

**Members of Virginia LLCs do not owe common law
or statutory fiduciary duties to each other.**

Two Virginia cases have held that if an LLC's articles of organization and operating agreement are silent as to fiduciary duties among members, the members do not owe any fiduciary duties to each other.

In *WAKA, LLC v. Humphrey*, 73 Va. Cir. 310 (2007), Humphrey asserted claims against certain other members for, among other things, breach of fiduciary duty. The members demurred as to this claim and contended that, as managers, their sole fiduciary duty is to the LLC as an entity, not to Humphrey as an individual member. The question, therefore, was whether member-managers owe fiduciary duties to the LLC's members in addition to the fiduciary duty they owe to the LLC.

The LLC's articles of organization and operating agreement were silent regarding fiduciary duties among members. In its review of Article 5, "Relationship of Members to Each Other", §§ 13.1-1022-1028, the court noted that the Virginia Code was also silent on this issue. Humphrey argued that because a member-managed LLC operates essentially as a general partnership, LLC member-managers owe common law fiduciary duties to LLC members.

The court concluded that the Code's silence about fiduciary duties among LLC members, particularly in light of the express provisions in the Partnership Act about fiduciary duties to the other partners, was intentional and dispositive. The court noted that the General Assembly's decision to omit similar provisions in the LLC Act was clear evidence of its intent that LLC members owe no fiduciary duty to other LLC members.

In the second case, *Remora Investments, LLC v. Orr*, 74 Va. Cir. 358 (2007), the issue was whether an LLC member could bring a direct action, as opposed to a derivative action, against the manager for breach of fiduciary duty.

The LLC's Operating Agreement did not provide that the manager owed any fiduciary duties to the members themselves. Furthermore, the court found that the Virginia Code does not differentiate among managers and member-managers with respect to duties a manager owes to the LLC. The court concluded that a claim for breach of fiduciary duty can only be brought against another member or manager of an LLC in a derivative capacity.

These cases should be considered when drafting operating agreements. Disputes between members of LLCs are not uncommon. Depending on your client's expectations with respect to other members, a duty of loyalty provision may help protect your client's interests.

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