

# Limited Liability Partnerships for the Practice of Architecture in Illinois

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Effective August 11, 1994, the Illinois Uniform Partnership act was amended to create "Limited Liability Partnerships," hereinafter referred to as "LLP." For Illinois architects practicing in a partnership, significant benefits exist at relatively little expense or time costs and thus, LLPs should prove rather popular.

## **What is an LLP and how does it differ from a traditional partnership?**

Partnerships in Illinois have been controlled since 1917 by the Uniform Partnership Act. The classic definition of a partnership follows:

*A partnership is an association of two or more persons to carry on as co-owners of a business for profit ...*

Virtually any business or profession can be organized as a partnership. It is a flexible form of organization. Its chief drawback, however, has been that all partners and the partnership entity can be liable for actions of any one partner done in the name of the partnership. Thus, if one partner commits malpractice, all partners — even "innocent" partners with no knowledge or control of the acts in question — stand liable. This specter of liability draws many professionals to incorporate or, more recently, form a limited liability company.

From a tax standpoint, earnings flow directly to partners without the concern of double taxation caused by corporate earnings paid as dividends to owners. Thus, partnerships have always been popular from that standpoint.

Illinois recognized by legislation effective August 14, 1994 limited liability partnerships (LLP). The chief difference between an LLP and the traditional partnership is that if a partnership elects to register with the Illinois Secretary of State and pay the annual fees, the liability of "innocent partners" vanishes. In other words, the statute provides:

*A partner in a registered limited liability partnership is not liable, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for debts, obligation, and liabilities of or chargeable to the partnership whether arising in tort, contract or otherwise, arising from negligence,*

*wrongful acts, omissions, misconduct, or malpractice, committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee, agent or representative of the partnership. [805 ILCS 205/15(b)]*

Not all liability is taken away, however. The statute provides that liability remains to the partner in a registered limited liability partnership:

*... for his own negligence, wrongful acts, omissions, misconduct or malpractice or that of any other person under his direct supervision and control or ... the joint liability of a partner for debts and obligations of the partnership arising from any cause other than those (set forth above) including the ordinary commercial debts of the registered limited liability partnership. [805 ILCS 205/15(c)]*

Still further, the law provides that partners who do not face such liabilities as described above should not be joined into a lawsuit. This changes earlier law.

## **What significance do LLPs have to architects in Illinois?**

Because the LLP is considered a simple variation of the long recognized partnership form of business, no special registration issues need exist under the Illinois Architecture Practice Act of 1989. Partnerships must register (see Section 21 of the Act) as a professional design firm, and demonstrate that two-thirds of the partners are "licensed under the laws of any State to practice architecture, professional engineering, or structural engineering" and that the "person having the architectural practice in this State in his charge is..." a partner who holds a license under the Act. The fact that the partnership elects LLP status does not require it to do anything further with respect to the licensing requirements of that Act.

In short, for only one more filing burden, the partners in a partnership can elect LLP status. While assets of the partnership entity and the partner whose own negligence or supervision is questioned remain exposed, the jeopardy to a partner innocent of the allegations of malprac-

tice, negligence, or other stated liabilities can now be eliminated.

## **What partnerships will want to elect LLP status?**

Certainly partners in large firms where less day-to-day interaction exists will feel more comfortable with an LLP. Also, a non-licensed partner in an architecture partnership could insulate himself from liabilities of architecture malpractice more easily, i.e., the non-licensed partner would hardly be charged with "direct supervision and control" or other malpractice allegations. Architects with a pre-existing and satisfactory partnership agreement for handling liabilities and partnership debts might be more comfortable with the established agreement than making the change.

As with all issues of business organization, taxes and liabilities, each individual case presents its own analysis of these complex issues. Consultation with legal counsel is certainly recommended.

## **How does an LLP differ from the recently enacted Limited Liability Company (LLC) or other forms of business organization?**

Illinois recognizes at least five forms of business organization pertinent to the practice of architecture. A sole proprietorship does not require registration as a professional design firm and is, of course, the simplest form of organization. Architects can incorporate as a professional service corporation and otherwise then need not register as a professional design firm.

Otherwise, practices which operate as a "business corporation," partnership (whether traditional or LLP) and Limited Liability Company (LLC) do need to register as a professional design firm.

An LLC is an organization which is different from a partnership or corporation. It has some of the attributes of both from an organizational standpoint. From a tax standpoint, it can have benefits that exist for partnerships that are lacking in business corporations. While the names or initials of LLP and LLC may seem similar, an LLC is an altogether separate legal entity wholly different from a limited liability partnership. Just as one example, if a traditional partnership elects to become an LLP for a given year by filing the appropriate forms and paying the fee, it

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would appear that a failure to file the forms and pay the fee in subsequent years would only cause a partnership with limited liability partnership status to simply revert to a traditional partnership with full liabilities on the partners. On the other hand, if a business corporation or limited liability company fails to pay the appropriate fees and file the appropriate forms, it stands the risk of outright dissolution by the Illinois Secretary of State.

In short, the choices may seem perplexing and almost too many. Consultation with legal counsel is recommended.

### *How does a Limited Liability Partnership differ from a "Limited Partnership?"*

Up until the 1994 legislation establishing limited liability partnerships, Illinois law recognized traditional partnerships created through the Illinois Uniform Partnership Act as well as "limited partnerships" created through the Illinois Revised Uniform Limited Partnership Act. Typically, "limited partnerships" would be es-

tablished for investments — often in **development of real estate**. Limited partnerships offered investors the tax advantages of flow-through income without double taxation while offering them some immunity if statutory requirements were followed. Limited partnerships have at least two types of partners: "general partners" and "limited partners." The general partners would typically run the limited partnership whereas the limited partners would not participate in the control of the business. A limited partner is not liable for the obligations of the limited partnership, subject to certain exceptions.

For a variety of reasons, persons desiring to form a partnership to offer architecture services would not be likely to form an Illinois "limited partnership."

In fact, now with the creation of LLPs, licensed professionals can participate in the control of the business without automatically becoming liable for the obligations of the limited partnership merely by status as a partner.

### Conclusion

Architects, professional engineers, and structural engineers who practice in partnerships can now enjoy increased immunities from liabilities triggered by the actions of other partners in their firm if they themselves were not involved. The cost of achieving that better status is relatively minimal and can be sustained with little burden.

With the arrival of limited liability companies just a few years ago and now the ability to convert a traditional partnership to an LLP, design professionals may want to now review the options available to them in choosing a business organization to offer their services. The choices are many; the nuances and the subtleties even more. Consequently, coordination of the legal and tax implications requires careful planning and professional advice. On the other hand, making the move from a traditional partnership to electing LLP status can be as simple as simply filing the form with the Illinois Secretary of State. Opportunity awaits. ■