

ARIZONA “FIDUCIARY DUTIES IN LLCs”

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With the growing popularity of limited liability companies (“LLCs”) as the business entity of choice, the question arises as to what fiduciary duties exist within the LLC. Black’s Law Dictionary defines a fiduciary duty as “a duty to act for someone else’s benefit, while subordinating one’s personal interests to that of the other person. It is the highest standard of duty implied in law.” In the LLC setting, fiduciary duties arise from the relationships of members and managers in the LLC.

The Arizona Limited Liability Company Act (“Arizona Act”) permits flexibility in structuring an LLC. The Arizona Act does not state whether any fiduciary duties exist in an LLC, instead bestowing the utmost flexibility on the LLC in defining the duties. The Arizona Act did not adopt the fiduciary duty language of either the Uniform Partnership Act (“UPA”) or Uniform Limited Liability Company Act (“ULLCA”). Consequently, LLCs may possibly be allowed to fully insulate members from liability by the freedom bestowed by the Arizona legislature. Even if the Arizona Act permits LLCs to define fiduciary duties of members and managers, it is doubtful parties to an LLC agreement may agree to eliminate all fiduciary duties. Public policy dictates that some fiduciary duty exists in an LLC despite the Arizona Act’s silence on the matter.

Because Arizona does not have an express statutory provision on a fiduciary relationship, two possible conclusions as to the status of a fiduciary relationship in an LLC may exist. One possible conclusion is that the legislature intended for LLCs to be governed solely by the operating agreement and thus if the articles or operating agreement did not provide for a fiduciary relationship, then none exists. The other possible conclusion is that a fiduciary duty is implied in the statute and exists as stated in the corporation and partnership statutes or common law unless the operating agreement decreases or changes a duty. Public policy requires that the second conclusion be adopted.

When examining the legislative intent related to the passage of the Arizona Act, the Arizona legislature likened duties of members and managers to those of directors, officers and shareholders in a corporation and those between partners in a partnership.

Presently, no Arizona case addresses fiduciary duties in LLCs. If the analogy to limited liability partnership (“LLP”) law is persuasive, LLC members will owe each other the fiduciary duties of care and loyalty as would a general partner of an LLP. In a member-managed LLC, each member is the LLC’s agent for the purposes of its business. Under the ULLCA, a member of a member-manager company owes both the company and the other members the duty of loyalty and the duty of care.

Under the ULLCA, a member of a manager-managed LLC “owes no duties to the company nor to the other members solely by being a member” of the LLC. Non-managing members may act in their own self-interest as long as the member adheres to fundamental good faith duties. The duty to conduct affairs of the LLC in good faith is incumbent on all members of the LLC.

If a member acts as a manager, the member will most likely owe fiduciary duties to the company and the other members. Under the ULLCA, a member-manager will owe the LLC and the other members the duty of care and the duty of loyalty. Member-managers also must fulfill the obligation of good faith and fair dealing under the ULLCA.

In sum, an Arizona Court will likely find that the same fiduciary duties exist between managers, members and the LLC as exist in regular business corporations and partnerships.

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