

# THE IMPACT OF ACT 170 ON LLCs, LLPs, LPs AND GPs

## Transferees

## Transfers/Transferee

### Section References

§8412 (General Partnerships)

§8612 (Limited Partnerships)

§8812 (Limited Liability Companies)

### Definitions:

**“Transferable interest.”** The right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

**“Transferee.”** A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under section 8863(a)(3) (relating to effect of dissociation).

## Transfers/Transferee

- “Transferable interest.” - Absent a contrary provision in the operating agreement or the consent of the members, a “transferable interest” is the only interest in a limited liability company that can be transferred to a non-member. [§ 8852.]
- Defined “as initially owned by a person in the person’s capacity as a member,” because Chapter 88 does not contemplate a limited liability company directly creating interests that comprise only economic rights. See 15 Pa.C.S. §§ 8841 (addressing how a person becomes a member) and 8852 (addressing how a person becomes a transferee).
- “Transferee.” – Subject to limited exceptions, “any transferable interest owned by the person in the person’s capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee” following dissociation. See 15 Pa.C.S. § 8863(a)(3).
- Transferees and members have substantially economic identical rights under Chapter 88, for example, entitlements to and limitations on distributions.

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## Transfers/Transferee

- Fundamental characteristic of limited liability company law is the “pick your partner” principle.
- A member’s rights in a limited liability company are bifurcated into economic rights (the transferable interest) and governance rights (including management rights, consent rights, rights to information, and rights to seek judicial intervention).
- Unless otherwise provided in the operating agreement, a member acting without the consent of all other members lacks both the power and the right to: (i) bestow membership on a non-member; or (ii) transfer to a non-member anything other than some or all of the member’s transferable interest.
- The rights of a mere transferee are quite limited – i.e., to receive distributions as provided in subsection (b), and, if the company dissolves and winds up, to receive specified information pertaining to the company from the date of dissolution as provided in subsection (c).

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## Transfers/Transferee

§ 8851. Nature of transferable interest.

(a) Personal property. – A transferable interest is personal property.

(b) Only right that may be transferred. – A person may not transfer to a person not a member any rights in a limited liability company other than a transferable interest.

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## Transfers/Transferees

- The Section 8851 default rule may be changed by way of the operating agreement, or via consent of the members.
- Absent a change to the default rule, a member's attempted transfer of governance rights to another member under the default rule of Section 8851
  - (a) does not increase the transferee's governance rights;
  - (b) eliminates the transferor's governance rights; and
  - (c) changes the denominator but not the numerator in calculating governance rights.

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## Transfers/Transferees

- Example: LCN Company, LLC is a member-managed limited liability company with three members, Laura, Charles, and Nora. The operating agreement does not displace Chapter 88 default rule on the allocation of governance rights among members. Thus, each member has 1/3 of those rights. Laura transfers her entire ownership interest to Charles. The transfer does not increase Charles's governance rights but does eliminate Laura's. After the transfer, Laura has no governance rights (regardless of whether Charles and Nora agree to expel Laura under 15 Pa. C.S. § 8861(5)(ii)). As a result, Charles and Nora each have ½ of the governance rights. [See §8851, Committee Comment]

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## Transfers/Transferee

§ 8852. Transfer of transferable interest.

(a) General rule. – Subject to section 8853(f) (relating to charging order), a transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause the dissociation of the transferor as a member or a dissolution and winding up of the limited liability company's activities and affairs; and

(3) subject to section 8854 (relating to power of personal representative of deceased member), does not entitle the transferee to: (i) participate in the management or conduct of the company's activities and affairs; or (ii) except as provided in subsection (c), have access to records or other information concerning the company's activities and affairs.

(b) Right to distributions. – A transferee has the right to receive, [in accordance with the transfer](#), distributions to which the transferor would otherwise be entitled.

(c) Right to account on dissolution. – In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

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## Transfers/Transferee

§8852 (con't)

(d) Certificate of interest. – A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in record form and, subject to this section, the transferable interest represented by the certificate may be transferred by a transfer of the certificate.

(e) Recognition of transferee's rights. – A limited liability company need not give effect to a transferee's rights under this section until the company knows or has notice of the transfer.

(f) Transfer restrictions. – A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Rights retained by transferor. – Except as provided in section 8861(5)(ii) (relating to dissociation by a vote of the other members), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

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## Transfers/Transferee

§ 8817. Amendment and effect of operating agreement.

(b) Obligations to non-members. – The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Except as provided in section 8844(d) (relating to sharing of and right to distributions before dissolution) or in a court order issued under section 8853(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(1) is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member;

(2) is not effective to the extent the amendment imposes a new debt, obligation or other liability on the transferee or person dissociated as a member.

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## Transfers/Transferee

### WHY IS THIS THE CASE?

- The law of unincorporated business organizations is only beginning to grapple in a modern way with the tension between the rights of an organization's owners to carry on their activities as they see fit (or have agreed) and the rights of transferees of the organization's economic interests. Such transferees can include the heirs of business founders as well as former owners who are "locked in" as transferees of their own interests. See 15 Pa.C.S. § 8863(a)(3).
- If the law were to categorically favor the owners, there would be a serious risk of expropriation and other abuse. On the other hand, if the law were to grant former owners and other transferees the right to seek judicial protection, that specter could "freeze the deal" as of the moment an owner leaves the enterprise or a third party obtains an economic interest.