



MINNESOTA'S NEW LLC ACT

By Roben D. Hunter, JD, CPA, CVA, MAFF

Minnesota's new statute governing limited liability companies ("LLC") became effective August 1, 2015. All LLC's that are organized after that date will fall under the new Chapter 322C of the Minnesota Statutes ("New Act").

What does that mean? How does it affect the LLC's already in existence?

The old LLC statute, Chapter 322B, was formulated under a corporate template. It basically looked and functioned a lot like a corporation with a few different names. LLC's had a board of governors that ran the business, similar to a board of directors. The officers were usually called "Managers" but could also be called President, VP and so on. There was formality similar to corporations as well, requiring that its' Member Control Agreement be in writing.

The New Act is set under more of a partnership template. Typically in a traditional partnership structure there is less formality than there is in a corporation. That is the case under the New Act. For example, the New Act allows for oral agreements of operation, or even implied agreements of operation. The governing agreement under the New Act is called an Operating Agreement, not a Member Control Agreement. Under the old act the operating agreement looked similar to corporate by-laws. Under the New Act, the Operating Agreement would typically discuss all of the governing issues found in both the old operating agreement and the member control agreement, but do so under one document, which, as stated before, can be oral or implied.

Another big shift between the two acts is the management default provisions. Although the old statute permitted member management, the default structure in the statute was for an LLC to be managed by a board of governors. The New Act permits three types of management options: member management, manager management and board management. The default structure in the New Act is member management. Therefore, unless there is an agreement to the contrary, each member has an equal vote in the management of the business for actions falling under its ordinary course of business, even if the ownership is 90% owned by one member, and 10% by another member. For actions desired to be taken outside the ordinary course of business, the statute default requires consent of all members.

The final large shift affecting most LLC's involves default distributions to members. Under the old act, the default was that distributions were allocated in proportion to the value of the members contributions. Under the new act the default rule would be an equal allocation among members.

As previously mentioned, any new LLC that is formed automatically falls under these new provisions. The LLC's formed prior to August 1st do not automatically fall under these provisions...yet. They may opt in to the new LLC act by an election. However, if they do not elect to be governed under the New Act, beginning January 1, 2018, all LLC's will automatically be subject to the New Act regardless.

The New Act has many other provisions that could make a difference in your LLC under certain circumstances. I would suggest that each Minnesota LLC seek informed counsel to help you determine when it would make sense for your LLC to opt in to the New Act.