



Innovations in Arizona's New LLC Law

OCTOBER 2, 2018 | PUBLICATIONS

After a long 25-year tenure, Arizona's Limited Liability Company Act will be retiring soon, to be updated by a comprehensive new law, signed by Governor Ducey this last legislative session. I had the distinct pleasure of working alongside a small group of Arizona business lawyers over the past handful of years in drafting the new LLC law.

Generally, the new Arizona LLC Act is based upon the Revised Uniform Limited Liability Act produced by the Uniform Laws Commission. Uniform laws are advantageous because they provide a wider body of case law as relevant precedent, considering that the underlying statutory language among the adopting states is the same. They also help reduce the amount of litigation, as potential litigants see the results of how judges decide issues in other states who have adopted the Uniform LLC Act. Uniform laws also allow us to participate in a greater wealth of commentary by lawyers and academics from around the country.

There are many innovations in the new Act. Here are a few:

- Centralized list of what statutory default rules can, and cannot, be changed in an Operating Agreement
- New default rules for member voting
- Statutory indemnification rights for managers
- Standards for fiduciary duties and duty of good faith and fair dealing
- Dissolution procedures for managing creditor claims
- Flexible remedies in derivative actions and institution of Special Litigation Committees to evaluate such claims
- Clarification on treatment of foreign protected series LLCs

The new Act will govern LLCs formed after September 1, 2019, as well as those existing companies who opt-in, and will govern all LLCs after September 1, 2020.

Although your existing Operating Agreements may largely be compliant with the new Act, be mindful that the new Act will impose its default rules to fill any gaps for issues you have not addressed. For example, if you are currently silent on fiduciary duties in your Agreement, then the members and managers in your company will be subject to the statutory recitation of the duty of care and fiduciary duty of loyalty, effective September 1, 2020. Likewise, if you have not considered and expressly denied the opportunity to appoint a special litigation committee to evaluate derivative claims by members, then managers will have that tool available to them.

In sum, the new Act provides a more complete set of default rules for those companies without Operating Agreements, as well as those with very basic agreements that miss out on many issues.

It's time to dust off your old agreement — or prepare one — so that you are confident that your company continues to operate and be governed as you intended.

Andy Anderson

Andy Anderson helps clients, from negotiation to closing, in corporate and M&A transactions, allowing them to execute with purpose and speed. Andy regularly advises clients on issues pertaining to limited liability company and partnership law, having served on the subcommittee of the State Bar of Arizona that drafted the Arizona Limited Liability Company Act.

Spencer Fane

At Spencer Fane, your business leaders work with our business leaders. We provide an unconventional approach to legal services geared toward protecting and advancing business and personal interests. Our clients are certain that

AUTHORS

- [Andy Anderson](#)

their interests are our priority, because they work with leaders – leaders who work decisively, execute with purpose and understand the importance of flawless timing. **Be certain.**

Spencer Fane has offices located in Phoenix, Arizona; Colorado Springs and Denver, Colorado; Overland Park, Kansas; Cape Girardeau, Jefferson City, Kansas City, Springfield, and St. Louis, Missouri; Omaha, Nebraska; Las Vegas, Nevada; Oklahoma City, Oklahoma; and Dallas and Plano, Texas.

This post was drafted by [Andy Anderson](#), an attorney in the Phoenix, AZ office of Spencer Fane LLP. For more information, visit spencerfane.com.