

**THE FLORIDA BAR BUSINESS LAW SECTION**  
**CORPORATIONS, SECURITIES & FINANCIAL SERVICES**  
**COMMITTEE MEETING**

**Thursday, December 1, 2011, 10:30 am to 12:00 pm; and 1:30 pm to 3:30 pm**  
**Marriott Renaissance**  
**1617 SE 17<sup>th</sup> Street**  
**Fort Lauderdale, Florida 33316**

**MINUTES**

**Special Session**

1. **Call to Order and Welcome** - Meeting was called to order by Robert Brighton.
2. **Self-introduction of Members Present** - All members introduced themselves and signed attendance sheet.
3. **Limited Liability Company Act Progress Report** - Discussion lead by Gary Teblum.

**(A) Status**

**Timetable** - The LLC draft was initially on target to be presented to the Legislature in 2012. However, due to a delay caused by the Olmstead case, the draft will probably be delayed until 2013. To meet this new deadline we will have monthly meetings to speed progress.

**Input/Comments from other Sections** - No issues between sections.

**(B) Review of Substantive Changes**

**Open Issues** - Oppression as a basis for dissolution is an issue. Both Chapters 607 and 608 have this issue and it must be addressed in a manner consistent to both statutes.

Changing the name of the Articles of Organization to Certificates of Formation or Organization is an issue. If we change this, would existing LLCs need to amend their articles to be in compliance?

Applicability of Chapter 617 Not For Profit statute to LLCs is an issue. Currently an LLC can be For Profit or Not For Profit.

**Questions/Comments**

(i) Gary Teblum proposed a cross reference sheet with respect to each redrafted section showing changes made to sections and section comments.

(ii) A debate arose about whether or not we want to be more competitive in LLC formations by making the Statute resemble Delaware's or whether we are more in favor of a statute protecting the local market (smaller companies).

Under Florida Law all fiduciary duties can be waived except the duties of loyalty, good faith, and fair dealings. We want these preserved. Under Delaware Law the duties of care and loyalty can be waived absolutely. Only the duties of good faith and fair dealings are non waivable.

Stuart Ames proposed that the statute be drafted to cater to the local market because larger companies will go to Delaware regardless.

(iii) Philip Schwartz committed to having a draft completed in the next 3-4 months which will be circulated prior to the June meeting. The draft will be presented to the Executive Council on Labor Day.

(iv) The formation of a list of bridge issues (issues common to both statutes) between Chapters 607 and 608 was proposed - to include judicial dissolutions for oppression, appraisal, and domestications.

#### **4. Adjourned for Lunch**

#### **Regular Session**

**5. Approval of Minutes** - Meeting was called to order by Robert Brighton and an approval of the previous session's minutes was granted.

**6. Continuation of Discussion of LLC Act** - The issue of conversions was discussed. The committee wishes to make merger and conversion provisions more homogeneous and provide guidance on the issues to make the process more user friendly.

**7. Legislative Matters (Preview of 2012 Session)** - Bill Wiley led the discussion.

**(A) Transfer of Tax Credits** - Bills AB 103 and SB 170 can be tracked through [www.leg.state.fl.us](http://www.leg.state.fl.us).

**(B) Other Bills of Interest** - 2010 revisions to UCC Article 9 is in committee in House and looks promising.

**(C) Comments/Questions** - Bill Wiley was asked "if we move back Chapter 608 to early 2013, will it affect the proposed introduction of changes to Chapter 607 which was also scheduled to be submitted in 2013?" Bill stated that he does not believe both will be able to pass in the same year and Chapter 607 would have to be pushed back to 2014.

**8. Federal Legislation** - Discussion led by Robert Brighton and Stuart Ames.

**(A) Shell Companies** - There has been a federal initiative raised against these companies due to their abuse by Chinese businesses using them for reverse merger

actions. There is a prohibition against trading with these companies within a period of time after a reverse merger has occurred.

**9. Regulatory Simplification Initiative** - Robert Brighton led the discussion.

**(A) Rule Changes/ elimination re: Securities Transactions** - Governor Scott is attempting to make Florida regulations more business friendly.

**10. Section Committee Updates** - Discussion led by Alan Aronson and Philip Schwartz.

**(A) Committee on Legal Opinions** - Philip Schwartz discussed the committee's opinion report being up for approval by the Executive Council.

**(B) Corporations - Chapter 607** - Regular monthly meetings will pick back up starting in January.

**(C) New Special Committees** - Alan Aronson proposed the formation of a committee to review Florida blue sky issues under Chapter 517 to enable companies to register offerings in Florida, including Regulation A offerings. Laurie Green and Alan Aronson will co-chair this committee.

Special Benefits/Flexible Purpose Corporations committee formation will allow the board to consider other issues as deemed necessary. Stuart Cohen will chair this Committee and also have his law students do research on what other states are doing.

**11. CLE Report 2011/Law School Initiative** - Discussion led by Alan Aronson

**(A) Section Lunch CLE Series** - Alan spoke about the section's involvement in monthly CLEs as well as networking with law schools across the state.

**12. Diversity and Pro Bono Projects** - Looking to form committees to promote these projects.

**13. New Business** - Stuart Ames proposed examining changing the name and expanding the scope of the Committee. He noted that, notwithstanding its name, the Bankruptcy/UCC Committee does not really cover issues under Article 9 of the UCC, focusing primarily on bankruptcy related issues. He said that many of the members of our Committee, including himself, practiced in the area of secured transactions and it might be appropriate to change the name and scope of the Committee to include the area of secured transactions under Article 9. Robert Brighton agreed and said he would include it for discussion at the next Committee meeting.

**14. Meeting Adjourned**