



9-1-1978

Introduction Symposium - Limited Partnership Act - Introduction.

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Recommended Citation

Brockenbrough Lamb Jr., *Introduction Symposium - Limited Partnership Act - Introduction.*, 9 ST. MARY'S L.J. (1978).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol9/iss3/3>

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SYMPOSIUM: LIMITED PARTNERSHIP ACT

INTRODUCTION

BROCKENBROUGH LAMB, JR.*

The revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976, was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners which is not available in the corporate form. Moreover, the relationship among partners is consensual, and requires a degree of privity which forces the general partner to seek approval of the partners (sometimes unanimous approval) under circumstances which corporate management would find unthinkable. The limited partnership was not intended to be an alternative in all cases where corporate form is undesirable for tax or other reasons, and the new Act was not intended to make it so. It clarifies many ambiguities and fills interstices in the prior uniform law by adding more detailed language and mechanics. In addition, some important substantive changes and additions have been made.

This symposium provides a detailed analysis of the most significant provisions of the Act by well known scholars in the fields of partnerships, corporations and taxation. These contributors have provided valuable insight to practitioners involved in drafting limited partnerships under both the present act and particularly under the new Act as it is adopted by the states. Additionally, the symposium may provide useful guidance to state legislators considering adoption of the Act. Finally, law professors and students should find

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it an excellent research and learning tool for studies in partnership law. The symposium writers discuss articles 3 and 4, dealing with powers and potential liabilities of the limited partner; articles 5 and 6 on the financial provisions; article 9 on foreign limited partnerships and article 10 which allows a limited partner to bring a derivative action. My extended introductory remarks on these articles are located at the beginning of each article.

The provisions of the Act which have not been discussed at length in the symposium include article 1 which lists all of the definitions used in the Act, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. All of these provisions are new. Article 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. Articles 1 and 2 reflect an important change in the statutory scheme: recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership), and merely reflects matters as to which creditors should be put on notice.

The assignability of partnership interests is dealt with in considerable detail in article 7. The provisions relating to dissolution appear in article 8, which, among other things, imposes a new standard for seeking judicial dissolution of a limited partnership.

It should be noted that the practice of the National Conference of Commissioners on Uniform State Laws after an act has been adopted by the Conference is to submit the act to the House of Delegates of the American Bar Association for its approval. The ULP (1976) has not been presented to the House of Delegates of the American Bar Association because the approval of the United States Treasury Department has not yet been obtained.

October 13, 1977