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OHIO UPDATES LLC LAW

Did you know that the state of Ohio recently enacted a massive overhaul to its limited liability company (LLC) statutory provisions? Ever since Ohio limited liability companies came into existence in 1994, determining who the actual members were and who had authority to act on the entity's behalf could be a difficult challenge. Limited liability companies could be member managed or manager managed, which presented a whole host of problems when it came to transacting business with an LLC.

With the recent changes to the Ohio LLC Act, the Ohio General Assembly attempted to make it easier for parties to transact business with an LLC. One of the main purposes behind the revisions was to make more obvious who had authority to act on behalf of the entity. For new limited liability companies, the form filed with the Ohio Secretary of State will provide for notice of who has authority to act on the new LLC's behalf.

The new statute also provides new protections against actions of other members of the company. Regarding liability, R.C. §1706.26 states:

A person who is a member of a limited liability company is not liable, solely by reason of being a member, for a debt, obligation, or liability of the limited liability company or a series thereof, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, agent, or employee of the limited liability company or a series thereof. The failure of a limited liability company or any of its members to observe any formalities relating to the exercise of the limited liability company's powers or the management of its activities is not a factor to consider in, or a ground for, imposing liability on the members for the debts, obligations, or liability of the limited liability company.

Under the old statutory provisions, a member could be liable for the actions of a fellow member depending on how the LLC was structured within the operating agreement. With this new provision, the Ohio General Assembly created blanket protection for members, so a member, simply by being a member, is not liable for another member's missteps or the company's liabilities.

The new act became effective April 12, 2021. The old act remains in effect until January 1, 2022. For those LLCs with older operating agreements, consider asking your attorney to review the operating agreement to better take advantage of the new statutory provisions, as well as to make any changes based upon how the LLC's business has evolved over time.



Barn used for events not exempt from building and safety codes

A renovated barn used for paid events was not exempt from building code and safety regulations under the agricultural exception in state law, according to the Court of Appeals in the Fifth Appellate District in the judgment released on June 28. The Court affirmed the Stark County Common Pleas Court's decision in Michael Gainer, et al., v. Angela Cavanaugh et al.

Michael and Brenda Gainer and Storybrook Barn, LLC had sued the Stark County Building Inspection Department's chief building official and the Lawrence Township fire chief after the county officials cited the Gainers and their business for changing the use of the barn to "public assembly" without complying with building and fire codes. The Gainers' position was the barn's use for events was incident to the agricultural use of the property and was therefore exempt from the local regulations Under Ohio Revised Code § 3781.06. The Gainers appealed through the administrative process, where they were unsuccessful, and then appealed to the Court of Common Pleas.

The Gainers "provided un rebutted evidence" that they used the barn for agricultural activities on the property." Livestock, hay, and other agricultural tools and supplies were stored in the barn on an on-going basis.

After using the loft in the barn for some years as a "man cave" and event space for family, friends, and church gatherings, the Gainers decided to rent the space to groups to supplement their income. A bar and restrooms were installed, as well as a sound system, filtered water, an ice machine, emergency lighting, smoke alarms, and panic bars on exit doors. The Gainers promoted the barn on a website for wedding events with up to 200 guests.

The township board granted a conditional use permit with conditions: (i) use local off-duty officers if alcohol was to be served; (ii) cut off music at 11 p.m.; (iii) use only a temporary sign of no more than 3- by 3-feet, to be posted near the driveway the day of the event and removed the next day; (iv) refrain from on-site cooking or frying inside the barn (using an outside grill or roasting a pig outside was "OK"); (v) follow all fire code regulations and inspections and maintain fire extinguishers and exit signs as required by inspections, (vi) follow all Ohio, Stark County, and Lawrence Township health, safety, and occupancy regulations; (vii) provide and regulate sound equipment to keep noise levels acceptable, with the warning that three event-related police complaints

would trigger automatic review of the conditional use; (viii) provide adequate and safe parking; and (ix) provide assistance at the street for traffic exiting events.

Within several days of obtain the conditional use permit, the local inspectors arrived to check compliance.

The legal issue was "whether a building that advertises for, and entertains, private functions attended by numerous people – events such as wedding receptions, parties, reunions, and the like – may operate in dangerous conditions lacking adequate fire precautions for the patrons and lacking the structural integrity to ensure the safety of those patrons" because its use was "incident to the use of the land for agricultural purposes." If "incident to the use of the land for agricultural purposes," the barn would not be subject to Ohio Revised Code 3781.06.

The Court's analysis for deciding whether the barn was "incident to the use of the land for agricultural purposes" is described in the 1969 case *State v. Huffman* from the Third District Court of Appeals. The use of the barn must be "directly and immediately" related to agricultural use and either "usually or naturally and inseparably" dependent upon agricultural use. The Court found the entire building needed to be considered and the agricultural exemption did not apply "in the context of the risk to sanitation and safety of the guests."

The Common Pleas Court found the barn was "not exempt from regulations by the Stark County Building Department.... The Barn was not 'incident to the agricultural use of the land' but used for event purposes close to 18 years and was promoted on a website as an event and wedding venue."

The Court specifically noted safety concerns, particularly the many combustible items stored in the barn, such as hay and straw, exposed wood and timbers, grain, kerosene fuel cans, gasoline- and diesel-powered implements, acetylene and oxygen tanks for welding. Safety concerns also included rodents, a refrigerator and ice maker in the same vicinity as drugs and chemicals for the animals.

Wrote the appeals court: "While we acknowledge that the prohibition on restriction of agricultural uses serves an important policy of encouraging agriculture, the trial court concluded, and we agree, that in the context of this case, the building and fire code serve the more pressing need to protect the health and safety of the public."

WELCOME, ELI EARICH

We are pleased to welcome Eli Earich as a new employee. Eli graduated in May 2021 from Capital University Law School. He grew up in Pickaway County, Ohio and is still heavily involved in his family's Angus cow-calf operation.

Eli earned his B.S. in agricultural economics at the University of Kentucky, where he was actively involved in Alpha Gamma Rho fraternity and Block and Bridle. Prior to law school, Eli worked full time as a commodity merchandiser for Archer Daniels Midland in Des Moines, Iowa. While in law school, he has worked as a research fellow for the National Agricultural Law Center and spent time in Washington D.C. as a Public Policy Law Clerk for the National Cattlemen's Beef Association. Eli strives to give back to agriculture through his involvement with trade groups and industry associations, such as the American Agricultural Law Association. After graduation, he intends to use his J.D. to advocate for agricultural interests in Ohio and across the country.



VERIFY EMPLOYMENT ELIGIBILITY WHEN HIRING

Federal law requires all U.S. employers to use the U.S. Citizenship and Immigration Services Form I-9 to establish employment eligibility of each new employee. Form I-9 must be completed and signed no later than the first day of employment, but not before the new employee accepts a job offer.

The current form can be found at the following website link: <https://www.uscis.gov/sites/default/files/document/forms/i-9-paper-version.pdf>

The current instructions for Form I-9 can be found at: <https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf>

The form contains a list of acceptable documents for establishing employment eligibility. The employer is responsible for making sure all parts of Form I-9 are properly completed. The employer should make copies of documents presented for the employer's records.

The completed Form I-9s are not filed with the federal government. However, the employer must retain each completed Form I-9 for as long as the individual works for the employer and for a specified period after employment has ended. The specified retention periods are as follows:

- Once the individual's employment ends, the employer must retain this form and attachments for either 3 years after the date of hire (i.e., first day of work for pay) or 1 year after the date employment ended, whichever is later.
- In the case of recruiters or referrers for a fee (only applicable to those that are agricultural associations, agricultural employers, or farm labor contractors), the retention period is 3 years after the date of hire (i.e., first day of work for pay).

Several federal government agencies are authorized to inspect Forms I-9 and copies of employees' documents retained by the employer. Substantial penalties can be assessed against the employer for failure to have completed Forms I-9 for each employee, for improperly completed Forms I-9, and for unlawful discrimination, as well. For some violations, the penalties can include criminal fines and imprisonment.



CONGRATULATIONS, TROY!

Congratulations to BECE Partner Troy Callicoat on being admitted as a member of the Michigan state bar. This will allow our firm to better serve clients located in Michigan. Troy has been a member of the Ohio bar since 2003 and is admitted to practice in federal courts in Ohio and Michigan.

B E C E

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