

In this week's edition...



Monday Morning Memo

July 10, 2017

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Protecting Real Property Lawyers

eClosings Committee to Review Emerging Process to Preserve Consumer Ability to Retain Real Estate Counsel

Materials for review will begin going out next week to attorneys interested in the eClosing concept that some lending pundits predict will be the next industry disrupter. Simply email Kaitlin at kmadden@pntn.com to be put on the list to stay informed on this emerging digital process. Attorneys previously requesting to be placed on the “digital closing” committee need not resubmit information as you will be contacted shortly.

As reported in these pages, the PNTN goal is to make sure Illinois real property lawyers are not displaced should eClosings live up to the hype being extolled on the service nationally. A few law firms have set up booths at lender trade shows offering “national legal document signing services.”

We have already witnessed lawyers in some jurisdictions being reduced to mere “deed scriveners” with no actual legal consultation being performed. We must prevent this law firm client erosion from occurring in the Chicago area (some downstate counties have already capitulated notwithstanding ISBA Ethics Opinion 94-1).

PNTN has filed for trademark status for “Counseled eClosings” which firmly establishes the attorney inclusiveness that will be coupled with this transpiring technology application. Stay tuned.

Important Changes to Illinois LLC Act Takes Effect July 1st

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Changes to the Illinois Limited Liability Company Act set to take effect on July 1, 2017 may impact either your current Illinois LLCs or your future ventures. The changes generally serve to conform Illinois law more closely to a model law for limited liability companies drafted by the National Conference of Commissioners on Uniform State Laws that has already been adopted by 15 states and the District of Columbia.

Among the changes to the Illinois law are:

Default Member Management

Under the revised law, an LLC will be member-managed by default unless there is explicit language in the operating agreement stating that the LLC is to be manager-managed. Similar to Delaware, when filing Articles of Organization for an Illinois LLC, you will no longer be required to specify whether it will be member-managed or manager-managed, but instead will only be required to provide information regarding each manager and each member having such management authority.

Oral Operating Agreements

Oral and implied operating agreements are now permitted and are also expressly exempted from the statute of frauds.

Designating Specific Authority of Members and Managers

Illinois LLCs can now file a "Statement of Authority" with the Illinois Secretary of State that establishes or limits the authority of a member or manager to transfer real estate or enter into other transactions on behalf of the LLC. If the member or manager named in a Statement of Authority wishes to deny the authority granted to them, they can file a Statement of Denial with the Illinois Secretary of State.

Waiver of Fiduciary Duties

With the exception of the duty of care, fiduciary duties may be restricted or eliminated by including clear and unambiguous language in the operating agreement. The operating agreement can now alter the duty of care so long as it does not authorize intentional misconduct or a knowing violation of law.

Limitation of Member's or Manager's Liability

The operating agreement can eliminate or limit a member or manager's liability to the LLC and the other members, unless such liability relates to a breach of certain specified fiduciary duties, a financial benefit to which such member or manager is not entitled, an intentional infliction of harm on the LLC or another member or an intentional crime.

Elimination of Assumed Agency Status

A member of an LLC is no longer considered an agent of the LLC solely as a result of being a member.

Access to Books and Records

The provision regarding rights of members to inspect the books and records of an LLC has been revised to clarify the rights held by members, disassociated members and transferees, and to permit LLCs to impose reasonable conditions and restrictions on access to information.

Authorized Signatories for State Filings

Documents to be filed with the Illinois Secretary of State may now be signed by any person authorized by the LLC, not just a manager or member, provided that both the name and title of the person signing are typed or printed where indicated on the applicable form. In addition, digital signatures will now be accepted by the Illinois Secretary of State.

Administrative Dissolution

When an LLC is administratively dissolved (i.e., for failure to file an annual report), no other entity may use the name of

the dissolved LLC for a period of three years after the dissolution. If the LLC is reinstated within such three-year period, it will resume use of its name unless it changes its name as part of the reinstatement process.

Conversion and Domestication

Instead of only permitting the conversion of a partnership or limited partnership to a limited liability company, the Act now provides for the conversion of a general partnership, limited partnership, business trust or corporation into an Illinois LLC, and vice versa. Prior to the changes to Illinois law, an entity other than a partnership could only convert to an Illinois LLC through a multi-step process involving a merger. Now, the converting entity simply files Articles of Conversion with the Illinois Secretary of State. The revised Act will also permit a foreign LLC to become an Illinois LLC through the filing of Articles of Domestication with the Illinois Secretary of State.

While it remains to be seen how the oral operating agreements play out, consider memorializing operating agreements in written documents executed by the members and managers. To that end, some of revisions to the Illinois LLC Act may even warrant revisions to existing operating agreements. As a result, we recommend that you consult with legal counsel.

For more information about this alert, please contact Jeffrey M. Friedman at jfriedman@foxrothschild.com or 312.517.9210, or Andrew M. Halbert at ahalbert@foxrothschild.com or 312.517.9204.

Member “Rain Making”

Will County up Next for HomeBase Newsletter

Members practicing in Will County will want to take advantage of the coming concentration on that County as HomeBase launches recruitment efforts toward new law firm client sources. Neighborhood businesses will be invited to participate in the popular HomeBase “Shop Local” program while various affinity groups and employers sign up for the cost free employee benefit plan.

As with its Homeowners Club of America predecessor, HomeBase affords attorneys with the ability to be retained before any law firm interference can take place. Furthermore, HomeBase promotes real estate brokers and mortgage lenders who value law firm delivery of legal/title services. HomeBase will be marketing participating attorneys in ways and places that are otherwise difficult to accomplish.

For more information on how the cost free HomeBase program can promote your real estate practice, contact Jay Miles at 773-497-0668 or go to homebase.services.

HomeBase Networking with Local Businesses

On the Third of July we let the good times roll-literally! Check out our blog post [here](#) for a full recap of how HomeBase celebrated the holiday!

