

Summary of Significant Changes of the Alabama Limited Liability Company Law of 2014

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Effective January 1, 2015, the Alabama Legislature enacted some significant changes to the Alabama Limited Liability Company Act. The purpose of the update was to bring the law into line with other limited liability company laws from around the country including the Model Act, the Colorado Limited Liability Company Act, the Delaware Limited Liability Company Act, the Texas Business Organizations Code, the Virginia Liability Company Act and other states. A summary of many the significant changes to the Act are discussed below.

A. Summary of Changes

1. Contractual Nature: The Act contains fewer mandatory provisions, and the Act is more contractual on nature. This allows members to modify the Limited Liability Company to suit their particular needs. There are certain default provisions which are included that if the members do not modify them in their company agreement will stay in place.

2. Mandatory Safeguards: The Act still provides for certain mandatory safeguards such as the implied contractual covenant of good faith and fair dealing which cannot be modified.

3. Notice Filing: Because the Act is now contractual in nature, the only filings that are required are notice filings to form, dissolve, merge or convert the limited liability company. Basically, the notice filing advises the State and third parties that the limited liability company

exists and how to contact it. All other details, operating requirements and other information relating to the company are to be part of the company agreement.

4. Right to Direct/Management: A person's right to direct and oversee activities and affairs of the limited liability company are again determined by the company agreement. If the agreement is silent, then the members themselves will direct and oversee the activities of the company.

5. Right to Bind: There is no statutory right to bind under the new Act. Rather, a person's authority to bind is governed by the company agreement and Alabama law of agency.

6. Purposes: The Act rephrases purposes this so that a limited liability company's purposes are now referred to as "activities and affairs." This reflects the fact that limited liability companies can now be used for purposes other than carrying on a business, such as estate planning and holding title to real estate.

7. Series: This is a new provision to the Act where the limited liability company may establish in its certificate of formation and its agreement one or more designated series of assets with which certain members may be associated. The assets of a designated series are not liable for the obligations of the limited liability company as a whole or the liabilities of other series. This provision was included to bring Alabama's Act in line with the Acts of several other states.

B. Significant Changes of the Act

1. Effective Dates: The effective date of new LLCs is January 1, 2015. Further, the statutory provisions of the preexisting LLC Act are effective until January 1, 2017, when they are repealed.

2. Statutory Code Changes: The provision of the old LLC Act are contained in Ala. Code § 10A-5-1.1 et seq. Provisions of the new LLC Act are contained in Ala. Code §10A-5A-1.01 et seq.

3. Definitions of Notice: Ala. Code §10A-5A-1.02 contains definitions relating to the new Act. What is significant are the provisions of Ala. Code §10A-5A-1.03 which includes the definition of knowledge and notice. This is not contained in the prior Act. This definition provides when a person is deemed to have a notice, and again, the new Act provides notice filing which puts the State and third parties on notice of existence of the LLC.

4. Terminology Changes: There are some other terminology changes which are significant. The Act no longer refers to the filing document as “Articles of Organization” but now it is referred to as a “Certificate of Formation.” Further, the document formally known as the “Operating Agreement” is now referred to as a “Company Agreement.”

5. Governance: Subject to certain limitations and protections contained in Ala. Code §10A-5A-1.08, the new Act provides that the limited liability company shall be governed by its agreement among its members. Further, the agreement can even be written, oral or implied.

6. Formation: Ala. Code §10A-5-5A-2.01 provides what is required to be included in the certificate of formation. Again, this is much less information than previously required. The new Act requires the name of the company, the address of registered agent, name of the registered agent at the registered office, a statement that there is at least one member of the company, a statement, if applicable, that the agreement provides for series, and finally any other matters that the members determine to be included.

7. Agency/Power to Bind: Ala. Code § 10A-5A-3.02 provides that no person has the power to bind the limited liability company unless the person is authorized to act as an agent

of the limited liability company or a series of the limited liability company pursuant to the agreement or the person is authorized to act as an agent of the limited liability company due to their position as a designated managing member.

8. Management: Ala. Code § 10A-5A-4.07 modifies the direction of oversight of the limited liability company. The Act provides that the limited liability company shall be subject to the direction of oversight (as opposed to management) by its (1) members, (2) one or more managers, or (3) such other governance structure as provided in the agreement. This provision also applies to a series as well. Further, in the event that the agreement is silent as to management, Ala. Code § 10A-5A-4.07 sets forth default provisions relating to management of the company and any series by vesting management and the members.

9. Limited Liability Company Property: The new Act departs from the old Act by specifying what property an LLC holds. The old Act contains specific points relating to the fact that property was maybe required, held and conveyed in the name of limited liability company, and any real property acquired by the limited liability company vested in the company itself rather than the members. Under the new Act, the legislature determined that its well established law that the limited liability company is an entity separate from its members; therefore, the new Act states “A member has no interest in any specific property of a limited liability company or series thereof.”

C. Series

Article 11 of the new Act provides for the creation of series of assets within the limited liability company. This is unique and will likely have a substantial impact on real estate. In the past, many petitioners would create separate limited liability companies to deal with separate real properties owned by their clients. However, under the new Act, if the Certificate of Formation

provides for such, the LLC may own separate series of assets. These assets and their accompanying liabilities are separate and unique from each other, and they may even be restricted as to certain members in the limited liability company.

1. Ala. Code § 10A-5A-11.01 provides that a series of assets has separate rights, powers or duties with respect to specific purpose to a specific property or obligations to the company or it may have a separate purpose or investment objective. Further, the series may be established to carry on either profit or nonprofit activities.

2. Ala. Code § 10A-5A-11.02 provides that all debts, liabilities, obligations and expenses relating to a specific series of assets are enforceable only against the assets of that series only and are not enforceable against the assets of the limited liability company generally or against any other series. However, in order for this provision to apply, the series must maintain its own records and accounts separate from the limited liability company or the other series.

D. Conclusion

There are numerous other provisions relating to the Alabama Liability Limited Company Act of 2014 which impact the use of limited liability companies in Alabama. However, the provisions outlined herein perhaps deal most directly with the limited liability companies and title to real property. Practitioners who routinely create limited liability companies are encouraged to review the other provisions of the Act. Overall, the new Act will make the creation and operation of the limited liability companies in Alabama much more flexible and user friendly based on the member's ability to draft company agreements to suit their taste and the provisions for the use of series of assets.