

Expansion of Fiduciary Duties Will Impact Florida LLCs – Is it Time to Update Your Operating Agreement?

BUSINESS TRANSACTIONS | REAL ESTATE | TAX | ESTATES, TRUSTS AND PROBATE | JUNE 9, 2015



David P. Burke



Cristin Conley Keane



Amendments to the Florida Revised Limited Liability Company Act go into effect on July 1, 2015. It governs all limited liability companies in the state of Florida. Effective July 1, 2015, the Act was amended, in part, to change the fiduciary duties of members and managers of Florida LLCs.

The amendment provides a variety of changes, the most significant expands the fiduciary duties of LLC members and managers by allowing for the application of common law principles of loyalty and care. As originally enacted, the Act specifically described and limited the fiduciary standards of conduct for members of member-managed LLCs and managers of manager-managed LLCs in Fla. Stat. § 605.04091. The amendment, however, makes clear that, unless an LLC's operating agreement or articles of organization expressly eliminates or restricts the fiduciary duties of its members and managers, the common law principles relating to the duties of loyalty and care would also apply to broaden the scope of those fiduciary duties under the Act.

This expansion of fiduciary duties differs from those for partnerships in Florida. It could be critical to fiduciaries of Florida LLCs, particularly as courts and member-litigants are permitted to rely on common law fiduciary principles in any claim asserting a breach of fiduciary duties. In addition, under the default rule, LLC fiduciaries would be obligated to understand, keep abreast of, and, of course, comply with evolving common law principles.

In light of this change, managers and members of Florida LLCs (especially members who are managers) should consider revising their operating agreements to opt out of the application of the common law fiduciary principles. By expressly eliminating or scaling back these fiduciary duties, LLC members and managers may effectively avoid the application of the change in the law and any supplementary common law principles thereby avoiding the Pandora's box of claims that may be created and used against them by an unhappy member.

