



Alabama Limited Liability Company Law of 2014

In March of this year, Alabama adopted a new limited liability company law under the name of the Alabama Limited Liability Company Law of 2014 (Act No. 2014-144). The new act will apply to LLCs formed after January 1, 2015. For LLCs formed before January 1, 2015, the law will be applicable to them after January 1, 2017, unless the members elect to be subject to the new law.

Jack Stephenson served on the Advisory Committee of the Alabama Law Institute that drafted the new law. The drafting process extended over a period of five years during which time the Committee compared the current Alabama law to the Revised Uniform Limited Liability Company Act, the ABA's Revised Prototype Limited Liability Company Act as well as laws of other states. The Committee tried to select the best provisions from these sources for the new law. The new act represents a significant improvement to the existing law and is unique to Alabama. The following summarizes some of the highlights in the new law:

- (a) **Notice Filing.** Local filing is retained. However, the document filed to form an LLC is designed only to notify State and third parties that an LLC exists and how to contact it. All other matters are addressed in the limited liability company agreement or LLC Agreement among the members.
- (b) **Contractual Nature.** The new law focuses on the contractual nature of an LLC. The LLC Agreement is the critical organizational document. The new law provides that every LLC must have an LLC Agreement and that the LLC Agreement may be "written, oral or implied" to cover those situations where there is no written agreement. The LLC Agreement establishes the relationship of the members and the LLC. Most provisions in the law are default provisions that only apply if the members have not modified them in the LLC Agreement.
- (c) **Management.** The authority to act for an LLC will be based upon the laws of agency. LLCs may continue to be designated as member-managed or manager-managed, but the members may agree to establish any other governance structure. The fiduciary duties of loyalty and care are imposed on the persons with authority to direct and oversee the activities and affairs of the LLC. If the limited liability company does not establish a governance structure, the right to direct the business of the LLC will reside in the members.
- (d) **Participation by the Members.** The current law provides that members share in profits and losses in proportion to their capital contributions. Because of difficulty in valuing non-cash contribution, this has become unworkable when there is no evidence of an agreement among the members. The new law focuses on distributions (rather than profits and losses) and provides that members will share equally in distributions and management of the LLC unless otherwise provided in the LLC Agreement.

If you have any questions or need further information, please contact:

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