

Advisory Council Corner

A candid "Council-Counsel" conversation with NAMWOLF Advisory Council Vice Chair, Mary Kasper, Group Vice President, Legal Services, at Ralphs Grocery Company

Tom Sargent: *Where did you attend law school?*

Mary Kasper: UCLA

T: *Since graduation from law school where have you worked?*

M: After law school, I took a fairly unusual course and went directly into a corporate law department. I joined Vons, which is a large grocery chain here in California and worked there for 10 years. I began my career as a real estate transactional lawyer working on new store leasing and development and other real estate matters. I expanded my practice into other corporate matters and was ultimately promoted to Associate General Counsel. I joined Ralphs in 1997. So I've been a grocery lawyer for my entire legal career.

T: *So what prompted you take your current job at Ralphs?*

M: Vons was acquired by Safeway. Safeway's a great company, but I decided to continue practicing law in Southern California, and came over to Ralphs, which is now owned by The Kroger Co. in Cincinnati. Kroger is one of the largest supermarket chains in the United States.

T: *How long have you been with Ralphs?*

M: Almost 10 years.

T: *What is your job description as VP, Legal Services?*

M: I was actually recently promoted to Group Vice President, Legal Services and am excited about that. I manage the Ralphs Law Department in Compton, California. Ralphs and its sister company, Food 4 Less, operate over 400 supermarkets in California, and Nevada and the Midwest. You wouldn't notice it as a customer, but the grocery business touches almost every area of law, such as real estate, labor and employment, contracts, intellectual property, environmental and regulatory matters, to name a few. The lawyers in our office work in those areas and also provide general legal advice to our management on a daily basis. I oversee a fair amount of litigation and work closely with our outside counsel.

Mary Kasper,
Group Vice
President, Legal
Services,
Ralphs Grocery
Company



T: *Sounds like a full plate....*

M: It is a platter! What's fun for us is that we get to interact with our clients at every level of the business, from the President to a Store Director to a Promotions Manager – anyone might call us with a legal question that they need help with at that moment. Every day is different.

T: *How did you first get involved with NAMWOLF?*

M: Back in 2003, I got a call from Bill Green, a former lawyer in the Kroger Law Department. He told me that NAMWOLF had contacted him to become part of the organization and he thought it would be a very good thing for me to do as well. I looked into it and agreed that it would be a very valuable organization for Ralphs to become involved in.

T: *Why is diversity important to you?*

M: In my business, I think that a diverse and multicultural employee base helps us to mirror our customer base and understand our customers better. Diversity brings with it different and creative thinking in all areas, which helps us make better business decisions to serve our customers.

T: *In that regard, why is NAMWOLF important to you?*

M: NAMWOLF is a wonderful organization because its mission is to increase legal representation for minority and women-owned law firms. Kroger has had a diversity supplier program in place for over 25 years. As a retailer, our company works with hundreds of MBE's and WBE's that provide services and products that our customers might be interested in. Diversity is as important to legal representation as it is to other corporate service providers. NAMWOLF is uniquely positioned to help Ralphs build its diversity program within the Law Department.

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OVERVIEW OF 2006 AMENDMENTS TO THE DELAWARE LLC ACT, LP ACT, GP ACT, STATUTORY TRUST ACT AND THE DGCL

Ellisa Opstbaum Habbart, Esquire

James C. Strum, Esquire

The Delaware legislature has amended Delaware's business statutes. Each year, committees consisting of members of the Delaware bar are responsible for drafting and recommending these amendments. An overview of some of the more significant amendments is set forth below.

Amendments to the DGCL, LLC Act, LP Act and GP Act.

Registered Agents. Amendments were made to the Delaware

business including requiring such entities to provide registered agents with a designated natural person to receive communications from the registered agent and requiring the registered agent to maintain in its records the identity of such persons.

In addition, the amendments provide that the certificate of incorporation, certificate of formation, certificate of limited partnership or statement of partnership existence, as the case may be, or registration of a domestic or foreign entity, will be cancelled if such entity fails, within a prescribed period, to obtain and designate a new registered agent as a result of the Court of Chancery enjoining a person or entity from acting as a registered agent.

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Renee Mullen, founder of The Mullen Group, has ten years of investor relations expertise, having worked with both public companies of all sizes and those thinking of going public.

Teresa Warren was one of the first 20 in-house law firm marketing directors in the U.S. She started TW² Marketing Consulting 15 years ago and has worked with a variety of companies in the areas of finance, non-profit, real estate, service and law. TW² is one of a handful of



Teresa Warren (left) of TW² Marketing Consulting and Renee Mullen (right) of The Mullen Group

companies that is experienced in the highly-skilled area of media and public relations regarding litigation.

For information about both companies, please visit www.tw2marketing.com and www.themullengroup.com.

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II. Amendments to the LLC Act, LP Act, GP Act and Statutory Trust Act.

Meetings. Amendments were made to the LLC Act, LP Act, GP Act and Statutory Trust Act to clarify that meetings of managers, members, partners, trustees or beneficial owners, as applicable, may be held by conference telephone or similar communications equipment unless otherwise provided in the applicable governing agreement.

III. Amendments to the DGCL. In addition, the amendment permits a corporation and individual directors to agree voluntarily, subsequently enforceable by the corporation, to voting standards for the election of directors which differ from the plurality default voting requirements to elect directors set forth in Section 216.

In addition, Section 216 was amended to provide that a bylaw adopted by a vote of stockholders that prescribes the required vote for the election of directors different from the plurality voting requirement may not be altered by the board of directors. Thus, stockholders may, for example, establish by bylaw amendment that a majority vote is required for the election of directors, which bylaw may not be amended by the board of directors.

Director Election and Resignation. Amendments were made to Sections 141(b) and 216 which may affect, if utilized, the election and resignation of directors of a Delaware corporation. Section 141 was amended to provide that the resignation of a director may be made effective upon the happening of a future event or events, together with the authority to make resignations contingent on stockholder votes irrevocable. In

Annual Franchise Tax Report. Amendments were made to Sections 502, 503, 510, 511, 514, and 517 of the DGCL to require corporations to include in their annual franchise tax report, among other things, the names and addresses of all of the corporation's directors, and the name and address of the officer who signs the report, and also to require the Secretary of State to declare void the charter of any corporation that fails to file a complete annual franchise tax report.

IV. Amendments to the Statutory Trust Act.

Execution. Amendments were made to Section 3801(f) to confirm that beneficial owners and trustees are bound by their respective governing instruments whether or not such instruments are executed by them.

Fiduciary Duties and Reliance on Records.

Amendments were made to Sections 3806(c) and 3806(d) to (i)

clarify that duties (including fiduciary duties) may be expanded, restricted and eliminated in a governing instrument; (ii) confirm that a governing instrument may not eliminate the implied contractual covenant of good faith and fair dealing; and (iii) clarify that the exculpation provision for good faith reliance on the terms of the governing instrument only applies with respect to breaches of fiduciary duties.

A new subsection (k) was also added to Section 3806 to clarify the circumstances under which trustees, beneficial owners or officers, employees, managers or other persons may rely on the records of, or information relating to, a statutory trust.

Execution. Amendments were made to Section 3801(f) to confirm that beneficial

Conclusion.

Lawyers who are advising Delaware business entities should review organizational documents to ensure compliance with, or to implement, the new amendments.

The "LLC Act" refers to the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.), the DGCL refers to the General Corporation Law of Delaware (8 Del. C. § 101, et seq.), the "LP Act" refers to the Delaware Revised Uniform Limited Partnership Act (6 Del. C. § 17-101, et seq.), the "GP Act" refers to the Delaware Revised Uniform Partnership Act (6 Del. C. § 15-101, et seq.), and the "Statutory Trust Act" refers to the Delaware Statutory Trust Act (12 Del. C. § 3801, et seq.). These amendments were, except as noted, effective August 1, 2006.

Ms. Habbart and Mr. Strum are appointed members of certain drafting committees. Ms. Habbart is a member of the drafting committee responsible for reviewing and updating Delaware's Statutory Trust Act. Mr. Strum is a member of the drafting committee responsible for reviewing and updating Delaware's LLC and partnership statutes. Both Ms. Habbart and Mr. Strum, partners with the Wilmington, Delaware law firm, The Delaware Counsel Group LLP, have provided transactional counseling to attorneys (both in-house and in private practice) and senior level managers (including CEOs, CFOs, general partners, boards of directors, managers and trustees) on Delaware law issues. They can be reached at (302) 576-9600 or ehabbart@delawarecounselgroup.com and jstrum@delawarecounselgroup.com.

The amendments affecting registered agents of Delaware corporations, LLCs, LPs, and GPs are reflected in Sections 132 of the DGCL, 18-104 of the LLC Act, 17-104 of the LP Act and 15-111 of the GP Act, and are effective January 1, 2007.

These amendments are reflected in Sections 18-302(d) and 18-304(d) of the LLC Act, 17-302(e) and 17-405(d) of the LP Act, 15-407(d) of the GP Act, and 3806(f) and 3806(g) of the Statutory Trust Act.

These amendments are effective January 1, 2008.