



**From the Desk of Edward E. Benoe, CPA**

**IMPORTANT CHANGES  
IN CALIFORNIA'S LLC LAW**

The California Society of CPAs recently sent out an email, authored by Richard Burt, discussing a change in California law regarding a very popular form of business entity – the LLC. We have condensed the salient points for your consideration, and would be pleased to provide the entire article at your request.

California's new LLC act became effective January 1, 2014. The new law affects all California LLCs – those formed on or after January 1, 2014 and, more importantly, those in existence prior to 2014. The good news is that the act does not change the way an LLC reports and pays taxes, for either federal or State of California purposes.

However, the new act does have provisions that, in certain circumstances, could result in forfeiture of your rights as a member! These new default provisions will apply if the operating agreement does not specify a particular course of action. Here is an example to clarify:

Assume you are one of four members in an LLC that owns real estate. As part of your estate plan, you transfer your economic interest in the LLC to your children. This transfer does not constitute a violation of the operating agreement. The economic interest means that the kids receive the right to receive distributions only. You retain the management and voting rights.

The new law grants the other three members the right to unanimously (excluding you) kick you out as a member, despite the fact that the operating agreement does not contain an expulsion provision. The old law does not allow this result; the new law expressly allows it.

That isn't even the worse part - the new law would also allow the remaining members to amend the operating agreement without your consent. Since the remaining members have no fiduciary duty to you, any such amendment could have profoundly adverse consequence to you and your kids.

Let's change the assumptions: let's say that, rather than transfer your interest, you die. Under the new law, your estate has no voting or management rights. The remaining members have no fiduciary duty to your estate and are free to amend the operating agreement without the consent of your estate or heirs.

Unless the new rules are explicitly addressed in the agreement, they apply by default!

Both of the rather dire consequences outlined in the examples above can be avoided by amending the existing operating agreement to negate the new rules. We strongly recommend that you consult with your attorney about the new law. (Some attorneys may not be familiar with the new act or the corrective measures that must be incorporated into your operating agreement, so make sure that your attorney is up-to-date with this area of the law.)

Like Roseanne Rosanna Danna, a character on Saturday Night Live back in the 80's, said: "it's always something".