

# **Units in Operating Agreements For LLC's and LP's Less Than Meets the Eye**

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## **Introduction.**

- Partnership and LLC statutes do not use the concept or term “unit” to describe ownership interests.
- Concept of “units” of ownership interests in an unincorporated entity is borrowed from the corporate context.

## Reasons for Units.

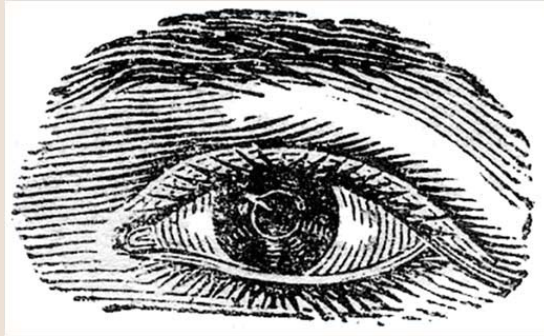
- Classes of ownership.
- Calculation of percentages of ownership.
- Transfers in ownership interest.
- Offerings of interest.
- Voting.

## Authorized Units.

- Borrowed from the corporate concept of authorized shares.
- Might be a way to protect minority owners from dilution, but be wary of amendment provisions.
- *Zimmerman v. Crothall*, 62 A3d 676 (2013 Del. Ch.).
  - LLC company agreement provided for fixed number of authorized units, but also provided that the board could issue additional units or create new classes of units.
  - Court found the provisions setting the number of units controlled.

## Pitfalls.

### Less Than Meets the Eye



## Pitfalls (cont'd).

- Creating units does not create a certificated interest.
  - Typically stock in a corporation is certificated.
  - If providing for certificated units, so state and include other provisions for dealing with certificates such as:
    - ✦ Form of certificate
    - ✦ Certificate register
    - ✦ Certificate transfer requirements
    - ✦ Replacement of lost certificates
  - Note that sample language does not attempt to provide for free transferability of management rights in the same way that voting rights would typically be transferred with stock certificates.

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"Units: Less There Than Meets the Eye"