

CHAPTER 276

AN ACT concerning limited liability companies and amending P.L.2012, c.50.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 8 of P.L.2012, c.50 (C.42:2C-8) is amended to read as follows:

C.42:2C-8 Name.

8. Name.

a. The name of a limited liability company shall contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."

b. Unless authorized by subsection d. of this section, the name of a limited liability company shall be distinguishable in the records of the filing office from:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this State; and

(2) each name reserved under section 10 of this act.

c. Furthermore, the name of a limited liability company shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this State, unless the limited liability company has complied with the restrictions.

d. A limited liability company may apply to the filing office for authorization to use a name that does not comply with subsection b. of this section. The filing office shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the filing office to change the noncomplying name to a name that complies with subsection b. of this section and is distinguishable in the records of the filing office from the name applied for; or

(2) the applicant delivers to the filing office a certified copy of the final judgment of a court establishing the applicant's right to use in this State the name applied for.

e. Subject to section 61, the provisions of this act shall apply to a foreign limited liability company transacting business in this State which has a certificate of authority to transact business in this State or which has applied for a certificate of authority.

2. Section 11 of P.L.2012, c.50 (C.42:2C-11) is amended to read as follows:

C.42:2C-11 Operating agreement; scope, function, and limitations.

11. Operating Agreement; Scope, Function, and Limitations.

a. Except as provided in subsections b. and c. of this section, the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under this act of a person in the capacity of manager;

(3) the activities of the company and the conduct of those activities; and

(4) the means and conditions for amending the operating agreement.

b. To the extent the operating agreement does not otherwise provide for a matter described in subsection a. of this section, this act governs the matter.

c. An operating agreement may not:

(1) vary a limited liability company's capacity under section 5 of this act to sue and be sued in its own name;

(2) vary the law applicable under section 6 of this act;

(3) vary the power of the court under section 21 of this act;

(4) subject to subsections d. through g. of this section, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

(5) subject to subsections d. through g. of this section, eliminate the contractual obligation of good faith and fair dealing under subsection d. of section 39 of this act;

(6) unreasonably restrict the duties and rights stated in section 40 of this act;

(7) vary the power of a court to decree dissolution in the circumstances specified in paragraphs (4) and (5) of subsection a. of section 48 of this act;

(8) vary the requirement to wind up a limited liability company's business as specified in subsection a. and paragraph (1) of subsection b. of section 49 of this act;

(9) unreasonably restrict the right of a member to maintain an action under Article 9 (sections 67 through 72 of this act);

(10) restrict the right to approve a merger, conversion, or domestication under section 86 of this act to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) except as otherwise provided in subsection b. of section 13 of this act, restrict the rights under this act of a person other than a member or manager.

d. If not manifestly unreasonable, the operating agreement may:

(1) restrict or eliminate the duty:

(a) as required in paragraph (1) of subsection b. and subsection i. of section 39 of this act, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(b) as required in paragraph (2) of subsection b. and subsection i. of section 39 of this act, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(c) as required by paragraph (3) of subsection b. and subsection i. of section 39 of this act, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify specific types or categories of activities that do not violate the duty of loyalty;

(3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and

(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection d. and subsection i. of section 39 of this act.

e. The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

f. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this act and imposes the responsibility on one or more other members, the

operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

g. The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 38 of this act and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for:

- (1) breach of the duty of loyalty;
- (2) a financial benefit received by the member or manager to which the member or manager is not entitled;
- (3) a breach of a duty under section 36 of this act;
- (4) intentional infliction of harm on the company or a member; or
- (5) an intentional violation of criminal law.

h. The court shall decide any claim under subsection d. of this section that a term of an operating agreement is manifestly unreasonable. The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

- (a) the objective of the term is unreasonable; or
- (b) the term is an unreasonable means to achieve the provision's objective.

i. This act is to be liberally construed to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

3. Section 13 of P.L.2012, c.50 (C.42:2C-13) is amended to read as follows:

C.42:2C-13 Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.

13. Operating Agreement; Effect on Third Parties and Relationship to Records Effective on Behalf of Limited Liability Company.

a. An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

b. The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. An amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

c. If a record that has been delivered by a limited liability company to the filing office for filing and has become effective under this act contains a provision that would be ineffective under subsection c. of section 11 of this act, if contained in the operating agreement, the provision is likewise ineffective in the record.

d. Subject to subsection c. of this section, if a record that has been delivered by a limited liability company to the filing office for filing and has become effective under this act conflicts with a provision of the operating agreement:

(1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

4. Section 34 of P.L.2012, c.50 (C.42:2C-34) is amended to read as follows:

C.42:2C-34 Sharing of and right to distributions before dissolution.

34. Sharing of and Right to Distributions before Dissolution.

a. Any distributions made by a limited liability company before its dissolution and winding up shall be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 42 and any order in effect under section 43 of this act.

b. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

c. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in subsection c. of section 56 of this act, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

d. If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

5. Section 42 of P.L.2012, c.50 (C.42:2C-42) is amended to read as follows:

C.42:2C-42 Transfer of transferable interest.

42. Transfer of Transferable Interest.

a. A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(3) subject to section 44 of this act, does not entitle the transferee to:

(a) participate in the management or conduct of the company's activities; or

(b) except as otherwise provided in subsection c. of this section, have access to records or other information concerning the company's activities.

b. A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

c. In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

d. A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

e. A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

f. A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

g. Except as otherwise provided in paragraph (2) of subsection d. of section 46 of this act, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

h. When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations known to the transferee when the transferee becomes a member.

6. Section 43 of P.L.2012, c.50 (C.42:2C-43) is amended to read as follows:

C.42:2C-43 Rights of judgment creditor of a member.

43. Rights of Judgment Creditor of a Member.

On application by a judgment creditor of a member, a court may charge the transferable interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. An action by a court pursuant to this section does not deprive any member of the benefit of any exemption laws applicable to his transferable interest. A court order charging the transferable interest of a member pursuant to this section shall be the sole remedy of a judgment creditor, who shall have no right under 42:2C-1 et seq. or any other State law to interfere with the management or force dissolution of a limited liability company or to seek an order of the court requiring a foreclosure sale of the transferable interest. Nothing in this section shall be construed to affect in any way the rights of a judgment creditor of a member under federal bankruptcy or reorganization laws.

7. Section 46 of P.L.2012, c.50 (C.42:2C-46) is amended to read as follows:

C.42:2C-46 Events causing dissociation.

46. Events Causing Dissociation. A person is dissociated as a member from a limited liability company when:

a. The company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

b. An event stated in the operating agreement as causing the person's dissociation occurs;

c. The person is expelled as a member pursuant to the operating agreement;

d. The person is expelled as a member by the unanimous consent of the other members if:

(1) it is unlawful to carry on the company's activities with the person as a member;

(2) there has been a transfer of all of the person's transferable interest in the company, other than:

(a) a transfer for security purposes; or

(b) an order in effect under section 43 of this act;

(3) the person is a corporation and, within 90 days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(4) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

e. On application by the company, the person is expelled as a member by judicial order because the person:

(1) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(2) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 39 of this act; or

(3) has engaged, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;

f. In the case of a person who is an individual:

(1) the person dies; or

(2) in a member-managed limited liability company:

(a) a guardian or general conservator for the person is appointed; or

(b) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this act or the operating agreement;

g. In a member-managed limited liability company, the person:

(1) becomes a debtor in bankruptcy;

(2) executes an assignment for the benefit of creditors; or

(3) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

h. In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

i. In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

j. In the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

k. The company participates in a merger under Article 10 (sections 73 through 87 of this act) if:

(1) the company is not the surviving entity; or

(2) otherwise as a result of the merger, the person ceases to be a member;

l. The company participates in a conversion under Article 10 (sections 73 through 87 of this act);

m. The company participates in a domestication under Article 10 (sections 73 through 87 of this act), if, as a result of the domestication, the person ceases to be a member; or

n. The company terminates.

8. Section 56 of P.L.2012, c.50 (C.42:2C-56) is amended to read as follows:

C.42:2C-56 Distribution of assets in winding up limited liability company's activities.

56. Distribution of Assets in Winding Up Limited Liability Company's Activities.

a. In winding up its activities, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

b. After a limited liability company complies with subsection a. of this section, any surplus shall be distributed in the following order, subject to any order in effect under section 43 of this act:

(1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 42 of this act.

c. If a limited liability company does not have sufficient surplus to comply with paragraph (1) of subsection b. of this section, any surplus shall be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

d. All distributions made under subsections b. and c. of this section shall be paid in money.

9. Section 91 of P.L.2012, c.50 (C.42:2C-91) is amended to read as follows:

C.42:2C-91 Application to existing relationships.

91. Application to Existing Relationships.

a. Before March 1, 2014, this act governs only:

(1) a limited liability company formed on or after the effective date of this act; and

(2) a limited liability company formed before the effective date of this act, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this act.

b. On and after March 1, 2014, this act governs all limited liability companies.

10. Section 95 of P.L.2012, c.50 is amended to read as follows:

Repeals.

95. Repeals. Effective on March 1, 2014, the following are repealed:

P.L.1993, c.210 (C.42:2B-1 et seq.); Section 22 of P.L.1997, c.139 (C.42:2B-8.1);

Section 14 of P.L.1997, c.139 (C.42:2B-24.1); and

Sections 1 and 2 of P.L.2003, c.12 (C.42:2B-49.1 and 42:2B-49.2).

11. This act shall take effect immediately, and shall be retroactive to September 19, 2012.

Approved January 17, 2014.