

New NJ Rules for LLCs



From the Desk of Harry Frieland, Esq.

If you are an LLC Member, I urge you to study the information below because the new NJ Act could significantly affect you.

If there is more than one member, the majority member(s) should be aware of the new Act. If all members have equal interests irrespective of their capital input, the new Act will have no effect. I would, however, recommend that members of an LLC which is not a single member entity review the Operating Agreement to see that it contains all necessary provisions to protect their respective interests.

On September 19, 2012, new legislation was enacted which replaces the current law on New Jersey limited liability companies (LLC), the New Jersey Limited Liability Company Act. The new law is entitled the New Jersey Revised Uniform Limited Liability Company Act (RULLCA). The Act becomes effective for all new LLC's formed after March 18, 2013 and will cover all New Jersey LLC's as of March 2014.

RULLCA makes a number of changes to the existing law which significantly affects the rules governing the internal structure and operation of an LLC which are usually set forth in the Operating Agreement of the LLC.

Because RULLCA contains many changes to the law governing a New Jersey LLC, the following are certain of the more significant updates and modifications:

1. Duration. RULLCA now provides that an LLC has perpetual life unless the Certificate of Formation states a limited duration. This change makes the LLC similar to the existence of a corporation.

2. Distribution of Profits and Losses. The current law allows for the members to share in profits and losses based upon the value of each member's capital contribution to the LLC. Under RULLCA, members share equally in profits and losses without regard to the value of their respective capital contribution.

3. Operating Agreement. The new law does not require a written Operating Agreement. Operating Agreements will now be permitted to be written, oral, and even implied from how an LLC conducts its business.

4. Withdrawing Member. The former law contained provisions which held that a withdrawing member be entitled to receive the fair value of the member's interest in the LLC upon withdrawal. RULLCA, on the other hand, changes the rights of the withdrawing member and states that the member becomes a "dissociated member" who has no vote or rights in the LLC other than to receive distributions if authorized by the LLC. This provision is designed to protect the LLC so as not to disable the LLC's operations and cash flow just to compensate the withdrawing member.

5. Oppressed Minorities. RULLCA now allows minority members to seek legal relief if the majority in control acts in such a way as to harm the LLC or any minority member of the LLC.

The foregoing is only a brief outline of the changes to New Jersey law governing LLC's. The effect of RULLCA makes it important for new and existing LLC's of more than one (1) member to have a written Operating Agreement in order to avoid any provision of the Act which could adversely affect the intentions of the members when the LLC was formed. It is highly recommended that persons or entities who intend to establish an LLC under New Jersey law or who have an LLC which is currently in existence, to review its Operating Agreement to ascertain if it contains all necessary provisions which conform to the intentions of the members. Any questions regarding the effectiveness of any current or future Operating Agreement should be directed to an attorney or accountant who is familiar with RULLCA and its operating and tax implications.

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