

ALERTS

Corporate Law Alert - California Revised Uniform Limited Liability Company Act To Take Effect January 2014

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Effective Jan. 1, 2014, California limited liability companies will be governed by the California Revised Uniform Limited Liability Company Act (RULLCA), codified at Cal. Corp. Code Sections 17701.01-17713.13. The current Beverly-Killea Limited Liability Company Act (Cal. Corp. Code Sections 17000-17656) will be repealed in its entirety as of the same date.

The RULLCA will apply to all existing and newly formed California LLCs and to all foreign LLCs that are registered to do business with the California Secretary of State. The RULLCA does not require existing companies to file any new or special documents to come under its governance – it will apply automatically to existing LLCs. This means that on Jan. 1, 2014, operating agreements drafted pursuant to the existing limited liability company act in California (the Beverly-Killea Limited Liability Company Act) may be out of sync with applicable law.

For example, the RULLCA:

- Explicitly defines the consequences of a member's dissociation from the LLC
- Presumes that LLCs will be member-managed unless the articles of organization expressly state otherwise
- Concretely defines the fiduciary duties of members and managers, and clarifies the extent to which a company's operating agreement can define, alter and in some cases eliminate certain aspects of fiduciary duties
- Authorizes companies to relieve managers and members from liability for money damages arising from breach of duty, subject to limitations

In addition, in a member-managed LLC, the following default rules will apply in the absence of a contrary agreement by the members in the operating agreement:

1. The management and conduct of the limited liability company are vested in the members.
2. Except as provided in the articles of organization or a written operating agreement, each member has equal rights in the management and conduct of the company's activities including equal voting rights.
3. A difference arising among members as to a matter in the ordinary

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course of the activities of the limited liability company shall be decided by a majority of the members of the company which the difference among the members has arisen.

4. An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
5. The operating agreement may be amended only with the consent of all members.

Similarly, in a manager-managed limited liability company, the following rules will apply in the absence of a contrary agreement by the members in the operating agreement:

1. Except as otherwise expressly provided in the articles of organization or a written operating agreement, any matter relating to the activities of the company is decided exclusively by the managers.
2. Each manager has equal rights in the management and conduct of the activities of the company.
3. A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers of the company.
4. The consent of all members of the company is required to do any of the following:
 - o Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, with or without the goodwill, outside the ordinary course of the company's activities.
 - o Approve a merger or conversion under Article 10 (commencing with Section 17710.01).
 - o Undertake any other act outside the ordinary course of the company's activities.

The RULLCA also prohibits a foreign limited liability company transacting intrastate business in California from maintaining any action or proceeding in California unless it has a certificate of registration to transact intrastate business in California. And finally, if the members of a foreign limited liability company residing in California represent 25 percent or more of the voting interest of the members of the foreign company, those members will now be entitled to all information and inspection rights provided for under the RULLCA, despite contrary provisions provided by the law of the state in which the foreign company is domiciled.

Because of these new rules, and other new default rules which will come into play in the event a company's operating agreement is silent, counsel for California LLCs, or foreign LLCs registered with the California Secretary of State, should review and understand the RULLCA to ensure a clear understanding of its potential impact before Jan., 1, 2014.

For more information, please contact a Barnes & Thornburg LLP corporate attorney with whom you work or a member of the Corporate Department in the following offices: Atlanta (404-846-1693), Chicago (312-357-1313), Columbus (614-628-0096), Delaware (302-300-3434), Elkhart (574-293-0681), Fort Wayne (260-423-9440), Grand Rapids (616-742-3930), Indianapolis (317-236-1313), Los Angeles

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