



The Missing Link In LLC Formations

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When a corporation is formed under the California General Corporation Law, an incorporator (or incorporators) signs the initial articles of incorporation and files them with the California [Secretary of State](#). Corporations Code § 200(a). The articles may, but are not required to, name the initial directors. Corporations Code § 204(c). If directors are named, then they proceed with the necessary steps to perfect the organization of the corporation (adopt bylaws, appoint officers and authorize the issuance of shares). If the articles do not name the initial directors, then the incorporator retains the authority to elect directors and officers. Corporations Code § 210. In either case, it is possible to draw a straight line between the incorporator and the persons selected as the initial directors and ultimately the shareholders.

No such straight line necessarily exists under California's limited liability company law (the Beverly-Killea Limited Liability Company Act). An LLC is formed when one or more persons executes and files articles of organization with the Secretary of State. Corporations Code § 17050(a). The person(s) who execute and file the articles are not required to be members of the LLC. The power to adopt an operating agreement is vested in members. Corporations Code § 17059. This discontinuity means that there may be no way to tie an LLC operating agreement definitively to a particular set of filed articles of organization. As Tertullian argued: "evoluant ordinem episcoporum suorum, ita per successionem ab initio decurrentem ut primus ille episcopus . . . habuerit auctorem et antecessorem (let them show the order of their bishops, descending in succession from the beginning so that their first bishop will have as his ordainer and antecedent . . .)". Tertulliani Liber De Praescriptione Haereticorum XXXII.

The absence of any mandatory line of succession could lead to a situation in which multiple sets of members claim to have adopted operating agreements with respect to a single filed articles of incorporation.

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