

Rights of Representatives of LLC Members Upon Death or Disability

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July 29, 2025

A foundational concept in the law of partnerships and limited liability companies (LLCs) is the pick-your-partner principle. Generally, assignees of membership interests do not automatically enjoy all of the rights of their assignors unless they are affirmatively admitted to the LLC as a member, either by the consent of one or more of the existing members or through an existing provision of the LLC agreement.

The pick-your-partner principle reflects the notion that members of an LLC have the right to choose with whom they associate in business, because the trustworthiness, creditworthiness and compatibility of co-owners are critical to the success and functioning of the enterprise.

The pick-your-partner principle makes a distinction between the economic rights of a member (i.e., the right to share in profits and losses and the right to distributions of an LLC's income and assets during its operation and upon dissolution) and such member's governance or management rights, including the right to vote, manage, make business decisions for, and access information about the company.

Absent agreement to the contrary, a transferee or assignee of an LLC interest generally receives only the economic rights of the interest and may not exercise any governance or management rights of the transferor or assignor.

The principle traces its roots back to the original 1914 Uniform Partnership Act (UPA), which declared that the conveyance of a partner's interest did not entitle the assignee to any management or administrative



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rights nor any access to books or information—only the profits and return of capital to which the assigning partner would have been entitled. See UPA § 27(1) (1914) (“A conveyance by a partner of his interest in the partnership does not of itself...entitle the assignee...to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books”).

The pick-your-partner principle endures in more recent LLC laws. The New York Limited Liability Company Law (NYLLCL), enacted in 1994, reflects the principle in Section 603, which says that unless otherwise provided in an operating agreement, an assignee of a membership interest in an LLC is granted only the “distributions and allocations of profits and losses to which the assignor would be entitled” (i.e., economic rights)—and is not entitled to “participate in the

management and affairs of the limited liability company or to become or to exercise any rights or powers of a member” (i.e., governance rights).

NYLLCL Section 603 parallels provisions in LLC model statutes prepared by the National Conference of Commissioners on Uniform State Laws, most recently the Revised Uniform Limited Liability Company Act of 2006 (RULLCA, last amended 2013), that have long limited the rights of transferees to economic rights. See Kleinberger, Daniel S., *Plight of the Bare Naked Assignee*, 42 Suffolk Law Review 587, 599 (2009); see also RULLCA § 502(a)(3) (a transferee is not entitled to “participate in the management or conduct of the company’s activities and affairs” nor, absent the dissolution of the LLC, “have access to records or other information concerning the company’s activities and affairs”).

In contrast to NYLLCL Section 603, Section 608 provides a limited exception to the pick-your-partner principle arising in connection with the death or disability of an individual member.

Section 608 states: “If a member who is a natural person dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the member’s executor, administrator, guardian, conservator or other legal representative may exercise all of the member’s rights for the purpose of settling his or her estate or administering his or her property, including any power under the operating agreement of an assignee to become a member.”

If a co-member dies and the operating agreement lacks provisions governing member succession upon death of a member—or there is no operating agreement at all—the remaining members may be required on some level to conduct business with the executors of the deceased’s estate. This may be problematic for the remaining members, as the interests of the estate (which may be seeking near-term liquidity and may be less likely to have interest in operating the asset for long-term benefit) may not align with those of the remaining members.

New York courts have not provided any detailed guidance as to the scope of the decedent’s rights that pass to the executor—over the last decade, New York courts have decided a handful of cases with brief opinions and limited or no analysis. New York has interpreted NYLLCL Section 608 to mean that unless otherwise provided by an operating agreement, the executor of an estate may exercise governance rights

as long as the rights are exercised for the specific purpose indicated in the statute.

New York has issued sparse guidance as to exactly what qualifies an action as being undertaken for a permitted purpose under NYLLCL Section 608. In *Crabapple Corp. v. Elberg*, 153 A.D.3d 434 (2017), the court held that in the absence of a relevant provision in an LLC’s operating agreement, Section 608 grants co-manager rights to the executor(s) of a deceased’s estate, though the opinion supported this holding by quoting the limiting language in the statute that the exercise must be for the purpose of settling the estate.

The court in *Andris v. 1376 Forest Realty, LLC*, 213 A.D.3d 923 (2023), relied on *Crabapple* and the language of Section 608 to hold that the executor of an estate had the right to commence a proceeding for judicial dissolution of an LLC in which the decedent had a 50% interest because he “ha[d] the authority to exercise the decedent’s rights in the LLC for the purpose of settling the estate.” (See also *Weinstein v. Wallace*, 231 A.D.3d 1187 (2024) (holding that the deceased member’s estate became a voting member of the LLC for the purpose of settling or managing the estate, because there was an operating agreement provision that “unambiguously provide[d] that a deceased member’s estate shall have all of the rights of a member for the purpose of settling or managing its estate”).)

In *Estate of Judith Lindenberg v. Winiarsky*, 2021 WL 1794560 (2021), the court held that despite written operating agreements prohibiting the admission of new members without the consent of all existing members, the executor of an estate was not barred from maintaining the deceased’s membership status because rather than being a new member, the executor had instead “assumed the membership responsibilities of [the deceased] pursuant to statute upon [the deceased’s] death,” but the court also makes clear that the exercise of rights must be for “the defined purposes enumerated in the statute.”

The *Lindenberg* court implies that if NYLLCL Section 608 intended for an executor to be treated merely as an assignee, it would have explicitly said so—the court noted as a counter-example Louisiana Revised Statutes Section 12:1333, which states that “if a member who is an individual dies...the member’s membership ceases and the member’s executor...shall be treated as an assignee of such member’s interest in the limited liability company” (emphasis added).

The New York rule that a deceased member’s estate is not merely an assignee or transferee (with

only economic rights) is unusual, and a significant majority of U.S. states do not have a statute analogous to NYLLCL Section 608. RULLCA and non-RULLCA states alike typically provide that following a member's death, the estate holds the status of a transferee or assignee (with only economic rights). Section 504 of the RULLCA, which is the closest analog in the RULLCA to NYLLCL Section 608, provides that beyond the rights of a transferee, an executor is only entitled to exercise rights relating to accountings and other information.

Delaware has recently interpreted Section 18-705 of the Delaware Limited Liability Company Act (DLLCA) (a statutory section similar to NYCLLC Section 608) to mean that, while a deceased member's estate is merely an assignee, the assignee is entitled under Delaware law (just as the assignee would be under New York law) to exercise certain rights of the member for the limited statutory purpose.

In a case decided in July 2024, *Gurney-Goldman v. Goldman*, Del.Ch., 321 A.3d 559 (2024), the court undertook a detailed analysis of the Delaware statute. The court held that when an LLC member dies, the decedent's membership status is terminated and the passing of the decedent's interest to the estate is an assignment. Thus, in Delaware's view, a deceased member's estate begins as an assignee.

The court argues that the Section 18-705 language supports this interpretation because it would be unnecessary to explicitly grant the power to exercise member rights via statute if the deceased's estate simply were a member ("If the estate of a deceased member automatically became a member, then there would be no reason to enable the personal representative to exercise member rights, because the personal representative already would have them."). To become a member, the estate must meet the requirements of DLLCA Section 18-704(a) (which explains when an assignee of an LLC interest can become a member). However, the court also held that the executor has the right to exercise member-level governance rights that the decedent had while alive, but only for the limited statutory purpose.

The defendant in the *Gurney-Goldman* case argued that the statutory language was intended to cover two different scenarios in the alternative: for a decedent's estate, the exercise of rights would be limited

"for the purpose of settling the member's estate," while the succeeding language in the statute—"or administering the member's property"—applied only to a legal representative of a member who becomes incompetent, not a deceased member.

Under this view, the exercise of rights by the executor would only apply for the purpose of settling the estate, which would seem to significantly narrow the scope of rights that would be covered.

The Delaware Court of Chancery rejected the defendant's reading of the statute, and held that "whatever rights the executor can exercise remain subject to the ceiling that Section 18-705 imposes: they have to be used for a proper purpose of either settling an estate or administering the former member's property."

The court did not provide significant guidance on how to apply this principle to the operations of the LLC. This aspect of the *Gurney-Goldman* decision has been appealed to the Delaware Supreme Court and is expected to be decided later this year. Delaware's highest court may take a different view of the statutory reading or provide some clarity as to the scope of an executor's rights.

It is worth noting that both the *Crabapple* court and the *Andris* court in New York quoted only the clause limiting the executor's exercise to the "purpose of settling [the member's] estate" in articulating their holdings, and did not include the additional clause "or administering [the member's] property."

While the defendant's unsuccessful argument in *Gurney-Goldman* was not presented to the New York courts in those cases, the omission by those courts of references to the second clause of NYLLCL Section 608 seems to indicate that those courts might be inclined to rule more narrowly than the *Gurney-Goldman* court.

The reported cases in New York are all either Supreme Court or Appellate Division cases, and New York's top court has not weighed in on these issues. For the time being, parties should bear in mind that the precise scope of the rights that a deceased member's estate has under the NYLLCL in the governance of a New York LLC remain unclear.

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