2015, all LLCs must adhere to the new law.

The new law is based for the most part on the Revised Uniform Limited Liability Company Act (2006, as amended in 2011), but retains many Florida LLC Act provisions and concepts while incorporating language and concepts from other sources, including other Florida business entity statutes, the American Bar Association's Prototype LLC Act and Revised Model Business Corporation Act, and the business entity laws of other states.

Among some of the more important changes are the following:

- adds more "non-waivable" rules pertaining to operating agreements, meaning that certain rules cannot be overridden by the operating agreement, while others can be modified within certain limitations (among the expanded non-waivable rules is a member's right to seek judicial dissolution in certain situations, and prohibiting indemnity rights for certain kinds of misconduct by the person seeking indemnification)
- clarifies the effect of records filed with Department of State on third parties with respect to the actual and apparent authority of persons acting on behalf of the LLC, and delineating the rights of third parties who rely on those filed records when they contain inaccurate information
- clarifies that there are only two management structures for LLCs and defines more precisely than prior law the respective duties of members and managers in each case, and the rights of third parties depending upon which management structure the LLC uses (and eliminating in the process the notion of a "managing member")
- permits LLCs to file statements of authority with the Department of State to place third parties on notice of the authority (or restricted authority) of certain persons or groups of persons associated with the LLC
- changes and clarifies the authority of members and managers to bind the LLC (and eliminates the notion of a "managing member")
- changes and clarifies the voting rights of members in certain circumstances
- clarifies the rights and duties of a transferee (formerly an "assignee") of a membership interest, and retains the *Olmstead* amendment made to the LLC Act two years ago
- changes the rights and duties of members and managers concerning the inspection and copying of company records

- changes the default (that is, implied) rules for apportioning distributions, profits/losses and member voting rights
- adds new provisions relating to the withdrawal of a member from an LLC (dissociation)
- incorporates new grounds for judicial dissolution and adds new rules for appointment of receivers and custodians and other remedies in the event of a judicial dissolution (including a right to buy-out the aggrieved member's interest in some cases)
- adds new provisions for derivative actions, including new special litigation committee procedures
- adds new provisions governing service of process on LLCs and creates a new section in Florida Statutes, Chapter 48 that addresses service of process on LLCs
- while retaining the merger and conversion constructs of existing law, the new law now allows interest exchanges, as well as the domestication of non-U.S. entities desiring to become a Florida LLC

It is also noteworthy that the new law does not permit the organization of a "series LLC" in Florida, as the Drafting Committee believes significant legal and tax issues must still be addressed before this kind of entity is sanctioned for organization in this state.

The new law is intended to make Florida a more attractive place to organize and operate an LLC. It modernizes the existing law, which was adopted more than 30 years ago and contains a "quilt-work" of amendments made over the years, making it more difficult to understand and use than the comparable statutes in many other states. While eliminating much of the uncertainty that exists in some parts of the prior law, the new law emphasizes the importance of the operating agreement (recognizing that LLCs are primarily a "creature of contract") and provides businesses and their advisers with a significant degree of flexibility in designing management structures, capital and profit participation schemes, and other features unique to their objectives and circumstances.

Owners and managers of Florida LLCs, and their attorneys and other advisers, should make time in the coming months to determine how the new law will affect them. It is likely that many LLCs will wish to amend or update their operating agreements and their articles of organization (and possibly other records filed with the Department of State) in order to address various provisions of the new law.

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