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**HIGHLIGHTS OF THE FLORIDA REVISED UNIFORM
LIMITED PARTNERSHIP ACT 2005**
By W. Michael Black, Esq.

Florida limited partnerships are creatures of Florida statute. Florida statutory law governing Florida limited partnerships provides (i) rules that cannot be overridden by agreement of the partners, and (ii) default rules that apply where there is no agreement of the partners to the contrary. Partners of most limited partnerships (this Article refers to “Florida limited partnerships” as “limited partnerships,” and this Article does not discuss limited partnerships governed by the laws of other States) adopt a “limited partnership agreement” to evidence their agreement concerning their rights and obligations over matters where state law does not mandate a particular result. Those desiring to form a limited partnership, and partners of existing limited partnerships should understand the aspects of Florida law that cannot be overridden by the agreement of the partners, and what default rules apply in the absence of any agreement to the contrary. The purpose of this Article is to provide partners of existing limited partnership and those considering forming a new limited partnership a brief overview of a few of the many important changes adopted in 2005 by the Florida Legislature to the statutory law governing limited partnerships.

A. IN 2005, THE FLORIDA LEGISLATURE AMENDED STATE LAW GOVERNING LIMITED PARTNERSHIPS IN WAYS THAT MAY REQUIRE PARTNERS TO AMEND THEIR LIMITED PARTNERSHIP AGREEMENTS

Since 1986, limited partnerships have been governed by the Florida Revised Uniform Limited Partnership Act of 1986 (“**FRULPA 1986**”). FRULPA 1986 is linked with the Florida Revised Uniform Partnership Act, the law governing Florida general partnerships (“**FRUPA**”), in that it refers to, but does not include within its four corners, many of FRUPA’s definitions and provisions. In 2005, the Florida Legislature passed the Florida Revised Uniform Limited Partnership Act of 2005 (“**FRULPA 2005**”) which contains substantial changes to FRULPA 1986. FRULPA 2005 was drafted to stand alone and apart from FRUPA. In order to stand alone, FRULPA 2005 incorporates within its four corners many provisions from FRUPA, in addition to several provisions and concepts derived from the Florida Limited Liability Company Act. As a result, FRULPA 2005 is far longer and more complex than FRULPA 1986.

FRULPA 2005 governs all limited partnerships formed after January 1, 2006. Limited partnerships in existence as of January 1, 2006, have one year to “opt in” to FRULPA 2005, during which time they will be subject to FRULPA 1986, but after January 1, 2007, all limited

partnerships will be governed by FRULPA 2005, whether or not they opted in. Limited partnerships opt in to FRULPA 2005 by amending their limited partnership agreements.

Even without formally amending their limited partnership agreements, many limited partnerships in existence as of January 1, 2006, are likely governed by FRULPA 2005 by virtue of the fact that they are, by the terms of their limited partnership agreements, governed by the “Florida Revised Limited Partnership Act, as amended.” While such limited partnerships are most likely governed by FRULPA 2005, their limited partnership agreements have most likely not been updated. To avoid unintended results, and to take advantage of many of FRULPA 2005’s favorable provisions, partners in limited partnerships in existence as of January 1, 2006, should amend their limited partnership agreements to reflect changes to FRULPA 1986 made by FRULPA 2005. An understanding of FRULPA 2005 is also helpful to those considering adopting the limited partnership as a vehicle for conducting business.

B. A BRIEF OVERVIEW OF FRULPA 2005

a. Duration of Limited Partnership’s Existence

Limited partnerships formed under FRULPA 1986 were formed by filing a certificate of limited partnership with the Florida Department of State. Under FRULPA 1986, partners of a limited partnership are required to designate, on the certificate of limited partnership, the date upon which the limited partnership is to dissolve. Under FRULPA 2005, a limited partnership is of perpetual duration unless the partnership agreement provides otherwise. In order to take advantage of the perpetual duration provided under FRULPA 2005, existing limited partnerships should amend their certificates of limited partnership and limited partnership agreements accordingly.

b. Limited Partners’ Ability to Participate in the Management of the Partnership

Under FRULPA 1986, limited partners are provided a shield against liability for the debts and obligations of the limited partnership extending beyond their contributions to capital. However, under FRULPA 1986, if a limited partner participates in the management of the business, such limited partner’s liability shield is revoked. Under FRULPA 2005, a limited partner is shielded from liability even if the limited partner participates in the management and control of the partnership. Existing partnerships may wish to extend management rights to limited partners in their capacities as limited partners without jeopardizing their liability shield.

c. General Partner’s Liability for Limited Partnership’s Liabilities

As under FRULPA 1986, FRULPA 2005 provides a simple mechanism whereby a limited partnership may elect “limited liability limited partnership” status in order to provide general partners with a liability shield. Thus, there is no risk in opting in to FRULPA 2005 that a general partner of a limited liability limited partnership could be subjected to liability for the debts and obligations of the limited liability limited partnership.

d. Right of a General Partner to Withdraw and Receive a Distribution Upon Withdrawal

Under FRULPA 1986, a general partner has the right to dissociate (or withdraw) from the partnership despite any restrictions in a limited partnership agreement to the contrary. However, a general partner that “wrongfully” dissociates can be liable for damages caused by such dissociation. Under FRULPA 1986, upon a general partner’s dissociation, whether wrongful or not, such general partner is entitled to a distribution equal to the value of such general partner’s partnership interest as measured by such general partner’s rights to expected future distributions. This means that even where a limited partnership agreement restricts a general partner from withdrawing before a stated time, a general partner may not only withdraw notwithstanding the restriction, but may also require the partnership to distribute an amount equal to the value of such general partner’s partnership interest as determined by statute. Any damages caused by such a wrongful withdrawal would be offset against the distribution received.

Under FRULPA 2005, while a general partner of a limited partnership has the right and power to dissociate from a partnership despite any restrictions in a limited partnership agreement to the contrary, such general partner has no right to any distributions at the time of dissociation unless provided otherwise by agreement of the partners. Rather, such dissociated general partner is treated as a “transferee” of such dissociated general partner’s own interest. A wrongfully dissociated general partner’s status as a “transferee” of such general partner’s own interest means that such general partner has no right to management and simply has a right to future distributions of profits or losses as distributed by the limited partnership.

Those considering whether to form a limited partnership should consider that a general partner of a general partnership can compel a distribution upon dissociation despite an agreement of the partners to the contrary. Thus, general partners of general partnerships are not treated similarly to general partners of limited partnerships in this respect.

e. Restrictions on Transfer

Many limited partnership agreements, including limited partnerships created to preserve and manage family assets, contain substantial restrictions on the transferability of limited partnership interests. Under FRULPA 1986, partnership interests are transferable unless otherwise permitted in the limited partnership agreement. However, FRULPA 1986 does not expressly ratify specific kinds of transfer restrictions contained in limited partnership agreements. Thus, the enforceability of very broad restrictions on transfers contained in limited partnership agreements has been questionable under FRULPA 1986, given the fact that courts generally disfavor such restrictions on the transferability of property interests.

FRULPA 2005 provides a mechanism to ensure that transfer restrictions are upheld. FRULPA 2005 explicitly blesses transfer restrictions that are printed on certificates evidencing limited partnership interests under the rationale that potential transferees are imputed with knowledge of such restrictions. Depending upon the breadth of transfer restrictions contained in a limited partnership’s limited partnership agreement, a limited partnership with uncertificated interests may benefit from the issuance of certificates with conspicuous notices of such transfer restrictions to ensure their enforceability. Those desiring to form new limited partnerships can be assured that transfer restrictions printed on certificates evidencing limited partnership interests will be enforced according to the plain language of FRULPA 2005.

f. Use of Limited Partner's Name

Under FRULPA 1986, limited partnerships could not use the name of a limited partner in the name of the limited partnership. Under FRULPA 2005, a limited partnership's name may include the name of a limited partner.

g. Fees

Under FRULPA 1986, the filing fee for filing a certificate of limited partnership is calculated at the rate of \$7 per \$1,000 of initial capital contribution as set forth by an affidavit, but the fee is not less than \$52.50 nor more than \$1,750. Also under FRULPA 1986, upon the contribution of additional capital, a supplemental affidavit must be filed and an additional fee at the rate of \$7 per \$1,000 of additional capital, but not less than \$52.50 nor more than \$1,750 is required to be paid. To file an annual report under FRULPA 1986, a limited partnership must pay a filing fee based on the amount of capital contribution, again calculated at the rate of \$7 per \$1,000 and the filing fee must not be less than \$52.50 nor more than \$437.50.

Under FRULPA 2005, the initial filing fee for a certificate of limited partnership is a flat fee of \$1,000 (\$965 filing fee plus a \$35 designation of registered agent fee) and the annual report filing fee is \$500 (\$411.25 filing fee plus an \$88.75 supplemental fee). Under FRULPA 2005, there is no requirement for affidavits of capital contribution as there is under FRULPA 1986.

For those considering forming a new limited liability partnership, the limited partnership initial and annual filing fees should be compared with the initial and annual filing fees for other entities. The initial filing fee for filing articles of organization for a limited liability company is \$125, the filing fee for filing articles of incorporation for a corporation is \$70, and the filing fee for a general limited liability partnership is \$75. Annual filing fees are \$50 for a limited liability company, \$150 for a corporation, and \$25 for a general limited liability partnership.

h. Dissolution Following Dissociation of a General Partner

Under FRULPA 1986, dissolution of a limited partnership occurs automatically upon the dissociation of a general partner unless all the partners agree to continue the business and if there is no remaining general partner, the remaining partners all agree to a replacement general partner. Under FRULPA 2005, if after the dissociation of a general partner at least one general partner remains, no dissolution of the limited partnership occurs unless, within 90 days after the dissociation, all partners consent to dissolve the limited partnership. If no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless the remaining partners consent to continue the business and admit at least one new general partner and the new general partner is, in fact, admitted.

i. Procedures for Barring Claims Against Dissolved Limited Partnerships.

Under FRULPA 1986, former partners of dissolved limited partnerships cannot bar creditors' claims made after the dissolution of the limited partnership. Under FRULPA 2005, partners of a limited partnership may follow procedures similar to those under the Florida

corporations statutes for giving notice, responding to such notice and paying and making provisions for claims that allow partners of limited partnerships to bar certain claims made at certain times after dissolution of the limited partnership.

j. Notice to Third Parties

Under FRULPA 1986, a certificate of limited partnership may list restrictions on the powers of general partners, and the filing of the certificate of limited partnership with the Florida Department of State constitutes notice to third parties of such restrictions, including restrictions that the general partner is prohibited from transferring real property. Under FRULPA 2005, a certificate of limited partnership containing a restriction on a general partner's right to transfer real property is not notice to third parties unless such certificate is recorded in the real property records where the property is located. Limited partners electing to opt in to FRULPA 2005 should be aware that any restrictions on a general or limited partner's right to transfer real property must be recorded in the real property records where the property is located to be effective to put third parties on notice of such restrictions.

k. Merger

While FRULPA 1986 specifically permits mergers of limited partnerships with other business organizations and provides for appraisal rights, FRULPA 2005 provides comprehensive and liberal provisions for conversion of other business organizations to limited partnerships, the conversion of limited partnerships into other organizations, and the merger of limited partnerships with other organizations. In addition, FRULPA 2005 contains provisions for the waiver of appraisal rights upon the merger of a limited partnership.

C. CONCLUSION

Overall, FRULPA 2005 expands the utility of limited partnerships by, among other things, expanding the rights of limited partners, validating transfer restrictions, providing limited partnerships with perpetual duration, simplifying the filing fees schedule, providing procedures for barring claims, and expanding limited partnerships' reorganization options, but limited partnerships in existence as of January 1, 2006, must implement these provisions by amending their limited partnership agreements.