

Business as Usual—For Now

2012 LLC Act Delayed Until at Least 2013



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In the December issue of *Utah Business*, we wrote an article outlining several key changes in Utah limited liability company law due to the Utah Legislature's passing of the Utah Revised Uniform Limited Liability Company Act. Instead of going into effect this July, the new law will not go into effect until July 1, 2013 for new LLCs and January 1, 2015 for existing LLCs. For now, this means business as usual under the current law.

The new LLC law was one of three separate, uniform acts that were adopted in 2011, the other two being the Utah Uniform Partnership Act and the Utah Uniform Limited Partnership Act. While the new LLC law had been carefully reviewed and edited by local attorneys at the time of its passage, the partnership and limited partnership laws had not. In order to allow the Utah Legislature more time to seek input from local attorneys and draft partnership laws consistent with the new LLC law, the effective date of the new LLC law and the new partnership and limited partnership laws were moved forward one year.

The new LLC law will likely be amended again before it goes into effect. The national group responsible for drafting model legislation recently adopted new LLC, partnership and limited partnership model laws to be consistent or in harmony with each other. These three types of business entities are similar enough in legal structure to merit a more consistent set of laws.

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Utah's LLC, partnership and limited partnership laws. Thus, the new LLC law will almost certainly be revised before it takes effect next year. The changes to harmonize the law to the new partnership and limited partnership laws, however, are reportedly few and not substantive.

Postponed Changes

In our December article, we highlighted three key changes and noteworthy provisions of the new LLC law. Specifically, we noted the new law limits the amount of publicly available information that must be filed with the Utah Division of Corporations when forming an LLC, allows for more flexibility in altering or defining fiduciary duties, and provides that an operating agreement, the key governance document for LLCs, can be oral, memorialized in one or more writings or established through course of conduct, or any combination.

becomes the entity's operating agreement.

The new LLC law, however, makes it advisable to first draft the operating agreement prior to filing the articles of organization since under the new law, any agreements or discussions that occur before the LLC is formed can be construed to constitute an operating agreement. The allowance of oral or implied operating agreements may become a boon for litigators.

Your Next Steps

Even with the changes, some of which may be controversial if implemented, we expect the limited liability company to remain the preferred business entity choice for many business relationships because of its flexible nature and the ability to mold the entity to fit virtually any desired business structure.

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Under the current LLC law, the repeal of which has now been postponed until July of 2013, an LLC is typically formed by one or more members who first file articles of organization with the Utah Division of Corporations. Only after the articles of organization are filed is an operating agreement drafted and signed. This is because under the current law, if an LLC does not adopt a written operating agreement, then, by default, the LLC statute

year, and will likely be further amended in early 2013, you should not take any immediate steps to comply with the new law. You should, however, keep in mind these changes are coming. After the end of the 2012-2013 Utah legislative session, we recommend you carefully review the new law with legal counsel to see how it affects your business prior to the effective date to avoid unintended, adverse consequences to your business. **UB**