



New Jersey's LLC Default Rules May Surprise You

Blogs

09.14.2026

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New Jersey's Revised Uniform Limited Liability Company Act ("NJ-RULLCA"), N.J.S.A. 42:2C-1 *et. seq.*, includes many default rules that courts will impose unless the operating agreement expressly states otherwise. The statute expressly empowers LLC members, with limited exception, by giving them the freedom to contract for the rules by which the entity will be governed. But where the members stay silent (intentionally or otherwise) and fail to address a particular matter in the operating agreement, NJ-RULLCA imposes default rules that courts will apply to resolve disputes. N.J.S.A. 42:2C-11(b). Many of those default rules may surprise unsuspecting members.

For example, NJ-RULLCA requires that every LLC specifically state whether it is managed by its members or by one or more managers. Even if the LLC is actually governed by a manager, the default rule provides that the company will be deemed to be member-managed by default unless the operating agreement expressly states otherwise, with equal management rights for each member. N.J. Stat. Ann. § 42:2C-37 (West). Many LLC managers would be surprised to learn that they may not have the authority they have been exercising just because the operating agreement remained silent.

Even more surprising to many is the default rule for the distribution of profits. If the operating agreement is silent, N.J.S.A. 42:2C-34 requires that such distributions be shared equally among all members. This is often not what the members intend or, in some cases, what they actually do. Many LLCs instead distribute profits based on capital contributions or membership interest percentages. If the operating agreement is silent, however, a member who contributed 90% of the capital has to share those profits equally with the other members who contributed the remaining 10% and runs the risk that a minority member will make a claim.

LLC members should routinely revisit their operating agreements to ensure that they do not unintentionally subject themselves to statutory default rules that they never intended (or do not follow).

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