FLORIDA'S NEW PARTNERSHIP LAW

by John W. Larson, Richard B. Comiter, and Marilyn B. Cane

The 1995 Florida Legislature completely rewrote Florida partnership law by adopting the Florida Revised Uniform Partnership Act (FRUPA) and authorizing limited liability partnerships (LLPs) in Florida.[1]

The original Uniform Partnership Act (UPA) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1914 and, with few amendments, was adopted by every state except Louisiana.[2] The effort to revise the UPA began in 1987,[3] and the final version of the Revised Uniform Partnership Act (RUPA or Revised Uniform Act) was adopted by NCCUSL, and approved by the American Bar Association, in August 1994.[4] After review and some minor revisions by a joint drafting committee of the Business Law and Tax sections, The Florida Bar included FRUPA in its 1995 legislative proposals.

Texas enacted the first limited liability partnership provisions in 1991, but RUPA contains no such provisions.[5] An LLP is essentially a general partnership in which, by virtue of statutory provisions, the partners have no personal liability, as partners, for certain partnership debts and obligations. LLPs are designed especially for professionals, such as lawyers and accountants, in order to shield the partners from personal liability for the malpractice of their fellow partners. The Florida LLP provisions were introduced independently of FRUPA,[6] although eventually passed as part of the same bill.[7]

This article examines some of the more significant policy changes from the UPA and provides a general overview of the substantive law aspects of FRUPA, as well as the new Florida LLP provisions.[8]

Major Policy Choices

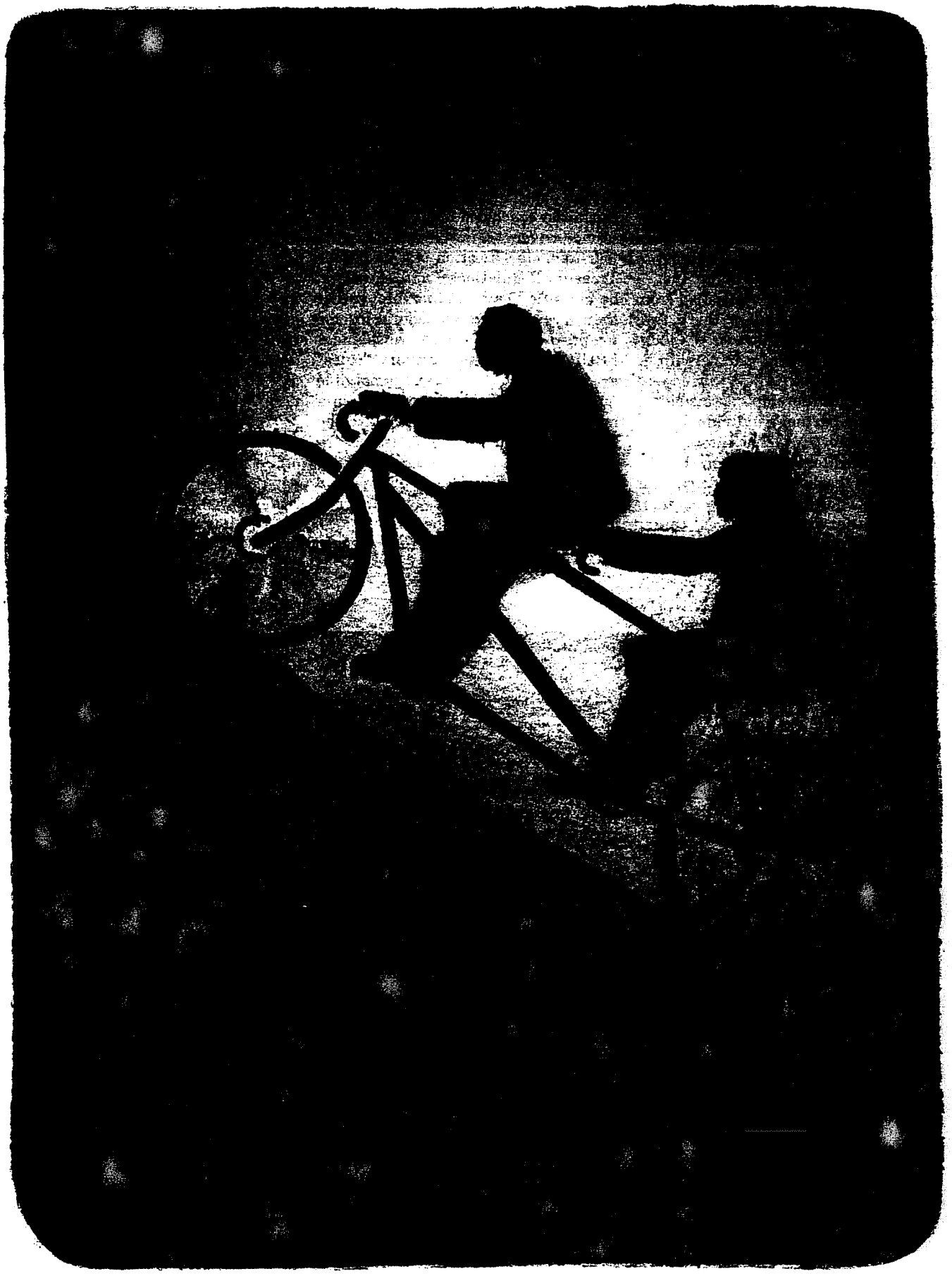
• *Most FRUPA Rules Are Default Rules, Not Mandatory*

With only a few specific exceptions, FRUPA permits partners to contract out of the statutory rules that govern relations among themselves. The general rule is that the partnership agreement governs the relations among the partners and between the partners and the partnership.[9] The provisions of FRUPA govern to the extent the partnership agreement does not provide otherwise. There are exceptions to the general rule, however, and a few immutable core provisions of FRUPA may not be abrogated by agreement.[10] Most importantly, neither the partners' fiduciary duties of loyalty and care, nor their obligation of good faith and fair dealing, may be eliminated entirely, although the partners by agreement may identify activities that do not violate the duty of loyalty or may determine standards by which to measure good faith.

• *FRUPA Adopts an Entity Theory to Achieve Simplicity*

FRUPA states expressly that a partnership is an entity, and most of the statutory rules unequivocally adopt the entity theory of partnership.[11] The question of whether and when a partnership is to be treated as an entity versus an aggregate has caused confusion and litigation under the UPA.[12] Giving clear expression to the entity nature of a partnership is intended to allay previous concerns stemming from the aggregate theory, such as the necessity of a deed to convey title from the old partnership to the new partnership every time there is a change of cast among the partners.[13]

Under the entity theory, the UPA property concept of tenancy in partnership is abolished. Property acquired by a partnership becomes property of



Art by Joe McFadden

the partnership, not of the partners individually,[14] and a partner has no transferable interest in specific partnership property.[15] Property is "partnership property" when acquired in the partnership name or in the name of one or more partners with an indication of their capacity as partners or of the existence of a partnership.[16]

As an entity, a partnership may sue and be sued in the partnership name.[17] A judgment against a partnership is not by itself a judgment against a partner, and a judgment against a partnership may not be satisfied from a partner's assets unless there is a judgment against the partner.[18] A judgment creditor of the partnership is generally required to levy unsuccessfully on the partnership's assets before levying on a partner's individual property.[19] Moreover, the rights of partnership creditors are generally unaffected by the dissociation of a partner or by the addition of a new partner, unless otherwise agreed.[20] Under FRUPA, partners are also permitted to sue the partnership at any time, rather than being confined to an action for dissolution or to an accounting.[21] Thus, the entity approach greatly simplifies suits by and against a partnership.

Because of concerns arising from the adoption of the entity theory, the Bar drafting committee reviewed the partnership tax classification issue for partnerships formed under FRUPA. The committee concluded that a partnership formed under the act should satisfy the four-item classification test under the Treasury Regulations[22] and, therefore, be classified as a partnership, rather than a corporation, for federal income tax purposes. However, because under FRUPA most of the statutory "rules" are merely default rules, it is possible to draft a partnership agreement in a manner which fails to comply with the Treasury Regulations. Thus, practitioners must understand the interplay between the FRUPA rules and the Treasury Regulations in drafting partnership agreements.

• *FRUPA Authorizes the Filing of Partnership Statements*

No filing is required to create a partnership under the UPA, nor is a filing so required under FRUPA. FRUPA does, however, provide for the voluntary filing with the Department of State of a registration statement[23] and other statements, such as a statement of partnership authority.[24] Unlike the RUPA, under FRUPA a partnership must, as a prerequisite to the filing of most other statements authorized by the act, first file a registration statement with the Department of State.[25] A statement of authority, if filed, must name the partners authorized to execute an instrument transferring real property held in the name of the partnership[26] and may also contain any other matter the partnership chooses, such as the authority, or limitations upon the authority, of some or all of the partners to enter into other transactions on behalf of the partnership.[27] A grant of authority to transfer real property, or a restriction on a partner's authority to transfer real property, is effective only if recorded with the land titles.[28] Other grants of authority bind the partnership as to a person who gives value without knowledge that the partner, in fact, has no authority;[29] on the other hand, other restrictions on a partner's authority only bind a third party who actually knows of the restriction.[30] Although the use of a statement of partnership authority is voluntary, it is likely to become common practice under FRUPA, especially for the transfer of real property.[31]

• *FRUPA Provides an Explicit Statement of a Partner's Fiduciary Duties*

The UPA provides very little guidance regarding the fiduciary obligation of partners.[32] FRUPA states expressly that a partner owes to the partnership and the other partners the fiduciary duties of loyalty and care as set forth in the act.[33] A partner's duty of loyalty includes (but is not limited to) the following three rules:[34] 1) A partner must account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or from a use by the partner of partnership property, including the appropriation of a partnership opportunity;[35] 2) A partner must refrain from dealing with the partnership on behalf of a party having an interest adverse to the partner-

ship;[36] and 3) A partner must refrain from competing with the partnership.[37]

Although FRUPA prohibits the partnership agreement from eliminating or waiving the duty of loyalty, the agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.[38] Any specific act or transaction that otherwise would violate the duty of loyalty may, after full disclosure of all material facts, be authorized or ratified by the other partners.[39]

A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.[40] The duty of care may not be reduced unreasonably in the partnership agreement.[41]

A partner is required to discharge duties under the act and under the partnership agreement, and to exercise any rights, consistently with the obligation of good faith and fair dealing. This obligation may not be eliminated in the partnership agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.[42] A partner does not violate any duty or obligation under the act or the partnership agreement merely because the partner's conduct furthers the partner's own interest.[43]

• *FRUPA Rewrites the Rules on Partnership Breakups*

Under the UPA, the rules on partnership breakups are all based on a "dissolution" of the partnership, which is defined as the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on of the business.[44] The UPA definition and use of the term "dissolution" have led to considerable confusion. In addition, the UPA definition, based as it is on the departure of any partner, reflects an emphasis on the aggregate theory of partnerships that is inconsistent with FRUPA's move to an entity theory. More significantly, the entity theory of partnership provides a conceptual means of continuing the firm itself despite a partner's withdrawal from the firm. Thus, while retaining much of the substance of the UPA rules on partnership breakups, FRUPA redefines the term "dissolution" and limits its significance.

The new breakup rules are divided among three articles, each of which has a central provision. Art. 6 concerns partner "dissociations," which are withdrawals and other departures, such as expulsions. Its central provision lists all the ways in which a partner dissociates,[45] including the UPA rule that a partner may dissociate at will, even in a fixed-term partnership.[46]

Art. 7 provides for the buyout of a dissociated partner's economic interest in lieu of winding up the business, unless the partner's dissociation results in a dissolution.[47] If there is no dissolution, the remaining partners have a right to continue the business and the dissociated partner has a right to be paid the value of his or her partnership interest. The central provision of this article describes the buyout in greater detail than present

law and provides for a judicial determination of the buyout price if the partners are unable to agree. The buyout price is the amount that would have been distributable to the dissociated partner in a dissolution under Art. 8 if the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner.[48]

Art. 8 concerns the situations in which a dissociation or other event causes a winding up of the partnership business. Its central provision states that "a partnership is dissolved, and its business must be wound up, only upon" the occurrence of one of the listed events.[49] Accordingly, in many situations under FRUPA, the departing partner is simply bought out under Art. 7, and there is no dissolution or winding up of the partnership's business. FRUPA does, however, retain the present rule that gives a partner at will the power to compel a winding up of the partnership business,[50] unless that right is waived.[51]

The breakup rules also expand the concept of a voluntary filing system as a means of affording notice to third persons. Any partner or the partnership may file a statement of dissociation[52] or a statement of dissolution,[53] as the case may be. After 90 days, the filings are deemed notice to third persons for the purpose of winding down partners' apparent authority and lingering personal liability for partnership obligations. Although a significant departure from present law, such filings by partnerships, and record checking by creditors and others transacting business with partnerships, should become common practice, as it has been in the commercial law area, because of the compelling incentives to do so.

• *FRUPA Creates a Safe Harbor for Partnership Conversions and Mergers*

Art. 9 is new and expressly authorizes the conversion and merger of partnerships.[54] FRUPA permits 1) a general partnership to convert to a limited partnership[55] and 2) a limited partnership to convert to a general partnership.[56] FRUPA treats the converted entity for all purposes as the same entity that existed before the conversion, and all obligations of the converting partnership continue as obligations of the converted partnership.[57] Although title to all personal property owned by the converting partnership remains vested in the converted entity,[58] title to real property must be transferred by deed to the converted entity.[59]

After 90 days, the filings are deemed notice to third persons for the purpose of winding down partners' apparent authority and lingering personal liability for partnership obligations

FRUPA authorizes the merger of a partnership with one or more general or limited partnerships, and the surviving entity may be either a general or a limited partnership.[60] As in a corporate merger, the separate existence of every partnership that is a party to the merger (other than the surviving entity) ceases,[61] and all obligations of every party to the merger become the obligations of the surviving entity.[62] As in the case of a conversion, all personal property owned by the parties to the merger vests in the surviving entity, but title to real property must be transferred by deed to the surviving entity.[63] Art. 9 makes clear, however, that it is not exclusive, but merely a safe harbor that assures the legal validity of conversions and mergers effected in compliance with its requirements.[64]

Other Policy Choices

Under FRUPA, as under the UPA, a partnership is formed by "the association of two or more persons to carry on as co-owners a business for profit."[65] A "partnership" under the UPA includes both general and limited partnerships.[66] FRUPA, however, provides that a business association formed under any other statute, except a predecessor statute (UPA) or a comparable statute of another jurisdiction, is not a partnership.[67] Thus, a limited partnership is not a partnership under FRUPA because it is formed under the Revised Uniform Limited Partnership Act (RULPA).[68]

A related change is the deletion of the UPA provision stating that the UPA governs limited partnerships in cases not provided for in RULPA.[69] Since RULPA already provides that the UPA governs in any case not provided for in RULPA,[70] the additional linkage in FRUPA is unnecessary and more appropriately leaves to RULPA the determination of the applicability of FRUPA to limited partnerships.[71]

FRUPA imports the concepts of "knowledge," "notice," and "a notification" from the Uniform Commercial Code.[72]

FRUPA provides that a partnership's internal affairs are governed by the laws of the state in which its chief executive office is located.[73] This is merely a default rule that can be varied by agreement.

FRUPA gives more detailed guidance on whether property is partnership property or a partner's separate property. Property is "partnership property" if it is acquired in the partnership name or in the name of one or more of the partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.[74] Property is presumed to be partnership property if it is purchased with partnership funds.[75] Property is presumed to be "separate property" if it is acquired in the name of one or more partners without an indication of the person's capacity as a partner and without use of partnership funds.[76]

FRUPA makes two minor changes to the UPA rule which provides that every partner is an agent of the partnership for the purposes of its business.[77] First, FRUPA makes explicit that the key concept is the carrying on in the usual way business "of the kind" carried on by the partnership, thus declaring relevant the business practices of other partnerships.[78] Second, FRUPA eliminates the UPA list of acts that require unanimous consent,[79] leaving this determination to the courts.

FRUPA expands the special UPA rules[80] applicable to the transfer of partnership real property to cover the transfer of personal or other property, as well. Property held in the name of the partnership may be transferred by

an instrument of transfer executed by any partner in the partnership name, subject to the effect of a limitation in a statement of partnership authority.[81] Generally, the burden is on the partnership to prove a partner's lack of authority for a transfer.[82] Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by the persons in whose name the property is held.[83] In that situation, FRUPA generally protects a transferee who gave value without knowledge that it was partnership property.[84]

FRUPA reflects a number of changes to the UPA default rules governing the rights and duties of the partners inter se. Under FRUPA, each partner is deemed to have an account that 1) is credited with his or her contribution and share of any profits, and 2) is charged with any distributions and his or her share of any losses.[85] By agreement, the partnership may adopt a different accounting system, so this is merely a default provision to be used in settling the partners' accounts in the absence of another accounting method.[86] FRUPA continues the UPA default rule[87] that profits are shared equally and that losses, whether capital or operating, are shared in the same proportion as profits.[88]

FRUPA mandates that a partnership must provide partners and their agents and attorneys with access to its books and records.[89] FRUPA continues the UPA rule[90] that, on demand, partners are entitled to information concerning the partnership's business and affairs.[91] FRUPA also affords partners another new information right that, in effect, imposes a disclosure duty on partners. Under FRUPA, each partner must furnish to the other partners, without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of their rights and duties under the partnership agreement and the act.[92]

Under FRUPA, the only transferable interest of a partner in the partnership is the partner's share of the profits and losses and the partner's right to receive distributions.[93]

Under FRUPA, a dissociated partner has continuing apparent authority to bind the partnership in,[94] and lingering exposure to personal liability for,[95] partnership transactions entered into within a year after his or her dissociation,[96] but only if the other party to the transaction reasonably believes when entering the transaction that the dissociated partner is a partner and does not have notice of the dissociation. Both the apparent authority and continued exposure to liability of a dissociated partner are cut off 90 days after the filing of a statement of dissociation.[97]

FRUPA spells out in greater detail the rules for settling accounts among partners in winding up the business. The assets of the partnership must

first be applied to discharge its obligations to creditors; any surplus is applied to pay in cash the net amount due to the partners in accordance with their rights.[98] The profits and losses resulting from the liquidation of the partnership assets must be credited and charged to the partners' accounts.[99] Partners are required to contribute the amount necessary to satisfy all partnership obligations.[100]

FRUPA, in effect, abolishes the so-called "jingle rule" rule which gives partnership creditors priority as to partnership property and separate creditors priority as to separate property.[101] Moreover, partners who are creditors of the partnership are treated the same as other creditors, rather than being subordinated to outside creditors.[102]

Applicability of FRUPA

FRUPA takes effect on January 1, 1996.[103] It governs all partnerships formed thereafter,[104] and any existing partnership that voluntarily elects to be governed by FRUPA.[105] After January 1, 1998, FRUPA governs all Florida partnerships.[106]

Limited Liability Partnership Provisions

Effective July 1, 1995,[107] any Florida partnership may register with the Department of State as a limited liability partnership (LLP).[108] The registration fee is $100 for each partner who is a Florida resident.[109] An LLP must maintain at least $100,000 per partner of liability insurance coverage.[110] The name of a registered limited liability partnership must contain those words or the designation "LLP."[111]

A partner in an LLP is not individually liable for the obligations or liabilities of the partnership, whether in tort or contract, arising from errors, omissions, negligence, malpractice, or wrongful acts committed by another partner or by an employee or agent of the partnership.[112] Each partner remains individually liable, jointly and severally, for all other debts and obligations of the partnership, including his or her own errors, omissions, negligence, malpractice, or wrongful acts and those committed by any person under his or her direct supervision and control.[113] Partnership assets are subject to all partnership liabilities, including malpractice claims.[114]

An LLP providing professional services regulated by a state agency remains under the supervision of the regulatory agency.[115] Whether the practice of law as an LLP would require modification of the Rules Regulating The Florida Bar and approval by the Florida Supreme Court remains uncertain.

Whether the practice of law as an LLP would require modification of the Rules Regulating The Florida Bar and approval by the Florida Supreme Court remains uncertain

The liability of partners in a Florida LLP is determined by Florida law, which applies in the event of a conflict of laws with respect to a partner's liability.[116] A Florida LLP may conduct its business in any state or foreign jurisdiction,[117] and a foreign LLP may register to conduct business in Florida.[118] The liability of the partners of a registered foreign LLP is governed by the laws of the state or jurisdiction under which it was formed.[119]

Conclusion

RUPA reflects a significant number of major policy choices and changes from the UPA. To date, seven states have adopted RUPA.[120] Due to the default nature of many RUPA provisions, Florida practitioners must become thoroughly conversant with the rules and their underlying rationale in order to properly draft agreements for partnerships formed after January 1, 1996. They must also analyze the impact of RUPA on existing partnerships due to its retroactive effect after January 1, 1998. Florida partnerships desiring to shield their partners from vicarious tort liability may also enjoy LLP status. In short, Florida lawyers now have the most progressive and efficient partnership law in the nation with which to help their clients remain competitive in today's business environment. ❐

[1] Both laws were enacted on May 4, 1995, as a part of 1995 Fla. Laws ch. 95-242. (The LLP provisions had actually been enacted two days previously by 1995 Fla. Laws ch. 95-409, which was superseded by the later reenactment.) It is anticipated that FRUPA will be codified as Part III of FLA. STAT. ch. 620, (§§620.81001-620.8108). The LLP provisions have been renumbered by the Division of Statutory Revision and will apparently be included in Part II of ch. 620 (§§620.78-620.789). Those section numbers will be used herein, rather than the section numbers found in 1995 Fla. Laws ch. 95-242.

The Florida codification of FRUPA corresponds to the RUPA section numbers, so that, for example, FLA. STAT. §620.8101 is RUPA §101. Citation herein is to FRUPA, and material nonuniform Florida amendments are noted. For a more comprehensive analysis of the new Florida legislation, *see* John W. Larson, *Florida's New Partnership Law: The Revised Uniform Partnership Act and Limited Liability Partnerships*, 23 FLA. ST. U.L. REV. (forthcoming 1995).

[2] Florida adopted the UPA in 1972. *See* 1972 Fla. Laws 351, ch. 72-108. It is codified as Part II of FLA. STAT. ch. 620 (1993) (§§620.56-.77).

[3] The NCCUSL Drafting Committee was appointed in large part in response to an ABA report which recommended some 150 changes to the UPA. *See Should the Uniform Partnership Act Be Revised?*, 43 BUS. LAW. 121 (1987). Dean Donald J. Weidner, of the Florida State University College of Law, was named as the reporter. *See generally* Donald J. Weidner, *Three Policy Decisions Animate Revision of Uniform Partnership Act*, 46 BUS. LAW. 427 (1991); Larry E. Ribstein, *A Mid-Term Assessment of the Project to Revise the Uniform Partnership Act*, 46 BUS. LAW. 111 (1990).

[4] *See* Prefatory Note to Unif. Partnership Act (1994), 6 U.L.A. 280, 281 (1995 Supp.). *See generally* Donald J. Weidner & John W. Larson, *The Revised Uniform Partnership Act: The Reporters' Overview*, 49 BUS. LAW. 1 (1993).

[5] In 1994, NCCUSL felt that it was premature to consider limited liability partnerships for uniform adoption, since at that time LLP's were novel and there was insufficient experience regarding their acceptance. Today, over 30 states have adopted LLP legislation. An ad hoc ABA working group recently completed drafting a "Prototype" Registered Limited Liability Partnership Act which integrates limited liability provisions directly into RUPA, and NCCUSL has appointed a committee to consider the "Prototype" proposal.

[6] FRUPA was introduced in the 1995 Florida Legislature as SB 1690 and HB 2187, and the LLP provisions were introduced as CS for HB 717 and CS for SB 894. The LLP bills were not part of The Florida Bar's legislative program. On May 2, 1995, CS for HB 717 and HB 2187 were added by amendment to SB 2296 which was then enacted as 1995 Fla. Laws ch. 95-242.

[7] *See* 1995 Fla. Laws ch. 95-242, §§1-

12.

[8] All references to RUPA herein will be to the Uniform Partnership Act (1994), as adopted by NCCUSL and published at 6 U.L.A. 280 (1995 Supp.).

[9] FLA. STAT. §620.8103(1).

[10] *Id.* §620.8103(2).

[11] *Id.* §620.8201.

[12] For a discussion of the widespread criticism of the aggregate theory, *see* MELVIN A. EISENBERG, AN INTRODUCTION TO AGENCY AND PARTNERSHIP 38 (2d ed. 1995). Query: Should a change to the entity approach for state law purposes affect the "mixed bag" approach to partnership taxation used by the Treasury in Subchapter K?

[13] *See* RUPA §201, cmt.

[14] FLA. STAT. §620.8203.

[15] *Id.* §620.8501.

[16] *Id.* §620.8204(1).

[17] *Id.* §620.8307(1).

[18] *Id.* §620.8307(3).

[19] *Id.* §620.8307(4).

[20] *Id.* §620.8703.

[21] *Id.* §620.8405(1). Thus, a partner may, during the term of the partnership, sue for breach of the partnership agreement or for another partner's breach of fiduciary duty.

[22] Treas. Reg. §§301.7701-2(b)-(e).

[23] FLA. STAT. §620.8105(1).

[24] *Id.* §620.8303.

[25] *Id.* §620.8105(4). Registration is not a prerequisite for the filing of a statement of denial or a statement of dissociation. *Id.* The registration statement must include the name of the partnership, the street address of its chief executive office and principal Florida office, the names and addresses of all current partners (or of an agent who will maintain a list of the partners and, on request for good cause shown, make it available to any person for inspection), the partnership's federal employer identification number, and the recorded document number of any partner that itself is an entity. *Id.* §620.8105(1). The filing fee for registration is $50. *Id.* §620.81055.

[26] *Id.* §620.8303(1)(a).

[27] *Id.* §620.8303(1)(b).

[28] *Id.* §§620.8303(3)(b) and (4).

[29] *Id.* §620.8303(3)(a).

[30] *Id.* §§620.8301(1), .8303(5). In other words, a recorded limitation on a partner's authority to transfer real property held in the name of the partnership constitutes constructive knowledge of the limitation, but a filed limitation on a partner's apparent authority to transact other partnership business does not constitute constructive knowledge. The distinction reflects FRUPA's policy of promoting reliance on record title to real property held in the partnership name.

[31] At the urging of the Real Property Section, Florida UPA §620.605(1), which provides for a recorded affidavit of partnership authority, has been retained as an alternative to a FRUPA statement of authority. It is somewhat revised and is now found in FLA. STAT. §689.045(3).

[32] Other than §21, the UPA is silent with respect to a partner's fiduciary duties, thus leaving such rules to judicial development. *See, e.g., Meinhard v. Salmon*, 249 N.Y. 458, 463, 164 N.E. 454, 456 (1928) (Cardozo, J.).

[33] *See* FLA. STAT. §620.8404(1). The only duties FRUPA characterizes as "fiduciary" are the duty of loyalty in §620.8404(2) and the duty of care in §620.8404(3), which fiduciary duties are exclusive. That is intended to discourage judges from finding other fiduciary duties applicable to partners.

[34] *Id.* §620.8404(2). RUPA, on the other hand, provides that a partner's duty of loyalty is *limited* to those three rules. The Florida non-uniform amendment is significant. Under FRUPA, the three statutory rules are not exclusive, and further judicial development of the duty of loyalty is possible.

[35] That rule is based on UPA §21.

[36] That rule is derived from §§389 and 391 of the RESTATEMENT (SECOND) OF AGENCY (1957).

[37] That rule is based on §393 of the RESTATEMENT (SECOND) OF AGENCY (1957).

[38] FLA. STAT. §620.8103(2)(a)3 (first clause).

[39] *Id.* (second clause).

[40] *Id.* §620.8404(3).

[41] *Id.* §620.8103(2)(b).

[42] Contractarian critics have expressed concern with the prohibition against the complete elimination of the fiduciary duties of loyalty and care, while traditionalists bemoan the contractual limitations permitted under RUPA. *Compare* Larry E. Ribstein, *The Revised Uniform Partnership Act: Not Ready for Prime Time*, 49 BUS. LAW. 45, 52-61 (1993), *with* Allan W. Vestal, *Fundamental Contractarian Error in the Revised Uniform Partnership Act*, 73 B.U.L. REV. 523 (1993). For a defense of the RUPA compromise, *see* Donald J. Weidner, *RUPA and Fiduciary Duty: The Texture of Relationships*, 58 LAW & CONTEMP. PROBS. (forthcoming 1995).

[43] FLA. STAT. §620.8404(5).

[44] *See* UPA §29.

[45] FLA. STAT. §620.8601.

[46] *Id.* §620.8602(1) underscores that a partner may exercise this power at any time, rightfully or wrongfully. Moreover, this power cannot be waived in the partnership agreement. *Id.* §620.8103(2)(d).

[47] *See id.* §620.8603(1).

[48] The hypothetical "sale of the entire business" method of valuation, in effect, negates the notion of a minority discount in determining the buyout price of a dissociated partner's interest in the partnership. Nevertheless, other discounts, such as discounts for lack of marketability or the loss of a key partner, may be appropriate in valuing the business at the partnership level. *See* RUPA §701, cmt. 3.

[49] FLA. STAT. §620.8801.

[50] *Id.* §620.8801(1).

[51] *Id.* §620.8802(2).

[52] *Id.* §620.8704(1).

[53] *Id.* §620.8806.

[54] Although the UPA is entirely silent with respect to the conversion or merger of partnerships—and the validity of such transactions may be open to some doubt—these transactions are almost routine today.

[55] FLA. STAT. §620.8902. Unless otherwise specifically provided in the partnership agreement, the unanimous consent of the partners is required for a conversion from a general partnership to a limited partnership.

[56] *Id.* §620.8903. Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a general partnership must be approved by all the partners. The purpose of this requirement is to protect a limited partner from exposure to personal liability as a general partner without his or her clear and knowing consent.

[57] *Id.* §620.8904.

[58] *Id.* §620.8904(2)(a).

[59] *Id.* That is a non-uniform Florida amendment imposed by the legislature to prevent a feared loss of documentary stamp tax revenue.

[60] *Id.* §620.8905(1).

[61] *Id.* §620.8906(1)(a).

[62] *Id.* §620.8906(1)(c).

[63] *Id.* §620.8906(1)(b).

[64] *Id.* §620.8908. Partnerships may be converted or merged in any other manner provided by law. Thus, a conversion or merger may be effected under the laws of another jurisdiction or under a Florida universal or cross-entity merger statute, if adopted in the future.

[65] *Id.* §620.8202(1). FRUPA, like RUPA, adds, "whether or not the persons intend to form a partnership." That codifies the judicial gloss on UPA §6 that the subjective intention of the parties to be "partners" is not necessary.

[66] UPA §6.

[67] FLA. STAT. §620.8202(2). The "definition" of the term "partnership," as used in FRUPA, means a partnership formed under §620.8202(1), predecessor law or a comparable law of another jurisdiction. *Id.* §620.8101(4).

[68] The Florida Revised Uniform Limited Partnership Act is found in Part I of FLA. STAT. ch. 620 (1993) (§§620.101-.192). Section 620.108 governs the formation of a limited partnership.

[69] UPA §6(2).

[70] *See* RULPA §1105 (1985), 6 U.L.A. 407, 610 (Supp. 1995). FLA. STAT. §620.186 was amended to reference the UPA or RUPA, as applicable. 1995 Fla. Laws. ch. 95-242, §22.

[71] The linkage question is under continuing scrutiny by NCCUSL, although no changes in RULPA may be necessary despite the many changes in RUPA.

[72] FLA. STAT. §620.8102.

[73] *Id.* §620.8106. The UPA is silent on this point.

[74] *Id.* §620.8204(1). Property is acquired in the name of the partnership by a transfer 1) to the partnership in its name or 2) to one or more partners in their capacity as partners in the partnership, but only if the name of the partnership is indicated in the instrument transferring title to the property. *Id.* §620.8204(2).

[75] *Id.* §620.8204(3).

[76] *Id.* §620.8204(4).

[77] UPA §9.

[78] FLA. STAT. §620.8301(1). To which FRUPA adds a non-uniform qualification,

"in the geographic area in which the partnership operates," thus suggesting a more local inquiry into business practices than the RUPA formulation.

[79] UPA §9(3).

[80] UPA §10.

[81] FLA. STAT. §620.8302. The effect of a partnership statement is determined by FLA. STAT. §620.8303.

[82] *Id.* §620.8302(2).

[83] *Id.* §620.8302(1)(c).

[84] *Id.* §620.8302(2)(b).

[85] *Id.* §620.8401(1).

[86] Most partnership agreements will, however, include an I.R.C. §704(b) capital account analysis.

[87] UPA §18(b).

[88] FLA. STAT. §620.8401(2).

[89] *Id.* §620.8403(2). The partnership agreement may not unreasonably restrict such access to the books and records. *Id.* §620.8103(2)(a)2.

[90] UPA §20.

[91] FLA. STAT. §620.8403(3)(b). A partner's information rights under §620.8403(3) cannot be unreasonably restricted in the partnership agreement. *Id.* §620.8103(2)(a)2. That is a non-uniform amendment.

[92] *Id.* §620.8403(3)(a). The significance of this provision may be profound, especially when a partner is contemplating withdrawal.

[93] *Id.* §620.8502. As under UPA §26, that interest is personal property.

[94] FLA. STAT. §620.8702(1).

[95] *Id.* §620.8703(2).

[96] Under RUPA §§702 and 703, it is two years.

[97] FLA. STAT. §620.8704(4).

[98] *Id.* §620.8807(1). This continues the in-cash rule of UPA §38(1).

[99] FLA. STAT. §620.8807(2).

[100] *Id.* §§620.8807(2)-(6). This continues the UPA §40 contribution rules.

[101] *See* FLA. STAT. §620.8807(1). The "jingle rule" is found in UPA §40(h). It was deleted because it is inconsistent with §723 of the Bankruptcy Code.

[102] FLA. STAT. §620.8807(1). Under UPA §40(b), debts owing to partners are subordinated to outside creditors.

[103] 1995 Fla. Laws ch. 95-242, §33. The act does not affect any action or proceeding commenced or any right accrued before its effective date. *Id.* §15.

[104] *Id.* §14(1)(a). The UPA continues to govern a partnership formed to continue the business of a partnership dissolved under FLA. STAT. §620.76, however. *Id.*

[105] 1995 Fla. Laws. ch. 95-242, §14(3). The personal liability of a partner to a creditor who has done business with the partnership within the past year is not affected by the partnership's election to be governed by FRUPA unless the creditor knows or receives a notification of the election. *Id.*

[106] *Id.* §14(2).

[107] *Id.* §33.

[108] FLA. STAT. §620.78(1). A limited partnership may register as a limited liability limited partnership (LLLP). *Id.* §620.788.

[109] *Id.* §620.78(3). The fee may not exceed $10,000.

[110] *Id.* §620.851(2). [N.B. The section numbers have been changed. *See* note 1, *supra*.] The maximum coverage amount is $3 million. The insurance must cover the errors, omissions, negligence, malpractice, and wrongful acts for which the partners' individual liability is limited by the act. *Id.* §620.851(1)(a). An irrevocable letter of credit in the same amount may be used in lieu of insurance. *Id.* (b).

[111] *Id.* §620.784(1). A partner who "participates" in the omission of the requisite name or designation, or "knowingly acquiesces in it," is liable for any indebtedness or damage caused by the omission. *Id.* (3). The meaning of this provision is unclear.

[112] *Id.* §620.782(1).

[113] *Id.* §§620.782(2)(a) and (b). A partner is also liable for any partnership debts for which he or she has agreed in writing to be liable. *Id.* (c).

[114] *Id.* §620.782(5).

[115] *Id.* §620.787(1).

[116] *Id.* §620.783.

[117] *Id.* §620.789.

[118] *Id.* §620.885(5). A registered foreign LLP must comply with the Florida insurance requirement and other provisions of the Florida act. *Id.* (2).

[119] *Id.* (4). At least two states (Minnesota and New York) shield the partners of an LLP from personal liability for any type of partnership debt or obligation, whether in tort or contract. Thus, they would have no personal liability to Florida creditors for any partnership debt. We may anticipate a rash of Minnesota LLPs registering in Florida.

[120] Montana and Wyoming adopted RUPA (1992), and North Dakota, West Virginia, and Connecticut, as well as Florida, have adopted RUPA (1994). The Texas Revised Partnership Act is heavily influenced by RUPA, although several key provisions reflect earlier drafts of RUPA.

AUTHORS

LARSON COMITER CANE

John W. Larson is an associate professor at the Florida State University College of Law in Tallahassee, and was the assistant reporter for the Revised Uniform Partnership Act. The views expressed herein are his own, however, and do not necessarily represent the views of the National Conference of Commissioners on Uniform State Laws.

Richard B. Comiter is a shareholder in the West Palm Beach tax law firm of August, Comiter, Kulunas & Schepps, P.A. He is the director of the Federal Tax Division of the Tax Section of The Florida Bar and a columnist on partnership state law for and a member of the Board of Advisors and Contributors of the Journal of Partnership Taxation.

Marilyn B. Cane is a professor of law at Shepard Broad Law Center of Nova Southeastern University in Ft. Lauderdale. She is a member of the executive council of the Business Law Section of The Florida Bar, and served as chair of its Committee on Corporations/Securities. Professor Cane gratefully acknowledges assistance from Paul Caldarelli and Robert Burnett, Goodwin Research fellows at NSU Law.

All three of the authors served on the Steering Committee and Drafting Committee of the Joint Task Force on RUPA of the Taxation and Business Law sections of The Florida Bar, which proposed the FRUPA legislation.

This article is based in part on an article published by the three authors, and as such is reprinted with permission from The Journal of Partnership Taxation, *vol. 10, no. 3,* © *1993 Warren Gorham and Lamont, 31 St. James Ave., Boston, MA 02116. All rights reserved.*

This column is submitted on behalf of the Business Law Section, Paul S. Singerman, chair, and Diane Noller Wells, editor.

■