

CALIFORNIA RULLCA REVIEW

New LLC Act in California

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In 2012, California enacted the Revised Uniform Limited Liability Company Act (RULLCA; 2012 Ch. 419 [SB 323]), which is codified in Sections 17701.01 through 17713.13 of the California Corporations Code (in effect or repealed, the Code), repealed the Beverly-Killea LLC Act (the Old Act) effective January 1, 2014.

RULLCA follows substantially the Revised Uniform Limited Liability Company Act (the Uniform Act) finalized in 2006 by The National Conference of Commissioners on Uniform State Laws (NCCUSL). The quirky numbering system of RULLCA adds "1770" before each Section of the Uniform Act and inserts a period after the first number, so Section 101 of the Uniform Act is Section 17701.01 of RULLCA, and logic is behind what could prove to be a drafting challenge. Background information about RULLCA provisions can be found on the NCCUSL website: [http://www.uniformlaws.org/Act.aspx?title=Limited Liability Company \(Revised\)](http://www.uniformlaws.org/Act.aspx?title=Limited+Liability+Company+(Revised)).

It is a tribute to the California Legislature, Governor Brown and certain members of the Partnerships and Limited Liability Company Committee of the Business Law Section of the California State Bar that California is on the frontend of legislation to

keep California LLC law current with business practices. California was the 47th state in the Union to adopt LLC statutes when the State enacted the Beverly-Killea LLC Act. California is the 7th state in the Union to adopt much of the Uniform Act, although not without hanging onto remnants of the Old Act and other changes needed to obtain approval in California.

The "Prefatory Note" to the Uniform Act explains the purpose behind RULLCA and its general changes. The purpose is to harmonize LLC law across all 50 states and replace LLC law that swept across America in the early 1990's as a soupy concoction of corporate and partnership law brewed by local legislatures. (Of course, I took liberty in the paraphrasing.) Additionally, although not a stated purpose, since California adopted much of a uniform limited partnership act in 2006 and a uniform general partnership act in 1996, RULLCA more closely aligns partnership and LLC law in California.

The same Prefatory Note states that the Uniform Act contains provisions affecting:

- the operating agreement
- fiduciary duty
- the power of a member or manager to bind the limited liability company

- default rules on management structure
- charging orders
- remedy for oppressive conduct
- organic transactions – mergers, conversions, and domestications

RULLCA follows many of those changes, but does not add a remedy for oppressive conduct not already embodied in judicial dissolution provisions, among other material differences.

Additionally, neither the Uniform Act nor RULLCA contains provisions addressing Series LLCs. The drafters of the Uniform Act did not propose Series LLC provisions because of perceived uncertainties in LLC and other law. The Internal Revenue Service has since addressed some of those uncertainties in proposed regulations related to taxation. As initially proposed, RULLCA would have included Series LLC provisions, but the California Secretary of State raised objections based, at least in part, on implementation issues.

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