

# CALIFORNIA RULLCA REVIEW

## Transition, Formation, Structure & Scope

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323])), codified at Section 17701.01 *et seq.* of the California Corporations Code (in effect or repealed, the Code), repealed the Beverly-Killea LLC Act (the Old Act) effective January 1, 2014.

Although RULLCA repeals the Old Act, RULLCA provides transition rules. Specifically, RULLCA applies to existing domestic and registered foreign LLCs existing or registered in California on or after January 1, 2014 and to all actions of members and managers taken on or after that date. However, RULLCA does not cancel the status of or require the filing of new articles of organization with the California Secretary of State. The Old Act continues to govern all contracts in existence, and all acts or transactions of an LLC or its members and managers occurring, before 2014. (Section 17713.04 of the Code.) Presumably, "contracts" in this rule include operating agreements, but operating agreements may need changes and should be reviewed. Technical corrections legislation may clarify the transition rules.

RULLCA does not change the fundamentals of LLC property rights. RULLCA specifically states that an LLC is an entity

distinct from its members. An LLC owns its own assets and has its own powers to deal with them. (Section 17701.04 of the Code.) RULLCA opted for that language rather than stating that no member has an interest in LLC property, as did the Old Act. (See Section 17300 of the Code.) Moreover, even though nomenclature differs, both RULLCA and the Old Act provide that an interest in an LLC is personal property. (Sections 17705.01 and 17300 of the Code.) No surprises.

RULLCA does make more significant changes to the formation rules. As with before, one or more persons must file articles of organization to form an LLC. However, the Old Act imposed the additional requirement that before or after the filing, members must enter into an operating agreement and that an LLC have one or more members. (Section 17050 of the Code.) RULLCA drops those requirements. The RULLCA provisions appear to mirror more closely those of corporations. However, under RULLCA an LLC generally will dissolve if it has no members after 90 consecutive days. (Section 17702.01(d), 17050 and 17707.01(c) of the Code.) RULLCA adds that a person becomes a member of a single member LLC as agreed by that person and the organizer of the LLC and of a

multi-member LLC as agreed by those persons before the formation of the LLC. (Section 17704.01 of the Code.)

RULLCA still requires that the articles of organizations declare whether the LLC is managed by one or more managers. The uniform act that RULLCA mostly adopts would have left the management structure to the operating agreement. In fact, the uniform act calls the articles of organization a certificate of organization to dispel any notion that it contains substantive governance rights. RULLCA rejected that change.

Perhaps disappointedly, but not unexpectedly, RULLCA does not expand the types of businesses in California that can operate as a limited liability company. RULLCA does not open the door to operate as an LLC for many businesses rendering services that require licenses under the California Business & Professions Code. (Sections 17701.04, 17002 and 17375 of the Code.)

*The preceding discussion is not and should not be construed as legal or tax advice or representation on specific legal matters for any client or jurisdiction, but rather as a general commentary. The information provided should not be acted upon without specific legal advice based on particular situations. No statement may be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.*