

Death and the NJ LLC

by Gianfranco A. Pietrafesa

What happens when a member of a limited liability company (LLC) dies? The New Jersey Revised Uniform Limited Liability Company Act (NJ-RULLCA)¹ provides that death is an event causing a member to become dissociated from the LLC.² An event of dissociation has certain statutory consequences, which, as set forth below, may be changed in an operating agreement.

For clarity, this article focuses on the estate of a deceased member, but the consequences described in this article also apply to the heirs of a deceased member inheriting the deceased member's interest in the LLC.

Equity Interest

The deceased member's equity interest is converted into an economic interest, known as a transferable interest³ under NJ-RULLCA, and the deceased member's estate has the status of a transferee, previously known as an assignee under the repealed statute.⁴ The estate of a deceased member is not admitted as a member of the LLC, except with the unanimous consent of all surviving members.⁵

Distributions

A member's death does not entitle the estate to a special distribution or buyout of the deceased member's interest in the LLC.⁶ Instead, as the owner of a transferable interest, the estate has the right to receive distributions that the deceased member would have received from the LLC, if and when the LLC decides to make such distributions.⁷ The estate will also receive allocations of income and pay taxes on such income. When the LLC is dissolved and wound up (which can be many years after the death of a member), the estate is entitled to receive any capital contributions made by, and not previously returned to, the deceased member, and then a liquidating distribution.⁸

Management

As a dissociated member and transferee, the estate of the deceased member has no right to participate in the management of the LLC.⁹ As a result, the estate

has no right to vote on any matter in or outside the ordinary course of business.¹⁰ Nor does the estate have any fiduciary duties with regard to matters arising and events occurring after the date of death of the deceased member.¹¹ Therefore, the estate (and any other holder of a transferable interest) may, for example, compete with the business of the LLC.¹²

Obligations

Death does not relieve the estate from making capital contributions to the LLC promised but not made by the deceased member, including contributions of money equal to the value of any services the deceased member was required to contribute to the LLC.¹³ Likewise, a member's death does not discharge the estate from any debt, obligation or other liability to the LLC or the other members the deceased member incurred while a member.¹⁴

Information Rights

As a transferee, the estate has no right to receive information about or from the LLC.¹⁵ However, as a dissociated member the estate has a right to information the member was entitled to receive that pertains to the period of time the deceased member was a member of the LLC; provided, however, that the estate seeks the information in good faith and satisfies the statutory requirements imposed on a member seeking information from a manager-managed LLC.¹⁶ In other words, the estate must seek the information for a purpose material to its transferable interest, the written demand must describe with reasonable particularity the information sought and the purpose for seeking the information, and the information sought must be directly connected to such purpose.¹⁷

Further, for purposes of settling the estate, it has the information rights of a current member of the LLC.¹⁸ Presumably this entitles the estate to the information necessary to value the deceased member's interest in the LLC. An LLC may, however, impose reasonable restrictions and conditions on providing information to the estate, such as a confidentiality agreement.¹⁹

Dissolution

In a multi-member LLC, a member's death does not cause the dissolution of the LLC.²⁰ When the LLC does eventually dissolve, the transferee holding the transferable interest received from the deceased member is entitled to an accounting by the LLC from the date of dissolution.²¹ However, this is a limited information right, essentially limited to information about the allocation of net assets among the LLC's creditors, members and transferees.²²

In a single-member LLC, the death of the member is an event of dissolution if the LLC does not have a member for 90 consecutive days.²³ However, the LLC is not dissolved if the estate designates a person (or more than one person) to become a member of the LLC and the person consents to be a member of the LLC.²⁴ Otherwise, the LLC must be dissolved.

Operating Agreement

NJ-RULLCA lists the statutory provisions that cannot be altered or eliminated in an operating agreement.²⁵ By not addressing the foregoing items on the list, NJ-RULLCA implicitly authorizes all of the foregoing statutory default provisions, and their consequences, to be altered by the members in an LLC operating agreement.²⁶ Therefore, for example, the operating agreement may provide for a spouse's (or other heir's) automatic admission as a member, or buy-sell provisions requiring or allowing the estate to sell the deceased member's interest to the LLC and/or the surviving members (as opposed to the estate being a mere transferee). In this regard, the members of an LLC have a great deal of flexibility to use the operating agreement to address the consequences of the death of a member to avoid the statutory default provisions. ■

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Endnotes

1. N.J.S.A. 42:2C-1 *et seq.*
2. N.J.S.A. 42:2C-46(f)(1).
3. N.J.S.A. 42:2C-2 (definition of transferable interest). Note that NJ-RULLCA does not define the entire bundle of LLC rights (e.g., economic, management and information), commonly called an interest, membership interest or LLC interest.
4. N.J.S.A. 42:2C-47(a)(3). See N.J.S.A. 42:2C-2 (definition of transferee).
5. N.J.S.A. 42:2C-31(c)(3). See also N.J.S.A. 42:2C-42(c)(3).
6. N.J.S.A. 42:2C-34(b).
7. N.J.S.A. 42:2C-2 (definition of transferable interest); N.J.S.A. 42:2C-34(a) & (b).
8. N.J.S.A. 42:2C-56(b)(1) & (2).
9. N.J.S.A. 42:2C-47(a)(1); N.J.S.A. 42:2C-42(a)(3)(a).
10. See N.J.S.A. 42:2C-37(b).
11. N.J.S.A. 42:2C-47(a)(2).
12. See N.J.S.A. 42:2C-39(b)(3).
13. N.J.S.A. 42:2C-33(a).
14. N.J.S.A. 42:2C-47(b).
15. N.J.S.A. 42:2C-40(f); N.J.S.A. 42:2C-42(a)(3)(b).
16. N.J.S.A. 42:2C-40(c).
17. See N.J.S.A. 42:2C-40(b)(2).
18. N.J.S.A. 42:2C-44.
19. See N.J.S.A. 42:2C-40(g).
20. See N.J.S.A. 42:2C-48(a).
21. N.J.S.A. 42:2C-44; N.J.S.A. 42:2C-42(c).
22. Uniform Law Commission 2015 Comments to RULLCA Section 502(c).
23. N.J.S.A. 42:2C-48(a)(3).
24. N.J.S.A. 42:2C-31(c)(4).
25. N.J.S.A. 42:2C-11. See also Gianfranco A. Pietrafesa, Non-Waivable Provisions Under the New Jersey Revised Uniform Limited Liability Company Act, *NJSBA Business Law Section Newsletter*, Vol. 41, No. 1 (Aug. 2017).
26. See N.J.S.A. 42:2C-11(b).