

**No More Excuses –
Changes to Pennsylvania Associations Code and
Realty Transfer Tax Rules Eliminate Justifications
for Continued Ownership of Real Estate through General Partnerships**

By Paul T. Rushton, Esq.¹

In this modern age of Pennsylvania corporation and associations laws in which various forms of limited liability entities are available for use by co-venturers, the general partnership (and the unlimited personal liability to which general partners are exposed) remains as an anachronistic reminder of a prior era. Despite the general partnership's outdated liability features, however, many entrepreneurs continue to own parcels of real property in such antiquated form of entity.² In resisting conversion into an entity with more favorable liability protection features, general partners have often expressed concerns about what they view as a complicated conversion process, as well as the risk that such conversion could result in the imposition of realty transfer tax. However, due to certain changes under the rules governing the imposition of the Pennsylvania realty transfer tax and the Pennsylvania Associations Code over the past several years, such concerns are now clearly unfounded in most cases and should not prevent entrepreneurs from obtaining the benefits of a "full liability shield"³ through the conversion of their general partnership into a form of entity that provides such liability protection under Pennsylvania law.

Increased Certainty under Realty Transfer Tax Rules.

As noted above, general partners considering a conversion of their real estate holding general partnership into a preferred form of entity from a liability perspective are oftentimes unwilling to proceed with the conversion if such transaction will result in the imposition of realty transfer tax. Unfortunately, before 2007, the realty transfer tax regulations in effect did not exempt a transaction of such type from the imposition of realty transfer tax. Instead, taxpayers were forced to rely for such purpose on the Pennsylvania Commonwealth Court decision in the *Exton Plaza* case⁴ and several Pennsylvania Department of Revenue letter rulings⁵ that enumerated criteria for determining if a "conversion" of a general partnership into another form of entity would result in the imposition of realty transfer tax. The lack of clear guidance on this subject often dissuaded general partners from proceeding with a conversion for fear that realty transfer taxes might be imposed as a result of the transaction.

The Pennsylvania Department of Revenue ultimately eliminated such uncertainty in realty transfer tax regulations promulgated in 2007. The regulations established a "confirmatory deed" exemption⁶ that provides, *inter alia*, that a deed made without consideration for the sole purpose of confirming an entity's existing real estate ownership following a conversion of the entity is not taxable, provided that certain criteria are met.⁷

With such tax treatment assured, general partners can now proceed with a conversion with confidence that the transaction will not result in the imposition of realty transfer tax, provided that the clearly-enumerated requirements of the "confirmatory deed" exemption are met.

New and Simpler Options for Conversion under Pennsylvania Associations Code.

Prior to the Association Transactions Act⁸ becoming effective on July 1, 2015, another factor that contributed to a general partner's reticence about a conversion into a form of entity that provided the "full liability shield" was the lack of a simple "conversion" method under Pennsylvania law. Unlike certain other states, Pennsylvania law at that time did not allow for a general partnership to convert into a form of entity providing such liability protection in a single step.⁹ Rather, a multi-step process was required at that time to accomplish a conversion of a general partnership into a form of entity that afforded such protection. For example, in order to convert a general partnership into a limited liability company prior to July 1, 2015, general partners would need to form a new "shell" limited liability entity and then merge the general partnership into the newly formed limited liability company. Although the multi-step processes required under Pennsylvania law at that time were not overly burdensome in practice, general partners would often decide against a conversion due to the perceived complications of the procedures.

With the enactment of the Association Transactions Act, however, Pennsylvania's Associations Code was amended to include a simple, one-step conversion process.¹⁰ Consequently, a Pennsylvania general partnership can now be "converted" into another form of entity, such as a limited liability company, under Pennsylvania law simply by filing a Statement of Conversion with the Pennsylvania Department of State.

The amendments to the Pennsylvania Partnership Code that were effectuated by Act 170 of 2016 also established an additional option for a real estate holding general partnership to obtain the protections of the "full liability shield" under Pennsylvania law. Specifically, through Act 170's extension of the "full liability shield" to a limited liability partnership, the current Pennsylvania Partnership Code now permits general partners to obtain such liability protection by simply filing a Statement of Registration with the Pennsylvania Department of State under Chapter 82 of the Partnership Code.¹¹

As a result of the above changes, Pennsylvania law now affords general partners a number of simple methods for converting a general partnership into an entity with the desired liability protection features.

Conclusion

In light of the changes to the Pennsylvania realty transfer tax rules and the Pennsylvania Associations Code described above, there are no more viable excuses for most entrepreneurs to resist the conversion of their real estate holding general partnership into a form of entity that affords its owners the "full liability shield" under Pennsylvania law. Accordingly, it is now increasingly advisable for general partners to revisit (or consider for the first time) with their legal and tax advisors the potential conversion of their real estate holding general partnership into one of those forms of entity.¹²

¹ Paul T. Rushton, Esq. is a partner with the law firm of Rosenn, Jenkins & Greenwald, LLP and chairs its Business & Finance Department. Paul specializes in corporate law and frequently counsels clients on choice of entity issues. He is a member of the Title 15/Business Associations Committee of the Section on Business Law of the Pennsylvania Bar Association.

² Real property is typically held in a general partnership either because the parcel was purchased before the availability of limited liability entities under Pennsylvania law or the persons purchasing the parcel in general

partnership form desired a simple governance model and/or were unwilling at the time of such purchase to form a limited liability entity to obtain the protections thereof.

³ Under the “full liability shield” under Pennsylvania law, an owner of an entity is not personally liable, directly or indirectly, by way of contribution or otherwise, for any debt, obligation, or other liability of the entity solely by reason of being an owner of the entity. *See, e.g.* 15 Pa.C.S. §§8204, 8633, and 8834(a).

⁴ *Exton Plaza Associates v. Com.*, 763 A.2d 521 (Pa. Cmwlth. 2000).

⁵ *See, e.g.* Pennsylvania Realty Transfer Tax Private Letter Ruling Nos. RTT 03-001 and RTT 03-10.

⁶ *See* 61 Pa. Code §91.152(b).

⁷ Among the criteria for application of this exemption is the requirement that title to the real estate at the time of the conversion be in the name of the general partnership itself (and not titled in the name of the individual partners and dedicated for the use of the partnership). *See* 61 Pa. Code §91.152(b)(1).

⁸ Act 172 of 2014.

⁹ Although a general partnership could be “converted” into a limited partnership or a limited liability partnership in a single step (i.e. through the filing of a Certificate of Limited Partnership or a Statement of Registration, respectively) prior to July 1, 2015, such step alone would not provide the partners thereof with the full benefits of the “full liability shield” under Pennsylvania law. In order to obtain the full benefits of such liability protection under a limited partnership, a general corporate partner would also need to be formed at the time of the “conversion” in order to avoid the personal liability imposed upon a general partner in a limited partnership. Also, as noted in this article, the partners of a limited liability partnership were not afforded the benefits of the “full liability shield” prior to the passage of Act 170 of 2016, but were instead only protected from certain types of liabilities (i.e. liabilities arising from negligent or wrongful acts or misconduct committed by another partner or representative of the partnership).

¹⁰ *See* 15 Pa.C.S. §§351-356, *et. seq.*

¹¹ *See* 15 Pa.C.S. §8204. It is important to note, however, that a limited liability partnership is required to pay an annual registration fee (on a per partner basis) under Pennsylvania law. In contrast, a limited liability company is not charged an annual registration fee under Pennsylvania law, provided that it is not a “restricted professional company”.