

THE NEW FLORIDA LIMITED LIABILITY ACT

Effective as of January 1, 2015, the existing Florida Limited Liability Act, as codified in Chapter 608, Florida Statutes (the “Prior Act”) was repealed and all Florida limited liability companies (“Florida LLC(s)”) are now subject to the Florida Revised Limited Liability Act, as codified in Chapter 605, Florida Statutes (the “New Act”). With the addition of 43 new defined terms, 12 new non-waiveable provisions and significant changes to how certain provisions governing the internal operations of a Florida LLC will be interpreted and enforced, the New Act, which is based in large part upon the Revised Uniform Limited Liability Company Act of 2006, as amended in 2011 (the “RULLCA”), represents a comprehensive change in the prior law governing Florida LLCs. As such, if you are a member or manager of a Florida LLC, it is highly recommended that you become familiar with the New Act to ensure compliance with its terms. Significant changes contained in the New Act include, but are not limited to, the following:

(1) Additional Non-Waiveable Statutory Provisions. The New Act, similar to the Prior Act, is a “default statute”. This means that the New Act provides a series of “default provisions” which act as gap-fillers in instances where either no operating agreement exists or the existing operating agreement does not sufficiently address a matter so as to supersede the statutory default provision. While many of the statutory default provisions contained in the New Act may be superseded by contractual provisions contained in a company’s operating agreement, the New Act significantly increases the number of statutory default provisions that may NOT be modified or superseded by a company’s operating agreement. Significant amongst these new non-waiveable provisions are provisions limiting the power of a Florida LLC to sue or be sued; provisions eliminating the duty of loyalty and care (except as explicitly permitted by the New Act); provisions eliminating the obligation of good faith and fair dealing (except as explicitly permitted by the New Act); provisions modifying the power of a member to dissociate; provisions modifying the grounds for dissolution; provisions modifying the requirements to wind up the LLC; and provisions providing indemnification of a member or manager for certain enumerated misconduct (i.e. breach of the duty of loyalty and breach of the obligation of good faith and fair dealing). *See §605.0105, Fla. Stat.*

(2) Elimination of Term “Managing Member”. As of the effective date of the New Act, the term “Managing Member” will no longer be a recognized term in describing a company’s management structure. The management structure of Florida LLCs will now fall exclusively into two (2) distinct categories, member-managed and manager-managed; with member-managed being the default classification unless expressly specified as manager-managed in the company’s articles or organization or operating agreement. It is important to note that reference to a “managing member” in a company’s operating agreement will not, in and of itself, be sufficient to bring a company within the manager-managed company classification. Companies wishing to continue operating under the traditional manager-managed management structure but falling within the default member-managed classification will need to take additional action in order to ensure compliance with the New Act. Under the default member-managed classification, each member of the company will now have the apparent authority to bind the company in all matters within the ordinary course of the company’s business regardless of whether or not such authority is exclusively reserved to a designated member in the company’s operating agreement. Likewise, under the manager-managed classification, the company’s managers will have the apparent authority to bind the company in all matters within the ordinary course of the company’s business

but the company's members, unless otherwise authorized as permitted under the New Act, will have no such apparent authority. *See §605.0407, Fla. Stat.*

(3) Creation of Statement of Authority. Related to the new management classifications of Florida LLCs, Florida LLCs may now provide constructive notice to third parties specifying the authority, or lack of authority, of certain persons or positions to bind the company. Such constructive notice will take the form of a Statement of Authority filed with the Department of State, shall be effective for five (5) years from the date the Statement, or its most recent amendment, becomes effective and shall be conclusive and binding upon third parties that give value in reliance upon the grant, except to the extent such third party: (1) has knowledge to the contrary, (2) the statement has been canceled or restrictively amended per the New Act, or (3) the grant of authority had been limited by a subsequently filed Statement of Authority. Furthermore, the New Act provides a mechanism whereby a person named in a Statement of Authority may deny such authority by signing and filing with the Department of State, a Statement of Denial. *See §605.0302, Fla. Stat. and §605.0303, Fla. Stat.*

(4) Additional Powers to Dissociate. In a departure from the Prior Act, which did not permit a member of a Florida LLC to withdraw or resign from the company prior to its dissolution, unless specifically stated in the articles of organization or the operating agreement, the New Act significantly expands the circumstances under which a member may dissociate from the company by adding ten (10) new events that will trigger a right to dissociate. Such circumstances now include the power of a member to dissociate from the company, rightly or wrongly, at any time by express will and the power of the members of the company to dissociate a fellow member by expulsion. The significance of this new provision is compounded by the fact that a member's right to dissociate from the company by express will is classified as a non-waiveable provision under the New Act and, as such, cannot be varied by a company's operating agreement. *See §605.0601, Fla. Stat and §605.0602, Fla. Stat.*

(5) Expansion of Duty of Loyalty. Under the New Act, managers of manager-managed Florida LLCs and all members of member-managed Florida LLCs will now owe a duty of loyalty and care to the company and its members. Under the Prior Act, such duty of loyalty and care was limited to only a company's managers or managing members, as applicable. Such duty of loyalty and care may be modified however (but not eliminated) by express language in the operating agreement specifying the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by the company. *See §605.04091(2)(c) and §605.0105, Fla. Stat.*

As is evident from the sampling of changes above, there are many instances in which the provisions of the New Act may significantly alter the relationship of members and managers of a Florida LLC as it existed under the Prior Act, especially if no operating agreement exists between a company's members to supersede the default provisions contained in the New Act. As such, it is highly recommended that members and managers of Florida LLCs consult with legal counsel in order to ensure compliance with the provisions of the New Act and determine what changes to their operating agreement, if any, may be appropriate.

A more comprehensive summary of the changes contained in the Revised Florida Limited Liability Act can be found in The Florida Bar Journal, Florida New Revised Acts, Parts I, II, III, and IV. (Volume 87, Nos. 8-9; Volume 88, No 1-2), which can be viewed at the link below:

[Florida's New Revised LLC Act](#)

Should you have any questions regarding the New Act and how it may affect you, please contact us by e-mail.

Thomas P. Angelo, Esq.
tpa@angelolaw.com

Disclaimer: The information provided above is not a comprehensive review of the Revised Florida Limited Liability Act and should not be acted upon without specific legal advice based on particular situations. This newsletter is for general purposes only. The article does not constitute or contain legal advice. This article should not be considered legal opinion by the author or by the firm of Angelo & Banta, P.A., or as a substitute for legal advice.