

Alert | Litigation



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Arizona’s New Alternative Business Structures Law Is Alive and Kicking

Now three months into its existence, Arizona’s new Alternative Business Structures law is alive and kicking. At its regular meeting on March 9, 2021, the Committee on Alternative Business Structures recommended approval to the Arizona Supreme Court of its first two ABS initial license applications. The Court approved them just eight days later, on March 17. The new law, which became effective January 1, 2021, thus continues to generate entrepreneurial and investment opportunities relating to the practice of law — and not just in Arizona.

In particular, the Arizona Supreme Court did away entirely with Arizona’s Ethics Rule 5.4, which barred (a) fee-sharing between lawyers and non-lawyers, (b) partnering between lawyers and non-lawyers to practice law, and (c) working in or with a law-practicing entity owned in whole or part by non-lawyers. Simultaneously, it enacted the new law, Arizona Code of Judicial Administration § 7-209, permitting and regulating “Alternative Business Structures,” i.e., law practices owned in whole or in part by nonlawyers.

In permitting nonlawyer ownership of law firms and law practices, Arizona joins

- the District of Columbia, which has permitted non-lawyer ownership for years but with restrictions not present in Arizona’s law,
- New South Wales and Victoria in Australia, which have gradually liberalized non-lawyer ownership laws since the 1990s and, since 2015, permitted the functional equivalent of ABSs,

- England and Wales, which have permitted nonlawyer ownership since 2007, and
- Utah, which began a “sandbox” pilot program just last year.

Other states are considering regulatory changes as well.

Entrepreneurs, investors, and others considering pursuing ABS initial licensure in Arizona confront a multitude of issues to consider, including but not limited to

- Which form of entity or entities to adopt (unlike some other states, LLCs may practice law in Arizona, potentially making the LLC the default choice of ABS entity);
- Whom to designate as the ABS’s “authorized person(s),” “designated principal,” and “compliance lawyer” required under the new law (considering, among other things, the extensive disclosure obligations, akin to character and fitness disclosure for bar admission applicants, for each);
- How to optimally structure ABS operations, as well as frame policies and procedures protecting independence of participant lawyer judgment, client confidentiality, conflicts of interest, and other matters addressed by the rules and regulations, to the satisfaction of the Committee and, ultimately, the Court (these matters drew intense interest from members of the Committee at its March 9 meeting);
- Ethical, other regulatory, and privilege obligations of participating lawyers, whether as owners, workers, or both; whether, if workers, as employees or independent contractors; and whether from inside or outside Arizona; and
- Potential limitations on Arizona-based ABS operations under the law and ethical rules of other states and jurisdictions.

As this list illustrates, optimizing business solutions requires consideration of the law, and its practical application, in multiple dimensions: business/corporate, legal ethics and law of lawyering, administrative law, employment law, and others. Perhaps obviously, interested individuals and businesses likely will benefit from counsel who have knowledge and experience in all these dimensions.

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