

Limited Liability Companies in the Decade of the 1990s
by Charles W. Murdock

Article Abstract:

The decade of the 1990s witnessed an unparalleled explosion of legislative activity in adopting a wide variety of LLC statutes. As a result, a body of case law also began to develop with regard to limited liability companies.

This article addresses the legislative developments and reviews the three generations of statutes that came to life within this decade. The first generation was referred to as "bulletproof," since the statute was designed to ensure compliance with the IRS regulations. Later statutes, the second-generation, took a more flexible approach, and the third generation arose with the advent of the check-the-box regulations which gave LLCs the option of pass-through tax treatment merely by so designating, rather than trying to comply with the previous complicated regulations dealing with limited liability, centralized management, transferability of interests, and continuity of life.

As a result of this hodgepodge of statutes, the Uniform Commissioners promulgated a "Uniform Limited Liability Company Act," which moved the LLC statutes from a partnership model toward a corporate model and, in effect, converted the former "events of dissociation," namely, death, insanity, bankruptcy, resignation or expulsion, into events of "dissociation," pursuant to which the entity would not die but rather the member's status would change into that of a mere transferee.

Unfortunately, the new Uniform Act sought to exclusively define fiduciary duties and thereby would have dramatically upset existing fiduciary duty law. The article takes the Commissioners to task for this ill advised policy change and explains why it is impossible to "cabin" fiduciary duties within a few statutory lines.

Finally, the article reviews essentially every judicial decision which was handed down in the 1990s and analyzes the extent to which courts understand the essential nature of a limited liability company.

