

21. Restrictions on Transfer; New Partners

21.1 NATURE OF PARTNERSHIP INTEREST

Each Partner's interest in the Partnership shall be personal property for all purposes.

COMMENT

As noted in RUPA § 502, the only transferable interest of a partner in the partnership is the partner's share of the profit and losses of the partnership and the partner's right to receive distributions. RUPA § 502 further states that this interest is personal property.

21.2 NO TRANSFER

A Partner may not directly or indirectly Transfer the Partner's interest in the Partnership, nor shall a Partner permit the Partner's interest in the Partnership to be directly or indirectly Transferred. An attempted Transfer of a Partner's interest in the Partnership shall not render the transferee a Partner without the Consent of Two-Thirds of the Partners, but shall result in the transferee having only those rights stated in Section 503(b) of the Act.

COMMENT

Transferable interest. Under RUPA § 502, a partner's share of profits and losses and the right to receive distributions are the "transferable interest," and under RUPA § 503(a)(1) the transfer of that "transferable interest" is permissible. This agreement serves to limit that transferability. The right to participate in management, as well as other rights arising from the partner's interest in the partnership (defined at RUPA § 101(9)), is not transferable.

Admission of a transferee. Admission of a transferee as a partner requires unanimous consent under RUPA § 401(i). See Sections 9.2(i) and (ii) hereof, as well as Section 21.3. See footnote to Section 21.3 for a discussion of the issues incident to determining the voting threshold for the admission of a new or transferee partner.

RUPA § 503 provides:

- (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:
 - (1) is permissible;
 - (2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

- (3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.
- (b) A transferee of a partner's transferable interest in the partnership has a right:
 - (1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
 - (2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
 - (3) to seek under Section 801(6) a judicial determination that it is equitable to wind up the partnership business.
- (c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.
- (d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.
- (e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.
- (f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

21.3 NEW PARTNERS

No person shall become a Partner except with the Consent of Two-Thirds of the Partners and upon execution of this Partnership Agreement.

COMMENT

See Section 9.2(i). Sections 9.2(i) and (iii) and Sections 21.2 and 21.3 depart from RUPA § 401(i), which provides that a person may become a partner only with the consent of all of the partners. In this agreement, admission of either a transferee or a new partner (the latter by making a capital contribution to the partnership and receiving the partnership interest directly from the partnership) requires the approval of Two-Thirds of the Partners (defined at Section 1.28). Consideration should be given to the difference between the admission of a transferee (who has acquired a partnership interest from a partner) and a "new partner." If different voting thresholds for the admission of a "new partner" and a "transferee partner" are to be used, it may be appropriate to add these categories as defined terms and, from there, to draw the necessary distinctions. The admission of a new partner and the admission of a transferee give rise to similar considerations as they relate to the question of "who are your partners." In either situation, current partners must determine whether the proposed partner is compatible with the partnership. The

nature of the partnership (e.g., professional practice versus holding large real estate portfolio) will affect the degree of concern with this issue.

The economics of the transaction create a significant distinction between the admission of a transferee member and the admission of a new partner. The admission of a transferee does not alter the relative economic rights of the partners (i.e., no partner's percentage share is reduced). The admission of a new partner has an economic impact in that the percentage interest of each pre-existing partner is reduced.

In view of this distinction, it may be appropriate to use different voting thresholds for the admission of a transferee as a partner as contrasted with the admission of a new partner. In other situations, a uniform voting threshold and its ease of application may be appropriate.