



# KLF Legal Briefs

## SPECIAL POINTS OF INTEREST:

- LLC's are fast becoming the preferred business structure for many small businesses.
- Changes to PA's Power of Attorney Statute went into effect January 1, 2015.
- Jerome Bettis HOF Crunch was released to commemorate his Hall of Fame induction.

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## The Importance of an LLC Members' Agreement!

So you and a partner decide to go into business together and form a limited liability company (LLC). You use some online legal service to file your certificate of organization because you are lead to believe through slick advertising that cheaper is better. Maybe you also get some form of stock operating agreement out of the deal that isn't even tailored to your type of partnership.

Over the years the business is doing great and growing significantly. The opening of additional locations is being planned. And a nice retirement looks like a given a few

more years down the road. Then you get a call in the middle of the night that your partner of the past five years suffered a massive heart attack and died. Shortly after the funeral you get a call from the attorney handling your deceased partner's estate informing you that he left his 50% of the business to his wife, someone who you don't get along with. You are now faced with being her partner in a business she knows nothing about. Could this have been avoided?

The answer is yes. Had you and your former partner consulted

with an experienced business attorney, you more than likely would have been advised that you also needed a Members' Agreement for just such a contingency as the death of a partner. A properly drafted Members' Agreement would contain certain "Buy/Sell" and "Right of First Refusal" provisions that would permit the surviving partner to have the first option to buy out the deceased partner's membership interest in the LLC. And the cost of the buy-out could have been underwritten through life insurance policies taken out on each partner. As a business attorney, I always recommend a Members' Agreement to my multi-member LLC clients.

## Changes to PA's Power of Attorney Statute!

On January 1, 2015 sweeping changes to Pennsylvania's Durable Power of Attorney (POA) statute went into effect. Known as Act 95, the intent of the changes appears to be to curb abuses of POA's by agents. This point is driven home as we continue to read about high profile agents facing both criminal and civil lawsuits over alleged abuses of POA's. The purpose of this article is not to give an exhaustive summary of all of the changes that went into effect this year, but to highlight some of the more sweeping changes.

One of the most important changes involves certain powers granted to an agent that may have been presumed under the old law, but now must be expressly authorized in the POA, such as the power to make gifts to third parties; the power to add names of others to the principal's assets; the power to select and change beneficiaries; the power to delegate authority; the power to create, amend and revoke lifetime trusts; the power to waive certain beneficiary or survivor rights of the principal; the power to exercise the principal's fiduciary powers; and the power to disclaim property.

The principal's "reasonable expectations" must now also be taken into account and carried out by the agent so long as the agent has actual knowledge of such expectations. In addition, the principal can now specify in the POA when records of the agent's transactions should be disclosed and to whom such records should be disclosed.

What was once considered a "one size fits all" document is now a complicated but important part of every estate plan that requires the careful drafting skills of an experienced attorney.



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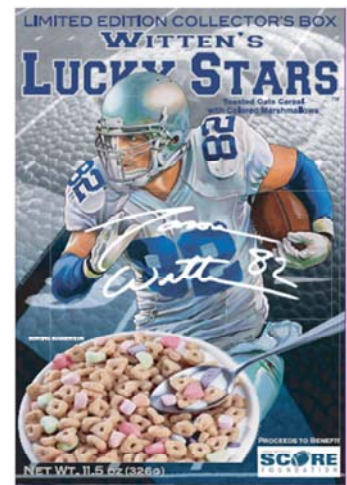
The Koeberle Law firm is a boutique firm catering to the legal needs of both small businesses and individuals. We concentrate our practice in the following areas:

- Small Business Representation
- Estate Planning/Wills & Trusts
- Real Estate Law/Community Association Law
- Sports & Entertainment Law

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## Recent Endorsement Agreements negotiated by KLF!

Attorney Brian Koeberle has been busy negotiating a number of sports related endorsement agreements this past summer.



This newsletter is intended for general informational purposes only and is not intended to provide specific legal advice. If you have a specific legal issue or question, you should consult with an attorney licensed to practice law in your state or jurisdiction.