

# NEW FLORIDA LIMITED PARTNERSHIP ACT AND OTHER BUSINESS LAWS

*By: Stefan Rubin, Esq.*

On January 1, 2006, several new Florida business entity laws went into effect, including a new Florida Revised Uniform Limited Partnership Act of 2005 (the "Act"), which represents the most comprehensive changes to Florida's limited partnership laws in almost twenty years. Some of the other new laws affect Florida's general partnerships, corporations and limited liability companies (LLCs).

Perhaps the greatest and most pervasive addition in the new laws is the ability for a Florida general partnership, limited partnership, corporation or LLC to "convert" into another entity type. Before the enactment of such conversion statutes, if a corporation wanted to continue business as an LLC, it was required to form anew LLC and then merge into that new LLC. The key difference between a conversion and a merger is that in a conversion, the resulting entity is deemed to have been in existence since the original entity's date of formation (i.e. it is the same entity), whereas in a merger, the resulting entity is the surviving entity of the merger (i.e. the newly formed entity that has no prior existence). In a conversion, the entity's name, or at least its suffix, must change so that it conforms to the name requirements for the new entity type (e.g. If a corporation converts to an LLC, its name can no longer end with "Inc.").

The Act also creates several new statutes governing limited partnerships and amends several prior limited partnership statutes. Florida's prior limited partnership laws were primarily designed to address only the limited partners of a limited partnership, and included a broad "bridge" provision to Florida's general partnership laws to address the general partners of a limited partnership. This new Act does away with that "bridge" provision and stands alone, governing both the limited and general partners of a limited partnership. As a result, the laws governing general partners of a limited partnership under the new Act may be significantly different than the laws which governed such general partners prior to the Act. Some of the other notable changes in the Act include:

- Simplified filing costs for forming and renewing a limited partnership (now flat fees, whereas they used to be variable based upon the total contributions to the partnership).
- A limited partner's name in the name of the partnership.
- A limited partner is not personally liable for obligations of the partnership by reason of being a limited partner, even if the limited partner participates in management of the partnership. Previously, a limited partner was only protected so long as A (Ed not engage in the partnership's management.
- Greater records inspection rights, allowing a limited partner the right to inspect partnership records even without specifying a purpose.

- A limited partner owes no fiduciary duty to the partnership or any other partner, unless it is engaged in the management of the partnership.
- The limited partnership itself is liable if it receives money or property from a non-partner which is misapplied by a general partner.
- Requires unanimous consent of all general and limited partners to amend the partnership agreement, admit new partners, dissolve the partnership or take certain other actions, and requires unanimous consent of all general partners (where there is more than one) to merge or convert the partnership, or sell all or substantially all of the partnership's assets.
- Requires a limited partnership to reimburse a general partner for payments made, and indemnify a general partner for liabilities incurred, by the general partner in the ordinary course of business or for the preservation of the partnership's assets or business if made in good faith by the general partner.
- Expressly provides that no partner of a limited partnership violates a duty or obligation under the Act merely because its conduct furthers its own interest.
- Establishes default appraisal rights for limited partners who dissent to a decision to merge or convert the partnership with or into another entity, and sets forth the procedure to exercise such rights. The old laws only provided such rights in the event of a merger, and did not set forth the procedure by which to exercise. However, the Act includes an opt-out provision and expressly allows a partnership to modify, restrict or eliminate such appraisal rights in its partnership agreement.
- Establishes a procedure for a dissolving limited partnership to dispose of known or unknown claims (similar to recently enacted statutes for Florida corporations).
- Clarifies that a partnership agreement can amend, modify or take several, but not 64 of these laws as they apply to general partners, limited partners and the partnership.

The Act currently applies only to Florida limited partnerships formed on or after January 1, 2006, and also applies to any limited partnerships formed before January 1, 2006 which elect to be governed by the Act. However, beginning January 1, 2007 the Act will apply to all limited partnerships in Florida. If you are considering whether your existing limited partnership should elect to be governed by the new laws of the Act before 2007, you should contact an attorney in Ruden McClosky's Corporate Law Group.

Amendments to Florida's other business organizations laws were also recently made, effective as of January 1, 2006. The Florida Limited Liability Company Act was amended to:

- Allow an LLC to include a statement in its articles of organization authorizing one or more persons to serve as managers or

managing-members of the LLC, and providing for any limitations upon the authority of such persons. The law also provides that inclusion of such a statement is deemed to provide notice to all other persons of such grant or restriction on authority, except in the case of restrictions relating to real estate which must be recorded at the local level.

- Limit the duty of loyalty for managers and managing-members to a few specific duties: - accounting to the LLC and holding as trustee any LLC property, not dealing with the LLC on behalf of any party having an adverse interest to the LLC, and not competing with the LLC while the LLC is active. The (Ad laws included a non-exhaustive list of duties, which could be interpreted to require greater fiduciary duties.
- Establish default appraisal rights for LLC members who dissent to a decision to merge or convert the LLC with or into another entity and sets forth the procedure to exercise such rights. The prior LLC laws only provided such appraisal rights in the event of a merger, and did not include a procedure. The new law includes an opt-out provision and expressly allows an LLC to modify, restrict or eliminate such appraisal rights in its LLC operating agreement.

Finally, the Florida Business Corporations Act was amended to clarify that in a situation where one or more shareholders dissent from a corporate action and such dissenting shareholders are entitled to statutory appraisal rights (whereby the corporation must purchase their shares for "fair value"), if the corporation has 10 or fewer shareholders then the "fair value" of shares shall not be discounted for lack of market ability or minority status. Prior to this statutory amendment, the law was unclear and courts were left to determine whether or not the purchase price would be discounted because the corporation was privately held or because the selling shareholder owned less than a controlling interest. It is interesting to note, however, that the legislative history of this amendment provides that the contra-positive of this statement is not necessarily true, and that this amendment should not be construed to require such discounting where there are more than 10 corporate shareholders.