

# Important News for LLCs (Limited Liability Companies)

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October 2, 2012 | by Jason Rittie



On September 21, 2012, Governor Christie signed the “Revised Uniform Limited Liability Company Act” (RULLCA). The bipartisan bill was sponsored by Senator Paul A. Sarlo, District 36 (Bergen and Passaic), and Senator Steven V. Oroho, District 24 (Morris, Sussex and Warren). RULLCA will become effective on March 20, 2013 for all new limited liability companies formed after that date, and for existing limited liability companies, the RULLCA will become effective 18 months following the adoption of the Statute.

RULLCA will repeal the existing “New Jersey Limited Liability Company Act,” and replaces it with a modern regulatory scheme for the creation and operation of limited liability companies in New Jersey. RULLCA is based on the Revised Uniform Limited Liability Company Act adopted by the National Conference of Commissioners on Uniform State Laws in 1996, and later revised in 2006. The current New Jersey Limited Liability Company Act was first adopted in 1993, and has received some minor amendments from time to time. However, RULLCA represents the first major revision and is a significant advancement in this area of the law. RULLCA incorporates some of the best elements of the

existing New Jersey Limited Liability Act, but it also now takes into account almost two decades of legal developments in the field. RULLCA is largely a series of “default rules” that govern the relationships between the LLC members in situations that are not otherwise addressed in an operating agreement. Similar to the existing law, RULLCA permits the express provisions of an operating agreement to prevail over most statutory rules.

As summarized by the Senate Commerce Committee Statement to Senate, No. 742, the more significant changes and innovations in the new Act are:

- **Perpetual duration.** RULLCA eliminates the default (and often overlooked) rule that LLCs have a limited life. As is the case with corporations, RULLCA provides for LLCs to have perpetual duration.
- **Permissible form of operating agreement.** RULLCA permits operating agreements to be oral, written or implied based on the way an LLC has operated. This is consistent with the vast majority of states and in line with the organization of many LLCs formed in New Jersey.
- **Distributions.** Unless otherwise agreed to by the LLC members, distributions are made on a per capita basis.
- **Statements of authority.** RULLCA allows an LLC to file statements of authority with the Division of Revenue in the Department of the Treasury (and in the case of real estate, in the office where real estate records are maintained) authorizing certain people or entities to bind the LLC.
- **Dissociation of a member.** RULLCA eliminates a major pitfall for the unwary practitioner or layperson forming an LLC in New Jersey. Under RULLCA, a resigning owner is no longer entitled to receive the fair value of his or her LLC interest as of the date of resignation. Rather, upon resignation, the resigning owner is dissociated as a member and only has the rights of an economic interest holder.

- **Remedies for deadlock and oppression.** Reflecting case law developments around the country and incorporating some of the best elements of the New Jersey Business Corporation Act, Article 7 (Dissolution and Winding Up) of RULLCA provides remedies for oppressed minority owners. RULLCA permits a member to seek a court order dissolving the company on the grounds that the managers or those members in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the member. RULLCA also permits a member to seek (or, in its equitable discretion, a court to order in lieu of dissolution) a less drastic remedy, such as the appointment of a custodian.
- **Domestication and conversion.** RULLCA provides enhanced ease and flexibility for domesticating, merging and converting an entity other than a domestic limited liability company, if permitted by the law under which it was formed. Its comprehensive provisions offer streamlined methods for domestication (*e.g.*, allowing an LLC formed under the laws of another state to become a New Jersey LLC) and conversion (*e.g.*, allowing a corporation to become an LLC).

Regardless of whether you are a current owner or member in an LLC or are planning to incorporate a new business as a limited liability company, you should make an appointment to see your business team – accountants and attorneys – to make sure that you understand the impact of this new law.