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## What Happens to Your MN LLC's Member Control Agreement After 1/1/18?

**Legal Update**

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As of January 1, 2018, all Minnesota limited liability companies (LLCs) will be governed by Minnesota's new LLC statute, Chapter 322C, including LLCs formed under the predecessor LLC statute, Chapter 322B. Chapter 322C is different in significant ways from Chapter 322B.

An LLC formed under Chapter 322B likely has a written member control agreement (MCA) which contains the governing provisions for the LLC. The LLC's MCA will continue after January 1, 2018, as the LLC's "operating agreement" under Chapter 322C, and its provisions will override Chapter 322C statutory provisions, with minor exceptions. However, if the MCA does not specifically set forth certain provisions, the provisions of Chapter 322C will govern, and you might not like the changes that automatically apply. For example:

- Under Chapter 322B, the MCA had to be a written agreement. Under Chapter 322C, the operating agreement may be written, oral, in a record, or implied (for example, established through conduct over time). Although yet to be tested in court, specifically stating in the operating agreement that the operating agreement represents the entire agreement among the LLC's members in regard to the LLC and that it can only be amended in writing should prevent "side conversation"-type agreements and practices inconsistent with the terms of the operating agreement from being amendments to the operating agreement. If your LLC's MCA/operating agreement is not clear that it is the only agreement among the members in regard to the LLC and that it may only be amended in writing, consider making those changes to avoid confusion or worse, a dispute as to what the operating agreement is.
- If you have a written MCA/operating agreement that may only be amended in writing, determine whether your actual economic and governance arrangements reflect what is in your MCA/operating agreement (and other organizational documents). If they are inconsistent, your written MCA/operating agreement will most likely control despite actual arrangements and practices to the contrary.
- Your LLC has articles of organization pursuant to which it was formed, and may have an MCA. It may also have bylaws or other organizational documents. Under Chapter 322C, all of those documents will be read together as the LLC's operating agreement. Consider changing all organizational documents so that

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they do not conflict with one another.

- Under Chapter 322C, LLCs may be member-managed, manager-managed, or board-managed. Unless the operating agreement specifies a management structure, Chapter 322C provides that the LLC will be member-managed.
- Under Chapter 322C, a member does not have the authority to act on behalf of the LLC simply by virtue of being a member. If you want a member to have such authority, that must be specified in the operating agreement or through the member affirmatively being appointed as the LLC's authorized agent.
- Chapter 322C does not provide for dissenters' rights, appraisal rights, or preemptive rights. These rights may apply, however, if included in the MCA/operating agreement.

Review your LLC's MCA and organizational agreements to make sure they contain provisions that override 322C where appropriate. Maybe amending your LLC's MCA is in order.