

Minnesota's Revised Limited Liability Company Statute

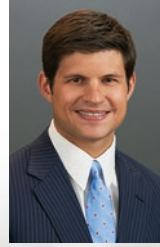
by Mark B. Peterson and Joshua A. Bobich



Practicing With Purpose in the Commercial World

by Patrick T. Zomer

Commercial lawyers too often are given a free pass when considering whether they are practicing with a sense of purpose. Providing the kind of service clients expect and deserve ultimately leads to a fulfilling practice.



Property Values Are Recovering – How Does That Impact Your Property Taxes?

by Michael T. Etmund

Due to a combination of escalating property tax rates and steady increases in assessed property valuations, property owners are at risk of substantial increases in property taxes payable.



Minnesota's Revised Limited Liability Company Statute

By Mark B. Peterson | 612.877.5428 | Mark.Peterson@lawmoss.com - and - Joshua A. Bobich | 612.877.5288 | Joshua.Bobich@lawmoss.com

In April 2014, Minnesota Governor Mark Dayton signed into law the "Minnesota Revised Uniform Limited Liability Company Act" (New Act). The New Act, which appears in Chapter 322C of the Minnesota Statutes, goes into effect on August 1, 2015, and all limited liability companies organized on or after that date will need to comply with the new law. The New Act replaces the current Minnesota Limited Liability Company Act, found in Chapter 322B of the Minnesota Statutes. Existing LLCs are not immediately affected by the change in the law, although they may elect to be subject to the New Act by amending their governing documents accordingly. However, on January 1, 2018, 322B will be repealed and all then existing LLCs in Minnesota will be required to comply with the New Act.

It is important for existing LLC owners and anyone considering organizing or investing in

a Minnesota LLC to understand some of the significant changes the New Act will bring, including:

- Governance and Management Structure** – The New Act changes the management of an LLC toward the partnership model utilized in most states. Currently, most Minnesota LLCs are governed by a board of governors and managers (similar to the board of directors and officers in a corporation) with their members being analogous to shareholders. The New Act changes the default to a "member-managed" structure, which means that unless provided otherwise in an operating agreement, the management of the LLC is vested in the members and each member has equal rights in the management and conduct of the company's activities. However, the New

Act also permits "manager-managed" and "board-managed" governance, which should allow existing LLCs to maintain their current structures.

- Operating Agreement** – Under the New Act, the rights and duties previously contained within the articles, bylaws, and member control agreement are combined into a single "operating agreement." The operating agreement is a contract between the members that govern the LLC's member relationships, governance structure, and activities, among other things. Unlike 322B's current requirement of a written member control agreement, an operating agreement can be informal and does not necessarily need to be in writing or even called an "operating agreement." The operating agreement gives the members substantial flexibility

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Practicing With Purpose in the Commercial World*

By Patrick T. Zomer (University of St. Thomas School of Law, Class of 2011) | 612.877.5278 | Pat.Zomer@lawmoss.com

Commercial lawyers too often are given (or take) a free pass when considering whether they are practicing with a sense of purpose – at least one that extends beyond meeting billable targets. This may be due to the difficulty of connecting their day-to-day work with the broader ideal of “search(ing) for truth through a focus on morality and social justice.” Yet, at its core, commercial practice shares a commonality with all other types of law: serving clients in an honest, ethical, and effective manner.

For me, fulfilling this common purpose draws on two concepts heavily emphasized during my time at the University of St. Thomas School of Law: servant leadership and the trusted adviser model. These concepts – one given (servant leadership) and one earned (trusted adviser) – are consistent with the type of service business clients expect and deserve and, ultimately, contribute to a fulfilling practice.

According to UST School of Law Professor Neil Hamilton, servant leadership “encourages leaders to serve others’ highest priority needs, helping others to reach their potential, to be their better selves, to be what they are capable of becoming.”

My practice is somewhat unique in that I work with businesses of all sizes, from Fortune 500 companies to closely held businesses. Regardless of the size of the client, I can always identify people on each project that I can help “be their better selves.” Within the confines of Model Rule 1.13, identifying with and relating to the people you work for through a strong servant leadership-ethic contributes to a deeper meaning in corporate practice. For example, servant leadership transforms a completed transaction from a few more dollars booked (or hours billed) to a means of helping my

counterpart advance his or her career. In this way, servant leadership both draws upon and contributes to a purpose-centric view of commercial practice.

Ultimately, a strong servant leadership ethic helps form the basis of a trusted adviser relationship. The adviser provides not only technical answers, but also perspective and insight into broader issues. Achieving a trusted adviser relationship occurs through a continual demonstration of technical skill and a commitment to others’ wellbeing (*i.e.*, servant leadership. Because it is something earned, it looks different from deal to deal, client to client, and year to year.

One client may entrust you with a bet-the-firm deal early in your career while another might not bring you into broader issues until you are the most senior of senior partners. Yet once earned, the trusted adviser receives the benefit of engaging clients in a deeper, more meaningful way. Further, as the view of “doing well by doing good” continues to challenge the accepted wisdom that the only intention of business is to maximize profits, advising clients from a broader, purpose-centric perspective will become increasingly synonymous with corporate practice.

It is always important to remember that commercial practitioners do have a role in our broader legal system consistent with “the search for truth.” At a recent Mission Roundtable discussion at UST School of Law, I pointed out that the attorney who represents utilities in rate proceedings and banks in commercial lending transactions is not necessarily a natural fit for such a talk. While the joke helped grab people’s attention, it failed to acknowledge the importance all commercial attorneys play in the larger legal system.

Rate cases are not just about increasing utility revenue; they are a necessary process by which a private party is given just compensation for the public’s use of its property. Commercial lending facilitates economic growth and reinforces the importance of private parties creating their own law through contractual relationships. Commercial practitioners uphold these and other fundamental tenants of our legal system on a daily basis. In doing so, we ensure the rule of law continues to have a place in our society, a benefit that extends beyond the particular transaction in question. Fulfilling these roles within our legal system is entirely consistent with an intention-driven practice.

My legal education helped provide the building blocks for a meaningful, purpose-filled commercial practice. At its heart, the practice of law is a commitment to serving others, a concept enshrined in the school’s mission and character. My time in law school helped me internalize that by directing my efforts toward the betterment of others, I am a better, more successful, and ultimately more satisfied attorney.

**This article originally appeared in the Winter 2015 edition of St. Thomas Lawyer magazine.*



Patrick T. Zomer is a member of our business law and regulated entities teams. He helps clients of all sizes navigate business and corporate laws and obtain or facilitate financing. To learn more about Pat, visit, LawMoss.com/patrick-t-zomer. He can be reached at 612-877-5278 or Pat.Zomer@lawmoss.com.

ALERT:**State Initiatives Underway to Address Retirement Readiness**

By Susan D. Lenczewski | 612-877-5250 | Susan.Lenczewski@lawmoss.com

As the press and federal agencies continue to decry the state of America's retirement savings readiness, states are beginning to explore solutions. Illinois is the first state to enact legislation that would require all employers, whether for-profit or non-profit companies, to adopt a retirement savings arrangement for employees. An employer is subject to the new requirement if it employs no fewer than 25 employees in Illinois in the prior calendar year, has been in business at least 2 years, and does not offer any retirement plan.

The new law, called the "Illinois Secure Choice Savings Program Act," would require employers to establish a "payroll deposit retirement savings arrangement" by which employees would contribute a percentage of their pay, by payroll deduction, and elect an investment option. The deduction would be done on an after-tax basis, similar to a Roth IRA. Employees can opt out of the program on an annual basis. The funds deducted would be transferred to a trust established under the Act and would be accounted for as individual accounts. Employers are not required to contribute to the program.

An employer who fails to enroll an employee in the program within nine months of implementation will be subject to a penalty of \$250 per employee for each calendar year or portion of the year during which the employee was neither enrolled in the program nor opted out of it. If the failure continues into another calendar year, the penalty increases to \$500 per employee.

The program is scheduled to be implemented within 24 months of January 4, 2015, the effective date of the Act, but can be delayed for lack of funding or if the program conflicts with federal law.

Similar legislation was introduced in the Minnesota Senate in February 2014, but did not include an employer mandate. The legislation, called the "Minnesota Secure Choice Retirement Savings Plan Establishment," did not make its way out of committee. Although no similar legislation has been introduced in the current session, one can expect the legislature to address the issue in future sessions.

This is positive news for employees: Even though the new law and similar proposals in other states have long implementation time frames and a few hurdles to overcome, we expect that these state initiatives will provide employees with greater access to retirement savings alternatives to improve retirement readiness.

Moss & Barnett's Spirit of Giving

While we pursue our professional goals, we also endeavor to improve the quality of life in our communities and around the world. Members of the Moss & Barnett team apply the same dedication to service by making significant contributions of their time and resources to charitable organizations important to all of us.

Breaking Free

Every year, Breaking Free helps hundreds of women and girls escape systems of prostitution and sexual exploitation through advocacy, direct services, housing, and education. This past holiday season, the firm's women attorneys once again "adopted" two Breaking Free families for the holidays. Our attorneys supplied gifts and gift cards according to each family's "wishes," helping to ensure that the women and their families had a joyful holiday. In addition, members of the firm continue to donate various daily items in need such as pots and pans, silverware, and women and children's clothing. To learn more, visit breakingfree.net.



Left to right: Susan Lenczewski, Shannon Bixby-Pankratz, Susie King, Jana Aune Deach, Taylor Tarvestad-Sztainer, Terese West, Cindy Ackerman, Marsha Stolt, Jennifer Reussé, Susan Rhode, Nancy Kiskis, Sarah Doerr, and Fran Kern (not pictured: Kathy Allen, Caroline Bussey, Beth Gliedman, Betsy Kiernat, and Cecilia Ray)

Richard J. Johnson and Brian T. Grogan Re-elected to Board of Directors

Rick Johnson and **Brian Grogan** were recently re-elected to three-year terms as members of our Board of Directors. Rick serves as the firm's Chief Financial Officer and is chair of our regulated industries team. Brian serves as the firm's Secretary, chairs the firm's communications and technology teams, and is a member of the firm's regulated industries team. They will each continue practicing law on a full-time basis in addition to handling their management responsibilities. Rick and Brian join returning directors **Kevin Busch**, **Tim Gustin**, **Dave Senger**, and **Tom Shroyer**.



Left to Right: Rick Johnson and Brian Grogan

Christopher Ferreira Elected a Shareholder of Moss & Barnett



Chris Ferreira

We are pleased to announce that **Christopher Ferreira** has been elected a shareholder of the firm. Chris is a member of the firm's banking and commercial transactions, business law, creditors' remedies and bankruptcy, and real estate teams. He represents financial institutions serving community, regional, and national markets, as well as credit unions and securitized investors, and regularly handles all aspects of major commercial and industrial financing. Chris received his law degree from William Mitchell College of Law and his B.S., *magna cum laude*, from Northeastern University.

Moss & Barnett is Pleased to Recognize the Following Team Members:

Taylor D. Tarvestad-Sztainer, an attorney with our accountant law, employment law, and litigation teams, was selected to serve as Co-Chair of the 2014 Mid-Minnesota Legal Aid One Hour of Sharing Associates' Campaign. Legal Aid provides free legal services in civil matters to seniors and low-income people in its 20-county service area, and to people with disabilities statewide. Because the need for legal services has always exceeded the funds available to provide them, in 1981, supporters of Legal Aid established "The Fund," which is dedicated to raising money for Legal Aid from members of the legal community. The Fund's One Hour of Sharing Campaign encourages all lawyers in Hennepin County to contribute the value of one billable hour, or more, to The Fund. In 2003, a group of associate attorneys established the Associates' Campaign and reached out to associates throughout Hennepin County in conjunction with the One Hour of Sharing Campaign. The Associates' Campaign has grown, with funds raised increasing from \$18,500 in 2003-2004 to over \$105,000 in recent years.



Taylor Tarvestad-Sztainer

As Co-Chair, Taylor works with the other Co-Chairs to organize the Campaign, recruit firm captains from over 60 local law

firms (who advocate for Legal Aid internally within their own firms), and disseminate information about Legal Aid and the important role the Campaign plays in providing quality legal representation to Minnesotans who could not otherwise afford it. In addition to serving as Co-Chair of the Campaign this year, 2014 marks the third year that Taylor has served as Moss & Barnett's firm captain. To learn more about Legal Aid and The Fund, visit mylegalaid.org.

Shelly A. Doerr, a paralegal with our wealth preservation and estate planning team, has been appointed to serve as Co-Chair of the Probate and Tax Law Section of the Minnesota Paralegal Association for 2015. The MPA is a voluntary, non-profit professional association comprising paralegals living or working in the State of Minnesota who are dedicated to fostering the growth and development of the paralegal profession. Shelly's more than 30-year career in the legal industry, as an administrative assistant and paralegal, strengthens the services and cost-effective results the firm delivers to its clients. To learn more about the MPA, visit www.mnparalegals.org.



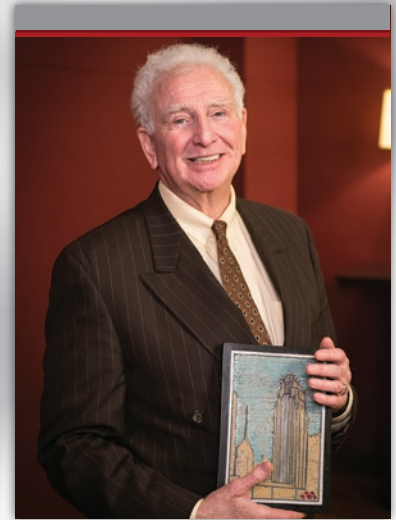
Shelly Doerr

Best Wishes and Congratulations to Edward L. Winer

Ed Winer retired from the practice of law at year's end, following a career that spanned more than four decades – all of them at Moss & Barnett. A highly respected family law attorney, Ed earned recognition for excellence from the American College of Family Trial Lawyers, which elected him a diplomate, and from *Worth* magazine as among "The Top 100 Attorneys in the United States." Based on three annual surveys, he was listed by *Worth* magazine as one of the top 10 divorce lawyers in the country. Ed was listed in every edition of *Best Lawyers in America*® since its inception in 1983 and in all editions of *Minnesota Super Lawyers* since 1991.

Ed was the long-serving chair and co-chair of Moss & Barnett's family law team. He is a Fellow of the American Academy of Matrimonial Lawyers and served as president of its Minnesota Chapter. Ed served as a frequent legal author, lecturer, and media commentator on a number of topics, including premarital and postmarital agreements, and has been quoted in numerous national and international media concerning family law.

Ed serves as a remarkable example of life-long dedication to the practice of law. We salute him for his many years of outstanding service to our firm, our clients, and our community – and we wish him many long and happy years of his well-deserved retirement!



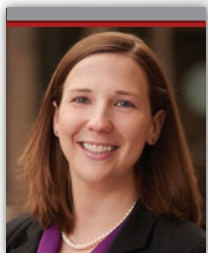
Ed Winer

Five New Attorneys Have Joined the Team



Aaron Dean

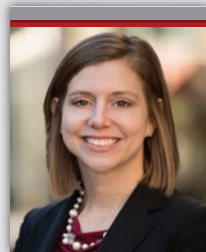
Aaron A. Dean has joined the firm's litigation team. Aaron's 20-year legal career spans all facets of the construction industry. He has a contractor side construction law practice, representing general contractors, subcontractors, and suppliers. In addition to his role as legal advisor, Aaron is a sought-after construction industry thought leader, speaking frequently at key trade events on timely construction topics and serving as an instructor for national and local contractor trade groups. He received his J.D., *summa cum laude*, from William Mitchell College of Law and his B.A. from Lafayette College.



Fran Kern

Frances L. Kern has joined the firm's accountant law and litigation teams. Fran assists businesses and individual clients with their litigation needs, including commercial and business disputes, professional liability claims, personal torts, and a variety of other areas. Prior to joining Moss & Barnett, Fran clerked at the Minnesota Court of Appeals and at the

United States District Court for the District of Minnesota. She received her J.D., *summa cum laude*, from William Mitchell College of Law, her M.A., from the University of California, Los Angeles, and her B.A., *magna cum laude*, from Carleton College.



Susie King

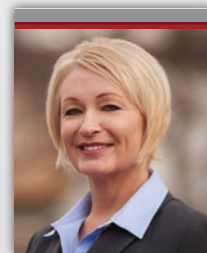
Susan A. King has joined the firm's wealth preservation and estate planning team. Susie focuses her practice in the areas of estate planning, probate, trust, guardianship/conservatorship, and elder law. She is a frequent speaker and has contributed to published works on an array of elder law issues. In 2013, Susie was appointed by the Fourth Judicial District Court to the Hennepin County Guardianship/Conservatorship Attorney Panel. She received her J.D., *cum laude*, from William Mitchell College of Law and her B.A. from the University of Kansas.

Marc L. Kruger has joined the firm's real estate team working primarily in the infrastructure practice group solving legal problems for the nation's largest wireless communications provider. Marc is certified by the Minnesota State Bar Association as a Real Property Law Specialist and brings more than



Marc Kruger

35 years of experience to his practice of commercial real estate law. Marc received his J.D. from Stanford University School of Law and his B.A., with highest honors, from Hamline University.



Cheryl Novak

Cheryl L. Novak has joined the firm's real estate and banking and commercial transactions teams, working primarily in the firm's national multifamily agency lending practice group, where she represents lenders who originate and sell multifamily loans to the Federal Home Loan Mortgage Corporation (Freddie Mac). Cheryl brings 25 years of experience in matters related to commercial real estate sales and acquisitions, contract negotiations, legal consulting, and business management. She received her J.D., *cum laude*, from Western New England College of Law, and her B.A., *summa cum laude*, from Our Lady of the Elms College.

Property Values Are Recovering – How Does That Affect Your Property Taxes?

By Michael T. Etmund | 612.877.5309 | Mike.Etmund@lawmoss.com

Although the exact time period is debatable, it is generally accepted that the residential and commercial real estate markets declined through 2011 before starting a gradual recovery in recent years. Since 2012, the number of sales and average sale prices of residential and commercial properties in Minnesota have continued to steadily increase. New construction has also seen a recent resurgence. Even with this positive outlook, many industry experts believe it will still take another five years before the real estate markets have fully recovered from the Great Recession.

In conjunction with the real estate market recovery, property owners are seeing an increase in the assessed valuations for many properties. The assessed valuations are used to determine the property tax basis for each property as part of total government budgeting. The Minnesota Department of Revenue estimates that property taxes could rise by an average of 4% in 2015. Due to a combination of escalating property tax rates and steady increases in assessed property valuations, property owners are at risk of substantial increases in property taxes payable.

As with the economic downturn, the market upturn signifies an opportunity for re-evaluation of the assessed valuation of your property. An inflated assessed valuation will magnify the impact of tax rate increases. Although many properties have increased in value, it should not be assumed that every property has followed that trend. The market value of your property may not reflect external market conditions. Despite some market recovery, there remain several factors that could adversely influence the market value of a specific property and that could easily be overlooked when a standardized increase is applied to all properties in a given area. For residential property, the overall condition and need for remodeling could be a determinative factor, especially in areas with significant new construction or updating of many homes. A sales comparison may unfairly increase the value of homes that, in fact, are not comparable.

For commercial property, the condition of the property, occupancy rates, and lease rates all impact the market valuation. An assessor may not be privy to detailed information about a specific property unless it is provided by the property owner.

In March of every year, property owners receive a notice containing the estimated market value of their property for the current year and previous year. If you disagree with the estimated assessed market valuation of your property for the current year, there is still time to initiate an appeal of that valuation or other property issue before turning to the Minnesota Tax Court. Typically, an appeal involves an appearance before a City/County Board of Appeal and Equalization and is usually finalized by early fall of each year. If not satisfied with the decision on appeal, a property owner may still file an appeal with the Minnesota Tax Court before the filing deadline.

In late November or early December of each year, property owners receive a “proposed” tax statement based on the estimated market value that indicates the anticipated taxes payable on the property based on governmental budgets for the upcoming year. At that point, the assessed valuation used to determine those taxes may only be challenged by filing an appeal with the Minnesota Tax Court. You have until April 30th of the year the tax becomes payable to appeal the valuation (or classification) to the Minnesota Tax Court. For example, an appeal of the 2014 valuation must be filed before April 30, 2015. All property taxes must continue to be paid in a timely fashion while an appeal is pending. Depending on the nature of the appeal and the volume of appeals in a specific county, it may take several months or even years to resolve an appeal.

There are several considerations that can assist you in determining whether to appeal your property taxes:

1. Compare the estimated market value of your property with that of other similarly situated properties in your area. The

estimated market value of each property is available online for nearly every county in Minnesota.

2. Review recent sales information from nearby properties that are comparable with your property. This is sometimes more beneficial for residential property as there tends to be more information available concerning such properties.
3. Research the classification of your property to make certain it is accurate.
4. Set up an appointment with the assessor to discuss your property valuation. The assessor can provide information as to how the value and classification of the property was determined.
5. Take advantage of the opportunity to appeal to the Board of Appeal and Equalization before heading to the Minnesota Tax Court. Nearly every city has such a board. If you are not satisfied by the result at the city level, you can appeal to the County Board of Appeal and Equalization. The appeal will need to be completed as soon as possible to avoid missing the April 30th deadline for appealing to the Minnesota Tax Court, if you are unsatisfied with the result at local levels. You always have the option of appealing directly to the Minnesota Tax Court.

For further information regarding property tax appeals, visit the website of the city or county assessor where your property is located (for Minneapolis, the website is <http://www.ci.minneapolis.mn.us/assessor/>) or contact your attorney at Moss & Barnett.



Michael T. Etmund represents clients in the areas of property tax appeals, creditor’s remedies, collections, and contractual disputes. Mike is also a member of ACA International Members’ Attorney Program (MAP), which offers members resources to help defense, collection, and in-house attorneys enhance representation to ACA members. To learn more about Mike, visit LawMoss.com/michael-t-etmund. He can be reached at 612.877.5309 or Mike.Etmund@lawmoss.com.

Jana Aune Deach Named 2014 Paul Van Valkenburg Community Service Award Recipient

Moss & Barnett was pleased to honor **Jana Aune Deach**, a member of our family law team, as the 2014 recipient of the Paul Van Valkenburg Community Service Award. Moss & Barnett established the Paul Van Valkenburg Community Service Award* in 2001. It is awarded annually to a Moss & Barnett team member in recognition of his or her outstanding volunteer contributions to the community. The award is named after our now deceased colleague, Paul Van Valkenburg, whose volunteer career set an example of the spirit of service and dedication that we seek to promote and recognize throughout our firm.

Jana has served the public in one form or another in a variety of ways and over many years. She serves on the Board of Directors of Mindekirken Foundation, raising capital through fundraising to support Mindekirken, the Norwegian Lutheran Memorial Church. The Church, founded by Norwegian immigrants in 1922, serves as the spiritual center for the Norwegian American Community and is the only church in America that still uses Norwegian as the primary liturgical language. Among other things, the Church sponsors the annual Liev Eriksson International Festival, celebrating Nordic cultural roots in the United States with concerts and classes in Norwegian language and culture. Jana also serves as President of the Congregation.

Since 2012, Jana has served as the Chairperson for the Dignity and Empowerment Committee of the Oslo Center for Peace and Human Rights. Jana was instrumental in organizing the seminar *Dignity & Empowerment: Women as the Keys to Global Food Security*, which brought together an international panel to promote the United Nations' goal of empowering women, through agriculture and economic programs, to be part of the solution to world hunger.

Jana contributes her energy to a number of other charitable organizations, including **Breaking Free**, a Minnesota-based, nationally recognized non-profit agency that helps women escape prostitution and sexual exploitation through advocacy, housing, education, and other services. For the past two years, Jana, along with Shannon Bixby-Pankratz, has coordinated the holiday adopt-a-family program by the women attorneys of Moss & Barnett. In addition, she coordinates collecting donations to Breaking Free.

Jana also helps several organizations, including **Loaves & Fishes**, **Feed My Starving Children**, and the **Ronald McDonald House**, to fulfill basic needs, such as food and housing.

Jana contributes so much time and energy to fundraising and other volunteer activities at **Trinity School in Eagan** that, in reviewing a list of her contributions, the volunteer coordinator at the school thought it must include typographical errors. There were no errors on the list: **Jana is a dynamo, whose capacity for giving seems boundless.**

Past recipients of the Paul Van Valkenburg Service Award include **Chuck Parsons** (retired), **Kevin Busch**, **Cheryl Riggs**, **Bill Haug** (retired), **Jennifer Reussé**, and **Betsy Kiernat**. We are proud to recognize Jana and our other award recipients for their willingness to be a part of organizations focused on improving the lives of others.

* The Paul Van Valkenburg Service Award includes a cash donation by the firm to the recipient's chosen charity, a special recognition ceremony, and a commemorative piece of pottery created by Minnesota artist, Steve Hemmingway. For 2014, the firm's donation was made to Feed My Starving Children.



Jana Aune Deach



The firm acquired a special piece of pottery, created by Minnesota artist Richard Bresnahan and Saint John's Pottery, to commemorate the award. The pottery piece is displayed in our reception area on a wooden stand with a metal plaque on which are engraved all of the names of the award recipients.

Minnesota's Revised Limited Liability Company Statute - Continued from Page 1

to define their relationship and direct the operation of the LLC, with certain exceptions and restrictions.

- **Voting** – The default rule under 322B is that the voting power of members is proportional to the value of their respective capital contributions. Under the New Act, voting is “per capita,” which means that each member will have equal voting rights in the management and conduct of the LLC’s activities unless the operating agreement provides otherwise. There is, however, already a bill of proposed amendments (which will be considered in the current Minnesota legislative session) that would grandfather in the current voting allocation provisions for an existing LLC formed before August 1, 2015.
- **Standards of Conduct and Other Duties** – Those in charge of managing an LLC — whether members, managers, or governors — have a “duty of loyalty” and a “duty of care” to the LLC. These duties may not be waived under 322B. The fiduciary duties of loyalty and care still apply under the New Act to those with management responsibility and cannot be eliminated. However, they may be modified or limited to the extent not “manifestly unreasonable.” The additional requirement of “good faith and fair dealing” among members also cannot be eliminated. However, the operating agreement can “prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing.”
- **Distributions** – Under the New Act, unless the operating agreement provides otherwise, the default rule is that operating distributions are per capita rather than proportionate to capital contributions (as is the case in 322B) and must be distributed in equal

shares among the members. However, a pending bill of proposed amendments would grandfather in the provision for distributions in proportion to capital contributions for any LLC formed before August 1, 2015. Upon dissolution and wind up of the LLC, unless the operating agreement provides otherwise, the New Act requires that distributions first be made to each member in an amount equal to the value of any unreturned contributions, and then in equal shares (per capita) among the members. Owners who currently receive distributions based upon their respective capital contributions to an LLC formed prior to August 1, 2015, will want to be sure that, prior to January 1, 2018, the LLC’s operating agreement expressly maintains proportional distributions based on those contributions. Otherwise, the New Act will require that distributions be made on a per capita basis.

- **No Preemptive Rights** – Under 322B, the members of an LLC automatically have preemptive rights (the right of a member to maintain his/her proportional ownership of the LLC) unless the governing documents or board provide otherwise. However, the New Act does not address preemptive rights. If the members wish to maintain their preemptive rights under the New Act, this will need to be specifically addressed in the operating agreement.
- **No Dissenters’ Rights** – Under 322B, a member may dissent and obtain payment for the fair value of the member’s interest in an LLC in the event of certain company actions. The New Act does not provide for statutory dissenters’ rights or appraisal rights. Accordingly, the current statutory rights of dissenting members will be eliminated on January 1, 2018, with the expiration of 322B. LLC owners should consider whether they

wish to retain dissenters’ rights and make plans to expressly include such rights in the LLC’s operating agreement.

- **“Dissociation” of a Member** – The New Act allows members to dissociate (resign) from the LLC “at any time, rightfully or wrongfully.” However, the New Act provides no obligation for the LLC or other members to buy out the dissociating member, nor does it trigger a judicial dissolution of the LLC.
- **Derivative Claims and Direct Action by a Member** – 322B provides members with the right to file a derivative action on behalf of an LLC alleging certain kinds of misfeasance on the part of the LLC’s management. However, 322B does not provide a direct right of action against the LLC on behalf of a member. Under the New Act, a member can bring a direct action for injuries to that member as well as a derivative action to enforce a claim on behalf of an LLC.
- **Merger, Conversion, and Domestication** – The New Act has comprehensive provisions authorizing LLCs to merge or convert into another type of entity and also authorizes other types of entities to merge and convert into an LLC. The default rule for each type of transaction requires there be unanimous approval of all members unless the operating agreement provides otherwise. The New Act also authorizes a Minnesota LLC to domesticate in another state and also authorizes a foreign LLC to domesticate in Minnesota.
- **Judicial Intervention and Oppressive Conduct** – 322B has extensive provisions detailing when and how a court may become involved in disputes among members, what considerations it may take into account, and how it may go about imposing equitable remedies, including involuntary dissolution

or forced buy-outs. The New Act is more expansive and permits a court to order dissolution or some remedy shy of dissolution (including a forced buy-out).

- **Authority to Bind LLC and Statements of Authority** – Unlike under 322B, the New Act permits an LLC to file a “statement of authority” with the Minnesota Secretary of State to provide notice as to which members or managers have authority to transfer real estate or bind the LLC to persons that are not members. The statement can also describe any limitations on the authority of the person to enter into certain transactions. This option allows LLCs to provide clarity to its members and others as to which members or managers have authority.

- **Shelf LLC** – The New Act includes a reference to a “Shelf LLC,” which is what exists after the organizer has filed the articles of organization and before the LLC has any members. A Shelf LLC is typically created in anticipation of a pending deal or while prospective members negotiate and document the LLC’s terms of membership, governance, and operations. However, until such time that it “has at least one member,” the Shelf LLC “lacks the capacity to do

any act or carry on any activity” except: making certain filings with the Minnesota Secretary of State, admitting a member, and/or dissolving.

Considerations for Our Clients

If you have an interest in an existing LLC that is organized under 322B, you should plan to review its structure and governing documents to determine what changes may be needed in order to bring your LLC into compliance with the New Act starting in 2018. The governing documentation for some LLCs will require little or no modification, while the need for modification will be greater in other situations. In certain circumstances, including in the event of a merger or recapitalization, members under existing LLCs may desire to elect into the New Act early to ensure that only one set of statutes (*i.e.*, the New Act) will apply.

As noted, there is already a proposed bill for the next Minnesota legislative session that would make both technical corrections and substantive changes to the New Act, including grandfathering in the existing voting allocation and distribution provisions in 322B. Additional amendments may be proposed, so it will be important to monitor for legislative adoption of any amendments and to consider their effect on LLCs, whether

formed before or after the August 1, 2015 effective date of the New Act.

For additional information on the New Act, including information on additional changes under the New Act not discussed here, or for assistance in assessing why you may want to consider an early adoption of the New Act, contact your attorney at Moss & Barnett.



Mark B. Peterson is a shareholder and a member of our business law team. He assists companies and owners with a wide variety of business matters, including entity formation, governance, compliance matters, negotiation and documentation of transactions, mergers and acquisitions, real estate/leasing, and litigation. To learn more about Mark, visit LawMoss.com/mark-b-peterson. He can be reached at [612.877.5428](tel:612.877.5428) or Mark.Peterson@lawmoss.com.



Joshua A. Bobich is a member of our business law; mergers, acquisitions, and corporate finance; and technology teams. He focuses his practice on achieving business-efficient legal solutions for privately held and family-owned entities in a variety of transactional matters, with particular experience in the industries of technology, manufacturing, real estate, retail, and hospitality. To learn more about Joshua, visit LawMoss.com/Joshua-a-bobich. He can be reached at [612.877.5288](tel:612.877.5288) or Joshua.Bobich@lawmoss.com.

Shannon M. Bixby-Pankratz is AFCC-MN “Member in the Spotlight”

Shannon Bixby-Pankratz, a member of our family law team, is the current “Member in the Spotlight” of the Association of Family and Conciliation Courts-Minnesota Chapter (AFCC-MN).

AFCC-MN is an interdisciplinary and diverse association of professionals dedicated to improving the lives of children and families through the resolution of family conflict. As part of our family law team, Shannon represents clients in the Twin Cities area and Greater Minnesota facing a variety of family law issues. Shannon is entering her fourth year of co-chairing the AFCC-MN Sponsorship Team. Every year, the number of sponsors and the amount of money raised to support AFCC-MN programming has increased. Last year, the AFCC-MN Sponsorship Team raised over \$10,000, which provided opportunities for the Chapter to offer scholarships and memberships, and for students to participate in programs at no cost. To learn more, visit afccmn.org.



Shannon Bixby-Pankratz

Moss & Barnett Named a “Best Law Firm” For 2015

U.S. News – Best Lawyers has released their 2015 “Best Law Firms” rankings – marking the fifth edition of this highly anticipated annual analysis – and we are very pleased to report that Moss & Barnett has once again been named a “Best Law Firm.”

Firms included in the 2015 “Best Law Firms” list are recognized for professional excellence with persistently impressive ratings from clients and peers. The rankings are based on a rigorous evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms as part of the formal submission process. Clients were asked to provide feedback on firm practice groups concerning expertise, responsiveness, understanding of the business and its needs, cost-effectiveness, civility, and whether they would refer another client to



the firm. Lawyers also voted on expertise, responsiveness, integrity, cost-effectiveness, whether they would refer a matter to the firm, and whether they consider the firm a worthy competitor.

Achieving a tiered ranking signals a unique combination of quality law practice and

breadth of legal expertise. Ranked firms, presented in tiers, are listed on a national or metropolitan scale. Receiving a tier designation reflects the high level of respect a firm has earned among other leading lawyers and clients in the same communities and the same practice areas for their abilities, their professionalism, and their integrity. The 2015 rankings are based on the highest number of participating firms and highest number of client ballots on record.

We would like to thank our many clients who took the time to participate in this survey on our behalf. The attorneys, paralegals, and administrative and support staff at Moss & Barnett are committed to providing you with effective, high quality, timely, and efficient solutions to your legal needs. It is our honor to offer you the quality service that you have every right to expect from your law firm.

Moss & Barnett Congratulates its “Lawyers of the Year” For 2015



Mike Bradley



Kevin Busch

Best Lawyers® has named **Michael J. Bradley** as the Minneapolis *Best Lawyers* Administrative/Regulatory Law “Lawyer of the Year” for 2015, and **Kevin M. Busch** as the Minneapolis *Best Lawyers* Financial Services Regulation Law “Lawyer of the Year” for 2015.

Best Lawyers began designating “Lawyers of the Year” in the United States in high-profile legal practice areas in conjunction with its 15th edition (2009). Only a single lawyer in each practice area and designated metropolitan area is honored

as “Lawyer of the Year,” making this accolade particularly significant. Lawyers who are honored as “Lawyer of the Year” are selected based on particularly impressive voting averages received during exhaustive peer review assessments conducted with thousands of leading lawyers each

year. Designation as “Lawyer of the Year” reflects the high level of respect a lawyer has earned among other leading lawyers in the same communities and the same practice areas for his or her abilities, professionalism, and integrity.

Mike’s practice has focused on utility regulation for the past 30 years. He also has extensive experience in communications law issues. Mike has been listed multiple times in *The Best Lawyers in America*® and *Super Lawyers*®, and, in addition to being

named a *Best Lawyers* 2015 Minneapolis Administrative/Regulatory Law “Lawyer of the Year,” he was named a *Best Lawyers* Minneapolis Energy Law “Lawyer of the Year” in 2012. His clients have praised Mike as a “responsive, knowledgeable, and practical” resource for legal support and strategic recommendations.

Kevin serves as the firm’s Chief Operating Officer, chairs the firm’s banking and commercial transactions team, and is a member of the firm’s business law and mergers, acquisitions, and corporate finance teams. Kevin’s practice focus is primarily on the structuring, restructuring, and documentation of secured and unsecured commercial loans, real estate loans, and letter of credit transactions. He also handles court proceedings when such transactions lead to litigation. Kevin has been listed multiple times in *The Best Lawyers in America* and *Super Lawyers*.

Congratulations, Mike and Kevin, on this well-deserved recognition!

Bold. Decisive. Results.

Moss & Barnett Congratulates its Attorneys Included in 2015 *Best Lawyers*

Moss & Barnett is pleased to congratulate its attorneys who were included in *The Best Lawyers in America*® for 2015:

- **Cindy J. Ackerman** – Trusts and Estates
- **Yuri B. Berndt** – Tax Law and Tax Litigation & Controversy
- **Michael J. Bradley** – Administrative/Regulatory Law and Energy Law
- **Kevin M. Busch** – Banking and Finance Law, Financial Services Regulation Law, Banking & Financing Litigation, and Securitization and Structured Finance Law
- **Jana Aune Deach** – Family Law
- **Richard J. Johnson** – Administrative/Regulatory Law and Energy Law
- **Richard J. Kelber** – Corporate Law and Mergers & Acquisitions Law
- **Peter A. Koller** – Appellate Practice
- **Susan C. Rhode** – Family Law and Family Law Mediation
- **James A. Rubenstein** – Bankruptcy Litigation
- **Thomas J. Shroyer** – Commercial, Intellectual Property, and Securities Litigation and Professional Malpractice Law-Defendants
- **James J. Vedder** – Family Law
- **Jeffrey L. Watson** – Real Estate Law

Best Lawyers bases its selection entirely on peer-review, designed to capture, as accurately as possible, the consensus opinion of leading lawyers about the professional abilities of their colleagues within the same geographical and legal practice areas. *Best Lawyers* then compiles lists of outstanding attorneys and publishes an annual referral guide, *The Best Lawyers in America*®.



Cindy J. Ackerman



Yuri B. Berndt



Michael J. Bradley



Kevin M. Busch



Jana Aune Deach



Richard J. Johnson



Richard J. Kelber



Peter A. Koller



Susan C. Rhode



James A. Rubenstein



Thomas J. Shroyer



James J. Vedder



Jeffrey L. Watson

To learn more about Moss & Barnett, our attorneys, and our various practice areas, please visit our website at LawMoss.com.



IMPORTANT NOTICE

This publication is provided only as a general discussion of legal principles and ideas. Every situation is unique and must be reviewed by a licensed attorney to determine the appropriate application of the law to any particular fact scenario. If you have a legal question, consult with an attorney. The reader of this publication will not rely upon anything herein as legal advice and will not substitute anything contained herein for obtaining legal advice from an attorney. No attorney-client relationship is formed by the publication or reading of this document. Moss & Barnett, A Professional Association, assumes no liability for typographical or other errors contained herein or for changes in the law affecting anything discussed herein.



Did You Know?

Shannon Bixby-Pankratz, an attorney with our family law team, volunteers her free time on the weekends to a local animal rescue organization located in Minnetonka, Minnesota, called Secondhand Hounds.

Secondhand Hounds is a non-profit animal rescue, founded in July of 2009. The organization provides safe shelter, proper veterinary care, and daily necessities for animals at risk, while working hard to find each a permanent, loving home. In addition, Secondhand Hounds provides education on overpopulation, breed discrimination, and other issues. Secondhand Hounds rescues dogs from high-kill shelters around the Midwest and southern states. Rescued dogs stay in the care of an extensive network of foster homes while they await adoption into their new "forever" homes. To date, Secondhand Hounds has found loving homes for nearly 6,500 animals!

Shannon volunteers her time to run Secondhand Hounds' office on Saturday mornings. She also helps with intake of the rescue dogs and participates nearly every weekend in transport efforts to bring the animals from high-kill shelters to the safety of Secondhand Hounds. In addition, Shannon donates time to the rescue's annual silent auction and fundraising events. To learn more, visit secondhandhounds.org.



Shannon Bixby-Pankratz with a "Secondhand Hound," that has since been adopted.



Secondhand Hounds rescued dog, now living at a "forever" home.