

**COMPARISON
OF
LIMITED PARTNERSHIP LAWS
OF
TEXAS AND DELAWARE**

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COMPARISON OF LIMITED PARTNERSHIP LAWS OF TEXAS AND DELAWARE

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I. INTRODUCTION

Choosing the applicable law under which to form the modern day limited partnership can be a crucial decision, and many lawyers and business people fail to appreciate the impact that the choice of law can have on future operations and transactions involving the limited partnership. Incorporating under the Delaware General Corporation Law has long been the dominant choice for public corporations. It is wise to examine the differences between Delaware and Texas law applicable to limited partnerships before automatically deferring to the choice of Delaware law for formation.

The statutory provisions governing limited partnerships in Texas are located in the Texas Business Organizations Code (the “TBOC”). Title 1 of the TBOC contains 12 Chapters that are generally applicable to all types of domestic entities formed under Texas law, including limited partnerships. The provisions of Chapters 151, 153 and 154 of the TBOC are applicable to limited partnerships. Chapters 151 and 154 of the TBOC also apply to general partnerships, which are separately governed by Chapter 152 of the TBOC. The provisions of Chapter 151, 153 and 154 and the provisions of Title 1 and Chapter 152 to the extent applicable to limited partnerships may be cited as the “Texas Limited Partnership Law.”

The statutory provisions governing a Delaware limited partnership are found in the Delaware Revised Uniform Limited Partnership Act (the “DRULPA”). The DRULPA constitutes Chapter 17 of Subtitle II of Title 6 of the Delaware Laws.

While I have attempted to prepare a fairly comprehensive comparison of what I view as the more important aspects of these limited partnership laws, the comparison is not complete. There are other provisions in each of the statutes that I have not attempted to address and compare. Any reader, of course, should review the statutory provisions himself or herself in order to make his or her own analysis and to compare other provisions that I have not addressed.

II. LIMITATIONS ON LIABILITY

A. Piercing Limited Partnership Liability Shield.

Texas. One of the primary considerations in choosing applicable law is the shield provided by the limited partnership for its limited partners with respect to obligations and liabilities of the limited partnership. Under the Texas Limited Partnership Law, a limited partner is not liable for the obligations of a Texas limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner’s rights and powers as a limited partner, the limited partner participates in the control of the business. If the limited

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partner participates in the control of the business, the limited partner is liable only to a person who transacts business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.¹ A limited partner does not participate in the control of the business because the limited partner has acted in one of numerous capacities or possesses or exercise one or more numerous powers listed in the TBOC.² Examples of such powers include calling, requesting, attending or participating in a meeting of the partners or the limited partners and consulting with or advising the general partner on any matter, including the business of the limited partnership, and acting as an officer, director or stockholder of a corporate general partner or as a member or manager of a limited liability company that is a general partner.³

Texas court cases have generally observed the liability shield for limited partners in most circumstances. In most cases, the court has decided that regular corporate veil-piercing principles are inapplicable to a Texas limited partnership because the general partner is always liable for the limited partnership's debts.⁴ Some Texas courts have also stated that allowing the application of veil-piercing theories to limited partnerships would essentially disregard formal statutory rules on liability of limited partners.⁵ For an excellent discussion of most of the Texas court cases addressing, and other relevant background information concerning, the topic of piercing the limited partnership veil, one should refer to Professor Elizabeth Miller's excellent CLE paper titled "*Governing Persons and Owners in Action: Liability Protection and Piercing the Veil of Texas Business Entities*."⁶

Delaware. The Delaware statute on liability of limited partners provides that a limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of the rights and powers of the limited partner, he or she participates in the control of the business. If the limited partner does participate in control of the business, he or she is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.⁷ A limited partner does not participate in the control of the business by virtue of possessing or exercising or attempting to exercise certain specified rights or powers. The listing of rights and powers substantially all of the rights and powers listed in the TBOC plus several additional specific rights and powers.⁸ The additional rights and powers include, among other

¹ TBOC §153.102.

² TBOC §153.103.

³ *Id.*

⁴ See, e.g., *Pinebrook Properties, Ltd. V. Brookhaven Lake Property Owners Ass'n*, 77 S.W.3d 487, 449-500 (Tex. App. – Texarkana 2002, pet denied); *Peterson Group, Inc. v. PLTQ Lotus Group, L.P.*, 2013 WL 6081451 (Tex. App. – Houston [1st Dist.] 2013, no pet. h.).

⁵ See, e.g., *Waller v. DB3 Holdings, Inc.*, 2008 WL 373155 (N.D. Tex. 2008).

⁶ Presented at *Essentials of Business Law* conference sponsored by the State Bar of Texas CLE on March 6-7, 2014 in Houston, Texas. The article can also be found on the Baylor Law School website on the webpage for Professor Miller at <http://www.baylor.edu/law>.

⁷ DRULPA §17-303(a).

⁸ DRULPA §17-303(b), (f).

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