



Karlen's Korner Special Edition
A REVISED LIMITED LIABILITY ACT

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On July 28, 2016, Governor Rauner signed into law a massive re-write of the Limited Liability Company Act, 805 ILCS 180/1-1 et seq. See Public Act 99-637 (HB 4361), effective July 1, 2017. This comprehensive revision of the Limited Liability Company Act (LLC Act) is based in large part on the Revised Uniform Limited Liability Company Act, a model act written by the National Conference of Commissioners on Uniform State Laws. Although P.A. 99-637 amends many sections of the LLC Act merely to match the language of the model act, the new law makes some substantive changes and adds some new concepts. Attorneys who intend to form limited liability companies and draft operating agreements and related documents should study all 112 pages of P.A. 99-637. For a starting point in analyzing the new law, practitioners may consult M. Hector, Proposed legislation makes sweeping changes to the Illinois LLC Act, July 2016 Illinois Bar Journal, Vol. 104., pp. 12-13. The following provisions of the new law should be of interest to real estate practitioners.

- Amended 805 ILCS 180/15-1 establishes a default rule for LLC management. An LLC shall be member-managed, unless the operating agreement specifically provides that the LLC shall be manager-managed. The LLC Act still requires a majority of members to act on behalf

of the LLC, with the usual exceptions requiring unanimous consent, e.g., amendment to the governing documents, dissolution of the LLC, addition of members, conversion or merger, sale of all or substantially all of the LLC's assets.

- Amended 805 ILCS 180/13-5, contrary to prior law, now states that a member is not an agent of the LLC. The amended section also states that other laws of agency still apply. It is not clear, however, whether this includes law relating to powers of attorney.
- New 805 ILCS 180/13-15 creates a document entitled Statement of Authority. This document may announce a member or manager's authority to act on behalf of the LLC or place limitations on the member or manager's authority. A Statement of Authority must be filed with the Secretary of State. If a Statement of Authority relates to actions concerning real estate, then it should be recorded in the county in which the real estate is located. Although recordation does not appear to be a requirement, recording will serve as constructive notice of the limitations contained in the Statement. The Section provides protection to bona fide purchasers for value who, without knowledge to the



contrary, rely in good faith on a recorded Statement of Authority. Title companies should find Statements of Authority by performing name searches on LLCs.

- New 805 ILCS 180/13-20 creates a new document entitled Statement of Denial. In a Statement of Denial, a member or manager named in a Statement of Authority may deny the authority granted or the stated limitation on authority. The rules for filing and recording are the same as above, as are the protections to those who act in good faith reliance.
- Amended 805 ILCS 180/37-10 revises and liberalizes the rules for conversion of business entities from one form into another. Except for foreign LLCs (see below), any entity can convert into another form if: (1) the entity's governing statute permits the conversion; (2) the conversion is not prohibited by law; and (3) the conversion is executed pursuant to the entity's governing statute. Conversion procedures and documentation remain largely unchanged.
- New 805 ILCS 180/37-31 through 37-34 create the concept of domestication. These sections create a procedure through which a foreign LLC may convert to an Illinois LLC.
- Amended 805 ILCS 180/35-15 requires the filing with the Secretary of State of a Statement of Termination (formerly, Articles of Dissolution) when a dissolved LLC has completed winding up its business and affairs.

The revised LLC Act contains many other provisions that are not related to real estate transactions or to title to LLC real property assets. Some of these issues include: accommodation of the statute to electronic signatures and electronic records, contents of operating agreements, rules for sale of membership interests, dissolution procedures, and fees for filing the new documents described above with the Secretary of State. Once again, practitioners are urged to review the whole of P.A. 99-637 when dealing with the LLC form of business entity. For the full text of P.A. 99-637 or any other new law, visit the General Assembly's website at www.ilga.gov.

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