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North Dakota Enacts Amendments to the Revised Uniform Limited Liability Company Act

Legal Update
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On April 14, 2017, Governor Burgum signed Senate Bill No. 2223, as passed by the North Dakota legislature, amending key sections of North Dakota's Revised Uniform Limited Liability Company Act (RULLCA). These amendments affect, among other things, distributions before dissolution, sharing of profits and losses and management for member-managed limited liability companies (LLC) created after July 31, 2017.

Key Changes for North Dakota Businesses

Generally, for North Dakota LLCs that have operating agreements, the majority of the new amendments will not have much of an impact. That is because RULLCA, and the new North Dakota amendments, still allow the parties to contract for almost any economic and governance arrangements they wish. N.D.C.C. §§ 10-32.1-13 through -15.

The new legislation, makes significant changes to LLCs created after July 31, 2017, that do not have operating agreements, which often happens when individuals form LLCs without legal counsel. For those LLCs, RULLCA effectively becomes the operating agreement. These new amendments will impact how LLCs operating without an operating agreement handle distributions prior to dissolution, sharing of profits and losses, and management issues in member-managed LLCs.

What North Dakota Businesses Need to Know

While the legislature made several changes to RULLCA, there are three key amendments North Dakota businesses should be aware of:

1. Distribution Amendment

How money is distributed among members is a critical function of any LLC. N.D.C.C. § 10-32.1-30, as amended, creates a new subdivision (5), which affects distributions before dissolution for LLCs created after July 31, 2017. The amendment provides that, unless the articles of organization or an operating agreement provide otherwise, distributions made to members before dissolution and winding up must be in proportion to the value of the contributions of the members. The law had previously provided for equal distributions. This actually returns the law to what it was prior to the initial adoption of RULLCA in 2015, and so it should be familiar to those who have worked with LLCs in the past.

2. Profits and Losses Amendment

The sharing of profits (and losses) is another important element to all LLCs. This new amendment by the North Dakota legislature creates N.D.C.C. § 10-32.1-30.1, addressing how LLCs share profits and losses without an operating agreement. Under this amendment, unless the articles of organization or operating agreement provide otherwise, all profits and losses must be allocated among members in proportion to the value of the contributions of the members, as opposed to in equal shares. As with the prior discussion, this returns the law to what it was before RULLCA.

3. Member-Managed Management Amendment

Most business owners enjoy the flexibility a LLC offers, especially concerning management issues. However, the North Dakota legislature has now articulated certain management rules for member-managed LLCs.

Importantly, N.D.C.C. § 10-32.1-39(2)(b), as amended, provides four new governing rules for **all LLCs**, including those with an operating agreement, created after July 31, 2017: (1) the management and conduct of the company is vested with the members; (2) any differences about the management and business operations of the company may be decided by a majority vote; (3) any act outside of the ordinary course of business may only be taken with the consent of all members; and (4) the operating agreement may be amended only with the consent of all members. The amendment also adds a new rule for those LLCs without operating agreements. That provision states, unless the articles of organization or operating agreement provide otherwise, each member has voting power in the management of the LLC in proportion to the member’s interest in distributions.

Takeaway

It is important to bear these rules in mind when forming an LLC and working with an LLC formed without an operating agreement. For more information on how these new changes 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.