CALIFORNIA RULLCA REVIEW

Fiduciary Duties

By: Layton L. Pace, Esq.

The California Revised Uniform Limited Liability Company Act (RULLCA; 2012 Ch. 419 [SB 323])), codified at Section 17701.01 *et seq.* of the California Corporations Code (in effect or repealed, the Code), repealed the Beverly-Killea LLC Act (the Old Act) effective January 1, 2014.

Under the Old Act, managers and members in member-managed LLCs owe the same fiduciary duties to the LLC and its members as partners owe to a partnership and its partners. (Sections 17150 and 17153 of the Code.) Accordingly, fiduciary duties for California LLC members and managers follow partnership law.

In 1996, California enacted the Revised Uniform Partnership Act (RUPA), which revised longstanding partnership law in California. RUPA codified the duty of loyalty and the duty of care as the fiduciary duties owed by partners. (Section 16404 of the Code.) However, the RUPA provision does not use the word "only" when specifying those fiduciary duties. Moreover, that provision lists specific duties "included" in the duty of loyalty, rather than expressly limiting it to the duties in the list. The uniform act from which RUPA came made the duty of loyalty and duty of care the only fiduciary duties owed and limited the duty of loyalty to the duties listed. (Section 404 of Uniform Partnership Act.) The upshot is that RUPA does not appear to define completely the fiduciary duties owed by partners and LLC members and managers.

RULLCA copies much of the RUPA fiduciary duties provisions. RULLCA still does not refer to the duty of loyalty and the duty of care as the "only" fiduciary duties owed and in fact references "any other fiduciary duty" in one provision. (Sections 17704.09 and 17701.10(c) of the Code.) However, RULLCA departs from RUPA, by limiting the duty of loyalty to the specific duties listed, which are roughly speaking, the duty to account, the duty not to take LLC opportunity, the duty not to further adverse interests and the duty not to compete. RULLCA rejected applying a business judgment rule standard (in the uniform LLC Act) in evaluating the duty of care, which is set at gross negligence, recklessness, intentional misconduct and knowing violation of law. Those are the statutory default provisions.

RULLCA allows an operating agreement to modify those fiduciary duties to some degree. Although, it cannot eliminate the duty of loyalty, the operating agreement can generally specify activities that do not violate that duty and the vote needed to ratify an act after full disclosure. The operating agreement also can lower the duty of care, but not unreasonably. RULLCA allows a written operating agreement to modify the fiduciary duties of a manager, but only after the informed consent of the members.

Additionally, under RULLCA, the operating agreement can relieve a member of a member-managed LLC from a responsibility and impose it on another member. In that event, the operating agreement also can eliminate or modify the fiduciary duties of the relieved member pertaining to the shifted responsibility. (Section 17701.10(c) and (e) of the Code.)

On a related point, the operating agreement may eliminate or limit the money damages owed by a member or manager to the LLC or other members. However, that provision does not apply to a breach of the duty of loyalty or for other listed events. (Section 17701.10(g) of the Code.)

300 Manhattan Beach Blvd., Suite 201
Phone: 310-379-5805
Manhattan Beach, CA 90266
layton@pacetaxlaw.com