



OWM NEWSLETTER OCTOBER 2017

ATTORNEY SPOTLIGHT

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[Joseph K. Koury, Esq.](#), Co-Chair of OWM Law's Business Law Practice Group, is a business and estate planning lawyer whose clients benefit from his advanced law degree in taxation and his experience, which includes a two-year clerkship with a respected trial judge. Mr. Koury regularly drafts and reviews business and estate

Recent, Significant Amendments to Pennsylvania Law of Limited Liability Companies

In November 2016, and effective February 21, 2017, Pennsylvania Governor Wolf signed Act 170. That act amends Title 15, Corporations and Unincorporated Associations, the latter of which include limited liability companies. The amendment brings Pennsylvania law closer in line with the Uniform Act promulgated by the Uniform Law Commission. The act also enables the creation of nonprofit limited liability companies, previously restricted to corporations.

The amendments make key changes to the governance of limited liability companies. The Certificate of Organization, the legal document which creates a Pennsylvania limited liability company, no longer requires the company's organizer to state whether it is manager- or member-managed. Typically, a limited liability company is member-managed, meaning that all members share responsibility for the day-to-day running of the business. Sometimes, however, a limited liability company is manager-managed, such as when members only want to be passive investors in the business and want to delegate management responsibilities to one or more other members (or even nonmembers). Additionally, under the act, the Certificate of Organization is no longer required to state whether membership interests in the limited liability company will be evidenced by a certificate.

planning agreements and documents for the personal and corporate clients whom he serves, clients which vary from the mom and pop store down the street to the more sophisticated business enterprise. Mr. Koury regularly assists and advises clients with business formation, business planning and succession planning. His clients gain value from his insights on taxation in their business and estate planning endeavors, enabling them to make better-informed decisions. Mr. Koury is active in the communities which OWM Law serves, and he holds leadership positions on the Boards of various local nonprofit organizations.

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Thus, the company’s Operating Agreement, a document governing the internal operations of the business, is now paramount in setting forth governance structure and evidence of ownership.

Under amended Title 15, the Operating Agreement of a limited liability company governs the rights and responsibilities of its members except as specifically provided in the title. The Operating Agreement may not completely eliminate the duty of loyalty or duty of care of members or managers.

Under the duty of loyalty, a member or manager of a limited liability company is supposed to put the success of, and benefits to, the company above any personal or individual advantages. Under amended Title 15, the Operating Agreement can identify types of activities that do not violate duty of loyalty. For instance, the Operating Agreement can eliminate the duty of loyalty with respect to company opportunity and competing with the company vis-à-vis the members or managers. Similarly, the Operating Agreement can provide that a specific act or transaction that would otherwise violate the duty of loyalty can be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

Under the duty of care, a member or manager of a limited liability company must refrain from engaging in conduct with gross negligence, recklessness, willful misconduct, or a knowing violation of the law. Under amended Title 15, the company’s Operating Agreement can alter the duty of care if not “manifestly unreasonable.” Unfortunately, what is “manifestly unreasonable” is determined by a court as a matter of law, after the fact.

Additionally, under amended Title 15, a company’s Operating Agreement can impose reasonable restrictions and conditions upon access to, and use of, a limited liability company’s information. It may also define appropriate remedies for a breach of such reasonable restrictions on use.

Finally, Act 170 clarifies that, unless the Operating Agreement provides otherwise, a member may not transfer to a person who is not already a member of that limited liability company anything other than his or her “transferable interest” in the limited liability company. A “transferable interest” refers to the economic right to receive distributions from the limited liability company; contrast this with a “governance interest,” which also includes the right to receive or demand information, vote on issues affecting the affairs of the company, and the like. Thus, a creditor of a member of a limited liability company will be restricted to obtaining a “charging order” against the member’s “transferable interest,” which is a lien that allows the creditor to receive distributions, but not participate in the management or conduct of the limited liability company. This limitation does not, however, apply to a single-member limited liability company, where the sole member’s entire “governance interest” is subject to execution.

Please call us at (610) 323-2800 or send an email to jkkoury@owmlaw.com to discuss. We would be happy to meet with you in either our Pottstown or Phoenixville offices. Also, please watch OWM’s October 2017 Legal Talk

program regarding Changes Affecting Pennsylvania LLCs in 2017 and Beyond on our website [here](#).

Upcoming Events

[David A. Megay, Esq.](#), speaking at Chester County Night School Seminars at Owen J. Roberts Middle School, Pottstown, PA on 10/24/17 from 6:30 p.m.-8:30 p.m. entitled "Ask the Lawyer: Starting and Operating Your Own Business" (contact Chester County Night School at 610-692-1964 or online at www.chestercountynightschool.org).

[Kathleen M. Martin, Esq., CELA](#), speaking at Owen J. Roberts Middle School, Pottstown, PA, on 10/10/17 from 7:00 p.m.-8:30 p.m., entitled "Unique Needs of Aging Adults: An Elder Law Perspective"; and at Pierce Middle School, West Chester, PA, on 10/3/17 from 7:00 p.m.-8:30 p.m., and at Owen J. Roberts Middle School, Pottstown, PA, on 10/24/17 from 7:00 p.m.-8:30 p.m., entitled "Beyond the Simple Will" (contact Chester County Night School at 610-692-1964 or online at www.chestercountynightschool.org).

Watch Legal Talk, brought to you by OWM, on PCTV, Tuesdays at 8:30 on Channel 28, and Thursdays at 9:30 p.m. on Channel 98, or on our website [here](#).

Read Legal Ease every first and third Sunday in the [Pottstown Mercury](#).

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