



Minnesota's New LLC Laws (322C, *et seq*)

Do you own a Limited Liability Company (LLC)? Starting August 1, 2015, Minnesota's new LLC statutes, Minn. Stat. §322C, *et seq.*, will be in effect.

The act, 322C, was signed into law on April 8, 2014. However, since that time, new LLCs could still be formed and operate under the old law (Minn. Stat. §322B, *et seq.*). Beginning on August 1, 2015, all new LLCs will be governed by the new statute. Further, beginning on January 1, 2018, all LLCs, regardless of when they were created, will be governed by the new statute.

Generally the new law means that LLCs in Minnesota will operate more like partnerships than like corporations, which matches up more with LLC statutes in other states.

The following are some of the key changes:

The LLC's Operating Agreement becomes the main document of the company. It will replace Member Control Agreements and Bylaws that might currently govern an LLC.

The Operating Agreement, can be in writing, but can also be verbal, or implied by conduct. It also does not have to be labeled as the "Operating Agreement" for it to be considered part of the Operating Agreement (or the whole Operating Agreement) under this new law.

Additionally, the default for LLCs under the new law is "one person one vote." Under the current law, the default voting is based upon the amount of capital contributed to the LLC – under the new law, the owner that contributes the most money to the LLC will have the same voting power as the owner that contributed the least.

Further, under the default language, the LLC will have no Board of Governors – rather it will be managed by the owners themselves.

Under the old laws (and under Minnesota's corporate laws), owners, governors (directors), managers (officers), and even employees owe a number of duties to the company, including a Duty of Loyalty, a Duty of Care, and a Duty of Good Faith and Fair Dealing.

Under the new laws, these duties are dramatically altered. The Duty of Loyalty and the Duty of Care standards are now whether or not the conduct is "manifestly unreasonable." This is a much higher standard than under the old laws. What it allows is for members, governors and managers to act with more self-interest than ever before. It will potentially allow for more self-dealing within any LLC, and business opportunities that were once wholly owned by the LLC may be pursued individually by members, governors and managers.

Further, in some instances these duties will be non-existent. For example, in a member managed LLC, neither the board of governors nor the managers (those who are running the day to day operations of the company) will owe any duties to the LLC. In a manager managed LLC (what we commonly see today), managers owe the company a Duty of Loyalty, a Duty of Care, and a Duty of Good Faith and Fair Dealing. However, members, those who own the company, only owe the company a Duty of Good Faith and Fair Dealing.

At Libby Law Office, we would be happy to sit down with you and help advise and protect your business, and navigate these new changes to the law.