

## Three's A Crowd: Dissociation Under New Jersey's RULLCA

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Friends get together to discuss a business idea. The concept sounds great, and everyone anticipates a smooth ride to a successful business and lasting partnership. The friends decide to form an LLC, but do not engage counsel or enter into a specific, detailed operating agreement, instead choosing a “template” after a Google search. The partners do not consider what happens if things do not go as planned, since they are convinced that this will not be the case. Unfortunately, while the business may become successful, the relationship among the partners may change for a host of unanticipated reasons. When things go bad and disputes arise among members of an LLC, the members – quite often friends or even family members – are faced with how to resolve the dispute without destroying the business.

The ***New Jersey Revised Uniform Limited Liability Company Act, N.J.S.A. 42:2C-1 et seq. (“RULLCA”)***, provides a mechanism to expel or “dissociate” a member from the company without terminating the business. Under Section 46 of the RULLCA, the company can apply to the court for a judicial order expelling the member because the person has engaged 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. One New Jersey court has found that to satisfy this standard, the company does not need to show a “wrongfulness element”, but rather address the ability to carry on the business with the member from a “prospective orientation.” In other words, the court must look forward to consider whether the existing members can get along so as to carry on the business.

The “dissociation” of a member does not mean that the member is completely removed from the company. Section 47 of the RULLCA provides that when a person is dissociated as a member of an LLC, the person’s right to participate in the management and conduct of the company’s activities terminates, as does the person’s fiduciary duties (if the company is member-managed). The member essentially becomes a silent partner, whose transferrable interest in the company is owned by the person solely as a transferee. To accomplish a clean break, the RULLCA gives the court the ability to order a sale of the person’s interests if it would be fair and equitable to all parties under all of the circumstances of the case. If the court orders such a sale, the issue becomes how to value the member’s interest in the company.

Oftentimes, the institution of a dissociation action will be met with counterclaims by the defendant member, and the dispute may expand to include a demand for the dissolution of the company. This outcome is all the more reason why people who get together to form an LLC, even with the best intentions and strong personal relationships, should formalize their business relationship with a

comprehensive operating agreement that describes what happens if, contrary to those intentions, things go bad. In the absence of such operating agreement, the RULLCA does enable the company to seek the dissociation of a member when three becomes a crowd.

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