

**RESOLUTION 02-03-2015**

**DIGEST**

Corporations Code: Limited Liability Corporation Dissolution on 50% Vote

Amends Corporations Code section 17707.01 to allow members holding 50% or more interest in a limited liability company to initiate dissolution proceedings.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Association recommends that legislation be sponsored to amend California Corporations Code section 17707.01 to read as follows:

§17707.01

- 1 A limited liability company is dissolved, and its activities shall be wound up, upon the
- 2 happening of the first to occur of the following:
- 3 (a) On the happening of an event set forth in a written operating agreement or the articles
- 4 of organization.
- 5 (b) By the vote of 50 percent or more ~~a majority~~ of the voting interests of the members of
- 6 the limited liability company or a greater percentage of the voting interests of members as may
- 7 be specified in the articles of organization, or a written operating agreement.
- 8 (c) The passage of 90 consecutive days during which the limited liability company has no
- 9 members, except on the death of a natural person who is the sole member of a limited liability
- 10 company, the status of the member, including a membership interest, may pass to the heirs,
- 11 successors, and assigns of the member by will or applicable law. The heir, successor, or assign of
- 12 the member's interest becomes a substituted member pursuant to subdivision (d) of Section
- 13 17704.01, subject to administration as provided by applicable law, without the permission or
- 14 consent of the heirs, successors, or assigns or, those administering the estate of the deceased
- 15 member.
- 16 (d) Entry of a decree of judicial dissolution pursuant to Section 17707.03.

(Proposed new language underlined; language to be deleted stricken)

**PROPONENT:** Bar Association of Northern San Diego County

**STATEMENT OF REASONS**

The Problem: The current LLC dissolution statute requires a majority of the voting powers of the LLC members in order to initiate voluntary dissolution proceedings. However, the LLC vehicle is used for many small business in California, many of which are owned by 2 members with equal voting power (i.e., 50/50). When one wants to dissolve the company and the other does not, that leaves the LLC in a stalemate and often results in litigation that these small businesses simply cannot afford for a decree of judicial dissolution.

The Solution: This harmonizes the LLC dissolution statute with the corporate voluntary dissolution statute (Corporations Code §1900(a)) to require only 50% of the voting power to

initiate voluntary dissolution. The language allowing members to select a higher voting percentage in its articles of organization or operating agreement is retained.

### **IMPACT STATEMENT**

This proposed resolution does not affect any other law, statute or rule.

### **CURRENT OR PRIOR RELATED LEGISLATION**

Not known.

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### **RESOLUTIONS COMMITTEE RECOMMENDATION**

#### **APPROVE IN PRINCIPLE**

#### History:

No similar resolutions found.

#### Reasons:

This resolution amends Corporations Code section 17707.01 to allow members holding 50% or more interest in a limited liability company to initiate dissolution proceedings. This resolution should be approved in principle because a 50% voting interest is substantial, and particularly in cases of a two-person owned entity, a 50% interest owner should not be able to thwart dissolution desired by the other 50% voting interests for want of an absolute majority.

A corporation may voluntarily elect to dissolve and wind-up business by vote of shareholders holding 50% or more of the voting power. (See Corp. Code, § 1900, subd. (a).) But under current law, an absolute majority vote of the membership is required for a limited liability company — which sometimes consists of no more than two people — to dissolve the limited liability company (LLC) and wind-up activities. (*Id.*, § 17707.01, subd. (b).) In the case of a 50-50 standoff, the only way to seek dissolution would be by the member(s) bringing a costly and time-consuming action in court for a judicial dissolution. That is the remedy under the “oppression doctrine,” more commonly applicable to closed corporations, when managers or members in control of the LLC abuse their authority or position to the detriment of the other members who are unable to garner a majority vote. Mindful that in an LLC made up of a small number of members, a 50-50 vote may be all that can be realistically expected, particularly under acrimonious circumstances. The proposed measure would provide empowerment and flexibility by crediting a 50% vote of the voting interests as sufficient to effect a dissolution. This is the same rule that already applies for corporations. The resolution will also eliminate the prospect of understandable surprise to those seeking dissolution, after organizing or becoming involved in an LLC, to realize that unlike other business organizations, to dissolve the LLC may will require — absent going to court — an absolute majority vote, even if the LLC consists of only two members.

Importantly, the resolution would only count the vote of the voting interests, not just the members. This is reasonable and fair for the larger stakeholders in the LLC. If the members do not wish to permit dissolution based on a 50% vote, they can change this by provision(s) in the articles of organization or written operating agreement specifying interests of the membership.