

**NEW MINNESOTA LLC ACT**  
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Effective January 1, 2018, all active limited liability companies organized under Chapter 322B of the Minnesota Statutes (the Old Act) will become subject to and governed by Chapter 322C of the MN Statutes (the New Act)– this occurs automatically with no action by the members of the LLC.

What does that mean?

The following summarizes the most significant differences between the statutes:

1. **Management.** Under the Old Act, an LLC may be managed by a board of governors or its members. The board managed structure resembles that of a corporation. This is the default structure under the Old Act. Under the New Act, an LLC can be managed by a board of governors, its members or one or more managers that may not be members. The default structure under the New Act is member-management. However, companies that were created under the Old Act and have a board managed structure need to do nothing – their board will remain intact. To change to a member managed structure that company will need to amend their operating agreement.
2. **Voting Rights.** Under the Old Act, the voting power of a member is proportional to the value of their capital contribution unless a member control agreement provides differently. Under the New Act, each member has equal voting rights in the management and conduct of the activities or the LLC unless the operating agreement provides otherwise. If there is no written agreement addressing the voting rights of a LLC created under the old Act, the default for that LLC will continue to be the voting power in proportion to their capital contributions unless changed in a new operating agreement.
3. **Distributions and Allocations of Profit.** The Old Act had distributions, profits and losses to be allocated in proportion to the value of each member’s contribution to the LLC unless otherwise decided in the LLC’s agreements. Under the New Act, unless the operating agreement provides otherwise, the default will be distributions made in equal shares among members. The New Act does not discuss the allocation of profits and losses. The Old Act will govern unless the distribution rights are changed in a new operating agreement.
4. **Dissenters’ Rights.** Under the Old Act, there is a right for a member to dissent from certain LLC actions and obtain a payment for the fair value of their interest. This is not the case under the New Act – there are no dissenters’ rights. Unless the dissenters’ rights have been eliminated under its governing documents, they will continue to apply to old LLC’s under the New Act.
5. **Authority to act on behalf of the LLC.** Under the Old Act, the LLC must have one or more individuals acting as Chief Manager and Treasurer or Chief Financial Manager, and unless otherwise provided by the LLC, only the Chief Manger can act as an agent of the LLC. Under the New Act, anyone can act as an agent of the LLC pursuant to their agreements, be it a member, non-member or simply a manager.
6. **Fiduciary Duties and Indemnification.** Both Acts impose fiduciary duties and indemnification for members, managers and governors, but the New Act is more flexible in their definitions.
7. **Agreements.** The Old Act required a member control agreement to be in writing and signed by all of the members. This is not the case under the New Act. An agreement under the New Act may be oral, written or implied by actions.

What should you do before January 1, 2018? You should undertake a full review of your LLC’s existing governing documents and ensure that they are the way you want them. Unless the

members of the LLC adopt a new operating agreement in writing under the New Act, the LLC's existing documents continue to be their operating agreement.