

The Arizona Supreme Court has decided to require fiduciary duties for the managers and certain members of limited liability companies (“LLC’s”). *See In re Sky Harbor Hotel Properties, LLC*, No. CV-19-0033-CQ, 2019 WL 2587776, at \*1 (Ariz. June 25, 2019). Although Arizona was among the first States to enact a limited liability company act no fiduciary duties for managers were created (the “Act”). *See* 1992 Sess. Laws 395 (2d Reg. Sess.).

Initially an Arizona Bankruptcy court recognized that the existing Act does not expressly impose fiduciary duties and, by default, LLC members and managers do not owe fiduciary duties. However, the Arizona Supreme Court held that Arizona common law imposes a default fiduciary duty on LLC members and managers under **principles of agency**. Specifically, the Arizona Supreme Court held that:

1. Managers have a common law fiduciary duty to the LLC;
2. Members have a common law fiduciary duty to the LLC if it is a member-managed company or if the member acts as an agent of the LLC;
3. The LLC’s operating agreement can eliminate fiduciary duties, but cannot limit the implied covenant of good faith and fair dealing, which will always apply.

As it stands, this ruling applies to all LLCs (and their constituent members) under the existing LLC Act. That means it applies to all currently existing LLCs until August 31, 2020. In other words, if the LLC was created before August 31, 2019, this ruling imposes **common law fiduciary duties** on members and managers of the LLC via principles of agency. After August 31, 2020 the definition of fiduciary duty will change consistent with the new LLC Act for all Arizona LLCs. Arizona’s new LLC Act, applicable to all LLC’s in existence on August 31, 2020 utilizes a similar but different definition of fiduciary duty liability.

As a result, we expect to see a spur in claims regarding breaches of fiduciary duties by managers and members of an LLC based on principles of agency. In Arizona, although an operating agreement can lawfully limit liability for fiduciary duties, an LLC can still sue its members and managers for breaching the duties of care, loyalty, and good faith.