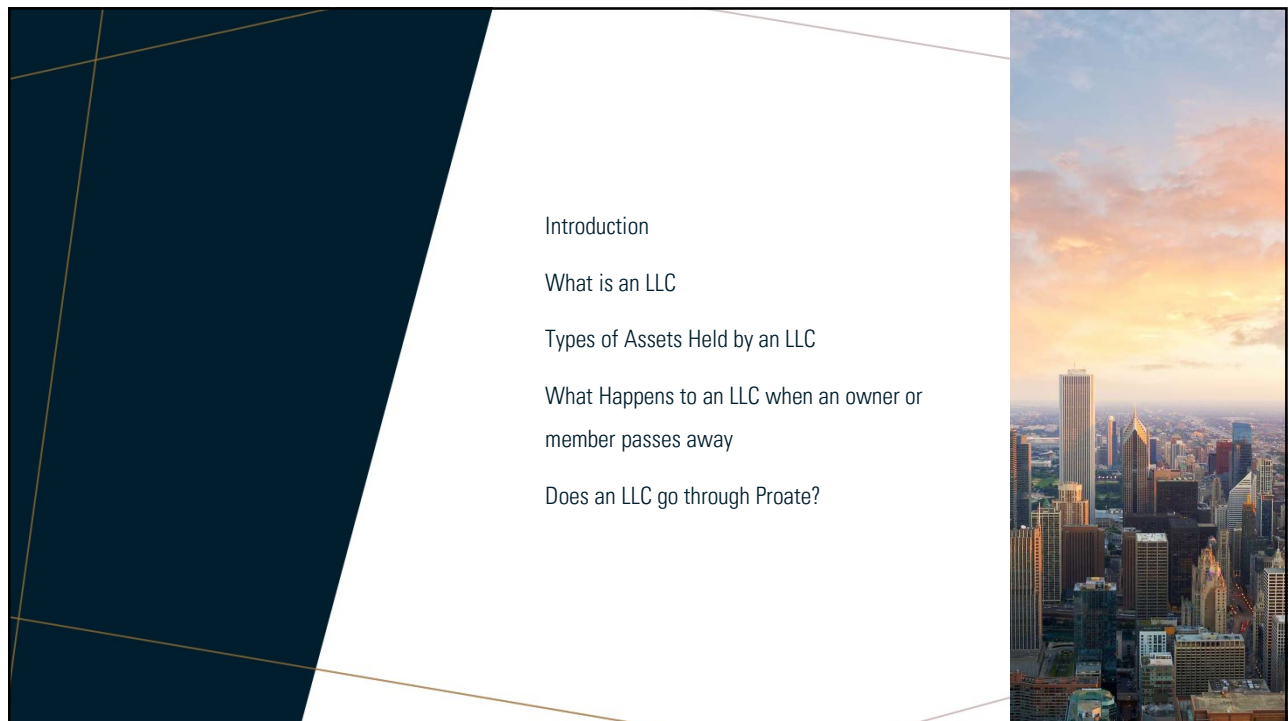




*DEATH, PROBATE
AND SMALL
BUSINESS BANK
ACCOUNTS*

1



Introduction

What is an LLC

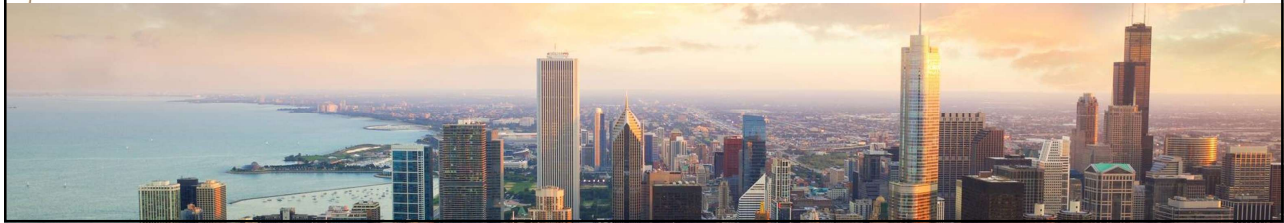
Types of Assets Held by an LLC

What Happens to an LLC when an owner or
member passes away

Does an LLC go through Proate?

2

INTRODUCTION



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WHAT IS AN LLC?

AN LLC, OR LIMITED LIABILITY COMPANY, IS A POPULAR BUSINESS STRUCTURE THAT COMBINES THE ADVANTAGES OF BOTH A CORPORATION AND A PARTNERSHIP OR SOLE PROPRIETORSHIP. IT PROVIDES A FLEXIBLE AND SIMPLIFIED FRAMEWORK FOR BUSINESS OWNERSHIP AND OPERATION. AN LLC IS A SEPARATE LEGAL ENTITY FROM ITS OWNERS, KNOWN AS MEMBERS, WHICH MEANS IT HAS ITS OWN RIGHTS, LIABILITIES, AND LEGAL EXISTENCE.

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KEY CHARACTERISTICS

- **1. Limited liability:** One of the main benefits of an LLC is the limited liability protection it offers to its members. This means that the personal assets of the members are generally protected from the debts and liabilities of the LLC. In case of legal claims or financial obligations, the liability is typically limited to the assets of the LLC itself.
- **2. Flexibility in management and ownership:** LLCs offer flexibility in terms of management and ownership structures. Members can choose to manage the LLC themselves or appoint managers to handle day-to-day operations. Additionally, ownership interests in an LLC can be divided among multiple members, who can have different percentages of ownership and varying levels of involvement in the business.
- **3. Operating agreement:** An LLC typically has an operating agreement, which is a legal document that outlines the internal rules, procedures, and ownership arrangements of the company. The operating agreement specifies the rights and responsibilities of the members, rules for decision-making, profit distribution, and other important aspects of the LLC's operation. It provides clarity and protection for all parties involved.
- **4. Perpetual existence:** Unlike partnerships or sole proprietorships, an LLC can have perpetual existence. This means that the LLC can continue to exist even if one or more members leave or new members are added. The continuity of the LLC is not dependent on the individual members, allowing for stability and longevity.

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TYPES OF ASSETS HELD BY AN LLC

Financial assets: An owner or member can open separate bank accounts, such as checking and savings, for a limited liability company. Separating business from personal finances is not only recommended, it is best practice to ensure that an owner and his or her business are separate financial entities in the event of a liability or lawsuit. LLCs can also hold financial assets such as stocks, bonds, and other investments that allow for the diversification and potential growth of company capital.

OTHER TYPES OF ASSETS

- Equipment
- Inventory
- Real Estate
- Intellectual Property

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WHAT HAPPENS WHEN AN OWNER DIES

Legally speaking, the LLC can continue to exist and operate. Mentioned earlier, this is one of the key advantages of establishing an LLC in the case of your death or incapacitation.

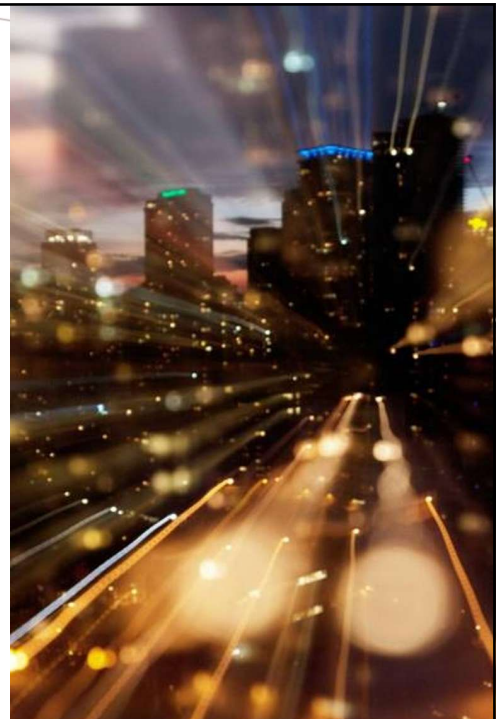
Ultimately, however, the outcome of the LLC when the owner or member passes away depends on a number of factors. Some factors include but aren't limited to:

- State laws pertaining to business entities
- Provisions outlined in the LLC's operating agreement
- The deceased individual's estate plan

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TRANSFER OF OWNERSHIP TO BENEFICIARIES

If the LLC's operating agreement or the deceased member's estate plan designates specific beneficiaries to receive the ownership interest, the ownership will typically transfer to them. The operating agreement may outline the procedure for the transfer and any restrictions on who can become a member.



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BUY SELL AGREEMENT

In some cases, an LLC may have a buy-sell agreement in place, which provides a mechanism for the remaining members or the LLC itself to purchase the deceased member's ownership interest. This agreement can help facilitate a smooth transition of ownership and ensure that the deceased member's interest is properly valued and transferred.

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OPERATING AGREEMENT

- The operating agreement of an LLC plays a critical role in determining the transfer of ownership upon the death of a member. Provisions can outline the steps to be taken, such as how the deceased member's interest is valued, whether it can be transferred to a new member, or whether it needs to be liquidated. They can also inform if the deceased member's interest will be transferred to their heir(s) or designated beneficiaries. It may also provide that the surviving members have the right to purchase the deceased member's interest.

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DISSOLUTION AND WIND-UP

- If the LLC's operating agreement does not specify what happens upon the death of a member and no other agreements or arrangements are in place, the LLC may need to be dissolved and its affairs winded up. This typically involves selling the LLC's assets, paying off debts and obligations, and distributing any remaining assets to the deceased member's estate or beneficiaries.

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DOES AN LLC GO THROUGH PROBATE?

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COMMON PROBATE ISSUES

- **Absence of operating agreement:** If the LLC does not have a well-drafted operating agreement that addresses the transfer of ownership interests upon the death of a member, the ownership interest may be subject to probate. In the absence of clear instructions, the court will rely on state laws to determine the distribution of the ownership interest.
- **Disputed ownership claims:** If there are disputes or challenges regarding the ownership of the LLC interest, probate may be necessary to resolve these issues. This can occur if there are conflicting claims or if the ownership interest is contested by other parties.
- **Insufficient planning for succession:** If there is no proper succession plan in place for the LLC, the death of an owner/member can lead to uncertainty and potential legal complications. Without clear provisions for the transfer of ownership, probate may be required to determine the rightful distribution of the ownership interest.

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LACK OF ESTATE PLANNING

- If an LLC owner/member does not have a comprehensive estate plan in place, including provisions for the transfer of their ownership interest, their assets, including the LLC interest, may need to go through probate. Without specific instructions or designated beneficiaries, the court will follow the state's intestacy laws to determine how the assets should be distributed.

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TRANSFERRING CONTROL OF FINANCIAL ACCOUNTS

- Step 1: Court Appoints Personal Representative of the Estate
- Step 2: Personal Representative Updates Information at Secretary of State
- Step 3: Personal Representative Updates Operating Agreement of Business
- Step 4: Personal Representative Updates Financial Accounts

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QUESTIONS?

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THANK YOU

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