

LLC Buy-Sell Provisions Should Cover a Change in Control

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Under the new Iowa LLC Act, transferees of membership interests do not become members of the LLC without the consent of all of the other members. See Iowa Code Sections 489.401 and 489.502. But what happens if a member who is not an individual merges with another entity? The definition of “transfer” in 489.102 includes transfers by operation of law. A merger in which the member is not the surviving entity will result in the surviving entity becoming a transferee, not a member, unless the operating agreement provides otherwise. However, if the member is the surviving entity even if the original owners lose control, then the desire of the other members to have control over the LLC’s membership is thwarted.

To avoid this result, buy-sell provisions or agreements should include a provision that covers situations where there is a change in control of the entity-member. This is usually defined as more than 50% of the voting interests or stock in the entity.