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## Revised Uniform Limited Liability Company Act: When the Curtain Rises

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Governor Christie signed the Revised Uniform Limited Liability Company Act into law on September 21, 2012. This significantly changes the landscape for use of limited liability companies in New Jersey. While most commentators have hailed this as a positive step forward bringing New Jersey more into line with modern LLC law, we are sounding a more cautionary note that, as with any new law, details will only emerge in its implementation. Taking advantage of beneficial changes in the law will require preparation while certainty as to some of the new provisions must await practice and, most likely, litigation. The following are some of the major changes brought about by the new Act.

### **Perpetual Duration.**

Under the old rule, limited liability companies were deemed by default to have a limited life. It was common practice to provide for a twenty year life span, a trap for the unwary as after twenty years a company's existence could expire because no one was paying attention any longer. The Revised Act provides that limited liability companies have perpetual duration unless otherwise stated.

### **Operating Agreements.**

The revised Act specifically allows operating agreements to be either oral, written or implied based on the way the LLC is operated. New members brought into the company are deemed by law to assent to the operating agreement. While at first glance this may seem like it allows greater flexibility, it poses potential dangers. If you do not have a written operating agreement, your company will be governed by whichever member can convince a judge that his or her version of the agreement is the correct one. If you have ever had

a disagreement with someone you do business with and you have ever gone to court to resolve that disagreement, then you know the dangers that await you. We cannot emphasize enough, especially under the new law, that operating agreements should be in writing and carefully crafted to reflect the parties' intent and agreement.

### **Distributions**

Unless otherwise agreed between the members, distributions are to be made to members on a per capita basis. This is another reason why it is vitally important to have operating agreements in writing so that the member's actual intent can be honored.

### **The Statements of Authority**

The revised Act allows a limited liability company to file a Certificate of Authority authorizing certain persons or entities to bind the LLC. This should streamline things administratively but it remains to be seen whether banks will accept this new procedure readily or if they will still insist on all the formalities of resolutions and consents.

### **Disassociation of a Member**

Under the new Law a resigning member is no longer entitled to receive the fair market value of his or her LLC interest as of the date of the resignation. Instead, the interest of the resigning member is limited to the rights of an economic interest holder and the member is disassociated as a member. While this may sound like an improvement, and most commentators say it is, we feel that the lack of any detail at all could ultimately prove dangerous. Many questions remain to be answered and we remain concerned that they will be answered in litigation. What are the interests of an economic interest holder? How do you differentiate between ongoing income and assets? What interest in real property does an economic interest holder have? The revised Act provides no guidance and no details. To avoid a surprise we again suggest that operating agreements be very carefully crafted.

### **Deadlock and Oppression**

Many of the traditional remedies at common law have been extended by the new law. A member is permitted to seek a court order dissolving the company on the grounds that the managers or majority members have acted in a manner that is oppressive and will harm the minority member. A less drastic remedy in

the form of appointment of a custodian is also provided for. Many of the remedies previously available to minority shareholders in a corporation are made applicable to a limited liability companies. In the corporate context, much litigation has arisen and the same will probably hold true for a number of liability companies.

### **Indemnification**

Indemnification is no longer optional. A company must indemnify those acting in its name. This includes all members of any member managed company, the manager of a manager managed company and an officer, employee or agent of a company acting in this capacity.

### **Domestication and Conversion**

There are streamlined provisions for allowing a limited liability company formed in another state to convert to a New Jersey Limited Liability Company and for another entity like a corporation to convert to a limited liability company.

The new law will take effect 180 days after the Governor's signature and will govern all limited liability companies formed after that date. After it has been in place for 18 months, it will govern all New Jersey LLCs no matter when they are formed. If you have a limited liability company or are planning to form one, we urge you again to insure that your intent is carried out and to have a detailed and carefully thought out operating agreement. Surprises can be good at parties. They are not nearly as much fun in operating a business.

Contact our Business Group if you should have any questions.

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