

**Caring Counseling and  
Sophisticated Solutions  
Since 1951**

We are always grateful for your trust in recommending us to others. A referral from you and your continued business are the highest compliments we could ever receive.

**Inside this issue:**

Highlights of the  
New Ohio Revised  
Limited Liability  
Company Act (New  
Ohio Revised Code  
Chapter 1706) **1**

Banker Advises  
"Great Time for  
SBA Loans" **2**

# Client Bulletin

Volume XXXVIII, No. 3

March 31, 2021

## Highlights of the New Ohio Revised Limited Liability Company Act (New Ohio Revised Code Chapter 1706)

On January 8, 2021, the Governor signed Senate Bill 276 into law. The new Ohio Revised Limited Liability Act ("New Act") amends and restates Chapter 1705 of the Ohio Revised Code and creates a wholly new Chapter 1706. The New Act takes effect April 12, 2021, with certain provisions taking effect January 1, 2022. Ohio's original LLC Act ("Old Act") was adopted by the Ohio General Assembly in 1994. Since that time, the limited liability company as a business entity has grown in its appeal to businesses by accommodating a variety of ownership structures while at the same time protecting the personal assets of its owners and providing a tax-efficient method of organization (an LLC can elect to be treated as a C Corp with taxation at the LLC level, as a partnership, a pass-through entity without taxation at the LLC level, or as a not-for-profit entity). Ohio law, however, has not kept pace with the significant changes in business and investing. The New Act will update and modernize Ohio's Limited Liability Company Act for all Ohio LLCs and for all non-Ohio LLCs conducting business in Ohio (so-called "foreign LLCs"). The New Act is now one of the most modern LLC Acts in the country and will provide a legal framework that is efficient, transparent, and makes common sense, making it easier to conduct business in Ohio. The New Act is intended to give maximum effect to the principles of freedom of contract and to the enforceability of operating agreements, written or oral.

Three key differences between the New Act and the Old Act as addressed in the Ohio Legislative Service Commission Bill Analysis are:

1. Under current law, a limited liability company (LLC) may be managed by its members or managers, and the Old Act spells out the authority members and managers have in each scenario. The New Act does away with this distinction and instead provides that a person's authority to bind the LLC must be determined by referencing the operating agreement, decisions of the members in accordance with the operating agreement, or the New Act's default rules. One may also file a "Statement of Authority" with the Ohio Secretary of State. This change provides relief from some of the organizational constraints and confusion concerning the respective roles of members and managers and provides additional flexibility for the management of each LLC to be structured in the manner most appropriate for that particular LLC.

Under the Old Act, the operating agreement generally controls the entity's structure and operations. The Old Act, however, provides a list of provisions that cannot be modified by the entity's operating agreement, such as the obligation of good faith and fair dealing or third-party rights afforded by law. The New Act also reflects that while an entity's operating agreement largely controls, certain provisions (listed in a new section 1706.08) cannot be changed. To the extent that a certain provision is not included in section 1706.08, an LLC will be permitted to modify such provision through its operating agreement. The New Act provides a specific section for provisions that are not permitted to be modified by the operating agreement and eliminates the need for phrases such as "unless otherwise provided in the limited liability operating agreement." The New Act will affect different LLCs differently because each LLC is governed by its own operating agreement.

2. Also under the Old Act, there are no statutory penalties for an LLC that fails to maintain a statutory agent, although there may be other legal consequences. The New Act requires the Secretary of State to cancel an LLC that fails to maintain a statutory agent but allows the company to be reinstated upon appointment of a new agent. The New Act imposes statutory penalties on LLCs that fail to continuously maintain or fail to update the name or address of their statutory agent and directs the Secretary of State to cancel an Ohio LLC's articles or a foreign LLC's Ohio registration after providing the LLC with notice and a 30-day opportunity to cure. It also provides a process for reinstatement on a form provided by the Secretary of State and the payment of a fee.
3. Lastly, in contrast to the Old Act, the New Act allows an LLC to establish one or more designated series of assets that are associated with at least one member and that have separate rights, powers, duties, liabilities, purposes or investment objectives. The so-called series LLC structure helps an entity protect assets and separate its liabilities. The main advantages of series LLCs (over parent/subsidiary LLCs) are reduced setup and maintenance costs and ease of upkeep. The articles of organization must authorize multiple series of assets and the operating agreement must utilize specific language that contains a statement to the effect of the limitations. Separate records must be kept for each entity that allows for reasonable identification of the entity's assets. The New Act permits Ohio LLCs to use the series structure and formalizes Ohio's treatment of non-Ohio series LLCs conducting business in Ohio. The New Act includes enforcement powers to the Ohio Attorney General to deal with foreign LLCs that have not registered to transact business in Ohio. A foreign LLC will be liable to the State of Ohio for a set fee and possibly result in an injunction against the foreign LLC, court costs and interest.

(Continued on page 2)

**MANOS, MARTIN &  
PERGRAM CO., LPA**

50 North Sandusky Street  
Delaware, Ohio 43015

Phone: (740) 363-1313  
Fax: (740) 363-1314

Visit us on the web  
[www.mmpdlaw.com](http://www.mmpdlaw.com)



This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates whom you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

Some of the differences between the Old Act and the New Act are substantive in nature and others are not. What has not change d is the terminology. The New Act retains the terminology used in the Old Act to reduce confusion and allow existing limited liability companies to continue with their current operating agreement and other organizational documents in effect. The New Act provides an opportunity to closely tailor an LLC's operations to the intention of its members.

*Nancy K. Krueger*

### Banker Advises "Great Time for SBA Loans"

Recently, Adam Hansberry, Senior Vice President-Corporate Banking, of First Commonwealth Bank and a friend of Manos, Martin & Pergram, sent an email indicating that it was a great time to finance or refinance with SBA loans and included a flyer, most of which is reproduced below.

#### CARES Act Update from First Commonwealth Bank

The CARES Act Legislation update passed in December 2020 includes a Small Business Recovery Act, which supports SBA lending in several proposed significant ways.

##### 7(a) Loan

- Guarantees — up to 90%
- Waiver of SBA guaranty fees
- Available through September 30, 2021

##### Express Loan Guarantees

- For a loan less than or equal to \$350,000 — not more than 75%
- For a loan greater than \$350,000 — not more than 50%
- Available through September 30, 2021

For up to one loan per borrower approved during the period from February 1, 2021 through September 30, 2021, SBA will make monthly payments of principal and interest in an amount up to \$9,000 per month, for the 3-month period beginning with the first payment due on the loan.

Depending on the needs of your clients, the SBA has several loan programs options to provide them with access to the financing they need to expand and grow. Since First Commonwealth Bank has met several key requirements, as set by the SBA based on our experience, reputation, and regulatory compliance, we have acquired the designation of 'SBA Preferred Lender.' This means we can simplify and expedite the SBA loan-approval process and we have the authority to make the final credit decision on any type of SBA loans.

Loans guaranteed by the SBA range from small to large and can be used for most business purposes, including long-term fixed assets and operating capital. Here are the most common types of SBA loans.

**SBA 7(a) Loans** - The 7(a) loan program is the SBA's primary program for providing financial assistance to small businesses. When clients apply for a 7(a) loan, they will work directly with the bank to prepare the required documents, and then the SBA participates by guaranteeing a portion of the loan amount.

The terms and conditions, like the guaranty percentage and loan amount, may vary by the type of loan. The maximum loan amount is \$5 million with a maximum SBA guaranty percentage of 85% for loans up to \$150k and 75% for loans greater than \$150k.

7(a) loans are often used to purchase equipment, inventory, and business essentials or to free up working capital

**CDC/SBA 504 Loans** - The 504 Loan Program provides small businesses with long-term, fixed-rate financing which will be used to acquire fixed assets for modernization or expansion. 504 loans are made available through Certified Development Companies (CDC's).

For this type of SBA loan, clients can borrow up to \$5 million, and the proceeds must be used for fixed assets and certain soft costs, but cannot be used for working capital or inventory, consolidating or repaying debt, or refinancing. Some of the primary benefits of a 504 loan are up to 90% financing, fixed-rate interest rates and savings that can improve your cash flow.

**SBA CAPLines Lines of Credit** - CAPLines is an umbrella program that helps small businesses meet their short-term and working-capital needs by utilizing various Lines of credit features. The maximum maturity on a CAPLine loan is 10 years, except for a Builders CAP Line. To qualify for this type of SBA loan, holders of at least 20% ownership in the applicant business are required to guarantee the loan.

**SBA Export Loans** - The SBA Export Express loan program gives exporters and lenders a streamlined method to get SBA-backed financing for loans and lines of credit up to \$500,000. Lenders will use their own credit decision process and loan documentation, and the SBA will respond to applications with 24 hours.

First Commonwealth Bank has offices located throughout 28 counties in Central, Northern and Southwest Ohio and Western and Central Pennsylvania. We operate two business banking centers in downtown Columbus and Powell. For our full listing of our retail locations, please visit [fcbanking.com/locations](http://fcbanking.com/locations).