



Law Office of  
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**FLORIDA'S NEW LLC ACT: HOW THIS NEW ACT AFFECTS  
YOUR EXISTING LLC AND FUTURE BUSINESS ISSUES**

Effective January 1, 2014, new limited liability companies formed in Florida will be subject to the provisions of the new LLC Florida Statute, F.S. 605, *et. seq.* The current applicable Limited Liability Company Statute is Florida Statute 608, but effective as of January 1, **2015**, all limited liability companies existing in Florida will be subject to provisions of Florida Statute 605. You should be cognizant of the changes that are taking place which will affect your LLC and the manner and method under which you conduct business under the LLC. *(Links to the articles are listed at the end)*

Kevin F. Jursinski & Associates can assist you with your LLC. We will answer questions about your current existing LLC and how the new Statute will affect you; we will assist you in making the necessary revisions to your current operating agreement so as to be in compliance with the law; we will identify your rights and duties that will be beneficial to you in successfully operating your LLC in Florida.

**Changes made to the existing Florida Statute:** There are numerous changes contained in the new LLC Statute. An overarching theme of the new Limited Liability Company Act, Florida Statute 605, is that it is a “default statute”. Absent specific provisions in the Operating Agreement, the new LLC statute establishes all of the rules for the operations of LLCs in Florida. In other words, if an operating agreement is silent (or as we see in certain cases, no operating agreement even exists), then all of the members of that LLC are subject to the provisions of the Limited Liability Company Statute which will determine how the LLC is governed.

Secondly, if certain areas in the operating agreement are silent as to the rights existing between the LLC and its members, then, and in such event, the “default” rules of the Limited Liability Company Statute will take effect and control the operation of the LLC. The bottom line is that most businesses would prefer to determine for themselves how they wish to be managed and operated and determine the nature of the relationship between the management, members and the LLC, rather than having the Statute control their activities.

An example of this is the following: If an operating agreement does not provide for an alternate dispute resolution provision then disputes existing between the managers, members and/or the LLC will be determined by Court through litigation.

Based upon the statistics, it is generally less expensive and time consuming if businesses choose to have their disputes resolved by alternate dispute resolution proceedings such as the obligation

to engage in good faith negotiation, non-binding mediation and then binding arbitration rather than court litigation. If non-binding mediation is not successful, disputes will be resolved by an Arbitrator who has experience in the area of business and business litigation and who can determine the rights existing between the parties as well as reasonable attorney's fees and costs to the prevailing party.

**Modifications to current LLC Statute** - There are a number of modifications that the new LLC Act contains. At the end of this notification letter, there will be several links both to our website and to certain articles that have been published on the new Act.

The purpose of this letter is to provide you notice of the passage of the Act and bring to your attention certain of the significant changes to the LLC Statute. This list is not exhaustive. Here are some key points that we believe should be considered by current LLCs as well as business people considering creating new LLCs in Florida:

1. **Apparent Authority and Agency** - The new Act continues to recognize the agency power of members and managers giving all members and managers "statutory apparent authority" to bind a limited liability company. This is significant especially if there is an issue between members as to who controls the company; hence, the requirement to have a specifically identified management duties specified within the operating agreement.
2. **Elimination of Manager Member**. Our experience is that many of the operating agreements have identifications of "manager/member" in which one or more members are appointed as the "managing member" of the company. The new Act totally eliminates "manager member" as a definitional term for all new LLCs and, effective January 1, 2015, will eliminate "manager member" for any existing LLCs. Effective January 1, 2014, all new LLCs and, effective January 1, 2015, all existing LLCs in Florida will either be "Member Managed" or "Manager Managed" with the elimination of the aforementioned "manager member".
3. **Disassociation of members**. The new Act modifies provisions relating to the disassociation of members as to the dissolution of the LLC. As currently exists under Florida Statute 608, unless authorized in the operating agreement, a member could not dissociate at all prior to the dissolution or winding up of the company. This has now been changed.
4. **Appointment of receiver/custodian**. The new Act clarifies grounds for judicial dissolution and the appointment of receivers and custodians. We are currently handling several disputed dissolution cases with receivers to be appointed and, again, there are some recent changes in the Statute addressing this as well as some ideas that we suggest, can eliminate the need to expend a significant amount of attorney's fees and costs on court ordered dissolution. There are several other alternative dispute resolution procedures that are far superior to the expensive and time consuming process of initiating a judicial dissolution and the appointment of a receiver and/or appointment of custodian in dissolution.

Again, on these particular points, we suggest that all of our clients consider a review of their operating agreement and the manner and method in which business can be conducted and disputes resolved.

5. **Fiduciary Duty and Standard of Care** - Florida Statute 605 did not change the overall fiduciary duties but did change the duty of care replacing the “ordinary care business judgment rule” standard in regard to the duty of care and replacing it with a “duty to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct or knowing violation of the laws”. Again, that new standard may or may not be acceptable to certain businesses who may wish to draft certain restrictions affecting its’ members as well as its’ managers. There also should be consideration given to whether an LLC would want to restrict and provide for non-compete provisions as to its’ managers and members to avoid any conflict of interest or dilution of the specific business intent of the existing LLC.
6. **Creditor Enforcement Rules** – The new Act did not change the recent impact and effect of the “Olmstead Rule” see case *Shaun Olmstead et al. v. Federal Trade Commission*, 44 So. 3d 76 (June 24, 2010). The prior existing provisions for Charging Orders contained in Florida Statute 608.433 (“Olmstead Patch Bill”) have not been changed. The Court can enter a “Charging Order” against a membership LLC interest of the judgment debtor (either the member or the transferee accepting the member’s interest) for payment of the debt with interest. A Charging Order is a lien on the judgment debtor’s transferrable interest and poses upon the LLC the obligation to pay the judgment creditor from any distributions to the judgment debtor.

It is important to note that Charging Orders remain the sole and exclusive remedy for a judgment creditor. However, clients are cautioned as to the impact of the “Olmstead Rule” which allows, under certain circumstances, for a Court to impose a foreclosure sale where the LLC has only “one member”. Under certain circumstances when the single member LLC will not satisfy a judgment within a reasonable time, the Court may order the transferrable interest of the single member LLC to be sold in a foreclosure sale. In such situations, the single member LLC’s interest is sold and the purchaser in the foreclosure sale acquires the entire LLC interest and becomes the sole member while the judgment debtor is automatically deemed disassociated from the company. See Florida Statute 605.0602(3) and Florida Statute 608.433.

Again, we caution all of our clients to recognize the serious implications of having a single member LLC based upon the prospective loss of the protections afforded to member’s interests from creditors under the prior and now current LLC Statute.

Listed below and on our website, <http://www.kfjlaw.com/news/published-articles/>, we have provided links to the entire new Florida Statute 605 as well as two recent Articles published in the Florida Bar Journal on the LLC Statute. Obviously, there are no reported cases regarding the new Statute since it has just gone into effect and, therefore, caution should be given in interpreting the new provisions of the statute.

With that said, it is highly recommended that current existing LLC operating agreements be reviewed and, ultimately, revised to be in compliance with the provisions that will impact the existing LLCs by the passage of Florida Statute 605.

Kevin F. Jursinski & Associates will assist you in reviewing and addressing your current business and Limited Liability Company's operating agreement and make suggestions to better protect the rights of members, managers and the LLC. We can assist in modifying your documents to address changes and also assist you if you are considering restricting transfers of interest, buyouts of member interest and other considerations.

You can contact us via email at [Kevin@KFJLaw.com](mailto:Kevin@KFJLaw.com) or by phone (239) 337-1147.

Sincerely,

*Kevin F. Jursinski, B.C.S.*

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## **Links to Articles**

Florida Statute

<http://www.flsenate.gov/Laws/Statutes/2013/605.0503>

Article Part I:

[http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/e000e018d4b1357685257bd4006aa1bc!OpenDocument&Highlight=0,Articles,on,new,LLC,Statute\\*](http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/e000e018d4b1357685257bd4006aa1bc!OpenDocument&Highlight=0,Articles,on,new,LLC,Statute*)

Article Part II:

[http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/fdb60ef10a411e6285257c12004a1e5e!OpenDocument&Highlight=0,Articles,on,new,LLC,Statute\\*](http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/fdb60ef10a411e6285257c12004a1e5e!OpenDocument&Highlight=0,Articles,on,new,LLC,Statute*)

Article Part III:

[http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/c324a5e5bf49df9c85257c4a0075e6c6!OpenDocument&Highlight=0,Articles,on,new,LLC,Statute\\*](http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/c324a5e5bf49df9c85257c4a0075e6c6!OpenDocument&Highlight=0,Articles,on,new,LLC,Statute*)