



## Client Alert

### Florida Revised Limited Liability Company Act

On January 1, 2014, the new Florida Revised Limited Liability Company Act (the "New LLC Act") went into effect in the State of Florida. Codified as Chapter 605 of the Florida Statutes, the New LLC Act is a complete revision of the existing Florida Limited Liability Company Act (the "Existing LLC Act"), which will be phased out in its entirety as the New LLC Act is implemented.

Based substantially on the Revised Uniform Limited Liability Company Act of 2006 (as amended in 2011), the New LLC Act was drafted with the intention of improving the legal framework under which entities conduct business in the State of Florida by modernizing its existing law. Some of the changes introduced by the New LLC Act include:

- The elimination of the "managing member" concept. All LLCs governed by the New LLC Act must either be member-managed or manager-managed. Existing LLCs that were previously managed by a "managing member" will be deemed to be member-managed unless they proactively assert themselves to be manager-managed;
- Modifications to default management and voting rules for both members and managers;
- The expansion of non-waivable provisions under an LLC's operating agreement;
- The expansion of possible actions triggering the appraisal rights of members in an LLC and entitling them to a payment of the fair market value of their membership interest;
- New rules permitting LLCs to file a "Statement of Authority" with the Florida Department of State to put third parties on notice that certain persons associated with the LLC have the ability to enter into contracts and bind the LLC;
- Clarifications on the rights and duties of transferees of a membership interest;
- Changes in the default rules regarding distributions of capital and allocations of profits and losses;
- New service of process rules for LLCs;
- Additional obligations regarding annual reports and the LLC's obligation to correct inaccurate records;
- New rules permitting a member to "dissociate" (withdraw) from an LLC;
- New rules permitting an LLC to have "non-economic members"; and
- New limitations on an LLC's ability to indemnify its members and managers.

These revisions along with many other changes introduced in the New LLC Act could have a substantial effect on the enforceability of operating agreements for existing LLCs that were organized pursuant to the Existing LLC Act.

Any limited liability company organized in the State of Florida after January 1, 2014 will automatically be governed by and subject to the New LLC Act. If your LLC was formed prior to January 1, 2014, it will continue to operate under the Existing LLC Act during the 2014 calendar year unless you affirmatively elect to be governed by the new law. **Starting on January 1, 2015, all limited liability companies organized in the State of Florida, regardless of when they were formed, will be governed by and subject to the New LLC Act.**

If you currently are a member, managing member or manager of any LLCs that were organized in the State of Florida prior to January 1, 2014, we strongly recommend that you contact your legal advisors at Hill Ward Henderson to review the operating agreements for those entities to determine whether amendments to those operating agreements will be necessary prior to January 1, 2015 when the New LLC Act begins to govern those entities. We also strongly advise that if you plan to organize a limited liability company in the State of Florida this year that you discuss the implications of the New LLC Act with your legal advisors so that they may carefully craft an operating agreement that meets your business needs while remaining compliant with the new law.

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If you have any questions regarding the New LLC Act or the contents of this client alert, please contact John Connery, Prestin Weidner or Ajay Malshe or the Hill Ward Henderson lawyer with whom you normally consult.



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