

# ALABAMA'S NEW LIMITED LIABILITY COMPANY ACT

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# Introduction

- Effective on January 1, 2015, the new Alabama Limited Liability Company Law of 2014 is designed to increase the ability to contract, add series segmentation, and decrease statutory requirements and duties. The Act is effective on all LLCs filed after Jan. 1, 2015 and **becomes retroactively effective on all LLCs on Jan. 1, 2017.**



# So This Means What Exactly?



# SIGNIFICANT CHANGES EXISTING THE NEW LAW

- **OPERATING AGREEMENTS**

- May be oral or implied
- Not required to be in writing

- **SERIES SEGMENTATION**

- Internal “Series” can divide up liabilities, Members, etc., eliminating the need for multiple LLCs (Note: IRS has not yet indicated how it will treat series tax liability)
- Alabama common law is not clear how it will treat series within an LLC for purposes of general liability or other issues in pending litigation such as discovery.

- **RIGHT TO CONTRACT**

- Many default provisions have been removed, and almost all provisions can be contracted around in the LLC Agreement. Including apportionment of tax deductions

- **CONVERSIONS**

- Provides a one-step conversion between LLCs and other types of entities, such as corporations and limited partnerships. The converted entity will own the same assets and retain the same liabilities as before the conversion. Depending on the state, the converted entity may also be able to elect to be treated as a corporation for tax purposes.

# ADDITIONAL CHANGES

- **MANAGEMENT**

- Unless otherwise provided in the LLC agreement, companies are member-managed rather than manager-managed.
- A member or manager's authority to bind an LLC shall be governed by the LLC Agreement. If no agreement, then agency law (apparent authority included) shall govern.

- **REINSTATEMENT**

- A dissolved LLC can come back to life

- **ABILITY TO LIMIT LIABILITY OF MEMBER FOR BREACH OF CONTRACT**

- In the LLC Agreement, the LLC can waive its ability to hold a Member liable for breach of contract

- **CLAWBACK DISTRIBUTIONS**

- A Member can be liable for receiving distributions in excess of the fair market value of the assets

# SERIES LLCs AND THE ALTERNATIVES

- **Series LLCs.**

- A series LLC will allow the company to carry on multiple business divisions within one company. The company can segregate its assets and liabilities in separate pods or groupings, each one of which will be a "series." The liabilities of each series are only enforceable against the assets of that series. Additionally, each series can have its own members and managers that are different from the other series. This is the creation of an entity within an entity.

- **Separate Entities:**

- As case law develops, Alabama Court's will begin interpreting the provisions of the new LLC law. Until then, there are other means of limiting your exposure:
  - Separate entities for property management and property holding companies
  - Multiple LLCs for holding separate portfolios of property

# Do I Need to Register my LLC?



# ALABAMA'S DOOR CLOSING STATUTE

- **ALABAMA CODE SECTION 10A-1-7.21**
  - A foreign entity transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.
- **FOREIGN LLC's, LP'S AND CORPORATIONS**
  - Failure to register will preclude an entity from having access to Alabama's judicial system. (ie. file suit). It will also preclude individual investors from enjoying the protection afforded by the LLC Act.
- **DOMESTIC PARTNERSHIPS**
  - Failure to register will preclude individual investors from enjoying the protection afforded by the LLC Act.





## **Practical Advantages to Property Owners:**

- Limits certain liability exposure making real estate investment safer and more attractive to investors
- LLCs able to enforce good faith and fair dealing among members
- Encourages equitable income distributions among members
- Ability to limit the authority of certain members/employees to bind LLC
- Allows conversion of partnerships or other entities to LLC's
- Ability to limit fiduciary duties of members to only those with "oversight"
- Remedies available against non-performing members
- Greater freedom to contract privately among LLC members
- Allows LLCs with substantial real estate holdings better protect their assets and exposure to all types of potential litigation and/or disputes.

# Questions?

Please contact us for more information:

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