**From:** "David R. Brittain" <DBrittain@trenam.com>
**Date:** July 23, 2021 at 2:57:34 PM EDT
**To:** Richard McIver <RMcIver@kasslaw.com>
**Cc:** "Jason M. Ellison (jellison@elattorneys.com)" <jellison@elattorneys.com>, "SALOME J ZIKAKIS (szikakis@parziklaw.com)" <szikakis@parziklaw.com>, "Kenneth E. Thornton" <KThornton@fishersauls.com>
**Subject:** **RE: Legislation for Review and Comment**

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Richard:

Good afternoon.  As the Commercial Lending and Capital Markets Subcommittee, Kip Thornton, Salome Zikakis, and I have reviewed the materials regarding the proposed Business Law Section legislative initiative to amend Sections 9-406 and 9-408 of Florida’s version of the UCC that you sent us with your email of July 7th below.

We think that many real estate lawyers likely do not realize the nullifying effect of the current statutory language of these two statutes on typical existing contractual transfer restrictions in an LLC operating agreement or partnership agreement.  The conclusion in the White Paper states it best:

Enacting the 2018 amendments to Florida’s UCC Sections 9-406 and 9-408 would protect freedom of contract principles that underlie the “pick your partner” doctrine and provide desired clarity to courts, practitioners, and business people that these provisions to not apply to LLC interests and partnership interests, reducing the potential for litigation over these issues.

We believe that the proposed legislation will provide greater certainty in transactions involving LLCs and partnerships, because the provisions confirm what most lawyers believe is already true: that a transfer restriction in a duly executed operating agreement or partnership agreement is valid and enforceable on all members and partners.  It thereby preserves the right of the members to choose their partner or other member, without the risk of having a creditor forced upon them in such capacity.

In addition to the logic of the amendment, we find it reassuring that other states have also enacted these amendments to exclude LLC and partnership ownership interests from the purview of 9-406 and 9-408.

We therefore support the BLS proposed legislation in its current form.  Please let me know if you have any questions.

Best regards,

David Brittain (Subcommittee Chair)

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| Trenam Law |   | **DAVID R. BRITTAIN | ATTORNEY**Florida Bar Board Certified in Real Estate LawDir: 813-227-7444 | Cell: 813-601-6697 | Fax: 813-227-0444 | email | [vcard](https://www.trenam.com/vcards/David-R-Brittain.vcf) | [bio](https://www.trenam.com/people-list/david-r-brittain/) |   |
| cid:image002.png@01D77FD3.015ABDB0cid:image003.png@01D77FD3.015ABDB0cid:image004.png@01D77FD3.015ABDB0 |   | 101 East Kennedy Boulevard, Suite 2700, Tampa, FL 33602Main: 813-223-7474 | [www.trenam.com](http://www.trenam.com) |  |

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