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PRACTICE BRIEF · CORPORATE GOVERNANCE

Recent Developments in California Corporate Governance Law: 2025-2026

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I. Introduction

The 2025-2026 period has produced a series of significant developments affecting corporate governance practice in California. From federal beneficial ownership reporting mandates to renewed friction between California and Delaware corporate law, from AI-driven fiduciary duty questions to a rising tide of LLC member disputes, businesses operating in the state face an evolving compliance and litigation landscape. This article surveys four of the most consequential developments and their practical implications for California companies, boards, and LLC members.

II. Corporate Transparency Act: Beneficial Ownership Reporting

The Corporate Transparency Act (CTA), codified at 31 U.S.C. § 5336, established the first federal beneficial ownership information (BOI) reporting regime in United States history. The statute directs the Financial Crimes Enforcement Network (FinCEN) to maintain a national

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database of beneficial owners of "reporting companies," with implementing regulations set forth at 31 C.F.R. Part 1010, Subpart C.

A "reporting company" is any corporation, LLC, or similar entity created by filing a document with a secretary of state or equivalent office, or any foreign entity registered to do business in the United States. The definition captures the vast majority of California closely-held corporations, LLCs, and limited partnerships. A "beneficial owner" is any individual who, directly or indirectly, exercises substantial control over the entity or owns or controls at least 25 percent of its ownership interests.

The CTA's path to enforcement has been turbulent. Although originally effective January 1, 2024, a nationwide injunction issued in *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-00478 (E.D. Tex. 2024), temporarily halted enforcement. Following the Fifth Circuit's stay of that injunction and the Supreme Court's subsequent denial of emergency relief, FinCEN reinstated compliance obligations. Under the current deadlines, entities formed before January 1, 2024, must file their initial BOI reports by January 13, 2025; entities formed during calendar year 2024 have 90 days from formation; and entities formed on or after January 1, 2025, have 30 days.

The statute provides over 25 exemptions, the most significant being for "large operating companies" — entities with more than 20 full-time U.S. employees, a physical U.S. office, and more than $5 million in prior-year gross receipts. Other exemptions cover SEC-reporting companies, banks, credit unions, insurance companies, public utilities, tax-exempt entities, and certain inactive entities. Critically, these exemptions are entity-specific: a parent company may qualify while its subsidiaries do not.

Penalties for noncompliance are severe. Civil penalties accrue at $591 per day of violation (adjusted annually for inflation). Willful violations carry criminal penalties of up to $10,000 and two years' imprisonment under 31 U.S.C. § 5336(h). For California closely-held companies and multi-member LLCs, the practical challenge lies in identifying all beneficial owners — particularly where ownership is held through layered entities, trusts, or community property arrangements — and in maintaining updated filings within 30 days of any change in beneficial ownership information.

III. Delaware vs. California Choice-of-Law (Corp. Code § 2115)

California Corporations Code § 2115 — the "quasi-California corporation" statute — remains one of the most aggressive exercises of state corporate regulatory authority in the nation. The statute applies specified provisions of California corporate law to any foreign corporation (including Delaware corporations) that derives more than 50 percent of its property, payroll, and sales from California and has more than 50 percent of its outstanding voting securities held of record by persons with California addresses.

When § 2115 applies, it overrides the foreign corporation's home-state governance rules in enumerated areas, including cumulative voting in director elections (Corp. Code § 708), removal of directors without cause (Corp. Code § 303), shareholder inspection rights (Corp. Code § 1600 et

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seq.), supermajority requirements for certain mergers and reorganizations, and distributions to shareholders. The practical effect is to impose California's more shareholder-protective governance regime on companies that chose Delaware incorporation precisely to avoid it.

The ongoing tension between § 2115 and Delaware's internal affairs doctrine — the principle that the law of the state of incorporation governs the internal affairs of a corporation — remains unresolved at the appellate level. In *VantagePoint Venture Partners 1996 v. Examen, Inc.*, 871 A.2d 1108 (Del. 2005), the Delaware Supreme Court held that Delaware law governs the internal affairs of Delaware corporations regardless of § 2115, finding the internal affairs doctrine constitutionally mandated under the Commerce and Full Faith and Credit Clauses. California courts have not uniformly deferred to this position.

Recent litigation has renewed the conflict. California trial courts have continued to apply § 2115 to Delaware-incorporated companies with majority California contacts, particularly in disputes involving cumulative voting rights and board removal. The result is a jurisdiction-by-jurisdiction gamble: a Delaware corporation with California-majority contacts may face different governance rules depending on which state's courts adjudicate the dispute. For companies in this posture, the practical risk extends beyond litigation uncertainty to board composition, director removal procedures, and the enforceability of charter provisions that would be valid under Delaware law but void under California's overlay.

IV. AI and Board Fiduciary Duty: Oversight Obligations

The rapid enterprise deployment of artificial intelligence systems has created a new frontier for director oversight liability under the *Caremark* standard. In *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996), Chancellor Allen established that directors face personal liability where they "utterly failed to implement any reporting or information system or controls" or, having implemented such a system, "consciously failed to monitor or oversee its operations." The Delaware Supreme Court reinforced this framework in *Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019), holding that the duty of oversight requires boards to make a "good faith effort" to establish an information and reporting system for "mission critical" compliance risks.

AI governance now falls squarely within this framework. Companies deploying AI in consumer-facing products, employment decisions, credit underwriting, healthcare, or other regulated contexts face substantial regulatory and litigation risk. The SEC has issued guidance requiring public companies to disclose material AI-related risks in their periodic filings, and several enforcement actions have targeted companies for AI-related disclosure deficiencies. The EU AI Act's extraterritorial reach further extends compliance obligations to California companies with European operations or customers.

The *Caremark* exposure for AI governance is concrete: where a board fails to establish any system for monitoring AI deployment risks — including bias and discrimination, data privacy violations, intellectual property infringement, and regulatory noncompliance — and the company suffers losses from an AI-related incident, derivative plaintiffs will argue that the absence of board-level

oversight constitutes the "sustained or systematic failure" that *Caremark* requires. Delaware Chancery's evolving standards suggest that AI risk, like food safety in *Marchand* and opioid compliance in *In re Clovis Oncology*, may qualify as a "mission critical" risk demanding affirmative board attention.

> *"A board that deploys AI without a governance framework is writing the complaint for a future derivative action. The question is not whether AI oversight is a fiduciary obligation — it is whether the board can demonstrate it took that obligation seriously before an incident occurred."*

V. RULLCA LLC Buyout Disputes Proliferating

California's adoption of the Revised Uniform Limited Liability Company Act (RULLCA), codified at Corporations Code § 17701.01 et seq., has produced a growing wave of member disputes — particularly over buyout valuations and the absence of statutory buyout rights that exist in the corporate context.

Unlike the California Corporations Code, which provides statutory buyout rights for shareholders of close corporations under § 2000 (permitting a corporation to avoid dissolution by purchasing the petitioning shareholder's shares at "fair value"), RULLCA provides no analogous buyout mechanism for LLC members. A dissatisfied LLC member's primary statutory remedy is judicial dissolution under Corp. Code § 17707.03, which authorizes dissolution where "it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement." This standard is considerably narrower than the oppression-based dissolution available to corporate shareholders.

The practical consequence is that LLC members locked in governance disputes face a binary choice: negotiate a buyout (often at a distressed valuation) or seek judicial dissolution of the entire enterprise. Courts have struggled with this framework, particularly where majority members engage in conduct that would constitute oppression in the corporate context — excluding minority members from management, withholding distributions, self-dealing transactions — but the LLC's operating agreement lacks adequate buyout or exit provisions.

Emerging case law has begun to address this gap. Several California courts have recognized fiduciary duties among LLC members and managers, notwithstanding RULLCA's default rules, where the operating agreement is silent or where the LLC functions as a de facto partnership. The "fair value" standard applied in judicially ordered buyouts has itself become a source of litigation, with disputes centering on whether minority and marketability discounts should apply — an issue on which California courts remain divided. Additionally, courts have considered whether the implied covenant of good faith and fair dealing constrains majority members' exercise of discretion under the operating agreement, particularly regarding distribution decisions and capital call provisions.

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PRACTICAL RECOMMENDATIONS FOR BOARDS AND MANAGEMENT

- Audit CTA compliance immediately — confirm whether each entity in your corporate family qualifies for an exemption, identify all beneficial owners (including through trusts and layered entities), and implement a 30-day change-reporting protocol
- For Delaware-incorporated companies with majority California contacts, evaluate exposure under Corp. Code § 2115 and consider whether charter provisions (particularly director removal, cumulative voting, and inspection rights) remain enforceable in California courts
- Establish a board-level AI governance framework before deploying AI systems in regulated or consumer-facing contexts — document the board's oversight process, designate responsible officers, and implement reporting protocols to satisfy *Caremark* obligations
- For multi-member LLCs, review operating agreements for adequacy of buyout provisions, exit mechanisms, and dispute resolution procedures — the absence of statutory buyout rights under RULLCA makes contractual protections essential
- Ensure operating agreements address valuation methodology, discount applicability, and payment terms for member buyouts to avoid protracted judicial valuation disputes

Practice	Corporate Governance
Topics	Corporate Transparency Act · Artificial Intelligence · Fiduciary Duty · LLC & Partnership Disputes
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