



Ohio’s limited liability company law updates: What you need to know

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On January 8, 2021, Ohio Gov. Mike DeWine signed into law the Ohio General Assembly’s recently-passed Enact Ohio Revised Limited Liability Company Act. This legislation modernizes Ohio limited liability company law by completely eliminating Ohio Revised Code Chapter 1705 (“Original Act”), which governed limited liability companies in Ohio since 1994, and replacing it with a new Chapter 1706 (“New Act”). Beginning on January 1, 2022, the New Act will govern all limited liability companies in existence in Ohio.

A few of the notable changes are highlighted below.

Governance and management structure

Under the Original Act, a limited liability company could be governed by its members or by one or more managers, and the statutory text provides default rules for the exercise of management authority in each distinct structure. The New Act provides a much more flexible approach, where a person’s authority to act as an agent of a limited liability company does not depend on the person’s title, but instead derives only from the operating agreement, the members’ decisions consistent with the operating agreement (if any), a statement of authority filed with the Ohio secretary of state, or default provisions of law. This allows an Ohio limited liability company to use any governance structure it

desires—including, for example, a corporation-like board of directors—without having to shoehorn it into a “member-managed” or “manager-managed” box. The New Act, like the Original Act, also allows an operating agreement to modify or waive some, but not all, fiduciary duties.

Series LLCs

Unlike the Original Act, the New Act enables the creation and use of “series LLCs,” which have characteristics roughly analogous to a parent-subsidiary or holding company-operating company structure involving multiple entities. Essentially, a parent limited liability company may contain multiple “series,” with separate and non-overlapping assets, rights, powers or duties. Each series has its own members and is liable only for its own debts and obligations. Series LLCs sometimes offer certain benefits, such as cost savings and administrative efficiencies, but can also pose tax-related and other risks because they are still a new concept and have not been widely and thoroughly developed and tested.

Penalties for failure to maintain statutory agent

Although the Original Act and New Act each require a limited liability company to maintain a statutory agent in Ohio, only the New Act imposes penalties for the failure to do so. Specifically, if a domestic or foreign limited liability company does not maintain a statutory agent or does not keep its agent’s identity current on the Ohio Secretary of State’s records, the New Act requires the secretary of state to notify the company of the deficiency and, if not cured within 30 days, cancel the company’s articles or registration.

Default member rights

The Original Act ties certain member rights to the pro rata value of each member’s contributions to the limited liability company. For example, in a limited liability company without an operating agreement, management authority is vested in the members in proportion to their capital contributions to the company and members are entitled to distributions and allocations of profit and loss in proportion to the value of their contributions. Under the New Act, by contrast, these members’ rights are determined on a per capita basis: matters in the ordinary course of the company’s activities are decided by a majority of the members, and all members must share equally in any distributions made by the company before its dissolution and winding up.

This article is intended only as a high-level summary of significant differences between the Original Act and the New Act. It is important for business-owners, investors and others who have—or work with—Ohio limited liability companies to consult with their legal counsel to analyze how the New Act may require updates to their existing LLC Operating Agreements or change how they execute their duties to ensure that the limited liability company structure operates most efficiently, retains its protection for its members’ personal liability for the LLC’s debts and obligations, and avoids any unwelcome consequences from the changes to Ohio’s LLC law. For questions, please contact Eric Beecher, 513-651-6903 or ebeecher@fbtlaw.com (<https://web.archive.org/web/20250718224900/mailto:ebeecher@fbtlaw.com>), or Jason Tonne, 513-651-6417 or jtonne@fbtlaw.com (<mailto:jtonne@fbtlaw.com>).

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