

§ 2:5. The New Arizona Limited Liability Act

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Business Organizations **Limited Liability Companies** And Partnerships

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Part I. Introduction to Arizona **Limited Liability Companies** and Partnerships

Chapter 2. **Limited Liability Companies**

§ 2:5. The New Arizona Limited Liability Act

In 2018, Arizona Legislature adopted a new Arizona **Limited Liability Company** Act.¹ However, the effective dates of the new Act are staggered so it does not go into effect all at the same time.² On September 1, 2018, any LLC may elect to adopt the new Act to govern the LLC's affairs by amending the LLC's Operating Agreement to indicate the choice to do so. On September 1, 2019 the new Act will go into effect for all new, converted or domesticated LLCs filed after that time. Effective September 1, 2020, all LLCs in the state of Arizona will be governed by the new Act unless the LLC's Operating Agreement was in effect prior to that time. If the LLC was formed prior to September 1, 2019 and its Operating Agreement was in existence prior to September 1, 2020 it will remain governed by the prior Act so long as the Operating Agreement is not amended after September 1, 2020. Any amendment to the Operating Agreement of an existing LLC occurring after September 1, 2020 will trigger mandatory governance by the new Act.³

Some changes in the new **Limited Liability Company** Act include:

1. Given the new Act is fully replacing the existing Act and not amending it, the citations to the new Act are completely different.⁴ The new Act is closely modeled after the **Revised Uniform Limited Liability Company Act** ("RULLCA") that was promulgated by the **Uniform** Laws Commission. The new Arizona Act closely follows the RULLCA numbering for statutes and practitioners may reference the comments in RULLCA for guidance on interpretational issues.⁵
2. Fiduciary and other duties of members and managers will be clarified by the new Act such as the duty of loyalty, the duty of care and the duty of disclosure.⁶ The new Act allows parties to contractually modify these duties and also expressly elect to use corporate rules regarding director liability (like the business judgment rule) in lieu of the new Act's default provisions on duties. In short, the duties of members and managers will no longer be governed by common law as they will be expressly detailed by the statutes.
3. Members retain the right to withdraw at any time under the new Act subject to the express terms of the LLC's Operating Agreement, but the withdrawal will be called "dissociation" under the new Act.⁷
4. The new Act will provide default rules regarding indemnification and reimbursement rights of the members and managers.⁸
5. The new Act will provide default rules for expulsion of a member for specific wrongful conduct.⁹ The existing Act provides no statutory mechanism for the expulsion of a member.
6. The new Act provides default provisions for member voting and will make the default rule that members will vote in proportion to the member's share in the LLC's profits. Currently, default member voting provisions are per capita which means that each member gets one vote regardless of the member's share in the LLC's profits.
7. LLCs will use its statutory agent's address to determine whether or not publication of a document is required.¹⁰
8. The term "principal address" will replace the terms "known place of business" and "principal office address".¹¹ For Arizona LLCs existing at the time the new Act goes into effect, the known place of

business will automatically be considered its principal address. For foreign LLCs, the known place of business listed at the time the new Act goes into effect will be deemed to be the principal address of the foreign LLC.¹²

9. The new Act allows for the formation of virtual LLCs. The LLC's principal address may be any mailing address and does not have to be an Arizona address. LLC records may also be stored electronically and are not required to be stored at one physical location.

10. Foreign series LLCs will be recognized in the State of Arizona, but they must contain series in their LLC name.¹³ However, the liability shield that exists between the individual series of the foreign LLC will not be enforceable against Arizona creditors with respect to transactions in Arizona.

11. Any authorized party may sign documents and that authorization is not tied to management structure for signatories.¹⁴

12. Any document that has not yet been approved for filing can be withdrawn by filing a Statement of Withdrawal.¹⁵

13. Currently, Articles of Correction may be filed, but not for any substantive issue. Under the new Act, a Statement of Correction may be filed for any issue.¹⁶

14. The new Act will allow LLCs to file a Notice of Winding Up in the dissolution process which may limit the statute of limitations for creditors to bring actions against the dissolving LLC.¹⁷

15. Under the new Act, LLCs will not be administratively dissolved based on a statement in the Articles of Organization stating the "latest date" for the LLC to dissolve.¹⁸

16. Foreign LLCs currently file an "Application for Registration", but under the new Act they will file a "Foreign Registration Statement".¹⁹ If the foreign LLC wishes to cancel its Arizona registration, it will now file a "Statement of Withdrawal".²⁰

Prior to September 1, 2020, it would behoove the Practitioner to become familiar with the new Act before it becomes mandatory to ensure that any existing LLC clients have updated or amended their Operating Agreements to contravene any new Act requirements that they do not want to govern their affairs. Any Operating Agreements executed or amended after September 1, 2020 will automatically be subject to the new Act which does not allow the contravention of many of the new Act's provisions.²¹ Any Operating Agreement that is in effect for an LLC that was formed prior to September 1, 2020 will be construed under the old Act unless it is subsequently amended after September 1, 2020 and upon amendment the new Act will automatically govern.

Pursuant to [A.R.S. 29-3105](#), the following are the new Act statutory requirements that may not be contravened by an LLC's Operating Agreement as was previously allowed by the existing Act.²² Under the new Act, an Operating Agreement may not:

1. Vary the governing law applicable pursuant to [A.R.S. § 29-3104](#).
2. Vary a **limited liability company's** capacity pursuant to [A.R.S. § 29-3109](#) to sue and be sued in the **limited liability company's** own name.
3. Vary any requirement, procedure or other provision of this the new LLC Act pertaining to:
 - a. statutory agents; and
 - b. the Commission, including provisions pertaining to records authorized or required to be delivered to the Commission for filing pursuant to the new LLC Act.
4. Vary the provisions of [A.R.S. § 29-3204](#) (signing and filing pursuant to judicial orders).
5. Eliminate the contractual obligation of good faith and fair dealing or the duty to refrain from wilful or intentional misconduct pursuant to [A.R.S. § 29-3409](#) (standards of conduct for members and managers).
6. Limit or eliminate a person's liability for any violation of the contractual obligation of good faith and fair dealing or conduct involving wilful or intentional misconduct.
7. Unreasonably restrict the duties and rights of members and managers pursuant to [A.R.S. § 29-3410](#) (record retention and rights to access records), but the Operating Agreement may impose reasonable restrictions on the availability and use of information obtained pursuant to [A.R.S. § 29-3410](#) and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.
8. Vary the causes of dissolution specified by [A.R.S. §§ 29-3701\(A\)\(4\)\(b\)](#) (when it is not reasonably practicable to continue the LLC's business in conformity with its Articles of Organization and Operating

Agreement), and 29-3701(A)(5) (right of the Commission to administratively dissolve the LLC).

9. Unreasonably restrict the right of a member to maintain an action under Article 8 of new Act,²³ except that the Operating Agreement may require a member maintaining a direct action pursuant to [A.R.S. § 29-3801](#) to plead and prove an actual or threatened injury that is not solely the result of any injury suffered or threatened to be suffered by the LLC.

10. Vary the provisions of [A.R.S. § 29-3805](#) (special litigation committees), but the Operating Agreement may provide that the company may not have a special litigation committee.

11. Vary the required contents of a plan of merger, a plan of interest exchange, a plan of conversion, a plan of domestication or a plan of division pursuant to Article 10 of the new Act.²⁴

12. Except as otherwise provided in [A.R.S. §§ 29-3106](#) and [29-3107\(b\)](#), restrict the rights pursuant to the new Act of a person other than a member or manager.

13. Reduce or eliminate the restrictions on distributions pursuant to [A.R.S. § 29-3405\(A\)](#) (limitations on distributions upon insolvency of LLC).²⁵

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Footnotes

^{a0} Thompson Law Group, PC, Tucson.

¹ The new LLC Act may be found in its entirety at Appendix 2-1.

² [A.R.S. § 29-3110](#).

³ [A.R.S. § 29-3110\(D\)](#).

⁴ Currently, there is no matrix cross referencing the old citations to the new citations. The new LLC Act may be found in its entirety at Appendix 2-1.

⁵ The RULLCA may be found at <http://uniformlaws.org/Acts.aspx>.

⁶ [A.R.S. § 29-3409](#).

⁷ [A.R.S. § 29-3601](#).

⁸ [A.R.S. § 29-3408](#).

⁹ [A.R.S. § 29-3601](#).

¹⁰ [A.R.S. § 29-3102](#).

¹¹ [A.R.S. § 29-3102](#).

¹² [A.R.S. § 29-3110](#).

¹³ [A.R.S. §§ 29-3102](#) and [29-3112](#).

¹⁴ [A.R.S. § 29-3203](#).

¹⁵ [A.R.S. § 29-3208](#).

¹⁶ [A.R.S. § 29-3209](#).

¹⁷ [A.R.S. § 29-3702](#).

¹⁸ [A.R.S. § 29-3708](#).

19 [A.R.S. § 29-3903.](#)

20 [A.R.S. § 29-3908.](#)

21 [A.R.S. § 29-3105\(C\) and \(D\).](#)

22 [A.R.S. § 29-3105\(C\) and \(D\).](#)

23 [A.R.S. §§ 29-3801 et seq.](#)

24 [A.R.S. §§ 29-4001 et seq.](#)

25 [A.R.S. § 29-3105\(C\) and \(D\).](#)

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