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California Revised Uniform Limited Liability Company Act

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The California Revised Uniform Limited Liability Company Act ("RULLCA") became effective on January 1, 2014, and repealed and replaced the Beverly-Killea Limited Liability Company Act. RULLCA now governs all new LLC's formed on or after January 1, and may apply to certain actions taken by existing LLC's formed prior to that date.

While the intent of RULLCA is to give maximum effect to freedom of contract in operating agreements, the new law imposes numerous limitations on what an operating agreement may say. For example, an operating agreement may not:

1. Eliminate fiduciary duties, including the duty of loyalty and duty of care;
2. Eliminate the obligations of good faith and fair dealing;
3. Unreasonably restrict the rights of members, managers and holders of transferrable interests to inspect the LLC's documents and to receive certain information;
4. Vary statutory provisions relating to judicial dissolution of the LLC;
5. Vary statutory the requirements in connection with the winding up and dissolution of the LLC;
6. Unreasonably restrict the right of a member to sue the LLC;
7. Restrict the rights of members to approve a merger or vary statutory provisions governing the procedures for a merger.

8. Vary statutory provisions relating to the rights of classes of members;
9. Unreasonably reduce the duty of care of a member to the LLC and the other members in the conduct and winding up of the activities of the LLC;
10. Eliminate or limit a member or manager's liability to the LLC for money damages in certain circumstances, such as where there has been a breach of the duty of loyalty, infliction of harm on the LLC or a member, or an intentional violation of criminal law.

An operating agreement may not eliminate fiduciary duties, but it may identify specific types or categories of activities that do not violate the duty of loyalty, if not unreasonable. It may also specify procedures for members to authorize or ratify a specific act or transaction that would otherwise violate the duty of loyalty.The operating agreement may vary the obligation of good faith and fair dealing by prescribing reasonable standards by which the performance of the obligation is to be measured.

Some statutory provisions may only be varied pursuant to a written operating agreement, such as those relating to management of the LLC, the fiduciary duties of a manger, meetings of the members, voting rights and certain other provisions.

RULLCA sets forth a set of default rules that will apply where an operating agreement is silent. In particular, managers and members should be aware that these default rules require unanimous consent for certain actions, such as a sale of substantially all assets of the LLC, a merger, or other actions not in the ordinary course of business.

Managers and members of LLCs should review their existing operating agreements to determine whether conflicts with the new law exist and whether any unwanted default rules may apply. If so, managers and members may wish to amend their current operating agreement to address any conflicts and avoid the application of default rules.

The forgoing is a brief summary of certain important aspects of the new law but is not intended to constitute legal advice on any particular subject.

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