

ANALYSIS OF 2002 AMENDMENTS TO THE DELAWARE REVISED UNIFORM PARTNERSHIP ACT

By *Matthew J. O'Toole, Esquire* and *Robert L. Symonds, Jr., Esquire*
Stevens & Lee
Wilmington, Delaware

Introduction

The Delaware Revised Uniform Partnership Act, 6 *Del. C.* § 15-101 *et seq.* (the “Act”), was amended in 2002, as it is periodically, for the purpose of keeping it current and maintaining its preeminence. The 2002 amendments to the Act were contained in Delaware State Senate Bill No. 364, and became effective August 1, 2002. *See* 73 *Del. Laws*, c. 296.¹ Senate Bill No. 364 amended provisions of the Act concerning (among other things): the partnership agreement; the statement of cancellation of a statement of partnership existence; the partnership name; appraisal rights; partnership powers; a partner’s liability; delegation of management rights and powers; preemptive rights; and notice of the cancellation of a statement of partnership existence.

The Partnership Agreement [§ 15-101]. Section 15-101(12) of the Act defines “partnership agreement” for purposes of the Act. Senate Bill No. 364 amended Section 15-101(12) to confirm that, whether or not a partnership executes its partnership agreement, the partnership is bound by such agreement.

Statement of Cancellation of Statement of Partnership Existence [§ 15-105]. Senate Bill No. 364 amended subsection (d) of Section 15-105 of the Act to delete the requirement that the statement of cancellation must set forth the reason for the filing thereof.

Partnership Name [§ 15-108]. Section 15-108 of the Act addresses the name of a partnership. Senate Bill No. 364 amended subsection (c) of Section 15-108 to clarify its intended meaning.

Appraisal Rights [§ 15-120]. The 2002 amendment to Section 15-120 of the Act confirms the ability to provide for contractual appraisal rights in certain circumstances, namely, in connection with a partnership’s conversion or transfer or domestication.

Partnership Powers [§ 15-202]. A new subsection (e) has been added to Section 15-202 of the Act. This amendment confirms and clarifies the broad powers of a partnership. Specifically, the new provision makes clear that, subject to any standards and restrictions set forth in its partnership agreement, a partnership has power and authority to make contracts of guaranty and suretyship, and to enter into interest rate, basis currency, hedge or other swap agreements, or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.

¹ Other amendments to the Act, conforming certain terminology to that of the newly amended Delaware Statutory Trust Act, 12 *Del. C.* § 3801 *et seq.*, were contained in Delaware State Senate Bill No. 412, and became effective September 1, 2002. *See* 73 *Del. Laws*, c. 329.

Partner's Liability [§ 15-306]. Senate Bill No. 364 added a new subsection (e) to Section 15-306 of the Act. This new provision confirms that a partner may agree to be personally liable for the obligations of a limited liability partnership.

Delegation of Management Rights and Powers [§ 15-401]. Subsection (l) of Section 15-401 of the Act addresses the delegation of rights and powers to manage and control the business and affairs of a partnership. The 2002 amendment to this subsection confirms that such delegation by a partner will not cause the delegatee to be a partner.

Preemptive Rights [§ 15-401]. New subsection (m) of Section 15-401 of the Act confirms that, unless otherwise provided in a partnership agreement or another agreement, a partner has no preemptive rights.

Notice of Cancellation of Statement of Partnership Existence [§ 15-1209]. The 2002 amendment to subsection (b) of Section 15-1209 of the Act permits the Delaware Secretary of State to carry out, through the use of electronic communication, its obligation to provide notice of the cancellation (pursuant to Section 15-1209(a)) of a partnership's statement of partnership existence.