

**Limited Liability Companies: Member Managed, At Will v. Term**

<i>Provision</i>	<i>South Carolina LLC Act</i>	
	<b>Member Managed, At Will</b>	<b>Term</b>
<i>Admission of new members</i>	33-44-503(a) Unanimous consent of members	Same
<i>Member right to transfer</i>	33-44-502 Distributional interest only	Same
<i>Rights of Transferee</i> (arising from dissociation, transfer, or <b>charging order</b> )	33-44-503(e) Receive Distributions only 33-44-801(b)(5) Seek Judicial Dissolution at any Time (can be eliminated)	33-44-503(e) Receive Distributions only 33-44-801(b)(5) Seek Judicial Dissolution at end of Term (can be eliminated)
<i>Event of Dissociation</i>  (Other events are bankruptcy, appointment of guardian or conservator, judicial determination of incapacity)	33-44-601 <ul style="list-style-type: none"> <li>• Withdrawal</li> <li>• Specified event in O.A.</li> <li>• Transfer of entire interest (not by charging order not foreclosed)</li> <li>• Death</li> <li>• Transfer by estate or trust</li> </ul>	Same
<i>Events of Dissolution</i>  (O.A. may provide that dissociation does not cause dissolution)  (O.A. may eliminate the mandatory purchase of dissociated member)	33-44-801(b)(3) Member dissociation for any reason unless remaining members agree to continue. 33-44-603(1) If the dissociation does cause dissolution, dissociated member's distributional interest must be immediately purchased by the company under Article 7. 33-44-801(5) <b>Dissociated member's right to petition for dissolution cannot be waived</b>	33-44-603(2) If the dissociation does cause dissolution, dissociated member's distributional interest must be purchased by the company at end of term  <b>33-44-801(5)</b> <b>Dissociated member's right to petition for dissolution cannot be waived</b>
<i>Rights of Dissociated Member</i>  (the right of a transferee to seef judicial dissolution may be eliminated by the OA)	33-44-701(a)(1) Right to immediate mandatory purchase <b>if not eliminated by O.A.</b> 33-44-801(5) <b>Dissociated member's right to petition for dissolution cannot be waived</b> 33-44-703 <b>May bind company for 2 years</b>	33-44-701(a)(2) Right mandatory purchase at end of term <b>if not eliminated by O.A.</b> 33-44-801(5) <b>Dissociated member's right to petition for dissolution cannot be waived</b> 33-44-703 <b>May bind company for 2 years</b>

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<i>Right to withdraw</i>	33-44-602(a) OA may eliminate the right to withdraw OA may eliminate the right to transfer membership	33-44-602(a) OA may eliminate the right to withdraw OA may eliminate the right to transfer membership
<i>Rights of transferee (Not a dissociated member)</i>	33-44-502 Right to distributions only 33-44-503 Unanimous consent to become member  The rights of a <i>Transferee</i> and a <i>dissociated member</i> are not the same; the right to seek judicial dissolution may be eliminated for a transferee	33-44-502 Right to distributions only 33-44-503 Unanimous consent to become member  The rights of a <i>Transferee</i> and a <i>dissociated member</i> are not the same; the right to seek judicial dissolution may be eliminated for a transferee
<i>Valuation of Purchased Interest under 702</i>	33-44-701(c) OA may fix price and terms 33-44-702 Default value is “fair value”	33-44-701(c) OA may fix price and terms 33-44-702 Default value is “fair value”
<i>Rights of Creditors</i>  <i>OA may eliminate right of creditor transferee to seek judicial dissolution</i>	33-44-504 exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company. <b>Comment to 44-504</b> the distributional interest of a member or <b>transferee</b> is limited to the member's right to receive distributions from the company <u>and to seek judicial liquidation of the company.</u>	33-44-504 exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company

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<p><b><i>Death of member</i></b></p> <p>Only the decedent's distributional interest transfers to the decedent's estate, which does not acquire the decedent member's management rights. Section 33-44-603(b)(1)</p> <p>The member's death causes <b><u>dissociation</u></b></p> <p>The effect of the dissociation where the company does not dissolve depends upon whether the company is <b>at-will</b> or <b>term</b> and whether <b><u>manager-managed</u></b></p>	<p>§ 33-44-402. (a) Does not excuse the member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company.</p> <p>§ 33-44-601(8)(i). the member's death causes <b><u>dissociation</u></b>:</p> <p>§ 33-44-701. (a) (1) Unless otherwise agreed, if the company <b>at-will</b>, the estate's distributional interest <b>must be purchased</b> by the company at fair value at the date of death</p> <p>The estate and its transferees have the right to make application for a judicial dissolution of the company under Section 33-44-801(b)(5) as successors in interest to a dissociated member</p> <p>Where company is <b>member managed</b>, death will result in a transfer of management rights to the remaining members on a proportionate basis.</p>	<p>§ 33-44-402. (a) Does not excuse the member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company.</p> <p>§ 33-44-601(8)(i). the member's death causes <b><u>dissociation</u></b></p> <p>If <b>term</b> company, the estate and its transferees continue only as the owner of the distributional interest with no management rights until the expiration of the specified term that existed on the date of <b>death</b></p> <p>Before term, the estate and its transferees have the right to make application for a judicial dissolution of the company under Section 33-44-801(b)(5) as successors in interest to a dissociated member.</p> <p>Where company is <b>member managed</b>, death will result in a transfer of management rights to the remaining members on a proportionate basis.</p> <p>This transfer of rights may be avoided by a provision in an operating agreement extending the Section 33-44-701(a)(1) at-will purchase right to a decedent member of a <b>term company</b>.</p>

Although a member is dissociated upon **death**, the effect of the dissociation where the company does not dissolve depends upon whether the company is at-will or term and whether manager-managed. Only the decedent's distributional interest transfers to the decedent's estate which does not acquire the decedent member's management rights. See [Section 33-44-603\(b\)\(1\)](#). Unless otherwise agreed, if the company was at-will, the estate's distributional interest must be purchased by the company at fair value determined at the date of **death**. However, if a term company, the estate and its transferees continue only as the owner of the distributional interest

with no management rights until the expiration of the specified term that existed on the date of **death**. At the expiration of that term, the company must purchase the interest of a dissociated member if the company continues for an additional term by amending its articles or simply continues as an at-will company. See [Sections 33-44-411](#) and [33-44-701\(a\)\(2\)](#) and Comments. Before that time, the estate and its transferees have the right to make application for a judicial dissolution of the company under [Section 33-44-801\(b\)\(5\)](#) as successors in interest to a dissociated member. See Comments to [Sections 33-44-801](#), [33-44-411](#), and [33-44-701](#). Where the members have allocated management rights on the basis of contributions rather than simply the number of members, a member's **death** will result in a transfer of management rights to the remaining members on a proportionate basis. This transfer of rights may be avoided by a provision in an operating agreement extending the [Section 33-44-701\(a\)\(1\)](#) at-will purchase right to a decedent member of a term company.

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