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The New LLC Act



Tamara B. Pow, Esq.

As of January 1, 2014, the California Revised Uniform Limited Liability Company Act ("RULLCA"), California's new limited liability company act, goes into effect. The previous LLC act had been in place for almost 20 years, with relatively few changes. The RULLCA is a complete re-write of the law. It applies to all existing California LLCs as well as all LLCs from other states that are registered in California. If you have an LLC, you should know that you cannot opt out of the new law. It automatically applies to your LLC, without any requirement for you to sign or file anything.

Although much of the new LLC act is similar to the current LLC act, the RULLCA is much more thorough. It includes more default rules that will apply in the event your LLC operating agreement is silent on an issue. It also includes some substantive changes. This is a good time to revisit your operating agreement to see if some of the new detailed provisions of the RULLCA may override the terms previously agreed to by the members.

In particular, the old law permits indemnification of any person by the LLC. The new Act provides that an LLC *must* reimburse a member of a member-managed LLC or the manager of a manager-managed LLC for payments and indemnify them for liabilities incurred in the course of their activities on behalf of the entity so long as they complied with the required fiduciary duties. This may directly contradict your existing operating agreement. In addition, RULLCA does not mention reimbursement or indemnification of officers, employees and agents of an LLC other than the member and manager. The new Act also provides much more information regarding fiduciary duties.

Another big change in the new law is the requirement

If you have an LLC, you cannot opt out of the new law.

of consent of ALL of the members in a manager-managed LLC to take certain actions, including selling substantially all of the LLC's property, approving a merger or conversion, anything outside the LLC's ordinary course of business, and amending the operating agreement. Take a close look at your operating agreement and be aware that in some situations the new rules may supersede what the members agreed to previously.

Success Story



SLG's client sought to enter into a merger-of-almost-equals with another entity. The two key principals had different ideas about what their respective ownership interests would be. SLG helped structure the terms such that their economic interests were different even though their voting power was equal. The principals, who were both used to doing things their way, were concerned that a minority owner could team up with the other key person to wrest control over the merged entity. SLG was able to structure a supermajority provision on the items that were important to the two principals so that each of them were assured that no important decision could be made without them. By using creative solutions to issues of real concern, SLG was able to help the client successfully complete the merger.

Crowdfunding—Update On The New Regulations

In our last newsletter, we reported on efforts by the SEC to open up the process of start-up company fundraising by allowing companies to publicly solicit investors and still qualify for an inexpensive registration exemption. A few weeks ago, the SEC published, *for comment*, proposed regulations to implement the crowdfunding structure described in the JOBS Act passed a year ago last September.

The proposals are contained in a release, running over 450 pages, in which the SEC makes a number of changes to existing regulations to stimulate crowdfunding. Although the



changes are proposals, and not yet law, they provide a valuable insight to where fundraising law is heading.

The changes run the gamut. The release discusses filing guidelines in offerings where public solicitation is allowed, new information which will be required as part of the forms filed with the Commission, and penalties for the failure to file. Disclosure materials are also affected. The proposals include requirements for particular language and cautionary legends in materials provided to potential investors, and require the materials to be filed with the Commission. Last, antifraud guidance found in certain existing regulations would extend to any materials provided to potential investors.

The proposed regulations show that the SEC's approach to allowing greater solicitation freedom for fund raising will be tempered by constraints necessary to protect investors. In plain English, the SEC is saying you can sell your shares to the public, but this isn't going to be the farmer's market. Stay tuned!

By: Robert Hawn, Esq.

Tax Corner

Year End Tax Reminders

- Don't forget to make your equipment purchases before year end. Up to \$500,000 of assets put in use by December 31st can be expensed. If more than \$2,000,000 of assets are put in place during 2013, the \$500,000 expense is phased out on a dollar for dollar basis. These limits will likely be lower for 2014, so take advantage of them now. Both used and new assets count!
- Another tax break set to expire after 2013 is the 50% bonus depreciation, allowing companies to write off half the cost of new assets with useful lives of 20 years or less. This includes interior leasehold improvements for commercial real estate. The remaining 50% is depreciated as usual.
- Need a new SUV? You can deduct most of the cost of new SUVs over 6000 pounds in the year of purchase. Between the special SUV \$25,000 deduction, 50% bonus depreciation, and normal depreciation, \$46,000 of a



\$60,000 heavy SUV used 100% for business can be deducted in 2013 if you put it in use in 2013.

Source: The Kiplinger Tax Letter, Vol. 88, No. 18, August 30, 2013

Minimum Wage Increase

The minimum wage in San Jose will be increasing from \$10.00 per hour to \$10.15 per hour effective January 1, 2014. Don't forget to update your employment posters with this information.

IRS Extends Tax-Free Benefits to All Same-Sex Married Couples

According to new IRS guidance, same-sex married couples who have been legally married in a state that recognizes same-sex marriage are entitled to all federal spousal tax benefits even if they do not currently live in a state that recognizes same-sex marriage. Employees in civil unions and domestic partnerships are not covered under this guidance.

Source: The HR Specialist, Vol. 11, No. 10, October 2013

The Latest News At



Adopt-A-Family

As part of our community outreach, SLG has adopted a family for the holidays through the Adopt-A-Family Program put on through the Bill Wilson Center. If you would like to give a gift to the family or make a donation to the family, please contact our office for additional information. The Adopt-A-Family program matches families in need with companies or individuals to provide gifts for families that would otherwise not have gifts to give their children at Christmas.

Recent Seminars

Jack Easterbrook and Tamara Pow recently co-presented at a seminar with Petrinovich Pugh & Company and Avidbank. They discussed important issues currently facing real estate owners, developers, investors and lenders. Stay tuned to our firm blog www.sanjosebusinesslawyersblog.com in upcoming months for additional information on the topics discussed at the seminar.



As mentioned in our last newsletter, our very own Bob Hawn was a speaker at San Jose's first C2SV event. The event was a huge success with technology leaders and musicians from all over the Bay Area converging in one place for three days of panels, music and networking.



Robert Hawn (middle) and the Social Media Gateways Team

Employment Corner

E-cigarettes

E-cigarettes, the battery-powered device that gives users a sense of smoking by inhaling a nicotine mist, are slowly becoming more popular. This is creating a new issue for employers. Should e-cigarettes be allowed in the office or not? Because e-cigarettes do not contain tobacco they are not prohibited by state and local workplace smoking laws. There are currently no laws that require employers to allow e-cigarettes to be smoked in offices. However, employers should consider updating their smoking policies now if they wish to prohibit smoking of e-cigarettes in the workplace.

Source: *The HR Specialist*, Vol. 11, No. 10, October 2013

Reminders and Other Items of Note

Going Out Of Business

If you are going out of business and no longer have employees, you must file a DE-9 with the Employment Development Department.

Avoid California Franchise Taxes for 2014!

If you want to dissolve an entity to avoid paying California franchise taxes for 2014, now is the time to consider winding up before year-end.

Formation of New Entities

If you are planning on forming a new entity before the end of the year, please note that if the entity is formed during the last two weeks of the year and does not do any business until January 1, 2014, it will not incur California franchise taxes for 2013.





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Dates To Remember

- December 18 Bake Cookies Day
- December 24 Christmas Eve
- December 25 Christmas Day—courts and government offices closed
- December 26 Boxing Day
- December 31 New Year's Eve
- January 1 New Year's Day—courts and government offices closed
- January 20 Martin Luther King Jr. Day—some courts and government offices closed

Did You Know?

- One in ten people live on an island.
- Vincent Van Gogh sold exactly one painting during his whole life, "Red Vineyard at Arles."
- The original English word for Butterfly was flutterby.
- Popcorn has been a food product for over 6,000 years.
- Proving that time is money, there are no clocks in Las Vegas casinos.
- Approximately 200,000,000 M&Ms are sold every day in the USA.



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We appreciate your referrals!

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www.sanjosebusinesslawyersblog.com