

Update Your LLC to Comply with New Laws Starting January 1, 2018

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What's this new LLC law about?

Significant changes are coming January 1, 2018 to your LLC, whether you are ready or not. If you own an LLC in Minnesota, you have or will receive a notice of the law change. **Do not ignore it.** The LLC law is changing from a Corporations law approach to a Partnership law approach. This changes the very philosophy upon which old (322B) LLCs were created. In addition, there are new tax laws that will require an update to LLC documents.

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But really, do I need to update my Operating Agreement?

Not if: your LLC is a single-member LLC; the LLC does not interact with non-owners; the LLC does not have bank accounts; you don't expect the LLC to enter into transactions.

You do need to update the Operating Agreement if: The Single-member LLC is complex; and if there are multiple members. (this includes where the members are spouses).

What are the tax changes that impact LLCs?

There are new tax audit rules on multi-member LLCs. These rules will permit the IRS to choose a "Partnership Representative" if your Operating Agreement does not have one designated. This is part of the Bipartisan Budget Act of 2015, which will replace the old law on January 1, 2018. Chances are, unless your LLC was recently created, it doesn't designate a Partnership Representative.

Every LLC taxed as a partnership should have this change made in writing.



What is different about the old law and the new law?

The differences include:

1. Different terminology (i.e. there is no longer a Member Control Agreement in MN, only Operating Agreements).
2. There is no longer "Governance Rights" and "Financial Rights" as there once was.
3. There are no longer any meaningful Dissenters' Rights.
4. Gap Filler rules under the old law will fall away.
5. Business Succession is implicated.
6. Default Rules are Partnership Law based, rather than Corporate Law based.
7. The new law is more flexible, but the Operating Agreement cannot: a) completely eliminate the fiduciary duty; b) authorize intentional misconduct or violations of the law; c) eliminate contractual obligation of good faith and fair dealing; or d) adopt any modification to a fiduciary duty that is manifestly unreasonable.
8. The new law lacks various default rules of the old law, so they must be put in the Operating Agreement expressly.

What are my options?

For those with LLC documents, such as resolutions, Member Control Agreements, Buy-Sell Agreements, etc. The best option is to redraft your documents and discard those documents based on the old law.

The second best option is to create a detailed resolution making clear the LLC's transition to the new law (322C), updating tax provisions and changing default provisions; Attach appropriate appendices to the resolution; and Amend and Restate the Articles of Organization.



It is important to know that the new law will apply to your LLC whether you want it to or not. The new law will apply on January 1, 2018, with or without action on your part.

In order to have an understanding of the new law and how it will impact your business, you should seek competent advice.

You are invited to set up a free consultation to review your LLC documents where we will review and suggest updates, if needed. We will then quote you a flat fee price for the appropriate scope of work. No obligation.



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Feel free to contact us at 651.237.1010 to set up a **FREE** consultation to discuss these changes and how they affect you. Content provided to you by Attorney Mike Fleming.

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