



# Does Your NJ LLC Have a Limited Duration?

## Client Advisories

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If your New Jersey limited liability company (LLC) was formed prior to March 18, 2013, you should check your LLC's certificate of formation to see if it has a limited duration of 30 years. If so, you will need to amend the certificate to give your LLC a perpetual life. Otherwise, your LLC may be automatically dissolved after 30 years.

**Original Statute.** New Jersey's original LLC statute required a certificate of formation to state that the LLC would have a perpetual duration. See N.J.S.A. 42:2B-11(a)(4) (repealed). Otherwise, it would have a limited duration of 30 years. See N.J.S.A. 42:2B-48(a) (repealed). Notwithstanding this statutory 30-year limited duration, some certificates of formation state that the LLC will have a 30-year limited duration. This was a common "belt and suspenders" approach in the infancy of LLCs and was done to avoid adverse tax consequences (being taxed as a corporation instead of a partnership), especially prior to the IRS "check-the-box" regulations where an LLC could elect to be taxed as a partnership or a corporation, which regulations became effective on January 1, 1997.

**Current Statute.** When New Jersey adopted its current LLC statute, which became effective on March 18, 2013, it provided that a NJ LLC would have perpetual duration. N.J.S.A. 42:2C-4(c). The current statute applies to all NJ LLCs. N.J.S.A. 42:2C-91(b). Therefore, even NJ LLCs formed prior March 18, 2013 will have a perpetual duration. However, if your LLC's certificate of formation provides for a limited duration, your LLC continues to have a limited duration and you must amend its certificate to change the duration to perpetual duration. If your LLC's certificate of formation does not mention a limited duration, then no action is required—your LLC has perpetual duration as a result of NJ's current LLC statute.

**Why Now?** Why is this being raised at this time? As noted, New Jersey authorized LLCs effective as of January 26, 1994. This is the 30th anniversary of LLC existence in New Jersey. Therefore, LLCs formed in 1994 will reach the 30-year limited duration this year.

**Next Steps.** You should review your LLC's certificate of formation to determine whether it mentions duration (especially if your LLC was formed between 1994 and 1996). If the certificate states that the LLC has a limited duration of 30 years, and a perpetual duration is desired, a certificate of amendment must be filed to change the duration to perpetual. If the certificate does not mention duration, then your LLC will have perpetual duration under the current LLC law.

<u>Certificate of Formation</u>	<u>Course of Action</u>
No duration stated	No action required
Perpetual duration stated	No action required
Limited duration stated	Certificate of amendment required if perpetual duration desired

If you have any questions about the duration of your NJ LLC, or any other LLC issues, please contact **Gianfranco A. Pietrafesa** at [gpietrafesa@archerlaw.com](mailto:gpietrafesa@archerlaw.com) or 201.498.8559.

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## Related People



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