

D R A F T  
FOR DISCUSSION ONLY

**PROPOSED REVISIONS 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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April, 2001

**PROPOSED REVISIONS OF  
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WITH 1985 AMENDMENTS**

*WITH PREFATORY NOTE*

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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WITH 1985 AMENDMENTS**

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UNIFORM LIMITED PARTNERSHIP ACT (1976)  
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1                                   **PROPOSED REVISIONS OF**  
2                                   **UNIFORM LIMITED PARTNERSHIP ACT (1976)**  
3                                   **WITH 1985 AMENDMENTS**

4                                   **PREFATORY NOTE**

5           This draft incorporates decisions made by the Drafting Committee at its most recent  
6           meeting (St. Petersburg Beach; December, 2000) and also suggestions made by the  
7           Committee on Style at its January, 2001 meeting.

8           To highlight changes from the 2000 Annual Meeting Draft, additions are shown by  
9           underlining. Deletions are shown by ~~strike out~~.

10          Footnotes contain explanatory materials. Footnotes marked “[COS]” are from the  
11          Committee on Style. Other footnotes are by the Reporter.

12          Most footnotes raise points of style. A few raise substantive questions.

13                               **The Issue of LLLP Status**

14                 In the Reporter’s view, the biggest question facing the Drafting Committee is  
15                 whether a limited partnership formed under the new Act should automatically be a  
16                 limited liability limited partnership (“LLLP”). Since its very first draft, Re-RULPA  
17                 has permitted LLLPs. Under the early drafts, non-LLLP status was the “default  
18                 setting,” but a limited partnership could become a limited liability limited partnership  
19                 simply by including a one line statement in the certificate of limited partnership.

20                 In late 1999, the Drafting Committee decided tentatively to make LLLP status  
21                 the Act’s default setting. In Committee shorthand, this decision is referred to as “the  
22                 flip,” and footnotes to this Draft sometimes use that term.

23                 The Reporter believes that many of the Commissioners on the Drafting  
24                 Committee now favor making non-LLLP status the Act’s default setting. In  
25                 Committee shorthand, this position has been referred to as “the flop,” and footnotes  
26                 to this Draft sometimes use that term.



1                                   **PROPOSED REVISIONS OF**  
2                                   **UNIFORM LIMITED PARTNERSHIP ACT (1976)**  
3                                   **WITH 1985 AMENDMENTS**

4                                   **[ARTICLE] 1**  
5                                   **GENERAL PROVISIONS**

6                   **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Revised  
7                   Uniform Limited Partnership Act (20\_\_\_\_).<sup>1</sup>

8                   **SECTION 102. DEFINITIONS.** In this [Act]:

9                   (1) ~~“Business” means any lawful activity, whether or not carried on for~~  
10                  ~~profit.~~<sup>2</sup> “Authenticate” means:

11                                  (A) to sign; or

12                                  (B) to execute or otherwise adopt a symbol, or encrypt or similarly  
13                  process a record in whole or in part, with the present intent of the authenticating  
14                  person to identify the person and adopt or accept a record.<sup>3</sup>

---

<sup>1</sup>Although the Committee on Style did not object to "Revised," the late Judge Burdick did so on the floor of the 2000 Annual Meeting.

<sup>2</sup>At its St. Petersburg Beach meeting, the Drafting Committee decided to eschew the "Humpty Dumpty" approach to defining "business." This decision accords with several comments made from the floor at the 2000 Annual Meeting. As one result, the Act no longer needs "business" as a defined term.

<sup>3</sup>Most recent uniform acts dealing with transactions have replaced "sign" with "authenticate" and "writing" with "record." You have define[d] "record," but also define and use the term "sign." Given the preemptive force of E-Sign, 15 U.S.C. § 7001 et seq., you should use the term "authenticate" instead of "sign." The definition is taken verbatim from Revised U.C.C. Article 9. It includes "sign." [COS]

1           (2) “Certificate of limited partnership” means the certificate referred to in  
2     Section 201 and the certificate as amended or restated.

3           (3) “Contribution” means any benefit provided by a person to a limited  
4     partnership in order to become a partner or in the person’s capacity as a partner.

5           (4) “Debtor in bankruptcy” means a person that is the subject of:

6                 (A) an order for relief under Title 11 of the United States Code or a  
7     comparable order under a successor statute of general application; or

8                 (B) a comparable order under federal, state, or foreign law governing  
9     insolvency.

10          (5) “Designated office” means:

11                 (A) with respect to a limited partnership, the office that a limited  
12     partnership is required to designate and maintain under Section 114; and

13                 (B) with respect to a foreign limited partnership, its principal office.

14          (6) “Distribution” means a transfer of money or other property from a  
15     limited partnership to a partner in the partner’s capacity as a partner or to a  
16     transferee on account of a transferable interest owned by the transferee.

17          (7) “Domestic limited partnership” means a limited partnership formed  
18     under or governed by<sup>4</sup> this [Act]. The term includes a limited liability limited

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<sup>4</sup>The added language encompasses preexisting limited partnerships that either opt in or are dragged in under the Act’s transition provisions, as well as entities that convert to become domestic limited partnerships. (The latter are arguably formed under this Act, but the former are not.)

1 partnership. The term does not include a foreign limited partnership or foreign  
2 limited liability limited partnership.

3 ~~(8) “Entity” means a person other than an individual.~~<sup>5</sup>

4 ~~(9)~~ (8) “Foreign limited partnership” means a partnership formed under the  
5 laws of a jurisdiction other than this State and required by those laws to have ~~as~~  
6 ~~partners~~ one or more general partners and one or more limited partners. The term  
7 includes a foreign limited liability limited partnership.

8 ~~(10)~~ (9) “Foreign limited liability limited partnership” means a foreign  
9 limited partnership whose general partners ~~are from~~ have limited<sup>6</sup> liability for the  
10 obligations of the foreign limited partnership under a provision similar to Section  
11 404(c).

12 ~~(11)~~ (10) “General partner” means:

13 (A) with respect to a domestic<sup>7</sup> limited partnership, a person that:

---

<sup>5</sup>This definition is unnecessary since the dictionary definition excludes individuals. Moreover, it is circular since the definition of "person" includes "any other legal or commercial entity." [COS]

<sup>6</sup>COS suggested "are protected from liability". RUPA § 101(4), defining foreign limited liability partnerships, states: "'Foreign limited liability partnership' means a partnership that: (i) is formed under laws other than the laws of this State; and (ii) has the status of a limited liability partnership under those laws." The Reporter prefers using the phrase conventionally applied to owners benefitting from a liability shield – i.e., "limited liability".

<sup>7</sup>This Act has two defined terms with essentially the same meaning – limited partnership and domestic limited partnership. When a provision encompasses both domestic and foreign limited partnerships, the Act uses the term “domestic”. When a provision encompasses only domestic limited partnerships, the Act uses the term “limited partnership” without including the word “domestic.”

1                    ~~(i)~~ has been admitted to a limited partnership as a general partner  
2                    under Section 401; or  
3                    (ii) was a general partner in a limited partnership when that limited  
4                    partnership became subject to this [Act] under Section 1206(b) or (d);<sup>8</sup> and  
5                    (B) with respect to a foreign limited partnership, a person that has rights,  
6                    powers and obligations similar to those of a general partner in a domestic limited  
7                    partnership.  
8                    ~~(12)~~ (11) “Limited liability limited partnership” means a limited partnership  
9                    whose certificate of limited partnership ~~does not include a statement made pursuant~~  
10                   ~~to Section 404(b)~~ states that the limited partnership is a limited liability limited  
11                   partnership.<sup>9</sup>  
12                   ~~(13)~~ (12) “Limited partner” means:  
13                    (A) with respect to a domestic limited partnership, a person that  
14                    ~~(i)~~ has been admitted to a limited partnership as a limited partner  
15                    under Section 301; or

---

<sup>8</sup>Section 1206 provides for preexisting limited partnerships to opt or be dragged into this Act. Query whether, in light of this usage and Section 1206, the definition of “limited partnership” is too narrow. If so, we could create an additional definition for “preexisting limited partnership”.

<sup>9</sup>Having consulted severally with a majority of the Commissioners on the Drafting Committee, the Reporter believes that the Committee will vote to “flop” on the “flip” – i.e., to provide that, as a default rule, the general partner of a limited partnership is liable for the debts of the entity. If the Reporter’s prediction is wrong (not an unprecedented event), the changes indicated above (and elsewhere) will simply be removed.

1                   (ii) was a limited partner in a limited partnership when that limited  
2 partnership became subject to this [Act] under Section 1206(b) or (d);<sup>10</sup> and

3                   (B) with respect to a foreign limited partnership, a person that has rights,  
4 powers and obligations similar to those of a limited partner in a domestic limited  
5 partnership.

6                   ~~(14)~~ (13) “Limited partnership,” except in the phrases “foreign limited  
7 partnership” and “foreign limited liability limited partnership, means a domestic  
8 limited partnership.”<sup>11</sup>

9                   ~~(15)~~ “Ownership interest” means an owner’s proprietary interest in a  
10 ~~business organization.~~<sup>12</sup>

11                   ~~(16)~~ (14) “Partner” means a limited partner<sup>13</sup> or general partner.

12                   ~~(17)~~ (15) “Partnership agreement” means ~~a valid~~ the agreement, ~~written or~~  
13 ~~oral, in record form, or implied,~~ of the partners ~~as to~~ concerning the affairs of a

---

<sup>10</sup>Section 1206 provides for preexisting limited partnerships to opt or be dragged into this Act. For a query as to whether “limited partnership” is the proper term for this provision, see note 8.

<sup>11</sup>The word “domestic” generally means “organized under the laws of this state.” Until the drag in date, there will be limited partnerships that are domestic in that sense but outside the term as used in this Act. The Reporter recognizes the anomaly. See note 8.

<sup>12</sup>This term appears only in Article 11 and is therefore relocated to the list of special definitions for that Article.

<sup>13</sup>When a defined term, such as “limited partner,” is used, it is best to repeat the term in full. [COS]

1 limited partnership ~~and the conduct of its business~~ , including amendments to the  
2 agreement.<sup>14</sup>

3 ~~(18)~~ (16) “Person” means an individual, as well as a<sup>15</sup> corporation, business  
4 trust, estate, trust, partnership, limited liability company, association, joint venture,  
5 government, governmental subdivision, agency, or instrumentality, or any other  
6 legal or commercial entity.

7 ~~(19)~~ (17) “Principal office” means the office where the principal executive  
8 office of a domestic or foreign limited partnership is located, whether or not the  
9 office is located in this State.

10 ~~(20)~~ (18) “Record” means information that is inscribed on a tangible medium  
11 or that is stored in an electronic or other medium and is retrievable in perceivable  
12 form.

---

<sup>14</sup>Changes bring the definition into accord with RUPA, except that this provision uses “in record form” instead of “written.” Note that RULPA’s definition, like prior Drafts of Re-RULPA, does not encompass implied agreements. RULPA § 101(9) states:

“Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.”

RUPA 101(7) states:

“Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

<sup>15</sup>The added language is to separate “individual” from the long list that ends with the phrase “or any other . . . entity.” As the Committee on Style observed, “the dictionary definition [of entity] excludes individuals.” See note 5.

1           ~~(21)~~ (19) “Required ~~records~~ information” means the ~~records~~ information<sup>16</sup>  
2           that a limited partnership is required to maintain under Section ~~406~~ 111.

3           ~~(22)~~ “Sign” means to identify a record, whether in writing, electronically, or  
4           otherwise, by means of a signature, mark, or other symbol, with intent to  
5           authenticate the record.<sup>17</sup>

6           ~~(23)~~ (20) “State” means a State of the United States, the District of  
7           Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession  
8           subject to the jurisdiction of the United States.

9           ~~(24)~~ (21) “Transfer” includes an assignment, conveyance, deed, bill of sale,  
10          lease, mortgage, security interest, encumbrance, and gift, as well as a shift of rights  
11          by operation of law.<sup>18</sup>

12          ~~(25)~~ (22) “Transferable interest” means ~~a partner’s share of the profits and~~  
13          ~~losses of the limited partnership and~~<sup>19</sup> the partner’s right to receive distributions.

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<sup>16</sup>“Record” has always been a defined term in Re-RULPA, but prior drafts made little use of the term. In this Draft “record” is used frequently. It seems potentially confusing to continue to use “required records” as a defined term.

<sup>17</sup>Deleted at the suggestion of the Committee on Style, due to E-Sign. See footnote 3.

<sup>18</sup>The current language lists only voluntary transfers, which arguably implies that the defined term excludes involuntary transfers. That implication would substantially undermine section 702(a)(3). RUPA handles this issue in a Comment, but the Reporter prefers to address the issue in the statute itself.

<sup>19</sup>The Drafting Committee decided that the Act need not refer to allocation of profits and losses, because that allocation is meaningful only for tax purposes. The Annual Meeting Draft sought to remove all references to profits and losses.

1           ~~(26)~~ (23) “Transferee” means a person to which all or part of a transferable  
2           interest has been transferred, whether or not the transferor is a partner.

3           **SECTION 103. KNOWLEDGE AND NOTICE.**

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

5           (b) Except as otherwise provided in subsections (c) and (d), a person has  
6           notice of a fact if the person:

7                   (1) knows of it;

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

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

11           (c) Subject to subsection (d), a certificate of limited partnership on file in  
12           the [office of the Secretary of State] is notice that the partnership is a limited  
13           partnership and the persons designated in the certificate as general partners are  
14           general partners but is not notice of any other fact.

15           (d) A person has notice:

16                   (1) of another person’s dissociation as a general partner, 90 days after  
17           the effective date of an amendment to the certificate of limited partnership which  
18           states that the other person has dissociated or 90 days after the effective date of a  
19           statement of dissociation pertaining to that other person, whichever occurs first;



1                   (2) of a limited partnership’s dissolution, 90 days after the effective date  
2                   of an amendment to the certificate of limited partnership stating that the limited  
3                   partnership is dissolved;

4                   (3) of a limited partnership’s termination, 90 days after the effective date  
5                   of a statement of termination;

6                   (4) of a limited partnership’s conversion under [Article] 11 90 days after  
7                   the effective date of the articles of conversion; and

8                   (5) of a merger under [Article] 11, 90 days after the effective date of the  
9                   articles of merger.

10                  (e) A person notifies or gives a notification to another by taking steps  
11                  reasonably required to inform the other person in ordinary course, whether or not  
12                  the other person learns of it.

13                  (f) A person receives a notification when the notification:

14                         (1) comes to the person’s attention; or

15                         (2) is duly delivered at the person’s place of business<sup>20</sup> or at any other  
16                  place held out by the person as a place for receiving communications.

17                  (g) Except as otherwise provided in subsection (h), an entity knows, has  
18                  notice, or receives a notification of a fact<sup>21</sup> for purposes of a particular transaction

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<sup>20</sup>In the Reporter’s opinion, this use of “business” does not call for a defined term. In this context, the word has an established meaning and include a locus of regular activity of, for instance, a non–profit, non-entrepreneurial organization.

<sup>21</sup>Here and in subsection (h), the Committee on Style proposes to delete “receipt of notification”:

1       when the individual conducting the transaction for the entity respectively knows, has  
2       notice, or receives a notification of the fact, or in any event when the fact would  
3       have been brought to the individual’s attention if the entity had exercised reasonable  
4       diligence. An entity exercises reasonable diligence if it maintains reasonable routines  
5       for communicating significant information to the individual conducting the  
6       transaction for the entity and there is reasonable compliance with the routines.  
7       Reasonable diligence does not require an individual acting for the entity to  
8       communicate information unless the communication is part of the individual’s  
9       regular duties or the individual has reason to know of the transaction and that the  
10      transaction would be materially affected by the information.

11               (h) A general partner’s knowledge, notice, or receipt of a notification of a  
12      fact relating to the limited partnership is effective immediately as respectively  
13      knowledge by, notice to, or receipt of a notification by the limited partnership,  
14      except in the case of a fraud on the limited partnership committed by or with the  
15      consent of the general partner. A limited partner’s knowledge, notice, or receipt of

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“Notice” includes “receipt of notification.” Section 103(b)(2). Unless a distinction is made between the two types of notice—actual notice (“receipt of notification”) and constructive notice—as in your applicability section, Section 1206(d)(2), which requires receipt of notification, it is redundant and confusing to state both “notice” and “receipt of notification” when “notice” would suffice. *Cf.* NCCUSL DRAFTING RULE 12(h) (“Use the defined term whenever apt, not its definitional language.”)

The Reporter respectfully disagrees, because the attribution rules are intended to link each separate concept pertaining to the individual to (and only to) the same separate concept as applied to the entity. To make this pointer more clearly, the Reporter proposes adding the word “respectively”.

1 a notification of a fact relating to the limited partnership is not effective respectively  
2 as knowledge by, notice to, or receipt of a notification by the limited partnership.

3 **SECTION 104. NATURE, PURPOSE, POWERS AND DURATION OF**  
4 **ENTITY; ~~WHEN PARTNER PROPER PARTY.~~**<sup>22</sup>

5 (a) A limited partnership is an entity distinct from its partners and, subject to  
6 section 801, shall have at least one general and one limited partner.<sup>23</sup> A limited  
7 partnership remains the same entity regardless of whether its certificate of limited  
8 partnership includes or ceases to include a statement that the limited partnership is a  
9 limited liability limited partnership.<sup>24</sup>

10 (b) A limited partnership may be organized under this [Act] for any lawful  
11 purpose.<sup>25</sup> ~~A partner is not a proper party to a proceeding by or against a limited~~  
12 ~~partnership unless:~~

13 ~~———— (1) an object of the proceeding is to determine or enforce a partner's~~  
14 ~~right against or liability to the limited partnership;~~

---

<sup>22</sup>Most of the changes to this Section and Section 105 are relocations.

<sup>23</sup>The express requirement of one general and one limited partner is new. Early Drafts quite properly removed the requirement from the definition but neglected to express the requirement elsewhere.

<sup>24</sup>Relocated from Section 104(c).

<sup>25</sup>Relocated from Section 105(a).

1       ~~\_\_\_\_\_ (2) the proceeding includes a claim that the partner is personally liable~~  
2       ~~under Section 404 or 405 or on some basis not dependent on the partner's status as~~  
3       ~~partner; or~~  
4       ~~\_\_\_\_\_ (3) the partner is bringing a derivative action under [Article] 10.~~  
5       (c) A limited partnership has the same powers as an individual to do all  
6       things necessary or convenient to carry on its activities,<sup>26</sup> including the power to sue,  
7       be sued and defend in its own name and to maintain an action against a partner for  
8       harm caused to the limited partnership through a breach of the partnership  
9       agreement or violation of a duty to the partnership.<sup>27</sup> ~~A limited partnership remains~~  
10      ~~the same entity regardless of whether its certificate of limited partnership includes or~~  
11      ~~ceases to include a statement made under Section 404(b).~~<sup>28</sup>  
12      (d) A limited partnership has a perpetual duration.  
13

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<sup>26</sup>The 2000 Annual Meeting Draft referred in this context to “business” rather than “activities”.

<sup>27</sup>At its St. Petersburg Beach meeting, the Drafting Committee decided to eliminate as unnecessary a long list of specific powers. The reference to the power to sue and be sued is retained so that Section 110(b) can refer to that power as nonwaivable. The reference to maintaining an action against a partner is retained to establish that the limited partnership itself has standing to enforce the partnership agreement. The language pertaining to standing has been reordered for better readability.

<sup>28</sup>Relocated to Section 104(a).

1           **SECTION 105. PURPOSE AND POWERS WHEN PARTNER PROPER**

2           **PARTY.**<sup>29</sup> A partner is not a proper party to a proceeding by or against a limited  
3           partnership unless:

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

6                       (2) the proceeding includes a claim that the partner is personally liable  
7           under Section 404 or 405 or on some basis not dependent on the partner's status as  
8           partner; or

9                       (3) the partner is bringing a derivative action under [Article] 10.

10                      ~~(a) A limited partnership may be organized under this [Act] for any lawful~~  
11           ~~purpose.~~

12                      ~~(b) A limited partnership has the same powers as an individual to do all~~  
13           ~~things necessary or convenient to carry on its business, including the power to:~~

14                      ~~———— (1) sue and be sued and defend in its own name, including an action~~  
15           ~~against a partner for a breach of the partnership agreement, or for the violation of a~~  
16           ~~duty to the partnership, causing harm to the partnership;~~

17                      ~~———— (2) purchase, receive, lease, or otherwise acquire, and own, hold,~~  
18           ~~improve, use, and otherwise deal with real or personal property, or any legal or~~  
19           ~~equitable interest in property, wherever located;~~

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<sup>29</sup>The added materials are relocated from Section 104(b). The deleted materials have been relocated to Section 104.

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

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

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

11      ~~————— (6) lend money, invest and reinvest its money, and receive and hold real~~  
12      ~~and personal property as security for repayment;~~

13      ~~————— (7) be a promoter, partner, member, associate, or manager of any~~  
14      ~~partnership, joint venture, trust, or other entity;~~

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

17      ~~————— (9) appoint officers, employees, and agents of the limited partnership,~~  
18      ~~define their duties, fix their compensation, and lend them money and credit;~~

19      ~~————— (10) pay pensions and establish pension plans, pension trusts, profit~~  
20      ~~sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all~~  
21      ~~of its current or former partners, officers, employees, and agents;~~

1       ~~\_\_\_\_\_ (11) make donations for the public welfare or for charitable, scientific, or~~  
2       ~~educational purposes; and~~  
3       ~~\_\_\_\_\_ (12) make payments or donations, or do any other act, not inconsistent~~  
4       ~~with law, that furthers the business of the limited partnership.~~

5           **SECTION 106. GOVERNING LAW.** The law of this State governs relations  
6       among the partners of a limited partnership and between the partners and the limited  
7       partnership as well as ~~and~~ the liability of partners as partners for an obligation of a  
8       limited partnership.<sup>30</sup>

9  
10           **SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW.**

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

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

15

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<sup>30</sup>Without the phrase “as partners”, the statement is overbroad. For example, a partner’s guarantee of a limited partnership obligation might well be governed by the law of some other jurisdiction. The substitution of “as well as” for “and” is intended to (i) avoid the confusion wrought by the structure “A *and* B *and* C,” and (ii) better separate the *inter se* matters (“relations among partners and between the partners and the limited partnership”) from third party matters (“liability of partners as partners for an obligation of the limited partnership”).

1       **SECTION 108. NAME.**

2               (a) The name of a limited partnership may contain the name of any partner.

3       The name of a limited partnership that is not a limited liability limited partnership  
4       must contain “limited partnership” or the abbreviation “L.P.” or “LP” and must not  
5       contain “limited liability limited partnership” or the abbreviation “LLLP” or  
6       “L.L.L.P.”. ~~If the limited partnership’s certificate of limited partnership does not~~  
7       ~~contain a statement made pursuant to Section 404(b), the limited partnership’s name~~  
8       The name of a limited liability limited partnership must contain “limited liability  
9       limited partnership” or the abbreviation “LLLP” or “L.L.L.P.” and must not contain  
10       the abbreviation “L.P.” or “LP.”<sup>31</sup> ~~If the limited partnership’s certificate of limited~~  
11       ~~partnership does contain a statement made pursuant to Section 404(b), the limited~~  
12       ~~partnership’s name must contain “limited partnership” or the abbreviation “L.P.” or~~  
13       ~~“LP” and must not contain “limited liability limited partnership” or the abbreviation~~  
14       ~~“LLLP” or “L.L.L.P.”~~ Subject to Section 905, the same requirements apply to the  
15       name of a foreign limited partnership authorized to transact business in this State.<sup>32</sup>

16               (b) Unless authorized by subsections (c) and (d), the name of a limited  
17       partnership and, subject to Section 905, of a foreign limited partnership authorized  
18       to transact business in this State, must be distinguishable upon the records of the  
19       [Secretary of State] from:

---

<sup>31</sup>Query whether the following language should be added here: or the words  
“limited partnership” except as part of the phrase “limited liability limited partnership”

<sup>32</sup>Changes are for readability and to accommodate whatever decision the Drafting  
Committee makes on the flip/flop issue.



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

3                   (2) any name reserved or registered under Section 109 or 906 or [other  
4 state laws allowing the reservation or registration of business names, including  
5 fictitious name statutes].

6                   (c) A domestic or foreign limited partnership may apply to the [Secretary of  
7 State] for authorization to use a name that is not distinguishable upon the records of  
8 the [Secretary of State] from one or more of the names described in subsection (b).  
9 The [Secretary of State] shall authorize use of the name applied for if, as to each  
10 conflicting name:

11                   (1) the present user, registrant, or owner of the conflicting name  
12 consents in an authenticated record to the use ~~in a signed record~~ and submits an  
13 undertaking in form satisfactory to the [Secretary of State] to change the conflicting  
14 name to a name that is distinguishable upon the records of the [Secretary of State]  
15 from the name applied for and from all of the names described in subsection (b); or

16                   (2) the applicant delivers to the [Secretary of State] a certified copy of  
17 the final judgment of a court of competent jurisdiction establishing the applicant's  
18 right to use in this State the name applied for.

19                   (d) A domestic or foreign limited partnership may use a name, including a  
20 fictitious name, shown upon the records of the [Secretary of State] as being used by  
21 another entity, if the domestic or foreign limited partnership proposing to use the  
22 name:

- 1 (1) has merged with the other entity;
- 2 (2) has been formed by reorganization with the other entity;
- 3 (3) has been converted from the other entity; or
- 4 (4) has acquired substantially all of the assets, including the name, of the
- 5 other entity.

6

7 **SECTION 109. RESERVATION OF NAME.**

8 (a) ~~Subject to Section 108, the~~ The exclusive right to the use of a name that

9 complies with Section 108 may be reserved by:

10 (1) a person intending to organize a limited partnership under this [Act]

11 and to adopt that name;

12 (2) a domestic limited partnership or any foreign limited partnership

13 authorized to transact business in this State which, in either case, intends to adopt

14 that name;

15 (3) a foreign limited partnership intending to obtain a certificate of

16 authority to transact business in this State and adopt that name;

17 (4) a person intending to organize a foreign limited partnership and

18 intending to have it obtain a certificate of authority to transact business in this State

19 and adopt that name;

20 (5) a foreign limited partnership formed under the name; ~~and~~ or

21 (6) a foreign limited partnership formed under a name that does not

22 comply with Section 108(a), but the named reserved under this paragraph may differ

1 from the foreign limited partnership's name only to the extent necessary to comply  
2 with Section 108(a).

3 (b) The reservation under subsection (a) must be made by delivering for  
4 filing with the [Secretary of State] an application, ~~signed~~ authenticated by the  
5 applicant, to reserve a specified name. If the [Secretary of State] finds that the name  
6 is available for use by a domestic or foreign limited partnership, the [Secretary of  
7 State] shall reserve the name for the exclusive use of the applicant for a period of  
8 120 days. An applicant that has so reserved a name may reserve the same name for  
9 additional 120-day periods. A person having a current reservation for a name may  
10 not apply for another 120-day period pertaining to the same name until 90 days have  
11 elapsed in the current reservation. The right to the exclusive use of a reserved name  
12 may be transferred to any other person by delivering for filing in the [office of the  
13 Secretary of State] a notice of the transfer, ~~signed~~ authenticated by the applicant for  
14 which the name was reserved and specifying the name and address of the person to  
15 which the transfer was made.

16  
17 **SECTION 110. EFFECT OF PARTNERSHIP AGREEMENT;**  
18 **NONWAIVABLE PROVISIONS.**

19 (a) Except as otherwise provided in subsection (b), the partnership  
20 agreement governs relations among the partners and between the partners and the  
21 partnership. To the extent the partnership agreement does not otherwise provide,

1       this [Act] governs relations among the partners and between the partners and the  
2       partnership.

3               (b) The partnership agreement may not:

4                       (1) vary a limited partnership's power under Section 104(c) to sue, be  
5       sued and defend in its own name;<sup>33</sup>

6                       (2) vary the law applicable to a limited partnership under Section 106;

7                       ~~(2)~~ (3) vary the rights and duties under Section 204;

8                       ~~(3)~~ (4) vary the ~~list of records~~ information required under Section 111 or  
9       unreasonably restrict the right to information under Sections 304 and 407, but the  
10      partnership agreement may impose reasonable limitations on the availability and use  
11      of information obtained under those sections and may define appropriate remedies,  
12      including liquidated damages, for a breach of any reasonable limitation on use;

13                      ~~(4)~~ (5) eliminate the duty of loyalty under Section 408, but the  
14      partnership agreement may:

15                               (A) identify specific types or categories of activities that do not  
16      violate the duty of loyalty, if not manifestly unreasonable; and

---

<sup>33</sup>The power to be sued is nonwaivable even without this provision, because that power affects third parties. However, the Drafting Committee has previously decided to make this point clear beyond argument.

1 (B) specify the number or percentage of ~~that~~ partners which may  
2 authorize or ratify, after full disclosure to all partners<sup>34</sup> of all material facts, a  
3 specific act or transaction that otherwise would violate the duty of loyalty;  
4 ~~(5)~~ (6) unreasonably reduce the duty of care under Section 408(c);  
5 ~~(6)~~ (7) eliminate the obligation of good faith and fair dealing under  
6 Sections 305(c) and 408(d), but the partnership agreement may prescribe the  
7 standards by which the performance of the obligation is to be measured, if the  
8 standards are not manifestly unreasonable;  
9 ~~(7)~~ (8) vary the power of a person to dissociate as a general partner  
10 under Section 604(a), except to require that the notice under Section 603(1) be in  
11 ~~writing~~ a record;<sup>35</sup>  
12 ~~(8)~~ (9) vary the right of a court to expel a partner in the events specified  
13 in Sections 601(b)(5) and 603(5);  
14 (10) eliminate the requirement that the limited partnership dissolve if it  
15 does not admit a general partner as specified in Section 801(3)(B) or a limited partner  
16 as specified in Section 801(4), but the limited partnership agreement may determine

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<sup>34</sup>This change is substantive and was made by the Drafting Committee at the St. Petersburg Beach meeting.

<sup>35</sup>Under E-Sign, 15 USC § 7001 *et seq.*, state law cannot require that transactions be in paper and ink if the parties agree to use electronic records and signatures. The standard NCCUSL definition of “record” (Section [102(18)]) includes writings. I have made similar changes in other provisions and have added the NCCUSL boilerplate E-Sign anti-preemption provision in the last article. [COS]

1 the requirements and procedures for admitting a partner and may extend to a  
2 reasonable extent the 90 day deadline;

3 ~~(9)~~ (11) vary the right of a court to decree dissolution in the  
4 circumstances specified in Section 802;

5 ~~(10)~~ (12) vary the requirement to wind up the partnership's business as  
6 specified in Section 803(a);

7 ~~(11)~~ (13) unreasonably restrict the right to bring an action under  
8 [Article] 10;

9 ~~(12)~~ (14) restrict the right of a partner to approve a merger or  
10 conversion under Section 1110; or

11 ~~(13)~~ (15) restrict rights under this [Act] of a person other than a partner  
12 or a transferee.

13  
14 **SECTION 111. REQUIRED RECORDS INFORMATION.**<sup>36</sup>

15 (a) A limited partnership must maintain at its designated office the following  
16 ~~required records~~ information in record form:

17 (1) a current list showing the full name and last known mailing and street  
18 address of each partner, separately identifying the general partners, in alphabetical  
19 order, and the limited partners, in alphabetical order;

---

<sup>36</sup>It seems confusing (albeit accurate) to use a generally applicable defined term as part of the name of a subset of the universe defined by the generally applicable term.

1                   (2) a copy of the certificate of limited partnership and all amendments to  
2 the certificate, together with ~~signed~~ authenticated copies of any powers of attorney  
3 pursuant to which any certificate or amendment has been ~~signed~~ authenticated;

4                   (3) a copy of any filed articles of conversion or merger;

5                   (4) a copy of the limited partnership's federal, state, and local income tax  
6 returns and reports, if any, for the three most recent years;

7                   (5) a copy of any ~~written~~ partnership agreements that have been adopted  
8 in record form and any ~~written~~ amendments to any of those agreements which have  
9 been adopted in record form and of any financial statements of the limited  
10 partnership for the three most recent years;

11                  (6) a copy of the three most recent annual reports delivered by the  
12 limited partnership to the [Secretary of State] pursuant to Section 210;

13                  (7) a copy of any record made by the limited partnership during the past  
14 three years of any consents given by or votes taken of any partner pursuant to this  
15 [Act or the partnership agreement; and

16                  (8) unless contained in a ~~written~~ partnership agreement adopted in record  
17 form, a ~~writing~~ record stating:

18                         (A) the amount of cash, and a description and statement of the  
19 agreed value of the other benefits, contributed and agreed to be contributed by each  
20 partner ~~and which each partner has agreed to contribute~~;

21                         (B) the times at which or events on the happening of which any  
22 additional contributions agreed to be made by each partner are to be made; and

1 (C) for any person that is both a general partner and a limited  
2 partner, a specification of what transferable interest the person owns in each  
3 capacity; and

4 ~~\_\_\_\_\_ (D) any events upon the happening of which the limited partnership is~~  
5 ~~to be dissolved and its affairs wound up.~~<sup>37</sup>

6 (b) Sections 304 and 407 govern access to the ~~records~~ information required  
7 by this section.

8  
9 **SECTION 112. BUSINESS TRANSACTIONS OF PARTNER WITH**  
10 **PARTNERSHIP.** A partner may lend money to and transact other business with  
11 the limited partnership and, subject to other law, has the same rights and obligations  
12 with respect thereto as a person that is not a partner.

13  
14 **SECTION 113. DUAL CAPACITY.** A person may be both a general partner  
15 and a limited partner. A person that is both a general and limited partner has the  
16 rights, powers, duties, and obligations provided by this [Act] and the partnership  
17 agreement in each of those capacities. When the person acts as a general partner,  
18 the person is subject to the obligations and restrictions under this [Act] and the  
19 partnership agreement for general partners. When the person acts as a limited  
20 partner, the person is subject to the obligations and restrictions under this [Act] and  
21 the partnership agreement for limited partners.

---

<sup>37</sup>At its St. Petersburg Beach meeting, the Drafting Committee decided that any such event must be contained in the partnership agreement.



1                   **SECTION 114. OFFICE AND AGENT FOR SERVICE OF PROCESS.**

2                   (a) A limited partnership ~~must~~ shall designate and continuously maintain in  
3 this State:

4                   (1) an office, which need not be a place of its ~~business~~ activity in this  
5 State;<sup>38</sup> and

6                   (2) an agent for service of process.

7                   (b) A foreign limited partnership ~~must~~ shall designate and continuously  
8 maintain in this State an agent for service of process.

9                   (c) An agent for service of process must be an individual resident of this  
10 State, a domestic entity, or a foreign entity authorized to do business in this State.

11                   **SECTION 115. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**

12 **SERVICE OF PROCESS.** A ~~limited partnership~~ domestic or foreign limited  
13 partnership may change its designated office, agent for service of process, or the  
14 address of its agent for service of process, by delivering to the [Secretary of State]  
15 for filing a statement of change ~~which sets forth~~ that states:

16                   (1) the name of the domestic or foreign limited partnership;

17                   (2) the street address of its current designated office;

18                   (3) if the current designated office is to be changed, the street address of the  
19 new designated office;

20                   (4) the name and address of its current agent for service of process; and

---

<sup>38</sup>Query: why require an in-state office? In any event, the requirement appears waivable through the partnership agreement.

1 (5) if the current agent for service of process or street address of that agent  
2 is to be changed, the new ~~address or the name and street address of the new agent~~  
3 ~~for service of process~~ information.

4  
5 **SECTION 116. RESIGNATION OF AGENT FOR SERVICE OF**  
6 **PROCESS.**

7 (a) An agent for service of process of a ~~limited partnership~~ domestic or  
8 foreign limited partnership may resign by delivering to the [Secretary of State] for  
9 filing a ~~record of the~~ statement of resignation, stating that the agent is resigning and  
10 giving the name of the domestic or foreign limited partnership.

11 (b) After ~~filing~~ receiving a statement of resignation, the [Secretary of State]  
12 shall file it and mail a copy to the designated office of the domestic or foreign  
13 limited partnership and another copy to the ~~limited partnership~~ at its principal office  
14 if the address of that office appears in the records of the [Secretary of State] and is  
15 different from the address of the designated office.

16 (c) An agency for service of process is terminated on the 31st day after the  
17 statement is filed in the [office of the Secretary of State].

18  
19 **SECTION 117. SERVICE OF PROCESS.**

20 (a) An agent for service of process appointed by a ~~limited partnership~~  
21 domestic or a foreign limited partnership is an agent of the ~~limited partnership~~  
22 domestic or foreign limited partnership for service of any process, notice, or demand

1 required or permitted by law to be served upon the ~~limited partnership~~ domestic or  
2 foreign limited partnership.

3 (b) If a ~~limited partnership~~ domestic or foreign limited partnership fails to  
4 appoint or maintain an agent for service of process in this State or the agent for  
5 service of process cannot with reasonable diligence be found at the agent's address,  
6 the [Secretary of State] is an agent of the ~~limited partnership~~ domestic or foreign  
7 limited partnership upon which process, notice, or demand may be served.

8 (c) Service of any process, notice, or demand on the [Secretary of State]  
9 may be made by delivering to and leaving with the [Secretary of State], ~~the~~  
10 ~~[Assistant Secretary of State], or clerk having charge of the limited partnership~~  
11 ~~department of the [office of the Secretary of State]~~<sup>39</sup> duplicate copies of the process,  
12 notice, or demand. If the process, notice, or demand is served on the [Secretary of  
13 State], the [Secretary of State] shall forward one of the copies by registered or  
14 certified mail, return receipt requested, to the ~~limited partnership~~ domestic or  
15 foreign limited partnership at its designated office. Service is effected under this  
16 subsection at the earliest of:

17 (1) the date the ~~limited partnership~~ domestic or foreign limited  
18 partnership receives the process, notice, or demand;

19 (2) the date shown on the return receipt, if ~~signed~~ authenticated on  
20 behalf of the ~~limited partnership~~ domestic or foreign limited partnership; or

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<sup>39</sup>The Secretary of State will specify who is authorized to accept service by rule or order. It is superfluous to do it in the statute. In many similar provisions in this act, the Secretary of State alone is mentioned. [COS]

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

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

6                   (e) This section does not affect the right to serve process, notice, or demand  
7     in any manner otherwise provided by law.<sup>40</sup>

8

9                   **SECTION 118. CONSENT AND PROXIES OF PARTNERS.**

10                  (a) Action requiring the consent ~~or vote~~<sup>41</sup> of partners under this [Act] may  
11     be taken without a meeting.

12                  (b) A partner may appoint a proxy to ~~vote~~ consent or otherwise act for the  
13     partner by ~~signing~~ authenticating an appointment ~~instrument~~ record, either  
14     personally or by the partner's attorney in fact.

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<sup>40</sup>At the 2000 Annual Meeting, a commissioner suggested including "or rule", because in some states court rules address service of process. The Reporter believes that the general concept of "law" includes rules as well as statutes.

<sup>41</sup>At its St. Petersburg Beach meeting, the Drafting Committee pondered whether "vote" (i) connotes greater formality than "consent," (ii) rules out implied and tacit consent, and (iii) perhaps even implies a meeting requirement. As presaged in a December, 2000 email to the Fine Tooth Comb Committee, this Draft uses "consent" only and eschews the concepts of "vote" and "assent".

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**[ARTICLE] 2**  
**FORMATION; CERTIFICATE OF**  
**LIMITED PARTNERSHIP AND OTHER FILINGS**

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

(a) In order to form a limited partnership, a certificate of limited partnership must be ~~executed~~ authenticated and delivered for filing in the [office of the Secretary of State]. The certificate must include:

- (1) the name of the limited partnership;
- (2) the address of the initial designated office and the name and address of the initial agent for service of process;
- (3) the name and the address of each general partner;
- (4) if ~~one or more of the general partners is liable for the limited partnership's debts and obligations under Section 404(b)~~ the limited partnership is a limited liability limited partnership, a statement to that effect; and
- (5) any additional information required by [Article] 11.

(b) A certificate of limited partnership may also contain any other matters, but may not vary the nonwaivable provisions of ~~this [Act]~~ specified in Section 110.

(c) Subject to subsection (b), if any provision of a partnership agreement is inconsistent with the certificate of limited partnership or with a filed statement of dissociation, termination or change, or filed articles of conversion or merger:

- (1) the partnership agreement prevails as to partners and transferees; and

1 (2) the certificate of limited partnership, statement of dissociation,  
2 termination, or change, or articles of conversion or merger prevails as to persons,  
3 other than partners and transferees, that reasonably rely on the filed record to their  
4 detriment.

5 (d) If there has been substantial compliance with the requirements of this  
6 section, a A limited partnership is formed at the time of the filing of the certificate of  
7 limited partnership in the [office of the Secretary of State] or, subject to Section  
8 206(d), at any later time specified in the certificate of limited partnership ~~if, in either~~  
9 ~~case, there has been substantial compliance with the requirements of this section.~~

10  
11 **SECTION 202. AMENDMENT OR RESTATEMENT OF**  
12 **CERTIFICATE.**

13 (a) A certificate of limited partnership may be amended by delivering for  
14 filing in the [office of the Secretary of State] an amendment or pursuant to [Article]  
15 11 articles of merger, stating:

16 (1) the name of the limited partnership;

17 (2) the date of filing of the original<sup>42</sup> certificate; and

18 (3) the changes the amendment makes to the certificate.

19 (b) A limited partnership ~~must~~ shall deliver for filing an amendment to a  
20 certificate of limited partnership reflecting the occurrence of ~~any of these events:~~

21 (1) the admission of a new general partner;

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<sup>42</sup>Additions to conform to Section 203(2).

- 1 (2) the dissociation of a person as a general partner; or  
2 (3) the appointment of a person to wind up the limited partnership's  
3 ~~business activities~~ under Section 803(b) or (c).

4 (c) A general partner that becomes aware that any<sup>43</sup> statement in a  
5 certificate of limited partnership was false when made or that any arrangements or  
6 other facts described have changed, making the certificate inaccurate in any respect,  
7 shall promptly:

8 (1) cause the certificate to be amended; or

9 (2) if appropriate, deliver for filing in the [office of the Secretary of  
10 State] a statement of change pursuant to Section 115 or a statement of correction  
11 pursuant to Section 207.

12 (d) A certificate of limited partnership may be amended at any time for any  
13 other proper purpose the ~~general partners~~ limited partnership determines.

14 (e) A restated certificate of limited partnership may be delivered for filing in  
15 the same manner as an amendment.

16  
17 **SECTION 203. STATEMENT OF TERMINATION.** A dissolved limited  
18 partnership that has completed winding up may deliver for filing in the [office of the  
19 Secretary of State] a statement of termination that states:

20 (1) the name of the limited partnership;

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<sup>43</sup>The Committee on Style has asked whether the Drafting Committee intends a materiality requirement here. The Reporter believes that the answer is no.

- 1 (2) the date of filing of its original certificate of limited partnership;
- 2 (3) the effective date of termination, which must be a date certain and is
- 3 subject to Section 206(d), if the statement is not to be effective upon filing; and
- 4 (4) any other information the general partners filing the statement
- 5 determine.

6

7 **SECTION 204. ~~SIGNING~~ AUTHENTICATION OF RECORDS.**

8 (a) Each record pertaining to a domestic or foreign limited partnership and

9 delivered for filing pursuant to this ~~Act~~ [Act] in the [office of the Secretary of State]

10 must be ~~signed~~ authenticated in the following manner:

11 (1) An original certificate of limited partnership must be ~~signed~~

12 authenticated by all general partners listed in the certificate.

13 (2) An amendment making, modifying or deleting a statement under

14 Section 404(b) must be ~~signed~~ authenticated by all general partners listed in the

15 certificate.

16 (3) An amendment designating as general partner a person admitted

17 under Section 801(3)(B) following the dissociation of a limited partnership's last

18 general partner must be ~~signed~~ authenticated by that person.

19 (4) An amendment required by Section 803(b) or following the

20 appointment of a person to wind up the dissolved limited partnership's ~~business~~

21 activities must be ~~signed~~ authenticated by that person.

22 (5) Any other amendment must be ~~signed~~ authenticated by:



1 (A) at least one general partner listed in the certificate;

2 (B) each other person designated in the amendment as a new general

3 partner; and

4 (C) each person that the amendment indicates has dissociated as a

5 general partner, unless:

6 (i) the person is deceased or a guardian or general conservator

7 has been appointed for the person and the amendment so states; or

8 (ii) the person has previously delivered for filing a statement of

9 dissociation.

10 (6) A restated certificate of limited partnership must be ~~signed~~

11 authenticated by at least one general partner listed in the certificate, and, to the

12 extent the restated certificate effects a change under any other paragraph of this

13 subsection, the certificate must be ~~signed~~ authenticated in a manner that satisfies that

14 paragraph.

15 (7) A statement of termination must be ~~signed~~ authenticated by all

16 general partners listed in the certificate or, if the certificate of a dissolved limited

17 partnership lists no general partners, by the person appointed under Section 803(b)

18 or 803(c) to wind up the dissolved limited partnership's ~~business~~ activities.

19 (8) Articles of conversion must be ~~signed~~ authenticated by each general

20 partner listed in the certificate of limited partnership.

21 (9) Articles of merger must be ~~signed~~ authenticated as provided in

22 Section 1108(a).

1                   (10) Any other record ~~signed~~ authenticated by or on behalf of a limited  
2 partnership must be ~~signed~~ authenticated by at least one general partner listed in the  
3 certificate.

4                   (11) A statement by a person pursuant to Section 605(4) stating that the  
5 person has dissociated as a general partner must be ~~signed~~ authenticated by that  
6 person.

7                   (12) A statement of withdrawal by a person pursuant to Section 306  
8 must be ~~signed~~ authenticated by that person.

9                   (13) A record ~~signed~~ authenticated by or on behalf of a foreign limited  
10 partnership must be ~~signed~~ authenticated by at least one general partner of the  
11 foreign limited partnership.

12                  (b) Any person may ~~sign~~ authenticate by an attorney in fact any record to be  
13 filed pursuant to this [Act].

14  
15                   **SECTION 205. FILING BY JUDICIAL ACT.**

16                  (a) If a person required by ~~[this Act]~~ this [Act] to ~~sign~~ authenticate any  
17 record fails or refuses to do so, any other person that is adversely affected by the  
18 failure or refusal may petition the [appropriate court] to order the person to ~~sign~~  
19 authenticate the record or order the [Secretary of State] to file the record ~~unsigned~~  
20 unauthenticated. If the adversely affected person is not the ~~limited partnership~~  
21 domestic or foreign limited partnership to which the record pertains, the adversely

1 affected person shall make that ~~limited partnership~~ domestic or foreign limited  
2 partnership a party to the action.

3 (b) A person adversely affected may seek both remedies provided in  
4 subsection (a) in the same action, in the alternative. If the court finds that it is  
5 proper for the record to be ~~signed~~ authenticated and that a person required by ~~this~~  
6 ~~Act~~ this [Act] to ~~sign~~ authenticate the record has failed or refused to do so, the  
7 court shall order the person to ~~sign~~ authenticate the record or order the [Secretary  
8 of State] to file an appropriate record ~~unsigned~~ unauthenticated, which is effective  
9 without being ~~signed~~ authenticated.

10  
11 **SECTION 206. FILING IN [OFFICE OF SECRETARY OF STATE].**

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  
14 Secretary of State]. Unless the [Secretary of State] determines that a record fails to  
15 comply as to form with the filing requirements of this [Act], and if all filing fees have  
16 been paid, the [Secretary of State] shall file the record and:

17 (1) for a statement of dissociation, send:

18 (A) a copy of the filed statement and a receipt for ~~the statement and~~  
19 the fees to the person which the statement indicates has dissociated as a general  
20 partner; and

21 (B) a copy of the filed statement and receipt to the limited  
22 partnership;

1 (2) for a statement of withdrawal, send:

2 (A) a copy of the filed statement and a receipt for ~~the statement and~~

3 the fees to the person on whose behalf the record was filed; and

4 (B) if the statement refers to an existing limited partnership, a copy

5 of the filed statement and receipt to the limited partnership; and

6 (3) for all other records, send a copy of the filed record and a receipt for

7 ~~the record and~~ the fees to the person on whose behalf the record was filed.

8 (b) Upon request and payment of a fee, the [Secretary of State] shall send to

9 the requester a certified copy of the requested record.

10 (c) Except as otherwise provided in subsection (d), a record filed by the

11 [Secretary of State] is effective:

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

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

14 (2) at the time specified in the record as its effective time on the date it is

15 filed.

16 (d) A record may specify a delayed effective time and date, and if it does so

17 the record becomes effective at the time and on the date specified. If a delayed

18 effective date is specified but the time is not specified, the record is effective at the

19 close of business on that date. If a delayed effective date is later than the 90th day

20 after the record is filed, the record is effective on the 90th day.<sup>44</sup>

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<sup>44</sup>The Reporter continues to question the wisdom of this truncating provision, believing that the provision may produce results unanticipated and undesired by persons seeking to form a limited partnership.

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2           **SECTION 207. CORRECTING FILED RECORD.**

3           (a) A ~~limited partnership~~ domestic or foreign limited partnership may  
4       correct a record filed by the [Secretary of State] if at the time of filing the record  
5       contained false or erroneous information or was defectively ~~signed~~ authenticated.

6           (b) A record is corrected by:

7               (1) preparing a statement of correction that:

8                       (A) describes the record, including its filing date, or attaches a copy  
9       of it to the statement of correction;

10                      (B) specifies the incorrect information and the reason it is incorrect  
11       or the manner in which the ~~signing~~ authenticating was defective; and

12                      (C) corrects the incorrect information or defective ~~signing~~  
13       authentication; and

14               (2) delivering the corrected record to the [Secretary of State] for filing.

15           (c) A statement of correction is effective retroactively on the effective date  
16       of the record the statement corrects, but the statement is effective when filed:

17               (1) for the purposes of Section 103(c) and (d); and

18               (2) as to persons relying on the uncorrected record and adversely  
19       affected by the correction.

1                   **SECTION 208. LIABILITY FOR FALSE INFORMATION IN RECORD.**

2                   (a) If a record filed under this [Act] contains false information, a person that  
3 suffers loss by reliance on the information may recover damages for the loss from:

4                   (1) a person that ~~signed~~ authenticated the record, or caused another to  
5 ~~sign~~ authenticate it on the person's behalf, and knew the statement to be false at the  
6 time the record was ~~signed~~ authenticated; and

7                   (2) a general partner that has notice that the information is false within a  
8 sufficient time before the information was relied upon to have reasonably enabled  
9 that general partner to effect an amendment under Section 202, file a petition  
10 pursuant to Section 205, or deliver for filing a statement of change pursuant to  
11 Section 115 or a statement of correction pursuant to Section 207.

12                  (b) The ~~signing~~ authenticating of a record authorized or required to be filed  
13 under this [Act] constitutes an affirmation under the penalties of perjury that the  
14 facts stated in the record are true.

15

16                   **SECTION 209. CERTIFICATE OF EXISTENCE OR**  
17 **AUTHORIZATION.**

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

21                  (b) A certificate of existence for a limited partnership must state:

22                   (1) the limited partnership's name;

1                   (2) that it ~~is~~ was duly formed under the laws of this State and the date of  
2                   formation;

3                   (3) whether all fees, taxes and penalties due to the [Secretary of State]  
4                   under this [Act] or other law have been paid;

5                   (4) whether its most recent annual report required by Section 210 has  
6                   been filed by the [Secretary of State];

7                   (5) that no statement of termination has been filed by the [Secretary of  
8                   State]; and

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

11                 (c) A certificate of authorization for a foreign limited partnership must state:

12                         (1) the foreign limited partnership's name and any alternate name  
13                         adopted under Section 905(a) for use in this State;

14                         (2) that it is authorized to transact business in this State;

15                         (3) whether all fees, taxes and penalties due to the [Secretary of State]  
16                         under this [Act] or other law have been paid;

17                         (4) whether its most recent annual report required by Section 210 has  
18                         been filed by the [Secretary of State];

19                         (5) that its certificate of authority to transact business has not been  
20                         revoked and a certificate of cancellation has not been filed; and

21                         (6) other facts of record in the [office of the Secretary of State] which  
22                         may be requested by the applicant.

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

(1) in case of a certificate of existence, nothing of record in the [office of the Secretary of State] indicates that the domestic ~~or foreign~~ limited partnership is not in existence; and<sup>45</sup>

(2) in the case of a certificate of authorization, the foreign limited partnership ~~or~~ is authorized to transact business in this State.

#### **SECTION 210. ANNUAL REPORT FOR [SECRETARY OF STATE].**

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

(1) the name of the ~~limited partnership~~ domestic or foreign limited partnership, ~~including any alternate name adopted under Section 905(a), and the State or other jurisdiction under whose law the domestic or foreign limited partnership is formed;~~

(2) the street and mailing address of its designated office and the name, street address and mailing address of its agent for service of process in this State; and

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<sup>45</sup>The partnership agreement can change a limited partnership's duration. A limited partnership is not required to file either a statement of dissolution or termination. As a result, a certificate of existence has limited utility.



1                   (3) in the case of a domestic limited partnership, the address of its  
2                   principal office; and

3                   (4) in the case of a foreign limited partnership, the State or other  
4                   jurisdiction under whose law the foreign limited partnership is formed and any  
5                   alternate name adopted under Section 905(a).

6                   (b) Information in an annual report must be current as of the date the annual  
7                   report is ~~signed~~ authenticated on behalf of the limited partnership.

8                   (c) The first annual report must be delivered to the [Secretary of State]  
9                   between [January 1 and April 1] of the year following the calendar year in which a  
10                  limited partnership was formed or a foreign limited partnership was authorized to  
11                  transact business. Subsequent annual reports must be delivered to the [Secretary of  
12                  State] between [January 1 and April 1] of the ensuing calendar years.

13                  (d) If an annual report does not contain the information required in  
14                  subsection (a), the [Secretary of State] shall promptly notify the reporting ~~limited~~  
15                  ~~partnership~~ domestic or foreign limited partnership and return the report to it for  
16                  correction. If the report is corrected to contain the information required in  
17                  subsection (a) and delivered for filing to the [Secretary of State] within 30 days after  
18                  the effective date of the notice, it is timely delivered.

19                  (e) If a filed annual report contains an address of a designatd office or the  
20                  name or address of an agent for service of process that differs from the information  
21                  shown upon the records of the [Secretary of State] immediately before the filing, the

- 1 differing information in the annual report is considered a statement of change under
- 2 Section 115.

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**[ARTICLE] 3**  
**LIMITED PARTNERS**

**SECTION 301. ADMISSION OF LIMITED PARTNER.** A person becomes a limited partner:

- (1) as provided in the partnership agreement;
- (2) as the result of a merger or conversion under [Article] 11;
- (3) with the consent of all the partners.

**SECTION 302. NO RIGHT OR POWER AS LIMITED PARTNER TO BIND LIMITED PARTNERSHIP.** A limited partner has neither the right nor the power as a limited partner to act for or bind the limited partnership.

**SECTION 303. NO LIABILITY AS LIMITED PARTNER TO THIRD PARTIES.** 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.

1           **SECTION 304. LIMITED PARTNER’S AND FORMER LIMITED**  
2           **PARTNER’S RIGHT TO INFORMATION.**

3           (a) On 10 days’ ~~written~~ demand in a record<sup>46</sup> to the limited partnership, a  
4           limited partner may inspect and copy the required ~~records~~ information during regular  
5           business hours in the limited partnership’s designated office. A limited partner  
6           making demand pursuant to this subsection need not demonstrate, state, or have any  
7           particular purpose for seeking the information.

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

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

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

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

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<sup>46</sup>Query: when does the 10-day period begin to run? Should the Act use the defined term of “gives a notification” or “receives a notification” instead of the undefined term “On . . . demand”? Using one of the defined terms will clarify the timing issue but will require more complicated language throughout this section.

1 (c) Within 10 days after receiving a demand pursuant to subsection (b), the  
2 limited partnership shall in ~~writing~~ a record inform the limited partner that made the  
3 demand:

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

6 (2) when and where the limited partnership will provide that information;  
7 and

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

10 (d) Subject to subsection (f), a person dissociated as a limited partner may  
11 inspect and copy ~~a required record~~ information<sup>47</sup> during regular business hours in the  
12 limited partnership's designated office if:

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

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

16 (3) the person meets the requirements of subsection (b).

17 (e) The limited partnership ~~must~~ shall respond to a demand made pursuant  
18 to subsection (d) in the same manner as provided in subsection (c).

19 (f) If ~~an individual who is~~ a limited partner dies, Section 704 applies.

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<sup>47</sup>“Required information” is a defined term. Query: is it sufficiently clear that the term does not include information that a limited partner might demand under subsection (b)?

1 (g) The limited partnership may impose reasonable limitations on the use of  
2 information obtained under this section. In a dispute concerning the reasonableness  
3 of a restriction under this subsection, the limited partnership has the burden of  
4 proving reasonableness.

5 (h) A limited partnership may charge a limited partner or person dissociated  
6 as a limited partner that makes a demand under this section reasonable costs of  
7 copying, limited to the costs of labor and material.

8 (i) Whenever ~~[this Act]~~ this [Act] or a partnership agreement provides for a  
9 limited partner to ~~vote on or~~ give or withhold consent to a matter, before ~~the vote is~~  
10 ~~taken or~~ the consent is given or withheld the limited partnership shall, without  
11 demand, provide the limited partner with all information ~~which~~ that the limited  
12 partnership knows and is material to the limited partner's decision.

13 (j) A limited partner or person dissociated as a limited partner may exercise  
14 the rights under this section through an attorney or other agent. In that event, any  
15 limitations on availability and use under subsection (g) apply both to the limited  
16 partner or person and to the attorney or other agent. ~~The rights under this section~~  
17 ~~extend to the legal representative of a person under legal disability who is a limited~~  
18 ~~partner or person dissociated as a limited partner.~~

19 (k) The rights stated in this section do not extend to a transferee, but:

20 (i) subsection (d) creates rights for a person dissociated as a limited  
21 partner; ~~and~~

1                   (i i) subsection (f) recognizes the rights of the executor or administrator  
2 of a deceased limited partner; and

3                   (iii) the rights under this section extend to the legal representative of a  
4 individual under legal disability who is a limited partner or person dissociated as a  
5 limited partner.<sup>48</sup>

6                   **SECTION 305. LIMITED DUTIES OF LIMITED PARTNERS.**

7                   (a) ~~Except as otherwise provided in subsection (b), a~~ A limited partner does  
8 not have any fiduciary duty as a limited partner to the limited partnership or to any  
9 other partner.

10                  (b) A limited partner that pursuant to the partnership agreement ~~exercises~~  
11 ~~some or all of the rights of a general partner in the management and conduct of the~~  
12 manages or controls a limited partnership's ~~business is held~~ subject, to the extent of  
13 that management or control, to the standards of conduct for a general partner ~~to the~~  
14 ~~extent that the limited partner exercises the managerial authority vested in a general~~  
15 ~~partner by this [Act].~~<sup>49</sup>

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

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<sup>48</sup>Changes prompted by a suggestion from the Committee on Style (but more far reaching than the revision suggested by that Committee).

<sup>49</sup>This revision reflects a decision made by the Drafting Committee at its St. Petersburg Beach meeting. The decision creates some problems. For example, if the partnership agreement provides that certain matters require the consent of the limited partners, does the giving or withholding of consent trigger this subsection?

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

4  
5 **SECTION 306. PERSON ERRONEOUSLY BELIEVING SELF**  
6 **LIMITED PARTNER.**

7 (a) Except as otherwise provided in subsection (b), a person that makes an  
8 investment in a business enterprise and erroneously but in good faith believes that  
9 the person has become a limited partner in the enterprise is not liable for its  
10 obligations by reason of making the investment, receiving distributions from the  
11 enterprise, or exercising any rights of or appropriate to a limited partner, if, on  
12 ascertaining the mistake, the person:

13 (1) causes an appropriate certificate of limited partnership, amendment,  
14 or statement of correction to be ~~signed~~ authenticated and delivered for filing in the  
15 [office of the Secretary of State]; or

16 (2) withdraws from future ~~equity~~ participation as an owner<sup>50</sup> in the  
17 enterprise by ~~signed~~ authenticating and delivering for filing in the [office of the  
18 Secretary of State] a statement of withdrawal under this section.

19 (b) A person that makes an investment described in subsection (a) is liable  
20 to the same extent as a general partner to any third party that transacts business with  
21 the enterprise (i) before the person withdraws and an appropriate statement of

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<sup>50</sup>Cf. Section 306(c) ("co-owners of the enterprise"). [COS]



1 withdrawal is delivered for filing in the [office of the Secretary of State], or (ii)  
2 before an appropriate certificate, amendment, or statement of correction is delivered  
3 for filing in the [office of the Secretary of State] to show that the person is not a  
4 general partner, but in either case only if the third party actually believed in good  
5 faith that the person was a general partner at the time of the transaction.

6 (c) If a person makes a diligent effort in good faith to comply with  
7 subsection (a)(1) and is unable to cause the appropriate certificate of limited  
8 partnership or amendment to be ~~executed~~ authenticated and delivered for filing with  
9 [the Secretary of State], the person has the right to withdraw from the enterprise  
10 pursuant to subsection (a)(2) even if otherwise the withdrawal would breach an  
11 agreement with others that are or have agreed to become co-owners of the  
12 enterprise.

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**[ARTICLE] 4**  
**GENERAL PARTNERS**

**SECTION 401. ADMISSION OF GENERAL PARTNER.** A person becomes a general partner:

- (1) as provided in the partnership agreement:
- (2) under Section 801(3)(B) following the dissociation of a limited partnership’s last general partner;
- (3) as the result of a conversion or merger under [Article] 11;
- (4) with the consent of all the partners.

**SECTION 402. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.**

(a) Each general partner is an agent of the limited partnership for the purposes of its ~~business~~ activities. An act of a general partner, including the ~~execution~~ authentication of an instrument in the partnership’s name, for apparently<sup>51</sup> carrying on in the ordinary course the limited partnership’s ~~business~~ activities or ~~business~~ activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner

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<sup>51</sup>The Committee on Style recommends placing “for” after “apparently” so as to parallel subsection (b). Because this phrase is core RUPA, the Reporter has not acceded to that suggestion.

1        was dealing knew, had received a notification,<sup>52</sup> or had notice under Section 103(d)  
2        that the general partner lacked authority.

3                (b) An act of a general partner which is not apparently for carrying on in the  
4        ordinary course the limited partnership's ~~business~~ activities or ~~business~~ activities of  
5        the kind carried on by the limited partnership binds the limited partnership only if the  
6        act was authorized by all the other partners.

7  
8                **SECTION 403. LIMITED PARTNERSHIP LIABLE FOR GENERAL**  
9        **PARTNER'S ACTIONABLE CONDUCT.**

10                (a) A limited partnership is liable for loss or injury caused to a person, or for  
11        a penalty incurred, as a result of a wrongful act or omission, or<sup>53</sup> other actionable

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<sup>52</sup>The Committee on Style recommends deleting "had received a notification" – apparently considering the phrase redundant in light of the subsequent reference to "notice". However, the subsequent reference is only to "notice under Section 103(d)", which refers only to constructive notice resulting from specified filings.

<sup>53</sup>The Committee on Style suggested inserting "for" here, but the Reporter believes that insertion would change the meaning of the provision. As the Reporter understands this provision, it means:

If

!        a wrongful act or omission or other actionable conduct  
  
~        of a partner  
  
~        acting in the ordinary course or with the authority of the  
         limited partnership  
  
!        results in  
  
~        loss or injury being caused to a person, or

1       conduct, of a general partner acting in the ordinary course of ~~business~~ activities of  
2       the limited partnership or with authority of the limited partnership.

3               (b) If, in the course of the limited partnership's ~~business~~ activities or while  
4       acting with authority of the limited partnership, a general partner receives or causes  
5       the limited partnership to receive money or property of a person not a partner, and  
6       the money or property is misapplied by a general partner, the limited partnership is  
7       liable for the loss.

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9               **SECTION 404. GENERAL PARTNER'S LIABILITY.**<sup>54</sup>

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~       the incurring of a penalty

then   the limited partnership is liable for the loss, injury or penalty.

<sup>54</sup>This section has been revised to reflect a “flop” on the LLLP issue – i.e., to reflect LLLP status not being the Act's default setting. If the Drafting Committee retains the “flip” (LLLP status as the Act's the default setting), the Section would be revised from the 2000 Annual Meeting draft only as follows:

**SECTION 404. GENERAL PARTNER'S LIABILITY.**

(a) Except as otherwise provided in subsection (b), the debts, obligations, and liabilities of a limited partnership, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the limited partnership. A general partner is not personally liable for a debt, obligation, or liability of the limited partnership solely by reason of being or acting as a general partner.

(b) All or specified general partners of a limited partnership are liable in their capacity as general partners for all or specified debts, obligations, or liabilities of the limited partnership if:

(1) the certificate of limited partnership contains a provision to that effect; and

(2) a general partner so liable has consented in ~~writing~~ an authenticated record to the provision or to be bound by the provision.

1           ~~(a) Except as otherwise provided in subsection (b), the debts, obligations,~~  
2           ~~and liabilities of a limited partnership, whether arising in contract, tort, or otherwise,~~  
3           ~~are solely the debts, obligations, and liabilities of the limited partnership. A general~~  
4           ~~partner is not personally liable for a debt, obligation, or liability of the limited~~  
5           ~~partnership solely by reason of being or acting as a general partner.~~

6           ~~—— (b) All or specified general partners of a limited partnership are liable in~~  
7           ~~their capacity as general partners for all or specified debts, obligations, or liabilities~~  
8           ~~of the limited partnership if:~~

9           ~~—— (1) the certificate of limited partnership contains a provision to that~~  
10           ~~effect; and~~

11           ~~—— (2) a general partner so liable has consented in writing to the provision~~  
12           ~~or to be bound by the provision.~~

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

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

19           (c) An obligation of a limited partnership incurred while the limited  
20           partnership is a limited liability limited partnership, whether arising in contract, tort,  
21           or otherwise, is solely the obligation of the limited partnership. A general partner is  
22           not personally liable, directly or indirectly, by way of contribution or otherwise, for

1 such an obligation solely by reason of being or acting as a general partner. This  
2 subsection applies despite anything inconsistent in the partnership agreement that  
3 existed immediately before the consent required to become a limited liability limited  
4 partnership under Section 406(b)(2).<sup>55</sup>

5  
6 **SECTION 405. ACTIONS BY AND AGAINST PARTNERSHIP AND**  
7 **PARTNERS.**

8 (a) ~~An action may be brought against the limited partnership and, to~~ To the  
9 extent not inconsistent with Sections 104(a) and 404, any or all of the general  
10 partners may be joined in ~~the same an~~ an action against the limited partnership or  
11 separate actions may be brought.<sup>56</sup>

12 (b) A judgment against a limited partnership is not by itself a judgment  
13 against a general partner. A judgment against a limited partnership may not be  
14 satisfied from a general partner's assets unless there is also a judgment against the  
15 general partner.

16 (c) A judgment against a general partner under Section 404 may not be  
17 satisfied from a general partner's assets unless ~~creditor of a general partner may not~~  
18 ~~levy execution against the assets of the general partner to satisfy a judgment based~~

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<sup>55</sup>This language is taken from the July, 1999 Draft, which is the most recent pre-flip Draft. The July, 1999 Draft took its language, essentially verbatim, from RUPA.

<sup>56</sup>A suggestion by the Committee on Style prompted this change, which goes beyond what that Committee suggested. The initial clause is deleted as redundant. See Section 104(c).

1     ~~on a claim against the limited partnership, unless the partner is personally liable for~~  
2     ~~the claim under Section 404 and:~~

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

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

7             (3) the general partner has agreed that the creditor need not exhaust  
8     limited partnership assets; or

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

14    ~~——— (5) liability is imposed on the general partner by law or contract~~  
15    ~~independent of the existence of the limited partnership.~~<sup>57</sup>

16  
17             **SECTION 406. MANAGEMENT RIGHTS OF GENERAL PARTNER.**

18             (a) Each general partner has equal rights in the management and conduct of  
19    the limited partnership's ~~business~~ activities. Except as expressly provided in this  
20    [Act], any matter relating to the ~~business~~ activities of the limited partnership may be

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<sup>57</sup>The changes proposed for subsection (c) are intended to make the provision more easily understood. The Drafting Committee will, of course, be the judge of that.

1 exclusively decided by the general partner or, if there is more than one general  
2 partner, by a majority of the general partners.

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

4 (1) amend the partnership agreement;

5 (2) authorize a limited partnership to amend its certificate of limited  
6 partnership to ~~include, modify, or delete a statement under Section 404(b)~~ become  
7 or cease to be a limited liability limited partnership; and

8 (3) sell, lease, exchange, or otherwise dispose of all, or substantially all  
9 of the limited partnership's property (with or without the good will) otherwise than  
10 in the usual and regular course of the limited partnership's ~~business~~ activities.

11 (c) A limited partnership ~~must~~ shall reimburse a general partner for  
12 payments made and indemnify a general partner for liabilities incurred by the general  
13 partner in the ordinary course of the ~~business~~ activities of the partnership or for the  
14 preservation of its ~~business~~ activities or property.

15 (d) A limited partnership ~~must~~ shall reimburse a general partner for an  
16 advance to the limited partnership beyond the amount of capital the general partner  
17 agreed to contribute.

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



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

**SECTION 407. GENERAL PARTNER'S AND FORMER GENERAL PARTNER'S RIGHT TO INFORMATION.**

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

(1) in the limited partnership's required office, the required ~~records~~ information; and

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

(b) Each general partner and the limited partnership ~~must~~ shall furnish to a general partner:

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

(2) on demand, any other information concerning the limited partnership's ~~business activities~~ and affairs, except to the extent the demand or the

1 information demanded is unreasonable or otherwise improper under the  
2 circumstances.

3 (c) Subject to subsection (e), on 10 days' ~~written~~ demand in a record to the  
4 limited partnership, a person dissociated as a general partner may have access to a  
5 ~~record~~ the information and records described in subsection (a) at the location  
6 specified in subsection (a) if:

7 (1) the information or record pertains to the period during which the  
8 person was a general partner;

9 (2) the person seeks the information or record in good faith; and

10 (3) the person ~~meets~~ satisfies the requirements ~~under~~ of Section 304(b).

11 (d) The limited partnership ~~must~~ shall respond to a demand made pursuant  
12 to subsection (c) in the same manner as provided in Section 304(c).

13 (e) If ~~an individual who is~~ a general partner dies, Section 704 applies.

14 (f) The limited partnership may impose reasonable limitations on the use of  
15 information under this section. In any dispute concerning the reasonableness of a  
16 restriction under this subsection, the limited partnership has the burden of proving  
17 reasonableness.

18 (g) A limited partnership may charge a person dissociated as a general  
19 partner that makes a demand under this section reasonable costs of copying, limited  
20 to the costs of labor and material.

21 (h) A general partner or person dissociated as a general partner may  
22 exercise the rights under this section through an attorney or other agent. In that

1 event, any limitation on availability and use under subsection (f) apply to the  
2 attorney or other agent as well as to the general partner or person dissociated as a  
3 general partner. ~~The rights under this section extend to the legal representative of a~~  
4 ~~person that has dissociated as a general partner because of death or legal disability.~~

5 (i) The rights under this section do not extend to a transferee, but:

6 (i) subsection (c) creates rights for a person dissociated as a general  
7 partner and those rights extend to the legal representative of an individual who  
8 dissociated as a general partner because of legal disability; and

9 (ii) subsection (e) recognizes the rights of the executor or administrator  
10 of a deceased ~~limited~~ general partner.<sup>58</sup>

11 **SECTION 408. GENERAL STANDARDS OF GENERAL PARTNER'S**  
12 **CONDUCT.**

13 (a) The only fiduciary duties that a general partner has to the limited  
14 partnership and the other partners are the duty of loyalty and the duty of care under  
15 subsections (b) and (c).

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

18 (1) to account to the limited partnership and hold as trustee for it any  
19 property, profit, or benefit derived by the general partner in the conduct and winding  
20 up of the limited partnership's ~~business~~ activities or derived from a use by the

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<sup>58</sup>Changes made to parallel the changes made in Section 304.

1 general partner of limited partnership property, including the appropriation of a  
2 limited partnership opportunity;

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

6 (3) to refrain from competing with the limited partnership in the conduct  
7 or winding up of the limited partnership's ~~business~~ activities.

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

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

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

18 ~~(f) A general partner is relieved of liability imposed by law for violation of~~  
19 ~~the standards prescribed by subsections (b) through (e) to the extent the partnership~~  
20 ~~agreement vests managerial authority in one or more of the limited partners.~~<sup>59</sup>

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<sup>59</sup>At its St. Petersburg Beach meeting, the Drafting Committee decided to delete this provision. A general partner may delegate a duty, but that delegation does not discharge the duty.

1 [ARTICLE] 5

2 CONTRIBUTIONS, PROFITS, AND DISTRIBUTIONS

3 SECTION 501. FORM OF CONTRIBUTION. A contribution of a partner  
4 may consist of tangible or intangible property or other benefit to the limited  
5 partnership, including money, promissory notes, services performed, other  
6 agreements to contribute cash or property, and contracts for services to be  
7 performed.

8  
9 SECTION 502. LIABILITY FOR CONTRIBUTION.

10 (a) A partner's obligation to contribute money, property, or other benefit to,  
11 or to perform services for, a limited partnership is not excused by the member's  
12 death, disability, or other inability to perform personally.

13 (b) If a partner does not make a promised contribution of property or  
14 services, the partner is obligated at the option of the limited partnership to  
15 contribute money equal to that portion of the value, as stated in the required  
16 records, of the stated contribution ~~which~~ that<sup>60</sup> has not been made.

17 (c) The obligation of a partner to make a contribution or return money or  
18 other property paid or distributed in violation of this [Act] may be compromised  
19 only by consent of all partners. A creditor of a limited partnership ~~that~~ which  
20 extends credit or otherwise acts in reliance on an obligation described in subsection

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<sup>60</sup>Per the Committee on Style. Query: is the reference to "stated contribution" or to "portion of the value"?

1 (a), and without notice of any compromise under this subsection, may enforce the  
2 original obligation.

3 **SECTION 503. SHARING OF DISTRIBUTIONS.** A distribution by a  
4 limited partnership is shared among the partners on the basis of the value, as stated  
5 in the required records when the limited partnership decides to make the  
6 distribution, of the contributions the limited partnership has received from each  
7 partner.

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9 **SECTION 504. INTERIM DISTRIBUTIONS.** A partner does not have a  
10 right to any distribution before the dissolution and winding up of the limited  
11 partnership unless the limited partnership decides to make an interim distribution.

12  
13 **SECTION 505. NO DISTRIBUTION ON ACCOUNT OF**  
14 **DISSOCIATION.** A person does not have a right to receive any distribution on  
15 account of dissociation.

16 **SECTION 506. DISTRIBUTION IN KIND.** A partner does not have a right  
17 to demand or receive any distribution from a limited partnership in any form other  
18 than cash. A limited partnership may distribute an asset in kind, subject to Section  
19 ~~813(b)~~ 812(b) and only to the extent that each partner receives a percentage of the  
20 asset equal to the partner's share of distributions.

1           **SECTION 507. RIGHT TO DISTRIBUTION.** At the time a partner  
2 becomes entitled to receive a distribution, the partner has the status of, and is  
3 entitled to all remedies available to, a creditor of the limited partnership with respect  
4 to the distribution. However, the limited partnership's obligation to make a  
5 distribution is subject to offset for any amount owed to the limited partnership by  
6 the partner or dissociated partner on whose account the distribution is made.

7           **SECTION 508. LIMITATIONS ON DISTRIBUTION.**

8           (a) A limited partnership may not make a distribution in violation of the  
9 partnership agreement.

10           (b) A limited partnership may not make a distribution if after the  
11 distribution:

12                   (1) the limited partnership would not be able to pay its debts as they  
13 become due in the ordinary course of ~~business~~ the limited partnership's activities; or

14                   (2) the limited partnership's total assets would be less than the sum of its  
15 total liabilities plus the amount that would be needed, if the limited partnership were  
16 to be dissolved, wound up, and terminated at the time of the distribution, to satisfy  
17 the preferential rights upon dissolution, winding up, and termination of partners  
18 whose preferential rights are superior to those of persons receiving the distribution.

19           (c) A limited partnership may base a determination that a distribution is not  
20 prohibited under subsection (b) on financial statements prepared on the basis of

1        accounting practices and principles that are reasonable in the circumstances or on a  
2        fair valuation or other method that is reasonable in the circumstances.

3                (d) Except as otherwise provided in subsection (g), the effect of a  
4        distribution under subsection (b) is measured:

5                        (1) in the case of distribution by purchase, redemption, or other  
6        acquisition of a transferable interest in the limited partnership, as of the date money  
7        or other property is transferred or debt incurred by the limited partnership; and

8                        (2) in all other cases, as of the date:

9                                (A) the distribution is authorized, if the payment occurs within 120  
10       days after that date; or

11                                (B) the payment is made, if payment occurs more than 120 days after  
12       that date.

13                (e) A limited partnership's indebtedness to a partner incurred by reason of a  
14        distribution made in accordance with this section is at parity with the limited  
15        partnership's indebtedness to its general, unsecured creditors.

16                (f) A limited partnership's indebtedness, including indebtedness issued in  
17        connection with or as part of a distribution, is not considered a liability for purposes  
18        of determinations under subsection (b) if the terms of the indebtedness provide that  
19        payment of principal and interest are made only to the extent that a distribution  
20        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.

#### **SECTION 509. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

(a) A general partner that ~~votes for or assents~~ consents to a distribution made in violation of Section 508 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in ~~voting for or assenting~~ consenting to the distribution the general partner failed to comply with Section 408.

(b) A partner or transferee that knew a distribution was made in violation of Section 508 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under Section 508.

(c) A general partner against which an action is brought under subsection (a) may:

(1) implead in the action any other person that as a general partner ~~voted for or assented~~ consented to the distribution in violation of subsection (a) and compel contribution from that person; and

(2) implead in the action any person that received a distribution in violation of subsection (b) and compel contribution from that person in the amount that person received in violation of subsection (b).

- 1                   (d) A proceeding under this section is barred if it is not commenced within
- 2           two years after the distribution.

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[ARTICLE] 6  
DISSOCIATION

SECTION 601. DISSOCIATION AS LIMITED PARTNER.

(a) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(b) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

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

(2) an event agreed to in the partnership agreement as causing the person’s dissociation as a limited partner;

(3) the person’s expulsion as a limited partner pursuant to the partnership agreement;

(4) the person’s expulsion as a limited partner by the unanimous ~~vote~~ consent of the other partners if:

(A) it is unlawful to carry on the limited partnership’s ~~business~~ activities with that person as a limited partner;

(B) there has been a transfer of all of the person’s transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person’s interest, which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it

1 has filed a certificate of dissolution or the equivalent, its charter has been revoked,  
2 or its right to conduct business has been suspended by the jurisdiction of its  
3 incorporation, there is no revocation of the certificate of dissolution or no  
4 reinstatement of its charter or its right to conduct business; or

5 (D) the person is a limited liability company or partnership that has  
6 been dissolved and whose business is being wound up;

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

9 (A) the person engaged in wrongful conduct that adversely and  
10 materially affected the limited partnership's ~~business~~ activities;

11 (B) the person willfully or persistently committed a material breach  
12 of the partnership agreement or of the obligation of good faith and fair dealing under  
13 Section 305(c); or

14 (C) the person engaged in conduct relating to the limited  
15 partnership's ~~business~~ activities which makes it not reasonably practicable to carry  
16 on the ~~business~~ activities with the person as limited partner;

17 (6) in the case of a person who is an individual, the person's death;

18 (7) in the case of a person that is a trust or is acting as a limited partner  
19 by virtue of being a trustee of a trust, distribution of the trust's entire transferable  
20 interest in the limited partnership, but not merely by reason of the substitution of a  
21 successor trustee;

1 (8) in the case of a person that is an estate or is acting as a limited  
2 partner by virtue of being a personal representative of an estate, distribution of the  
3 estate's entire transferable interest in the limited partnership, but not merely by  
4 reason of the substitution of a successor personal representative;

5 (9) termination of a limited partner that is not an individual, partnership,  
6 limited liability company, corporation, trust, or estate;

7 (10) the limited partnership's participation in a merger or conversion  
8 under [Article] 11, if the limited partnership:

9 (A) is not the converted or surviving entity; or

10 (B) is the converted or surviving entity but, as a result of the  
11 conversion or merger, the person ceases to be a limited partner.

12

13 **SECTION 602. EFFECT OF DISSOCIATION AS LIMITED PARTNER.**

14 Upon a person's dissociation as a limited partner:

15 (1) subject to Section 704, the person does not have further rights as a  
16 limited partner;

17 (2) the person's obligation of good faith and fair dealing as a limited partner  
18 under Section 305(c) continues only as to matters arising and events occurring  
19 before the dissociation;

20 (3) subject to Section 704 and [Article] 11, any transferable interest owned  
21 by the person in the person's capacity as a limited partner immediately before  
22 dissociation is owned by the person as a mere transferee; and

1           (4) the dissociation does not of itself discharge the person from any  
2           obligation to the limited partnership or the other partners which the person incurred  
3           while a limited partner.

4  
5           **SECTION 603. DISSOCIATION AS GENERAL PARTNER.** A person is  
6           dissociated from a limited partnership as a general partner upon the occurrence of  
7           any of the following events:

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

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

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

14          (4) the person's expulsion as a general partner by the unanimous ~~vote~~  
15          consent of the other persons that are partners if:

16                (A) it is unlawful to carry on the limited partnership's ~~business~~ activities  
17                with that person as a general partner;

18                (B) there has been a transfer of all or substantially all of the person's  
19                transferable interest in the limited partnership, other than a transfer for security  
20                purposes, or a court order charging the person's interest, which has not been  
21                foreclosed;

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

7 (D) the person is a limited liability company or partnership that has been  
8 dissolved and whose business is being wound up;

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

11 (A) the person engaged in wrongful conduct that adversely and  
12 materially affected the limited partnership affairs;

13 (B) the person willfully or persistently committed a material breach of  
14 the partnership agreement or of a duty owed to the partnership or the other partners  
15 under Section 408; or

16 (C) the person engaged in conduct relating to the limited partnership's  
17 ~~business activities~~ which makes it not reasonably practicable to carry on the affairs  
18 of the limited partnership with the person as a general partner;

19 (6) the person's:

20 (A) becoming a debtor in bankruptcy;

21 (B) execution of an assignment for the benefit of creditors;

1 (C) seeking, consenting to, or acquiescing in the appointment of a  
2 trustee, receiver, or liquidator of that ~~partner~~ person or of all or substantially all of  
3 that ~~general partner's~~ person's property; or

4 (D) failure, within 90 days after the appointment, to have vacated or  
5 stayed the appointment of a trustee, receiver, or liquidator of the general partner or  
6 of all or substantially all of the person's property obtained without the person's  
7 consent or acquiescence, or failing within 90 days after the expiration of a stay to  
8 have the appointment vacated;

9 (7) in the case of a person who is an individual:

10 (A) the person's death;

11 (B) the appointment of a guardian or general conservator for the person;

12 or

13 (C) a judicial determination that the person has otherwise become  
14 incapable of performing the person's duties as a general partner under the  
15 partnership agreement;

16 (8) in the case of a person that is a trust or is acting as a general partner by  
17 virtue of being a trustee of a trust, distribution of the trust's entire transferable  
18 interest in the limited partnership, but not merely by reason of the substitution of a  
19 successor trustee;

20 (9) in the case of a person that is an estate or is acting as a general partner by  
21 virtue of being a personal representative of an estate, distribution of the estate's



entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(11) the limited partnership's participation in a merger or conversion under [Article] 11, if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

**SECTION 604. PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER; WRONGFUL DISSOCIATION.**

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to Section 603(1).

(b) A person's dissociation as a general partner is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement;

or

(2) it occurs before the termination of the limited partnership, and:

(A) the person withdraws as a general partner by express will;

(B) the person is expelled as a general partner by judicial determination under Section 603(5);

1 (C) the person is dissociated as a general partner by becoming a  
2 debtor in bankruptcy; or

3 (D) in the case of a person that is not an individual, trust other than a  
4 business trust, or estate, the person is expelled or otherwise dissociated as a general  
5 partner because it willfully dissolved or terminated.

6 (c) A person that wrongfully dissociates as a general partner is liable to the  
7 limited partnership and, subject to Section 1001, to the other partners for damages  
8 caused by the dissociation. The liability is in addition to any other obligation of the  
9 general partner to the limited partnership or to the other partners.

10

11 **SECTION 605. EFFECT OF DISSOCIATION AS GENERAL**

12 **PARTNER.** Upon a person's dissociation as a general partner:

13 (1) the person's right to participate as a general partner in the management  
14 and conduct of the partnership's ~~business~~ activities terminates;

15 (2) the person's duty of loyalty as a general partner under Section 408(b)(3)  
16 terminates;

17 (3) the person's duty of loyalty as a general partner under Section 408(b)(1)  
18 and (2) and duty of care under Section 408(c) continue only with regard to matters  
19 arising and events occurring before the person's dissociation as a general partner;

20 (4) the person is obligated to ~~sign~~ authenticate, at the request of the limited  
21 partnership, an amendment to the certificate of limited partnership which states that

1 the person has dissociated, and may ~~sign~~ authenticate and deliver for filing a  
2 statement of dissociation pertaining to the person;<sup>61</sup>

3 (5) subject to Section 704 and [Article] 11, any transferable interest owned  
4 by the person immediately before dissociation in the person's capacity as a general  
5 partner is owned by the person as a mere transferee; and

6 (6) the dissociation does not of itself discharge the person from any  
7 obligation to the limited partnership or the other partners which the person incurred  
8 while a general partner.

9  
10 **SECTION 606. DISSOCIATED GENERAL PARTNER'S POWER TO**  
11 **BIND AND LIABILITY TO PARTNERSHIP BEFORE DISSOLUTION.**

12 (a) After a person is dissociated as a general partner and before the limited  
13 partnership is dissolved, converted under [Article] 11 or merged out of existence  
14 under [Article 11], the limited partnership is bound by an act of the person only if:

15 (1) the act would have bound the limited partnership under Section 402  
16 before the dissociation; and

17 (2) at the time the other party enters into the transaction:

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<sup>61</sup>Query whether the provision would read better with the principal phrases reversed – that is:

the person ~~is obligated to sign, at the request of the limited partnership, an amendment to the certificate of limited partnership which states that the person has dissociated, and may sign~~ authenticate and deliver for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall authenticate an amendment to the certificate of limited partnership which states that the person has dissociated;

1 (A) less than two years has passed since the dissociation; and  
2 (B) the other party does not have notice of the dissociation and  
3 reasonably believes that the person is a general partner.

4 (b) If a limited partnership is bound under subsection (a), the person  
5 dissociated as a general partner is liable:

6 (1) to the limited partnership for any damage caused to the limited  
7 partnership arising from that obligation; and

8 (2) if a general partner or a person dissociated as a general partner is  
9 liable for that obligation, to that general partner or other person for any damage  
10 caused to that general partner or other person arising from that liability.

11

12 **SECTION 607. DISSOCIATED GENERAL PARTNER'S LIABILITY**  
13 **TO OTHER PERSONS.**

14 (a) A person's dissociation as a general partner does not of itself discharge  
15 the person's liability as a general partner for a limited partnership's obligation  
16 incurred before dissociation. Except as otherwise provided in subsections (b) and  
17 (c), the person is not liable for a limited partnership's obligation incurred after  
18 dissociation.

19 (b) A person whose dissociation as a general partner resulted in a  
20 dissolution and winding up of the limited partnership's ~~business~~ activities is liable to  
21 the same extent as a general partner under Section 404 on an obligation incurred by  
22 the limited partnership under Section 804.

1 (c) A person that has dissociated as a general partner but whose  
2 dissociation did not result in a dissolution and winding up of the limited  
3 partnership's ~~business~~ activities is liable to the same extent as a general partner  
4 under Section 404 on a transaction entered into after the dissociation by the limited  
5 partnership, only if:

6 (1) a general partner would be liable on the transaction;<sup>62</sup> and  
7 (2) at the time the other party enters into the transaction:

8 (A) less than two years has passed since the dissociation; and  
9 (B) the other party does not have notice of the dissociation and  
10 reasonably believes that the person is a general partner.

11 (d) By agreement with the limited partnership's creditor and the limited  
12 partnership, a person dissociated as a general partner may be released from liability  
13 for a limited partnership's obligation.

14 (e) A person dissociated as a general partner is released from liability for a  
15 limited partnership's obligation if a limited partnership's creditor, with notice of the  
16 person's dissociation as a general partner but without the person's consent, agrees  
17 to a material alteration in the nature or time of payment of the limited partnership's  
18 obligation.

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<sup>62</sup>This language works well if the Drafting Committee decides to "flop". In that event, the LLLP shield will be all or nothing. Under the current "flip" language, it is theoretically possible to put small holes in the LLLP shield without removing the shield entirely. If that arrangement remains possible, then this language will have to become substantially more complicated.

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[ARTICLE] 7

**TRANSFERABLE INTERESTS AND RIGHTS  
OF TRANSFEREES AND CREDITORS**

**SECTION 701. PARTNER’S TRANSFERABLE INTEREST.** The only transferable interest of a partner is the partner’s right to receive distributions. The interest is personal property.

**SECTION 702. TRANSFER OF PARTNER’S TRANSFERABLE  
INTEREST.**

(a) A transfer, in whole or in part, of a partner’s transferable interest in the limited partnership:

- (1) is permissible;
- (2) does not by itself cause the partner’s dissociation or a dissolution and winding up of the limited partnership’s ~~business~~ activities; and
- (3) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership’s ~~business~~ activities, to require access to information concerning the limited partnership’s transactions except as provided in subsection (c), or to inspect or copy the limited partnership’s books or records.

1           (b) A transferee of a partner's transferable interest in the limited  
2 ~~partnership~~<sup>63</sup> has a right to receive, in accordance with the transfer:  
3           (1) distributions to which the transferor would otherwise be entitled; and  
4           (2) upon the dissolution and winding up of the limited partnership's  
5 ~~business activities~~ the net amount otherwise distributable to the transferor.  
6           (c) In a dissolution and winding up, a transferee is entitled to an account of  
7 the limited partnership's transactions only from the date of dissolution.  
8           (d) Upon transfer, the transferor retains the rights of a partner other than the  
9 interest in distributions transferred and retains all duties and obligations of a partner.  
10          (e) A limited partnership need not give effect to a transferee's rights under  
11 this section until ~~it~~ the limited partnership has notice of the transfer.  
12          (f) A transfer of a partner's transferable interest in the limited partnership in  
13 violation of a restriction on transfer contained in the partnership agreement is  
14 ineffective as to a person having notice of the restriction at the time of transfer.  
15          (g) A transferee that becomes a partner with respect to a transferable  
16 interest is liable for the transferor's obligations under Sections 502 and 509.  
17 However, the transferee is not obligated for liabilities unknown to the transferee at  
18 the time the transferee became a partner.

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<sup>63</sup>The deleted language is unnecessary because "transferee" is a defined term. See Section 102(23).

1           **SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR**  
2           **TRANSFeree.**

3           (a) On application to a court of competent jurisdiction by any judgment  
4           creditor of a partner or transferee, the court may charge the transferable interest of  
5           the judgment debtor with payment of the unsatisfied amount of the judgment with  
6           interest. To the extent so charged, the judgment creditor has only the rights of a  
7           transferee. The court may appoint a receiver of the share of the distributions due or  
8           to become due to the judgment debtor in respect of the partnership and make all  
9           other orders, directions, accounts, and inquiries the judgment debtor might have  
10          made or which the circumstances of the case may require to give effect to the  
11          charging order.

12          (b) A charging order constitutes a lien on the judgment debtor's transferable  
13          interest. The court may order a foreclosure upon the interest subject to the charging  
14          order at any time. The purchaser at the foreclosure sale has the rights of a  
15          transferee.

16          (c) At any time before foreclosure, an interest charged may be redeemed:

17                  (1) by the judgment debtor;

18                  (2) with property other than limited partnership property, by one or more  
19          of the other partners; or

20                  (3) with limited partnership property, by the limited partnership with the  
21          consent of all partners whose interests are not so charged.



1           (d) This [Act] does not deprive any partner or transferee of the benefit of  
2           any exemption laws applicable to the partner's or transferee's transferable interest.

3           (e) This section provides the exclusive remedy by which a judgment creditor  
4           of a partner or transferee may satisfy a judgment out of the judgment debtor's  
5           transferable interest.

6           **SECTION 704. POWER OF ESTATE OF DECEASED PARTNER.** If a  
7           partner ~~who is an individual~~ dies, the deceased partner's executor, administrator, or  
8           other legal representative may exercise the rights of a transferee as provided in  
9           Section 702 and, for the purposes of settling the estate, may exercise the rights of a  
10          current limited partner under Section 304.

1 [ARTICLE] 8  
2 DISSOLUTION

3 SECTION 801. NONJUDICIAL DISSOLUTION. A limited partnership is  
4 dissolved, and its ~~business~~ activities must be wound up, only upon the occurrence of  
5 any of the following events:

6 (1) the happening of an event specified in ~~writing~~ in record form in the  
7 partnership agreement;

8 (2) the ~~written~~ consent, given in record form, of all general partners and of  
9 limited partners owning a majority of the rights to receive distributions owned by  
10 persons as limited partners at the time the consent is to be effective;

11 (3) <sup>64</sup>after the dissociation of a person as a general partner:

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<sup>64</sup>At its St. Petersburg Beach meeting the Drafting Committee substantially revised subparagraph (3)(A) on the assumption that the “flip” would stay in place. Based on those revisions, the provision would read as follows:

(3) after the dissociation of a person as a general partner:

(A) if the limited partnership has at least one remaining general partner:

(i) ~~the limited partnership’s having notice within 90 days after the dissociation of the express will of any remaining general partner to dissolve the limited partnership; or~~

(ii) the ~~written~~ consent to dissolve the limited partnership given in record form within 90 days after the dissociation by ~~limited~~ partners owning a majority of the rights to receive distributions owned by persons as ~~limited~~ partners immediately following the dissociation at the time the consent is to be effective;

As stated in the Prefatory Note, the Reporter believes that a majority of the Commissioners on the Drafting Committee’s now favor the “flop.” If the Drafting Committee votes for the “flop,” the language in the text would be appropriate.

1 (A) if the limited partnership has at least one remaining general partner:  
2 (i) the limited partnership's having notice within 90 days after the  
3 dissociation of the express will of any remaining general partner to dissolve the  
4 limited partnership; or  
5 (ii) the ~~written~~ consent to dissolve the limited partnership given in  
6 record form within 90 days after the dissociation by limited partners owning a  
7 majority of the rights to receive distributions owned by persons as limited partners  
8 ~~immediately following the dissociation~~ at the time the consent is to be effective; or  
9 (B) if the limited partnership does not have a remaining general partner,  
10 the passage of 90 days after the dissociation, unless within that 90 days:  
11 (i) consent to continue the activities of the limited partnership and to  
12 admit at least one general partner is obtained from partners owning a majority of the  
13 rights to receive distributions owned by limited partners ~~immediately following the~~  
14 ~~dissociation consent to continue the business and to admit at least one general~~  
15 ~~partner~~ at the time the consent is to be effective; and  
16 (ii) at least one person is admitted as a general partner in accordance  
17 with that consent;

---

A third alternative has been suggested: provide a dual track, with one provision applicable if at the time of general partner dissociation the limited partnership is an LLLP and another provision applicable if at the time of general partner dissociation the limited partnership is not an LLLP. The Reporter considers this approach interesting but overly complicated. The complexity would have to be quite substantial to take into account a limited partnership that begins existence (and incurs substantial liabilities) as an ordinary limited partnership and then later becomes an LLLP.

1 (4) the passage of 90 days after the dissociation of the limited partnership's  
2 last limited partner, unless before the end of the 90 days the limited partnership  
3 admits at least one limited partner; or

4 (5) the ~~signing~~ authenticating of a declaration of dissolution by the  
5 [Secretary of State] under Section ~~810(b)~~, or 809(c)

6 ~~entry of a decree of judicial dissolution under Section 802.~~<sup>65</sup>

7  
8 **SECTION 802. JUDICIAL DISSOLUTION.** On application by or for a  
9 partner the [appropriate court] court may decree dissolution of a limited partnership  
10 if it is not reasonably practicable to carry on the ~~business~~ activities of the limited  
11 partnership in conformity with the partnership agreement.

12  
13 **SECTION 803. WINDING UP.**

14 (a) A limited partnership continues after dissolution only for the purpose of  
15 winding up its ~~business~~ activities. In winding up its ~~business~~ activities the limited  
16 partnership may amend its certificate of limited partnership to state that the limited  
17 partnership is dissolved, preserve the limited partnership's ~~business~~ activities or  
18 property as a going concern for a reasonable time, prosecute and defend actions and  
19 proceedings, whether civil, criminal, or administrative, settle and close the limited  
20 partnership's ~~business~~ activities, dispose of and transfer the limited partnership's  
21 property, discharge the limited partnership's liabilities, distribute the assets of the

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<sup>65</sup>The deleted provision does not belong in a section captioned "NONJUDICIAL DISSOLUTION".

1 limited partnership under Section ~~813~~ 812, settle disputes by mediation or  
2 arbitration, deliver for filing a statement of termination under Section 203, and  
3 perform other necessary acts.

4 (b) If a dissolved limited partnership does not have a general partner, a  
5 person to wind up the dissolved limited partnership's activities may be appointed by  
6 the consent of limited partners owning a majority of the rights to receive  
7 distributions owned by partners at the time the consent is to be effective. ~~may~~  
8 ~~appoint a person to wind up the dissolved limited partnership's business.~~ A person  
9 appointed under this subsection:

10 (1) has the powers of a general partner under Section 804; and

11 (2) shall promptly amend the certificate of limited partnership to:

12 (A) state that the limited partnership does not have a general partner  
13 and that the person has been appointed to wind up the limited partnership; and

14 (B) ~~give~~ state the address of the person.

15 (c) On the application of any partner, a court may order judicial supervision  
16 of the winding up, including the appointment of a person to wind up the dissolved  
17 limited partnership's ~~business~~ activities, if:

18 (1) a limited partnership does not have a general partner and within a  
19 reasonable time following the dissolution no person has been appointed pursuant to  
20 subsection (b); or

21 (2) the applicant establishes other good cause.

1           **SECTION 804. POWER OF GENERAL PARTNER AND PERSON**  
2           **DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP**  
3           **AFTER DISSOLUTION.**

4           (a) A limited partnership is bound by a general partner's act after dissolution  
5           which:

6                   (1) is appropriate for winding up the limited partnership's ~~business~~  
7           activities; or

8                   (2) would have bound the limited partnership under Section 402 before  
9           dissolution and at the time the other party enters into the transaction the other party  
10          does not have notice of the dissolution.<sup>66</sup>

11          (b) A person dissociated as a general partner binds a limited partnership  
12          through an act occurring after dissolution if:

13                   (1) at the time the other party enters into the transaction:

14                           (A) less than two years has passed since the person's dissociation as  
15          a general partner; and

16                           (B) the other party does not have notice of the dissociation and  
17          reasonably believes that the person is a general partner; and

18                   (2) the act:

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<sup>66</sup>The Committee on Style suggests revising this provision to read:

(2) would have bound the limited partnership under Section 402 before  
dissolution ~~and if~~ if at the time the other party enters into the transaction the  
other party does not have notice of the dissolution

The Reporter prefers the current language.

1 (A) is appropriate for winding up the limited partnership's ~~business~~  
2 activities; or

3 (B) would have bound the limited partnership under Section 402  
4 before dissolution and at the time the other party enters into the transaction the  
5 other party does not have notice of the dissolution.

6  
7 **SECTION 805. LIABILITY AFTER DISSOLUTION OF GENERAL**  
8 **PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO**  
9 **LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS, AND**  
10 **PERSONS DISSOCIATED AS GENERAL PARTNER.**

11 (a) If a general partner having knowledge of the dissolution causes a limited  
12 partnership to incur an obligation under Section 804(a) by an act that is not  
13 appropriate for winding up the partnership's ~~business~~ activities, the general partner  
14 is liable:

15 (1) to the limited partnership for any damage caused to the limited  
16 partnership arising from the obligation; and

17 (2) if another general partner or a person dissociated as a general partner  
18 is liable for the obligation, to that other general partner or person for any damage  
19 caused to that other general partner or person arising from that liability.

20 (b) If a person dissociated as a general partner causes a limited partnership  
21 to incur an obligation under Section 804(b), the person is liable:

1 (1) to the limited partnership for any damage caused to the limited  
2 partnership arising from the obligation; and

3 (2) if a general partner or another person dissociated as a general partner  
4 is liable for that obligation, to that general partner or other person for any damage  
5 caused to that general partner or other person arising from that liability.

6

7 **SECTION 806. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**  
8 **PARTNERSHIP.**

9 (a) In this section, “claim” does not include a contingent liability or a claim  
10 based on an event occurring after the effective date of dissolution.<sup>67</sup>

11 (b) A dissolved limited partnership may dispose of the known claims against  
12 it by following the procedure described in ~~this section~~ subsection (c).

13 (c) A dissolved limited partnership ~~must~~ may<sup>68</sup> notify its known claimants in  
14 ~~writing in a record~~ of the dissolution. The notice must:

15 (1) specify the information required to be included in a claim;

16 (2) provide a mailing address to which the claim is to be sent;

17 (3) state the deadline for receipt of the claim, which may not be less than  
18 120 days after the date the ~~written~~ record notice is received by the claimant;

19 (4) state that the claim will be barred if not received by the deadline; and

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<sup>67</sup>Query the effect of this provision on security interests.

<sup>68</sup>The Committee on Style suggests “shall” in place of “must” but the Reporter believes that giving notice is permissive.



1 (5) unless the ~~limited partnership's certificate of limited partnership has~~  
2 ~~never contained a statement under Section 404(b) been throughout its existence a~~  
3 limited liability limited partnership, state that the barring of a claim against the  
4 limited partnership will also bar any corresponding claim against any present or  
5 dissociated general partner which is based on Section ~~404(b)~~ 404.

6 (d) A claim against a dissolved limited partnership is barred if the  
7 requirements of subsection (c) are met and:

8 (1) the claim is not received by the specified deadline; or

9 (2) in the case of a claim that is timely received but rejected by the  
10 dissolved limited partnership, the claimant does not commence a proceeding to  
11 enforce the claim against the limited partnership within 90 days after the receipt of  
12 the notice of the rejection.

13  
14 **SECTION 807. OTHER CLAIMS AGAINST DISSOLVED LIMITED**  
15 **PARTNERSHIP.**

16 (a) A dissolved limited partnership may publish notice of its dissolution and  
17 request persons having claims against the limited partnership to present them in  
18 accordance with the notice.

19 (b) The notice must:

20 (1) be published at least once in a newspaper of general circulation in the  
21 [county] in which the dissolved limited partnership's principal office is located or, if

1 it has none in this State, in the [county] in which the limited partnership's designated  
2 office is or was last located;

3 (2) describe the information required to be contained in a claim and  
4 provide a mailing address to which the claim is to be sent;

5 (3) state that a claim against the limited partnership is barred unless a  
6 proceeding to enforce the claim is commenced within five years after publication of  
7 the notice; and

8 (4) unless the ~~limited partnership's certificate of limited partnership has~~  
9 ~~never contained a statement under Section 404(b) been throughout its existence a~~  
10 limited liability limited partnership, state that the barring of a claim against the  
11 limited partnership will also bar any corresponding claim against any present or  
12 dissociated general partner which is based on Section 404.

13 (c) If a dissolved limited partnership publishes a notice in accordance with  
14 subsection (b), the claim of each of the following claimants is barred unless the  
15 claimant commences a proceeding to enforce the claim against the dissolved limited  
16 partnership within five years after the publication date of the notice:

17 (1) a claimant that did not receive ~~written~~ notice in a record under  
18 Section 806;

19 (2) a claimant whose claim was timely sent to the dissolved limited  
20 partnership but not acted on; and

21 (3) a claimant whose claim is contingent or based on an event occurring  
22 after the effective date of dissolution.

- 1 (d) A claim not barred under this section may be enforced:
- 2 (1) against the dissolved limited partnership, to the extent of its
- 3 undistributed assets;
- 4 (2) if the assets have been distributed in liquidation, against a partner or
- 5 transferee to the extent of that person's proportionate share of the claim or the
- 6 limited partnership's assets distributed to the partner or transferee in liquidation,
- 7 whichever is less, but a person's total liability for all claims under this paragraph
- 8 ~~may~~ does not exceed the total amount of assets distributed to the person as part of
- 9 the winding up of the dissolved limited partnership; or
- 10 (3) against any person liable on the claim under Section 404.

11

12 **SECTION 808. EFFECT OF BAR ON CLAIMS OF PERSONAL**

13 **LIABILITY OF PARTNERS AND DISSOCIATED PARTNERS.** If a claim

14 against a dissolved limited partnership is barred under Section 806 or 807, any

15 corresponding claim under Section 404 is also barred.

16

17 **SECTION 809. ~~GROUND~~ FOR ADMINISTRATIVE DISSOLUTION.**

18 (a) The [Secretary of State] may ~~commence a proceeding to~~ dissolve a

19 limited partnership administratively under this section if the limited partnership does

20 not, within 60 days after it is due.<sup>69</sup>

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<sup>69</sup>Per the Committee on Style. Perhaps "after it is due" should be come "after the due date". or another structure suggested by the Committee on Style, see Section 906.

1 (1) pay any ~~fees, taxes, or penalties~~ fee, tax or penalty<sup>70</sup> due to the  
2 [Secretary of State] under this [Act] or other law ~~within 60 days after they are due;~~

3 or

4 (2) deliver its annual report to the [Secretary of State] ~~within 60 days~~  
5 ~~after it is due.~~

6  
7 **~~SECTION 810. PROCEDURE FOR AND EFFECT OF~~**  
8 **~~ADMINISTRATIVE DISSOLUTION.~~**

9 (a) ~~(b)~~ If the [Secretary of State] determines that a ground exists for  
10 administratively dissolving a limited partnership, the [Secretary of State] shall enter  
11 a record of the determination and serve the limited partnership with a copy of the  
12 record.

13 ~~(b)~~ (c) If within 60 days after service of the copy the limited partnership  
14 does not correct each ground for dissolution or demonstrate to the reasonable  
15 satisfaction of the [Secretary of State] that each ground determined by the  
16 [Secretary of State] does not exist, the [Secretary of State] shall administratively  
17 dissolve the limited partnership by ~~signing~~ authenticating and filing a declaration of  
18 dissolution that states the grounds for dissolution and its effective date. The  
19 [Secretary of State] shall ~~file the original of the declaration and~~ serve the limited  
20 partnership with a copy of the filed declaration.

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<sup>70</sup>To conform to the singular pronoun (“it”) in the lead-in phrase.

1           ~~(c)~~ (d) A limited partnership administratively dissolved continues its  
2       existence but may carry on only ~~business~~ activities necessary to wind up and  
3       liquidate its ~~business~~ activities and affairs under Sections 803 and ~~813~~ 812 and to  
4       notify claimants under Sections 806 and 807.

5           ~~(d)~~ (e) The administrative dissolution of a limited partnership does not  
6       terminate the authority of its agent for service of process.

7  
8           **SECTION ~~811~~ 810. REINSTATEMENT FOLLOWING**  
9       **ADMINISTRATIVE DISSOLUTION.**

10           (a) A limited partnership that has been administratively dissolved may apply  
11       to the [Secretary of State] for reinstatement within two years after the effective date  
12       of dissolution. The application must state:

13                   (1) the name of the limited partnership and the effective date of its  
14       administrative dissolution;

15                   (2) that the ground or grounds for dissolution either did not exist or have  
16       been eliminated; and

17                   (3) that the limited partnership's name satisfies the requirements of  
18       Section 108.

19           (b) If the [Secretary of State] determines that the application contains the  
20       information required by subsection (a) and that the information is correct, the  
21       [Secretary of State] shall cancel the declaration of dissolution and prepare a  
22       declaration of reinstatement that states this determination and the effective date of  
23       reinstatement, file the original of the declaration of reinstatement, and serve the  
24       limited partnership with a copy.

25           (c) When reinstatement is effective, it relates back to and takes effect as of  
26       the effective date of the administrative dissolution and the limited partnership may  
27       resume its ~~business~~ activities as if the administrative dissolution had never occurred.

1  
2           **SECTION ~~812~~ 811. APPEAL FROM DENIAL OF REINSTATEMENT.**

3           (a) If the [Secretary of State] denies a limited partnership's application for  
4           reinstatement following administrative dissolution, the [Secretary of State] shall  
5           serve the limited partnership with a record that explains the reason or reasons for  
6           denial.

7           (b) The limited partnership may appeal from the denial of reinstatement to  
8           the [appropriate court] within 30 days after service of the notice of denial is  
9           perfected by petitioning the court to set aside the dissolution. The petition must  
10          contain a copy of the [Secretary of State's] declaration of dissolution, the limited  
11          partnership's application for reinstatement, and the [Secretary of State's] notice of  
12          denial.

13          (c) The court may summarily order the [Secretary of State] to reinstate the  
14          dissolved limited partnership or may take other action the court considers  
15          appropriate.

16  
17           **SECTION ~~813~~ 812. SETTLING OF ACCOUNTS AND**  
18           **DISTRIBUTION OF ASSETS.**

19          (a) In winding up a limited partnership's ~~business activities~~, the assets of the  
20          limited partnership, including the contributions required by this section, must be  
21          applied to discharge its obligations to creditors, including, to the extent permitted by  
22          law, partners that are creditors.

1           (b) Any surplus remaining after the limited partnership complies with  
2 subsection (a) must be paid in cash as a distribution.

3           (c) If the limited partnership's assets are insufficient to discharge all of its  
4 obligations under subsection (a), with respect to each undischarged obligation  
5 incurred when ~~certificate of limited partnership contained a provision authorized by~~  
6 ~~Section 404(b) the limited partnership was not a limited liability limited partnership.~~  
7 the following rules apply:

8           (1) Each person that was a general partner and bound by that provision  
9 when the obligation was incurred and that has not been released from that obligation  
10 under Section 607 shall contribute to the limited partnership for the purpose of  
11 enabling the limited partnership to discharge that obligation. The contribution due  
12 from each of those persons is in proportion to the right to receive distributions in the  
13 capacity of general partner in effect for each of those persons when the obligation  
14 was incurred.

15           (2) If a person fails to contribute the full amount required under  
16 paragraph (1) with respect to an undischarged limited partnership's obligation, the  
17 other persons required to contribute by paragraph (1) on account of that obligation  
18 shall contribute the additional amount necessary to discharge the obligation. The  
19 additional contribution due from each of those other persons is in proportion to the  
20 right to receive distributions in the capacity of general partner in effect for each of  
21 those other persons when the obligation was incurred.

1                   (3) If a person fails to make the additional contribution required by  
2 paragraph (2), further additional contributions are due and are determined in the  
3 same manner as provided in that paragraph.

4                   (d) A person that makes an additional contribution under subsection (c)(2)  
5 or (3) may recover from any person whose failure to contribute under subsection  
6 (c)(1) or (2) necessitated the additional contribution. A person may not recover  
7 under this subsection more than the amount additionally contributed. A person's  
8 liability under this subsection may not exceed the amount the person failed to  
9 contribute.

10                  (e) The estate of a deceased ~~person~~ individual is liable for the person's  
11 obligations under this section.

12                  (f) An assignee for the benefit of creditors of a limited partnership or a  
13 partner, or a person appointed by a court to represent creditors of a limited  
14 partnership or a partner, may enforce a person's obligation to contribute under  
15 subsection (c).



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**[ARTICLE] 9**  
**FOREIGN LIMITED PARTNERSHIPS**

**SECTION 901. GOVERNING LAW.**

(a) The laws of the State or other jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its partners.

(b) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this State.

(c) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this State.

**SECTION 902. APPLICATION FOR CERTIFICATE OF AUTHORITY.**

(a) A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must state:

(1) the name of the foreign limited partnership and, if that name does not comply with Section 108, an alternate name adopted pursuant to Section 905(a).

(2) the name of the State or ~~country~~ other jurisdiction under whose law it is organized;

1 (3) the street address of its principal office, and if the laws of the  
2 jurisdiction under which the foreign limited partnership is organized require the  
3 foreign limited partnership to maintain an office in that jurisdiction, the street  
4 address of that required office;

5 (4) the name and street address of its initial agent for service of process  
6 in this State;

7 (5) the name and address of each of its general partners; and

8 (6) whether the foreign limited partnership is a foreign limited liability  
9 limited partnership.

10 (b) A foreign limited partnership ~~must~~ shall deliver with the completed  
11 application a certificate of existence or a record of similar import authenticated by  
12 the [Secretary of State] or other official having custody of the foreign limited  
13 partnership's records in the State or ~~country~~ other jurisdiction under whose law it is  
14 organized.

15  
16 **SECTION 903. ACTIVITIES NOT CONSTITUTING TRANSACTING**  
17 **BUSINESS.**

18 (a) Activities of a foreign limited partnership which do not constitute  
19 transacting business in this State within the meaning of this [article] include:

20 (1) maintaining, defending, and settling an action or proceeding;

21 (2) holding meetings of its partners or carrying on any other activity  
22 concerning its internal affairs;

- 1                   (3) maintaining ~~bank~~ accounts in financial institutions;<sup>71</sup>
- 2                   (4) maintaining offices or agencies for the transfer, exchange, and
- 3 registration of the foreign limited partnership's own securities or maintaining
- 4 trustees or depositories with respect to those securities;
- 5                   (5) selling through independent contractors;
- 6                   (6) soliciting or obtaining orders, whether by mail or electronic means or
- 7 through employees or agents or otherwise, if the orders require acceptance outside
- 8 this State before they become contracts;
- 9                   (7) creating or acquiring indebtedness, mortgages, or security interests in
- 10 real or personal property;
- 11                  (8) securing or collecting debts or enforcing mortgages or other security
- 12 interests in property securing the debts, and holding, protecting, and maintaining
- 13 property so acquired;
- 14                  (9) conducting an isolated transaction that is completed within 30 days
- 15 and is not one in the course of similar transactions of a like manner; and
- 16                  (10) transacting business in interstate commerce.
- 17                  (b) For purposes of this [article], the ownership in this State of income-
- 18 producing real property or tangible personal property, other than property excluded
- 19 under subsection (a), constitutes transacting business in this State.

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<sup>71</sup>This revision implements a suggestion from the floor at the 2000 Annual Meeting.

1 (c) This section does not apply in determining the contacts or activities that  
2 may subject a foreign limited partnership to service of process, taxation, or  
3 regulation under any other law of this State.

4  
5 **SECTION 904. FILING OF CERTIFICATE OF AUTHORITY.** Unless  
6 the [Secretary of State] determines that an application for a certificate of authority  
7 fails to comply as to form with the filing requirements of this [Act], the [Secretary of  
8 State], upon payment of all filing fees, shall file the application, file a certificate of  
9 authority to transact business in this State, and send a conformed copy of the  
10 certificate, together with a receipt for the fees to the foreign limited partnership or  
11 its representative.

12  
13 **SECTION 905. NONCOMPLYING NAME OF FOREIGN LIMITED**  
14 **PARTNERSHIP.**

15 (a) A foreign limited partnership whose name does not comply with Section  
16 108 may not obtain a certificate of authority until it adopts, for the purpose of  
17 transacting business in this State, an alternate name that complies with Section 108.  
18 A foreign limited partnership that adopts an alternate name under this subsection  
19 and then obtains a certificate of authority with that name need not comply with  
20 [fictitious name statute]. After obtaining a certificate of authority with an alternate  
21 name, a foreign limited partnership ~~must~~ shall transact business in this State under

1       that name unless the foreign limited partnership is authorized under [fictitious name  
2       statute] to transact business in this State under another name.

3               (b) If a foreign limited partnership authorized to transact business in this  
4       State changes its name to one that does not comply with Section 108, it may not  
5       thereafter transact business in this State until it complies with subsection (a) and  
6       obtains an amended certificate of authority.

7  
8               **SECTION 906. REVOCATION OF CERTIFICATE OF AUTHORITY.**

9               (a) A certificate of authority of a foreign limited partnership to transact  
10       business in this State may be revoked by the [Secretary of State] in the manner  
11       provided in subsection (b) if the foreign limited partnership fails to:

12               (1) pay, within 60 days after they are due, any fees, taxes, or penalties  
13       due to the [Secretary of State] under this [Act] or other law ~~within 60 days after~~  
14       ~~they are due~~;

15               (2) deliver, within 60 days after it is due, its annual report required under  
16       Section 210 to the [Secretary of State] ~~within 60 days after it is due~~;<sup>72</sup>

17               (3) appoint and maintain an agent for service of process as required by  
18       Section 114(b); or

19               (4) deliver for filing a statement of a change under Section 115 within  
20       **[FBD]** 30 days after a change has occurred in the name or address of the agent.

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<sup>72</sup>Per the Committee on Style. Compare the Committee's changes to Section 809(a). The same approach should be used in both places.

1 (b) The [Secretary of State] may not revoke a certificate of authority of a  
2 foreign limited partnership unless the [Secretary of State] sends the foreign limited  
3 partnership notice of the revocation, at least 60 days before its effective date, by a  
4 record addressed to its agent for service of process in this State, or if the foreign  
5 limited partnership fails to appoint and maintain a proper agent in this State,  
6 ~~addressed~~ to the foreign limited partnership's designated office. The notice must  
7 specify the cause for the revocation of the certificate of authority. The authority of  
8 the foreign limited partnership to transact business in this State ceases on the  
9 effective date of the revocation unless the foreign limited partnership cures the  
10 failure before that date.

11  
12 **SECTION 907. CANCELLATION OF CERTIFICATE OF**  
13 **AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE.**

14 (a) A foreign limited partnership may cancel its certificate of authority to  
15 transact business in this State by delivering for filing in the office of the [Secretary of  
16 State] a certificate of cancellation.<sup>73</sup>

17 (b) A foreign limited partnership transacting business in this State may not  
18 maintain an action or proceeding in this State unless it has a certificate of authority  
19 to transact business in this State.

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<sup>73</sup>Query whether it is necessary to specify the contents of the certificate, expressly authorize the Secretary of State to charge a fee, mandate that the Secretary of State file the certificate and state that the certificate takes effect when filed.

1           (c) The failure of a foreign limited partnership to have a certificate of  
2           authority to transact business in this State does not impair the validity of a contract  
3           or act of the foreign limited partnership or prevent the foreign limited partnership  
4           from defending an action or proceeding in this State.

5           (d) A partner of a foreign limited partnership is not liable for the obligations  
6           of the foreign limited partnership solely by reason of the foreign limited  
7           partnership's having transacted business in this State without a certificate of  
8           authority.

9           (e) If a foreign limited partnership transacts business in this State without a  
10          certificate of authority or cancels its certificate of authority, it appoints the  
11          [Secretary of State] as its agent for service of process for rights of action arising out  
12          of the transaction of business in this State.

13          **SECTION 908. ACTION BY [ATTORNEY GENERAL].** The [Attorney  
14          General] may maintain an action to restrain a foreign limited partnership from  
15          transacting business in this State in violation of this [article].

1 [ARTICLE] 10

2 ACTIONS BY PARTNERS

3 SECTION 1001. DIRECT ACTIONS BY PARTNER.

4 (a) Subject to subsection (b), a partner may maintain a direct action against  
5 the partnership or another partner for legal or equitable relief, with or without an  
6 accounting as to partnership's ~~business~~ activities, to:

7 (1) enforce the partner's rights under the partnership agreement;

8 (2) enforce the partner's rights under this [Act]; or

9 (3) enforce the rights and otherwise protect the interests of the partner,  
10 including rights and interests arising independently of the partnership relationship.

11 (b) A partner bringing a direct action under this section is required to plead  
12 and prove an actual or threatened injury that is not solely the result of an injury  
13 suffered or threatened to be suffered by the limited partnership.

14 (c) The accrual of, and any time limitation on, a right of action for a remedy  
15 under this section is governed by other law. A right to an accounting upon a  
16 dissolution and winding up does not revive a claim barred by law.

17  
18 SECTION 1002. DERIVATIVE ACTION. A partner may bring a derivative  
19 action to enforce a right of a limited partnership if:

20 (1) the partner first makes a demand on the general partners, requesting that  
21 they cause the limited partnership to bring an action to enforce the right, and the  
22 general partners do not bring the action within a reasonable time; or



1           (2) a demand would be futile.

2

3           **SECTION 1003. PROPER PLAINTIFF.** In a derivative action, the plaintiff  
4 must be a partner at the time of bringing the action and:

5           (1) the plaintiff must have been a partner when the conduct giving rise to  
6 action occurred; or

7           (2) the plaintiff's status as a partner must have devolved upon the plaintiff by  
8 operation of law or pursuant to the terms of the partnership agreement from a  
9 person that was a partner at the time of the conduct.

10

11           **SECTION 1004. PLEADING.** In a derivative action, the complaint must state  
12 with particularity:

13           (1) the date and content of plaintiff's demand and the general partners'  
14 response to the demand; or

15           (2) why demand is excused as futile.

16

17           **SECTION 1005. PROCEEDS AND EXPENSES.**

18           (a) Except as otherwise provided in subsection (b):

19           (1) any proceeds or other benefits of a derivative action, whether by  
20 judgment, compromise, or settlement, belong to the limited partnership and not to  
21 the derivative plaintiff;

22           (2) if the derivative plaintiff receives any of those proceeds, the  
23 derivative plaintiff shall immediately remit them to the limited partnership.

1                   (b) If a derivative action is successful in whole or in part, the court may  
2                   award the plaintiff reasonable expenses, including reasonable attorney's fees, from  
3                   the recovery of the limited partnership.

1 [ARTICLE] 11

2 **CONVERSION AND MERGER**

3  
4 **SECTION 1101. DEFINITIONS.** In this [article]:

5 (1) “Business organization” means a domestic or foreign general  
6 partnership, including a limited liability partnership; ~~a~~ a limited partnership, including  
7 a limited liability limited partnership; ~~a~~ a limited liability company; ~~a~~ a business trust; ~~a~~  
8 corporation; ~~and or~~ any other entity having owners and ownership interests under  
9 its governing statute.

10 (2) “Constituent business organization” means a business organization that  
11 is party to a merger.

12 (3) “Constituent limited partnership” means a constituent business  
13 organization that is a limited partnership.

14 ~~(3)~~ (4) “Converted business organization” means the business organization  
15 into which a converting business organization converts pursuant to Section 1102.

16 ~~(4)~~ (5) “Converting business organization” means a business organization  
17 that converts into another business organization pursuant to Section 1102.

18 (6) “Converting limited partnership” means a converting business  
19 organization that is a limited partnership.

20 ~~(5)~~ (7) “General partner” means a general partner of a limited partnership.

1           ~~(6)~~ (8) “Governing statute” of a business organization means the statute  
2           under which the organization is incorporated, organized, formed, or created and  
3           which governs the internal affairs of the organization.

4           ~~(7)~~ (9) “Organizational documents” means:

5                   (A) for a domestic or foreign general partnership, its partnership  
6           agreement;

7                   (B) for a ~~limited partnership and a domestic or foreign limited~~  
8           partnership, its certificate of limited partnership and partnership agreement;

9                   (C) for a domestic or foreign limited liability company, its articles of  
10          organization and operating agreement;

11                  (D) for a business trust, its agreement of trust and declaration of trust;

12                  (E) for a domestic or foreign corporation, its articles of incorporation,  
13          bylaws, and other agreements among its shareholders which are authorized by its  
14          governing statute; and

15                  (F) for any other business organization, the basic records that create the  
16          business organization and determine its internal governance and the relations among  
17          its owners.

18           ~~(8)~~ (10) “Owner” means:

19                   (A) with respect to a domestic or foreign general or limited partnership,  
20          a partner;

21                   (B) with respect to a domestic or foreign limited liability company, a  
22          member;

1 (C) with respect to a domestic or foreign business trust, the owner of a  
2 beneficial interest in the trust;

3 (D) with respect to a domestic or foreign corporation, a shareholder; and

4 (E) with respect to any other business organization, a person that has an  
5 ownership interest in the organization.

6 (11) “Ownership interest” means an owner’s proprietary interest in a  
7 business organization.<sup>74</sup>

8 ~~(9)~~ (12) “Owner’s liability” means personal liability for a debt, obligation, or  
9 liability of a business organization which is imposed on an owner:

10 (A) by the organization’s governing statute solely by reason of the  
11 owner’s capacity as owner; or

12 (B) by the organization’s organizational documents under a provision of  
13 the organization’s governing statute authorizing those documents to make one or  
14 more specified owners liable in their capacity as owners for all or specified debts,  
15 obligations, or liabilities of the business organization.

16 ~~(10)~~ (13) “Person dissociated as a general partner” means a person  
17 dissociated as a general partner of a limited partnership.

18 ~~(11)~~ (14) “Surviving business organization” means a business organization  
19 into which one or more other business organizations are merged. A surviving  
20 business organization may preexist the merger or be created by the merger.

21

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<sup>74</sup>Relocated from Section 102.

1           **SECTION 1102. CONVERSION.**

2           (a) A business organization other than a limited partnership may convert to  
3           a limited partnership, and a limited partnership may convert to another business  
4           organization pursuant to this section and Sections ~~1102~~ 1103 through 1105<sup>75</sup> and a  
5           plan of conversion, if:

6                   (1) those sections are not inconsistent with the governing statute of the  
7           other business organization; and

8                   (2) the other business organization complies with its governing statute in  
9           effecting the conversion.

10          (b) A plan of conversion shall be in a record and must include:

11                   (1) the name and form of the business organization before conversion;

12                   (2) the name and form of the business organization after conversion; and

13                   (3) the terms and conditions of the conversion, including the manner and

14           basis for converting the ownership interests of the converting business organization

15           into any combination of money, ownership interests in the converted business

16           organization, and other consideration; and

17                   (4) the organizational documents of the converted business organization.

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<sup>75</sup>Per the Committee on Style.

1           **SECTION 1103. ACTION ON PLAN OF CONVERSION BY LIMITED**  
2           **PARTNERSHIP.**

3           (a) ~~If Subject to Section 1110, all the partners of a converting business~~  
4           ~~organization is a limited partnership must approve , subject to Section 1110 the plan~~  
5           ~~of conversion must be approved by all the partners.~~

6           (b) Subject to Section 1110 and any contractual rights, after a conversion is  
7           approved, and at any time before a filing is made under Section 1104, a converting  
8           ~~business organization that is a limited partnership~~ may amend the plan or abandon  
9           the planned conversion:

10                   (1) as provided in the plan; and

11                   (2) except as prohibited by the plan, by the same consent as was required  
12           to approve the plan.

13  
14           **SECTION 1104. FILINGS REQUIRED FOR CONVERSION;**  
15           **EFFECTIVE DATE.**

16           (a) After a plan of conversion is approved:

17                   (1) ~~if the converting business organization is a limited partnership, the a~~  
18           converting limited partnership must deliver for filing with the [Secretary of State]  
19           articles of conversion, which must include:

20                           (A) a statement that the limited partnership has been converted into  
21           another business organization;

1 (B) the name and form of that business organization and the  
2 jurisdiction of its governing statute;

3 (C) the date the conversion is effective according to the governing  
4 statute of the converted business organization;

5 (D) a statement that the conversion was approved as required by this  
6 [Act]; and

7 ~~(E) a statement that the conversion was approved as required by the~~  
8 governing statute of the converted business organization; and

9 (E) if the converted business organization is a foreign entity not  
10 authorized to transact business in this State, the street and mailing address of an  
11 office which the [Secretary of State] may use for the purposes of Section 1105(c);  
12 and

13 (2) if the converting business organization is ~~a~~ not a converting limited  
14 partnership, the converting business organization shall deliver for filing with the  
15 [Secretary of State] a certificate of limited partnership, which must include, in  
16 addition to the information required by Section 201:

17 (A) a statement that the limited partnership was converted from  
18 another ~~form of~~ business organization;

19 (B) the name and form of that business organization and the  
20 jurisdiction of its governing statute; and

21 (C) a statement that the conversion was approved in a manner that  
22 complied with the business organization's governing statute.



1 (b) A conversion becomes effective:

2 (1) if the converted business organization is a limited partnership, when  
3 the certificate of limited partnership takes effect; and

4 (2) if the converted business organization is not a limited partnership, as  
5 provided by the governing statute of the converted business organization.

6  
7 **SECTION 1105. EFFECT OF CONVERSION.**

8 (a) A business organization that has been converted pursuant to this [article]  
9 is for all purposes the same entity that existed before the conversion.

10 (b) When a conversion takes effect:

11 (1) all property owned by the converting business organization vests in  
12 the converted business organization;

13 (2) all debts, liabilities, and other obligations of the converting business  
14 organization continue as obligations of the converted business organization;

15 (3) an action or proceeding pending by or against the converting business  
16 organization may be continued as if the conversion had not occurred;

17 (4) except as prohibited by other law, all of the rights, privileges,  
18 immunities, powers, and purposes of the converting business organization vest in the  
19 converted business organization; ~~and~~

20 (5) except as otherwise provided in the plan of conversion, the terms and  
21 conditions of the plan of conversion take effect; and

1                   ~~(5)~~ (6) except as otherwise agreed, if the converting business  
2 organization is a limited partnership the conversion does not dissolve the a  
3 converting limited partnership for the purposes of [Article] 8.

4                   (c) A converted business organization that is a foreign entity consents to the  
5 jurisdiction of the courts of this State to enforce any obligation owed by the  
6 converting business organization, if before the conversion the converting business  
7 organization was subject to suit in this State on that obligation. A converted  
8 business organization that is a foreign entity and not authorized to transact business  
9 in this State appoints the [Secretary of State] as its agent for service of process for  
10 purposes of enforcing an obligation under this subsection. Service on the [Secretary  
11 of State] under this subsection is made in the same manner and with the same  
12 consequences as ~~provided~~ in Section 117(c) and (d).

13  
14                   **SECTION 1106. MERGER.**

15                   (a) A limited partnership may merge with one or more other constituent  
16 business organizations pursuant to this section and Sections 1106 1107<sup>76</sup> through  
17 1109 and a plan of merger, if:

18                               (1) those sections are not inconsistent with the governing statute of each  
19 of the other constituent business organizations; and

20                               (2) each of the other constituent business organizations complies with its  
21 governing statute in effecting the merger.

---

<sup>76</sup>To conform with the revision to Section 1102.

- 1 (b) A plan of merger shall be in a record and must include:
- 2 (1) the name and form of each constituent business organization;
- 3 (2) the name and form of the surviving business organization and, if the
- 4 surviving business organization is to be created by the merger, a statement to that
- 5 effect;
- 6 (3) the terms and conditions of the merger, including the manner and
- 7 basis for converting the ownership interests of each constituent business
- 8 organization into any combination of money, ownership interests in the surviving
- 9 business organization, and other consideration;
- 10 (4) if the surviving business organization is to be created by the merger,
- 11 the surviving business organization's organizational documents; and
- 12 (5) if the surviving business organization is not to be created by the
- 13 merger, any amendments to be made by the merger to the surviving business
- 14 organization's organizational documents.

15 **SECTION 1107. ACTION ON PLAN OF MERGER BY LIMITED**

16 **PARTNERSHIP.**

17 (a) Subject to Section 1110, ~~the plan of merger must be approved by~~ all the

18 partners of a constituent ~~business organization that is a limited partnership~~ must

19 approve a plan of merger.

20 (b) Subject to Section 1110 and any contractual rights, after a merger is

21 approved, and at any time before a filing is made under Section 1108, a constituent

1 ~~business organization that is a~~ limited partnership may amend the plan or abandon  
2 the planned merger:

3 (1) as provided in the plan; and

4 (2) except as prohibited by the plan, by the same consent as was required  
5 to approve the plan.

6 **SECTION 1108. FILINGS REQUIRED FOR MERGER; EFFECTIVE**  
7 **DATE.**

8 (a) After each constituent business organization has approved a merger,  
9 articles of merger must be ~~signed~~ authenticated on behalf of:

10 (1) each preexisting constituent ~~business organization that is a~~ limited  
11 partnership, by each general partner listed in the certificate of limited partnership;  
12 and

13 (2) each other preexisting constituent business organization ~~that is not a~~  
14 ~~limited partnership~~, by a duly authorized representative.

15 (b) The articles of merger must include:

16 (1) the name and form of each constituent business organization and the  
17 jurisdiction of its governing statute;

18 (2) the name and form of the surviving business organization, the  
19 jurisdiction of its governing statute, and, if the surviving business organization is  
20 created by the merger, a statement to that effect;

21 (3) the date the merger is effective;

1 (4) if the surviving business organization is to be created by the merger:

2 (A) if it will be a limited partnership, the limited partnership's

3 certificate of limited partnership; or

4 (B) if it will be a business organization other than a limited

5 partnership, the organizational document that creates the business organization;

6 (5) if the surviving business organization preexists the merger, any

7 amendments provided for in the plan of merger for the organizational document that

8 created the business organization; ~~and~~

9 (6) a statement as to each constituent business organization that the

10 merger was approved as required by the business organization's governing statute;

11 ~~and~~

12 (7) if the surviving business organization is a foreign entity not

13 authorized to transact business in this State, the street and mailing address of an

14 office which the [Secretary of State] may use for the purposes of Section 1109(b);

15 and

16 ~~(7)~~ (8) any additional information required by the governing statute of

17 any constituent business organization.

18 (c) Each constituent ~~business organization that is a~~ limited partnership must

19 deliver the articles of merger for filing in the [office of the Secretary of State].

20 (d) A merger becomes effective under this [article] ~~upon the later of:~~

21 (1) if the surviving business organization is a limited partnership, upon

22 the later of:

1                    (i) compliance with subsection (c) ~~and the performance of any acts~~  
2 ~~required to effectuate the merger under the governing statute of each constituent~~  
3 ~~business organization; or~~

4                    ~~(2)~~

5                    (ii) subject to Section 206, a date specified in the articles of merger;  
6 and

7                    (2) if the surviving business organization is not a limited partnership, as  
8 provided by the governing statute of the surviving business organization.

9  
10                    **SECTION 1109. EFFECT OF MERGER.**

11                    (a) When a merger becomes effective:

12                    (1) the surviving business organization continues or comes into  
13 existence;

14                    (2) each constituent business organization that merges into the surviving  
15 business organization ceases to exist as a separate entity;

16                    (3) all property owned by each constituent business organization that  
17 ceases to exist vests in the surviving business organization;

18                    (4) all debts, liabilities, and other obligations of each constituent business  
19 organization that ceases to exist continue as obligations of the surviving business  
20 organization;

1 (5) an action or proceeding pending by or against any constituent  
2 business organization that ceases to exist may be continued as if the merger had not  
3 occurred;

4 (6) except as prohibited by other law, all of the rights, privileges,  
5 immunities, powers, and purposes of each constituent business organization that  
6 ceases to exist vest in the surviving business organization;

7 (7) except as otherwise provided in the plan of conversion, the terms and  
8 conditions of the plan of conversion take effect; and

9 ~~(7)~~ (8) except as otherwise agreed, if a constituent ~~business organization~~  
10 ~~is a limited partnership that~~ ceases to exist, the merger does not dissolve the limited  
11 partnership for the purposes of [Article] 8;

12 ~~(8)~~ (9) if the surviving business organization is created by the merger:

13 (A) if it is a limited partnership, the certificate of limited partnership  
14 becomes effective; or

15 (B) if it is a business organization other than a limited partnership,  
16 the organizational document that creates the business organization becomes  
17 effective; and

18 ~~(9)~~(10) if the surviving business organization preexists the merger, any  
19 amendments provided for in the ~~plan~~ articles of merger for the organizational  
20 document that created the business organization become effective.

21 (b) A surviving business organization that is a foreign entity consents to the  
22 jurisdiction of the courts of this State to enforce any obligation owed by a

1 constituent business organization, if before the conversion the constituent business  
2 organization was subject to suit in this State on that obligation. A surviving  
3 business organization that is a foreign entity and not authorized to transact business  
4 in this State appoints the [Secretary of State] as its agent for service of process for  
5 the purposes of enforcing an obligation under this subsection. Service on the  
6 [Secretary of State] under this subsection is made in the same manner and with the  
7 same consequences as ~~provided~~ in Section 117(c) and (d).

8 **SECTION 1110. RESTRICTIONS ON ~~NON-UNANIMOUS~~**  
9 **NONUNANIMOUS APPROVAL OF CONVERSIONS AND MERGERS.**

10 (a) If a partner of a limited partnership will have owner's liability with  
11 respect to a converted or surviving organization, approval and amendment of a plan  
12 of conversion or merger are ineffective without the consent of that partner, unless:

13 (1) the limited partnership's partnership agreement provides for the  
14 approval of the conversion or merger with the consent of less than all the partners;<sup>77</sup>  
15 and

16 (2) that partner has ~~assented~~ consented to that provision of the  
17 partnership agreement.

18 (b) A partner does not give the ~~assent~~ consent required by subsection (a)  
19 merely by ~~assenting~~ consenting to a provision of the partnership agreement which

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<sup>77</sup>Query: since this provision is so important, should the Act require the consent to be given in a record?



1 permits the partnership agreement to be amended with the consent of less than all  
2 the partners.

3  
4 **SECTION 1111. LIABILITY OF GENERAL PARTNER AFTER**  
5 **CONVERSION OR MERGER.**

6 (a) A conversion or merger under this article does not discharge any liability  
7 under Sections 404 and 607 of a person that was a general partner in or dissociated  
8 as a general partner ~~in from~~ a converting or constituent ~~business organization~~ limited  
9 partnership, but:

10 (1) the provisions of this [Act] pertaining to the collection or discharge  
11 of that liability continue to apply to that liability;

12 (2) for the purposes of applying those provisions, the converted or  
13 surviving business organization is deemed to be the converting or constituent  
14 ~~business organization~~ limited partnership; and

15 (3) if a person is required to pay any amount under this subsection:

16 (A) the person has a right of contribution from each other person that  
17 was liable as a general partner under Section 404 when the obligation was incurred  
18 and has not been released from that obligation under Section 607; and

19 (B) the contribution due from each of those persons is in proportion  
20 to the right to receive distributions in the capacity of general partner in effect for  
21 each of those persons when the obligation was incurred.

22 (b) In addition to any other liability provided by law:

1 (1) a person that immediately before a conversion or merger became  
2 effective was a general partner in a converting or constituent ~~business organization~~  
3 ~~and had owner's liability for that business organization's obligations~~ limited  
4 partnership that was not a limited liability limited partnership is personally liable for  
5 each obligation of the converted or surviving business organization arising from a  
6 transaction with a third party after the conversion or merger becomes effective, if at  
7 the time the third party enters into the transaction the third party:

8 (A) does not have notice of the conversion or merger; and

9 (B) reasonably believes that:

10 (i) the converted or surviving business is the converting or  
11 constituent ~~business organization~~ limited partnership;

12 (ii) the converting or constituent limited partnership is not a  
13 limited liability limited partnership; and ~~that~~

14 (iii) the person is a general partner in the converting or  
15 constituent ~~business organization~~ limited partnership;

16 (2) a person that was dissociated as a general partner from a converting  
17 or constituent ~~business organization~~ limited partnership before the conversion or  
18 merger became effective is personally liable for each obligation of the converted or  
19 surviving business organization arising from a transaction with a third party after the  
20 conversion or merger becomes effective, if:

21 (A) immediately before the conversion or merger became effective  
22 the converting or surviving ~~business organization~~ limited partnership was a not a

1 ~~limited liability~~ limited partnership ~~whose certificate of limited partnership included a~~  
2 ~~statement under Section 404(b) ; and~~

3 (B) at the time the third party enters into the transaction less than  
4 two years have passed since the person dissociated as a general partner and the third  
5 party:

6 (i) does not have notice of the dissociation;

7 (ii) does not have notice of the conversion or merger; and

8 (iii) reasonably believes that the converted or surviving business  
9 organization is the converting or constituent ~~business organization~~ limited  
10 partnership, ~~the converting or constituent limited partnership is not a limited liability~~  
11 limited partnership and that the person is a general partner in the converting or  
12 constituent ~~business organization~~ limited partnership.

13  
14 **SECTION 1112. POWER OF GENERAL PARTNERS AND PERSONS**  
15 **DISSOCIATED AS GENERAL PARTNERS TO BIND AFTER**  
16 **CONVERSION OR MERGER.**

17 (a) An act of a person that immediately before a conversion or merger  
18 became effective was a general partner in a converting or constituent ~~business~~  
19 ~~organization~~ limited partnership binds the converted or surviving business  
20 organization after the conversion or merger becomes effective, if:

1                   (1) before the conversion or merger became effective, the act would have  
2 bound the converting or constituent ~~business organization~~ limited partnership under  
3 Section 404; and

4                   (2) at the time the third party enters into the transaction, the third party:

5                         (A) does not have notice of the conversion or merger; and

6                         (B) reasonably believes that the converted or surviving business is the  
7 converting or constituent ~~business organization~~ limited partnership and that the  
8 person is a general partner in the converting or constituent ~~business organization~~  
9 limited partnership.

10                  (b) An act of a person that before a conversion or merger became effective  
11 was dissociated as a general partner from a converting or constituent ~~business~~  
12 ~~organization~~ limited partnership binds the converted or surviving business  
13 organization after the conversion or merger becomes effective, if:

14                         (1) before the conversion or merger became effective the act would have  
15 bound the converting or constituent ~~entity~~ limited partnership under Section 402 if  
16 the person had been a general partner; and

17                         (2) at the time the third party enters into the transaction, less than two  
18 years have passed since the person dissociated as a general partner and the third  
19 party:

20                         (A) does not have notice of the dissociation;

21                         (B) does not have notice of the conversion or merger; and

1 (C) reasonably believes that the converted or surviving business  
2 organization is the converting or constituent ~~business organization~~ limited  
3 partnership and that the person is a general partner in the converting or constituent  
4 ~~business organization~~ limited partnership.

5 (c) If a person having knowledge of the conversion or merger causes a  
6 converted or surviving business organization to incur an obligation under subsection  
7 (a) or (b), the person is liable:

8 (1) to the converted or surviving business organization for any damage  
9 caused to the business organization arising from the obligation; and

10 (2) if another person is liable for the obligation, to that other person for  
11 any damage caused to that other person arising from that liability.

12 **SECTION 1113. [ARTICLE] NOT EXCLUSIVE.** This [article] does not  
13 preclude an entity from being converted or merged under other law.

1 [ARTICLE] 12

2 MISCELLANEOUS PROVISIONS

3  
4 SECTION 1201. UNIFORMITY OF APPLICATION AND

5 CONSTRUCTION. In applying and construing this Uniform Act, consideration  
6 must be given to the need to promote uniformity of the law with respect to its  
7 subject matter among States that enact it.

8 SECTION 1202. SEVERABILITY CLAUSE. If any provision of this [Act]

9 or its application to any person or circumstance is held invalid, the invalidity does  
10 not affect other provisions or applications of this [Act] which can be given effect  
11 without the invalid provision or application, and to this end the provisions of this  
12 [Act] are severable.

13 SECTION 1203. ELECTRONIC SIGNATURES IN GLOBAL AND

14 NATIONAL COMMERCE ACT. The provisions of this [Act] governing the legal  
15 effect, validity, or enforceability of electronic records or signatures, and of contracts  
16 formed or performed with the use of such records or signatures conform to the  
17 requirements of Section 102 of the Electronic Signatures in Global and National  
18 Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), 15 U.S.C. Sec. 7002,

1 and supersede, modify, and limit the Electronic Signatures in Global and National  
2 Commerce Act.<sup>78</sup>

3 **SECTION ~~1203~~ 1204. EFFECTIVE DATE.** This [Act] takes effect January  
4 1, 20\_\_.

5 **SECTION ~~1204~~ 1205. REPEALS.** Except as otherwise provided in Section  
6 ~~1205~~ 1206 effective January 1, 20\_\_ {drag-in date}, the following acts and parts of  
7 acts are repealed: [the State Limited Partnership Act as amended and in effect  
8 immediately before the effective date of this [Act]].

9  
10 **SECTION ~~1205~~ 1206. APPLICABILITY.**

11 (a) Before January 1, 20\_\_ {drag-in date}, this [Act] governs only:

12 (1) a limited partnership formed on or after the effective date of this  
13 [Act]; and

14 (2) subject to subsection (c), a limited partnership formed before the  
15 effective date of this [Act], that elects, as provided by subsection (d), to be  
16 governed by this [Act].

17 (b) Except as otherwise provided in subsection (c), beginning January 1,  
18 20 \_\_ {drag-in date}, this [Act] governs all limited partnerships.

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<sup>78</sup>Boilerplate NCCUSL anti-preemption E-Sign section. [COS]

1           (c) ~~Each of the following provisions of [the State Limited Partnership Act as~~  
2 ~~amended and in effect immediately before the effective date of this [Act]] continue~~  
3 ~~to apply~~ Even after January 1, 20\_\_\_\_{drag-in date}, ~~to~~ for a limited partnership  
4 formed before the effective date of this [Act], except as the partners otherwise elect  
5 in the manner provided in the partnership agreement or by law for amending the  
6 partnership agreement:<sup>79</sup>

7           (1) ~~[FBD]~~ Section 104(d) does not apply and the limited partnership has  
8 whatever term it had under the law applicable immediately before the effective date  
9 of this [Act];

10           (2) Sections 601 and 602 do not apply and a limited partner has the same  
11 right and power to dissociate from the limited partnership, with the same  
12 consequences, as existed immediately before the effective date of this [Act];

13           (3) Section 603(4) does not apply;

14           (4) Section 603(5) does not apply and a court has the same power to  
15 expel a general partner as the court had immediately before the effective date of this  
16 [Act];

17           (5) Section 801(3) does not apply and the connection between a general  
18 partner's dissociation of the dissolution of the limited partnership is the same as  
19 existed immediately before the effective date of this [Act].

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<sup>79</sup>If the Drafting Committee chooses to retain the “flip,” this provision will have to be considerably more complicated.



1 (d) Before January 1, 20\_\_\_\_{drag-in date}, a limited partnership formed  
2 before the effective date of this [Act] ~~voluntarily~~ may elect, in the manner provided  
3 in its partnership agreement or by law for amending the partnership agreement, to be  
4 governed by this [Act]. ~~If a limited partnership formed before the effective date of~~  
5 ~~this [Act] makes~~ After that election takes effect, the provisions of this [Act] relating  
6 to the liability of the limited partnership's partners to third parties apply:

7 (1) before January 1, 20\_\_\_\_{drag-in date}, to:

8 (A) a third party that had not done business with the limited  
9 partnership within one year before the limited partnership's election to be governed  
10 by this [Act]; and

11 (B) a third party that had done business with the limited partnership  
12 within one year before the limited partnership's election to be governed by this  
13 [Act], only if the third party knows or has received a notification of the partnership's  
14 election to be governed by this [Act]; and

15 (2) after January 1, 20\_\_\_\_{drag-in date}, to all third parties.  
16

17 **SECTION ~~1206~~ 1207. SAVINGS CLAUSE.** This [Act] does not affect an  
18 action or proceeding commenced or right accrued before this [Act] takes effect.