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Sixty-fifth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2223

Introduced by

Senators Nelson, Armstrong, Sorvaag

Representatives M. Johnson, Klemin, Schneider

A BILL for an Act to create and enact section 10-32.1-30.1 of the North Dakota Century Code, relating to sharing of profits and losses; to amend and reenact subsection 2 of section 10-32.1-15, ~~subsection 1 of~~ section 10-32.1-30, subsection 2 of section 10-32.1-39, and sections 10-32.1-45, 10-32.1-54, 45-10.2-64, and 45-17-04 of the North Dakota Century Code, relating to limited liability company distributions and management and partnership transferable interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-32.1-15 of the North Dakota Century Code is amended and reenacted as follows:

2. The obligations of a limited liability company and its members to a person in the capacity of the person as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under ~~subdivision b of subsection 2 of~~ section 10-32.1-45, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the capacity of the person as a transferee or dissociated member.

~~**SECTION 2. AMENDMENT.** Subsection 1 of section 10-32.1-30 of the North Dakota Century Code is amended and reenacted as follows:~~

~~1. Subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05 and unless otherwise provided in the articles of organization or in an operating agreement, any distributions among members and dissociated members made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociatedproportion to the value of the~~

~~contributions of the~~ ~~members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.~~

SECTION 2. AMENDMENT. Section 10-32.1-30 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-30. Sharing of and right to distributions before dissolution.

1. ~~Subject~~Except as provided in subsection 5 and subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.
2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. The dissociation of a person does not entitle the person to a distribution.
3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in ~~subsection 3 of~~ section 10-32.1-54, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the share of distributions of the person.
4. If a member or transferee becomes entitled to receive a distribution, then the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.
5. Notwithstanding subsection 1, subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05 and unless otherwise provided in the articles of organization or in an operating agreement, for a limited liability company created after July 31, 2017, any distributions among members and dissociated members made by a limited liability company before its dissolution and winding up must be in proportion to the value of the contributions of the members, except to the extent necessary to

comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.

SECTION 3. Section 10-32.1-30.1 of the North Dakota Century Code is created and enacted as follows:

10-32.1-30.1. Sharing of profits and loss.

Unless otherwise provided in the articles of organization, or in an operating agreement, the profits and losses of a limited liability company created after July 31, 2017, must be allocated among the members and among classes and series of members in proportion to the value of the contributions of the members.

SECTION 4. AMENDMENT. Subsection 2 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~In~~

a. Except as provided in subdivision b, in a member-managed limited liability company, the following rules apply:

~~a.~~ (1) The management and conduct of the company are vested in the members.

~~b.~~ (2) Each member has equal rights in the management and conduct of the activities of the company~~Unless otherwise provided in the articles of organization or in an operating agreement, each member possesses voting power in the management and conduct of the activities of the company in proportion to the interest of the member in distributions of the limited liability company before dissolution and winding up~~.

~~c.~~ (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the ~~voting power of the transferable interest of the~~ members.

~~d.~~ (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

~~e.~~ (5) The operating agreement may be amended only with the consent of all members.

b. Notwithstanding subdivision a, in a member-managed limited liability company created after July 31, 2017, the following rules apply:

(1) The management and conduct of the company are vested in the members.

(2) Unless otherwise provided in the articles of organization or in an operating agreement, each member possesses voting power in the management and conduct of the activities of the company in proportion to the interest of the member in distributions of the limited liability company before dissolution and winding up.

(3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the voting power of the transferable interest of the members.

(4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

(5) The operating agreement may be amended only with the consent of all members.

SECTION 6. AMENDMENT. Section 10-32.1-45 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-45. Charging order.

1. On application by a judgment creditor of a member or transferee and following notice to the limited liability company of the application, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.

2. A charging order constitutes a lien on the transferable interest of a judgment debtor and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

~~2.~~3. ~~To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may:~~

~~a. Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and~~

~~b. Make all other orders necessary to give effect to the charging order.~~

~~3. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, then the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the~~

~~transferable interest, does not thereby become a member, and is subject to section 10-32.1-44.~~

~~4.~~ ~~At any time before foreclosure under subsection 3, the~~The member or transferee whose transferable interest is subject to a charging order ~~under subsection 1~~ may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

~~5.~~4. At any time before ~~foreclosure~~extinguishment under subsection 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

~~6.~~5. This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

~~7.~~6. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the transferable interest of the judgment debtor.

a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries that the debtor member might have made, is available to the judgment creditor that is attempting to satisfy the judgment out of the judgment debtor's interest in the limited liability company.

b. No creditor of a member or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies with respect to a property of the company.

7. This section applies to single member limited liability companies and limited liability companies with more than one member.

SECTION 7. AMENDMENT. Section 10-32.1-54 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-54. Distribution of assets in winding up limited liability activities of the company.

1. ~~In~~Except as provided in subsection 5, in winding up its activities, a limited liability company ~~must~~shall apply its assets to discharge its obligations to creditors, including members that are creditors.
2. After a limited liability company complies with subsection 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45 ~~and unless otherwise provided in the articles of organization or an operating agreement~~:
   a. To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
   b. In equal shares among~~proportion to the value of the contributions of~~ members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.
3. If a limited liability company does not have sufficient surplus to comply with subdivision a of subsection 2, then any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.
4. All distributions made under subsections 2 and 3 must be paid in money ~~unless otherwise provided in the articles of organization in an operating agreement, or by the unanimous consent of the voting members~~.
5. a. Notwithstanding subsections 1 through 4, in winding up its activities a limited liability company created after July 31, 2017, shall apply its assets to discharge its obligations to creditors, including members that are creditors.
   b. After a limited liability company complies with subdivision a, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45 and unless otherwise provided in the articles of organization or an operating agreement:

(1) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) In proportion to the value of the contributions of members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.

c. If a limited liability company does not have sufficient surplus to comply with paragraph 1 of subdivision b, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

d. All distributions made under subdivisions a and b must be paid in money unless otherwise provided in the articles of organization or in an operating agreement, or by the unanimous consent of the voting members.

SECTION 8. AMENDMENT. Section 45-10.2-64 of the North Dakota Century Code is amended and reenacted as follows:

45-10.2-64. (703) ~~Rights of a creditor of partner or transferee~~Charging order.

1. On application ~~to a court of competent jurisdiction by any~~by a judgment creditor of a partner or of a partner's transferee, ~~the court may charge~~and following notice to the partnership of the application, a court of competent jurisdiction may enter a charging order against the transferable interest of the judgment debtor ~~with payment of the~~for the unsatisfied amount of the judgment ~~with interest~~.

~~a. To the extent so charged, the judgment creditor has only the rights of a transferee.~~

~~b. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.~~

~~c.~~

2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.

~~2.~~5. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.

~~3.~~6. This section provides the exclusive remedy by which a person seeking to enforce a judgment ~~creditor of~~against a partner or transferee may satisfy, in the capacity of a judgment ~~with request to~~creditor, the judgment from the transferable interest of the judgment debtor.

a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.

b. No creditor of a partner or transferee has a right to obtain possession or otherwise exercise legal or equitable remedies with respect to property of the partnership.

SECTION 9. AMENDMENT. Section 45-17-04 of the North Dakota Century Code is amended and reenacted as follows:

45-17-04. (504) Partner's transferable interest subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee and following notice to the partnership of such application, a court having jurisdiction may ~~charge~~enter a charging order against the transferable interest of the judgment debtor ~~to satisfy~~for the unsatisfied amount of the judgment. ~~The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and~~

~~inquiries the judgment debtor might have made or which the circumstances of the case may require.~~

2. A charging order constitutes a lien on the ~~judgment debtor's~~ transferable interest ~~in~~of a judgment debtor and requires the partnership to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor. ~~The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.~~

3. ~~At any time before foreclosure, an interest charged may be redeemed:~~

   ~~a. By the judgment debtor;~~

   ~~b. With property other than partnership property, by one or more of the other partners; or~~

   ~~c. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged~~The partner or transferee whose transferable interest is subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the order.

4. At any time before extinguishment under subsection 3, a partnership or one or more partners whose transferable interest are not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.

5. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

~~5.~~6. This section provides the exclusive remedy by which a person seeking to enforce a judgment ~~creditor of~~against a partner or ~~partner's~~ transferee may satisfy ~~a~~, in the capacity of a judgment ~~out~~creditor, the judgment from the transferable interest of the judgment ~~debtor's transferable interest in the partnership~~debtor.

   a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the partnership.

b. No creditor of a partner or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies to a property of the partnership.