

DRAFT  
FOR DISCUSSION ONLY

**REVISION OF  
UNIFORM LIMITED PARTNERSHIP ACT (1976)  
WITH 1985 AMENDMENTS**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**MARCH, 1999**

**REVISION OF  
UNIFORM LIMITED PARTNERSHIP ACT (1976)  
WITH 1985 AMENDMENTS**

With Prefatory Note and Comments

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## Prefatory Note to the Drafting Committee and its Advisors and Observers

### Comments Instead of Endnotes

Unlike prior drafts, Draft #4 contains no endnotes. Temporary Comments provide roughly comparable information.

### Temporary Section Numbers

Consistent with the Drafting Committee's instructions, Draft #4 continues to de-link RULPA from the general partnership act while seeking to preserve as much as possible RULPA's basic organization, language and "look and feel." De-linking requires the inclusion of many new sections, but it seems important for temporary reference purposes to preserve RULPA's current section numbers. As a result most of the new sections carry temporary numbers, inappropriate to any final version (e.g., Section 101C, Section 802A). In addition, Draft #2 relocated several sections from Article 4 to Article 8, and Draft #4 continues that relocation. To preserve as much continuity in section numbers as possible among the drafts, these relocated sections have even more unusual section numbers (e.g., Section 803A-2).

### Noteworthy Differences Between Draft #4 and Draft #3

At its October, 1998 meeting, the Drafting Committee spent most of its time discussing Articles 1 and 2. As a result, most differences between Draft #4 and Draft #3 appear in those Articles or in other provisions modified to reflect changes in those Articles.

Major changes include:

#### 1. Deleting a proposed definition for "good faith and fair dealing."

At its July, 1997 meeting, the Drafting Committee directed the Reporter to suggest a definition for this concept. The Reporter's proposal appeared at Section 101(10) of Draft #3:

"Good faith and fair dealing" requires a person to act honestly and with the honest belief that the act serves a legitimate purpose.

At the October, 1998 meeting, the Committee decided to follow RUPA and ULLCA and not define "good faith and fair dealing."

2. Conforming Re-RULPA's provisions on the partnership agreement to RUPA's approach.

Draft #3 proposed a number of variations from RUPA's treatment of the partnership agreement, including: a reference to implied-in-fact agreements, an express authorization for a partnership agreement to "exclude [alternate language: preclude] oral agreements and . . . specify the extent, if any, that the conduct of the partners and the partnership are to be considered in determining and interpreting the partnership agreement," an express authorization for a partnership agreement to be executed before the limited partnership is formed, a standard of unconscionability for limiting the partnership agreement's ability to define or curtail certain partner duties. The Committee rejected these variations and directed that Re-RULPA conform to RUPA.

3. Choosing the ULLCA approach instead of the RUPA approach for approval of self-interested transactions.

The provision appears in Draft #4 at Section 101B(b)(3).

4. Permitting the partnership agreement to vary the power of a limited partner to dissociate.

Prior drafts had given limited as well as general partners the nonwaivable power to dissociate. Even under those drafts, however, a limited partner who wrongfully dissociated merely became the transferee of its own transferable interest and had no right to be bought out.

5. Deleting proposed language guiding courts on the relevance of general partnership law to Re-RULPA issues.

Prior drafts had attempted to address this consequence of de-linkage.

6. Permitting the names of limited partners to appear in the names of limited partnerships and eliminating personal liability for a limited partner whose name is used in the name of a limited partnership.

Current name restrictions are anachronistic, given the absence of comparable restrictions in corporate, LLC and LLP law.



7. Modifying the approach to required records and to limited partner access to information.

Earlier drafts had proposed increasing the scope of required records while ending a limited partner's more open-ended right to "true and full information regarding the state of the business and financial condition of the limited partnership . . . and . . . other information regarding the affairs of the limited partnership as is just and reasonable." RULPA § 305(2). The Committee rejected this approach, returning the required records provision to its current scope and reinstating the right to additional information.

8. Permitting a limited partnership to have any lawful purpose.

The Committee decided not to restrict a limited partnership to a business purpose.

9. Permitting the partnership agreement to vary a limited partnership's term.

Draft #3 reflected the Committee's earlier decision to provide a perpetual term as the default term and also provided that only the certificate of limited partnership could vary that default. At the October, 1998 meeting, the Committee decided that the partnership agreement could vary the term.

This decision means that the term of a limited partnership will no longer be apparent from the face of the public record.

10. Deleting the requirement that a limited partnership amend its certificate to indicate dissolution.

Such an amendment is still permitted and will be important for curtailing the apparent authority of general partners to bind the limited partnership. (This change makes a change in current law, which requires a limited partnership to file a "certificate of cancellation" upon dissolution.)

11. Deleting the proposed requirement that a limited partnership file a declaration of termination upon the completion of winding up.

The filing is still defined and permitted. As for "cleansing" the public record of inactive files, Re-RULPA relies on administrative dissolution for failure to file an annual report.

12. Deleting the requirement that the limited partnership provide limited partners with

copies of the certificate of limited partnership and amendments to the certificate.

Under current law this requirement is merely a default rule. The Committee's decision simply reverses the default.

13. Deleting the proposed requirement that a mere transferee receive a written explanation of the basis on which the limited partnership calculated the amount distributed to the transferee.

Transferees who are not partners have virtually no information rights. Draft #4 provides only that "[i]n a dissolution and winding up, a transferee is entitled to an account of limited partnership transactions only from the date of dissolution." Section 702(c).

14. Eliminating as a ground for judicial dissolution the fact that "another partner has engaged in conduct relating to the limited partnership which makes it not reasonably practicable to carry on the business in partnership with that partner."

The deleted language had been imported from RUPA. The Committee retained another RUPA provision, which permits judicial dissolution if "the economic purpose of the limited partnership is likely to be unreasonably frustrated."

15. Replacing proposed new language for mergers with language sourced from ULLCA and RUPA.

The October, 1998 meeting did not discuss the merger article, but, consistent with Committee instructions, Draft #4 follows ULLCA and RUPA as closely as possible.

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## GENERAL PROVISIONS

**SECTION 101. DEFINITIONS.** As used in this [Act], unless the context otherwise

(1) "Business" includes every trade, occupation, and profession.

(†2) "Certificate of limited partnership" means the certificate referred to in

(23) "Contribution" means any cash, property, services rendered, or a promissory

(4) "Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under Title 11 of the United States Code or a

(ii) a comparable order under federal, state, or foreign law governing

(5) "Distribution" means a transfer of money or other property from a limited

(6) "Entity" means a person other than an individual.

~~(3) "Event of withdrawal of a general partner" means an event that causes a~~

1 ~~person to cease to be a general partner as provided in Section 402.~~

2 (47) "Foreign limited partnership" means a partnership formed under the laws of  
3 any state other than this State and ~~having~~ required by those laws to have as partners one or more  
4 general partners and one or more limited partners.

5 (58) "General partner" means a person who has been admitted to a limited  
6 partnership as a general partner ~~in accordance with the partnership agreement and named in the~~  
7 ~~certificate of limited partnership as a general partner~~ as provided in Section 401.

8 (9) "Limited liability limited partnership" means a limited partnership whose  
9 certificate of limited partnership states that the limited partnership is a limited liability limited  
10 partnership.

11 (610) "Limited partner" means a person who has been admitted to a limited  
12 partnership as a limited partner ~~in accordance with the partnership agreement~~ as provided in  
13 Section 301.

14 (711) "Limited partnership" and "domestic limited partnership" mean a  
15 ~~partnership formed by two or more persons under the laws of this State and having one or more~~  
16 ~~general partners and one or more limited partners~~ an entity formed under this [Act] and include a  
17 limited liability limited partnership.

18 (812) "Partner" means a limited or general partner.

19 (913) "Partnership agreement" means any valid agreement, written, or oral, of the  
20 partners as to the affairs of a limited partnership and the conduct of its business.

21 (10) ~~"Partnership interest" means a partner's share of the profits and losses of a~~  
22 ~~limited partnership and the right to receive distributions of partnership assets.~~

1           ~~(1114)~~ "Person" means ~~a natural person, partnership, limited partnership~~  
2 ~~(domestic or foreign), trust, estate, association, or corporation.~~ an individual, corporation,  
3 business trust, estate, trust, partnership, limited liability company, association, joint venture,  
4 government, governmental subdivision, agency, or instrumentality, or any other legal or  
5 commercial entity.

6           (15) "Record" means information that is inscribed on a tangible medium or that is  
7 stored in an electronic or other medium and is retrievable in perceivable form.

8           (16) "Required records" means the records that Section 105 requires a limited  
9 partnership to maintain.

10           (17) "Sign" means to identify a record, whether in writing, electronically or  
11 otherwise, by means of a signature, mark, or other symbol, with intent to authenticate the record.

12           ~~(1218)~~ "State" means ~~a state, territory, or possession of the United States, the~~  
13 ~~District of Columbia, or the Commonwealth of Puerto Rico~~ a State of the United States, the  
14 District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession  
15 subject to the jurisdiction of the United States.

16           (19) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease,  
17 mortgage, security interest, encumbrance, and gift."

18           (20) "Transferable interest" means a partner's share of the profits and losses of the  
19 limited partnership and the partner's right to receive distributions.

20           (21) "Transferee" means a person to whom has been transferred all or part of the  
21 transferable interest, whether or not the transferor is a partner.

## Comment

"Business" [(1)] -- Source: RUPA § 101(1). This draft eschews the broader definition stated in ULLCA § 101(3), which defines "business" to include "every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit." As a matter of style, the phrase "other lawful purpose" seems not to fit with the other items on the list. As a matter of substance, the term "business" connotes economic activity and a defined term should not contradict common usage. The more significant question is whether a limited partnership may be formed for a nonprofit or non-entrepreneurial purpose. That question is resolved in Section 106(a), which deals directly with the issue.

"Contribution" [(3)] -- The definition has been changed to replace a list of items with a more general term ("benefit") that encompasses those items and to avoid using the word "contribute" as part of the definition of the term "contribution." The word "benefit" comes from Section 501 (Form of contribution), which in turn is taken, per the Committee's instruction, from ULLCA § 401. Some earlier drafts used "consideration" rather than "benefit."

"Debtor in bankruptcy" [(4)]-- Source: RUPA § 101(2).

"Distribution" [(5)] -- Derived from RUPA § 101(3). Changes from RUPA are as follows:

"Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to the partner's a transferee on account of a transferable interest owned by the transferee.

Aside from referring to the partnership as "a limited partnership," the Re-RULPA provision differs from RUPA § 101(3) in two ways. First, RUPA §101(3) refers to "the partner's transferee" rather than "a transferee." Re-RULPA's Section 101(24) defines "transferee," making inappropriate a reference to "the partner's transferee." The difference is primarily but not exclusively stylistic. Consider payments to the transferee of a "partner's transferee." Suppose that a partner transfers part of its transferable interest to a non-partner, and that person later re-transfers that interest to a third person. Are payments to that third person distributions? Under Re-RULPA, they clearly are. Under RUPA, the question appears to depend on whether RUPA §101(3) considers the third person to be "the partner's transferee."

The second substantive difference between Re-RULPA and RUPA is the definition's concluding phrase. The phrase does not appear in RUPA § 103 and was added (to Draft #2) based on a suggestion made at the Committee's July, 1997 meeting.

"Entity" [(6)] -- Source: ULLCA § 101(7). "Entity" is somewhat of a misnomer, because the term encompasses legal persons that might still be thought of as aggregates, or part aggregate/part entity (i.e., UPA general partnerships).

1       "Event of withdrawal" [deleted; formerly (3)] -- This definition is no longer needed  
2 because this draft follows RUPA and uses the term "dissociation." At its July, 1997 meeting, the  
3 Committee directed the Reporter to consider providing a definition of "dissociation." After  
4 reviewing UPA, RUPA, and ULLCA, the Reporter decided that Re-RULPA should not define  
5 "dissociation." Accordingly, Draft #2 did not define the term. Draft #3 preserved Draft#2's  
6 approach and produced no objection at the October, 1998 meeting.

7       The Reporter's rationale is fealty to RUPA and ULLCA. UPA § 29 defines dissolution in  
8 a way that gave rise to the RUPA/ULLCA concept of dissociation: "Dissolution . . . is the  
9 change in the relation of the partners caused by any partner ceasing to be associated in the  
10 carrying on as distinguished from the winding up of the business." However, neither RUPA nor  
11 ULLCA define "dissociation." Instead, those statutes list events causing "dissociation" and  
12 explain the meaning of the term through a Comment. Each Comment essentially mirrors UPA §  
13 29. See RUPA § 601, Comment 1, first paragraph; ULLCA § 601, Comment, first sentence. In  
14 this instance, the Reporter sees no reason for Re-RULPA to deviate from the pattern established  
15 by RUPA and ULLCA.

16       "Foreign limited partnership" [(7)] -- The change is to correct an inaccuracy. A limited  
17 partnership does not cease being a limited partnership merely because it ceases to have at least  
18 one general and one limited partner. A dissolved limited partnership continues in existence  
19 through winding up and until termination.

20       "General partner" [(8)] -- There are two reasons for this change. First, Re-RULPA  
21 changes the rules on how a person becomes a general partner. Second, putting those rules in the  
22 definition section would make for a very cumbersome definition.

23       "Limited partnership and domestic limited partnership" [(11)] -- The old definition was  
24 inaccurate. A limited partnership does not cease being a limited partnership merely because it  
25 ceases to have at least one general and one limited partner. A dissolved limited partnership  
26 continues in existence through winding up and until termination.

27       "Partnership agreement" [(13)] -- Earlier drafts proposed adding "implied from conduct."  
28 At its October, 1998 meeting, the Drafting Committee rejected the proposed addition.

29       "Partnership interest" [deleted; formerly (10)] -- In a modified form this concept now  
30 appears in the definition of "Transferable interest."

31       "Person" [(14)] -- Source: ULLCA § 101(14). ULLCA § 101(14) adds "limited liability  
32 company" to the list contained in RUPA § 110(10).

33       "Record" [(15)] -- Source: ULLCA § 101(16). ULLCA moved into, or at least into  
34 contemplation of, the brave new world in which documents need no longer exist in paper.  
35 Beginning with Draft #2, Re-RULPA has followed suit. See Section 206(a). ULLCA § 101(16)  
36 portends more than it commands. ULLCA § 206(a) requires the Secretary of State to determine

1 what media are permissible for filing, and in general "[o]ther law must be consulted to determine  
2 admissibility in evidence, the applicability of statute of frauds, and other questions regarding the  
3 use of records." ULLCA § 101, Comment.

4 "Sign" [(17)] -- Derived from ULLCA § 101(17). The phrase "whether in writing,  
5 electronically or otherwise" has been added to make clear that signing may occur electronically.  
6 This definition will be re-visited in light of the continuing work of the Drafting Committee for  
7 the Uniform Electronic Transactions Act ("UETA"). With regard to each instance in which Re-  
8 RULPA requires someone to "sign" something, the question is whether Re-RULPA means to  
9 require a manual signature.

10 "State" [(18)] -- Source: RUPA § 101(12). Replicated in ULLCA § 101(18).

11 "Transfer" [(19)] -- Source: ULLCA § 101(20), which states more examples than the  
12 comparable RUPA provision, RUPA § 101(14). Draft #3 used the RUPA provision but added a  
13 reference to "transfer by operation of law." This reference prompted concerns about unintended  
14 effects. The key reason for referring to operation of law is to buttress Section 701's limitations  
15 on transferability. Draft #4 deletes the reference to operation of law.

16 "Transferable interest" [(20)] -- Source: RUPA § 502. This definition appears here,  
17 rather than later in the statute (as in RUPA), because the term is used throughout the statute.

18 "Transferee" [(21)] -- The last phrase ("whether or not the transferor is a partner" was  
19 added at the October, 1998 drafting meeting.

## 20 **SECTION 101A. KNOWLEDGE AND NOTICE.**

21 (a) A person knows a fact if the person has actual knowledge of it.

22 (b) A person has notice of a fact if the person:

23 (1) knows of it;

24 (2) has received a notification of it; or

25 (3) has reason to know it exists from all of the facts known to the person at  
26 the time in question.

27 (c) A person notifies or gives a notification to another by taking steps reasonably  
28 required to inform the other person in ordinary course, whether or not the other person learns of



1 it.

2 (d) A person receives a notification when the notification:

3 (1) comes to the person's attention; or

4 (2) is duly delivered at the person's place of business or at any other place  
5 held out by the person as a place for receiving communications.

6 (e) Except as otherwise provided in subsection (f), an entity knows, has notice, or  
7 receives a notification of a fact for purposes of a particular transaction when the individual  
8 conducting the transaction for the entity knows, has notice, or receives a notification of the fact,  
9 or in any event when the fact would have been brought to the individual's attention if the entity  
10 had exercised reasonable diligence. An entity exercises reasonable diligence if it maintains  
11 reasonable routines for communicating significant information to the individual conducting the  
12 transaction for the entity and there is reasonable compliance with the routines. Reasonable  
13 diligence does not require an individual acting for the entity to communicate information unless  
14 the communication is part of the individual's regular duties or the individual has reason to know  
15 of the transaction and that the transaction would be materially affected by the information.

16 (f) A general partner's knowledge, notice, or receipt of a notification of a fact  
17 relating to the limited partnership is effective immediately as knowledge by, notice to, or receipt  
18 of a notification by the limited partnership, except in the case of a fraud on the limited  
19 partnership committed by or with the consent of that general partner.

20 **Comment**

21 Source: RUPA § 102, except for subsection (e) which follows ULLCA in using "entity."

22 Subsection (f) -- RUPA merely refers to a "partner's knowledge," etc., and the Comment  
23 to RUPA § 102 states in part: "It is anticipated that RULPA will address the issue of whether

notice to a limited partner is imputed to a limited partnership." Under this draft, limited partner status does not cause information possessed by a limited partner to be attributed to the limited partnership. Attribution is an aspect of agency power, and in the default mode limited partners have neither the right to manage the limited partnership nor the power to bind it. Section 302(a) and (e). Of course, a limited partner who acts in a different capacity viz a viz the limited partnership might have agency power in that capacity. See notes to Section 302(e).

**SECTION 101B. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.**

(a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this [Act] governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) vary the rights and duties under Section 204;

(2) unreasonably restrict the right of access to information under Sections 305 and 403E;

(3) eliminate the duty of loyalty under Section 403D, but:

(i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of partners or disinterested general partner that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under Section 403D(c);

(5) eliminate the obligation of good faith and fair dealing under Sections

1 302A(c) and 403D(d), but the partnership agreement may prescribe the standards by which the  
2 performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

3 (6) vary the power of a person to dissociate as a general partner under  
4 section 602A, except to require the notice under Section 602(1) to be in writing;

5 (7) vary the right of a court to expel a partner in the events specified in  
6 Sections 602(5) and 603(b)(5);

7 (8) vary the right of a court to decree dissolution in the circumstances  
8 specified in section 802;

9 (9) vary the requirement to wind up the partnership business as specified  
10 in Section 803(a);

11 (10) vary the law applicable to a limited partnership under Section 101D;

12 (11) restrict rights of a third party under this [Act].

### 13 **Comment**

14 Source: RUPA § 103. At its October, 1998 meeting the Drafting Committee deleted  
15 proposed variations from RUPA § 103(a), including a reference to implied-in-fact agreements, an  
16 express authorization for a partnership agreement to "exclude [alternate language: preclude] oral  
17 agreements and . . . specify the extent, if any, that the conduct of the partners and the partnership  
18 are to be considered in determining and interpreting the partnership agreement," and an express  
19 authorization for a partnership agreement to be executed before the limited partnership is formed.  
20 Following the Drafting Committee's instructions, the Section 302(b)(1) now contains the rule on  
21 amending the partnership agreement.

22 The Reporter remains concerned as to whether it is sufficiently clear which statutory  
23 provisions are outside the domain of "relations among the partners" (and therefore not  
24 susceptible to change by the partnership agreement). For example, may the partnership  
25 agreement change Section 104's requirement that the limited partnership maintain an in-state  
26 office?

27 As discussed at the Committee's July, 1997 meeting, the Reporter believes that the  
28 Committee should eventually review each section of the Act in light of subsection (a). The  
29 Committee will be far more familiar with the Act than the typical attorney or judge. If the

1 Committee has difficulty determining which provisions of the Act are subject to change by the  
2 partnership agreement, a fortiori attorneys and judges will be confused.

3 Subsection (b)(1) -- Source: RUPA § 103(b)(1). The referenced section describes who  
4 must sign various documents.

5 Subsection (b)(2) -- This provision is derived from RUPA § 103(b)(2), which imposes  
6 this standard viz a viz "access to books and records." The first section refers to a limited  
7 partner's right of access and the second to a general partner's right. At its October, 1998 meeting,  
8 the Drafting Committee significantly changed the information rights of limited partners. See  
9 Comment to Section 305.

10 Subsection (b)(3) -- Paragraph (i) is taken verbatim from RUPA § 103(b)(3)(i). At its  
11 October, 1998 meeting, the Drafting Committee decided to follow ULLCA rather than RUPA  
12 and use "and" instead of "or" between paragraphs (i) and (ii) and use in paragraph (ii) ULLCA's  
13 reference to "disinterested managers" [in Re-RULPA: disinterested general partners].

14 Following ULLCA, paragraph (ii) does not define the term "disinterested." Compare  
15 RMBCA §§ 8.62 and 8.63 (dealing with corporate director conflicts of interest and defining in  
16 detail the concept of disinterestedness for directors and shareholders). Moreover, again following  
17 ULLCA, paragraph (ii) leaves unexplained why general partner disinterest is essential but limited  
18 partner disinterest is not. Suppose, for example, that a person serves as the general partner of a  
19 limited partnership, while also owning a majority of the limited partner interests. The  
20 partnership agreement could not provide for that person qua general manager to ratify its own  
21 loyalty conflicts but could permit ratification through the consent of persons owning a majority  
22 of profit interests owned by persons as limited partners.

23 Subsection (b)(6) -- Previous drafts applied this exception to the power to dissociate of  
24 limited as well as general partners. At its October, 1998 meeting, the Drafting Committee  
25 decided that a partnership agreement can prevent a limited partner from voluntarily dissociating.  
26 The Committee made this decision despite that fact that, in the default mode, a limited partner's  
27 dissociation merely means that the limited partner becomes a transferee of its own transferable  
28 interest; i.e., dissociation means the abandonment of all nonfinancial rights. Even if the  
29 dissociating limited partner is the only limited partner, the general partner(s) can avoid  
30 dissolution by admitting a new limited partner. See Section 801(4). An anomaly can result if the  
31 limited partnership agreement purports to preclude dissociation even of a limited partner who  
32 dies. The same issue exists under RUPA. RUPA § 601(7)(i) lists the death of an individual as  
33 an event of dissociation, and RUPA § 103 does not make § 601(7)(i) nonwaivable.

34 Subsection (b)(7) -- Source: RUPA § 103(b)(7). As discussed at the October, 1998  
35 meeting, this provision could be read to limit a partnership agreement's power to provide for  
36 arbitration. That is, an agreement to arbitrate all disputes -- including expulsion disputes -- could  
37 be seen as an attempt to "vary the right of a court expel a partner." Such a reading would put this  
38 statute at odds with federal law. See *Southland Corp. v. Keating*, 465 U.S. 1 (1984) (holding that

1 the Federal Arbitration Act preempts state statutes that seek to invalidate agreements to arbitrate)  
2 and Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995) (same). A Comment will  
3 indicate that an agreement to arbitrate expulsion disputes is permissible.

4 Subsection (b)(8) -- At its October, 1998 meeting, the Drafting Committee decided to add  
5 this provision to the list of nonwaivable provisions. The caveat concerning arbitration applies  
6 here as well.

7 Subsection (b)(11) -- Source: RUPA § 103(9). Understanding this provision requires  
8 understanding RUPA's approach to choice of law. See the Comment to Section 101D.

### 9 **SECTION 101C. SUPPLEMENTAL PRINCIPLES OF LAW.**

10 (a) Unless displaced by particular provisions of this [Act], the principles of law  
11 and equity supplement this [Act].

12 (b) If an obligation to pay interest arises under this [Act] and the rate is not  
13 specified, the rate is that specified in [applicable statute].

#### 14 **Comment**

15 Source: RUPA § 104 (ULLCA § 104 replicates RUPA § 104 verbatim.) RULPA  
16 addresses this topic at § 1105, but both RUPA and ULLCA will condition readers to look for this  
17 provision in this location. At its October, 1998 meeting, the Drafting Committee deleted  
18 proposed new language that sought to more explicitly protect the partnership agreement from  
19 judicial re-writing. The Committee also deleted proposed new language that sought to "de-link"  
20 general partnership case law and to guide courts in the use of that case law.

### 21 **SECTION 101D. GOVERNING LAW**

22 The law of this State governs relations among the partners and between the  
23 partners and the limited partnership and the liability of partners for an obligation of a limited  
24 partnership.

#### 25 **Comment**

1 Derived from RUPA § 106. RUPA provides two different choice-of-law rules, one  
2 applicable to ordinary general partnerships and one applicable to LLPs. As to the former, RUPA  
3 provides, as a default rule, that the partnership's internal affairs are governed by "the law of the  
4 jurisdiction in which a partnership has its chief executive office." RUPA § 106(a). RUPA does  
5 not indicate which law governs the liability of partners for an obligation of an ordinary general  
6 partnership. As to LLPs, RUPA provides that "[t]he law of this State" governs both an LLP's  
7 internal affairs and "the liability of partners for an obligation of a limited liability partnership."  
8 The partnership agreement cannot change this rule. RUPA § 103(b)(9).

9 At first glance it might seem that the presence of a liability shield transforms RUPA's  
10 choice-of-law rule from a default rule to a mandatory rule. However, the most recent comments  
11 to RUPA § 106 indicate otherwise. "Unlike a general partnership which may be formed without  
12 any filing, a partnership may only become a limited liability partnership by filing a statement of  
13 qualification. Therefore, the situs of its organization is clear. Because it is often unclear where a  
14 general partnership is actually formed, the decision to file a statement of qualification in a  
15 particular State constitutes a choice-of-law for the partnership which cannot be altered by the  
16 partnership agreement."

17 The rationale for the mandatory rule thus seems to be as follows: where the situs of  
18 organization is clear, the choice of that situs constitutes a nonwaivable decision as to choice-of-  
19 law. Since the situs of organization is always clear for a limited partnership, Section 101D states  
20 a nonwaivable rule applicable to all limited partnerships. (The term "limited partnership"  
21 includes limited liability limited partnerships. See Section 101(11).)

22 Like RUPA § 106(b), Section 101D chooses the law applicable both to a partnership's  
23 internal affairs and to "the liability of partners for an obligation of" the organization. Unlike  
24 RUPA § 106(b), Section 101D applies that choice even for a limited partnership that has not  
25 elected "limited liability" status. Even an ordinary limited partnership has a shield, and general  
26 choice of law principles suggest that the law of the state of organization should govern the  
27 interpretation and application of that shield.

## 28 **SECTION 102. NAME.**

29 (a) The name of each a limited partnership as set forth stated in its certificate of  
30 limited partnership:

31 (1) shall contain without abbreviation the words "limited partnership";  
32 must contain "limited partnership" or the abbreviation "L.P." or "LP" and may contain the name  
33 of any partner. The name of a limited liability limited partnership must include "limited liability

1 limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

2 \_\_\_\_\_ (b)(3) may not be the same as, or deceptively similar to, the name of any  
3 corporation or limited partnership organized under the laws of this State or licensed or registered  
4 as a foreign corporation or limited partnership in this State; and

5 (4) may not contain the following words [here insert prohibited words]. Except as  
6 authorized by subsections (c) and (d), the name of a limited partnership must be distinguishable  
7 upon the records of the [Secretary of State] from:

8 (1) the name of any entity incorporated, organized or authorized to transact  
9 business in this State; and

10 \_\_\_\_\_ (2) any name reserved or registered under Section 103, Section [reserved  
11 for section in Article 9 re: foreign limited partnerships], or [insert citations to other State laws  
12 allowing the reservation or registration of business names].

13 \_\_\_\_\_ (c) A limited partnership may apply to the [Secretary of State] for authorization  
14 to use a name that is not distinguishable upon the records of the [Secretary of State] from one or  
15 more of the names described in subsection (b). The [Secretary of State] shall authorize use of the  
16 name applied for if, as to each conflicting name:

17 \_\_\_\_\_ (1) the present user, registrant, or owner of the conflicting name consents  
18 to the use in a signed record and submits an undertaking in form satisfactory to the [Secretary of  
19 State] to change the conflicting name to a name that is distinguishable upon the records of the  
20 [Secretary of State] from the name applied for and from all of the names described in subsection  
21 (d); or

22 \_\_\_\_\_ (2) the applicant delivers to the [Secretary of State] a certified copy of the

1 final judgment of a court of competent jurisdiction establishing the applicant's right to use in this

2 State the name applied for.

3 (d) A limited partnership may use a name, including a fictitious name, shown upon the  
4 records of the [Secretary of State] as being used by another entity if the limited partnership  
5 proposing to use the name has:

6 (1) merged with the other entity;

7 (2) been formed by reorganization with the other entity;

8 (3) been converted from the other entity; or

9 (4) acquired substantially all of the assets, including the name, of the other  
10 entity.

### 11 **Comment**

12 This section has been substantially rewritten, reflecting more modern attitudes toward  
13 permissible names. The advent of LLLPs requires that a choice be made as to the use of a  
14 partner's name in the name of the limited partnership. Either general partners' names must be  
15 prohibited from the name of a LLLP or limited partners' names should be includable in the name  
16 of both ordinary limited partnerships and LLLPs.

17 At its October, 1998 meeting, the Drafting Committee choose the latter approach. That  
18 choice makes sense. RULPA's approach derives from the 1916 Uniform Limited Partnership  
19 Act. In 1916, most business organizations were either unshielded (i.e., general partnerships) or  
20 partially shielded (i.e., limited partnerships), and it was reasonable for third parties to believe that  
21 an individual whose own name appeared in the name of a business would "stand behind" the  
22 business. Today most businesses have a full shield (e.g., corporations, limited liability  
23 companies, most limited liability partnerships), and corporate, LLC and LLP statutes generally  
24 do not prohibit the use of an owner's name in the name of the business.

25 Subsection (a) does require particular phrases or abbreviations to signify the limited  
26 partnership's status. Permitting abbreviations is new but is certainly consistent with current  
27 views. See, e.g., ULLCA § 105(a) and RMBCA § 4.01(a)(1). Subsection (a) arguably permits  
28 fewer abbreviations than ULLCA. ULLCA § 105(a) allows both initials (e.g., LLC) and partial  
29 abbreviations (Ltd. and Co.)

30 As to the location of the specified signifiers within the limited partnership's name,



subsection(a) follows current law and does not require that the signifiers appear at the end of the limited partnership's name. Accord ULLCA § 105(a) (requiring signifiers but omitting any "end with" requirement) and RMBCA § 4.01(a)(1) (same). Compare RUPA §§ 1002 (requiring the name of an LLP to "end with" specified signifiers) and 1102(a)(1) (requiring a foreign LLP to file a statement of foreign qualification containing the foreign LLP's name "which . . . ends with" specified signifiers.)

Subsections (b), (c) and (e) are derived from ULLCA § 105(b). At its October, 1998 meeting, the Drafting Committee decided to replace ULLCA's list of other entities with a more generic term.

Subsection (b)(2) -- This provision does not appear in ULLCA. The bracketed material will allow, for instance, references to a State's assumed name statute.

Subsection (c) -- derived from ULLCA § 105(c). Subsection (c)'s reference to "authorization to use a name" (emphasis added) comes verbatim from ULLCA § 105(c), pertains only to the limited role of the [Secretary of State] and implies nothing about other areas of law such as intellectual property law.

Subsection (c)(1) -- This provision differs from ULLCA § 105(c)(1) in three respects: (i) ULLCA refers only to "reserved name," but that reference appears underinclusive. Subsection (b) also encompasses other names, i.e. names in use. So long as the owner of the conflicting name agrees to change it, why shouldn't the applicant have a right to the formerly conflicting name? (ii) ULLCA does not require the record of consent to be signed. (iii) ULLCA does not include the phrase "and from the all of the names described in subsection (b)." The phrase "an undertaking in form satisfactory to the [Secretary of State]" is arguably inadequate to express the substantive requirement that the new name "be distinguishable" from other names "upon the records of the [Secretary of State]."

Subsection (c)(2) -- This provision differs from ULLCA § 105(c)(2) in the placement of "in this State." ULLCA places the phrase at the end of the provision. That placement makes the provision arguably ambiguous, since the name has been applied for "in this State."

Subsection (d) -- Derived from ULLCA § 105(d). The differences are as follow:

(d) A limited ~~liability company~~ partnership may use the name, including a fictitious name, shown upon the records of the [Secretary of State] as being used by <sup>A</sup>of another domestic or foreign company entity which is used in this State if the other company is organized or authorized to transact business in this State and the company<sup>B</sup> if the limited partnership proposing to use the name has:

- (1) merged with the other ~~company~~ entity;
- (2) been formed by reorganization with the other ~~company~~ entity;
- (3) has been converted from the other entity; or

1 (34) acquired substantially all of the assets, including the name, of the  
2 other company.

3 <sup>A</sup>The reference to the records of the Secretary of State is added because this provision is  
4 part of a set of rules that enable the Secretary of State to determine whether a limited  
5 partnership's name is acceptable. As to possible conflicts with other names, the Secretary  
6 of State's exclusive reference is to the Secretary of State's records. The added language  
7 makes that situation explicit.

8 <sup>B</sup>This language differs from ULLCA § 105(d) by: (i) broadening the referred-to entities  
9 that might be using a conflicting name; and (ii) deleting ULLCA's reference to entities  
10 "organized or authorized to transact business in this State." The added reference to the  
11 records of the [Secretary of State] make the precondition unnecessary.

### 12 **SECTION 103. RESERVATION OF NAME.**

13 (a) The exclusive right to the use of a name may be reserved by:

14 (1) any person intending to organize a limited partnership under this [Act]  
15 and to adopt that name;

16 (2) any domestic limited partnership or any foreign limited partnership  
17 registered in this State which, in either case, intends to adopt that name;

18 (3) any foreign limited partnership intending to register in this State and  
19 adopt that name; and

20 (4) any person intending to organize a foreign limited partnership and  
21 intending to have it register in this State and adopt that name.

22 (b) The reservation shall be made by filing with the [Secretary of State] an  
23 application, ~~executed~~ signed by the applicant, to reserve a specified name. If the [Secretary of  
24 State] finds that the name is available for use by a domestic or foreign limited partnership, ~~he~~ ~~for~~  
25 ~~she~~ the [Secretary of State] shall reserve the name for the exclusive use of the applicant for a  
26 period of 120 days. Once having so reserved a name, the same applicant may ~~not again~~ reserve

1 the same name for additional 120-day periods. A person with a current reservation for a name  
2 may not file for another 120-day period pertaining to the same name until 90 days have elapsed  
3 in the current reservation ~~until more than 60 days after the expiration of the last 120-day period~~  
4 ~~for which that applicant reserved that name.~~ The right to the exclusive use of a reserved name  
5 may be transferred to any other person by filing in the office of the [Secretary of State] a notice  
6 of the transfer, ~~executed~~ signed by the applicant for whom the name was reserved and specifying  
7 the name and address of the ~~transferee~~ person to whom the transfer was made.

### 8 **Comment**

9 ULLCA § 106 essentially derives from the RULPA language in this section. Consistent  
10 with the Drafting Committee's instructions to preserve current RULPA language absent good  
11 cause to do otherwise, this draft follows RULPA rather than ULLCA. The Reporter wonders,  
12 however, whether those instructions still make sense. It now appears that Re-RULPA will  
13 incorporate substantial amounts of ULLCA's language while preserving little of RULPA's  
14 language. It might make better sense, therefore, for Re-RULPA to follow ULLCA rather than  
15 RULPA, absent a policy reason to the contrary.

16 In any event, there is a substantive difference between RULPA and ULLCA worth  
17 noting. Under RULPA § 103, when a reservation expires the registrant must wait 61 days before  
18 re-applying for the same name. ULLCA § 106(a) states merely that a reservation is for "a  
19 nonrenewable 120-day period." It is unclear whether that language means that: (i) once the first  
20 reservation expires the same applicant can never apply for the same name, or (ii) once a 120-day  
21 period actually expires the same applicant can apply for the same name immediately, with the  
22 application being considered a new application rather than as a renewal. See also RMBCA §  
23 4.02(a) (apparently the source for ULLCA § 106(a); uses the same language).

24 At its October, 1998 meeting, the Drafting Committee decided to explicitly allow  
25 reservations for successive 120-day periods. The Committee did not decide how far in advance  
26 of the expiration of one 120-period a person can apply for next 120-day period. Some limitation  
27 must exist; otherwise a person could effectively eliminate the 120-day limit by filing  
28 simultaneously reservations for several successive periods. This Draft creates a 30-day window  
29 at the end of each 120-day period.

30 The change in the last line of the section is due to Re-RULPA's use of "transferee" as a  
31 defined term.

1                   **SECTION 103A. REGISTERED NAME.**

2                   (a) A foreign limited partnership may register its name subject to the  
3 requirements of Section [TBD], if the name is distinguishable upon the records of the [Secretary  
4 of State] from names that are not available under Section 102(d).

5                   (b) A foreign limited liability company registers its name, or its name with any  
6 addition required by Section by delivering to the [Secretary of State] for filing an application:

7                   (1) setting forth its name, or its name with any addition required by  
8 Section [TBD] the State or country and date of its organization, and a brief description of the  
9 nature of the business in which it is engaged; and

10                   (2) accompanied by a certificate of existence, or a record of similar import,  
11 from the State or country of organization.

12                   (c) A foreign limited partnership whose registration is effective may renew it for  
13 successive years by delivering for filing in the office of the [Secretary of State] a renewal  
14 application complying with subsection (b) between October 1 and December 31 of the preceding  
15 year. The renewal application renews the registration for the following calendar year.

16                   (d) A foreign limited partnership whose registration is effective may qualify as a  
17 foreign limited partnership under its name or consent in writing to the use of its name by a  
18 limited partnership later organized under this [Act] or by another foreign limited partnership later  
19 authorized to transact business in this State. The registered name terminates when the limited  
20 partnership is organized or the foreign limited partnership qualifies or consents to the  
21 qualification of another foreign limited partnership under the registered name.

22                   **Comment**

1 Source: ULLCA § 107. As the comment to ULLCA § 106 notes, registration is more  
2 advantageous than reservation (longer term; renewable without limitation). Registration is,  
3 however, available only to existing, foreign limited partnerships.

4 Drafts #1 and #2 of Re-RULPA did not include this provision, because the Reporter  
5 preferred to locate all provisions dealing with foreign limited partnerships in the Article dealing  
6 with foreign limited partnerships. Draft #3 located the provision here, consistent with the  
7 instructions to follow RUPA/ULLCA.

8 **SECTION 104. SPECIFIED OFFICE AND AGENT FOR SERVICE OF**  
9 **PROCESS.**

10 \_\_\_\_\_ ~~Each~~ (a) A limited partnership shall continuously maintain in this State:

11 (1) an office which may but need not be a place of its business in this State, at  
12 which shall be kept the records required by Section 105 to be maintained; and

13 (2) an agent for service of process on the limited partnership.

14 (b) An agent for service of process must be an individual resident of this State, a domestic  
15 ~~corporation entity~~, or a foreign ~~corporation entity~~ authorized to do business in this State.

16 **Comment**

17 Draft #3 revised this section to conform to ULLCA § 108. That conformity was  
18 necessary, because Draft #3 incorporated ULLCA §§ 109 -- 111 and those sections depend on  
19 the revised language. However, at its October, 1998 meeting, the Drafting Committee decided to  
20 return to RULPA's approach.

21 That decision also entailed deleting Section 104A, Change of Designated Office or Agent  
22 for Service of Process. Derived from ULLCA § 109, Section 104A allowed a limited partnership  
23 to "change its designated office or agent for service of process by delivering to the [Secretary of  
24 State] for filing a statement of change."

25 **SECTION 104B. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

26 (a) An agent for service of process of a limited partnership may resign by  
27 delivering to the [Secretary of State] for filing a record of the statement of resignation.

1 (b) After filing a statement of resignation, the [Secretary of State] shall mail a  
2 copy to the designated office and another copy to the limited partnership at its principal office if  
3 the address of that office appears in the records of the [Secretary of State].

4 (c) An agency is terminated on the 31st day after the statement is filed in the  
5 office of the [Secretary of State].

#### 6 **Comment**

7 Source: ULLCA § 110.

8 Subsection (b) -- The reference to a limited partnership's principal office is from ULLCA  
9 § 110(b). Under ULLCA, a foreign limited liability company's application for a certificate of  
10 authority must designate the principal office. As to a domestic limited liability company, the  
11 [Secretary of State] must glean the information from the annual report. See ULLCA § 211(a)(3).  
12 Because the annual report is not due upon formation, ULLCA § 211(c), for some months after an  
13 LLC's organization the [Secretary of State] does not know the LLC's principal office and  
14 therefore cannot strictly comply with ULLCA § 110(b). The same anomaly exists under this  
15 Draft. To at least recognize the anomaly, this Draft adds the phrase "if the address of that office  
16 appears in the records of the [Secretary of State]."

17 Subsection (c) -- The delayed effective date follows ULLCA § 110(c) but is at odds with  
18 the general law of agency. Moreover, if the would-be resigning agent fails to forward documents  
19 during the 30-day interim, the appointing limited partnership or foreign limited partnership might  
20 be significantly prejudiced. It might be better to allow an immediate effective date and provide  
21 for service on the [Secretary of State] if a resignation leaves the appointing partnership without  
22 an agent for service of process.

#### 23 **SECTION 104C. SERVICE OF PROCESS.**

24 (a) An agent for service of process appointed by a limited partnership or a foreign  
25 limited partnership is an agent of the limited partnership or foreign limited partnership for service  
26 of any process, notice, or demand required or permitted by law to be served upon the limited  
27 partnership or foreign limited partnership.

28 (b) If a limited partnership or foreign limited partnership fails to appoint or  
29 maintain an agent for service of process in this State or the agent for service of process cannot

1 with reasonable diligence be found at the agent's address, the [Secretary of State] is an agent of  
2 the limited partnership or foreign limited partnership upon whom process, notice, or demand may  
3 be served.

4 (c) Service of any process, notice, or demand on the [Secretary of State] may be  
5 made by delivering to and leaving with the [Secretary of State], the [Assistant Secretary of  
6 State], or clerk having charge of the limited partnership department of the [Secretary of State's]  
7 office duplicate copies of the process, notice, or demand. If the process, notice, or demand is  
8 served on the [Secretary of State], the [Secretary of State] shall forward one of the copies by  
9 registered or certified mail, return receipt requested, to the limited partnership or foreign limited  
10 partnership at its office **[description of office TBD, depending on whether Re-RULPA**  
11 **requires a foreign limited partnership to maintain an office within "this State"]**. Service is  
12 effected under this subsection at the earliest of:

13 (1) the date the limited partnership or foreign limited partnership receives  
14 the process, notice, or demand;

15 (2) the date shown on the return receipt, if signed on behalf of the limited  
16 partnership or foreign limited partnership; or

17 (3) five days after its deposit in the mail, if mailed postpaid and correctly  
18 addressed.

19 (d) The [Secretary of State] shall keep a record of all processes, notices, and  
20 demands served pursuant to this section and record the time of and the action taken regarding the  
21 service.

22 (e) This section does not affect the right to serve process, notice, or demand in

1 any manner otherwise provided by law.

2 **Comment**

3 Source: ULLCA § 111.

4 Subsection (c) -- ULLCA § 108(a)(1) requires both domestic and foreign LLCs to  
5 "maintain in this State . . . an office." RULPA does not require an "out-of-state" limited  
6 partnership to have an "in-state" office. RULPA § 902(5).

7 **SECTION 105. REQUIRED RECORDS TO BE KEPT.**

8 (a) ~~Each~~ A limited partnership shall ~~keep at the office referred to in~~  
9 ~~Section 104(1)~~ maintain and keep current the following required records:

10 (1) a current list of the full name and last known business address of each  
11 partner, separately identifying the general partners (in alphabetical order) and the limited partners  
12 (in alphabetical order);

13 (2) a copy of the certificate of limited partnership and all ~~certificates of~~  
14 ~~amendments thereto~~ to the certificate, together with executed copies of any powers of attorney  
15 pursuant to which any certificate or amendment has been executed;

16 (3) copies of the limited partnership's federal, state, and local income tax  
17 returns and reports, if any, for the three most recent years;

18 (4) copies of any written partnership agreements and any written  
19 amendments to any of those agreements and of any financial statements of the limited  
20 partnership for the three most recent years;

21 (5) copies of the three most recent annual reports delivered by the limited  
22 partnership to the [Secretary of State] pursuant to section 211;

23 (6) copies of any record made by the limited partnership during the past



1 three years of any consents given by or votes taken of any partner pursuant to this Act or the  
2 partnership agreement; and

3 (57) unless contained in a written partnership agreement, a writing setting  
4 out:

5 (i) the amount of cash and a description and statement of the  
6 agreed value of the other property or services contributed by each partner and which each partner  
7 has agreed to contribute;

8 (ii) the times at which or events on the happening of which any  
9 additional contributions agreed to be made by each partner are to be made;

10 (iii) any right of a partner to receive, or of a general partner to  
11 make, distributions to a partner which include a return of all or any part of the partner's  
12 contribution; and

13 (iv) any events upon the happening of which the limited  
14 partnership is to be dissolved and its affairs wound up.

15 (b) ~~Records kept under this section are subject to inspection and copying at the~~  
16 ~~reasonable request and at the expense of any partner during ordinary business hours. Sections~~  
17 305 and 403E govern access to the records required by this Section.

#### 18 **Comment**

19 At its October, 1998 meeting, the Drafting Committee substantially revised this section.  
20 The revisions eschew the two-tiered approach contemplated by earlier drafts and reject many of  
21 the proposed additions to the required records.

22 It may now be possible to combine in one section both the listing of required records and  
23 the rules governing partner access to those records. However, a decision on that organizational  
24 issue must await the Committee's decisions on two more fundamental organizational issues --  
25 namely, to what extent should Re-RULPA follow the RUPA/ULLCA organizational structure

1 and to what extent should Re-RULPA co-locate provisions relating to general partners with  
2 provisions relating to limited partners.

3 Subsection (a)(2) -- It can be confusing to have the same word -- certificate -- refer both  
4 to an original document and to the documents that amend that original document. Re-RULPA  
5 therefore refers to "amendments" rather than "certificates of amendments." The changes in this  
6 paragraph reflect that change.

7 Subsection (a)(4) -- The Committee may wish to revisit the reference to "written"  
8 agreements and amendments, in light of the more modern concept of a "record."

9 Subsection (a)(6) -- This provision reflects a decision made by the Drafting Committee at  
10 its October, 1998 meeting. The provision does not require a limited partnership to make a record  
11 but does create a retention requirement for those records the limited partnership does create. The  
12 three years runs from the date the record is created, not from the date the consent or vote occurs.

## 13 **SECTION 106. NATURE OF BUSINESS AND POWERS.**

14 (a) A limited partnership may ~~carry on any business that a partnership without~~  
15 ~~limited partners may carry on except [here designate prohibited activities]~~ be organized under  
16 this [Act] for any lawful purpose, subject to any law of this State governing or regulating  
17 business.

18 (b) Except as stated in subsection (c), a limited partnership has the same powers  
19 as an individual to do all things necessary or convenient to carry on its business or affairs,  
20 including power to:

21 (1) to sue and be sued and defend in its own name;

22 (2) purchase, receive, lease, or otherwise acquire, and own, hold, improve,  
23 use, and otherwise deal with real or personal property, or any legal or equitable interest in  
24 property, wherever located;

25 (3) sell, convey, mortgage, grant a security interest in, lease, exchange,  
26 and otherwise encumber or dispose of all or any part of its property;

1                                   (4) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote,  
2 use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with,  
3 ownership interests in or obligations of any other entity;

4                                   (5) make contracts and guarantees, incur liabilities, borrow money, issue  
5 its notes, bonds, and other obligations, which may be convertible into or include the option to  
6 purchase other securities of the limited partnership, and secure any of its obligations by a  
7 mortgage on or a security interest in any of its property, franchises, or income;

8                                   (6) lend money, invest and reinvest its funds, and receive and hold real and  
9 personal property as security for repayment;

10                                  (7) be a promoter, partner, member, associate, or manager of any  
11 partnership, joint venture, trust, or other entity;

12                                  (8) conduct its business, locate offices, and exercise the powers granted by  
13 this [Act] within or without this State;

14                                  (9) appoint officers, employees, and agents of the limited partnership,  
15 define their duties, fix their compensation, and lend them money and credit;

16                                  (10) pay pensions and establish pension plans, pension trusts, profit  
17 sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its  
18 current or former partners, officers, employees, and agents;

19                                  (11) make donations for the public welfare or for charitable, scientific, or  
20 educational purposes; and

21                                  (12) make payments or donations, or do any other act, not inconsistent  
22 with law, that furthers the purpose of the limited partnership.

1                   (c) The certificate of limited partnership may limit the powers of a limited  
2 partnership but may not affect the power of a limited partnership to sue, be sued, and defend in  
3 its own name.

#### 4                   **Comment**

5                   De-linking makes it necessary to expand this section to specify a limited partnership's  
6 powers.

7                   Subsection (a) -- At its October, 1998 meeting, the Drafting Committee decided not to  
8 confine limited partnerships to "business" activities and to permit a limited partnership to pursue  
9 any lawful purpose. Accordingly, this subsection follows ULLCA § 112(a) essentially verbatim.  
10 The Committee may wish, however, to delete the last phrase ("subject to . . . ") as both redundant  
11 and underinclusive. As to redundancy -- if some other law prohibits a limited partnership from  
12 engaging in a particular activity, pursuing that activity would not be a "lawful purpose." As to  
13 underinclusiveness -- the reference to "any law of this State governing or regulating business"  
14 appears too limited because a limited partnership is not restricted to business activities.

15                   Subsection (b) -- Derived from ULLCA § 112, which in turn appears to have relied  
16 heavily on RMBCA § 3.02.

17                   Subsection (b)(4) -- ULLCA § 112(b)(4) refers to "shares or other interests." That  
18 reference derives verbatim from RMBCA § 3.02(6). In a limited partnership act there is no  
19 reason to give special mention to corporate ownership interests.

20                   Subsection (b)(7) -- ULLCA did not mention limited liability companies, but perhaps Re-  
21 RULPA should.

22                   Subsection (b)(10) -- In prior Drafts, this provision referred to "general" partners. At its  
23 October, 1998 meeting, the Drafting Committee deleted the word "general." (RMBCA §  
24 3.02(12) and ULLCA § 112(10) differ as to whether the entity has the power to provide pensions  
25 for a mere passive owner. The RMBCA provision does not mention shareholders, while the  
26 ULLCA provision refers to members. The ULLCA provision therefore appears to allow  
27 pensions for members in manager-managed LLC. Perhaps ULLCA's approach reflects the  
28 statutory default mode of member management.)

29                   Subsection (b)(12) -- ULLCA § 112(b)(12) refers to "further[ing] the business of the  
30 limited liability company," (emphasis added), but the reference to "business" seems  
31 underinclusive. Following ULLCA, Re-RULPA has removed the business purpose restriction.

32                   Earlier drafts of subsection (b) included the following additional provision: "(13) transact  
33 any lawful business that will aid governmental policy." That provision appears at RMBCA

1 § 3.02(14) but not in ULLCA. At its October, 1998 meeting, the Drafting Committee decided to  
2 follow ULLCA.

3 Subsection (c) -- The power of the publicly-filed document to alter the entity's powers  
4 derives from ULLCA § 112(b), but is separately stated to make mandatory the power of a limited  
5 partnership to sue and be sued in its own name. This power is of the essence of a limited  
6 partnership's nature as a legal entity. Moreover, any change in this power would significantly  
7 affect the rights of nonpartners.

8 This nonwaivable power does not affect a limited partnership's right assign a cause of  
9 action or to sue or be sued under an assumed name.

10 At its October, 1998 meeting, the Drafting Committee suggested that Section 101B(b)  
11 (provisions not waivable by the partnership agreement) refer to the mandatory nature of a limited  
12 partnership's power to sue and be sued in its own name. That reference seems unnecessary,  
13 because this section provides that a limited partnership has the listed powers "[e]xcept as stated  
14 in subsection (c)" and subsection (c) only mentions the certificate of limited partnership as  
15 altering the listed powers. Moreover, the reference seems inconsistent with ULLCA. See  
16 ULLCA §§ 112(b) (listing an LLC's powers "[u]nless its articles of organization provide  
17 otherwise") and 103(b) (listing provisions not waivable by the operating agreement and not  
18 mentioning the list of an LLC's powers).

19 This issue aside, the notion of limitation through a public document is problematic for  
20 ULLCA and doubly problematic for Re-RULPA. If a statute authorizes restrictions on an entity's  
21 normal powers, the statute should also contemplate what will happen if restrictions exist and the  
22 entity transgresses them. See, e.g., RMBCA §§ 3.02 (allowing the articles of incorporation to  
23 restrict a corporation's powers) and 3.04 (dealing with ultra vires acts). ULLCA contemplates  
24 restrictions but not transgressions.

25 Re-RULPA has an additional problem. A certificate of limited partnership is not  
26 precisely analogous to an LLC's articles of organization or a corporation's articles of  
27 incorporation. Although all three documents function to create an entity, certificates of limited  
28 partnership typically play a far weaker role in governing the entity's structure and operations.  
29 Indeed, at its July, 1997 meeting the Committee rejected Draft #1's attempt to strengthen the  
30 certificate's role, deleting provisions that would have made the certificate dispositive in  
31 determining the identity of general partners.

32 In light of the "weak" role of a certificate of limited partnership, it seems anomalous to  
33 empower the certificate to restrict a limited partnership's powers. The Reporter therefore favors  
34 deleting the language allowing the certificate to restrict a limited partnership's powers. If a  
35 limited partnership wishes to restrict its operations, it should indicate so in its partnership  
36 agreement. Whether those restrictions will bind third parties will depend on Sections 403A  
37 (general partner agent of limited partnership) and 403B (limited partnership liable for general  
38 partner's actionable conduct).

1 In any event, a limitation of a limited partnership's powers is not for the purposes of  
2 Section 208(c) a statement limiting the authority of a general partner to execute an instrument  
3 transferring real property held in the name of the partnership. Draft #3 included statutory  
4 language to that effect, which the Drafting Committee deleted as unnecessary.

5 An entity power restriction contained in the certificate could still undermine a general  
6 partner's power to bind the limited partnership, due to the Act's provisions on power to bind. See  
7 Section 403A(a)(1) (negating a general partner's power to bind when "the general partner had no  
8 authority to act for the limited partnership . . . and the person with whom the general partner was  
9 dealing knew . . . that the general partner lacked authority"). Arguably, a person who knows that  
10 a limited partnership lacks the power to do an act knows that no general partner has the power to  
11 bind the limited partnership to do that act.

## 12 **SECTION 107. BUSINESS TRANSACTIONS OF PARTNER WITH** 13 **PARTNERSHIP.**

14 ~~Except as provided in the partnership agreement, a~~ A partner may lend money to and  
15 transact other business with the limited partnership and, subject to other applicable law, has the  
16 same rights and obligations with respect thereto as a person who is not a partner.

### 17 **Comment**

18 To the uninitiated, this section appears to conflict with Section 403D(b)(2) (general  
19 partner's loyalty duty includes refraining from acting as or for an adverse party). However, this  
20 section has no connection with the duty of loyalty and is intended only to deal with claims by  
21 creditors of the limited partnership. The unartful formulation is retained for historical reasons  
22 and because including language that differs substantially from RUPA and ULLCA would  
23 exacerbate rather than ameliorate the confusion.

24 N.b. -- both RUPA and ULLCA locate this provision elsewhere, within the section  
25 dealing with fiduciary duty. See RUPA § 404(f) and ULLCA § 409(f).

## 26 **ARTICLE 2** 27 **FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP**

1                   **SECTION 200. LIMITED PARTNERSHIP AS ENTITY; PERPETUAL TERM.**

2                   (a) A limited partnership is an entity distinct from its partners.

3                   (b) A limited partnership has a perpetual term.

4                   **Comment**

5                   Subsection (a) -- Source: RUPA § 201. ULLCA § 201 contains essentially the same  
6 provision. Draft #1 contained a subsection (b), stating when a partner is a proper party in a  
7 proceeding involving a limited partnership. That provision has been relocated to Section 403C-2  
8 and revised.

9                   Subsection (b) -- Draft #3 required that changes in the default term be made in the  
10 certificate of limited partnership. At its October, 1998 meeting, the Drafting Committee decided  
11 that the partnership agreement could change the default. This decision puts Re-RULPA at odds  
12 with ULLCA. See ULLCA § 203(a)(5) (requiring a limited liability company's articles of  
13 organization to state "whether the company is to be a term company and, if so, the term  
14 specified").

15                   **SECTION 201. CERTIFICATE OF LIMITED PARTNERSHIP.**

16                   (a) In order to form a limited partnership, a certificate of limited partnership must  
17 be executed and filed in the office of the Secretary of State. The certificate ~~shall set forth~~ must  
18 include:

19                               (1) the name of the limited partnership;

20                               (2) the address of the office and the name and address of the agent for  
21 service of process required to be maintained by Section 104;

22                               (3) the name and the business address of each general partner; and

23                               (4) ~~the latest date upon which the limited partnership is to dissolve; and if~~  
24 the limited partnership is a limited liability limited partnership, a statement to that effect.

25                   (b) A certificate of limited partnership may state the authority, or limitations on  
26 the authority, of some or all of the general partners to execute an instrument transferring real

1 property held in the name of the partnership.

2 (c) A certificate of limited partnership may also contain ~~(5)~~ any other matters the  
3 general partners determine to include therein, except that a certificate may not vary the  
4 nonwaivable provisions of [this Act] listed in Section 101B.

5 (d) Subject to subsection (c), if any provision of a partnership agreement is  
6 inconsistent with the certificate of limited partnership:

7 (1) the partnership agreement controls as to partners and transferees; and

8 (2) the certificate of limited partnership controls as to persons, other than  
9 partners and transferees, who reasonably rely on the certificate to their detriment.

10 (be) A limited partnership is formed at the time of the filing of the certificate of  
11 limited partnership in the office of the [Secretary of State] or, subject to Section 206(d), at any  
12 later time specified in the certificate of limited partnership if, in either case, there has been  
13 substantial compliance with the requirements of this section.

#### 14 **Comment**

15 Subsection (a)(2) -- ULLCA allows updating of this information without formal  
16 amendment to the formation document. ULLCA § 203(a)(2). Draft #3 conformed Re-RULPA  
17 to that approach, but at the October, 1998 meeting the Drafting Committee decided to return to  
18 RULPA.

19 Subsection (a)(4) -- The reference to the limited partnership's term is deleted, following  
20 the Drafting Committee's decision at the October, 1998 meeting.

21 Former subsection (a)(5) -- The reference to optional matters is relocated to subsection  
22 (c).

23 Subsection (b) -- This provision is a much slimmed-down version of RUPA's statement  
24 of authority. Compare RUPA § 303. RUPA's more elaborate and extensive approach seems  
25 unnecessary given the sharp division of authority between general and limited partners.

26 Subsection (c) -- The exception is derived from ULLCA § 203(c), which refers a bit



1 inaccurately (albeit more succinctly) to "the nonwaivable provisions of Section . . . ."

2       Subsection (d) -- Source: ULLCA § 203(c). At its October, 1998 meeting, the Drafting  
3 Committee directed the deletion of ULLCA's introductory phrase "As to all other matters" and  
4 the placement of this conflict provision in a separate subsection. The new introductory phrase  
5 ("subject to . . .") makes clear that the conflict rules cannot override the list of nonwaivable  
6 provisions. Thus, for example, if the certificate purports to change a nonwaivable provision and  
7 a third party relies on the certificate, the certificate does not prevail. (Arguably, no person could  
8 "reasonably" rely on a certificate provision that violates subsection (b), but ULLCA saw fit to  
9 make this point directly.)

10       Subsection (e) -- Section 206(d) limits the delay period to 90 days.

11       **SECTION 202. AMENDMENT OR RESTATEMENT OF ~~THE~~ CERTIFICATE.**

12       (a) A certificate of limited partnership is amended by filing an ~~certificate of~~  
13 amendment ~~thereto~~ in the office of the [Secretary of State]. The ~~certificate~~ amendment shall set  
14 forth:

- 15                       (1) the name of the limited partnership;  
16                       (2) the date of filing the certificate; and  
17                       (3) the changes the amendment makes to the certificate.

18       (b) ~~Within 30 days after the happening of any of the following events, A limited~~  
19 partnership shall file an amendment to a certificate of limited partnership reflecting the  
20 occurrence of any of these ~~the event or events shall be filed:~~

- 21                       (1) the admission of a new general partner;  
22                       (2) the ~~withdrawal~~ dissociation of a person as a general partner; ~~or~~  
23                       (3) ~~the continuation of the business under Section 801 after an event of~~  
24 ~~withdrawal of a general partner~~ the appointment of a person to wind up the limited partnership's  
25 business under Section 803(b) or (c).

1 (c) A general partner who becomes aware that any statement in a certificate of  
2 limited partnership was false when made or that any arrangements or other facts described have  
3 changed, making the certificate inaccurate in any respect, shall promptly ~~amend~~ cause the  
4 certificate to be amended.

5 (d) A certificate of limited partnership may be amended at any time for any other  
6 proper purpose the general partners determine.

7 (e) Subject to Sections 602C, 602D, and 803A, no ~~No~~ person has any liability  
8 because an amendment to a certificate of limited partnership has not been filed to reflect the  
9 occurrence of any event referred to in subsection (b) of this section if the amendment is filed  
10 within the 30-day period specified in subsection (b) 30 days after the occurrence of the event.

11 (f) A restated certificate of limited partnership may be ~~executed and~~ filed in the  
12 same manner as an certificate of amendment.

### 13 **Comment**

14 Caption -- The 1986 amendments to RULPA added subsection (f), providing for restated  
15 certificates. The change to the caption merely reflects that addition.

16 Subsection (a) -- Re-RULPA does not use the term "certificate" to refer to amendments.  
17 It is confusing to use the same term to refer both to an initial document (i.e., the certificate of  
18 limited partnership) and subsequent documents that amend the initial document.

19 Subsection (b) -- The stylistic change is to switch from the passive to active voice. The  
20 substantive change, made at the October, 1998 meeting, is to delete the 30-day time period. A  
21 shadow of that time period remains (of necessity) in subsection (e), discussed below.

22 ULLCA contains no provision comparable to subsection (b), relying instead on ULLCA  
23 §§ 207 (permitting but not expressly requiring the correction of a filed record) and 209 (liability  
24 for false statement in filed record).

25 Subsection (b)(2) -- "Withdrawal" is no longer the term of art. "Dissociation" is.

26 Subsection (b)(3) -- Earlier drafts deleted the original language because (i) a general

1 partner's dissociation does not necessarily cause dissolution, and (ii) what concerns third parties  
2 is whether the limited partnership has dissolved. Dissolution is the event which affects the  
3 power of general partners to bind the entity. See Section 803A. It seemed sensible, therefore, to  
4 have the certificate directly address the question of dissolution, and earlier drafts required the  
5 certificate to be amended to indicate "the dissolution of the limited partnership."

6 However, at its October, 1998 meeting, the Drafting Committee decided to delete the  
7 "dissolution" language. That deletion creates at least two problems. First, Sections 803A(b) and  
8 (c) presuppose that the certificate will be amended to indicate dissolution. Some of that Section's  
9 power-to-bind rules depend on that amendment. Second, Section 202(c) requires general  
10 partners to correct "inaccurate" certificates. Since dissolution has significant legal effects on  
11 third parties, it is arguably "inaccurate" for a certificate to omit the fact of dissolution.

12 Subsection (c) -- In some circumstances an amendment requires a signature from more  
13 than one general partner. See Section 204. The change is to accommodate those circumstances.  
14 Section 205 (Signing and Filing by Judicial Act) is available to a general partner who cannot  
15 convince fellow general partners to sign.

16 What if the partnership agreement places all responsibility and power to amend the  
17 certificate on one general partner and another partner becomes aware of an inaccuracy? Does the  
18 agreement relieve the second partner of responsibility under this provision? Presumably not --  
19 the certificate is not squarely within the domain of the partnership agreement, because  
20 inaccuracies in the certificate have an effect on third parties. Moreover, Section 207 imposes  
21 personal liability on general partners for failure to correct the public record. If there is doubt on  
22 this point, however, perhaps this provision should be included in the list of nonwaivable  
23 provisions. In some circumstances, an amendment requires more than one general partner's  
24 signature.

25 Query: is a Comment necessary to make clear that a general partner who knows the  
26 limited partnership is dissolved is not "aware that any arrangements or other facts described have  
27 changed, making the certificate inaccurate in any respect"?

28 Subsection (d) -- It would generally not be a "proper purpose" to amend the certificate to  
29 undercut or conflict with the partnership agreement. However, if the partnership agreement gets  
30 out of synch with reality -- e.g., if a general partner is dissociated but the partnership agreement  
31 has not been amended to reflect that change -- this provision would oblige the general partners to  
32 amend the certificate despite the resulting nonconformity with the partnership agreement. But see  
33 Section 201(d) (providing that among partners "the partnership agreement controls" over the  
34 certificate).

35 Subsection (e) -- The Drafting Committee dwelled on this subsection at the October,  
36 1998 meeting, initially deciding to delete the provision and then deciding to reinstate it. Neither  
37 of the changes shown in Draft #4 were discussed at the October meeting; both seek to respond to  
38 issues raised by other parts of the Draft.

1 The first change subjects subsection(e) to sections dealing respectively with Dissociated  
2 General Partner's Power to Bind and Liability to Partnership, Dissociated General Partner's  
3 Liability to Other Persons, and General Partner's Power to Bind Partnership After Dissolution.  
4 Under each of these sections information in the certificate (i.e., a general partner's dissociation,  
5 the partnership's dissolution) provides constructive notice 90 days after the certificate is amended  
6 to provide the information. Subsection (e) should not be read to affect the running of that 90-day  
7 period.

8 The second change results from the Committee's decision to delete the 30-day time period  
9 from subsection (b). Presumably the "relating back" benefits of subsection (e) are not available  
10 forever. The second change maintains the current 30-day deadline.

11 Subsection (f) -- As a matter of organization, the reference to execution belongs in  
12 Section 204, which deals with execution requirements. Also, moving the reference will make it  
13 easier to correct the current rule's simplistic approach. Who must sign a restated certificate  
14 depends on the nature of the changes reflected in the restated certificate. Some changes might  
15 require a single general partner's signature, while others might require two or more.

16 **SECTION 203. ~~CANCELLATION OF CERTIFICATE~~ DECLARATION OF**  
17 **TERMINATION**. ~~A certificate of limited partnership shall be cancelled upon the dissolution~~  
18 ~~and the commencement of winding up of the partnership or at any other time there are no limited~~  
19 ~~partners. A certificate of cancellation shall be filed~~

20 (a) A dissolved limited partnership may file in the [office of the Secretary of  
21 State] a declaration of termination that ~~and~~ sets forth:

- 22 (1) the name of the limited partnership;
- 23 (2) the date of filing of its original certificate of limited partnership; and
- 24 (3) ~~the reason for filing the certificate of cancellation~~
- 25 (4) the effective date (which shall be a date certain and shall be subject to
- 26 Section 206(d)) of cancellation termination if it the declaration is not to be effective upon ~~the~~

1 filing of the certificate, and

2 (5) any other information the general partners filing the certificate  
3 determine.

4 (b) The existence of a limited partnership is terminated upon the filing of a  
5 declaration of termination, or, subject to Section 206(d), at a later date specified in that  
6 declaration. Termination of a limited partnership does not affect the application of Sections  
7 803B, 803C and 803D (barring of claims).

#### 8 **Comment**

9 At its October, 1998 meeting, the Drafting Committee substantially revised this section,  
10 making the filing permissive rather than mandatory, deleting certain information from the  
11 declaration and subsuming Section 805 into this section.

12 As with previous drafts, the revised version switches the focus from dissolution to  
13 termination. Cancelling the certificate upon dissolution (current law) is misleading because a  
14 dissolved limited partnership is not terminated. However, given past usage it would be  
15 confusing to apply the word "cancellation" to a document filed to indicate the termination of a  
16 limited partnership's existence. Re-RULPA therefore uses "declaration of termination" for that  
17 purpose. (Previous drafts called for a limited partnership to amend its certificate to indicate  
18 dissolution, but at the October, 1998 meeting the Drafting Committee eliminated that  
19 requirement. See Section 202.)

20 It is a close organizational question whether treatment of the declaration of termination  
21 belongs here (in fealty to the current statute's organizational structure) or in the article dealing  
22 with dissolution, winding up and termination. Consistent with the Committee's instructions, this  
23 draft (like previous drafts) opts for the former.

24 Subsection (a)(2) -- The adjective is added to distinguish any restated certificates.

25 Subsection (a)(3) -- Section 206(d) limits the delay period to 90 days.

26 Subsection (b) -- In previous drafts this provision was Section 805.

#### 27 **SECTION 204. EXECUTION OF ~~CERTIFICATES~~ RECORDS.**

28 (a) Each ~~certificate~~ record pertaining to a limited partnership and filed pursuant to

1 ~~this Act required by this Article to be filed~~ in the office of the [Secretary of State] ~~shall~~ must be  
2 executed in the following manner:

3 (1) an original certificate of limited partnership must be signed by all  
4 general partners listed in the certificate;

5 (2) an amendment causing a limited partnership to become or cease to be a  
6 limited liability limited partnership must be signed by all general partners listed in the certificate;

7 \_\_\_\_\_ (3) an amendment designating as general partner a person admitted under  
8 Section 801(3) following the dissociation of a limited partnership's last general partner must be  
9 signed by that person;

10 \_\_\_\_\_ (4) an amendment required by Section 803(b) or 803(d) following the  
11 appointment of a person to wind up the dissolved limited partnership's business must be signed  
12 by that person;

13 (25) ~~a certificate of any other~~ amendment must be signed by at least one  
14 general partner listed in the certificate and by each other ~~general partner person~~ designated in the  
15 ~~certificate amendment~~ as a new general partner; ~~and~~

16 (6) a restated certificate of limited partnership must be signed by at least  
17 one general partner listed in the certificate, and to the extent the restated certificate effects a  
18 change under any other paragraph of this subsection the certificate must be signed in a manner  
19 that satisfies that paragraph;

20 (37) ~~a certificate of cancellation~~ declaration of termination must be signed  
21 by all general partners listed in the certificate or, if the certificate of a dissolved limited  
22 partnership lists no general partners, then by the person appointed under section 803(b) or 803(c)

1 to wind up the dissolved limited partnership's business;

2 (8) any other record signed by or on behalf of a limited partnership must  
3 be signed by at least one general partner listed in the certificate; and

4 (9) a statement by a person pursuant to Section [TBD] declaring that the  
5 person has dissociated as a general partner must be signed by that person.

6 (b) Any person may sign a ~~certificate~~ record by an attorney-in-fact, ~~but a power~~  
7 ~~of attorney to sign a certificate relating to the admission of a general partner must specifically~~  
8 ~~describe the admission.~~

9 (c) The execution of a certificate, amendment, or declaration by a ~~general partner~~  
10 person pursuant to this section constitutes an affirmation under the penalties of perjury that the  
11 facts stated ~~therein~~ in that record are true.

## 12 **Comment**

13 Subsection (a) -- ULLCA § 205 (Signing of records) refers to "a record to be filed by or  
14 on behalf of a limited liability company." This draft omits that language because paragraph  
15 (a)(9) contemplates a dissociated general partner filing a record on his, her or its own behalf.  
16 The phrase "pertaining to a limited partnership" makes clear that these signing requirements  
17 apply only to domestic limited partnerships. Following ULLCA, Re-RULPA does not state  
18 signing requirements for records filed by or on behalf of foreign limited partnerships (e.g.,  
19 annual reports, applications for a certificate of authority). The change from "shall" to "must" is  
20 in accord with NCCUSL Procedural and Drafting Manual (1997 ed.), Rule 8(a)(2).

21 Subsection (a)(1) -- At its July, 1997 meeting, the Committee decided that a person can  
22 be a general partner even though not listed in the certificate. This change reflects that decision.

23 Subsection (a)(2) -- Per Section 302(b), in the default mode as among the partners this  
24 change requires the consent of all partners. However, execution of the necessary publicly-filed  
25 document remains the province of the general partners.

26 Subsection (a)(3) -- At its October, 1998 meeting, the Drafting Committee directed the  
27 Reporter to consider the "interloper" problem -- i.e., whether this provision allows a stranger to  
28 the limited partnership to muddle the public record with a false filing. The Reporter recognizes  
29 the problem but believes this provision should remain as drafted. A false filing risks both

1 criminal and civil liability. Sections 204(c) and 207. Moreover, no simple solution exists. For  
2 example, requiring the signature of at least one limited partner does not help, because the public  
3 record does not identify limited partners. ULLCA suffers from a comparable problem. Any  
4 member may execute a record on behalf of a member-managed LLC, ULLCA § 205(a)(2), but  
5 the public record does not identify an LLC's members. ULLCA §§ 203(a) (stating the  
6 information required in the articles of organization and omitting the identity of members) and  
7 211(a) (same as to the contents of the LLC's annual report).

8 Subsection a(4) -- This subsection has the same "interloper" problem as exists under  
9 subsection a(3).

10 Subsection (a)(7) -- In previous drafts this paragraph's alternative provision applied if  
11 "the dissolved limited partnership has no general partners." The new language reflects the  
12 possibility of a person being a general partner without being listed in the certificate. Such  
13 persons may have rights and obligations despite their unlisted status, but they cannot act as  
14 general partners for the purpose of affecting the public record.

15 Although the Drafting Committee did not expressly decide this point at the October, 1998  
16 meeting, the result is implied in a decision the Committee did make. Subsection (a) contains  
17 various references to records requiring the signature of a general partner. The Committee  
18 instructed the Reporter to qualify those references with the phrase "listed in the certificate." That  
19 qualification suggests that under this Section only certificate-listed general partners may sign  
20 records on behalf of a limited partnership.

21 Subsection (a)(8) -- This paragraph applies, e.g., to annual reports, Section 211, and  
22 articles of correction, Section 206A. The signature of one general partner is sufficient to sign  
23 articles of correction, even if the record being corrected required additional signatures. A general  
24 partner who uses articles of correction to make a substantive change to a record will run afoul of  
25 subsection (c).

26 Subsection (a)(9) -- It was suggested during the Committee's March, 1998 meeting that  
27 such statements be authorized but to date there has been no discussion on the legal effect of such  
28 statements. Following RUPA, such statements would at least act as a limitation of authority to  
29 execute transfers of real property and could have an effect on the person's power to bind the  
30 partnership and the person's liability for the partnership's debts.

31 But what will be the effect on Section 208(a), which provides in part:

32 The fact that a certificate of limited partnership is on file in the office of the  
33 Secretary of State is notice that the partnership is a limited partnership and the  
34 persons designated ~~therein~~ in the certificate as general partners are general  
35 partners . . .

36 (Emphasis added.) Also, what will be the effect on Section 304 (Person Erroneously Believing



Himself [or Herself] Limited Partner)?

Pending the Committee's deliberations on this issue, Draft #4 follows Draft #3 and omits any provision for the legal effect of statements referred to in this provision and for the filing of such statements. (Determining where to place such provisions will be considerably easier after the Committee decides the overall "look and feel" issue.)

Former subsection (a)(10) -- At its October, 1998 meeting, the Drafting Committee deleted a proposed paragraph (10), which referred to "a statement by a person pursuant to Section [TBD] declaring that the person is not and has not been a general partner must be signed by that person." Two remedies remain. Under Section 205 (Signing and Filing by Judicial Act), the person can sue to force a correction. Under Section 304, if the person has invested in the limited partnership, the person can file a declaration of withdrawal.

Subsection (b) -- At its October, 1998 meeting, the Drafting Committee adopted a minimalist approach to this provision. Compare ULLCA § 205(c) (stating that a power-of-attorney need not be filed but must be retained by the LLC).

Subsection (c) -- This subsection raises two questions: (1) Given that ULLCA has no comparable provision, should Re-RULPA omit this provision? (2) If Re-RULPA retains this provision, should the provision extend only to the certificate, amendments and declarations, or also to other filings, such as annual reports and applications by foreign limited partnerships for certificates of authority?

At its October, 1998 meeting, the Drafting Committee decided to retain this subsection. (The Reporter confesses that he does not understand the rationale behind that decision. In this realm the only distinction the Reporter sees between an LLC and a Re-RULPA limited partnership is the personal liability of general partners. Perhaps it can be argued that such liability makes misstatements in limited partnership filings more serious than misstatements in LLC filings.)

As to the scope issue, Draft #3 used the narrower scope and was not amended at the October, 1998 meeting.

**SECTION 205. ~~EXECUTION~~ SIGNING AND FILING BY JUDICIAL ACT.** If a person required by ~~Section 204~~ [this Act] to execute any ~~certificate record~~ fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the [designate the appropriate court] to direct the ~~execution~~ signing of the ~~certificate record~~. If the court finds that it is proper for the ~~certificate record~~ to be ~~executed~~ signed and that any person so

designated has failed or refused to ~~execute~~ sign the ~~certificate~~ record, it shall order the Secretary of State to ~~record~~ file an appropriate ~~certificate~~ record.

### Comment

Following ULLCA, Re-RULPA uses "sign" as a defined term. ULLCA § 210, that Act's comparable provision, is captioned "Filing by judicial act." The specific reference to Section 204 is deleted, because strictly speaking that section does not require a person to execute a document. Section 204 merely specifies whose signatures are required for a document to be properly executed.

RUPA contains another approach, allowing various persons to file documents to correct the public record. See RUPA §§ 304 (authorizing a person "named as a partner in a filed statement of partnership authority" to file "a statement of denial"); 704 (authorizing a dissociated partner to file a statement of dissociation); and 805(a) (authorizing a partner who has not wrongfully dissociated to file a statement of dissolution).

It makes sense for Re-RULPA to differ from RUPA in this respect. RUPA assumes decentralized management, so decentralizing the power to affect the entity's public record is consistent with RUPA's overall paradigm. Re-RULPA, however, assumes centralized management. The general partners run the business and, it can be argued, should have exclusive authority and responsibility to maintain the limited partnership's public record. So far the only exceptions relate to a person dissociated as a general partner, Section 204(a)(9), and a person who has invested in the business and has been erroneously listed as a general partner, Section 304(a)(2). (The latter provision applies in other situations as well.)

At its October, 1998 meeting, the Drafting Committee decided to make permissive rather than mandatory an amendment to the certificate indicating dissolution. That decision probably makes this section inapplicable to such amendments. Suppose, for example, the limited partnership dissolves, the general partner declines to amend the certificate and a limited partner wishes to curtail the general partner's power to bind the dissolved partnership. The limited partnership is not "required" to file the amendment.

### **SECTION 206. FILING IN OFFICE OF [SECRETARY OF STATE].**

~~(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his [or her] authority as a prerequisite to filing. Unless the Secretary~~

1 of State finds that any certificate does not conform to law, upon receipt of all filing fees required  
2 by law he [or she] shall:

3 (1) ~~endorse on each duplicate original the word "Filed" and the day, month~~  
4 ~~and year of the filing thereof;~~

5 (2) ~~file one duplicate original in his [or her] office; and~~

6 (3) ~~return the other duplicate original to the person who filed it or his [or~~  
7 ~~her] representative.~~

8 (b) ~~Upon the filing of a certificate of amendment (or judicial decree of~~  
9 ~~amendment) in the office of the Secretary of State, the certificate of limited partnership shall be~~  
10 ~~amended as set forth therein, and upon the effective date of a certificate of cancellation (or a~~  
11 ~~judicial decree thereof), the certificate of limited partnership is cancelled.—~~

12 (a) A record authorized to be filed under this [Act] must be in a medium  
13 permitted by the [Secretary of State] and must be delivered to the office of the [Secretary of  
14 State]. Unless the [Secretary of State] determines that a record fails to comply as to form with  
15 the filing requirements of this [Act], and if all filing fees have been paid, the [Secretary of State]  
16 shall file the record and send a receipt for the record and the fees to the limited partnership or its  
17 representative.

18 (b) Upon request and payment of a fee, the [Secretary of State] shall send to the  
19 requester a certified copy of the requested record.

20 (c) Except as otherwise provided in subsection (d), a record accepted for filing by  
21 the [Secretary of State] is effective:

22 (1) at the time of filing on the date it is filed, as evidenced by the

1 [Secretary of State's] date and time endorsement on the record; or

2 \_\_\_\_\_ (2) at the time specified in the record as its effective time on the date it is  
3 filed.

4 \_\_\_\_\_ (d) A record may specify a delayed effective time and date, and if it does so the  
5 record becomes effective at the time and date specified. If a delayed effective date but no time is  
6 specified, the record is effective at the close of business on that date. If a delayed effective date  
7 is later than the 90th day after the record is filed, the record is effective on the 90th day.

### 8 **Comment**

9 This Section has been completely revised, following ULLCA § 206 essentially verbatim.

10 Subsection (c) -- "[A]ccepted for filing" does not precisely correspond with the language  
11 in subsection (a). Perhaps the phrase should read "filed by the [Secretary of State]."

12 Subsection (c)(1) -- At its October, 1998 meeting, the Drafting Committee decided to  
13 deviate from ULLCA and delete the word "original," which in ULLCA § 206(c)(1) appears  
14 immediately before the word "record."

15 Subsection (d) -- This subsection is taken verbatim from ULLCA § 206(d). At its  
16 October, 1998 meeting, the Drafting Committee discussed whether the truncating provision in  
17 the subsection's last sentence is good policy or whether the subsection should provide instead for  
18 rejection of a record that seeks to delay its effective date more than 90 days. The Committee  
19 postponed a decision on this issue. ULLCA § 206(c) and (d) appear to have been taken,  
20 essentially verbatim, from RMBCA § 1.23. The RMBCA does not have a truncating provision.

### 21 **SECTION 206A. CORRECTING FILED RECORD.**

22 \_\_\_\_\_ (a) A limited partnership or foreign limited partnership may correct a record filed  
23 by the [Secretary of State] if the record contains a false or erroneous statement or was defectively  
24 signed.

25 \_\_\_\_\_ (b) A record is corrected:

26 \_\_\_\_\_ (1) by preparing articles of correction that:

1 (i) describe the record, including its filing date, or attach a copy of  
2 it to the articles of correction;

3 (ii) specify the incorrect statement and the reason it is incorrect or  
4 the manner in which the signing was defective; and

5 (iii) correct the incorrect statement or defective signing; and  
6 (2) by delivering the corrected record to the [Secretary of State] for filing.

7 (c) Articles of correction are effective retroactively on the effective date of the  
8 record they correct except as to persons relying on the uncorrected record and adversely affected  
9 by the correction. As to those persons, articles of correction are effective when filed.

#### 10 **Comment**

11 This Section is derived essentially verbatim from ULLCA § 207, which in turn derives  
12 mostly verbatim from RMBCA § 1.24. The ULLCA provision has no Comment. The RMBCA  
13 Comment explains that:

14 This correction procedure has two advantages: (1) filing articles of correction may  
15 be less expensive than refiling the document or filing articles of amendment, and  
16 (2) articles of correction do not alter the effective date of the underlying document  
17 being corrected.

18 As to the relationship between signing requirements for articles of correction and signing  
19 requirements for original filings, see the Comment to Section 204(a)(8).

#### 20 **SECTION 207. LIABILITY FOR FALSE STATEMENT IN ~~CERTIFICATE~~**

21 **RECORD.** ~~If any certificate of limited partnership or certificate of amendment or cancellation~~  
22 Subject to Section 202(e), if a record authorized or required to be filed under this [Act] contains  
23 a false statement, one who suffers loss by reliance on the statement may recover damages for the  
24 loss from:

25 (1) ~~any~~ a person who ~~executes the certificate~~ signed the record, or ~~causes~~ caused

another to ~~execute~~ sign it on ~~his~~ the person's behalf, and knew, ~~and any general partner who~~  
knew or should have known, the statement to be false at the time the ~~certificate was executed~~  
record was signed; and

(2) a general partner who had notice that the statement was false at the time the  
record was signed; and

(23) any a general partner who thereafter after the time the record was signed has  
notice ~~knows or should have known~~ that any ~~arrangement or other~~ fact described in the  
~~certificate~~ record has changed, making the statement inaccurate in any respect within a sufficient  
time before the statement was relied upon reasonably to have enabled that general partner to  
~~cancel or amend the certificate~~ effect an amendment under Section 202, or to file a petition for its  
~~cancellation or amendment~~ under Section 205 or file articles of correction under Section 206A.

### Comment

At its October, 1998 meeting, the Drafting Committee struggled with this section,  
initially deciding to delete it and then deciding to reinstate it.

Although the Committee will doubtlessly revisit this issue and may well change the  
underlying policy (see below), Draft #4 does some "clean up" work on the section. In particular:

- i. In the first sentence the "Subject to" phrase is added to make clear that the  
exculpatory provision contained in Section 202(e) modifies this Section's general  
statement of liability.
- ii. "Sign" replaces "execute," and "record" replaces "certificate." These changes  
conform to terminology changes made throughout Re-RULPA.
- iii. The defined term "has notice" replaces the "knows or has reason to know"  
formulation.
- iv. A new paragraph (2) is created, to unpack from paragraph (1) what is essentially a  
separate basis for liability. New paragraph (2) highlights the exposure of a  
general partner who -- though uninvolved in a particular filing -- has notice of a  
false statement at the time the record is signed.

1 If the Committee retains Section 207, at least two other drafting issues require attention.  
2 First, paragraph (3) [essentially former paragraph (2)] has byzantine syntax. Second, and more  
3 substantively, the present formulation (and current law) omit any liability for a general partner  
4 who after the signing of a record gains notice of an initially false statement. Paragraph (3) does  
5 not impose that liability, applying only if a general partner has notice of a post-signing change in  
6 facts.

7 As to whether the Committee should retain Section 207, the Committee must reconcile  
8 Re-RULPA with ULLCA. Section 207 reaches much further than the comparable ULLCA  
9 provision. ULLCA § 209 provides:

10 If a record authorized or required to be filed under this [Act] contains a false  
11 statement, one who suffers loss by reliance on the statement may recover damages  
12 for the loss from a person who signed the record or caused another to sign it on  
13 the person's behalf and knew the statement to be false at the time the record was  
14 signed.

15  
16 ULLCA omits personal liability for those who learn of a misstatement, have the authority to  
17 correct it but fail to do so. ULLCA also omits liability for those who merely have reason to  
18 know of the misstatement.

19 It is difficult to justify Re-RULPA and ULLCA having such radically different  
20 approaches. In particular, it is difficult to justify imposing a more demanding standard on those  
21 who manage a limited partnership than on those who manage an LLC. It is true that general  
22 partners have personal liability for the entity's debts and LLC members and managers do not.  
23 However, Section 207 liability is not liability for the entity's debt; it is liability for mismanaging  
24 the public record. How does the existence of the former type of liability justify imposing the  
25 latter?

26 The October, 1998 meeting raised but did not resolve another issue: whether the limited  
27 partnership should itself be liable for loss suffered in reliance on a false statement. ULLCA does  
28 not create any such liability for an LLC.

## 29 **SECTION 208. SCOPE OF NOTICE.**

30 (a) The fact that a certificate of limited partnership is on file in the office of the  
31 Secretary of State is notice that the partnership is a limited partnership and the persons  
32 designated ~~therein~~ in the certificate as general partners are general partners, but, except as  
33 provided in subsections (b) and (c), it is not notice of any other fact.

1                   (b) Subject to Section 803A(b) regarding an amendment indicating dissolution, if  
2                   the certificate of limited partnership contains a statement granting authority to a general partner  
3                   to execute an instrument transferring real property held in the name of the limited partnership,  
4                   that statement is conclusive in favor of a person who gives value without knowledge to the  
5                   contrary.

6                   (c) If the certificate of limited partnership contains a statement limiting the  
7                   authority of a general partner to execute an instrument transferring real property held in the name  
8                   of the partnership, a person not a partner is deemed to know of the limitation.

### 9                   **Comment**

10                   This Section is at best "a work in progress." At its October, 1998 meeting, the Drafting  
11                   Committee opted for a minimalist approach to the section, but several issues remain:

- 12                   i.       The phrase "is notice" [subsection (a)] does not fit with Section 101A(b) (sourced  
13                   from RUPA and defining "has notice"). As a result, the meaning of "is notice" is  
14                   unclear. Presumably the phrase means that all persons "have notice" of the  
15                   specified information. The problem is exacerbated by subsection (c), which uses  
16                   other language from RUPA and refers to a person being "deemed to know"  
17                   specified information. This problem can be resolved by jettisoning the RULPA  
18                   formulation and using language more consistent with RUPA.
- 19                   ii.     The phrase "not notice of any other fact" [subsection (a)] is technically correct but  
20                   may nonetheless mislead the uninitiated. Under several Re-RULPA provisions,  
21                   the presence in the certificate of other information gives what amounts to  
22                   constructive notice. See, e.g., Sections 602C(a)(2)(ii) (cutting off a dissociated  
23                   general partner's power to bind the limited partnership when "90 days have passed  
24                   since the certificate of limited partnership was amended to state that the person is  
25                   dissociated as a general partner"); 602D(b)(2)(ii) (functional equivalent as to  
26                   general partner's liability for post-dissociation debts of the limited partnership);  
27                   803A(b) (stating that an amendment to the certificate which states that the limited  
28                   partnership is dissolved has consequences with regard to a general partner's  
29                   authority to transfer real property); 803A(c) (imputing notice to non-partners of  
30                   the dissolution of the limited partnership "90 days after the certificate of limited  
31                   partnership has been amended to state that the limited partnership is dissolved").

32                   Subsection (b) -- Source: RUPA § 302(b)(1) and (2). This subsection applies only to real



property transactions. At its October, 1998 meeting, the Drafting Committee deferred deciding whether to add RUPA-based provisions covering other types of transactions.

N.b. -- this draft does not require duplicate filings.

Subsection (c) -- Source: RUPA § 303(e). N.b. -- this draft does not require duplicate filings. Note also that, following RUPA, this provision operates even if the partnership agreement differs from the statement and a third party knows of the differing provision of the partnership agreement. In that event, this provision operates to impute knowledge "of the limitation" to the third party. What result if the third party relies on the partnership agreement and ignores the filed limitation? Comment 2 to RUPA § 303 suggests that the third party acts at its peril, because the publicly-filed limitation means the partner lacks the power to bind the entity: "Of course, a transferee with actual knowledge of a limitation on a partner's authority is bound under Section 301, whether or not there is a recorded statement of limitation." However, the Comment does not seem to contemplate a third party "knowing" two conflicting things.

#### ~~SECTION 209. DELIVERY OF CERTIFICATES TO LIMITED PARTNERS.~~

~~Upon the return by the Secretary of State pursuant to Section 206 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.~~

#### **Comment**

Deleted by the Drafting Committee at its October, 1998 meeting.

#### **SECTION 210. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.**

(a) A person may request the [Secretary of State] to furnish a certificate of existence for a limited partnership or a certificate of authorization for a foreign limited partnership.

(b) A certificate of existence for a limited partnership must set forth:

(1) the limited partnership's name;

(2) that it is duly formed under the laws of this State, the date of

1 formation;

2 \_\_\_\_\_ (3) if payment is reflected in the records of the [Secretary of State] and if  
3 nonpayment affects the existence of the limited partnership, that all fees, taxes, and penalties  
4 owed to this State have been paid;

5 \_\_\_\_\_ (4) whether its most recent annual report required by Section 211 has been  
6 filed with the [Secretary of State];

7 \_\_\_\_\_ (5) that a declaration of termination has not been filed; and

8 \_\_\_\_\_ (6) other facts of record in the office of the [Secretary of State] which may  
9 be requested by the applicant.

10 \_\_\_\_\_ (c) A certificate of authorization for a foreign limited partnership must set forth:

11 \_\_\_\_\_ (1) the foreign limited partnership's name used in this State;

12 \_\_\_\_\_ (2) that it is authorized to transact business in this State;

13 \_\_\_\_\_ (3) if payment is reflected in the records of the [Secretary of State] and if  
14 nonpayment affects the authorization of the company, that all fees, taxes, and penalties owed to  
15 this State have been paid;

16 \_\_\_\_\_ (4) whether its most recent annual report required by Section 211 has been  
17 filed with the [Secretary of State];

18 \_\_\_\_\_ (5) that a certificate of cancellation has not been filed; and

19 \_\_\_\_\_ (6) other facts of record in the office of the [Secretary of State] which may  
20 be requested by the applicant.

21 \_\_\_\_\_ (d) Subject to any qualification stated in the certificate, a certificate of existence  
22 or authorization issued by the [Secretary of State] may be relied upon as conclusive evidence that

1 the domestic or foreign limited partnership is in existence or is authorized to transact business in  
2 this State.

### 3 **Comment**

4 Source: ULLCA § 208. The Reporter would prefer a different name for this document,  
5 so that as much as possible the word "certificate" refers to the certificate of limited partnership.  
6 Consistent with instructions to follow RUPA/ULLCA, however, this Draft uses the same name  
7 as used by ULLCA.

8 Subsection (b)(2) -- At its October, 1998 meeting the Drafting Committee decided that  
9 certificate of limited partnership need not refer to a limited partnership's term. The Committee  
10 therefore deleted from the end of this provision the phrase "and the limited partnership's  
11 specified term."

### 12 **SECTION 211. ANNUAL REPORT FOR [SECRETARY OF STATE].**

13 (a) A limited partnership, and a foreign limited partnership authorized to transact  
14 business in this State, shall deliver to the [Secretary of State] for filing an annual report that sets  
15 forth:

16 (1) the name of the limited partnership or foreign limited partnership and  
17 the State or country under whose law it is formed;

18 (2) the address of the office required by Section 104(a)(1) or referred to in  
19 Section 902(5) and the name and address of its agent for service of process in this State; and

20 (3) the address of its principal office.

21 (b) Information in an annual report must be current as of the date the annual  
22 report is signed on behalf of the limited partnership.

23 (c) The first annual report must be delivered to the [Secretary of State] between  
24 [January 1 and April 1] of the year following the calendar year in which a limited partnership

1 was formed or a foreign limited partnership was authorized to transact business. Subsequent  
2 annual reports must be delivered to the [Secretary of State] between [January 1 and April 1] of  
3 the ensuing calendar years.

4 (d) If an annual report does not contain the information required in subsection (a),  
5 the [Secretary of State] shall promptly notify the reporting limited partnership or foreign limited  
6 partnership and return the report to it for correction. If the report is corrected to contain the  
7 information required in subsection (a) and delivered to the [Secretary of State] within 30 days  
8 after the effective date of the notice, it is timely filed.

### 9 **Comment**

10 Source: ULLCA § 211. Draft #4 differs from Draft #3 (and from ULLCA) as follows.

11 Subsection (a)(2) -- At its October, 1998 meeting, the Drafting Committee rejected  
12 ULLCA's concept of a "designated" in-state office for domestic and foreign limited partnerships.  
13 Accordingly, Draft #4 removes a reference to a "designated office" and substitutes appropriate  
14 cross-references.

15 Former subsection (a)(4) -- This provision, referring to "the names and business addresses  
16 of its general partners," has been deleted to avoid possible conflicts between the information  
17 provided in the annual report and the information stated in the certificate of limited partnership.  
18 No comparable problem exists under ULLCA, even though ULLCA § 211(a)(4) requires the  
19 annual report to include "the names and business addresses of any managers." ULLCA requires  
20 the articles of organization to include only "the name and address of each initial manager."  
21 ULLCA § 203(a)(6). Re-RULPA, in contrast, requires the certificate of limited partnership to  
22 list the general partners and requires the certificate to be amended to keep the list up to date.  
23 Sections 201(a)(3) and 202(b)(1) and (2).

## 24 **ARTICLE 3**

### 25 **LIMITED PARTNERS**

#### 26 **SECTION 301. ADMISSION OF LIMITED PARTNERS.**

1 (a) A person becomes a limited partner:

2 ~~(1) at the time the limited partnership is formed if the person has entered~~  
3 ~~into a partnership agreement that takes effect when the limited partnership is formed. or~~

4 ~~(2) at any later time specified in the records of the limited partnership for~~  
5 ~~becoming a limited partner.~~

6 (b) ~~After the filing of a limited partnership's original certificate of limited~~  
7 ~~partnership, a person may be admitted as an additional limited partner:~~

8 ~~(1) in the case of a person acquiring a partnership interest directly from the~~  
9 ~~limited partnership, upon compliance with the partnership agreement or, if the partnership~~  
10 ~~agreement does not so provide, upon the written consent of all partners; and~~

11 ~~(2) in the case of an assignee of a partnership interest of a partner who has~~  
12 ~~the power, as provided in Section 704, to grant the assignee the right to become a limited partner,~~  
13 ~~upon the exercise of that power and compliance with any conditions limiting the grant or~~  
14 ~~exercise of the power. After formation of the limited partnership, a person becomes a limited~~  
15 ~~partner as provided in the partnership agreement, with the consent of all the partners, as the result~~  
16 ~~of a merger under [Article] 11, or as the result of a conversion under [Article] TBD.~~

17 Alternative Version (in lieu of subsections (a) and (b) -- A person becomes a limited partner as  
18 provided in the partnership agreement, with the consent of all the partners, as the result of a  
19 merger under [Article] 11, or as the result of a conversion under [Article] TBD.

## 20 **Comment**

21 Former subsection (a)(2) -- This provision is deleted because it is unclear how a limited  
22 partner admitted under that paragraph differs from a limited partner admitted under subsection  
23 (b). In particular, it is unclear why subsection(a)(2) allows the required records to provide for  
24 admission, while subsection (b) requires compliance with the partnership agreement.

1        Alternative Version -- This version furthers the process of simplification and removes the  
2 formal distinction between obtaining membership pre- and post-formation. Ordinary contract  
3 law principles permit a partnership agreement to be signed prior to formation, to be effective  
4 upon formation.

5            **SECTION 302. ~~VOTING~~ MANAGEMENT RIGHTS AND POWERS OF**  
6 **LIMITED PARTNERS.** ~~Subject to Section 303, the partnership agreement may grant to all or a~~  
7 ~~specified group of the limited partners the right to vote (on a per capita or other basis) upon any~~  
8 ~~matter.~~

9            (a) A limited partner has no right to participate in the management of the limited  
10 partnership, except for:

11                            (1) the amendment to the partnership agreement under subsection (b);

12                            (2) the authorization or ratification under Section 101B(b)(3)(ii) of acts or  
13 transactions that would otherwise violate the duty of loyalty;

14                            (3) a decision under subsection (b) to authorize the limited partnership  
15 become or cease to be a limited liability limited partnership;

16                            (4) access to the required records and other information under Section 305;

17                            (5) the admission of a new partner under Sections 301(b), 401 or  
18 801(3)(ii);

19                            (6) a decision under Section 502(d) to compromise a claim against a  
20 partner;

21                            (7) the expulsion of a general partner under Section 602(4) or a limited  
22 partner under Section 603(4);

23                            (8) a decision under Section 703(c)(3) to use limited partnership property  
24 to redeem an interest subject to a charging order;

1                   (9) a decision under Section 801(2) whether to dissolve the limited  
2 partnership;

3                   (10) a decision under Section 801(3)(i)(B) whether to dissolve the limited  
4 partnership following the dissociation of a general partner;

5                   (11) a decision under Section 801(3)(ii) whether to continue the limited  
6 partnership and appoint a new general partner following the dissociation of the limited  
7 partnership's last general partner;

8                   (12) a decision under Section 803(b) to appoint a person to wind up the  
9 dissolved limited partnership's business;

10                  (13) application to a court pursuant to Section 803(c) for the appointment  
11 of a person to wind up the dissolved limited partnership's business;

12                  (14) the bringing of a derivative action under Article 10;

13                  (15) approval under Section 1102(c) of a merger to which the limited  
14 partnership is a party; and

15                  (16) a decision under Section [TBD] to have the limited partnership  
16 participate in a conversion.

17                  (b) The consent of each partner is necessary to:

18                         (i) amend the partnership agreement; and

19                         (ii) to authorize a limited partnership to become or cease to be a limited  
20 liability limited partnership.

21                  (c) Action requiring the consent or vote of limited partners under this [Act] may  
22 be taken without a meeting.

(d) A limited partner may appoint a proxy to vote or otherwise act for the limited partner by signing an appointment instrument, either personally or by the limited partner's attorney-in-fact.

(e) A limited partner has no right and no power as a limited partner to act for or bind the limited partnership.

### Comment

Subsection (a) -- Draft #1 first listed various nonfinancial rights of a limited partner and then stated that a limited partner had no other management rights. At the Committee's direction, all subsequent drafts have begun with the restrictive language.

ULLCA contains a comparable list. See ULLCA § 404(c) (management of limited liability company). For Re-RULPA there are two possible locations for the list: here, in the section dealing with limited partners, or Section 403, dealing with the management rights of general partners. Draft #4 continues the approach of Drafts ##1-3 and locates the list here. Accordingly, Section 403 refers to this section. If the Committee wishes, the list can be relocated to Section 403 and this section will then refer to the list in Section 403.

This list was re-styled in Draft #2, to follow the style of ULLCA § 404(c). The following items appear in ULLCA 404(c) but not in this Draft: the making of interim distributions; waiver of the right to have the company's business wound up (inapposite); the sale, lease, exchange, etc. of all of the company's property. Draft #2 did not reserve such sale, lease, exchange, etc. to a vote of the limited partners, thereby implicitly authorizing the general partners to take such action on their own.

That approach was continued in Draft #3 and is consistent with a decision the Committee made in its July, 1997 meeting. Draft #1, Section 403(c) prohibited general partners from taking "any action outside the ordinary course or the proper winding up of the limited partnership's business" and an endnote suggested that, except during winding up, disposition of substantially all of a limited partnership's assets would typically be outside the ordinary course. The Committee deleted Section 403(c).

Subsection (a)(4) -- Draft #1 included the phrase "and other information regarding the limited partnership's business, affairs and financial condition". Draft #2 deleted that phrase, because at the July, 1997 meeting the Drafting Committee deleted provisions requiring the limited partnership to compile that additional information. At its October, 1998 meeting, the Committee partially reversed itself and added language requiring the limited partnership to provide information beyond the required records. Accordingly, Draft #4 inserts the words "and other information."



1           There has been some discussion as to whether access to records properly fits with the  
2 caption of "management rights" and concept of "participat[ing] in . . . management."

3           Subsection (a)(5) -- The first cross reference is to the generally applicable provision on  
4 admitting limited partners. The second cross reference is to the generally applicable provision on  
5 admitting general partners. The third cross reference is to the provision allowing the admission  
6 of a new general partner following the dissociation of the limited partnership's last general  
7 partner. In the default mode, the first two of the cross referenced provisions require unanimous  
8 partner consent. The third requires consent from limited partners owning a majority of profits  
9 interests.

10           Subsection (a)(14) -- There has been some discussion as to whether bringing a derivative  
11 action properly fits with the caption of "management rights" and concept of "participat[ing] in . .  
12 . management." However, courts addressing the demand futility question routinely state that the  
13 bringing of litigation is ordinarily a matter of business judgment, to be decided by the company's  
14 management.

15           Subsection (c) -- Source: ULLCA § 404(d). The same provision appears in Section 403.  
16 The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.  
17 Perhaps this provision should be expanded to include action under the partnership agreement.

18           Subsection (d) -- Source: ULLCA § 404(e). The same provision appears in Section 403.  
19 The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

20           Subsection (e) -- The phrase "as a limited partner" means that: (i) this provision does not  
21 disable a general partner that also owns a limited partner interest, and (ii) a separate agreement  
22 could empower and entitle a person who is a limited partner to act for the limited partnership in  
23 another capacity; e.g., as an agent.

24           The fact that a limited partner has no power to bind the limited partnership means that  
25 information possessed by a limited partner is not attributed to the limited partnership.  
26 Attribution of information is an aspect of the power to bind.

27           Draft #1 contained an additional subsection, which stated: "This section does not  
28 prevent a limited partner from bringing a direct action to enforce rights personal to that limited  
29 partner. A limited partner may bring a direct action with or without an accounting." The  
30 Committee directed that those issues be addressed elsewhere. See Section 1005(a).

## 31   **SECTION 302A. LIMITED DUTIES OF LIMITED PARTNERS**

32           (a) Except as stated in subsection (b), a limited partner does not owe any

1 fiduciary duty to the limited partnership or to any other partner.

2 **[two alternative versions of subsection (b) follow]**

3 Version #1 (pro tanto; from ULLCA) -- (b) A limited partner who pursuant to the  
4 limited partnership agreement exercises some or all of the rights of a general partner in the  
5 management and conduct of the limited partnership's business is held to the standards of conduct  
6 for a general partner to the extent that the limited partner exercises the managerial authority  
7 vested in a general partner by this [Act].

8 Version #2 (pro tanto) (inspired by RMBCA) -- (b) To the extent the partnership  
9 agreement vests the discretion or powers of a general partner in a limited partner, that limited  
10 partner has the duties of a general partner with respect to the vested discretion or powers.

11 Alternative to Subsections (a) and (b) -- (a) A limited partner does not owe any  
12 fiduciary duty to the limited partnership or to any other partner, even if in accordance with the  
13 partnership agreement or other agreement the limited partner possesses and exercises some or all  
14 of the rights of a general partner in the management and conduct of the limited partnership's  
15 business.

16 (c) A limited partner shall discharge the duties to the partnership and the other  
17 partners under this [Act] or under the partnership agreement and exercise any rights consistently  
18 with the obligation of good faith and fair dealing. The obligation stated in this subsection  
19 displaces any common law or other obligation of good faith and fair dealing.

20 (d) A limited partner does not violate a duty or obligation under this [Act] merely  
21 because the limited partner's conduct furthers the limited partner's own interest.

## Comment

Subsection (a) -- Draft #1 included the phrase "on account of that status" following the word "not." The Drafting Committee deleted that phrase as unnecessary. A limited partner can assume fiduciary obligations on account of some other relationship to the limited partnership. For example, a limited partner who acts as a broker or attorney for the limited partnership will owe the limited partnership fiduciary duties in that role. See also Section 404 (Dual Capacity).

Subsection (b), Version #1 -- Derived from ULLCA § 409(h)(3). Like the ULLCA provision, this provision could be read to omit nonfeasance; i.e. a limited partner who is given rights but fails to exercise them would not be liable. In any event, this rule does not apply if the limited partner exercises powers under a separate agreement. A limited partner who acts under a separate agreement will have at least whatever contractual duties that agreement provides. If the agreement reflects or defines a fiduciary relationship (e.g., an agent), that relationship will impose fiduciary duties as well.

Subsection (b), Version #2 -- Derived (loosely) from RMBCA § 7.32(e).

Alternative to Subsections (a) and (b) -- The Reporter's notes indicate that at the July, 1997 meeting there was some support for this Alternative. If the Committee adopts this Alternative, the Reporter will propose a Comment indicating that this language does not immunize a person from liability for usurping a general partner's functions.

Subsection (c) -- The first sentence is sourced from RUPA § 404 (d). The second sentence follows the Committee's instructions. That sentence adds significance to the following proposed Comment on good faith. (In Draft #1 this Comment appeared following Section 302A. In Draft ## 2 and 3 the Comment appeared following Section 101. Underlining and strikeouts indicate changes to the proposed Comment made in Draft #3 and continued in Draft #4).

Draft Comment on Good Faith and Dealing: The obligation of good faith and fair dealing is not a fiduciary duty, does not command altruism or self-abnegation, and does not prevent a partner from acting in the partner's own self-interest. Courts should not use the obligation to change ex post facto the parties' or this [Act's] allocation of risk and power. To the contrary, the obligation should be used only to protect agreed-upon arrangements from conduct that is manifestly beyond what a reasonable person could have contemplated when the arrangements were made. The more open-ended is a grant of power or discretion, the less plausible is a claim of breach of the obligation of good faith and fair dealing.

The partnership agreement or this [Act] may grant discretion to a partner, and that partner may properly exercise that discretion even though another partner suffers as a consequence. Conduct does not violate the obligation of good faith and fair dealing merely because that conduct substantially prejudices a party. Indeed, parties allocate risk precisely because prejudice may occur. The exercise of discretion constitutes a breach only when the party claiming breach shows that the conduct has no ~~genuine~~, legitimate,

1 honestly-held business purpose. Once such a purpose appears, courts should not second  
2 guess a party's choice of method in serving that purpose, unless the party invoking the  
3 obligation of good faith and fair dealing shows that the choice of method itself lacks any  
4 genuine, legitimate, honestly-held business purpose.

5 Subsection (d) -- Source: RUPA § 404(e). Draft #1 contained the following  
6 statement, which the Committee deleted as more appropriate for a Comment: "This section does  
7 not prevent a limited partner from assuming fiduciary or other duties in some capacity other than  
8 limited partner."

### 9 **SECTION 303. LIABILITY TO THIRD PARTIES.**

10 ~~(a) Except as provided in subsection (d), a limited partner is not liable for the~~  
11 ~~obligations of a limited partnership unless he [or she] is also a general partner or, in addition to~~  
12 ~~the exercise of his [or her] rights and powers as a limited partner, he [or she] participates in the~~  
13 ~~control of the business. However, if the limited partner participates in the control of the~~  
14 ~~business, he [or she] is liable only to persons who transact business with the limited partnership~~  
15 ~~reasonably believing, based upon the limited partner's conduct, that the limited partner is a~~  
16 ~~general partner.~~

17 ~~(b) A limited partner does not participate in the control of the business within the~~  
18 ~~meaning of subsection (a) solely by doing one or more of the following:~~

19 ~~(1) being a contractor for or an agent or employee of the limited~~  
20 ~~partnership or of a general partner or being an officer, director, or shareholder of a general~~  
21 ~~partner that is a corporation;~~

22 ~~(2) consulting with and advising a general partner with respect to the~~  
23 ~~business of the limited partnership;~~

24 ~~(3) acting as surety for the limited partnership or guaranteeing or assuming~~

1 ~~one or more specific obligations of the limited partnership;~~

2 ~~(4) taking any action required or permitted by law to bring or pursue a~~  
3 ~~derivative action in the right of the limited partnership;~~

4 ~~(5) requesting or attending a meeting of partners;~~

5 ~~(6) proposing, approving, or disapproving, by voting or otherwise, one or~~  
6 ~~more of the following matters:~~

7 ~~(i) the dissolution and winding up of the limited partnership;~~

8 ~~(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of~~  
9 ~~all or substantially all of the assets of the limited partnership;~~

10 ~~(iii) the incurrence of indebtedness by the limited partnership other~~  
11 ~~than in the ordinary course of its business;~~

12 ~~(iv) a change in the nature of the business;~~

13 ~~(v) the admission or removal of a general partner;~~

14 ~~(vi) the admission or removal of a limited partner;~~

15 ~~(vii) a transaction involving an actual or potential conflict of~~  
16 ~~interest between a general partner and the limited partnership or the limited partners;~~

17 ~~(viii) an amendment to the partnership agreement or certificate of~~  
18 ~~limited partnership; or~~

19 ~~(ix) matters related to the business of the limited partnership not~~  
20 ~~otherwise enumerated in this subsection (b), which the partnership agreement states in writing~~  
21 ~~may be subject to the approval or disapproval of limited partners;~~

22 ~~(7) winding up the limited partnership pursuant to Section 803; or~~

~~(8) exercising any right or power permitted to limited partners under this [Act] and not specifically enumerated in this subsection (b).~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him [or her] in the business of the limited partnership.~~

~~\_\_\_\_\_ (d) A limited partner who knowingly permits his [or her] name to be used in the name of the limited partnership, except under circumstances permitted by Section 102(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for a debt, obligation, or other liability of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

### Comment

In this respect limited partners are analogous to shareholders. Nothing in the limited partner's shield affects claims for which owner status is not an element. This section does not prevent a limited partner from being liable as a result of the limited partner's own conduct to the extent that the same conduct would result in liability for a person who is not a limited partner.

The Drafting Committee has not yet discussed whether Re-RULPA should address the concept of "piercing the veil." The concept is an equitable doctrine and presumably applies to limited partnerships under Section 101C(a).

Prior Drafts retained subsection (d), regarding use of a limited partner's name in the name of a limited partnership. At its October, 1998 meeting, the Drafting Committee decided to permit the inclusion of a limited partner's name and thereby made subsection (d) obsolete.

**SECTION 304. PERSON ERRONEOUSLY BELIEVING HIMSELF [OR HERSELF] LIMITED PARTNER.**

1 (a) Except as provided in subsection (b), a person who makes ~~a contribution to an~~  
2 investment in a business enterprise and erroneously but in good faith believes that he [or she] has  
3 become a limited partner in the enterprise ~~is not a general partner in the enterprise and~~ is not  
4 bound by its obligations by reason of making the ~~contribution~~ investment, receiving distributions  
5 from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on  
6 ascertaining the mistake, ~~he [or she]~~ the person:

7 (1) causes an appropriate certificate of limited partnership or ~~a certificate~~  
8 ~~of amendment to be executed~~ signed and filed; or

9 (2) withdraws from future equity participation in the enterprise by  
10 ~~executing signing~~ and filing in the office of the Secretary of State a ~~certificate declaring~~  
11 declaration of withdrawal under this section.

12 (b) A person who makes ~~a contribution~~ an investment of the kind described in  
13 subsection (a) is liable to the same extent as a general partner to any third party who transacts  
14 business with the enterprise (i) before the person withdraws and an appropriate ~~certificate~~  
15 declaration is filed to show withdrawal, or (ii) before an appropriate certificate or amendment is  
16 filed to show that ~~he [or she]~~ the person is not a general partner, but in either case only if the  
17 third party actually believed in good faith that the person was a general partner at the time of the  
18 transaction.

19 (c) If a person makes a good faith and diligent effort to comply with subsection (a)(1) and  
20 is unable to cause the appropriate certificate of limited partnership or amendment to be executed  
21 and filed, the person has the right to withdraw from the enterprise pursuant to subsection (a)(2)  
22 even if otherwise the withdrawal would breach an agreement with others who are or have agreed

1 to become co-owners of the enterprise.

## 2 **Comments**

3 This is an elliptically drafted provision. Its components function to produce the desired  
4 result, but the reader has to work through the details before seeing the big picture. To state the  
5 rule directly would, however, require a much longer provision. In light of the rare use of the  
6 current provision and the need to keep the statute to a manageable length, this draft makes no  
7 substantial revisions.

8 N.b. -- neither this provision nor any other in this draft deal with a general partner who  
9 starts an enterprise erroneously believing the enterprise to be an LLLP. This issue can be  
10 labelled "defective formation" and only arises with regard to full shield entities. With an  
11 ordinary limited partnership, the general partner is always liable for the business' debts and so the  
12 niceties of formation have little impact.

13 Corporate law has dealt with this issue in various ways, including: MBCA § 146 (persons  
14 assuming to act when de jure corporation not yet formed); RMBCA § 2.04 (liability for  
15 preincorporation transactions); the doctrines of de facto incorporation and corporation by  
16 estoppel. ULLCA does not address the subject.

17 If the Committee wishes, the next draft can include a provision immunizing general  
18 partners who in good faith but erroneously believe themselves to be general partners of an LLLP.  
19 It can be argued that such people are indistinguishable from "persons purporting to act as or on  
20 behalf of a corporation [not] knowing there was no incorporation." RMBCA § 2.04. In  
21 deciding this point, it is well to consider that a LLLP resembles an LLC at least as much as a  
22 corporation and that ULLCA is a very recent Uniform Act. Absent a good reason to the contrary,  
23 why not follow ULLCA rather than the RMBCA?

24 Subsection (a) -- This provision: (i) permits a withdrawing person to receive as an  
25 ordinary creditor payment equal to the amount by which the value of the person's investment  
26 (determined as of the time made) exceeds any distributions received prior to withdrawal, but no  
27 greater amount; (ii) does not itself create a right for a withdrawing person to receive any  
28 payment, that being a matter for other law, and (iii) does not require the return of any greater  
29 amount received prior to withdrawal.

30 A "person erroneously, etc." cannot make use of Section 206A(correcting filed record),  
31 because (a) that provision would apply only if a certificate of limited partnership has been filed,  
32 and (b) even if a certificate has been filed, the statement of correction must be signed by a  
33 general partner. See Section 204(a)(8).

34 "Investment" replaces "contribution," because in this draft "contribution" is a defined  
35 term and relates to an investment in a de jure limited partnership. This provision is not limited to  
36 that situation.



1 As to the phrase "business enterprise" -- even if the Committee decides that a limited  
2 partnership need not have a "business" purpose, the word "business" should probably remain  
3 here. This provision addresses the vicarious liability that arises from co-ownership of a would-  
4 be profit-making enterprise.

5 The deleted phrase "is not a general partner" is redundant to the extent the phrase is  
6 intended to protect the would-be limited partner from vicarious liability to third parties.  
7 Moreover, the phrase may be confusing in relation to Section 403A (General partner agent of  
8 limited partnership). If this section is intended to override Section 403A, this section should say  
9 so explicitly. If not (which the Reporter thinks is and should be the case) the phrase "is not a  
10 general partner" does not belong here.

11 The addition of "or appropriate to" is intended to cover situations in which no certificate  
12 of limited partnership is on file and therefore no limited partnership has come into existence. In  
13 those circumstances, a person cannot have the rights of a limited partner because no limited  
14 partner interests can yet exist.

15 Subsection (a)(2) -- This change is intended to aid clarity by reserving the term  
16 "certificate" for the certificate of limited partnership.

17 Subsection (b) -- The phrase "to the same extent" is added to accommodate LLLPs. If at  
18 the relevant moment the limited partnership is a LLLP, no personal liability results.

19 Subsection (c) -- This rule is perhaps implicit in the current language, but seems worth  
20 stating directly, especially in light of the new approach to limited partner withdrawal. The  
21 provision's purpose is to protect the withdrawing person from claims from other partners or  
22 would-be partners but not, for example, to give the withdrawing person a statutory right to avoid  
23 a personal guarantee made to a lender.

## 24 **SECTION 305. LIMITED PARTNER'S AND FORMER LIMITED PARTNER'S**

25 **RIGHT TO INFORMATION** ~~INFORMATION. Each limited partner has the right to:~~

26 ~~(1) inspect and copy any of the partnership records required to be maintained by~~

27 ~~Section 105; and~~

28 ~~(2) obtain from the general partners from time to time upon reasonable demand (i)~~

29 ~~true and full information regarding the state of the business and financial condition of the limited~~

1 ~~partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal,~~  
2 ~~state and local income tax returns for each year, and (iii) other information regarding the affairs~~  
3 ~~of the limited partnership as is just and reasonable.~~

4 (a) On 10 days written demand to the limited partnership, a limited partner may  
5 inspect and copy during regular business hours in the office required to be maintained by Section  
6 104(a)(1) the required records described in Section 105. A partner making demand pursuant to  
7 this subsection need not demonstrate, state, or have any particular purpose for seeking the  
8 information.

9 (b) A limited partner may, during regular business hours and at a reasonable  
10 location specified by the limited partnership, obtain from the limited partnership and inspect and  
11 copy true and full information regarding the state of the business and financial condition of the  
12 limited partnership and other information regarding the affairs of the limited partnership as is just  
13 and reasonable if:

14 (1) the limited partner seeks the information for a purpose reasonably  
15 related to the partner's interest as a limited partner;

16 (2) the limited partner makes a written demand on the limited partnership,  
17 describing with reasonable particularity the information sought and the purpose for seeking the  
18 information; and

19 (3) the information sought is directly connected to the limited partner's  
20 purpose.

21 (c) Within 10 days of receiving a demand pursuant to subsection (b), the limited  
22 partnership shall in writing inform the limited partner who made the demand:

1                                   (1) what information the limited partnership will provide in response to  
2 the demand;

3                                   (2) when and where the limited partnership will provide that information;  
4 and

5                                   (3) if the limited partnership declines to provide any demanded  
6 information, the limited partnership's reasons for declining.

7                                   (d) A person dissociated as a limited partner may inspect and copy during regular  
8 business hours in the office required to be maintained by Section 104(a)(1) a required record if:

9                                   (1) the record pertains to the period during which the person was a limited  
10 partner;

11                                   (2) the person seeks the information in good faith; and

12                                   (3) the person meets the requirements stated in paragraphs (1) to (3) of  
13 subsection (b).

14                                   (e) The limited partnership shall respond to a demand made pursuant to  
15 subsection (d) in the same manner as provided in subsection (c).

16                                   (f) The limited partnership may impose reasonable limitations on the use of  
17 information under this Section. A partnership agreement may impose reasonable limitations on  
18 the availability and use of information under this Section and may define appropriate remedies  
19 (including liquidated damages) for a breach of any reasonable use limitation. In any dispute  
20 concerning the reasonableness of a restriction under this subsection, the limited partnership has  
21 the burden of proving reasonableness.

22                                   (g) A limited partnership may charge a limited partner or person dissociated as a

1 limited partner who makes a demand under this section reasonable costs of copying, limited to  
2 the costs of labor and material.

3 (h) A limited partner or person dissociated as a limited partner may exercise the  
4 rights stated in this section through an attorney or other agent. In that event, any availability and  
5 use limitations under subsection (f) apply both to the limited partner or person and to the attorney  
6 or other agent. The rights stated in this section extend to the legal representative of a deceased  
7 limited partner and to the legal representative of a person under legal disability who is a limited  
8 partner or person dissociated as a limited partner. The rights stated in this section do not apply to  
9 a transferee, except that subsection (d) creates rights for a person dissociated as a limited partner.

#### 10 **Comment**

11 At its October, 1998 meeting, the Drafting Committee made substantial changes to this  
12 Section, in accordance with the Committee's rejection of the two-tiered approach to required  
13 records. See Comment to Section 105. The Committee decided to retain Draft #3's corporate-  
14 like provisions relating to process but to change the substance of the information accessible for  
15 cause.

16 Specifically, the Committee decided to use the language from RULPA § 305(a)(2)(i) and  
17 (iii). Those paragraphs require the limited partnership to provide, on proper demand, "true and  
18 full information regarding the state of the business and financial condition of the limited  
19 partnership and other information regarding the affairs of the limited partnership as is just and  
20 reasonable." Compare RUPA § 403(a) and ULLCA § 408(b) (giving access inter alia to "other  
21 information concerning the [entity's] business or affairs, except to the extent the demand or the  
22 information demanded is unreasonable or otherwise improper under the circumstances") and  
23 RMBCA § 16.02 (limiting access to specified records).

24 In its July, 1997 meeting, the Drafting Committee deleted from Draft #1 the following  
25 provision as unduly burdensome and expansive:

26 Whenever [this Act] or a partnership agreement provides for a limited partner to  
27 vote on or give or withhold consent to a matter, before the vote is taken or the  
28 consent given or withheld the limited partnership shall, without demand, provide  
29 the limited partner with all information which the general partners possess or have  
30 access to and which is material to the limited partner's decision.

1 The deleted provision derived from ULLCA § 408(b), which provides comparable rights  
2 to LLC members even in a manager-managed LLC. Discussion at the July, 1997 meeting  
3 suggested that the applicability of ULLCA § 408(b) to manager-managed LLCs was an  
4 "oversight."

5 Subsection (b) -- The language describing the information to be provided comes verbatim  
6 from RULPA § 305(a)(2)(i) and (iii). Earlier drafts had deleted this language as imposing too  
7 open-ended a burden on the limited partnership. At its October, 1998 meeting, the Drafting  
8 Committee reinstated the RULPA language.

9 As to the location where the information is made available, Draft #1 referred to "the  
10 limited partnership's in-state office." The Committee deleted that reference in favor of the  
11 current language, which is taken from RMBCA § 16.02.  
12

13 Subsection (b)(1) -- Derived from RMBCA, § 16.02(c). That provision refers to "proper  
14 purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment.  
15 Draft #1 followed RMBCA § 16.02(c)(1) in imposing a "good faith" requirement. This Draft  
16 deletes that specific requirement as redundant, given a limited partner's generally-applicable duty  
17 of good faith.

18 Subsection (c)(3) -- In a dispute concerning demanded information, general principles of  
19 civil procedure will impose the burden of proof on the party seeking relief; i.e. the person making  
20 demand.

21 Subsection (d) -- For the notion that former owners should have access rights, see  
22 ULLCA 408(a).

23 Subsection (f) -- Following discussion at the October, 1998 meeting, this subsection has  
24 been revised to authorize the partnership agreement to restrict availability (as well as use) of  
25 information. All other changes are stylistic. The section has several noteworthy aspects:

- 26 i. It provides specific authority to the partnership agreement rather than relying on  
27 the general authority stated in Section 101B(a). The main consequence seems to  
28 be an oblique effect on Section 101B(b)(2) (prohibiting unreasonable restrictions  
29 on the right of access). Because subsection (f) specifically authorizes access and  
30 use restrictions, such restrictions cannot be deemed categorically to violate  
31 Section 101B(b)(2).
- 32 ii. It permits the general partners to impose use limitations, even if the partnership  
33 agreement is silent. The Committee adopted this position at its the July, 1997  
34 meeting.
- 35 iii. It imposes on the limited partnership the burden of proving the reasonableness of  
36 any restriction.

1 Also as a result of the July, 1997 meeting, the subsection expressly authorizes the partnership  
2 agreement to provide for liquidated damages. This authorization seems unnecessary; liquidated  
3 damages are an ordinary phenomenon in agreements.

4 Subsection (g) -- At its October, 1998 meeting, the Drafting Committee directed the  
5 Reporter to consider expanding this subsection to encompass costs a limited partnership incurs in  
6 generating information under subsection (b). In fealty to RUPA and ULLCA, the subsection is  
7 not expanded. See RUPA § 403(b) and ULLCA § 408(a) (charges limited to copying costs).  
8 The phrase "limited to the costs of labor and material" has been added, following ULLCA. (The  
9 RUPA provision refers to "covering the costs . . .")

10 Subsection (h) -- At the Committee's March, 1998 meeting the Reporter was directed to  
11 refer to ULLCA § 408(b) and provide comparable protections for the estate of a deceased  
12 partner. The legal representative of a deceased limited partner would have the rights only of a  
13 person dissociated as a limited partner, because death causes dissociation. See Section 603(b)(6).

14 The exception that concludes the subsection relates to Section 603A(3). Under that  
15 provision, a person dissociated as a limited partner becomes a transferee of the person's own  
16 transferable interest.

## 17 **ARTICLE 4**

### 18 **GENERAL PARTNERS**

#### 19 **SECTION 401. ADMISSION OF ~~ADDITIONAL~~ GENERAL PARTNERS.**

20 ~~\_\_\_\_\_ After the filing of a limited partnership's original certificate of limited partnership,~~  
21 ~~additional general partners may be admitted as provided in writing in the partnership agreement~~  
22 ~~or, if the partnership agreement does not provide in writing for the admission of additional~~  
23 ~~general partners, with the written consent of all partners.~~

24 A person becomes a general partner as provided in the partnership agreement, with the  
25 consent of all the partners, under Section 801(3)(ii) following the dissociation of a limited  
26 partnership's last general partner, as the result of a merger under [Article] 11, or as the result of a  
27 conversion under [Article] TBD.

1 **Comment**

2 General Partner Status and the Certificate of Limited Partnership -- At its July, 1997  
3 meeting, the Committee decided that a person could be a general partner without being so  
4 designated in the certificate of limited partnership. Therefore, if a person is a general partner  
5 according to the partnership agreement but not according to the certificate, that person has:

- 6 • all the rights and duties of a general partner as to the limited partnership and the  
7 other partners;
- 8 • the powers of a general partner to bind the limited partnership under Section 403A  
9 and 403B
- 10 • no power to sign records on behalf of the limited partnership for filing with the  
11 [Secretary of State] (see Comment to Section 204(a)(7))

12 The certificate of limited partnership is consequently a far less powerful document that  
13 envisioned in Draft #1. With regard to the status of general partners, the certificate merely serves  
14 as notice that those persons so listed are general partners. The absence of a name is not  
15 affirmatively significant. Suppose, for example, that a third party believes X to be a general  
16 partner, but the certificate of limited partnership does not list X as a general partner. That  
17 omission does not dispositively undercut X's bona fides in the eyes of the third party -- even if  
18 the third party has reviewed the certificate. (It might be argued, however, that such a third party  
19 has at least a duty to inquire further.)

20 With regard to authority to transfer real property, the certificate can go further. It can  
21 specifically limit that authority to a particular general partner or to persons named in the  
22 certificate as general partners. See Section 208(c).

23 {Sections 401A through 401F have been relocated to Article 6 and renumbered}

24 ~~**SECTION 402. EVENTS OF WITHDRAWAL.** Except as approved by the specific~~  
25 ~~written consent of all partners at the time, a person ceases to be a general partner of a limited~~  
26 ~~partnership upon the happening of any of the following events:~~

27 ~~(1) the general partner withdraws from the limited partnership as provided in~~  
28 ~~Section 602;~~

29 ~~(2) the general partner ceases to be a member of the limited partnership as~~  
30 ~~provided in Section 702;~~

1                   (3) the general partner is removed as a general partner in accordance with the  
2 partnership agreement;

3                   (4) ~~unless otherwise provided in writing in the partnership agreement, the general~~  
4 partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in  
5 bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for  
6 himself [or herself] any reorganization, arrangement, composition, readjustment, liquidation,  
7 dissolution or similar relief under any statute, law, or regulation; (v) files an answer or other  
8 pleading admitting or failing to contest the material allegations of a petition filed against him [or  
9 her] in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment  
10 of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or  
11 her] properties;

12                   (5) ~~unless otherwise provided in writing in the partnership agreement, [120] days~~  
13 after the commencement of any proceeding against the general partner seeking reorganization,  
14 arrangement, composition, readjustment, liquidation, dissolution or similar relief under any  
15 statute, law, or regulation, the proceeding has not been dismissed, or if within [90] days after the  
16 appointment without his [or her] consent or acquiescence of a trustee, receiver, or liquidator of  
17 the general partner or of all or any substantial part of his [or her] properties, the appointment is  
18 not vacated or stayed or within [90] days after the expiration of any such stay, the appointment is  
19 not vacated;

20                   (6) in the case of a general partner who is a natural person;

21                               (i) his [or her] death; or

22                               (ii) the entry of an order by a court of competent jurisdiction adjudicating  
23 him [or her] incompetent to manage his [or her] person or his [or her] estate;

24                   (7) in the case of a general partner who is acting as a general partner by virtue of  
25 being a trustee of a trust, the termination of the trust (but not merely the substitution of a new  
26 trustee);

27                   (8) in the case of a general partner that is a separate partnership, the dissolution  
28 and commencement of winding up of the separate partnership;

29                   (9) in the case of a general partner that is a corporation, the filing of a certificate



1 ~~of dissolution, or its equivalent, for the corporation or the revocation of its charter; or~~  
2 ~~(10) in the case of an estate, the distribution by the fiduciary of the estate's entire~~  
3 ~~interest in the partnership.~~

#### 4 **Comment**

5 This section was deleted in Draft #1, because under that draft's "discharge" paradigm it  
6 was not necessary to deal separately with the dissociation of general and limited partners. In  
7 Draft #1 treatment of dissociation was therefore relocated to Article 8.

8 Draft #2 dispensed with the notion of general partner discharge, so it was once again  
9 necessary to treat the dissociation of general and limited partners at least somewhat differently.  
10 Many of the causes of dissociation overlap, and the Reporter favors dealing with general and  
11 limited partner dissociation in one section. Nonetheless, consistent with the Committee's  
12 instructions to maintain as much as possible of RULPA's structure and "look and feel," Draft #2  
13 included separate sections on general and limited partner dissociation. Draft #3 continued that  
14 approach, as does Draft #4. See, for example, Sections 602 and 603.

### 15 **SECTION 403. ~~GENERAL POWERS AND LIABILITIES~~ MANAGEMENT** 16 **RIGHTS OF GENERAL PARTNERS.**

17 ~~(a) Except as provided in this [Act] or in the partnership agreement, a general~~  
18 ~~partner of a limited partnership has the rights and powers and is subject to the restrictions of a~~  
19 ~~partner in a partnership without limited partners.~~

20 ~~(b) Except as provided in this [Act], a general partner of a limited partnership has~~  
21 ~~the liabilities of a partner in a partnership without limited partners to persons other than the~~  
22 ~~partnership and the other partners. Except as provided in this [Act] or in the partnership~~  
23 ~~agreement, a general partner of a limited partnership has the liabilities of a partner in a~~  
24 ~~partnership without limited partners to the partnership and to the other partners.~~

25 (a) Each general partner has equal rights in the management and conduct of the  
26 limited partnership's business. Except for matters listed in Section 302(a) (rights of limited

partners), any matter relating to the business of the limited partnership may be exclusively decided by the general partner, or, if there is more than one general partner, by a majority of the general partners.

(b) Action requiring the consent or vote of general partners under this [Act] may be taken without a meeting.

(c) A general partner may appoint a proxy to vote or otherwise act for the general partner by signing an appointment instrument, either personally or by the general partner's attorney-in-fact.

(d) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(e) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(f) A payment or advance made by a general partner which gives rise to a limited partnership obligation under subsection (d) or (e) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(g) A general partner is not entitled to remuneration for services performed for the partnership.

### **Comment**

Derived from ULLCA § 404 and RUPA § 401.

Subsection (a) -- At its July, 1997 meeting, the Committee decided to use ULLCA's language for this provision. Accordingly, this paragraph follows ULLCA § 404(b)(1) and (2) essentially verbatim. ULLCA does not specifically address deadlock, i.e., when the decision-makers split 50-50 on an issue. In that situation, any proposed decision will fail, because a

majority is more than 50%. The consequences of deadlock will depend on the seriousness of the situation. If the deadlock involves a crucial issue, a court might order dissolution under Section 802(a).

Subsection (b) -- Source: ULLCA § 404(d). The same provision appears in Section 302(c). The repetition follows from Re-RULPA's bifurcated approach to limited and general partners. Perhaps this provision should be expanded to include action under the partnership agreement.

Subsection (c) -- Source: ULLCA § 404(e). The same provision appears in Section 302(d). The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

Subsection (d) -- Source: RUPA § 401(c). The draft does not include any parallel provision for limited partners, because they are assumed to be passive. To the extent a limited partner has authority to act on behalf of the limited partnership, agency law principles will apply to create an indemnity obligation. In other situations, principles of restitution might apply.

Subsection (e) -- Source: RUPA § 401(d).

Subsection (f) -- Source: RUPA § 401(e).

Subsection (g) -- Derived from RUPA § 401(h), but this draft omits RUPA's exception "for reasonable compensation for services rendered in winding up the business of the partnership." In a limited partnership, winding up is a foreseeable consequence of being a general partner. See Section 403(a).

Former subsection (h) -- At its July, 1997 meeting, the Committee decided to delete subsection (h). That section, sourced from RUPA § 401(k), provided: "This section does not affect the obligations of a limited partnership to other persons under Section 403A." An endnote to subsection (h) questioned that subsection's accuracy, noting that some provisions of this section do affect a general partner's actual authority and therefore can affect a limited partnership's obligations to third parties.

## **SECTION 403A. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.**

(a) Subject to Section 208 (effect of information contained in certificate of limited partnership):

(1) Each general partner is an agent of the limited partnership for the purpose of its business. An act of a general partner, including the execution of an instrument in

1 the partnership name, for apparently carrying on in the ordinary course the limited partnership  
2 business or business of the kind carried on by the limited partnership binds the limited  
3 partnership, unless the general partner had no authority to act for the limited partnership in the  
4 particular matter and the person with whom the general partner was dealing knew or had received  
5 a notification that the general partner lacked authority.

6 (2) An act of a general partner which is not apparently for carrying on in  
7 the ordinary course the limited partnership's business or business of the kind carried on by the  
8 limited partnership binds the limited partnership only if the act was authorized by the other  
9 partners.

#### 10 **Comment**

11 Source: RUPA § 301.

12 Subsection (a)(2) -- Draft #1 substituted the phrase "the general partner had actual  
13 authority for the act or the limited partnership ratified the act" for RUPA § 301(2)'s phrase  
14 "authorized by the other partners." An endnote to Draft #1 explained the substitution as follows:

15 The Comment to RUPA § 301 explains what RUPA means by "authority" in this  
16 context. This draft merely takes RUPA's explanation and puts that explanation  
17 into the statute.

18 Draft #2 returned to the RUPA language, in accordance with the Committee's instructions at the  
19 July, 1997 meeting, and of course subsequent drafts have continued that approach.

20 The Reporter continues to urge the Committee to return to Draft #1's approach in this  
21 instance and notes that RUPA comments ascribe various meanings to the word "authority." See  
22 RUPA §§ 301, Comment 3 (interpreting RUPA § 301(2), which contemplates an act "not  
23 apparently for carrying on in the ordinary course" as being "authorized by the other partners;  
24 stating that the subsection "makes clear that the partnership is bound by a partner's actual  
25 authority, even if the partner has no apparent authority"); 305, Comment, third paragraph  
26 (explaining that the phrase "with the authority of the partnership" in § 305(a) "is intended to  
27 include a partner's apparent, as well as actual, authority"); 305, Comment, fifth paragraph  
28 (interpreting, without quoting, the phrase "with authority of the partnership" in § 305(b) and

1 indicating that the phrase refers to "the scope of the partner's actual authority").

2 This draft follows ULLCA in omitting any parallel to RUPA § 302, Transfer of  
3 Partnership Property. RUPA § 302 derives from UPA § 10, and both those sections address  
4 issues arising from the former aggregate aspect of general partnerships.

5 **SECTION 403B. LIMITED PARTNERSHIP LIABLE FOR GENERAL**  
6 **PARTNER'S ACTIONABLE CONDUCT.**

7 (a) A limited partnership is liable for loss or injury caused to a person, or for a  
8 penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a  
9 general partner acting in the ordinary course of business of the limited partnership or with  
10 authority of the limited partnership.

11 (b) If, in the course of the limited partnership's business or while acting with  
12 authority of the limited partnership, a general partner receives or causes the limited partnership to  
13 receive money or property of a person not a partner, and the money or property is misapplied by  
14 a general partner, the limited partnership is liable for the loss.

15 **Comment**

16 Source: RUPA § 305.

17 Subsection (a) -- For the sake of clarity, Draft #1 included immediately before the word  
18 "authority" the phrase "actual or apparent." RUPA § 305(a) is the source of this subsection, and  
19 the Comment to RUPA § 305(a) states "[t]his is intended to include a partner's apparent, as well  
20 as actual, authority." Remarkably, the Comment to RUPA § 305(b) interprets the phrase "acting  
21 with the authority of the partnership" to refer only to "the scope of the partner's actual authority."  
22 To avoid confusion, Draft #1 inserted the applicable adjective into the text of the statute.

23 In accordance with the Committee's instructions at the July, 1997 meeting, Draft #2  
24 returned to the RUPA language, and of course subsequent drafts have continued that approach.  
25 The Reporter continues to urge the Committee to return to the Draft #1 language.

26 Subsection (b) -- ULLCA omits this provision. Subsection (a) would suffice to cover  
27 subsection (b), except that -- according to the RUPA comments -- subsection (a) includes

1 apparent authority while subsection (b) does not. According to the Comment to RUPA § 305(b),  
2 that subsection's phrase "acting with authority of the partnership" refers only to "the scope of the  
3 partner's actual authority." As to various meanings RUPA Comments ascribe to the word  
4 authority, see the Comment to subsection (a), above.

### 5 **SECTION 403C. GENERAL PARTNER'S LIABILITY.**

6 (a) Except as otherwise provided in subsections (b) and (c), all general partners  
7 are liable jointly and severally for all obligations of the limited partnership unless otherwise  
8 agreed by the claimant or provided by law.

9 (b) A person admitted as a general partner into an existing limited partnership is  
10 not personally liable for any limited partnership obligation incurred before the person's  
11 admission as a partner.

12 (c) An obligation of a limited partnership incurred while the limited partnership is  
13 a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the  
14 obligation of the limited partnership. A general partner is not personally liable, directly or  
15 indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being  
16 or acting as a general partner. This subsection applies despite anything inconsistent in the  
17 partnership agreement that existed immediately before the vote required to become a limited  
18 liability limited partnership under Section 302(b).

### 19 **Comment**

20 Source: RUPA § 306.

21 Subsection (a) -- Draft #1 included within the exception "Section 401F (discharged [now  
22 'dissociated'] partner's liability to other persons)". Draft #2 omitted that reference because,  
23 strictly speaking, Section 401F [now Section 602D] does not refer to a general partner's liability.  
24 Section 602D governs the personal liability of a dissociated partner.

25 Subsection (c) -- The Committee needs to consider what, if anything, the Act should say  
26 about the doctrine of "piercing the [corporate] veil." The doctrine has little relevance for

1 ordinary limited partnerships, because, except in the most extraordinary circumstances, the  
2 general partner's management control and personal liability render the doctrine moot. (Piercing  
3 remains relevant, as a matter of corporate law, with regard to the shareholders of a corporate  
4 general partner.)

5 Piercing is, however, an important issue with regard to LLLPs, because an LLLP has a  
6 full, corporate-like liability shield. Following ULLCA, this draft does not directly mention  
7 piercing. However, following ULLCA, RUPA and UPA, Section 101C(a) of this draft provides  
8 that "[u]nless displaced by particular provisions of this [Act], the principles of law and equity  
9 supplement this [Act]." Piercing is an equitable doctrine.

## 10 **SECTION 403C-2. ACTIONS BY AND AGAINST PARTNERSHIP AND** 11 **PARTNERS.**

12 (a) A limited partnership may sue and be sued in the name of the limited  
13 partnership.

14 (b) A partner is not a proper party to a proceeding by or against a limited  
15 partnership except when:

16 (1) the object of the proceeding is to determine or enforce a partner's right  
17 against or liability to the limited partnership;

18 (2) the proceeding includes a claim that the partner is personally liable  
19 under Section 403C or 403C-3 or on some basis not dependent on the partner's status as partner;  
20 or

21 (3) the partner is a limited partner and is bringing a derivative action  
22 pursuant to Article 10.

23 (c) Subject to subsection (b), an action may be brought against the limited  
24 partnership and, to the extent not inconsistent with Section 403C, any or all of the general  
25 partners in the same action or in separate actions.

1                   (d) A judgment against a limited partnership is not by itself a judgment against a  
2 general partner. A judgment against a limited partnership may not be satisfied from a general  
3 partner's assets unless there is also a judgment against the general partner.

4                   (e) A judgment creditor of a general partner may not levy execution against the  
5 assets of the general partner to satisfy a judgment based on a claim against the limited  
6 partnership unless the partner is personally liable for the claim under Section 403C and:

7                   (1) a judgment based on the same claim has been obtained against the  
8 limited partnership and a writ of execution on the judgment has been returned unsatisfied in  
9 whole or in part;

10                   (2) the limited partnership is a debtor in bankruptcy;

11                   (3) the general partner has agreed that the creditor need not exhaust limited  
12 partnership assets;

13                   (4) a court grants permission to the judgment creditor to levy execution  
14 against the assets of a general partner based on a finding that limited partnership assets subject to  
15 execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership  
16 assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the  
17 court's equitable powers; or

18                   (5) liability is imposed on the general partner by law or contract  
19 independent of the existence of the limited partnership.

20                   (f) This section applies to any limited partnership liability or obligation resulting  
21 from a representation by a general partner or purported general partner under Section 403C-3.

22                   **Comment**



1 Draft #1 included most of this material in the preceding section, Section 403C.  
2 Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2 followed RUPA  
3 more closely. This Section, unchanged since Draft #2, follows RUPA § 307 essentially  
4 verbatim, except for the insertion of subparagraph (b).

5 Subsection (a) -- This provision seems at least partially redundant of Section 106(b)(1)  
6 (power of a limited partnership to sue and be sued in its own name).

7 Subsection (b)(3) -- This draft follows RULPA and limits derivative claims to limited  
8 partners. See Section 1001.

### 9 **SECTION 403C-3. LIABILITY OF PURPORTED PARTNER.**

10 (a) If a person, by words or conduct, purports to be a general partner, or consents  
11 to being represented by another as a general partner, in an actual or purported limited partnership,  
12 the purported partner is liable to a person to whom the representation is made, if that person,  
13 relying on the representation, enters into a transaction with the actual or purported limited  
14 partnership. If the representation, either by the purported general partner or by a person with the  
15 purported general partner's consent, is made in a public manner, the purported general partner is  
16 liable to a person who relies upon the purported limited partnership even if the purported partner  
17 is not aware of being held out as a general partner to the claimant. If limited partnership liability  
18 results, the purported partner is liable with respect to that liability as if the purported general  
19 partner were a general partner. If no limited partnership liability results, the purported general  
20 partner is liable with respect to that liability jointly and severally with any other person  
21 consenting to the representation.

22 (b) If a person is thus represented to be a general partner in an existing or  
23 purported limited partnership, the purported general partner is an agent of persons consenting to  
24 the representation to bind them to the same extent and in the same manner as if the purported

1 partner were a general partner, with respect to persons who enter into transactions in reliance  
2 upon the representation. If all of the general partners of the existing limited partnership consent  
3 to the representation, a limited partnership act or obligation results. If fewer than all of the  
4 general partners of the existing partnership consent to the representation, the person acting and  
5 the general partners consenting to the representation are jointly and severally liable.

6 (c) A person is not liable as a general partner merely because the certificate of  
7 limited partnership names that person as a general partner.

8 (d) Except as otherwise provided in subsections (a) and (b), persons who are not  
9 general partners of a limited partnership are not liable as general partners to other persons.

#### 10 **Comment**

11 Draft #1 omitted this section as unnecessary, given the powerful role of the certificate of  
12 limited partnership. At its July, 1997 meeting, the Committee deflated that role considerably,  
13 and Draft #2 accordingly included a provision sourced from RUPA § 308. No changes were  
14 made in this provision at the March, 1998 meeting or the October, 1998 meeting.

15 For a detailed explanation of the way this provision varies (of necessity) from the RUPA  
16 version, see the endnotes to this section in Draft #3.

#### 17 **SECTION 403D. GENERAL STANDARDS OF GENERAL PARTNER'S** 18 **CONDUCT.**

19 (a) The only fiduciary duties a general partner owes to the limited partnership and  
20 the other partners are the duty of loyalty and the duty of care stated in subsections (b) and (c).

21 (b) A general partner's duty of loyalty to the limited partnership and the other  
22 partners is limited to the following:

23 (1) to account to the limited partnership and hold as trustee for it any

1 property, profit, or benefit derived by the general partner in the conduct and winding up of the  
2 limited partnership business or derived from a use by the general partner of limited partnership  
3 property, including the appropriation of a limited partnership opportunity;

4 (2) to refrain from dealing with the limited partnership in the conduct or  
5 winding up of the limited partnership business as or on behalf of a party having an interest  
6 adverse to the limited partnership; and

7 (3) to refrain from competing with the limited partnership in the conduct  
8 of the limited partnership business before the dissolution of the limited partnership.

9 (c) A general partner's duty of care to the limited partnership and the other  
10 partners in the conduct and winding up of the limited partnership business is limited to refraining  
11 from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing  
12 violation of law.

13 (d) A general partner shall discharge the duties to the partnership and the other  
14 partners under this [Act] or under the partnership agreement and exercise any rights consistently  
15 with the obligation of good faith and fair dealing.

16 (e) A general partner does not violate a duty or obligation under this [Act] or  
17 under the partnership agreement merely because the general partner's conduct furthers the general  
18 partner's own interest.

19 (f) A general partner is relieved of liability imposed by law for violation of the  
20 standards prescribed by subsections (b) through (e) to the extent of the managerial authority  
21 delegated to the limited partners by the partnership agreement.

22 **Comment**

Source: RUPA § 404.

Subsection (a) -- The reference to "the other partners" is not intended to blur the distinction between direct and derivative claims. See Section 1005(b).

Subsection (f) -- Source: ULLCA § 409(h)(4). Earlier drafts omitted this provision, on the theory that general partners have a nondelegable duty towards the limited partnership. On that theory, the requirements of the duty may change to the extent management power is shared or delegated, but no change can eliminate the duty entirely. Draft #3 discarded that theory, in accord with instructions to follow ULLCA. Draft #4 continues Draft #3's language without change.

This subsection can be read to apply only when the delegation is to limited partners collectively. Is that the intended meaning? Should it be? Suppose, for example, the partnership agreement takes a decision out of the hands of the general partners and gives the decision to one class of limited partners. Shouldn't this provision apply? If it should, perhaps the language should be revised to refer to "authority delegated to any ~~the~~ limited partners".

Query: if delegation to limited partners relieves a general partner of liability, shouldn't the same result follow when the limited partnership has more than one general partner and the partnership agreement reserves certain responsibilities to one of general partners?

RUPA § 404(f) has been omitted, because RULPA § 107 covers the topic. RUPA § 404(f) provides:

A general partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the general partner are the same as those of a person who is not a partner, subject to other applicable law.

RUPA § 404(g) has also been omitted. That subsection provides:

This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

In this draft, Section 803(b)(2) covers the issue addressed by RUPA § 404(g).

## **SECTION 403E. GENERAL PARTNER'S AND FORMER GENERAL PARTNER'S RIGHT TO INFORMATION.**

1                   (a) Without having to demonstrate, state, or have any particular purpose for  
2 seeking the information, a general partner may inspect and copy during regular business hours:

3                   (1) in the office required to be maintained by Section 104(a)(1) the  
4 required records described in Section 105, and

5                   (2) at a reasonable location specified by the limited partnership any other  
6 records maintained by the limited partnership regarding the limited partnership's business,  
7 affairs, and financial condition.

8                   (b) Each general partner and the limited partnership shall furnish to a general  
9 partner:

10                   (1) without demand, any information concerning the limited partnership's  
11 business and affairs reasonably required for the proper exercise of the general partner's rights and  
12 duties under the partnership agreement or this [Act]; and

13                   (2) on demand, any other information concerning the limited partnership's  
14 business and affairs, except to the extent the demand or the information demanded is  
15 unreasonable or otherwise improper under the circumstances.

16                   (c) On ten days written demand to the limited partnership, a person dissociated as  
17 a general partner may have access to a record described in subsection (a) and the location stated  
18 in subsection (a) if:

19                   (1) the record pertains to the period during which the person was a general  
20 partner;

21                   (2) the person seeks the record in good faith; and

22                   (3) the person meets the requirements stated in paragraphs (1) to (3) of

1 Section 305(b).

2 (d) The limited partnership shall respond to a demand made pursuant to  
3 subsection (c) in the same manner as provided in Section 305(c).

4 (e) The limited partnership may impose reasonable limitations on the use of  
5 information under this Section. A partnership agreement may impose reasonable limitations on  
6 the availability and use of information under this Section and may define appropriate remedies  
7 (including liquidated damages) for a breach of any reasonable use limitation. In any dispute  
8 concerning the reasonableness of a restriction under this subsection, the limited partnership has  
9 the burden of proving reasonableness.

10 (f) A limited partnership may charge a person dissociated as a general partner  
11 who makes a demand under this section reasonable costs of copying, limited to the costs of labor  
12 and material.

13 (g) A general partner or person dissociated as a general partner may exercise the  
14 rights stated in this section through an attorney or other agent. In that event, any availability and  
15 use limitations under subsection (e) apply to the attorney or other agent as well as to the general  
16 partner or person dissociated as a general partner. The rights stated in this section extend to the  
17 legal representative of a person who has dissociated as a general partner due to death or legal  
18 disability. The rights stated in this section do not apply to a transferee, except that subsection (c)  
19 creates rights for a dissociated general partner.

## 20 **Comment**

21 This Section and Section 305 have substantial overlap, which could be reduced by  
22 combining the sections. The combined section might be captioned "Access to Required Records  
23 and Other Information" and follow the section listing required records, i.e. Section 105. In that  
24 event, current subsection (b), obligating a general partner to volunteer information to other

1 general partners, could be relocated to Section 403D, General Standards of General Partner  
2 Conduct.

3 Draft #4 revises this Section in light of the revisions made in Section 305. For detailed  
4 explanation, see the Comment to Section 305.

5 Subsection (a) -- In contrast to Draft #3, this Draft states explicitly that a general partner  
6 need have no particular purpose to examine or copy existing records.

7 Subsection (b) -- Source: RUPA § 403(c). The RUPA provision also requires disclosure  
8 "to the legal representative of a deceased partner or partner under legal disability." Re-RULPA  
9 omits that language, because a deceased or incompetent general partner is dissociated as a  
10 general partner and becomes a mere transferee of its own transferable interest. See Section  
11 602B(4).

12 Subsection (b) states a very broad disclosure obligation. If the partnership agreement  
13 authorizes a general partner to compete with the limited partnership, it would be wise to  
14 explicitly protect from mandated disclosure confidential information generated in that competing  
15 enterprise.

16 Subsection (b)(1) -- Like RUPA, Re-RULPA leaves unclear the relation between  
17 information available from the entity's records and a general partner's obligation under this  
18 subsection. Does a general partner who knows of material information in the limited  
19 partnership's records have an affirmative obligation to disseminate that information to fellow  
20 general partners, or does each general partner have an individual obligation to keep up to date on  
21 the information in those records? Probably no categorical answer exists, but arguably in most  
22 circumstances it is not "reasonably necessary" to furnish to a fellow general partner information  
23 apparent in the limited partnership's records.

24 Subsection (b)(2) -- The exception seems very vaguely stated, but it appears both in both  
25 in RUPA § 403(c) and ULLCA § 408(b)(2).

26 Subsection (c) -- This provision mirrors Section 305's approach to former limited  
27 partners.

28 Subsection (e) -- For an analysis of this language, see the Comment to Section 305(f).

29 Subsection (f) -- No charge is allowed for current general partners, because in almost all  
30 cases they would be entitled to reimbursement under Section 403(d).

31 Subsection (g) -- At the Committee's March, 1998 meeting the Reporter was directed to  
32 refer to ULLCA § 408(b) and provide comparable protections for the estate of a deceased  
33 partner. However, absent a contrary agreement the legal representative of a deceased or  
34 incompetent general partner will have only the rights of a person dissociated as a general partner;

1 death and incompetency both cause dissociation. See Section 602(7). This Draft does not  
2 provide any "fall back" rule in case the partnership agreement changes the "death/incompetency  
3 => dissociation" rule but fails to consider the rights of the legal representative of the  
4 decedent/incompetent.

5 The concluding clause ("except . . .") is necessary because a dissociated general partner is  
6 treated as a transferee of his, her or its own transferable interest. See Section 602B(4).

#### 7 **SECTION 404. ~~CONTRIBUTIONS BY GENERAL PARTNER~~ DUAL**

8 **CAPACITY.** ~~A general partner of a limited partnership may make contributions to the~~  
9 ~~partnership and share in the profits and losses of, and in distributions from, the limited~~  
10 ~~partnership as a general partner. A general partner also may make contributions to and share in~~  
11 ~~profits, losses, and distributions as a limited partner. A person who is both a general partner and~~  
12 ~~a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a~~  
13 ~~general partner and, except as provided in the partnership agreement, also has the powers, and is~~  
14 ~~subject to the restrictions, of a limited partner to the extent of his [or her] participation in the~~  
15 ~~partnership as a limited partner. A person may be both a general partner and a limited partner.~~  
16 A person who is both a general and limited partner has the rights, powers, duties and obligations  
17 provided by this [Act] and the partnership agreement for each of those capacities. When that  
18 person acts as a general partner, that act is subject to the obligations and restrictions provided by  
19 this [Act] and the partnership agreement for general partners. When that person acts as a limited  
20 partner, that act is subject to the obligations and restrictions provided by this [Act] and the  
21 partnership agreement for limited partners.

#### 22 **Comment**

23 In the second new sentence Draft #4 changes the phrase "rights and powers" to "the  
24 rights, powers, duties and obligations." The additional language is intended to encompass sins of  
25 omission.



~~**SECTION 405. VOTING.** The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.~~

### Comment

Sections 101B(a) (providing broad powers to the partnership agreement) and 403 (describing the management authority of general partners) make this provision unnecessary.

1 **ARTICLE 5**

2 **FINANCE**

3 **SECTION 501. FORM OF CONTRIBUTION.**

4 ~~The contribution of a partner may be in cash, property, or services rendered, or a~~  
5 ~~promissory note or other obligation to contribute cash or property or to perform services. A~~  
6 contribution of a partner may consist of tangible or intangible property or other benefit to the  
7 limited partnership, including money, promissory notes, services performed, or other agreements  
8 to contribute cash or property, or contracts for services to be performed.

9 **Comment**

10 Per the Committee's instructions at its March, 1998 meeting, this language (added in  
11 Draft #3) is taken, essentially verbatim, from ULLCA § 401. Both the old, stricken language and  
12 the new language partially overlap Section 101(3)'s definition of "contribution." That overlap is  
13 present in RULPA as well.

14 **SECTION 502. LIABILITY FOR CONTRIBUTION.**

15 (a) ~~A promise by a limited partner to contribute to the limited partnership is not~~  
16 ~~enforceable unless set out in a writing signed by the limited partner.~~

17 (b) ~~Except as provided in the partnership agreement, a partner is obligated to the~~  
18 ~~limited partnership to perform any enforceable promise to contribute cash or property or to~~  
19 ~~perform services, even if he [or she] is unable to perform because of death, disability, or any~~  
20 ~~other reason. A partner's obligation to contribute money, property, or other benefit to, or to~~  
21 ~~perform services for, a limited partnership is not excused by the member's death, disability, or~~  
22 other inability to perform personally.

23 (b) If a partner does not make ~~the~~ a required contribution of property or services,

1 ~~he [or she]~~ the partner is obligated at the option of the limited partnership to contribute cash  
2 money equal to that portion of the value, as stated in the ~~partnership required~~ records ~~required to~~  
3 ~~be kept pursuant to Section 105~~, of the stated contribution which has not been made.

4 (c) ~~Unless otherwise provided in the partnership agreement, the~~ The obligation of  
5 a partner to make a contribution or return money or other property paid or distributed in violation  
6 of this [Act] may be compromised only by consent of all partners. ~~Notwithstanding the~~  
7 ~~compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance~~  
8 ~~on that obligation after the partner signs a writing which reflects the obligation and before the~~  
9 ~~amendment or cancellation thereof to reflect the compromise may enforce the original obligation~~  
10 A creditor of a limited partnership who extends credit or otherwise acts in reliance on an  
11 obligation described in subsection (a), and without notice of any compromise under this  
12 subsection, may enforce the original obligation.

### 13 **Comment**

14 Subsection (a) -- At its March, 1998 meeting, the Committee decided to delete the writing  
15 requirement contained in RULPA's subsection (a). That requirement was added to RULPA in  
16 1985, but ULLCA contains no comparable provision. ULLCA § 402.

17 That deletion "promoted" some of what had been subsection (b) into subsection (a). Per  
18 the Committee's instructions, given at the March, 1998 meeting, that promoted language was  
19 revised to follow ULLCA, which in turns derives from the RULPA language being modified  
20 here.

21 Subsection (b) -- At its March, 1998 meeting, the Committee decided to begin a new  
22 subsections here. The separation makes clear that the obligation to pay money applies whenever,  
23 and for whatever reason, the partner fails to make a required in-kind contribution. The reference  
24 to required records does not appear in ULLCA, because ULLCA has no required records  
25 provision.

26 Following ULLCA § 402(a), this subsection does not by its terms apply to a person who  
27 has promised to make a contribution, whose admission as a partner is contingent on making that  
28 contribution and who fails to make the contribution.

Subsection (c) -- At its March, 1998 meeting the Committee decided to use the approach taken by ULLCA §§ 402(b) and 404(c)(4). These revisions implement that decision. The revised language is taken essentially verbatim from ULLCA § 402(b).

**SECTION 503. SHARING ALLOCATION OF PROFITS AND LOSSES.** The profits and losses of a limited partnership shall be allocated among the partners ~~and among~~ classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership required records ~~required to be kept pursuant to~~ Section 105, of the contributions made by each partner to the extent ~~they~~ those contributions have been received by the limited partnership and have not been returned. A partner receives a return of contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the required records, of the partner's contribution which has not been distributed to the partner.

### Comment

At its March, 1998 meeting, the Committee discussed substituting the phrase "in proportion to" for the phrase "on the basis of" in the first sentence in order to handle situations in which all contributions have been returned. The Reporter does not recall a decision having been reached on this point. The language added at the end of the section comes essentially verbatim from RULPA § 608(c). Section 608 has a new rule, taken from ULLCA, on liability for unlawful distributions, so this language is no longer appropriate there. Draft #2 sought to eliminate the recondite and byzantine language of RULPA § 608(c) and substitute a reference to generally accepted accounting principles. That effort met a underwhelming response; i.e., no one liked it. Therefore, Draft #3 returned to the language of RULPA § 608(c). (It appears that ULLCA, which uses the concept of un-retuned contributions, has no rule for determining the extent to which a contribution has been returned. See ULLCA § 806(b).)

**SECTION 504. SHARING OF DISTRIBUTIONS.** ~~Distributions of cash or other~~

1 ~~assets of a limited partnership shall be allocated among the partners and among classes of~~  
2 ~~partners in the manner provided in writing in the partnership agreement. If the partnership~~  
3 ~~agreement does not so provide in writing, distributions shall be made on the basis of the value, as~~  
4 ~~stated in the partnership records required to be kept pursuant to Section 105, of the~~  
5 ~~contributions made by each partner to the extent they have been received by the partnership and~~  
6 ~~have not been returned. Except as provided in Section 804(b) for winding up distributions, any~~  
7 ~~distributions made shall be in proportion to the partners' allocation of profit and losses in effect at~~  
8 ~~the time the limited partnership declares the distribution.~~

#### 9 **Comment**

10 The changes are mostly for stylistic reasons, although this draft does state a different  
11 default rule on sharing -- namely that distribution allocation follows profit and loss allocation.  
12 Thus, absent a contrary agreement any change in the default rule on profit and loss allocation  
13 will automatically change the distribution sharing rule.

14 Draft #2 included language establishing a formal mechanism by which a limited  
15 partnership would announce distributions. At its March, 1998 meeting, the Committee rejected  
16 that language. Beginning with Draft #3 the Section refers merely to the declaration of a  
17 distribution. See BLACK'S LAW DICTIONARY ("To make known, manifest, or clear. To signify,  
18 to show in any manner either by words or acts. To publish; to utter; to announce clearly some  
19 opinion or resolution. . .").

## 20 **ARTICLE 6**

### 21 **DISTRIBUTIONS AND WITHDRAWAL**

22 **SECTION 601. INTERIM DISTRIBUTIONS.** ~~Except as provided in this Article, a~~  
23 ~~partner is entitled to receive distributions from a limited partnership before his [or her]~~  
24 ~~withdrawal from the limited partnership and before the dissolution and winding up thereof to the~~  
25 ~~extent and at the times or upon the happening of the events specified in the partnership~~

1 ~~agreement~~ A partner has no right to any distribution before the dissolution and winding up of  
2 the limited partnership, unless the limited partnership decides to make an interim distribution.

### 3 **Comment**

4 The major change is the elimination of any reference to a partner's "put" right, since in  
5 the default mode that right no longer exists. Others changes are stylistic or to conform with this  
6 draft's approach to the powers of a partnership agreement.

7 Although it will be the limited partnership that actually makes any interim distributions, it  
8 will be the general partners who decide whether interim distributions will be made. See Section  
9 403(a). As for the use of "declare," see Comment to Section 504.

### 10 **SECTION 602. ~~WITHDRAWAL~~ DISSOCIATION OF AS A GENERAL**

11 **PARTNER.** ~~A general partner may withdraw from a limited partnership at any time by giving~~  
12 ~~written notice to the other partners, but if the withdrawal violates the partnership agreement, the~~  
13 ~~limited partnership may recover from the withdrawing general partner damages for breach of the~~  
14 ~~partnership agreement and offset the damages against the amount otherwise distributable to him~~  
15 ~~[or her].~~ A person is dissociated from a limited partnership as a general partner upon the  
16 occurrence of any of the following events:

17 (1) the limited partnership's having notice of the person's express will to  
18 withdraw as a general partner or on a later date specified by the person;

19 (2) an event agreed to in the partnership agreement as causing the person's  
20 dissociation as a general partner;

21 (3) the person's expulsion as a general partner pursuant to the partnership  
22 agreement;

23 (4) the person's expulsion as a general partner by the unanimous vote of the other  
24 partners if:

1                                   (i) it is unlawful to carry on the limited partnership affairs with that person  
2 as a general partner;

3                                   (ii) there has been a transfer of all or substantially all of the person's  
4 transferable interest in the limited partnership, other than a transfer for security purposes, or a  
5 court order charging the person's interest, which has not been foreclosed;

6                                   (iii) the person is a corporation and, within 90 days after the limited  
7 partnership notifies the person that it will be expelled as a general partner because it has filed a  
8 certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct  
9 business has been suspended by the jurisdiction of its incorporation, there is no revocation of the  
10 certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

11                                   (iv) the person is a limited liability company or partnership that has been  
12 dissolved and whose business is being wound up;

13                                   (5) on application by the limited partnership, the person's expulsion as a general  
14 partner by judicial determination because:

15                                   (i) the person engaged in wrongful conduct that adversely and materially  
16 affected the limited partnership affairs;

17                                   (ii) the person willfully or persistently committed a material breach of the  
18 partnership agreement or of a duty owed to the partnership or the other partners under Section  
19 403D; or

20                                   (iii) the person engaged in conduct relating to the limited partnership  
21 affairs which makes it not reasonably practicable to carry on the affairs of the limited partnership  
22 with the person as a general partner;

1                   (6) the person's:

2                   (i) becoming a debtor in bankruptcy;

3                   (ii) executing an assignment for the benefit of creditors;

4                   (iii) seeking, consenting to, or acquiescing in the appointment of a trustee,  
5 receiver, or liquidator of that partner or of all or substantially all of that general partner's  
6 property; or

7                   (iv) failing, within 90 days after the appointment, to have vacated or  
8 stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or  
9 substantially all of the person's property obtained without the person's consent or acquiescence,  
10 or failing within 90 days after the expiration of a stay to have the appointment vacated;

11                  (7) in the case of a person who is an individual:

12                  (i) the person's death;

13                  (ii) the appointment of a guardian or general conservator for the person; or

14                  (iii) a judicial determination that the person has otherwise become  
15 incapable of performing the person's duties as a general partner under the partnership agreement;

16                  (8) in the case of a person that is a trust or is acting as a general partner by virtue  
17 of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited  
18 partnership, but not merely by reason of the substitution of a successor trustee;

19                  (9) in the case of a person that is an estate or is acting as a general partner by  
20 virtue of being a personal representative of an estate, distribution of the estate's entire  
21 transferable interest in the limited partnership, but not merely by reason of the substitution of a  
22 successor personal representative;



1                   (10) termination of a general partner who is not an individual, partnership, limited  
2                   liability company, corporation, trust, or estate;

3                   (11) the limited partnership participates in a merger under [Article] 11 and:

4                   (i) is not the surviving organization; or

5                   (ii) is the surviving organization but as a result of the merger the  
6                   person ceases to be a general partner.

7                   **Comment**

8                   At its July, 1997 meeting, the Committee decided that, in the default mode, a general  
9                   partner who ceases to be a general partner becomes a mere transferee of the transferable interest  
10                  formerly associated with its status as a general partner. That decision made it possible to greatly  
11                  simplify Re-RULPA's approach to general partners. It is no longer necessary to treat separately  
12                  the termination of a general partner's management and ownership roles.

13                  The change in the caption is to reflect Re-RULPA's use of "dissociation" rather than  
14                  "withdrawal" and to recognize that, strictly speaking, general partner dissociation involves the  
15                  dissociation of a person as a general partner rather than the dissociation of a general partner.  
16                  This distinction, adopted at the Committee's March, 1998 meeting, is important because a person  
17                  may be simultaneously a general and limited partner. See Section 404(Dual capacity).  
18                  Dissociation therefore applies to the capacity rather than to the person.

19                  As decided by the Committee at its July, 1997 meeting, this section adopts the RUPA  
20                  provision essentially verbatim, see RUPA § 601, subject to the Committee's decision to apply  
21                  dissociation to a person's capacity as a general partner.

22                  Paragraph (1) -- This provision could be problematic when a sole general partner gives  
23                  notice of dissociation, especially if the limited partnership has no employees or other agents of  
24                  its own. The same problem might exist under ULLCA § 601(1) when the LLC has one manager,  
25                  who is a member, and that member-manager wishes to dissociate as a member.

26                  Paragraph (4) -- At its March, 1998 meeting, the Committee discussed but did not decide  
27                  whether affiliates of the would-be expelled person should be excluded from the vote. Query --  
28                  should "vote" be changed to "consent"?

29                  Paragraph (4)(i) -- Draft #4 replaces RUPA's word "business" with "affairs," consonant  
30                  with the Drafting Committee's decision (made at the October, 1998 meeting) to allow a limited  
31                  partnership to pursue any lawful purpose.

1       Paragraph (4)(iii) -- Suppose the corporate general is dissolved and terminated, but the  
2 other partners cannot muster a unanimous vote to expel. Does the limited partnership continue  
3 with a non-existent general partner? Are the remaining partners forced to seek dissolution under  
4 Section 802?

5       Paragraph (5) -- Following RUPA, this provision originally permitted the application to  
6 come either from the limited partnership "or another partner." The Reporter recommended  
7 deleting the latter reference, out of concern that the reference would invite confusion as to the  
8 distinction between direct and derivative claims and undermine the general partner's authority to  
9 manage the business. At its March, 1998 meeting, the Committee accepted the Reporter's  
10 recommendation.

11       Paragraph (5)(i) -- Draft #4 replaces RUPA's word "business" with "affairs," consonant  
12 with the Drafting Committee's decision to allow a limited partnership to pursue any lawful  
13 purpose.

14       Paragraph (5)(iii) -- In RUPA the concluding phrase is "carry on the business in  
15 partnership with the partner." Given the possible dual status of a general partner in a limited  
16 partnership, RUPA's phrase "in partnership with the partner" would be overbroad in Re-RULPA.  
17 Given the decision to allow a limited partnership to pursue any lawful purpose, RUPA's  
18 reference to "business" would be underinclusive in Re-RULPA.

19       Paragraph (7)(ii) -- In this respect, in the default mode a general partner has fewer rights  
20 than a limited partner. If a guardian or general conservator is appointed for a limited partner, that  
21 guardian or conservator may exercise the limited partner's rights ad infinitum. See Section 705.  
22 For a general partner, in contrast, the appointment causes dissociation, which in turns relegates  
23 the dissociated general partner to a mere transferee of the transferable interest associated with the  
24 general partnership interest.

25       Paragraph (8) -- RUPA's approach, replicated here, might seem anomalous when  
26 compared with the status of a general partner who transfers "all or substantially of that partner's  
27 transferable interest in the partnership." RUPA § 601(4)(ii), incorporated in Re-RULPA as  
28 section 602(4)(ii). In that latter event, dissociation occurs only upon "the unanimous vote of the  
29 other partners." Why should a harsher rule apply to a trust, especially if the distribution of the  
30 trust's transferable interest was foreseeable (e.g., ordained by the terms of the trust) at the time  
31 the trust became a general partner? At the March, 1998 meeting, Committee members explained  
32 this approach as beneficial to the trust, since the trustee will not wish to remain a general partner  
33 once that trust has no further economic interest in the limited partnership.

34       Paragraph (11) -- This paragraph is intended to dovetail with Section 1104(g).

35       **SECTION 602A. PERSON'S POWER TO DISSOCIATE AS A GENERAL**

1 **PARTNER; WRONGFUL DISSOCIATION**

2 (a) A person has the power to dissociate as a general partner at any time,  
3 rightfully or wrongfully, by express will pursuant to Section 602(1).

4 (b) A person's dissociation as a general partner is wrongful only if:

5 (1) it is in breach of an express provision of the partnership agreement; or

6 (2) it occurs before the termination of the limited partnership, and:

7 (i) the person withdraws as a general partner by express will;

8 (ii) the person is expelled as a general partner by judicial  
9 determination under Section 602(5);

10 (iii) the person is dissociated as a general partner by becoming a  
11 debtor in bankruptcy; or

12 (iv) in the case of a person who is not an individual, trust other  
13 than a business trust, or estate, the person is expelled or otherwise dissociated as a general  
14 partner because it willfully dissolved or terminated.

15 (c) A person who wrongfully dissociates as a general partner is liable to the  
16 limited partnership and, subject to Section 1005, to the other partners for damages caused by the  
17 dissociation. The liability is in addition to any other obligation of the general partner to the  
18 limited partnership or to the other partners.

19 **Comment**

20 Subsection (b)(1) -- This language limits the remedies available if a general partner's  
21 dissociation breaches the partner's fiduciary duty or obligation of good faith.

22 Subsection (b)(2) -- The roughly analogous passage of RUPA, § 602(2), states: "in the  
23 case of a partnership for a definite term or particular undertaking, before the expiration of the  
24 term or the completion of the undertaking." Draft #4's different language (which originated in

Draft #3) reflects a different assumption about the partners' deal -- namely, that in a limited partnership, absent a contrary agreement, the general partner is expected to shepherd the limited partnership through winding up.

Under this Draft, a person's obligation to remain as general partner through winding up continues even if another general partner dissociates and even if that dissociation leads to the limited partnership's premature dissolution under Section 801(3)(i). The obligation also continues if for some other reason dissolution occurs before the expiration of the limited partnership's term. Other default rules are certainly plausible, but would require more complicated language. See, e.g., RUPA § 602(b)(2). This Draft's approach seems at least equally plausible and has the virtue of greater simplicity.

Following the dissociation of a person as general partner, each remaining general partner has the power to dissolve the limited partnership by "express will." Section 801(3)(i). A remaining general partner can exercise that power without thereby dissociating as a general partner. The "express will" to dissolve is different from the "express will" to dissociate.

Subsection (b)(2)(i) -- RUPA uses "withdrawal." For the sake of internal consistency, the Reporter would prefer "dissociates." The analogous RUPA passage continues: "unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection." RUPA § 601(6) through (10) provide for automatic dissociation in the event of, e.g., bankruptcy, death, distribution of a trust's entire transferable interest in the partnership. It is unclear whether that default rule is appropriate for a limited partnership. Where a limited partnership has more than one general partner, absent a contrary agreement the limited partners might expect each general partner to "stay the course" at least for the purposes of winding up, regardless of whether the other general partners do.

Subsection (b)(2)(iii) -- Why not also include the events that Section 602(5), following RUPA 601(5), considers comparable or tantamount to becoming a debtor in bankruptcy?

Subsection (c) -- Source: RUPA § 602(c). The language "subject to Section 1005" was new in Draft #3 and was inserted in accord with discussions at the March, 1998 meeting. The language is intended to preserve the distinction between direct and derivative claims and to make clear that a partner seeking to claim damages under Section 602A(c) has to prove some harm independent of harm suffered by the limited partnership.

## **SECTION 602B. EFFECTS OF DISSOCIATION AS A GENERAL PARTNER**

Upon a person's dissociation as a general partner:

(1) the person's right to participate as a general partner in the management and conduct of the partnership business terminates;

(2) the person's duty of loyalty as a general partner under Section 403D(b)(3) terminates;

(3) the person's duty of loyalty as a general partner under Section 403D(b)(1) and (2) and duty of care under Section 403D(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(4) subject to Article 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee; and

(5) the dissociation does not of itself discharge the person from any obligation to the limited partnership or the other partners which pertains to the time during which the person was a general partner.

### Comment

Source: RUPA § 603(b), except for paragraphs (4) and (5), which are new.

Paragraph (1) -- This clause differs from its RUPA analog in two respects. First, the paragraph adds the phrase "as a general partner" to cover circumstances in which a person dissociates as a general partner but remains as a limited partner. Second, this clause omits RUPA's exception for winding up. Unlike a dissociated RUPA general partner, a dissociated Re-RULPA general partner has no rights to participate in winding up.

Paragraph (3) -- The RUPA provision continues certain duties if the dissociated person participates in winding up. RUPA § 603(b)(3). For the reasons stated in the Comment to paragraph (1), this Draft eschews that approach.

Following RUPA, this section does not refer to the duty of good faith and fair dealing. Compare section 603A(a)(2) (stating how limited partner dissociation affects that duty).

Paragraph (4) -- The "subject to" language refers to a merger in which, for example, the general partner dissociates because the limited partnership ceases to exist. In that event, no transferable interest of the old limited partnership will survive the merger.

As decided at the March, 1998 meeting, paragraph (4) now refers only to transferable

interests owned by the dissociated person in the capacity of a general partner. Comparable language appears in Section 603A(3), in reference to a person's dissociation as a limited partner.

In Draft #2, the paragraph was a default rule that swept all of the dissociated general partner's transferable interest into "mere transferee" status. In subsequent drafts, the paragraph remains a default rule but the "sweeping" occurs only to the extent the transferable interest is associated with the person's status as a general partner.

Paragraph (5) -- Discussion at the Committee's March, 1998 meeting suggested the need for this type of provision with regard to limited partners. The language is included here, as well, to preclude any misunderstanding that might result from a lack of parallel treatment. The word "discharge" is derived from RUPA § 703(a).

**SECTION 602C. DISSOCIATED GENERAL PARTNER'S POWER TO BIND  
AND LIABILITY TO PARTNERSHIP.**

(a) After a person is dissociated as a general partner, the limited partnership is bound by an act of the person only if:

(1) the act would have bound the limited partnership under Section 403A before the dissociation; and

(2) at the time the other party enters into the transaction:

(i) less than two years has passed since the dissociation;

(ii) fewer than 90 days have passed since the certificate of limited partnership was amended to state that person is dissociated as a general partner; and

(iii) the other party does not have notice of the dissociation, reasonably believes that the person is still a general partner, and is not deemed to have had knowledge under Section 208(c) of any relevant limitation.

(b) A person who is dissociated as a general partner is liable to the limited partnership for any damage caused to the limited partnership arising from an obligation incurred by the limited partnership under subsection (a).

1                   (c) This section is subject to Section 803A.

2   **Comment**

3                   As instructed by the Committee at its July, 1997 meeting, the Reporter prepared two  
4 versions of this Section for Draft #2. The first version followed RUPA § 702 as closely as  
5 possible. The second version reorganized and restated the RUPA provision for the sake of  
6 readability. To the best of the Reporter's recollection, at its March, 1998 meeting the Committee  
7 decided to use the second version. In Draft #3, former Version #2 was slightly revised so that  
8 that concept of dissociation referred to a person's capacity as general partner. The Drafting  
9 Committee made no changes to this Section at the October, 1998 meeting, so Draft #4 continues  
10 the language from Draft #3.

11                   Subsection (a)(2)(ii) -- This clause is intended to function in a manner equivalent to  
12 RUPA § 702(a)(3).

13                   Subsection (a)(2)(iii) -- The phrase "does not have notice" seems redundant. A party that  
14 has notice of a general partner's dissociation cannot reasonably believe that the dissociated  
15 general partner is still a general partner.

16                   The clause "is not deemed to have had knowledge under Section 208(c) of any relevant  
17 limitation" was added to Draft #3 pursuant to a decision made at the March, 1998 meeting.  
18 Nonetheless, that clause seems redundant of paragraph (a)(1). If the person "is . . . deemed to  
19 have had knowledge under Section 208(c) of any relevant limitation," then "the act would [not]  
20 have bound the limited partnership under Section 403A."

21                   Subsection (b) -- RUPA's phrase "after dissociation" has been deleted as redundant.  
22 Subsection (a) refers exclusively to post-dissociation events. RUPA's phrase "an obligation  
23 incurred by the dissociated partner" has been deleted as ambiguous or at least unartful. Under  
24 subsection (a) a dissociated partner can cause the limited partnership to incur an obligation. On  
25 casual reading the RUPA language seems to refer to the dissociated partner incurring an  
26 obligation him, her or itself.

27                   Subsection (c) -- Upon dissolution, Section 803A takes over. RUPA may intend the same  
28 result, but its language refers only to dissolution caused by the partner's dissociation. Indeed, at  
29 the March, 1998 meeting some Commissioners interpreted RUPA to provide that: (i) if a  
30 partner's dissociation does not cause dissolution, and (ii) the partnership subsequently dissolves  
31 for some other reason, then (iii) the dissociated partner's management right "spring back" into  
32 existence. Version #2 rejects that approach for limited partnerships and defers to the dissolution  
33 provision even if the dissolution occurs for some reason other than the person's dissociation as a  
34 general partner.

35   **SECTION 602D. DISSOCIATED GENERAL PARTNER'S LIABILITY TO**

1     **OTHER PERSONS.**

2             (a) A person's dissociation as a general partner does not of itself discharge the  
3     person's liability as a general partner for a limited partnership obligation incurred before  
4     dissociation. The person is not liable for a limited partnership obligation incurred after  
5     dissociation, except as otherwise provided in subsection (b).

6             (b) A person who has dissociated as a general partner without resulting in a  
7     dissolution and winding up of the limited partnership business is liable as a general partner on a  
8     transaction entered into after the dissociation by the limited partnership, or a surviving general or  
9     limited partnership under [Article] 11, only if:

10            (1) a general partner would be liable on the transaction ; and

11            (2) at the time the other party enters into the transaction:

12                 (i) less than two years has passed since the dissociation;

13                 (ii) fewer than 90 days have passed since the certificate of limited  
14     partnership was amended to state that person is dissociated as a general partner; and

15                 (iii) the other party does not have notice of the dissociation and  
16     reasonably believes that the person is still a general partner.

17             (c) By agreement with the limited partnership creditor and the limited  
18     partnership, a person dissociated as a general partner may be released from liability for a limited  
19     partnership obligation.

20             (d) A person dissociated as a general partner is released from liability for a  
21     limited partnership obligation if a limited partnership creditor, with notice of the person's  
22     dissociation as a general partner but without the person's consent, agrees to a material alteration



1 in the nature or time of payment of a limited partnership obligation.

2 **Comment**

3 Subsection (b) -- This language is taken from RUPA. It will be necessary to specify the  
4 applicable rule if dissolution does occur. Section 803A-2 addresses "General Partner's Liability  
5 to Other General Partners After Dissolution," but does not expressly encompass persons  
6 dissociated as general partners prior to dissolution.

7 Subsection (b)(2)(ii) -- This subparagraph is intended to function in a manner equivalent  
8 to RUPA § 703(b)(3).

9 Subsection (b)(2)(iii) -- The phrase "does not have notice" seems redundant. A party that  
10 has notice of a general partner's dissociation cannot reasonably believe that the dissociated  
11 general partner is still a general partner.

12 Subsection (c) -- RUPA § 703(c) reads: "the partners continuing the business." Re-  
13 RULPA's differing language reflects the Draft's entity view of limited partnerships.

14 **SECTION 603. ~~WITHDRAWAL~~ DISSOCIATION OF AS A LIMITED**  
15 **PARTNER.**

16 (a) A limited partner person has no right to dissociate as a limited partner before  
17 the termination of the limited partnership. ~~may withdraw from a limited partnership at the time or~~  
18 ~~upon the happening of events specified in writing in the partnership agreement. If the~~  
19 ~~agreement does not specify in writing the time or the events upon the happening of which a~~  
20 ~~limited partner may withdraw or a definite time for the dissolution and winding up of the limited~~  
21 ~~partnership, a limited partner may withdraw upon not less than six months' prior written notice to~~  
22 ~~each general partner at his [or her] address on the books of the limited partnership at its office in~~  
23 ~~this State.~~

24 (b) A person is dissociated from a limited partnership as a limited partner upon  
25 the occurrence of any of the following events:

1 (1) the limited partnership's having notice of the person's express will to  
2 withdraw as a limited partner or on a later date specified by the person;

3 (2) an event agreed to in the partnership agreement as causing the person's  
4 dissociation as a limited partner;

5 (3) the person's expulsion as a limited partner pursuant to the partnership  
6 agreement;

7 (4) the person's expulsion as a limited partner by the unanimous vote of  
8 the other partners if:

9 (i) it is unlawful to carry on the limited partnership affairs with that  
10 person as a limited partner;

11 (ii) there has been a transfer of all of the person's transferable  
12 interest in the limited partnership, other than a transfer for security purposes, or a court order  
13 charging the person's interest, which has not been foreclosed;

14 (iii) the person is a corporation and, within 90 days after the  
15 limited partnership notifies the person that it will be expelled as a limited partner because it has  
16 filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to  
17 conduct business has been suspended by the jurisdiction of its incorporation, there is no  
18 revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct  
19 business; or

20 (iv) the person is a limited liability company or partnership that has  
21 been dissolved and whose business is being wound up;

22 (5) on application by the limited partnership, the person's expulsion as a

1 limited partner by judicial determination because:

2 (i) the person engaged in wrongful conduct that adversely and  
3 materially affected the limited partnership affairs;

4 (ii) the person willfully or persistently committed a material breach  
5 of the partnership agreement or of the obligation of good faith and fair dealing under Section  
6 302A(c); or

7 (iii) the person engaged in conduct relating to the limited  
8 partnership affairs which makes it not reasonably practicable to carry on the affairs with the  
9 person as limited partner;

10 (6) in the case of a person who is an individual, the person's death;

11 (7) in the case of a person that is a trust or is acting as a limited partner by  
12 virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the  
13 limited partnership, but not merely by reason of the substitution of a successor trustee;

14 (8) in the case of a person that is an estate or is acting as a limited partner  
15 by virtue of being a personal representative of an estate, distribution of the estate's entire  
16 transferable interest in the limited partnership, but not merely by reason of the substitution of a  
17 successor personal representative;

18 (9) termination of a limited partner who is not an individual, partnership,  
19 limited liability company, corporation, trust, or estate;

20 (10) the limited partnership participates in a merger under [Article] 11  
21 and;

22 (i) is not the surviving organization; or

(ii) is the surviving organization but as a result of the merger the person ceases to be a limited partner.

### Comment

The causes of limited partner dissociation substantially overlap the causes of general partner dissociation. That overlap could be avoided (or, rather, exploited) by sacrificing some of RULPA's look and feel and having one section captioned "Partner Dissociation." That section would list separately events that cause dissociation of any partner and events that cause dissociation only for general partners.

As decided by the Drafting Committee at its March, 1998 meeting, Re-RULPA adopts the RUPA provision essentially verbatim, except for the omission of provisions inappropriate to limited partners. At its October, 1998 meeting, the Committee discussed whether limited powers should lack the power as well as the right to withdraw by express will. To the best of the Reporter's recollection, the Committee decided to preserve that power in the default mode but to allow the partnership agreement to negate the power. See Section 101B(b)(6).

Subsection (b)(4)(i) -- Draft #4 replaces RUPA's word "business" with "affairs,"  
consonant with the Drafting Committee's decision (made at the October, 1998 meeting) to allow  
a limited partnership to pursue any lawful purpose.

Subsection (b)(4)(iii) -- Suppose the corporate limited is dissolved and terminated, but the other partners cannot muster a unanimous vote to expel. Does the limited partnership continue with a non-existent limited partner? Are the remaining partners forced to seek dissolution under Section 802?

Subsection (5) -- Following RUPA, this provision originally included the phrase "or another partner." The Reporter recommended deleting the phrase, out of concern that the phrase would invite confusion as to the distinction between direct and derivative claims and undermine the limited partner's authority to manage the business. At its March, 1998 meeting, the Committee accepted the Reporter's recommendation.

Subsection (5)(4)(i) -- Draft #4 replaces RUPA's word "business" with "affairs," consonant with the Drafting Committee's decision to allow a limited partnership to pursue any lawful purpose.

Subsection (b)(5)(iii) -- In RUPA the concluding phrase is "carry on the business in partnership with the partner." Given the possible dual status of a general partner in a limited partnership, RUPA's phrase "in partnership with the partner" would be overbroad in Re-RULPA. Given the decision to allow a limited partnership to pursue any lawful purpose, RUPA's

reference to "business" would be underinclusive in Re-RULPA.

In contrast to the Re-RULPA provision on dissociation as a general partner, this provision does not provide for dissociation on account of bankruptcy or insolvency.

Subsection (b)(6) -- In contrast to the provision on dissociation as a general partner, this provision does not provide for dissociation on account of an individual's incompetency.

Subsection (b)(9) -- This paragraph is not as necessary here as in the provision on dissociation as a general partner. The paragraph appears here to avoid confusion likely to result from an absence of parallelism.

#### **SECTION 603A. EFFECT OF DISSOCIATION AS A LIMITED PARTNER.**

Upon a person's dissociation as a limited partner,

(1) the person has no further rights as a limited partner;

(2) the person's obligation of good faith and fair dealing as a limited partner under Section 302A(c) continues only as to matters arising and events occurring before the dissociation;

(3) subject to [Article] 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee; and

(4) the dissociation does not of itself discharge the person from any obligation to the limited partnership or the other partners which pertains to the time during which the person was a general partner.

#### **Comment**

Paragraph (1) -- Derived from RUPA § 603(b)(1).

Paragraph (2) -- Section 602B (Effect of dissociation as a general partner) has no parallel provision, because RUPA § 603(b)(3) does not refer to the duty of good faith and fair dealing.

Paragraph (4) -- Discussion at the Committee's March, 1998 meeting suggested the need

1 for this type of provision with regard to limited partners. The language is included in Section  
2 602B, as well, to preclude any misunderstanding that might result from a lack of parallel  
3 treatment. The word "discharge" is derived from RUPA § 703(a).

4 At its March, 1998 meeting, the Committee voted to delete subsection (b), which had  
5 provided:

6 (b) A limited partner who dissociates before the termination of the limited  
7 partnership is liable to the limited partnership and to other partners for any  
8 damages caused by the dissociation.

9 Compare Section 602A(c)(stating the rule for persons who dissociate as general partners).

10 **SECTION 604. NO DISTRIBUTION UPON WITHDRAWAL ON ACCOUNT OF**  
11 **DISSOCIATION.** ~~Except as provided in this Article, upon withdrawal any withdrawing partner~~  
12 ~~is entitled to receive any distribution to which he [or she] is entitled under the partnership~~  
13 ~~agreement and, if not otherwise provided in the agreement, he [or she] is entitled to receive,~~  
14 ~~within a reasonable time after withdrawal, the fair value of his [or her] interest in the limited~~  
15 ~~partnership as of the date of withdrawal based upon his [or her] right to share in distributions~~  
16 ~~from the limited partnership.~~ A person has no right to receive any distribution on account of  
17 dissociation.

#### 18 **Comment**

19 Under sections 602B(4) (dissociation as a general partner) and 603A(a)(3) (dissociation  
20 as a limited partner), the person's status degrades to that of a transferee. (In Draft #2 this  
21 provision read: "A partner's dissociation does not entitle that partner to any distribution." The  
22 change reflects a style suggestion made by a Committee member at the March, 1998 meeting.)

23 **SECTION 605. DISTRIBUTION IN KIND.** ~~Except as provided in writing in the~~  
24 ~~partnership agreement, a A partner, regardless of the nature of his [or her] contribution, has no~~  
25 ~~right to demand and receive any distribution from a limited partnership in any form other than~~  
26 ~~cash. Except as provided in writing in the partnership agreement, a A partner may not be~~

1 compelled to accept a distribution of any asset in kind from a limited partnership to the extent  
2 that the percentage of the asset distributed to ~~him [or her]~~ the partner exceeds a percentage of that  
3 asset which is equal to the percentage in which ~~he [or she]~~ the partner shares in distributions  
4 from the limited partnership.

#### 5 **Comment**

6 At its March, 1998 meeting, the Committee rejected Draft #2's stylistic changes to this  
7 provision. The Reporter considered using ULLCA § 404(b), which states succinctly a simple  
8 rule: "A member has not right to receive, and may not be required to accept, a distribution in  
9 kind." However, that rule constrains the entity more than Re-RULPA's current approach. The  
10 Reporter does not know (at least so far) any reason to restrict Re-RULPA's default rule, so Draft  
11 #4 (like Draft #3) uses Re-RULPA's language.

#### 12 **SECTION 606. RIGHT TO DISTRIBUTION.**

13 At the time a partner becomes entitled to receive a distribution, ~~he [or she]~~ the partner has  
14 the status of, and is entitled to all remedies available to, a creditor of the limited partnership with  
15 respect to the distribution, except that the limited partnership's obligation to make a distribution  
16 is subject to offset for any amount owed to the limited partnership by the partner or dissociated  
17 partner on whose account the distribution is made.

#### 18 **Comment**

19 The reference to "dissociated partner" is to encompass circumstances where the partner is gone  
20 and all that remains are that dissociated partner's transferable interests.

21 **SECTION 607. LIMITATIONS ON DISTRIBUTION.** ~~A partner may not receive a~~  
22 ~~distribution from a limited partnership to the extent that, after giving effect to the distribution, all~~  
23 ~~liabilities of the limited partnership, other than liabilities to partners on account of their~~  
24 ~~partnership interests, exceed the fair value of the partnership assets.~~

25 (a) A limited partnership may not make a distribution in violation of the

1 partnership agreement.

2 (b) A limited partnership may not make a distribution if after the distribution:

3 (1) the limited partnership would not be able to pay its debts as they  
4 become due in the ordinary course of business; or

5 (2) the limited partnership's total assets would be less than the sum of its  
6 total liabilities plus the amount that would be needed, if the limited partnership were to be  
7 dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential  
8 rights upon dissolution, winding up, and termination of partners whose preferential rights are  
9 superior to those receiving the distribution.

10 (c) A limited partnership may base a determination that a distribution is not  
11 prohibited under subsection (b) on financial statements prepared on the basis of accounting  
12 practices and principles that are reasonable in the circumstances or on a fair valuation or other  
13 method that is reasonable in the circumstances.

14 (d) Except as otherwise provided in subsection (g), the effect of a distribution  
15 under subsection (b) is measured:

16 (1) in the case of distribution by purchase, redemption, or other acquisition  
17 of a transferable interest in the limited partnership, as of the date money or other property is  
18 transferred or debt incurred by the limited partnership; and

19 (2) in all other cases, as of the date:

20 (i) the distribution is authorized, if the payment occurs within 120  
21 days after that date; or

22 (ii) the payment is made, if payment occurs after that 120 days.



(e) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

### Comment

The new language is derived mostly from ULLCA § 406, which appears to have derived, almost verbatim, from RMBCA § 6.40.

Subsection (a) -- ULLCA § 406 does not include this provision, but ULLCA § 407 (Liability for unlawful distributions) establishes personal liability for anyone "who votes for or assents to a distribution made in violation of . . . the articles of organization, or the operating agreement." Similarly, RULPA § 608(b) imposes consequences for receiving a return of contribution "in violation of the partnership agreement." It makes for cleaner drafting to directly prohibit distributions that violate the partnership agreement.

Subsection (b)(1) -- Source: ULLCA § 406(a)(1).

Subsection (b)(2) -- Source: ULLCA § 406(a)(2).

Subsection (b)(3) -- Source: ULLCA § 406(b). N.b. -- this subsection imposes a more rigorous standard of care than the "gross negligence" standard applicable under Section 403D(c).

Subsection (d) -- Source: ULLCA § 406(c).

Subsection (d)(1) -- The RMBCA has an alternate date, if earlier -- when the owner being

redeemed ceases to be an owner. The Comment to ULLCA § 406 does not explain why ULLCA omits the alternate date.

Subsection (d)(2) -- The RMBCA has another category -- distributions of indebtedness not involved in a redemption. The Comment to ULLCA § 406 does not explain why ULLCA omits this additional category.

Subsection (e) -- This subsection is redundant of Section 606. One should be deleted. Assuming the Committee decides that the next draft will, like this draft, maintain as much of the basic structure of RULPA as possible, the Reporter recommends deleting this provision and retaining Section 606. If, instead, the Committee opts for a RUPA/ULLCA "look and feel," this subsection should remain.

Subsection (g) -- This provision is stated as a separate subsection, to make clear that "indebtedness" is not limited to the types of indebtedness referred to in the immediately preceding sentence -- i.e., "indebtedness [whose terms] provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section."

## **SECTION 608. LIABILITY ~~UPON RETURN OF CONTRIBUTION~~ FOR UNLAWFUL DISTRIBUTIONS.**

~~(a) If a partner has received the return of any part of his [or her] contribution without violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.~~

~~(b) If a partner has received the return of any part of his [or her] contribution in violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.~~

~~(c) A partner receives a return of his [or her] contribution to the extent that a distribution to him [or her] reduces his [or her] share of the fair value of the net assets of the~~

1 ~~limited partnership below the value, as set forth in the partnership records required to be kept~~  
2 ~~pursuant to Section 105, of his contribution which has not been distributed to him [or her].~~

3 (a) A general partner who votes for or assents to a distribution made in violation  
4 of Section 607 is personally liable to the limited partnership for the amount of the distribution  
5 which exceeds the amount that could have been distributed without the violation if it is  
6 established that in voting for or assenting to the distribution the general partner failed to comply  
7 with Section 607(c) or Section 403D.

8 (b) A partner who knew a distribution was made in violation of Section 607 is  
9 personally liable to the limited partnership, but only to the extent that the distribution received by  
10 the partner exceeded the amount that could have been properly paid under Section 607.

11 (c) A general partner against whom an action is brought under subsection (a) may  
12 implead in the action all:

13 (1) other general partners and persons dissociated as general partners who  
14 voted for or assented to the distribution in violation of subsection (a) and may compel  
15 contribution from them; and

16 (2) partners and persons dissociated as partners who received a  
17 distribution in violation of subsection (b) and may compel contribution from the partner or  
18 person in the amount received in violation of subsection (b).

19 (d) A proceeding under this section is barred unless it is commenced within two  
20 years after the distribution.

## 21 **Comment**

22 Consistent with the Drafting Committee's tentative decision, this draft replaces RULPA's  
23 antiquated "clawback" provisions with a more modern approach derived from RMBCA § 8.33(a)

1 and ULLCA § 407(a). (The ULLCA provision closely follows the RMBCA provision.)

2 RMBCA § 8.33 and ULLCA § 407 both refer to "Unlawful" distributions, but that term  
3 fits poorly with liability imposed for distributions that merely breach the partnership agreement  
4 or some comparable document (e.g., a corporation's articles of incorporation, an LLC's articles of  
5 organization, or operating agreement). Earlier drafts therefore used "Improper" instead of  
6 "Unlawful." Draft #4 (like Draft #3) uses "Unlawful" in light of instructions to follow ULLCA.

7 Subsection (a) -- Section 403D contains the general duties of general partners. Section  
8 607(c) imposes a separate duty with regard to reliance on financial statements, accounting  
9 principles, etc.

10 N.b. -- section 607(c) imposes a higher standard of care than does Section 403D. This  
11 anomaly does not exist under the RMBCA (from which both this draft and ULLCA derive their  
12 respective provisions on liability for improper distributions). The RMBCA's general standard of  
13 care is ordinary care, RMBCA § 8.30(a)(2), not the mere avoidance of gross negligence.  
14 ULLCA does not expressly contain this anomaly. The ULLCA provision on "Limitations on  
15 distributions" states a reasonableness standard with regard to reliance on financial statements,  
16 accounting principles, etc., ULLCA § 406(b), but the ULLCA provision on "Liability for  
17 unlawful distributions" makes no reference to that standard. ULLCA § 407. The Reporter views  
18 that approach as anomalous, and therefore Draft #4 (like previous drafts) deviates from ULLCA  
19 in this regard.

20 Subsection (c) -- This subsection does not allow a limited partner to implead anyone else,  
21 because a limited partner's liability is limited to the amount by which the limited partner's  
22 distribution exceeded the permissible amount. Following ULLCA, Draft #2 referred to "this  
23 section." At its March, 1998 meeting, the Committee approved the narrower reference to  
24 subsection (a).

25 Subsection (c)(2) -- Source: ULLCA § 407(c). The ULLCA language is a bit imprecise.  
26 For example, strictly speaking, subsection (b) does not establish a prohibition that can be  
27 violated; it states a remedy. The implied prohibition is against receiving an improper distribution  
28 while knowing that the distribution is improper.

29 Moreover, § 407(c)(2) refers first to "members" and then to "the member." It is important  
30 to make clear that the limitation applies to each member severally, not to all members jointly.

31 The following alternative language makes that point and also makes clear that any funds  
32 paid by a recipient in a separate action (i.e., under subsection (b)) count against the recipient's  
33 contribution limit:

34 (c) A general partner against whom an action is brought under  
35 subsection (a) may implead in the action and obtain contribution from:

36 (1) any other general partner or person dissociated as a

1 general partner who could be held liable under subsection (a) for the improper  
2 distribution; and

3 (2) any partner or person dissociated as partner who could  
4 be held liable under subsection (b), but a partner or person's total liability under  
5 this paragraph and subsection (b) with respect to any distribution is limited to the  
6 total amount for which the person could be liable under subsection (b) for that  
7 distribution.  
8

9 Subsection (d) -- This subsection follows ULLCA § 407(d), which differs from the  
10 RMBCA. Under RMBCA § 8.33(c) the clock runs from "the date on which the effect of the  
11 distribution [is] measured" under the provision limiting distributions. The Comments to ULLCA  
12 do not explain ULLCA's departure from the RMBCA.

## 13 ARTICLE 7

### 14 ~~ASSIGNMENT OF PARTNERSHIP~~ TRANSFERABLE INTERESTS AND RIGHTS OF 15 TRANSFEREES AND CREDITORS

16 ~~SECTION 701. NATURE OF PARTNERSHIP~~ PARTNER'S TRANSFERABLE  
17 INTEREST. The only transferable interest of a partner is the partner's allocation of the profits  
18 and losses of the partnership and the partner's right to receive distributions. The A partnership  
19 interest is personal property.

#### 20 Comment

21 Source: RUPA § 502. Section 606 provides that a partner's right to distributions is  
22 subject to offset.

23 ~~SECTION 702. ASSIGNMENT OF PARTNERSHIP INTEREST~~ TRANSFER OF  
24 PARTNER'S TRANSFERABLE INTEREST. ~~Except as provided in the partnership~~  
25 ~~agreement, a partnership interest is assignable in whole or in part. An assignment of a~~  
26 ~~partnership interest does not dissolve a limited partnership or entitle the assignee to become or to~~  
27 ~~exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent~~

1 ~~assigned, only the distribution to which the assignor would be entitled. Except as provided in the~~  
2 ~~partnership agreement, a partner ceases to be a partner upon assignment of all his [or her]~~  
3 ~~partnership interest.~~

4 (a) A transfer, in whole or in part, of a partner's transferable interest in the limited  
5 partnership:

6 \_\_\_\_\_ (1) is permissible;

7 \_\_\_\_\_ (2) does not by itself cause the partner's dissociation or a dissolution and  
8 winding up of the limited partnership business; and

9 \_\_\_\_\_ (3) does not, as against the other partners or the limited partnership, entitle  
10 the transferee, during the continuance of the limited partnership, to participate in the  
11 management or conduct of the limited partnership business, to require access to information  
12 concerning limited partnership transactions, or to inspect or copy the limited partnership books  
13 or records.

14 \_\_\_\_\_ (b) A transferee of a partner's transferable interest in the limited partnership has a  
15 right:

16 \_\_\_\_\_ (1) to receive, in accordance with the transfer, distributions to which the  
17 transferor would otherwise be entitled,

18 \_\_\_\_\_ (2) to receive upon the dissolution and winding up of the limited  
19 partnership business, in accordance with the transfer, the net amount otherwise distributable to  
20 the transferor; and

21 \_\_\_\_\_ (3) to seek under Section 802(b) a judicial determination that it is  
22 equitable to wind up the limited partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of  
limited partnership transactions only from the date of dissolution.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred, including the transferor's liability to the limited partnership under Sections 207 and 502.

(e) A limited 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 limited 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.

(g) A transferee who becomes a partner is liable for the transferor's obligations to make and return contributions as provided in Articles 5 and 6. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

### Comment

Source: RUPA § 503. Although for the most part RULPA's language "works," the formulation is oblique. In this instance, the benefits (especially for the uninitiated) of a more direct formulation outweigh the preference for retaining familiar language. Re-RULPA therefore takes RUPA language in place of RULPA language. (Draft #1 rearranged the provisions of RUPA § 503 so that the affirmative aspects were stated first and the limitations or negative aspects were stated second. Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2 provided the RUPA provisions without significant change, while preserving Draft #1's language as an alternative version. At its March, 1998 meeting, the Committee rejected the alternative version, and that version has therefore been omitted from subsequent drafts.)

Subsection (c) -- RUPA § 503(c) reads: "the latest account agreed to by all of the partners." At its March, 1998 meeting, the Committee decided to deviate from RUPA.

Subsection (d) -- The phrase beginning "including" does not appear in RUPA. See RUPA § 503(d). At its March, 1998 meeting, the Committee decided to append the language of

1 RULPA § 704(c), which provides:

2 (c) If an assignee of a partnership interest becomes a limited partner, the assignor  
3 is not released from his [or her] liability to the limited partnership under  
4 Sections 207 and 502.

5 That language appears redundant, given the broad statement carried over from RUPA.  
6 Moreover, specifying this subset of continuing obligations might raise questions as to the status  
7 of other subsets; e.g., a transferor general partner's liability for breach of the duty of loyalty or  
8 care.

9 Subsection (g) -- This subsection is taken from RULPA § 704(b). Changes from that  
10 subsection are as follows:

11 ~~An assignee who has become a limited partner has, to the extent assigned, the~~  
12 ~~rights and powers, and is subject to the restrictions and liabilities, of a limited~~  
13 ~~partner under the partnership agreement and this [Act]. An assignee~~ A transferee  
14 who becomes a limited partner also is liable for the transferor's obligations of his  
15 ~~[or her] assignor~~ to make and return contributions as provided in Articles 5 and 6.  
16 However, the ~~assignee~~ transferee is not obligated for liabilities unknown to the  
17 ~~assignee~~ transferee at the time ~~he [or she]~~ the transferee became a limited partner.

18 At its March, 1998 meeting, the Committee instructed the Reporter to preserve the substance of  
19 RULPA § 704(b)'s second sentence.

### 20 **SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFEEE.**

21 (a) On application to a court of competent jurisdiction by any judgment creditor of  
22 a partner or transferee, the court may charge the ~~partnership~~ transferable interest of the ~~partner~~  
23 judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the  
24 extent so charged, the judgment creditor has only the rights of ~~an assignee of the partnership~~  
25 ~~interest~~ a transferee. The court may appoint a receiver of the share of the distributions due or to  
26 become due to the judgment debtor in respect of the partnership and make all other orders,  
27 directions, accounts, and inquiries the judgment debtor might have made or which the  
28 circumstances of the case may require to give effect to the charging order.



1                   **(b) A charging order constitutes a lien on the judgment debtor's transferable**  
2 **interest. The court may order a foreclosure of the interest subject to the charging order at any**  
3 **time. The purchaser at the foreclosure sale has the rights of a transferee.**

4                   **(c) At any time before foreclosure, an interest charged may be redeemed:**

5                   **(1) by the judgment debtor;**

6                   **(2) with property other than limited partnership property, by one or more**  
7 **of the other partners; or**

8                   **(3) with limited partnership property, by the limited partnership with the**  
9 **consent of all partners whose interests are not so charged.**

10                   **(d) This [Act] does not deprive any partner or transferee of the benefit of any**  
11 **exemption laws applicable to his [or her] partnership the partner's or transferee's transferable**  
12 **interest.**

13                   **(e) This section provides the exclusive remedy by which a judgment creditor of a**  
14 **partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.**

15                   **Comment**

16                   **Caption** -- RUPA captions its comparable section "PARTNER'S INTEREST SUBJECT  
17 **TO CHARGING ORDER.**" RUPA § 504. ULLCA captions its comparable section "Rights of  
18 **creditor.**" ULLCA § 504.

19                   **Subsection (a)** -- This expansion to include "transferee" comports with both RUPA §  
20 504(a) and ULLCA § 504(a). The sentence added at the end of the subsection originated in  
21 RUPA § 504(a). ULLCA § 504(a) incorporated the RUPA language but added the last phrase  
22 ("to give effect . . ."), apparently in an effort to limit the extent to which the "or which" clause  
23 empowers a court to intervene in the entity's affairs. The Drafting Committee should consider  
24 why a receiver should have greater rights of inquiry than the judgment debtor.

25                   **Subsection (b)** -- Source: RUPA § 504(b).

26                   **Subsection (c)** -- Source: RUPA § 504(c) and ULLCA § 504(c).

1        Subsection (c)(3) -- Source: RUPA § 504(c)(3). According to the RUPA provision, the  
2 redemption is by "one or more of the other partners." At its March, 1998 meeting, the  
3 Committee substituted the phrase "the limited partnership," making clear that the entity does the  
4 redemption. The Committee rejected language that would have allowed disinterested general  
5 partners to make the redemption decision.

6        Subsection (e) -- Source: RUPA § 504(e).

7        **~~SECTION 704. RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.~~**

8            ~~(a) An assignee of a partnership interest, including an assignee of a general~~  
9 ~~partner, may become a limited partner if and to the extent that (i) the assignor gives the assignee~~  
10 ~~that right in accordance with authority described in the partnership agreement, or (ii) all other~~  
11 ~~partners consent.~~

12            ~~(b) An assignee who has become a limited partner has, to the extent assigned, the~~  
13 ~~rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the~~  
14 ~~partnership agreement and this [Act]. An assignee who becomes a limited partner also is liable~~  
15 ~~for the obligations of his [or her] assignor to make and return contributions as provided in~~  
16 ~~Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at~~  
17 ~~the time he [or she] became a limited partner.~~

18            ~~(c) If an assignee of a partnership interest becomes a limited partner, the assignor~~  
19 ~~is not released from his [or her] liability to the limited partnership under Sections 207 and 502.~~

20            **Comment**

21            This Section dealt with matters now encompassed by Section 702. Portions of this  
22 Section have relocated there. For the details of the relocation, see the endnotes to this Section in  
23 Draft #3.

24        **SECTION 705. POWER OF ESTATE OF DECEASED OR INCOMPETENT**

1     **PARTNER.**

2             (a) If a partner who is an individual dies, the deceased partner's executor,  
3     administrator, or other legal representative may exercise the rights of a transferee as provided in  
4     Section 702;

5             (b) If a partner who is an individual is adjudged by ~~or~~ a court of competent  
6     jurisdiction adjudges him [or her] to be incompetent to manage his [or her] the partner's person or  
7     his [or her] property,

8             (1) if the individual is a limited partner, the partner's executor,  
9     ~~administrator,~~ guardian, conservator, or other legal representative may exercise all the  
10    individual's limited partner's rights as a limited partner for the purpose of settling his [or her]  
11    ~~estate or administering his [or her] the individual's~~ property, including any power the partner  
12    ~~had to give an assignee the right to become a limited partner; and~~

13            (2) if before the adjudication the individual was a general partner, the  
14    guardian, conservator, or other legal representative may not exercise any right or power of a  
15    general partner but for the purpose of administering the individual's property may exercise the  
16    rights that belong to the individual as a person who has dissociated as a general partner.

17            ~~If a partner is a corporation, trust, or other entity and is dissolved or terminated,~~  
18    ~~the powers of that partner may be exercised by its legal representative or successor.~~

19                             **Comment**

20            Neither RUPA nor ULLCA contains a comparable provision.

21            Subsection (a) -- Under Sections 602B(4) (consequences of dissociation as a general  
22    partner) and 603A(3) (consequences of dissociation as a limited partner) the decedent partner's  
23    interest will convert to a mere transferable interest.

Subsection (b)(1) -- Incompetency does not cause a limited partner to dissociate. See Section 603. This power can therefore continue indefinitely.

Subsection (b)(2) -- The adjudication will cause the person's dissociation as a general partner. See Section 602(7)(ii) and (iii).

Dissolution of a corporation, trust or other entity -- Dovetailing this section's approach to entity demise with the RUPA-based interrelationship of entity demise and partner dissociation will be quite complicated. At its March, 1998 meeting, the Committee discussed but did not decide whether to follow RUPA and ULLCA and omit this section entirely. The Reporter has therefore decided to leave to another day the complicated task of dovetailing. (If the provision does remain, this subsection will be expanded to mention the dissolution of partnerships and limited liability companies.)

## ARTICLE 8

## DISSOLUTION

{Sections 800 and 800A have been relocated to Article 6}

**SECTION 801. NONJUDICIAL DISSOLUTION.** A limited partnership is dissolved ~~and its affairs shall be wound up~~ upon the happening of the first to occur of the following:

~~(1) at the time as specified in the certificate of limited partnership;~~

~~(2) upon the happening of an events specified in writing in the partnership~~

agreement;

(32) written consent of all general partners and of limited partners owning a  
majority of the profit interests owned by persons as limited partners;

~~(43) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by~~

1 ~~reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in~~  
2 ~~writing to continue the business of the limited partnership and to the appointment of one or more~~  
3 ~~additional general partners if necessary or desired~~ after the dissociation of a person as a general  
4 partner,

5 (i) if the limited partnership has at least one remaining general partner,

6 (A) the limited partnership's having notice within 90 days after the  
7 dissociation of the express will of any remaining general partner to dissolve the limited  
8 partnership, or

9 (B) written consent to dissolve the limited partnership given within  
10 that 90 days by limited partners owning a majority of the profit interests owned by persons as  
11 limited partners immediately following the dissociation; or

12 (ii) if the limited partnership has no remaining general partner, the passage  
13 of 90 days after the dissociation unless within that 90 days partners owning a majority of the  
14 profit interests owned by limited partners immediately following the dissociation consent to  
15 continue the business and to admit at least one general partner and at least one person is admitted  
16 as a general partner in accordance with that consent;

17 (54) the passage of 90 days after the dissociation of the limited  
18 partnership's last limited partner, unless before the end of the 90 days the limited partnership  
19 admits at least one limited partner;

20 (65) the signing of a statement of dissolution by the [Secretary of State]  
21 under Section 803F(b);

22 or

(56) entry of a decree of judicial dissolution under Section 802.

### Comment

Section 803(a) makes the phrase "and its affairs shall be wound up" redundant.

Paragraph (1) -- In Draft #3, Section 201 provided that only the certificate of limited partnership could vary a limited partnership's perpetual term. At its October, 1998 meeting, the Drafting Committee deleted that provision and directed that the corresponding deletion be made in this section. Under Draft #4, a limited partnership can establish a term through the partnership agreement and the expiration of that term will cause dissolution as "the happening of an events specified in writing in the partnership agreement."

This approach will be problematic, however, if a limited partnership states a term in its certificate (permissible under Section 201(c)) but neglects to include precisely the same term in the partnership agreement. That problem could be resolved by revising paragraph (1) to state: "the happening of an events specified in the certificate of limited partnership or in writing in the partnership agreement." However, that approach could produce awesome difficulties if the certificate and a written partnership agreement happened to disagree about dissolution.

Section 201(d) would not suffice to resolve those difficulties. Sourced from ULLCA, Section 201(d) states that "the partnership agreement controls as to partners and transferees . . . and . . . the certificate of limited partnership controls as to persons, other than partners and transferees, who reasonably rely on the certificate to their detriment." This formulation is drafted to address specific, particularized disagreements between the certificate and the partnership agreement, and it fails when the conflict relates to the fundamental notion of dissolution. It would be bizarre to have a public record indicate on its face that an entity has dissolved and yet have the law deem the entity "un-dissolved" for many purposes. Moreover, a disagreement over dissolution could implicate every facet of a limited partnership's operations. It could be a gargantuan task for courts and practitioners to discern, much less resolve, all the ramifications.

Based on the discussion at the October, 1998 meeting, the Reporter believes the Committee will revisit and may reconsider the question of whether only the certificate of limited partnership should be able to vary a limited partnership's perpetual term. The Reporter therefore anticipates that further discussion will either moot the problem just discussed or provide guidance in how to resolve it.

The reference to "writing" should be reconsidered when the Drafting Committee considers how to reconcile Re-RULPA with the UETA.

Paragraph (2) --Draft #2 followed RULPA. Draft #3 showed a revision tentatively adopted at the end of the Committee's March, 1998 meeting. That revision was discussed and not amended at the October, 1998 meeting. Draft #4 therefore preserves Draft #3's language. The reference to "profit interests owned by persons as limited partners" excludes profit interests

1 that are owned by transferees who are not also partners as well as profit interests owned by  
2 general partners in their capacity as general partners.

3 At its March, 1998 meeting, the Committee deleted the following proposed new  
4 language, which had been derived from RUPA § 801(4) and ULLCA § 801(3):

5 the passage of 90 days after the limited partnership has notice of an event that  
6 makes it unlawful for all or substantially all of the business of the limited  
7 partnership to be continued, unless the illegality is cured before the end of the 90  
8 day period;

9 Paragraph (3) -- This language also was discussed and not amended at the October, 1998  
10 meeting.

11 Paragraph (3)(i)(A) -- A remaining general partner can exercise this power to cause  
12 dissolution without thereby dissociating as a general partner. The "express will" to dissolve is  
13 different from the "express will" to dissociate.

14 Paragraph (3)(i)(B) -- Excluded from the calculation are profit interests owned by a  
15 transferee who is not a limited partner. Profit interests owned by a person who is both a general  
16 and a limited partner figure in only to the extent those interests can be said to held in the person's  
17 capacity as a limited partner.

18 Query: should the majority be calculated against the profits interest owned by persons as  
19 limited partners immediately after dissolution (as in this Draft) or against the profits interests  
20 owned at the time the consent is obtained? The latter calculation would produce a different result  
21 if, prior to the consent, a second dissociation occurs and that dissociation causes a transfer to a  
22 person who is not a limited partner.

23 Paragraph (3)(ii) -- This language requires that all of the following occur within the 90  
24 days: consent to avoid dissolution, consent to appoint a new general partner and admission of a  
25 new general partner in accordance with that consent. This language is arguably too narrow. For  
26 example, suppose that the requisite consent is obtained within the 90 days, in contemplation of a  
27 particular person becoming a general partner. Shortly before the end of the 90 days, the person  
28 refuses to be admitted as a general partner. To avoid dissolution the limited partners would have  
29 to find a substitute general partner and obtain new consents before the 90 day period expires.  
30 The rule is, however, merely a default rule.

31 The query posed in the Comment to paragraph (3)(i)(B) applies here as well. The Act  
32 should take the same approach to both these provisions.

## 33 **SECTION 802. JUDICIAL DISSOLUTION.**

34 (a) On application by or for a partner the [designate the appropriate court] court

1 may decree dissolution of a limited partnership whenever:

2 (1) the economic purpose of the limited partnership is likely to be  
3 unreasonably frustrated; or

4 (2) it is not reasonably practicable to carry on the business in conformity  
5 with the partnership agreement.

6 (b) On application by or for a transferee the [designate the appropriate court]  
7 court may decree dissolution of a limited partnership if:

8 (1) at the time of the transfer or entry of the charging order that gave rise  
9 to the transferee's interest the partnership agreement provided in writing for the limited  
10 partnership to have a term other than perpetual;

11 (2) after having notice of that transfer or entry the limited partnership  
12 amended its partnership agreement in writing to extend the limited partnership's term;

13 (3) the limited partnership's term would have expired but for that  
14 amendment; and

15 (4) it is equitable to dissolve the limited partnership and wind up its  
16 business.

### 17 **Comment**

18 Both RUPA § 801 and ULLCA § 801 include nonjudicial and judicial dissolution in the  
19 same section. This draft preserves RULPA's approach, dividing the two types of dissolution into  
20 two sections.

21 Subsection (a)(1) -- The addition comes from RUPA § 801(5), which is also the source of  
22 most of ULLCA § 801(4). Draft #3 included another basis for judicial dissolution, also sourced  
23 from RUPA § 801(5):

24 another partner has engaged in conduct relating to the limited partnership business  
25 which makes it not reasonably practicable to carry on the business in partnership



1 with that partner

2 Re-RULPA deviates from ULLCA in another way. ULLCA § 801(4)(v) includes a  
3 concept developed in the law of closely held corporations. A court may decree dissolution of an  
4 LLC when "the managers or member in control of the company have acted in a manner that is  
5 illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner." This draft does not  
6 include any analogous provision. At its October, 1998 meeting, the Drafting Committee  
7 discussed but did not adopt such a provision.

8 Subsection (b) -- This provision is derived from RUPA § 801(6)(i), which was also the  
9 source for ULLCA § 801(5)(i). This provision does not protect transferees from the  
10 consequences of a merger in which the limited partnership is not the surviving organization.  
11 Query whether this provision should remain, given that the default term is perpetual duration.

12 Subsection (b)(1) -- This provision appears in neither RUPA nor ULLCA; neither of  
13 those Acts provide for perpetual term as the default rule. The writing requirement follows  
14 Section 801(1) and reflects current law.

15 Subsection (b)(2) -- RUPA § 801(6)(i) refers more simply to the expiration of the  
16 partnership's term. However, RUPA § 406(a) contemplates a term general partnership  
17 continuing its business after its term expires and "be[ing] treated as a partnership at will." RUPA  
18 § 801, Comment 5. No comparable provision exists in RULPA or Re-RULPA. The expiration  
19 of a limited partnership's term causes dissolution. Section 801(1). Therefore, this paragraph  
20 applies to the roughly analogous situation of a limited partnership amending its partnership  
21 agreement to extend its term. (Draft #3 referred to amendment of the certificate of limited  
22 partnership.)

23 If a limited partnership simply declines to recognize its own dissolution, a transferee will  
24 have a remedy under Section 803(c)(2) (judicial supervision of winding up upon a partner's or  
25 transferee's showing of "other good cause").

26 **SECTION 802A. LIMITED PARTNERSHIP CONTINUES AFTER**  
27 **DISSOLUTION.** A limited partnership continues after dissolution only for the purpose of  
28 winding up its business. A limited partnership terminates under Section 203. Dissolution does  
29 not relieve the limited partnership, any general partner or any person dissociated as a general  
30 partner of liability for the debts and other obligations of the limited partnership.

31 **Comment**

32 Derived from RUPA § 802, which is also the source of ULLCA § 802. Both RUPA §

1 802(b) and ULLCA § 802(b) allow the unanimous consent of partners/members to "un-do" a  
2 dissolution. For two reasons this draft does not include that provision. First, both RUPA and  
3 ULLCA provide for the buy-out of a dissociated owner in the event that dissociation does not  
4 cause dissolution. This draft, in contrast, freezes in a dissociated owner (as a transferee of its  
5 own transferable interest) until dissolution. It seems inequitable, therefore, to allow a waiver of  
6 dissolution without some consent of those transferees who are former partners. Second,  
7 providing for transferee consent would require at best an intricate statutory provision, and --  
8 given the limited partnership's durability in the default mode -- the intricacy hardly seems  
9 warranted.

10 First Sentence -- Both RUPA § 802(a) and ULLCA § 802(a) use this language. Based on  
11 years of explaining the dissolution and termination to the uninitiated, the Reporter prefers: "A  
12 dissolved limited partnership is not terminated but continues its existence only for the purpose of  
13 winding up its business."

14 **SECTION 803. WINDING UP.** ~~Except as provided in the partnership agreement, the~~  
15 ~~general partners who have not wrongfully dissolved a limited partnership or, if none, the limited~~  
16 ~~partners, may wind up the limited partnership's affairs, but the [designate the appropriate court]~~  
17 ~~court may wind up the limited partnership's affairs upon application of any partner, his [or her]~~  
18 ~~legal representative, or assignee.~~

19 (a) A dissolved limited partnership shall promptly wind up its business. In  
20 winding up its business the limited partnership may preserve the limited partnership business or  
21 property as a going concern for a reasonable time, prosecute and defend actions and proceedings,  
22 whether civil, criminal, or administrative, settle and close the limited partnership's business,  
23 dispose of and transfer the limited partnership's property, discharge the limited partnership's  
24 liabilities, distribute the assets of the limited partnership under Section 804, settle disputes by  
25 mediation or arbitration, file a declaration of termination under Section 203, and perform other  
26 necessary acts.

27 (b) If a dissolved limited partnership has no general partners, limited partners

1 owning a majority of the profit interests owned by partners immediately following the  
2 dissolution may appoint a person to wind up the dissolved limited partnership's business. A  
3 person appointed under this subsection:

4 \_\_\_\_\_ (1) has the powers of a general partner under Section 803A and the duties  
5 of a general partner under Section 403D; and

6 (2) shall promptly amend the certificate of limited partnership to:

7 \_\_\_\_\_ (i) state that the limited partnership has no general partner and that  
8 the person has been appointed to wind up the limited partnership; and

9 \_\_\_\_\_ (ii) give the business address of the person.

10 (c) On the application of any partner or transferee, a court may order judicial  
11 supervision of the winding up, including the appointment of a person to wind up the dissolved  
12 limited partnership's business, if:

13 \_\_\_\_\_ (1) a limited partnership has no general partner and within a reasonable  
14 time following the dissolution no person has been appointed pursuant to subsection (b), or

15 \_\_\_\_\_ (2) the applicant establishes other good cause.

16 \_\_\_\_\_ (d) Except as ordered by the court, a person appointed under subsection (c) has the  
17 same powers and duties of a person appointed under subsection (b).

### 18 **Comment**

19 This Section has been changed to: (i) provide, as a default matter, that so long as a  
20 dissolved limited partnership has at least one general partner, the limited partnership  
21 management structure remains in place during winding up; and (ii) incorporate many of the  
22 mechanical refinements of RUPA § 803. (RUPA § 803 is also the source for ULLCA § 803.)

23 Subsection (a) -- The language of this subsection comes essentially verbatim from RUPA  
24 803(c). For two reasons the Reporter prefers the reformulation set out below. First, the RUPA  
25 language is exclusively permissive, and some of the listed items should be mandatory. Second,

1 the reformulation gives more guidance to the uninitiated by creating two functionally distinct  
2 categories. The first category concerns the general processes of winding up. The second  
3 category concerns specific tasks necessary to close down the business. The reformulation would  
4 read as follows:

5 In winding up its business the limited partnership:

6 (1) may preserve the limited partnership business or  
7 property as a going concern for a reasonable time, prosecute and defend actions  
8 and proceedings, whether civil, criminal, or administrative, transfer the limited  
9 partnership's property, settle disputes by mediation or arbitration, file a  
10 declaration of termination as provided in Section 203, and perform other  
11 necessary acts; and

12 (2) shall discharge the limited partnership's liabilities, settle  
13 and close the limited partnership's business, and under Section 804 martial and  
14 distribute the assets of the partnership.

15 Both the language currently in Draft #4 and the language just suggested incorporate a  
16 decision made by the Drafting Committee at its October, 1998 meeting. At that meeting, the  
17 Committee deleted in this subsection and in Section 202 the requirement that a dissolved limited  
18 partnership amend its certificate to indicate dissolution. Such an amendment is still permitted,  
19 Section 201(c), and will often be the prudent course. See Section 803A(b), (c) and (e) (providing  
20 that amending the certificate to indicate dissolution helps curtail the power of a general partner to  
21 bind the limited partnership during winding up).

22 Also at the October, 1998 meeting, the Committee made the filing of a declaration of  
23 termination permissive rather than mandatory. Accordingly, the following sentence has been  
24 deleted from Draft #3's version of this subsection: "Promptly after winding up is completed, the  
25 limited partnership shall file a declaration of termination as provided in Section 805 [now 203]."

26 Subsection (b) -- At its July, 1997 meeting, the Committee eliminated writing  
27 requirements pertaining to most consents. Consistent with that action, Draft #2 eliminated Draft  
28 #1's requirement that the partners consent in writing to this appointment. However, given the  
29 special circumstances involved here, the Committee might wish to reinsert the writing  
30 requirement here.

31 Subsection (b)(1) -- The appointee does not have the liabilities of a general partner to  
32 third parties. Under Section 403D(b)(3), the appointee will have the right to compete with the  
33 dissolved limited partnership.

34 Subsection (b)(2) -- Draft #3 also required the amendment to indicate that the limited  
35 partnership had dissolved. Such an indication is no longer mandatory, but will often be prudent.  
36 See Comment to subsection (a).

37 Subsection (c) -- Derived from RUPA § 803(a), which is replicated in ULLCA § 803(a).

1                   **SECTION 803A. GENERAL PARTNER'S POWER TO BIND PARTNERSHIP**  
2 **AFTER DISSOLUTION.**

3                   (a) Subject to subsections (b) and (c), a limited partnership is bound by a general  
4 partner's act after dissolution that:

5                   (1) is appropriate for winding up the limited partnership business; or  
6                   (2) would have bound the partnership under Section 403A before  
7 dissolution, if the other party to the transaction did not have notice of the dissolution.

8                   (b) If the certificate of limited partnership has been amended to state that the  
9 limited partnership is dissolved, the amendment:

10                   (1) nullifies any statement granting authority pursuant to Section 201(b);  
11 and

12                   (2) operates as a statement limiting authority pursuant to Section 201(b).

13                   (c) For the purposes of subsection (a)(2) and Section 403A, a person not a partner  
14 is deemed to have notice of a limited partnership's dissolution and the limitation on the general  
15 partners' authority 90 days after the certificate of limited partnership is amended to state that the  
16 limited partnership is dissolved.

17                   (d) After amending its certificate of limited partnership to state that the limited  
18 partnership is dissolved, a dissolved limited partnership may amend its certificate to include new  
19 statements regarding authority pursuant to Section 201(b) which will operate as provided in  
20 Section 208 for subsequent transactions, whether or not a transaction is appropriate for winding  
21 up the limited partnership business.

1                   (e) This Section's limitations on a general partner's power to bind a dissolved  
2 limited partnership also apply under Section 602C to the power to bind of a person dissociated as  
3 a general partner.

4                   **Comment**

5                   \_\_\_\_\_ Derived from RUPA §§ 804, 805 and 806.

6                   Subsection (a) -- Source: RUPA § 804. The only change is to make the attribution rules  
7 expressly subject to subsections (b) and (c) (which are in turn sourced from RUPA § 805).

8                   Subsection (b)(1) -- Derived from the first paragraph of RUPA § 805(b). The only  
9 substantive change is that, unlike RUPA § 805(a), subsection (b) does not allow any "partner  
10 who has not wrongfully dissociated" to affect the relevant document. Under RUPA, the relevant  
11 act is the filing of a statement of dissolution. Under Re-RULPA [so far, in any event] the  
12 relevant act is amending the certificate of limited partnership. Under Section 204, any general  
13 partner may execute that amendment.

14                   Under both RUPA and Re-RULPA previously documented restrictions on authority  
15 remain in effect.

16                   Subsection (b)(2) -- Source: the second paragraph of RUPA § 805(b). For two reasons  
17 the Reporter prefers the reformulation provided below. First, the full import of RUPA's language  
18 comes clear only with reference to Comment 2 to RUPA § 805 (see especially the second  
19 paragraph, third sentence [beginning "In effect . . ."]). The reformulation puts the sense of that  
20 Comment into the statutory text. Second, the reformulation more closely dovetails Re-RULPA's  
21 use of the certificate of limited partnership as the repository of statements expressing and  
22 limiting general partner authority. The reformulation would read as follows:

23                   operates as a statement, made pursuant to Section 201(b), limiting to  
24 circumstances appropriate for winding up the limited partnership business the  
25 authority of each general partner to execute an instrument transferring real  
26 property held in the name of the limited partnership.

27                   Subsection (c) -- Source: RUPA § 805(c). At its October, 1998 meeting, the Drafting  
28 Committee decided to make this referred-to amendment permissive rather than mandatory.

29                   Subsection (d) -- Source: RUPA § 805(d). At its October, 1998 meeting, the Drafting  
30 Committee decided to make the referred-to amendment permissive rather than mandatory.

31                   **SECTION 803A-2. GENERAL PARTNER'S LIABILITY TO OTHER GENERAL**

1 **PARTNERS AFTER DISSOLUTION.**

2 (a) Except as otherwise provided in subsection (b) and Section 403C, after  
3 dissolution a general partner is liable to the other general partners for the general partner's share  
4 of any partnership liability incurred under Section 803A.

5 (b) A general partner who, with knowledge of the dissolution, incurs a limited  
6 partnership liability under Section 803A(a) by an act that is not appropriate for winding up the  
7 partnership business is liable to the limited partnership for any damage caused to the limited  
8 partnership arising from the liability.

9 **Comment**

10 Source: RUPA § 806. This section was new in Draft #2. Draft #1 included RUPA §  
11 806(b) as part of Section 802 and omitted RUPA § 806(a) as unnecessary. (A limited partnership  
12 remains a limited partnership during winding up. The rules regarding loss sharing among  
13 general partners are not limited to a limited partnership's pre-dissolution phase.)

14 At its July, 1997 meeting, the Committee expressed a presumption in favor of RUPA  
15 provisions. Accordingly, Draft #2 incorporated RUPA § 806(a) and created a new section to  
16 parallel RUPA § 806. In order to maintain the temporary numbering system used in Draft #1, the  
17 new section was given an especially unusual, temporary section number.

18 Subsection (a) -- Source: RUPA § 806(a).

19 Subsection (b) -- Source: RUPA § 806(b). Strictly speaking, the general partner does not  
20 "incur a limited partnership liability." The Reporter would therefore prefer "causes the limited  
21 partnership to incur a liability under . . ."

22 **SECTION 803B. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**  
23 **PARTNERSHIP.**

24 (a) A dissolved limited partnership may dispose of the known claims against it by  
25 following the procedure described in this section.

26 (b) A dissolved limited partnership shall notify its known claimants in writing of

1 the dissolution. The notice must:

2 (1) specify the information required to be included in a claim;

3 (2) provide a mailing address where the claim is to be sent;

4 (3) state the deadline for receipt of the claim, which may not be less than  
5 120 days after the date the written notice is received by the claimant;

6 (4) state that the claim will be barred if not received by the deadline; and

7 (5) unless the limited partnership has been a limited liability limited  
8 partnership throughout its existence, state that the barring of a claim against the limited  
9 partnership will also bar any corresponding claim against any present or dissociated general  
10 partner which is based on Section 403C.

11 (c) A claim against a dissolved limited partnership is barred if the requirements of  
12 subsection (b) are met, and:

13 (1) the claim is not received by the specified deadline; or

14 (2) in the case of a claim that is timely received but rejected by the  
15 dissolved limited partnership, the claimant does not commence a proceeding to enforce the claim  
16 against the limited partnership within 90 days after the receipt of the notice of the rejection.

17 (d) For purposes of this section, "claim" does not include a contingent liability or  
18 a claim based on an event occurring after the effective date of dissolution.

### 19 **Comment**

20 \_\_\_\_\_ If this draft did not allow for LLLPs, Sections 803B and 803C would probably be  
21 unnecessary. The sections seem warranted, however, because many limited partnerships will be  
22 fully-shielded.

23 ULLCA lifted its provisions on this topic virtually verbatim from the RMBCA. This  
24 draft takes the same approach, making a few stylistic changes plus a few substantive additions



necessitated by the personal liability of general partners in an ordinary (i.e., non-LLLP) limited partnership.

Section 803B is derived from ULLCA § 807 and RMBCA § 14.06.

Subsection (b)(5) -- This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

Subsection (c)(2) -- The phrase "against the limited partnership" is added to make clear that bringing a claim against an allegedly liable present or dissociated general partner does not save a claim against the limited partnership.

**SECTION 803C. OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.**

(a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited partnership's principal office is located or, if none in this State, in which the office required by Section 104(a) is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent;

(3) state that a claim against the limited partnership is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice; and

(4) unless the limited partnership has been a limited liability limited

1 partnership throughout its existence, state that the barring of a claim against the limited  
2 partnership will also bar any corresponding claim against any present or dissociated general  
3 partner which is based on Section 403C.

4 (c) If a dissolved limited partnership publishes a notice in accordance with  
5 subsection (b), the claim of each of the following claimants is barred unless the claimant  
6 commences a proceeding to enforce the claim against the dissolved limited partnership within  
7 five years after the publication date of the notice:

8 (1) a claimant who did not receive written notice under Section 803B;

9 (2) a claimant whose claim was timely sent to the dissolved limited  
10 partnership but not acted on; and

11 (3) a claimant whose claim is contingent or based on an event occurring  
12 after the effective date of dissolution.

13 (d) A claim not barred under this section may be enforced:

14 (1) against the dissolved limited partnership, to the extent of its  
15 undistributed assets;

16 (2) if the assets have been distributed in liquidation, against a partner or  
17 transferee to the extent of that person's proportionate share of the claim or the limited  
18 partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a  
19 person's total liability for all claims under this paragraph may not exceed the total amount of  
20 assets distributed to the person as part of the winding up of the dissolved limited partnership.

21 (3) against any person liable on the claim under Section 403C.

22 **Comment**

Derived from ULLCA § 808 and RMBCA § 14.07.

Subsection (b)(4) -- This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

Subsection (d)(2) -- This paragraph states a claim limitation, which has several elements.

- As to any one claim under this paragraph, a person's liability can exceed neither:
  - ~ the total amount the person received as a liquidating distribution, nor
  - ~ the portion of the total claim equal to the portion of the limited partnership's assets the person received in the liquidating distribution.
- As to all claims under this paragraph, a person's aggregate liability cannot exceed the total amount the person received as a liquidating distribution.

The paragraph is quite complex, and variations among ULLCA, RMBCA and Re-RULPA are best indicated through notes, as follow:

(2) if the assets have been distributed in liquidation, against a partner<sup>A</sup> or transferee<sup>B</sup> to the extent of that person's proportionate<sup>C</sup> share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph<sup>D</sup> may not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership.<sup>E</sup>

<sup>A</sup> Arguably the reference should be "dissociated" or "former" partner, since the termination of a limited partnership ends partner status, but ULLCA uses "members" and RMBCA uses "shareholders."

<sup>B</sup> ULLCA § 808(d)(2) does not include transferees.

<sup>C</sup> RMBCA § 14.07(d)(2) uses "pro rata." ULLCA § 808(d)(2) uses "proportionate."

<sup>D</sup> RMBCA and ULLCA refer to "this section." In light of paragraph (3), that reference is overbroad for Re-RULPA.

<sup>E</sup> This draft adds the concluding phrase ("as part of the winding up of the dissolved limited partnership") to emphasize that the "clawback" relates only to liquidating distributions.

Subsection (d)(3) -- The referenced section provides for personal liability of general partners in an ordinary limited partnership.

**SECTION 803D. EFFECT OF CLAIMS BAR ON PERSONAL LIABILITY OF PARTNERS AND DISSOCIATED PARTNERS.**

Version #1 -- If Section 803B or 803C bars a claim against a dissolved limited partnership, any  
corresponding claim under Section 403C is also barred.

Version #2 -- No person is liable under Section 403C on account of any obligation of a limited partnership with regard to which Section 803B or 803C has barred a claim.

### Comment

This Section essentially requires a person to preserve its claim against the limited partnership in order to preserve a vicarious liability claim against the general partners. This requirement is arguably inconsistent with Section 403C-2(e) (requiring claimants generally to exhaust limited partnership resources before pursuing a general partner but allowing some exceptions, most notably when the limited partnership is bankrupt). It might seem more consistent to specify circumstances in which a claimant could preserve its claim against a current or former general partner by proceeding against that partner without having to proceed against the limited partnership.

For the following three reasons, however, this draft eschews that approach. First, that approach would add complexity to an already complex series of sections. Second, if one dissociated or present general partner remains at risk, the other dissociated or current partners should have some means of learning of that risk. (They could be at risk by way of a claim for contribution or indemnification.) A proceeding against the limited partnership is a good (albeit imperfect) way of bringing the ongoing risk to the attention of all current and former general partners. Third, futility is the essential rationale for the exceptions provided by Section 403C-2(e) to the exhaustion requirement. That is, there is no reason to require exhaustion when even extensive efforts to collect from the limited partnership are destined to be futile. That rationale does not apply here, because a simple, discrete act (i.e., the commencement of the proceeding against the limited partnership) accomplishes the desired result -- i.e., preventing the bar.

**SECTION 803E. GROUNDS FOR ADMINISTRATIVE DISSOLUTION.** The

[Secretary of State] may commence a proceeding to dissolve a limited partnership

administratively if the limited partnership does not:

(1) pay any fees, taxes, or penalties imposed by this [Act] or other law within 60 days after they are due; or

(2) deliver its annual report to the [Secretary of State] within 60 days after it is

due.

### Comment

Source: ULLCA § 809.

RMBCA includes three other grounds, omitted from ULLCA. See RMBCA § 14.20(3)-(5) (being without a registered agent or in-state office for 60 days or more; failing for 60 days or more to notify Secretary of State of certain changes in registered agent or in-state office; expiration of period of duration specified in articles of incorporation). Bert Black, the representative of the International Association of Corporation Administrators, suggests that "there needs to be some 'stick' to get the limited partnership to appoint a new agent" when the old agent resigns. He suggests administrative dissolution as that stick.

**SECTION 803F. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE**  
**DISSOLUTION.**

(a) If the [Secretary of State] determines that a ground exists for administratively dissolving a limited partnership, the [Secretary of State] shall enter a record of the determination and serve the limited partnership with a copy of the record.

(b) If within 60 days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of

1 State] shall administratively dissolve the limited partnership by signing a statement of dissolution  
2 that recites the grounds for dissolution and its effective date. The [Secretary of State] shall file  
3 the original of the statement and serve the limited partnership with a copy of the statement.

4 (c) A limited partnership administratively dissolved continues its existence but  
5 may carry on only business necessary to wind up and liquidate its business and affairs under  
6 Section 803 and to notify claimants under Sections 803B and 803C.

7 (d) The administrative dissolution of a limited partnership does not terminate the  
8 authority of its agent for service of process.

9 **Comment**

10 Source: ULLCA § 810, which closely follows RMBCA § 14.21.

11 Subsection (b) -- ULLCA § 810(b) locates the "within" phrase in the middle of the  
12 sentence. The change from ULLCA is for ease in reading. ULLCA § 801(b) refers to "service of  
13 the notice" rather than "service of the copy" -- an apparent residue from the RMBCA  
14 formulation. ULLCA § 810(b) refers to a "certificate of dissolution." As much as possible, Re-  
15 RULPA reserves the term "certificate" for the certificate of limited partnership.

16 Subsection (d) -- The same thing is true for non-administrative dissolution, but this draft  
17 does not say so. Query: should it?

18 **SECTION 803G. REINSTATEMENT FOLLOWING ADMINISTRATIVE**  
19 **DISSOLUTION.**

20 (a) A limited partnership administratively dissolved may apply to the [Secretary  
21 of State] for reinstatement within two years after the effective date of dissolution. The  
22 application must:

23 (1) recite the name of the limited partnership and the effective date of its  
24 administrative dissolution;

1 (2) state that the ground or grounds for dissolution either did not exist or  
2 have been eliminated;

3 (3) state that the limited partnership's name satisfies the requirements of  
4 Section 102; and

5 (4) contain a certified statement from the [taxing authority] reciting that all  
6 taxes owed by the limited partnership have been paid.

7 (b) If the [Secretary of State] determines that the application contains the  
8 information required by subsection (a) and that the information is correct, the [Secretary of State]  
9 shall cancel the statement of dissolution and prepare a statement of reinstatement that recites this  
10 determination and the effective date of reinstatement, file the original of the statement of  
11 reinstatement, and serve the limited partnership with a copy.

12 (c) When reinstatement is effective, it relates back to and takes effect as of the  
13 effective date of the administrative dissolution and the limited partnership may resume its  
14 business as if the administrative dissolution had never occurred.

#### 15 **Comment**

16 Source: ULLCA § 811, which closely follows RMBCA § 14.22.

17 Subsection (a)(2) -- ULLCA § 811(a)(3) refers only to "ground." RMBCA § 14.22(a)(2)  
18 refers to "ground or grounds." The ULLCA version may reflect an oversight, since that version  
19 uses "have" -- i.e., "the ground for dissolution either did not exist or have [sic] been eliminated."

20 Subsection (b) -- ULLCA § 811(b) refers to "certificate of reinstatement." Re-RULPA  
21 seeks to confine the term "certificate" to the certificate of limited partnership.

#### 22 **SECTION 803H. APPEAL FROM DENIAL OF REINSTATEMENT.**

23 (a) If the [Secretary of State] denies a limited partnership's application for

1 reinstatement following administrative dissolution, the [Secretary of State] shall serve the limited  
2 partnership with a record that explains the reason or reasons for denial.

3 (b) The limited partnership may appeal the denial of reinstatement to the [name  
4 appropriate] court within 30 days after service of the notice of denial is perfected. The limited  
5 partnership appeals by petitioning the court to set aside the dissolution and attaching to the  
6 petition copies of the [Secretary of State's] statement of dissolution, the company's application  
7 for reinstatement, and the [Secretary of State's] notice of denial.

8 (c) The court may summarily order the [Secretary of State] to reinstate the  
9 dissolved limited partnership or may take other action the court considers appropriate.

10 (d) The court's final decision may be appealed as in other civil proceedings.

#### 11 **Comment**

12 Source: ULLCA § 812. Drafts ## 1 and 2 omitted any parallel provision to ULLCA §  
13 812 on the theory that, absent good reason to the contrary, a State's generally applicable  
14 provisions for appealing the actions of an administrative agency should apply to the Secretary of  
15 State's denial of reinstatement. Consistent with instructions to follow RUPA/ULLCA, Draft #3  
16 included an analog to ULLCA § 812.

#### 17 **SECTION 804. SETTLING OF ACCOUNTS AND DISTRIBUTION OF ASSETS.**

18 ~~Upon the winding up of a limited partnership, the assets shall be distributed as follows:~~

19 ~~(1) to creditors, including partners who are creditors, to the extent permitted by~~  
20 ~~law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to~~  
21 ~~partners under Section 601 or 604;~~

22 ~~(2) except as provided in the partnership agreement, to partners and former~~  
23 ~~partners in satisfaction of liabilities for distributions under Section 601 or 604; and~~



1                   ~~(3) except as provided in the partnership agreement, to partners first for the return~~  
2 ~~of their contributions and secondly respecting their partnership interests, in the proportions in~~  
3 ~~which the partners share in distributions.~~

4                   (a) In winding up a limited partnership's business, the assets of the limited  
5 partnership, including the contributions required by this section, must be applied to discharge its  
6 obligations to creditors, including, to the extent permitted by law, partners who are creditors.  
7 Any surplus must be applied to pay in cash the net amount distributable to partners and  
8 transferees in accordance with subsection (b).

9                   (b) Any surplus existing under subsection (a) shall be distributed first as a return  
10 of all contributions that have not previously been returned and second as a distribution of profits  
11 allocated under Section 504. If the surplus does not suffice to return all contributions, the  
12 surplus shall be allocated in proportion to the unreturned contributions.

13                   (c) If the limited partnership's assets are insufficient to discharge all its  
14 obligations under section (a), then with respect to each undischarged obligation incurred when  
15 the limited partnership was not a limited liability limited partnership:

16                   (1) each person who was a general partner when the obligation was  
17 incurred and who has not been released from that obligation under Section 602D shall contribute  
18 to the limited partnership for the purpose of enabling the limited partnership to discharge that  
19 obligation and the contribution due from each of those persons shall be in proportion to the share  
20 of limited partnership losses in effect for each of those persons when the obligation was incurred;

21                   (2) if a person fails to contribute the full amount required under paragraph  
22 (1) with respect to an undischarged limited partnership obligation, the other persons required to

1 contribute by paragraph (1) on account of that obligation shall contribute the additional amount  
2 necessary to discharge the obligation and the additional contribution due from each of those other  
3 persons shall be in proportion to the share of limited partnership losses in effect for each of those  
4 other persons when the obligation was incurred; and

5 \_\_\_\_\_ (3) if a person fails to make the additional contribution required by  
6 paragraph (2), further additional contributions shall be due and determined in the same manner as  
7 provided in that paragraph.

8 \_\_\_\_\_ (d) A person who makes an additional contribution under subsection (c)(2) or  
9 (c)(3) may recover from any person whose failure to contribute under subsection (c)(1) or (c)(2)  
10 necessitated the additional contribution. A person may not recover under this subsection more  
11 than the amount additionally contributed. A person's liability under this subsection shall not  
12 exceed the amount the person failed to contribute.

13 \_\_\_\_\_ (e) The estate of a deceased person is liable for the person's obligations under this  
14 Section.

15 \_\_\_\_\_ (f) An assignee for the benefit of creditors of a limited partnership or a partner, or  
16 a person appointed by a court to represent creditors of a limited partnership or a partner, may  
17 enforce a person's obligation to contribute under this Section.

#### 18 **Comment**

19 This Section has been substantially revised to accord with RUPA § 807. RUPA § 807(b)  
20 is omitted, however, because that provision rests on RUPA's concept of a partner's account.  
21 RUPA § 401(a). Re-RULPA does not adopt the "partner's account" approach.

22 Subsection (a) -- Source: RUPA § 807(a). A partner entitled to receive a distribution is a  
23 creditor. See Section 606. However, a partner is not a creditor with respect to any unreturned  
24 contribution.

1 N.b. -- this section does not require general partners to contribute so as to equalize losses  
2 among partners or to bring actual losses into accord with loss shares. Capital losses lay where  
3 they fall, just as with a corporation or an LLC.

4 The word "transferees" was added to the last sentence in Draft #3.

5 Subsection (b) -- This subsection differs substantially in form from RUPA § 807(b),  
6 because this draft does not specify the structure of each partner's "account." RUPA § 807(b)  
7 depends on RUPA § 401(a)'s concept of a partner's account.

8 Subsection (c) -- This draft's approach is more complex than RUPA's, because (i) this  
9 draft does not rely on the "partner's account" concept, and (ii) does provide for contributions  
10 from dissociated general partners. RUPA does not need the latter provision, because in the  
11 default mode the buy-out price of a dissociated RUPA partner reflects any liabilities outstanding  
12 at the time of dissociation. See RUPA § 701(b).

13 Subsection (e) -- Derived from RUPA § 807(e), but query: why is this provision  
14 necessary? Is there something in other law that would excuse or release the estate? In any event,  
15 RUPA's formulation has been changed to include all obligations under this Section; i.e., not only  
16 a person's obligation to contribute to the limited partnership but also the liability of under-  
17 contributors to over-contributors.

18 **FORMER SECTION 805 (TERMINATION) HAS BEEN SUBSUMED INTO SECTION**  
19 **203.**

20 **[revisions to Article 9 are reserved pending the Committee's decision on the RULPA "look**  
21 **and feel" issue]**

## 22 **ARTICLE 9**

### 23 **FOREIGN LIMITED PARTNERSHIPS**

24 **SECTION 901. LAW GOVERNING.** Subject to the Constitution of this State, (i) the  
25 laws of the state under which a foreign limited partnership is organized govern its organization  
26 and internal affairs and the liability of its limited partners, and (ii) a foreign limited partnership  
27 may not be denied registration by reason of any difference between those laws and the laws of

1     this State.

2             **SECTION 902. REGISTRATION.** Before transacting business in this State, a foreign  
3     limited partnership shall register with the Secretary of State. In order to register, a foreign  
4     limited partnership shall submit to the Secretary of State, in duplicate, an application for  
5     registration as a foreign limited partnership, signed and sworn to by a general partner and setting  
6     forth:

7                     (1) the name of the foreign limited partnership and, if different, the name under  
8     which it proposes to register and transact business in this State;

9                     (2) the State and date of its formation;

10                    (3) the name and address of any agent for service of process on the foreign limited  
11     partnership whom the foreign limited partnership elects to appoint; the agent must be an  
12     individual resident of this State, a domestic corporation, or a foreign corporation having a place  
13     of business in, and authorized to do business in, this State;

14                    (4) a statement that the Secretary of State is appointed the agent of the foreign  
15     limited partnership for service of process if no agent has been appointed under paragraph (3) or,  
16     if appointed, the agent's authority has been revoked or if the agent cannot be found or served with  
17     the exercise of reasonable diligence;

18                    (5) the address of the office required to be maintained in the state of its  
19     organization by the laws of that state or, if not so required, of the principal office of the foreign  
20     limited partnership;

21                    (6) the name and business address of each general partner; and

22                    (7) the address of the office at which is kept a list of the names and addresses of

1 the limited partners and their capital contributions, together with an undertaking by the foreign  
2 limited partnership to keep those records until the foreign limited partnership's registration in this  
3 State is cancelled or withdrawn.

#### 4 **SECTION 903. ISSUANCE OF REGISTRATION.**

5 (a) If the Secretary of State finds that an application for registration conforms to  
6 law and all requisite fees have been paid, he [or she] shall:

7 (1) endorse on the application the word "Filed," and the month, day and  
8 year of the filing thereof;

9 (2) file in his [or her] office a duplicate original of the application; and

10 (3) issue a certificate of registration to transact business in this State.

11 (b) The certificate of registration, together with a duplicate original of the  
12 application, shall be returned to the person who filed the application or his [or her]  
13 representative.

14 **SECTION 904. NAME.** A foreign limited partnership may register with the Secretary  
15 of State under any name, whether or not it is the name under which it is registered in its state of  
16 organization, that includes without abbreviation the words "limited partnership" and that could  
17 be registered by a domestic limited partnership.

18 **SECTION 905. CHANGES AND AMENDMENTS.** If any statement in the  
19 application for registration of a foreign limited partnership was false when made or any

1 arrangements or other facts described have changed, making the application inaccurate in any  
2 respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a  
3 certificate, signed and sworn to by a general partner, correcting such statement.

4 **SECTION 906. CANCELLATION OF REGISTRATION.** A foreign limited  
5 partnership may cancel its registration by filing with the Secretary of State a certificate of  
6 cancellation signed and sworn to by a general partner. A cancellation does not terminate the  
7 authority of the Secretary of State to accept service of process on the foreign limited partnership  
8 with respect to [claims for relief] [causes of action] arising out of the transactions of business in  
9 this State.

10 **SECTION 907. TRANSACTION OF BUSINESS WITHOUT REGISTRATION.**

11 (a) A foreign limited partnership transacting business in this State may not  
12 maintain any action, suit, or proceeding in any court of this State until it has registered in this  
13 State.

14 (b) The failure of a foreign limited partnership to register in this State does not  
15 impair the validity of any contract or act of the foreign limited partnership or prevent the foreign  
16 limited partnership from defending any action, suit, or proceeding in any court of this State.

17 (c) A limited partner of a foreign limited partnership is not liable as a general  
18 partner of the foreign limited partnership solely by reason of having transacted business in this  
19 State without registration.

20 (d) A foreign limited partnership, by transacting business in this State without

1 registration, appoints the Secretary of State as its agent for service of process with respect to  
2 [claims for relief] [causes of action] arising out of the transaction of business in this State.

3 **SECTION 908. ACTION BY [APPROPRIATE OFFICIAL].** The [designate the  
4 appropriate official] may bring an action to restrain a foreign limited partnership from transacting  
5 business in this State in violation of this Article.

## 6 **ARTICLE 10**

### 7 **DERIVATIVE ACTIONS**

#### 8 **Comment**

9 The following Article shows suggested changes intended to modernize RULPA's  
10 language. These changes would cause Re-RULPA to deviate from ULLCA, because ULLCA  
11 follows very closely the current language of RULPA.

12 The proposed changes are essentially stylistic, and the Drafting Committee may wish to  
13 consider whether the changes improve the Article's readability. Or, the Committee may simply  
14 decide to adhere to ULLCA. In that case, re-drafting Article 10 will be quick and simple and  
15 involve merely "cutting and pasting."

16 In deciding whether even to consider the proposed changes, the Committee should be  
17 aware that, according to the Reporter for ULLCA, the ULLCA drafting committee adopted  
18 RULPA's language essentially uncritically and gave no substantial thought to modernizing that  
19 language. Article 10 first appeared in the 1976 version of RULPA and was little changed by the  
20 1985 amendments.

21 In any event, the Committee should review Section 1005, which is taken in part from  
22 RUPA and includes some new material relating to the distinction between direct and derivative  
23 claims.

24 **SECTION 1001. RIGHT OF ACTION.** A limited partner may bring ~~an~~ a derivative  
25 action ~~in the~~ to enforce a right of a limited partnership ~~to recover a judgment in its favor if~~

1 ~~general partners with authority to do so have refused to bring the action or if an effort to cause~~  
2 ~~those general partners to bring the action is not likely to succeed if:~~

3 (1) the limited partner first makes a demand on the general partners, requesting  
4 that they cause the limited partnership to bring an action to enforce the right, and the general  
5 partners do not bring the action within a reasonable time, or

6 (2) a demand will be futile.

### 7 **Comment**

8 The proposed revisions make three changes. First, the revised language uses the concept  
9 of demand futility, rather than the older, more oblique formulation that "an effort to cause those  
10 general partners [to act] is not likely to succeed." Second, the revised language refers to the  
11 general partners causing the limited partnership to bring suit, rather than the general partners  
12 themselves bringing suit. This change reflects this draft's pure entity approach.

13 The third difference concerns the addressees of the demand. The current provision refers  
14 to those "general partners with authority" to bring suit on behalf of the partnership, and ULLCA  
15 has a comparable formulation. See ULLCA § 1101. As in other instances, the word "authority"  
16 is confusing. Does it mean the right, the power, either, or both? In any event, in the context of a  
17 limited partnership the phrase "with authority" seems superfluous. A limited partner makes  
18 demand on the general partners collectively. If the partnership agreement allocates the decision  
19 on the demand to fewer than all of the general partners, that allocation affects the way in which  
20 the general partners process a demand, not the way in which the limited partner addresses the  
21 demand.

22 **SECTION 1002. PROPER PLAINTIFF.** In a derivative action, the plaintiff must be a  
23 limited partner at the time of bringing the action and:

24 (1) the plaintiff (i) must have been a partner at the time of the transaction of which  
25 he [or she] complains when the conduct giving rise to action occurred; or

26 (2) (ii) his [or her] the plaintiff's status as a partner must have devolved upon him  
27 [or her] the plaintiff by operation of law or pursuant to the terms of the partnership agreement  
28 from a person who was a partner at the time of the transaction conduct.



1 **Comment**

2 Changes to this section are either necessary to conform to the proposed revisions to  
3 Section 1001 or purely stylistic. In the first sentence, adding the word "limited" merely makes  
4 explicit a qualification that follows from the previous section. Both currently in RULPA and in  
5 this draft, Section 1001 refers only to derivative actions by limited partners. A person who is  
6 both a limited partner and a general partner will satisfy this requirement. See Section 404  
7 (stating that a person who is both a general and a limited partner has the rights pertaining to each  
8 status).

9 Paragraph (1) -- Here the broader category of "partner" is appropriate, because a  
10 derivative suit may be brought by a person who was a general partner when the underlying  
11 events occurred and a limited partner when the suit is brought. The change in status could occur  
12 under a provision of the partnership agreement. For example, the partnership agreement might  
13 provide that, in specified circumstances, a person dissociated as a general partner becomes a  
14 limited partner rather than a mere transferee.

15 There are two reasons for change from "at the time of the transaction of which he [or she]  
16 complains" to "when the conduct giving rise to action occurred." The change eliminates the "his  
17 [or her]" formulation and excludes the narrowing connotation associated with "transaction."

18 Neither RULPA nor this draft (nor ULLCA) expressly require a derivative plaintiff to be a proper  
19 representative of other owners.

20 **SECTION 1003. PLEADING.** In a derivative action, the complaint shall ~~set forth~~ state  
21 with particularity ~~the effort of the plaintiff to secure initiation of the action by a general partner~~  
22 ~~or the reasons for not making the effort;~~

23 (1) the date and content of plaintiff's demand and the general partners' response to  
24 the demand, or

25 (2) why demand is excused as futile.

26 **Comment**

27 Changes to this section are either necessary to conform to the proposed revisions to  
28 Section 1001 or purely stylistic.

29 **SECTION 1004. PROCEEDS AND EXPENSES.** ~~If a derivative action is successful,~~

1 ~~in whole or in part, or if anything is received by the plaintiff as a result of a judgment,~~  
2 ~~compromise or settlement of an action or claim, the court may award the plaintiff reasonable~~  
3 ~~expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited~~  
4 ~~partnership the remainder of those proceeds received by him [or her].~~

5 (a) Subject to subsection (b):

6 (1) any proceeds or other benefits of a derivative action, whether by  
7 judgment, compromise, or settlement, belong to the limited partnership and not to the derivative  
8 plaintiff;

9 (2) if the derivative plaintiff receives any of those proceeds, the derivative  
10 plaintiff shall immediately remit them to the limited partnership.

11 (b) If a derivative action is successful in whole or in part, the court may award the  
12 plaintiff reasonable expenses, including reasonable attorney's fees.

### 13 **Comment**

14 This Section is restated to improve style and to make explicit propositions that are  
15 implied in the current language.

16 Caption -- The phrase "PROCEEDS AND" is new in the caption, but that subject matter  
17 has been part of this section since RULPA was first promulgated.

18 Subsection (a)(1) -- "Compromise" and "settlement" seem to refer to the same category  
19 of events. If so, one should be deleted. Neither the proposed nor current language addresses a  
20 court's equitable power to order a direct recovery for a derivative plaintiff.

### 21 **SECTION 1005. DIRECT ACTIONS BY PARTNERS.**

22 (a) Subject to subsection (b), a partner may maintain a direct action against the  
23 partnership or another partner for legal or equitable relief, with or without an accounting as to  
24 partnership business, to:

1 (1) enforce the partner's rights under the partnership agreement;  
2 (2) enforce the partner's rights under this [Act]; or  
3 (3) enforce the rights and otherwise protect the interests of the partner,  
4 including rights and interests arising independently of the partnership relationship.

5 (b) A partner bringing a direct claim under this section must plead and prove an  
6 actual or threatened injury that is not solely the result of an injury suffered or threatened to be  
7 suffered by the limited partnership.

8 (c) The accrual of, and any time limitation on, a right of action for a remedy  
9 under this section is governed by other law. A right to an accounting upon a dissolution and  
10 winding up does not revive a claim barred by law.

#### 11 **Comments**

12 This Section is derived from RUPA § 405 but omits RUPA § 405(a). That subsection  
13 provides: "A partnership may maintain an action against a partner for a breach of the partnership  
14 agreement, or for the violation of a duty to the partnership, causing harm to the partnership."  
15 The provision makes sense but clearly does not belong in Article 10. Once the Committee has  
16 decided the RULPA "look and feel" question, the next draft will insert RUPA § 405(a) in an  
17 appropriate location.

18 Subsection (a) -- Derived from RUPA § 405(b). RUPA 405(b) does not include the word  
19 "direct" to modify "action."

20 Subsection (a)(2) -- RUPA § 405(b)(2) includes a non-exhaustive list of those rights. The  
21 Comment does not explain why some rights warrant special mention.

22 Subsection (b) -- In ordinary contractual situations it is axiomatic that each party to a  
23 contract has standing to sue for breach of that contract. Within a limited partnership, however,  
24 different circumstances may exist. For instance, if the partnership agreement recites or  
25 establishes the general partners' duties as managers of the enterprise, breach of those duties will  
26 create a classic derivative claim. The fact that the partnership agreement incorporates those  
27 duties does not transmute the claim into a direct one. Thus, a partner does not have a direct  
28 claim against another partner merely because the other partner has breached the partnership  
29 agreement. Likewise a partner's violation of this Act does not automatically create a direct claim  
30 for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be

1 able to show a harm that occurs independently of the harm caused or threatened to be caused to  
2 the limited partnership.

3 The reference to "threatened" harm is intended to encompass claims for injunctive relief  
4 and does not relax standards for proving injury.

5 This provision has no analog in either RUPA or ULLCA.

6 Subsection (c) -- Source: RUPA § 405(c).

## 7 **CONVERSIONS**

8 **The question of conversions presents some unusual drafting and policy questions**  
9 **that relate particularly to existing uniform laws (i.e., RUPA and ULLCA) and to the**  
10 **potential overlap and redundancy among those laws. Existing uniform laws already**  
11 **provide for the conversion of:**

- 12 • **limited partnerships into general partnerships (RUPA, § 903),**
- 13 • **general partnerships into limited partnerships (RUPA, § 902), and**
- 14 • **general and limited partnerships into limited liability companies (ULLCA § 902).**

15 **Neither RUPA nor ULLCA provide for the conversion of:**

- 16 • **limited liability companies into any form of partnership, or**
- 17 • **any form of partnership or limited liability company into a corporation.**

18 **Assuming that the reasons for those omissions remain in force, the Drafting**  
19 **Committee has at least the following options regarding conversion provisions:**

- 20 **1. include none, relying on the coverage provided by RUPA and ULLCA;**
- 21 **2. replicate the RUPA and ULLCA provisions as optional provisions in case a state**  
22 **has not adopted those provisions as parts of its general partnership and limited**  
23 **liability company acts;**
- 24 **3. propose a paradigm for determining which statute should contain which**  
25 **conversion provision (e.g., each statute to control conversion into the entity covered**  
26 **by the statute, but not conversion out of that organizational form) and, consistent**  
27 **with that paradigm, draft not only language for this Act but also appropriate**  
28 **amendments for RUPA and ULLCA;**
- 29 **4. move toward the "hub and spoke" notion by developing a conversion provision**

1 that applies generally to conversions of all the entity types it encompasses.

2 Even if the Drafting Committee decides to provide for additional types of  
3 conversions (e.g., from a limited liability company into a limited partnership, or from a  
4 corporation into a limited partnership), the options listed above remain relevant for the  
5 types of conversions already permitted.

6 This draft follows the first option, because:

7 a. if the Committee chooses the second option, RUPA and ULLCA provide the  
8 necessary language and that language can be easily incorporated into the next draft;

9 b. if the Committee chooses the third option, it is necessary to decide on the  
10 paradigm before undertaking detailed drafting; and

11 c. if the Committee chooses the fourth option, this draft's Article 11 (providing a  
12 somewhat generic approach to mergers) can be adapted to encompass conversions  
13 as well.

## 14 ARTICLE 11

### 15 MERGERS

#### 16 Comment

17 Following the Drafting Committee's instructions to follow RUPA/ULLCA, Draft #4  
18 jettisons the version of Article 11 that appeared in earlier drafts and substitutes a version taken  
19 essentially verbatim from Article 9 of ULLCA. This Article changes the ULLCA version only as  
20 is necessary to reflect Re-RULPA's focus on limited partnerships rather than limited liability  
21 companies.

#### 22 **SECTION 1101. DEFINITIONS.** In this [article]:

23 \_\_\_\_\_ (1) "Corporation" means a corporation under [the State Corporation Act], a  
24 predecessor law, or comparable law of another jurisdiction.

25 \_\_\_\_\_ (2) "General partner" means a partner in a partnership and a general partner in a  
26 limited partnership.

1                   (3) "General partnership" means a general partnership formed under [the State  
2 General Partnership Act], a predecessor law, or comparable law of another jurisdiction.

3                   (4) "Limited liability company" means a limited liability company organized  
4 under [the State Limited Liability Company Act], a predecessor law, or comparable law of  
5 another jurisdiction.

6                   (5) "Shareholder" means a shareholder in a corporation.

7                   **SECTION 1102. MERGER OF ENTITIES.**

8                   (a) Pursuant to a plan of merger approved under subsection (c), a limited  
9 partnership may be merged with or into one or more limited partnerships, foreign limited  
10 partnerships, limited liability companies, foreign limited liability companies, corporations,  
11 foreign corporations, partnerships, foreign partnerships, or other domestic or foreign entities.

12                   (b) A plan of merger must set forth:

13                               (1) the name of each entity that is a party to the merger;

14                               (2) the name of the surviving entity into which the other entities will  
15 merge;

16                               (3) the type of organization of the surviving entity;

17                               (4) the terms and conditions of the merger;

18                               (5) the manner and basis for converting the interests of each party to the  
19 merger into interests or obligations of the surviving entity, or into money or other property in  
20 whole or in part; and

21                               (6) the street address of the surviving entity's principal place of business.

1                   (c) A plan of merger must be approved:  
2                   (1) in the case of a limited partnership that is a party to the merger, by all  
3 of the partners or by a number or percentage of partners specified in the partnership agreement;  
4                   (2) in the case of a foreign limited partnership that is a party to the merger,  
5 by the vote required for approval of a merger by the law of the State or foreign jurisdiction in  
6 which the foreign limited partnership is formed;  
7                   (3) in the case of any other entities that are parties to the merger, by the  
8 vote required for approval of a merger by the law of this State or of the State or foreign  
9 jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the  
10 owners of interests in the entity.  
11                   (d) After a plan of merger is approved and before the merger takes effect, the plan  
12 may be amended or abandoned as provided in the plan.  
13                   (e) The merger is effective upon the filing of the articles of merger with the  
14 [Secretary of State], or at such later date as the articles may provide.

#### 15                   **Comment**

16                   Subsection (a) -- The repeated references to the domestic and foreign versions of entities  
17 may be unnecessary, because Section 1101 defines each of the particularly-mentioned entities to  
18 include both domestic and foreign versions. Moreover, the list itself maybe unnecessary since  
19 the general term "entity" is a defined term in both ULLCA and Re-RULPA.

20                   The mention of other domestic entities suffices to encompass mergers with domestic  
21 limited partnerships formed under a predecessor law of this State.

22                   The definition of "entity" could be read to permit a merger with a non-profit entity. See  
23 Section 101(6) (defining "entity" as "a person other than an individual") and 101(14) (defining  
24 "person" to include "any . . . legal . . . entity"). Both those definitions also appear in ULLCA.  
25 But see § 1102(b)(5) (requiring the plan of merger to deal with "the interests of each party to the  
26 merger" and thereby suggesting that to participate in a merger an entity must have ownership  
27 interests of some sort).

1        Subsection (b)(1) -- Referring to participants in a merger as "party to the merger" might  
2        create confusion in the case of triangular mergers. In triangular mergers, parent companies are  
3        often "parties" to the merger agreement.

4        Subsection (b)(5) -- The term "interests" presumably refers to ownership interests and  
5        does not extend, e.g., to bondholders and holders of security interests.

6        Subsection (c)(1) -- If the partnership agreement provides for approval with less-than-  
7        unanimous consent, a merger could impose on a partner -- over that partner's objection --  
8        significantly greater exposure to liability. For example, if a Re-RULPA limited partnership  
9        merges into a RULPA limited partnership, the limited partners will have a less effective shield.

10       Subsection (c)(2) -- ULLCA gives comparable special treatment to foreign LLCs,  
11       although the next paragraph seems sufficiently broad to make that special treatment unnecessary.  
12       Note also the reference to "vote" rather than "consent."

13       Subsection (c)(3) -- The language prescribing the approval mechanism might read more  
14       simply as follows:

15       the vote required for approval of a merger by the law of ~~this State or of the State~~  
16       ~~or foreign~~ the jurisdiction in which the entity is organized

## 17       **SECTION 1103. ARTICLES OF MERGER.**

18       (a) After approval of the plan of merger under Section 1102(c), unless the merger  
19       is abandoned under Section 1102(d), articles of merger must be signed on behalf of each limited  
20       partnership and other entity that is a party to the merger and delivered to the [Secretary of State]  
21       for filing. The articles must set forth:

22       (1) the name and jurisdiction of formation or organization of each of the  
23       limited partnerships and other entities that are party to the merger;

24       (2) for each limited partnership that is to merge, the date its certificate of  
25       limited partnership was filed with the [Secretary of State];

26       (3) that a plan of merger has been approved and signed by each limited  
27       partnership and other entity that is to merge;



1                                   (4) the name and address of the surviving limited partnership or other  
2 surviving entity;

3                                   (5) the effective date of the merger;

4                                   (6) if a limited partnership is the surviving entity, such changes in its  
5 certificate of limited partnership as are necessary by reason of the merger;

6                                   (7) if a party to a merger is a foreign limited partnership, the jurisdiction  
7 and date of filing of its initial certificate of limited partnership and the date when its application  
8 for authority was filed by the [Secretary of State] or, if an application has not been filed, a  
9 statement to that effect; and

10                                  (8) if the surviving entity is not a limited partnership formed under this  
11 [Act] or a predecessor law of this State, an agreement, with respect to any limited partnership  
12 that is a party to the merger and was formed under this [Act] or a predecessor law of this State:

13                                   (i) that, if that limited partnership was previously subject to suit in  
14 this State, the surviving entity may be served with process in this State and is subject to liability  
15 in any action or proceeding in this State for the enforcement of any liability or obligation of that  
16 limited partnership; and

17                                   (ii) for the enforcement, as provided in this [Act], of the right of  
18 partners of that limited partnership to receive payment for their interest against the surviving  
19 entity.

20                                  (b) If a foreign limited partnership is the surviving entity of a merger, it may not  
21 do business in this State until an application for that authority is filed with the [Secretary of  
22 State].

(c) The surviving limited partnership or other entity shall furnish a copy of the plan of merger, on request and without cost, to any partner of any limited partnership or any person holding an interest in any other entity that is to merge.

(d) Articles of merger operate as an amendment to the limited partnership's certificate of limited partnership.

### Comment

Subsection (a) -- Is it necessary to mention specially the entity that is the focus of this Act?

Subsection (a)(7) -- This subsection follows ULLCA in giving special treatment to the foreign version of the entity.

Subsection (a)(8) -- ULLCA lacks the reference to "predecessor law." Inserting that reference required revising the paragraph's structure.

Subsection (b) -- This subsection follows ULLCA in limiting the prohibition to the foreign version of the entity that is the focus of the Act.

**SECTION 1104. EFFECT OF MERGER.**

(a) When a merger takes effect:

(1) the separate existence of each limited partnership and other entity that  
is a party to the merger, other than the surviving entity, terminates;

(2) all property owned by each of the limited partnerships and other  
entities that are party to the merger vests in the surviving entity;

(3) all debts, liabilities, and other obligations of each limited partnership  
and other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited partnership or

1 other party to a merger may be continued as if the merger had not occurred or the surviving  
2 entity may be substituted as a party to the action or proceeding; and

3 (5) except as prohibited by other law, all the rights, privileges, immunities,  
4 powers, and purposes of every limited partnership and other entity that is a party to a merger vest  
5 in the surviving entity.

6 (b) The [Secretary of State] is an agent for service of process in an action or  
7 proceeding against the surviving foreign entity to enforce an obligation of any party to a merger  
8 if the surviving foreign entity fails to appoint or maintain an agent designated for service of  
9 process in this State or the agent for service of process cannot with reasonable diligence be found  
10 at the designated office. Upon receipt of process, the [Secretary of State] shall send a copy of the  
11 process by registered or certified mail, return receipt requested, to the surviving entity at the  
12 address set forth in the articles of merger. Service is effected under this subsection at the earliest  
13 of:

14 (1) the date the company receives the process, notice, or demand;

15 (2) the date shown on the return receipt, if signed on behalf of the  
16 company; or

17 (3) five days after its deposit in the mail, if mailed postpaid and correctly  
18 addressed.

19 (c) Unless otherwise agreed, a merger of a limited partnership that is not the  
20 surviving entity in the merger does not require the limited partnership to wind up its business  
21 under this [Act] or pay its liabilities and distribute its assets pursuant to this [Act].

22 (d) Articles of merger serve as a declaration of termination for a limited

1 partnership that is not the surviving entity in the merger.

2 (e) If the surviving entity is a limited partnership or a general partnership, a  
3 general partner of the surviving entity is liable for:

4 (1) all obligations of a party to the merger for which the partner was  
5 personally liable before the merger;

6 (2) all other obligations of the surviving entity incurred before the merger  
7 by a party to the merger, but those obligations may be satisfied only out of property of the entity;  
8 and

9 (3) all obligations of the surviving entity incurred after the merger takes  
10 effect, except those obligations incurred when the entity is a limited liability limited partnership  
11 or a limited liability partnership.

12 (f) If the obligations incurred before the merger by a party to the merger that was  
13 a general partnership or a limited partnership are not satisfied out of the property of the entity,  
14 the general partners of that party immediately before the effective date of the merger shall  
15 contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the  
16 manner provided in Section 804 or in the [General Partnership Act] of the jurisdiction in which  
17 the party was formed, as the case may be, as if the merged party were dissolved.

18 (g) A person who was a general partner of a party to a merger and who does not  
19 become a general partner of the surviving entity is dissociated as a general partner from the party,  
20 of which that person was a general partner, as of the date the merger takes effect. The surviving  
21 entity shall cause the person's interest as a general partner in the party to be purchased, if a  
22 statute specifically applicable to that person's interest so provides. The surviving entity is bound

1 under Section 602C or [Applicable Provision of General Partnership Act], as the case may be, by  
2 an act of a person dissociated as a general partner under this subsection, and the person is liable  
3 under Section 602D or [Applicable Provision of General Partnership Act], as the case may be, for  
4 transactions entered into by the surviving entity after the merger takes effect.

#### 5 **Comment**

6 This Article does not use ULLCA § 906(c), which states:

7 A member of the surviving limited liability company is liable for all obligations  
8 of a party to the merger for which the member was personally liable before the  
9 merger.

10 Instead, this Article uses RUPA § 906(c) and (d), which appear as subsections (e) and (f). This  
11 Article uses a variation of RUPA § 906(e), which appears as subsection (g).

12 Subsection (f) -- Does this subsection encompass a limited partnership formed under the  
13 law of another jurisdiction? Under a predecessor law of this State?

14 Subsection (g) -- Should this subsection also trigger the release provision of Section  
15 602D(d)?

16 **SECTION 1105. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an  
17 entity from being merged under other law.

18 **[revisions to current Article 11 are reserved for the next draft]**

### 19 **ARTICLE 11**

### 20 **MISCELLANEOUS**

21 **SECTION 1101. CONSTRUCTION AND APPLICATION.** This [Act] shall be so  
22 applied and construed to effectuate its general purpose to make uniform the law with respect to

1 the subject of this [Act] among states enacting it.

2 **SECTION 1102. SHORT TITLE.** This [Act] may be cited as the Uniform Limited  
3 Partnership Act.

4 **SECTION 1103. SEVERABILITY.** If any provision of this [Act] or its application to  
5 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
6 applications of the [Act] which can be given effect without the invalid provision or application,  
7 and to this end the provisions of this [Act] are severable.

8 **SECTION 1104. EFFECTIVE DATE, EXTENDED EFFECTIVE DATE AND**  
9 **REPEAL.** Except as set forth below, the effective date of this [Act] is \_\_\_\_\_ and the  
10 following acts [list existing limited partnership acts] are hereby repealed:

11 (1) The existing provisions for execution and filing of certificates of limited  
12 partnerships and amendments thereunder and cancellations thereof continue in effect until  
13 [specify time required to create central filing system], the extended effective date, and  
14 Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended  
15 effective date.

16 (2) Section 402, specifying the conditions under which a general partner ceases to  
17 be a member of a limited partnership, is not effective until the extended effective date, and the  
18 applicable provisions of existing law continue to govern until the extended effective date.

19 (3) Sections 501, 502 and 608 apply only to contributions and distributions made

1 after the effective date of this [Act].

2 (4) Section 704 applies only to assignments made after the effective date of this  
3 [Act].

4 (5) Article 9, dealing with registration of foreign limited partnerships, is not  
5 effective until the extended effective date.

6 (6) Unless otherwise agreed by the partners, the applicable provisions of existing  
7 law governing allocation of profits and losses (rather than the provisions of Section 503),  
8 distributions to a withdrawing partner (rather than the provisions of Section 604), and  
9 distribution of assets upon the winding up of a limited partnership (rather than the provisions of  
10 Section 804) govern limited partnerships formed before the effective date of this [Act].

11 **SECTION 1105. RULES FOR CASES NOT PROVIDED FOR IN THIS [ACT].** In  
12 any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.

13 **SECTION 1106. SAVINGS CLAUSE.** The repeal of any statutory provision by this  
14 [Act] does not impair, or otherwise affect, the organization or the continued existence of a  
15 limited partnership existing at the effective date of this [Act], nor does the repeal of any existing  
16 statutory provision by this [Act] impair any contract or affect any right accrued before the  
17 effective date of this [Act].