



**Featured News**

**ALERT**

**California LLCs May Avoid Judicial Dissolution Buyout Procedures by a Vote of the Majority of the Members to Dissolve**

In August of 2022, the California Second Appellate District found that the holders of at least fifty percent (50%) of a California LLC may vote to dissolve the LLC, pursuant to California's Corporations Code Section 17707.01, and render moot a previously commenced judicial dissolution action, effectively circumventing the buyout procedure provided for in Section 17707.03 subdivision (c)(1). (*Friend of Camden, Inc. v. Brandt* (2022) 81 Cal. App. 5<sup>th</sup> 1054, 1063-64.)

A one percent (1%) interest owner of the LLC in the *Friend of Camden, Inc.* case filed a lawsuit seeking judicial dissolution of the LLC pursuant to California's Corporations Code Section 17707.03, citing irreconcilable deadlock between the members whose membership interests were split 50-50 over how to manage the LLC's sole income-producing asset. (*Id.* at 1060.) Two (2) months after the filing of the lawsuit the opposing LLC members filed a motion to stay the proceedings in order to ascertain the value of and purchase the one percent (1%) interest owner's membership interest. (*Id.*) Approximately one month after the opposing motion was filed, the one percent (1%) interest owner joined with other members to form a fifty percent (50%) membership interest holding and voted to dissolve the LLC in accordance with California Corporations Code Section 17707.01 subdivision b. (*Id.* at 1061.) Thirty-nine (39) days after the members voted to dissolve the LLC, the court granted the opposing members' earlier motion to stay the proceedings. (*Id.*)

California Corporations Code Section 17707.01 states that an LLC is dissolved, and its activities shall be wound up "upon the happening of the first to occur..." including by a vote of fifty percent or more of the voting interests of the members and entry of a decree of judicial dissolution.

Typically, when a suit for judicial dissolution is commenced, any members opposing the dissolution may avoid the dissolution of the LLC by purchasing for cash the membership interest of the member(s) who initiated the dissolution proceeding. (Cal. Corp. Code § 17707.03 (c)(1)). Once the buyout procedure is commenced, the party who originally moved for judicial dissolution may not prevent the buyout procedure from going forward, as the purchasing party has the right to pursue the buyout procedure either by compelling a sale or walking away if the valuation is not



favorable. (*Friend of Camden, Inc.* supra at 1060.)

The important takeaway from the *Friend of Camden, Inc.* case is that at least fifty percent of the owners of the LLC can indeed avoid a buyout, described in California Corporations Code 17707.03, by voting to dissolve the LLC **as long as the buyout procedure has not yet begun** . The court found that the buyout procedure had not begun until the trial court ordered a stay of the dissolution proceedings to ascertain the value of the buyout, which occurred thirty-nine (39) days after the vote to dissolve. (*Id.* at 1063.) Therefore under the clear language of California Corporations Code Section 17707.01 the first event to occur which dissolved the LLC was a vote by fifty percent (50%) or more of the members.

This case represents a significant development in the law surrounding judicial dissolutions of LLCs. Both members of LLCs who seek judicial dissolution and those who oppose it should be aware of this court's findings and the effects of the decision on the options available to and requirements imposed upon California LLC members.

Please do not hesitate to contact us at Brothers Smith LLP if you have any questions.



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