

The Impact of Act 170 on LLCs, LLPs, LPs and GPs

How Act 170 has changed the business
landscape in Pennsylvania

Introduction

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Today's Course

- Goal: to provide an overview of Act 170 and prepare you to use those new laws.
- Materials:
 - Powerpoint slides
 - Statute
 - LLC forms

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Topics Addressed by Act 170

- Revision of the laws on partnerships and LLCs.
 - Uniform Partnership Act (1997, 2013)
 - Uniform Limited Partnership Act (2001, 2013)
 - Uniform Limited Liability Company Act (2006, 2013)
- Expanded liability shield for LLPs.
- New provisions on derivative suits involving all types of entities.
- Nonprofit limited partnerships and LLCs.
- Benefit LLCs.

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Partnership and LLC Laws

- The focus of our discussion will be on LLCs because they are used most frequently in practice. But the related GP and LP provisions will be noted at times.
- If you know the section number of one of the uniform laws, you can find the corresponding provision of Title 15 as follows:
 - Omit the zero in the middle of the uniform act number.
 - At the front, add 84 if it is a GP provision, add 86 if it is an LP provision, and add 88 if it is an LLC provision.
 - Thus:
 - section 8421 corresponds to section 201 of UPA
 - section 8671 corresponds to section 701 of ULPA
 - section 8842 corresponds to section 402 of ULLCA

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Effective Date

- Act 170 took effect generally on February 21.
- 15 Pa.C.S. § 8811(b):
 - Before **April 1, 2017**, this chapter governs only:
 - (1) a limited liability company **formed on or after** [the effective date of new Chapter 88]; and
 - (2) except as provided in subsection (c), a limited liability company **formed before** [the effective date of new Chapter 88] which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.
- Similar provisions are found in §§ 8411 and 8611.

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Restricted Professional Companies

- Near the end of the legislative consideration of H.B. 1398 (which became Act 170), a decision was made to retain the category of restricted professional companies because of the annual fee that they pay.
- Thus Subchapter 89L was saved from repeal.

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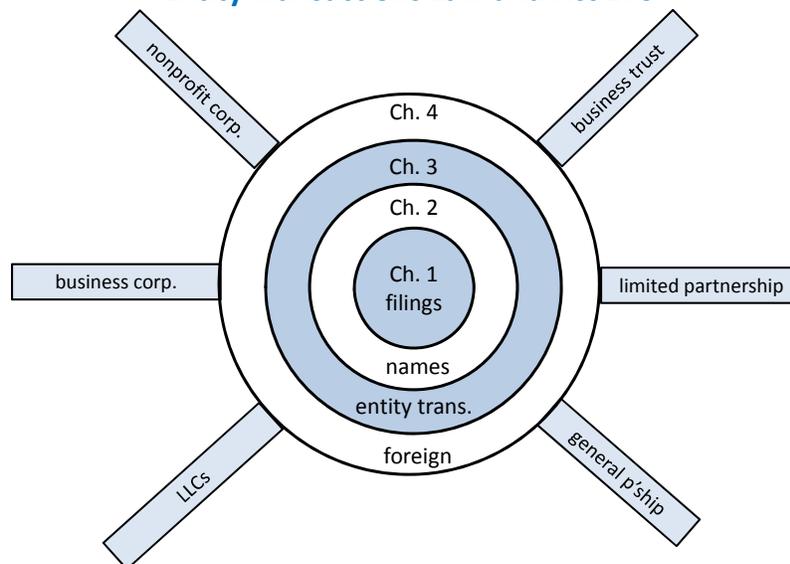
Benefit Companies

- New Subchapter 881 (§§ 8891-8898) provides for the organization of benefit companies, which are the LLC analog of benefit corporations.
- Like benefit corporations, benefit companies have three distinguishing characteristics:
 1. a **purpose** that includes having a material positive impact on society and the environment;
 2. a **duty** of the governors to consider the interests of non-owner stakeholders; and
 3. an obligation to **report** on the accomplishment of the expanded purpose of the company.



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Structure of Title 15 After Entity Transactions Law and Act 170



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Derivative Suits

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- Similar provisions are provided for:
 - business corporations (§§ 1781-1784)
 - nonprofit corporations (§§ 5781-5784)
 - limited partnerships (§§ 8692-8695)
 - limited liability companies (§§ 8882-8885)
- Derivative suits are not authorized in general partnerships because general partners have a personal right of action under § 8448(b).

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- Provisions expand and clarify the rules from the ALI Principles of Corporate Governance adopted in *Cuker v. Mikalauskas*, 692 A.2d 1042 (1997).
 - Universal demand rule adopted. Demand is excused only if there is a specific showing that irreparable harm to the entity would otherwise result – and even then demand must be made promptly after commencement of the action.
 - Demand must give notice with reasonable specificity of the essential facts relied upon to support each of the claims made.
 - If a claim is later brought that was not fairly subsumed under the demand, a new demand must be made. The new demand will not relate back to the date of the original demand for purposes of the SOL.

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- Procedures are provided governing the use of special litigation committees.
 - The members of the SLC do not have to be members or managers (§ 8884(c)(3)), or general or limited partners (§ 8694(c)(3)).
 - If the court finds that the members of the committee were **disinterested** and the committee acted **in good faith, independently** and with **reasonable care**, the court must enforce the determination of the committee.

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Nonprofit LPs and LLCs

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Nonprofit Purpose

- § 8620(b): “A limited partnership may have any lawful purpose, other than acting as a banking institution, credit union or insurer, **regardless of whether the purpose is for profit. ...**”
- § 8818(b): “A limited liability company may have any lawful purpose other than acting as an insurer, **regardless of whether the purpose is for profit. ...**”

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Restrictions

- Restrictions applicable to nonprofit LPs and LLCs:
 - Nonprofit **purpose** must be stated in its public organic record.
 - Income or profits subject to **non-distribution** constraint – except for reasonable compensation.
 - May hold property in **trust** for its nonprofit purpose.
 - **Non-diversion** restriction applicable to fundamental changes.
- These restrictions are found in §§ 8620(e) and 8818(d) and follow those in the Nonprofit Corporation Law.