

Featured Professionals

Michael S. Raum

Related Services

Business & Tax Planning

Family & Closely Held
Businesses

North Dakota Adopts Revised Uniform LLC Act Changing Law Governing LLCs

Legal Update

07.06.2016

By Wayne W. Carlson, Michael S. Raum & Elizabeth L. Alvine

North Dakota recently adopted the Revised Uniform Limited Liability Company Act (RULLCA), chapter 10-32.1 of the North Dakota Century Code. Minnesota has also adopted RULLCA. Over the last 15 years, LLCs have become the dominant form of new business in North Dakota, surpassing corporations: **New registrations**

2001**2003****2005****2007****2009****2011****2013 For-profit corps**

11,675

12,284

12,849

13,211

13,283

13,330

13,785 **LLCs**

1,542

2,220

3,362

4,833

6,818

9,732

16,783

What RULLCA Means for North Dakota Businesses

RULLCA makes major changes to the law governing LLCs. As a general rule, any LLC formed under the old act should remain more or less the same, whether or not it has an operating agreement. N.D. Cent. Code § 10-32.1-15 contains transitional rules that provide that the old statute will continue to apply in most material respects to LLCs formed under the old act. In addition, new LLCs which have operating agreements will be able to look and act like the LLCs to which we have all become accustomed, because RULLCA allows the parties to contract for almost any economic and governance arrangements they wish. N.D. Cent. Code § 10-32.1-13 through -15.

However, there are major differences for LLCs that do not have operating agreements, which is common when individuals form LLCs without legal assistance. While the North Dakota Secretary of State does not keep records for what percentage of LLCs are formed without legal assistance, we know that this happens all the time, as fill-in-the-blanks articles of organization can be downloaded from the Secretary of State's website. For those LLCs, the statute effectively becomes the agreement. Two provisions of RULLCA in particular are important to note, because they differ from prior law and what the parties may expect.

Why This Is Not Business As Usual in North Dakota

There are many differences between RULLCA and the prior law, but these are two points that may surprise those who form their own LLCs and are used to the old way of doing things.

First, RULLCA calls for the default management structure to be equal among the members. N.D. Cent. Code § 10-32.1-39. The prior act assumed that voting rights were distributed in proportion to equity, like in a corporation. RULLCA, on the other hand, gives all members an equal voice in management, no matter their ownership interest.

Second, RULLCA calls for making interim distributions on an equal, per capita basis to all members. N.D. Cent. Code § 10-32.1-30(1). Again, the prior act had called for interim distributions to be made in proportion to capital. Under RULLCA, an LLC would distribute \$100 50/50 to its two members, even if one had contributed \$85 and the other one \$15. The final distributions at dissolution would be unequal to allow recovery of capital, but interim distributions would be equal, rather than proportional to contributed capital.

Takeaway

It is important to bear these rules in mind when forming an LLC or working with an LLC formed without an operating agreement. For more information on how RULLCA may affect your business or if you have other questions related to obligations under this law, please contact Wayne Carlson, Michael Raum or Beth Alvine.