

CHANGES IN L.L.C. LAW MAY IMPACT YOUR PRACTICE

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If you have formed a new limited liability company (hereinafter “L.L.C.”) for your practice or another business since January 1, 2009, you are aware that Iowa laws governing a L.L.C. have changed. If you have not formed a new L.L.C. in that time, but your practice is an L.L.C. or you have a different business venture which is an L.L.C., you should be aware that this new law will automatically apply to all L.L.C.s formed before January 1, 2009, on January 1, 2011. You have some time to review your entity documents or to make changes, but you should be aware of the changes in this new law. The changes are found in Chapter 489 of the Iowa Code. Items of interest include:

Certificate of Organization: Starting on January 1, 2009, you no longer file “Articles of Organization” with the Secretary of State to start your Iowa L.L.C. Instead, you file a “Certificate of Organization” to begin the process.

Operating Agreement Pitfalls: The Operating Agreement is the document that sets forth how the L.L.C. is governed and operated and the relationship by or among its members. Under the new law, an operating agreement is not required to be in writing but then the statutory provisions control important issues regarding management rights, profit distribution and transfers of interest. Therefore, it may be in your best interest to have a written operating agreement that sets out how you want your L.L.C. to be operated rather than just rely solely on the statutory provisions.

Statements of Authority: The new law permits an L.L.C. to file a statement of authority with the Secretary of State and the county recorder’s office. The statement of authority serves as notice of who does or does not have authority to act for the L.L.C., to sign documents transferring

real property, or to otherwise bind the L.L.C. This change in the law affects who may act on the L.L.C.s behalf. You should also note this issue when dealing or contracting with other L.L.C.s.

Pay Attention to Management: The default provision in the new L.L.C. law is: one member equals one vote. Prior to the new law, the default provision was based upon capital contributions. This change means that without a written operating agreement to the contrary, even a member with a minority capital percentage may have the ability to have as much management authority as a member that has a majority of the membership units. Accordingly, if a majority owner wants to maintain management control, the written operating agreement will need to specify such agreement.

Dissociation of a Member: The new law has several provisions outlining what happens when a member leaves or is asked to leave an L.L.C. An operating agreement can vary the provisions contained in the law. The provisions relating to disassociation may be complicated, so it is important to get legal advice regarding these issues. For example, under the new law, a person who disassociates from the L.L.C. may no longer have management rights but could still have the right to receive distributions, which may be a result remaining L.L.C. members neither wanted nor expected.

This alert sets forth just a few examples of how the new L.L.C. law may affect the operation of your company. It is important to review your L.L.C. documents to determine whether changes in your operating agreement and other documents should be made before the new law automatically applies to your L.L.C. Taking time now may save you many unintended consequences later.

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