

WHAT'S A LAWYER'S LIFE WORTH?

TAKING VALUE FROM A LAW FIRM LLC IN THE AFTERLIFE

by Gregory A. Brockwell

– Is your law firm a limited liability company (“LLC”)? Might you die one day? If the answer to both of these is yes, then please keep reading.

Let’s talk about the afterlife. The Allman Brothers used to sing, “Can’t take it with you. Everybody knows. Can’t take it with you when you go.” Warren Buffett tells us, “Value is what you get.” Life is finite. Value is uncertain. None of us will get out of here alive. But, when your time comes, what will be the value of your ownership in your law firm? What will your family get?

If you have addressed the issue in the LLC company agreement (formerly known as the “operating agreement”), then the answer should be clear enough. But, what if your company agreement is silent on the issue? Then the value must be determined by a new statutory procedure, which might involve protracted litigation for your estate.

Alabama’s new LLC Act provides a default valuation procedure for a decedent’s interest in an LLC performing professional services. Considering that many of us (the author included) are part of such an LLC, someday our heirs will be facing the question of what value our “stock” in the LLC has. Do you want to leave valuation to the statutory procedure, or do you want to have some certainty? That will all depend on how comfortable you feel with the procedure the Legislature has set for us.

The statutory procedure follows a series of sequential steps, as follows:

- First, the member dies.
- Second, within six months of the death, the LLC must make a written offer to pay the holder of the deceased member’s interest (the decedent’s estate or transferee) “a specified price deemed by the LLC to be the fair value of the transferable interest as of the date of the death.” The offer must be accompanied by a recent balance sheet and profit and loss statement of the LLC.
- Third, the decedent’s estate or transferee has 30 days to agree or disagree with the LLC’s written offer.
- Fourth, if the decedent’s estate or transferee agrees to the offer, then the LLC shall make payment within 90 days of the date of the offer or within such other time as the parties may agree. Upon receipt of the payment, the decedent’s estate or transferee shall cease to have any interest in the LLC.
- Fifth, if the decedent’s estate or transferee does not agree to the offer, then either party may commence a civil action in the circuit court in which the LLC is located, requesting that the court determine the fair value. The court may appoint one or more appraisers to receive evidence and recommend a deci-

sion on the question of fair value.

- Sixth, once the court has determined the fair value, the decedent’s estate or transferee shall be entitled to a judgment against the LLC for the amount of the fair value, plus interest at the rate the court finds to be fair and equitable. The court, in its discretion, may order that the judgment be paid in installments.
- Seventh, the court shall assess costs and expenses against the parties in a manner the court deems equitable. The court is granted discretion to shift attorney and expert fees from one party to the other if the court-determined fair value materially differs (higher or lower) from the LLC’s pre-litigation offer.

If your LLC company agreement already provides a procedure for valuation and purchase upon a member’s death, then the statutory procedure should be of no concern to you. If your company agreement is silent, do you like the thought of your estate possibly being forced into litigation with your former law partners? Do you believe the court will reach the right decision on the “fair value” of LLC assets like your pending contingency cases? If you feel that way, then the statutory procedure is perfect for you. If not, it may be time to talk with your law partners and update your firm’s company agreement. Taking care of the issue now may be much better than letting it drag into the afterlife.



¹ Ala. Code §§ 10A-5A-1.02(k); 10A-5A-1.08.

² Ala. Code § 10A-5A-8.02. This statutory procedure applies when a member dies or is “disqualified,” if the company agreement does not address the issue. This article addresses only the “death” issue, not the “disqualification” issue, though the two are very similar.

³ “Fair value” is distinguished from “fair market value” in Alabama law: There is, however, a fundamental difference between fair value and fair market value when those terms are used in the appraisal context: ‘Fair value’ is not the same as, or short-hand for, ‘fair market value.’ ‘Fair value’ carries with it the statutory purpose that shareholders be fairly compensated, which may or may not equate with the market’s judgment about the stock’s value. This is particularly appropriate in the close corporation setting where there is no ready market for the shares and consequently no fair market value. Ex parte Baron Servs., 874 So. 2d 545, 549 (Ala. 2003).



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