

CALIFORNIA RULLCA REVIEW

Liability Protection

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2012 Ch. 419 [SB 323]), codified at Section 17701.01 *et seq.* of the California Corporations Code (in effect or repealed, the Code), repealed the Beverly-Killea LLC Act (the Old Act) effective January 1, 2014.

Liabilities involving an LLC that affect members or managers may come from all directions. Generally, those liabilities consist of (i) liabilities owed to third parties arising from the activities of the LLC, (ii) liabilities owed to third parties by the members and managers not related to the LLC (*e.g.*, charging orders and fraudulent conveyances) and (iii) liabilities owed between and among the members, managers and LLC (*e.g.*, breach of duty of care and loyalty, contribution, indemnity and other obligations in the operating agreement). This article discusses the first two categories of liabilities.

RULLCA continues the general rule that neither a member nor a manager is liable for the liabilities of an LLC merely by virtue of “acting” as a member or manager. The Old Act extended that liability protection for “being” a member or manager. (Sections 17703.04, 17101

and 17158 of the Code.) In other words, member and managers generally have no liability based on status. (I could not find any official comments explaining the switch to “acting” as a member or manager from “being” one.) Other laws can impose liability on members and managers who are responsible for certain acts, such as remitting sales tax reimbursement and FICA taxes, which derive from status. Additionally, RULLCA recognizes that those persons can undertake liability for LLC liabilities through guarantees and other contracts.

RULLCA also keeps the “piercing the veil” rules of the Old Act. Those rules imposes personal liability on a member of an LLC to the same extent as a shareholder of a corporation, except that where meetings of members or managers are not required, the failure to observe formalities regarding the calling or conduct of those meetings is not a factor to be considered in establishing that liability. In a choice of entity debate, I view this provision as favoring a California LLC over a California corporation.

Additionally, RULLCA continues to provide that a charging order is the exclusive remedy for a judgment creditor of a member or transferee seeking to satisfy a judgment from an interest in an LLC.

(Section 17705.03 of the Code.) RULLCA’s charging order provisions make other changes, though. Specifically, those provisions refer to Section 17705.02 that limits rights to participate in management and access to records and other information about the LLC. Those provisions also require a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, before a court can order a foreclosure sale of the charged interest. The Old Act (Section 17303 of the Code) allowed a foreclosure sale “at any time.” The RULLCA charging order provisions also remove any reference to “redeeming” the charged interest and, instead, refer to rights to extinguish or pay the debt by the debtor, the LLC or other LLC members.

In conclusion, RULLCA leaves unchanged much of the liability protection of the Old Act.

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