

CALIFORNIA RULLCA REVIEW

LLC Management

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323])), codified at Section 17701.01 *et seq.* of the California Corporations Code (in effect or repealed, the Code), repealed the Beverly-Killea LLC Act (the Old Act) effective January 1, 2014.

RULLCA maintains the distinction between member-managed LLCs and manager-managed LLCs. In fact, RULLCA officially defines and refers to “member-managed” and “manager-managed” LLCs in various provisions. (Section 17701.02(o) & (q) of the Code.) A member-managed LLC mirrors a general partnership in that each member has the right to participate in the management of the LLC. A manager-managed LLC mirrors a limited partnership in that one or more persons has the right and power to make most decisions on behalf of the LLC, although a manager of an LLC does not have to own a membership interest in the LLC.

Subject to fiduciary duties, RULLCA does not prevent members or managers from operating in the manner of a board of directors. RULLCA adds to the flexibility of a member-managed LLC by allowing members to decline specified responsibilities and to eliminate the related

fiduciary duties, if other members undertake those responsibilities. (Section 17701.10(f) of the Code.) That has the feel of a committee.

RULLCA maintains the requirement that to be a manager-managed LLC, the articles of organization must include a statement that the LLC has one or more managers. Whether intended or not, RULLCA also requires that the operating agreement contain a similar statement. Through a poor operating agreement, this provision conceivably could cause an LLC to be member-managed despite articles to the contrary. (Section 17704.07(a) of the Code.)

RULLCA leaves virtually unchanged rules relating to rights and powers of members and managers. For example, Sections 17703.01 and 17157 of the Code contain parallel provisions regarding the agency of members and managers and their ability to bind an LLC.

Similarly, RULLCA incorporates virtually verbatim, the meeting, voting, notice and quorum provisions of the Old Act that pertain to members. (Compare Section 17704.07(f) - (w) with Sections 17104 and 17154 of the Code.) The lack of those rules in Delaware and other state LLC law can cause operating agreements formed

under those laws to bulge with provisions that otherwise can be incorporated by reference. Under RULLCA and the Old Act, the operating agreement must set forth the meeting and other decision-making mechanism of managers.

As the Old Act, RULLCA enables the operating agreement to alter voting rights of members and allows classes of members to have different voting rights. However, RULLCA still requires that members must have the right to vote upon the amendment of the articles and a dissolution or merger of the LLC. (Section 17704.07(r) - (t) of the Code.)

RULLCA contains the same rules relating to the appointment of officers of an LLC. Those rules continue to require a written operating agreement to appoint officers.

In conclusion, RULLCA made only minor changes to the management provisions of LLCs.

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