

The Time Has Come: Are You Familiar With Florida's New Revised Limited Liability Company Act?

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Effective January 1, Florida's limited liability company statute, in effect since 1982 (Chapter 608, Florida Statutes) was repealed. All Florida limited liability companies (LLCs) are now governed by an entirely new Florida Revised Limited Liability Company Act (Chapter 605, Florida Statutes) (the "New LLC Act"). The New LLC Act replaced Chapter 608 (the "Prior LLC Act") and contains substantial revisions to the Prior LLC Act. If you operate through a Florida LLC, now is the perfect time to review and update the LLC's governing documents to comply with the New LLC Act. If you do business with a Florida LLC, now is a good time to assess whether the New LLC Act necessitates any modifications to your contractual arrangements. Note the following key issues regarding the New LLC Act. **What hasn't changed?**

1. It is still a default statute that can be modified by contract. Absent an operating agreement, which can be written, oral, or even implied, the members may override the statutory default rules through the LLC operating agreement (except for certain "non-waivable" provisions set forth in Section 605.0105). Thus, the operating agreement remains the principal focal point for examining the rights and responsibilities among the members. So, careful drafting of the operating agreement remains essential.

2. The charging order remedy for creditors of members (the "Olmstead Patch") has not changed.
Under the Prior LLC Act and the New LLC Act, judgment creditors of a member of a multi-member Florida LLC cannot foreclose on the LLC membership interest itself, but are limited to obtaining a charging order against the LLC interest. This means that creditors are only entitled to the economic rights relating to the membership interest, rather than the voting and other membership rights. In contrast, if the LLC is a single-member LLC, foreclosure of the membership interest is still an available remedy for a judgment creditor.
3. There are still no "series" LLCs under the New LLC Act.

What has changed?

1. The list of "non-waivable" default rules has been expanded. The New LLC Act significantly expands the list of non-waivable default rules that cannot be overridden by the operating agreement. Members should review their existing operating agreements to see if any of the provisions are now impermissible under Section 605.0105.
2. The concept of a "managing member" has been eliminated. Under the New LLC Act, LLCs can be member-managed or manager-managed and that's it. The (often confusing) term "managing member" has been eliminated. If your LLC (or an LLC with which you do business) is managed by one or more managing members and does not modify its documents to affirmatively state that it is manager-managed, the LLC will be deemed member-managed under the New LLC Act.
3. There are new ways to limit or expand a person's apparent authority to bind the LLC. Under the new LLC Act, an LLC can file a statement of authority with the Florida Department of State, which provides third party notice in clarifying, expanding, or limiting that person's apparent authority to bind the LLC.
4. Additional modifications and new provisions include:

- ◦ Modification of default management and voting rules for members and managers
- Modification of default member dissociation rules
- Clarification of judicial dissolution remedy and appointment of a receiver
- Modification of procedures for service of process on LLCs
- Modification of derivative action provisions
- Addition of special litigation committees
- Modification of mergers and conversions provisions
- Addition of interest exchanges and domestications by non-U.S. entities
- Modification of appraisal rights provisions

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