

**Reporter's thoughts on Re-RULPA transition issues
(posted to list serv during the week of Nov. 13)**

As I contemplate the December meeting, it seems to me that our largest (and still largely unexplored) issue is transition -- specifically which rules should apply automatically to each preexisting limited partnership (once "dragged in" after a suitable waiting period) and which should apply to a preexisting limited partnership only if the partnership opts in to that provision.

a. This issue is obviously very important in its own right and to date the drafting committee has only discussed the structure of Re-RULPA's approach and not the substance. We must identify those sections that will not automatically apply to preexisting limited partnerships. To my mind, the LLLP shield is the most obvious provision. Other candidates include: judicial expulsion of the general partner, the new rules on dissolution, the rules on fiduciary duty, perpetual duration, the new and improved shield for limited partners (on the theory that old shield discourages limited partner meddling and is thus an important part of the "deal" from the general partner's perspective), rules governing payout to dissociated partners. (I do not suggest that each of these candidates should be winning candidates, merely that they warrant discussion. There's a Florida joke lurking here, I'm sure, but I resist the temptation.)

b. Moreover, this issue has very significant ramifications for the drafting of the entire Act. What we decide about transition may affect whether the "Haynsworth flip" allows us to simplify the Act by removing a host of complicated sections. E.g Section 607 - Dissociated General Partner's Liability to Other Persons; Section 805 - Liability after Dissolution of General Partner and Person Dissociated as General Partner to Limited Partnership, Other General Partners, and Persons Dissociated as General Partner; Section 1111 - Liability of General Partner after Conversion or Merger.

These sections were drafted because Re-RULPA originally assumed personal liability for general partners. The Haynsworth flip eliminates that assumption, and, if we were writing on the blank slate, we could probably jettison these sections. ULLCA has no comparable provisions.

However, if Re-RULPA is going to become the governing law for preexisting limited partnerships and many of those limited partnership will not elect LLLP status, our slate is not truly blank. I don't think we are going to "drag" old limited partnerships into LLLP status. That means that we have to consider retaining in Re-RULPA a number of complex sections that originated before the Haynsworth flip.

I hope you find these observations useful.

Looking forward to seeing you in St. Petersburg.

Dan