

New Statute to Replace Chapter 183 for Wisconsin LLCs

On April 15, 2022, Wisconsin enacted a new business entity law, 2021 Wisconsin Act 258, that introduced significant changes. Chapter 183 governing limited liability companies (LLCs) organized under Wisconsin law was completely removed and replaced with a new statute based on the Revised Uniform Limited Liability Company Act already adopted in some form by other states. The Wisconsin Department of Financial Institutions (WDFI) recently posted new forms on its [website](#) and the Wisconsin State Legislature archived the old version of Chapter 183. The Wisconsin Uniform Limited Liability Company Law (WULLCL) is the current version of Chapter 183 on the Wisconsin State Legislature [website](#).

What does this mean for my existing LLC?

Consider taking prompt action to avoid unintended effects from the changes in the law. If your LLC is already organized, you have three options: 1) file a Statement of Nonapplicability with the WDFI by December 31, 2022, which means you elect to continue the status quo and be governed by the laws that have governed your LLC since its organization; 2) file a Statement of Applicability, which means you elect to be governed by the new Chapter 183 (WULLCL) early; or 3) do nothing and on January 1, 2023, your LLC will be governed by WULLCL by operation of law. If you opt in or are mandated in by operation of law to WULLCL, any terms of a current operating agreement that were valid under the old Chapter 183 will remain valid under WULLCL, but any terms that were not valid will be moot. If you elect to be governed by WULLCL, we recommend reviewing your current operating agreement to determine if there are any provisions that will be invalid under WULLCL. Those who opt out of WULLCL likely do not need to make changes to their operating agreement. We recommend you initially opt out of WULLCL by filing a [Statement of Nonapplicability](#).

What does this mean for an LLC I want to organize prior to January 1, 2023?

You can still organize your LLC under Wisconsin law, but you must elect one of the options listed above: 1) file a Statement of Nonapplicability; 2) File a Statement of Applicability; or 3) do nothing and be governed by WULLCL by operation of law on January 1, 2023.

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What does this mean for an LLC that I organize after January 1, 2023?

All LLCs organized in Wisconsin on or after January 1, 2023, will be governed by WULLCL.

If I file a Statement of Nonapplicability, can I later opt in to WULLCL?

Yes, if you initially filed a [Statement of Nonapplicability](#) and opted out of WULLCL, you can later file a Statement of Applicability to have your LLC governed by WULLCL. The filing date of the Statement of Applicability will be the date that WULLCL is effective as to your LLC.

How do I file a Statement of Nonapplicability or a Statement of Applicability?

Both forms can be found on the [WDFI's website](#). The Statement of Nonapplicability can be found [here](#). Please be sure you are filling out the correct form as they look almost identical. In addition, you will need a consent resolution or other currently acceptable form of approval by the members or managers of your LLC to approve the filing of either form. The approval required for this consent is the same as is currently required to amend your LLC's operating agreement. If you do not have an operating agreement, or have a provision in your operating agreement providing for how to amend the same, the default consent or approval under the old Chapter 183 requires unanimous consent or approval from all members of the LLC.

What are some of the key changes from the old Chapter 183 to WULLCL?

Articles of Organization: An LLC is no longer required to list its management type (member-managed or manager-managed) in its Articles of Organization. The Articles may still include management if you so choose. Under WULLCL, an LLC will be member-managed by default unless its operating agreement (or the Articles) states in writing that it is manager-managed.

Operating Agreement: An LLC's operating agreement could be interpreted as optional under the old Chapter 183, but will now appear to immediately exist upon formation and is no longer limited to a written document, meaning the operating agreement can also be verbal, implied or any combination of the three. WULLCL also includes a series of limitations on an operating agreement's terms,



with a carveout for actions that will only be allowed by a written operating agreement (and not for an operating agreement that is not in writing).

Fiduciary Duties: Under the old Chapter 183, LLC members and managers could agree to waive fiduciary duties owed to each other, which include the duty of care, the duty of loyalty and the imposed contractual obligations of good faith and fair dealing otherwise imposed by Wisconsin law. After January 1, 2023, WULLCL will mandate these duties to protect the interests of minority interest holders and avoid potential member and manager disputes, but will allow for a written operating agreement to contract around those duties to a certain extent. For LLCs that were organized before being governed by WULLCL, WULLCL will honor any provision in an operating agreement effective under the old Chapter 183 so long as the provision was enforceable under the old Chapter 183. This means that LLCs that have already waived some or all fiduciary duties of members and managers under the old Chapter 183 will not be required to conform to WULLCL's fiduciary duty provisions so long as the provision was valid under the old Chapter 183.

There may be other changes resulting from WULLCL that affect your LLC. Please contact your Reinhart attorney with specific questions about WULLCL, filing a Statement of Nonapplicability or any other matters addressed in this alert.

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