

D R A F T
FOR APPROVAL

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**REVISION OF
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WITH PREFATORY NOTE AND REPORTER'S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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Transition Issues

Following RUPA’s example, this Act provides (i) an effective date, after which all newly formed limited partnership are subject to this Act; (ii) an optional period, during which limited partnerships formed under a predecessor statute may elect to become subject to this Act; and (iii) a mandatory date, on which all preexisting limited partnerships become subject to this Act by operation of law.

A few provisions of this Act differ so substantially from prior law that they should not apply automatically to a preexisting partnership. Section 1206(c) lists these provisions and states that each remains inapplicable to a preexisting limited partnership, unless the limited partnership elects for the provision to apply.

Comparison of RULPA and this Act

The following table compares some of the major characteristics of RULPA and this Act. In most instances, the rules involved are “default” rules – i.e., subject to change by the partnership agreement.

Characteristic	RULPA	this Act
relationship to general partnership act	linked, § 1105	de-linked (but many RUPA provisions incorporated)
permitted purposes	subject to any specified exceptions, “any business that a partnership without limited partners may carry on,” § 106	any lawful purpose, § 104(b)
constructive notice via publicly filed documents	only that limited partnership exists and that designated general partners are general partners, § 208	RULPA constructive notice provisions carried forward, § 103(c), plus constructive notice, 90 days after appropriate filing, of: general partner dissociation and of limited partnership dissolution, termination, merger and conversion, § 103(d)
duration	specified in certificate of limited partnership, § 201(a)(4)	perpetual, § 104(c); subject to change in partnership agreement
use of limited partner name in entity name	prohibited, except in unusual circumstances, § 102(2)	permitted, §108(a)
annual report	none	required, § 210
limited partner liability for entity debts	none unless limited partner “participates in the control of the business” and person “transact[s] business with the limited partnership reasonably believing . . . that the limited partner is a general partner,” § 303(a); safe harbor lists many activities that do not constitute participating in the control of the business, § 303(b)	none, regardless of whether the limited partnership is an LLLP, “even if the limited partner participates in the management and control of the limited partnership,” § 303

limited partner duties	none specified	no fiduciary duties “solely by reason of being a limited partner,” § 305(a); each limited partner is obliged to “discharge duties . . . and exercise rights consistently with the obligation of good faith and fair dealing,” § 305(b)
partner access to information – required records/information	all partners have right of access; no requirement of good cause; Act does not state whether partnership agreement may limit access; §§ 105(b) and 305(1)	list of required information expanded slightly; Act expressly states that partner does not have to show good cause; §§ 304(a), 407(a); however, the partnership agreement may set reasonable restrictions on access to and use of required information, § 110(b)(4), and limited partnership may impose reasonable restrictions on the use of information, §§ 304(g) and 407(f)
partner access to information – other information	limited partners have the right to obtain other relevant information “upon reasonable demand,” § 305(2); general partner rights linked to general partnership act, § 403	for limited partners, RULPA approach essentially carried forward, with procedures and standards for making a reasonable demand stated in greater detail, plus requirement that limited partnership supply known material information when limited partner consent sought, § 304; general partner access rights made explicit, following ULLCA and RUPA, including obligation of limited partnership and general partners to volunteer certain information, § 407
general partner liability for entity debts	complete, automatic and formally inescapable, § 403(b) (n.b. – in practice, most modern limited partnerships have used a general partner that has its own liability shield; <i>e.g.</i> , a corporation or limited liability company)	LLLP status available to provide a full liability shield to all general partners, § 404(c); if the limited partnership is not an LLLP, general partners are liable just as under RULPA, § 404(a)

general partner duties	linked to duties of partners in a general partnership, § 403	RUPA general partner duties imported, § 408; general partner's non-compete duty continues during winding up, § 408(b)(3); in contrast to ULLCA § 409(h)(4), the Act does not relieve general partner of responsibility even if the partnership agreement vests managerial authority in one or more limited partners
allocation of profits, losses and distributions	provides separately for sharing of profits and losses, § 503, and for sharing of distributions, § 504; allocates each according to contributions made and not returned	eliminates as unnecessary the allocation rule for profits and losses; allocates distributions according to contributions made, § 503 (n.b. – in the default mode, the Act's formulation produces the same result as RULPA formulation)
partner liability for distributions	recapture liability if distribution involved "the return of . . . contribution"; one year recapture liability if distribution rightful, § 608(a); six year recapture liability if wrongful, § 608(b)	following ULLCA §§ 406 and 407, the Act adopts the RMBCA approach to improper distributions, §§ 508 and 509
limited partner voluntary dissociation	theoretically, limited partner may withdraw on six months notice unless partnership agreement specifies a term for the limited partnership or withdrawal events for limited partner, § 603; practically, virtually every partnership agreement specifies a term, thereby eliminating the right to withdraw (n.b. – due to estate planning concerns, several States have amended RULPA to prohibit limited partner withdrawal unless otherwise provided in the partnership agreement)	no "right to dissociate as a limited partner before the termination of the limited partnership," § 601(a); power to dissociate expressly recognized, § 601(b)(1), but can be eliminated by the partnership agreement

limited partner involuntary dissociation	not addressed	lengthy list of causes, § 601(b), taken with some modification from RUPA
limited partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” § 604	no payout; person becomes transferee of its own transferable interest, § 602(3)
general partner voluntary dissociation	right exists unless otherwise provided in partnership agreement, § 602; power exists regardless of partnership agreement, § 602	RULPA rule carried forward, although phrased differently, § 604(a); dissociation before termination of the limited partnership is defined as wrongful, § 604(b)(2)
general partner involuntary dissociation	§ 402 lists causes	following RUPA, § 603 expands the list of causes, including expulsion by court order, § 603(5)
general partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” § 604, subject to offset for damages caused by wrongful withdrawal, § 602	no payout; person becomes transferee of its own transferable interest, § 605(5)
transfer of partner interest – nomenclature	“Assignment of Partnership Interest,” § 702	“Transfer of Partner’s Transferable Interest,” § 702
transfer of partner interest – substance	economic rights fully transferable, but management rights and partner status are not transferable, § 702	same rule, but §§ 701 and 702 follow RUPA’s more detailed and less oblique formulation
rights of creditor of partner	limited to charging order, § 703	essentially the same rule, but, following RUPA and ULLCA, the Act has a more elaborate provision that expressly extends to creditors of transferees, § 703

dissolution by partner consent	requires unanimous written consent, § 801(3)	requires consent of “all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective,” § 801(2)
dissolution following dissociation of a general partner	occurs automatically unless all partners agree to continue the business and, if there is no remaining general partner, to appoint a replacement general partner, § 801(4)	if at least one general partner remains, no dissolution unless “within 90 days after the dissociation . . . partners owning a majority of the rights to receive distributions as partners” consent to dissolve the limited partnership; § 801(3)(A); if no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless before that deadline limited partners owning a majority of the rights to receive distributions owned by limited partners consent to continue the business and admit at least one new general partner and a new general partner is admitted, § 801(3)(B)
filings related to entity termination	certificate of limited partnership to be cancelled when limited partnership dissolves and begins winding up, § 203	limited partnership may amend certificate to indicate dissolution, § 803(b)(1), and may file statement of termination indicating that winding up has been completed and the limited partnership is terminated, § 203
procedures for barring claims against dissolved limited partnership	none	following ULLCA §§ 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, §§ 806 and 807

conversions and mergers	no provision	Article 11 permits conversions to and from and mergers with any “organization,” defined as “a general partnership, including a limited liability partnership; limited liability partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute . . . [including] domestic and foreign entities regardless of whether organized for profit.” §1101(8)
writing requirements	some provisions pertain only to written understandings; <i>see, e.g.</i> , §§ 401 (partnership agreement may “provide in writing for the admission of additional general partners”; such admission also permitted “with the written consent of all partners”), 502(a) (limited partner’s promise to contribute “is not enforceable unless set out in a writing signed by the limited partner”), 801(2) and (3) (dissolution occurs “upon the happening of events specified in writing in the partnership agreement” and upon “written consent of all partners”), 801(4) (dissolution avoided following withdrawal of a general partner if “all partners agree in writing”)	removes virtually all writing requirements; but does require that certain information be maintained in record form, § 111

**REVISION OF
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[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Limited Partnership Act (2001).

SECTION 102. DEFINITIONS. In this [Act]:

(1) “Certificate of limited partnership” means the certificate required by Section 201. The term includes the certificate as amended or restated.

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

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

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

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

(4) “Designated office” means:

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

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

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

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

9 (7) “Foreign limited liability limited partnership” means a foreign limited
10 partnership whose general partners have limited liability for the obligations of the
11 foreign limited partnership under a provision similar to Section 404(c).

12 (8) “General partner” means:

13 (A) with respect to a limited partnership, a person that:

14 (i) has been admitted as a general partner under Section 401; or

15 (ii) was a general partner in a limited partnership when that limited
16 partnership became subject to this [Act] under Section 1206(a) or (b); and

17 (B) with respect to a foreign limited partnership, a person that has rights,
18 powers, and obligations similar to those of a general partner in a limited partnership.

19 (9) “Limited liability limited partnership,” except in the phrase “foreign
20 limited liability limited partnership,” means a limited partnership whose certificate of
21 limited partnership states that the limited partnership is a limited liability limited
22 partnership.

1 (10) “Limited partner” means:

2 (A) with respect to a limited partnership, a person that:

3 (i) has been admitted as a limited partner under Section 301; or

4 (ii) was a limited partner in a limited partnership when that limited

5 partnership became subject to this [Act] under Section 1206(a) or (b); and

6 (B) with respect to a foreign limited partnership, a person that has rights,

7 powers, and obligations similar to those of a limited partner in a limited partnership.

8 (11) “Limited partnership,” except in the phrases “foreign limited

9 partnership” and “foreign limited liability limited partnership,” means an entity,

10 having one or more general partners and one or more limited partners, which is

11 formed under this [Act] by two or more persons or becomes subject to this [Act]

12 under [Article] 11 or Section 1206(a) or (b). The term includes a limited liability

13 limited partnership.

14 (12) “Partner” means a limited partner or general partner.

15 (13) “Partnership agreement” means the partners’ agreement, oral, implied,

16 in record form, or in any combination, concerning the limited partnership. The term

17 includes the agreement as amended.

18 (14) “Person” means an individual, corporation, business trust, estate, trust,

19 partnership, limited liability company, association, joint venture, government,

20 governmental subdivision, agency, or instrumentality, or any other legal or

21 commercial entity.

1 (15) “Principal office” means the office where the principal executive office
2 of a limited partnership or foreign limited partnership is located, whether or not the
3 office is located in this State.

4 (16) “Record” means information that is inscribed on a tangible medium or
5 that is stored in an electronic or other medium and is retrievable in perceivable form.

6 (17) “Required information” means the information that a limited
7 partnership is required to maintain under Section 111.

8 (18) “Sign” includes:

9 (A) to execute or adopt a tangible symbol with the present intent to
10 authenticate a record; or

11 (B) to attach or logically associate an electronic symbol, sound, or
12 process to or with a record with the present intent to authenticate a record.

13 (19) “State” means a State of the United States, the District of Columbia,
14 the Commonwealth of Puerto Rico, or any territory or insular possession subject to
15 the jurisdiction of the United States.

16 (20) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease,
17 mortgage, security interest, encumbrance, gift, and transfer by operation of law.

18 (21) “Transferable interest” means the partner’s right to receive
19 distributions.

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

1 **Reporter's Notes**

2 This section contains definitions applicable throughout the Act. Section
3 1101 provides additional definitions applicable within Article 11.

4 **Paragraph (11) [Limited partnership]** – This definition pertains to what is
5 commonly termed a “domestic” limited partnership. The definition encompasses: (i)
6 limited partnerships originally formed under this Act; (ii) any entity that becomes
7 subject to this Act by converting into a limited partnership under Article 11; (iii) any
8 preexisting domestic limited partnership that elects pursuant to Section 1206(a) to
9 become subject to this Act; and (iv) all other preexisting domestic limited
10 partnerships when they become subject to this Act under Section 1206(b).

11 Following the approach of predecessor law, RULPA § 101(7), this
12 definition contains two substantive requirements. First, it is of the essence of a
13 limited partnership to have two classes of partners. Accordingly, under Section
14 101(11) a limited partnership must have at least one general and one limited
15 partner. Section 801(3)(B) and (4) provide that a limited partnership dissolves if its
16 sole general partner or sole limited partner dissociates and the limited partnership
17 fails to admit a replacement within 90 days of the dissociation. The 90 day
18 limitation is a default rule, but, in light of Section 101(11), a limited partnership
19 may not indefinitely delay “having one or more general partners and one or more
20 limited partners.”

21 It is also of the essence of a limited partnership to have at least two partners.
22 Section 101(11) codifies this requirement by referring to a limited partnership as “an
23 entity . . . which is formed under this [Act] by two or more persons.” Thus, while
24 the same person may be both a general and limited partner, Section 113 (Dual
25 Capacity), one person alone cannot be the “two persons” contemplated by this
26 definition. However, nothing in this definition prevents two closely affiliated
27 persons from satisfying the two person requirement.

28 **Paragraph (13) [Partnership agreement]** – Section 110 is essential to
29 understanding the significance of the partnership agreement. See also Section
30 201(d) (resolving inconsistencies between the certificate of limited partnership and
31 the partnership agreement).

32 **Paragraph (20) [Transfer]** – The reference to “transfer by operation of
33 law” is significant in connection with Section 702 (Transfer of Partner's Transferable
34 Interest). That section severely restricts a transferee's rights (absent the consent of
35 the partners), and this definition makes those restrictions applicable, for example, to
36 transfers ordered by a family court as part of a divorce proceeding and to transfers
37 resulting from the death of a partner.

1 **SECTION 103. KNOWLEDGE AND NOTICE.**

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

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

5 (1) knows of it;

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

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

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

13 (d) A person has notice of:

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

18 (2) a limited partnership's dissolution, 90 days after the effective date of
19 an amendment to the certificate of limited partnership stating that the limited
20 partnership is dissolved;

21 (3) a limited partnership's termination, 90 days after the effective date of
22 a statement of termination;

1 (4) a limited partnership's conversion under [Article] 11, 90 days after
2 the effective date of the articles of conversion; and

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

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

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

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

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

12 (g) Except as otherwise provided in subsection (h), an entity knows, has
13 notice, or receives a notification of a fact for purposes of a particular transaction
14 when the individual conducting the transaction for the entity knows, has notice, or
15 receives a notification of the fact, or in any event when the fact would have been
16 brought to the individual's attention if the entity had exercised reasonable diligence.

17 An entity exercises reasonable diligence if it maintains reasonable routines for
18 communicating significant information to the individual conducting the transaction
19 for the entity and there is reasonable compliance with the routines. Reasonable
20 diligence does not require an individual acting for the entity to communicate
21 information unless the communication is part of the individual's regular duties or the

1 individual has reason to know of the transaction and that the transaction would be
2 materially affected by the information.

3 (h) A general partner's knowledge, notice, or receipt of a notification of a
4 fact relating to the limited partnership is effective immediately as knowledge by,
5 notice to, or receipt of a notification by the limited partnership, except in the case of
6 a fraud on the limited partnership committed by or with the consent of the general
7 partner. A limited partner's knowledge, notice, or receipt of a notification of a fact
8 relating to the limited partnership is not effective as knowledge by, notice to, or
9 receipt of a notification by the limited partnership.

10 **Reporter's Notes**

11 **Source** – RUPA § 102; RULPA § 208.

12 **Subsection (c)** – This subsection provides what is colloquially called
13 constructive notice and comes essentially verbatim from RULPA § 208. As for the
14 significance of constructive notice “that the partnership is a limited partnership,” see
15 *Water, Waste & Land, Inc. v. Lanham*, 955 P.2d 997, 1001-1003 (Colo. 1998)
16 (interpreting a comparable provision of the Colorado LLC statute and holding the
17 provision ineffective to change common law agency principles, including the rules
18 relating to the liability of an agent that transacts business for an undisclosed
19 principal).

20 As for constructive notice that “the persons designated in the certificate as
21 general partners are general partners,” Section 201(a)(3) requires the initial
22 certificate of limited partnership to name each general partner, and Section
23 202(b)(1) and (2) requires a limited partnership to promptly amend its certificate of
24 limited partnership to reflect any change in the identity of its general partners.
25 Nonetheless, it will be possible, albeit improper, for a person to be designated in the
26 certificate of limited partnership as a general partner without having been admitted
27 as a general partner as contemplated by Section 401. Likewise, it will be possible
28 for a person to have been admitted as a general partner under Section 401 without
29 being designated as a general partner in the certificate of limited partnership.
30 According to the last clause of this subsection, the fact that a person is **not** listed as
31 in the certificate as a general partner is **not** notice that the person is **not** a general

1 partner. For further discussion of this point, see the Reporter’s Notes to Section
2 401.

3 If the partnership agreement and the public record are inconsistent, Section
4 201(d) applies (partnership agreement controls *inter se*; public record controls as to
5 third parties who have relied). See also Section 202(b) (requiring the limited
6 partnership to amend its certificate of limited partnership to keep accurate the listing
7 of general partners), 202(c) (requiring a general partner to take corrective action
8 when the general partner knows that the certificate of limited partnership contains
9 false information), and 208 (imposing liability for false information in *inter alia* the
10 certificate of limited partnership).

11 **Subsection (d)** – This subsection works in conjunction with other sections
12 of this Act to curtail the power to bind and personal liability of general partners and
13 persons dissociated as general partners. See Sections 402, 606, 607, 804, 805,
14 1111, and 1112. Following RUPA (in substance, although not in form), the
15 constructive notice begins 90 days after the effective date of the filed record. For
16 the Act’s rules on delayed effective dates, see Section 206(c).

17 The 90-day delay applies only to the constructive notice and not to the event
18 described in the filed record.

19 **Example:** On March 15 X dissociates as a general partner from XYZ Limited
20 Partnership by giving notice to XYZ. See Section 603(1). On March 20, XYZ
21 amends its certificate of limited partnership to remove X’s name from the list of
22 general partners. See Section 202(b)(2).

23 X’s **dissociation** is effective March 15. If on March 16 X purports to be a
24 general partner of XYZ and under Section 606(a) binds XYZ to some
25 obligation, X will be liable under Section 606(b) as a “person dissociated as a
26 general partner.”

27 On June 13, the world has constructive notice of X’s dissociation as a
28 general partner. Beginning on that date, X will lack the power to bind XYZ.
29 See Section 606(a)(2)(B) (person dissociated as a general partner can bind the
30 limited partnership only if, *inter alia*, “at the time the other party enters into the
31 transaction . . . the other party does not have notice of the dissociation”).

32 Constructive notice under this subsection applies to partners and transferees
33 as well as other persons.

34 **Subsection (h)** – Under this subsection and Section 302, information
35 possessed by a person that is only a limited partner is not attributable to the limited

1 partnership. However, information possessed by a person that is both a general
2 partner and a limited partner is attributable to the limited partnership. See Section
3 113 (Dual Capacity)

4 **SECTION 104. NATURE, PURPOSE, AND DURATION OF ENTITY.**

5 (a) A limited partnership is an entity distinct from its partners. A limited
6 partnership is the same entity regardless of whether its certificate states that the
7 limited partnership is a limited liability limited partnership.

8 (b) A limited partnership may be organized under this [Act] for any lawful
9 purpose.

10 (c) A limited partnership has a perpetual duration.

11 **Reporter's Notes**

12 **Subsection (a)** – Acquiring or relinquishing an LLLP shield changes only
13 the rules governing a general partner's liability for subsequently incurred obligations
14 of the limited partnership. The underlying entity is unaffected.

15 **Subsection (b)** – In contrast with RULPA § 106, this Act does not require a
16 limited partnership to have a business purpose. However, many of the Act's default
17 rules presuppose at least a profit-making purpose. *See, e.g.*, Section 503 (providing
18 for the sharing of distributions in proportion to the value of contributions), 701
19 (defining a transferable interest in terms of the right to receive distributions), 801
20 (allocating the right to consent to cause or avoid dissolution in proportion to
21 partners' rights to receive distributions), and 812 (providing that, after a dissolved
22 limited partnership has paid its creditors, "[a]ny surplus remaining . . . must be paid
23 in cash as a distribution" to partners and transferees). If a limited partnership is
24 organized for an essentially non-pecuniary purpose, the organizers should carefully
25 review the Act's default rules and override them as necessary via the partnership
26 agreement.

27 **Subsection (c)** – The partnership agreement has the power to vary this
28 subsection, either by stating a definite term or by specifying an event or events
29 whose occurrence causes dissolution. Sections 110(a) and 801(1). Section 801 also
30 recognizes several other occurrences that cause dissolution. Thus, the public record
31 pertaining to a limited partnership will not necessarily reveal how genuinely
32 perpetual is the limited partnership's duration.

That public record might also fail to reveal whether the limited partnership has in fact dissolved. A dissolved limited partnership may amend its certificate of limited partnership to indicate dissolution, but that amendment is not required. Section 803(b)(1).

Predecessor law took a somewhat different approach. RULPA § 201(4) required the certificate of limited partnership to state “the latest date upon which the limited partnership is to dissolve.” Although RULPA § 801(2) provided for a limited partnership to dissolve “upon the happening of events specified in writing in the partnership agreement,” RULPA § 203 required the limited partnership to file a certificate of cancellation to indicate that dissolution had occurred.

SECTION 105. POWERS. A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Reporter's Notes

This Act omits as unnecessary any detailed list of specific powers. The power to sue and be sued is mentioned specifically so that Section 110(b)(1) can prohibit the partnership agreement from varying that power. The power to maintain an action against a partner is mentioned specifically to establish that the limited partnership itself has standing to enforce the partnership agreement.

SECTION 106. GOVERNING LAW. The law of this State governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of a limited partnership.

Reporter's Notes

To partially define its scope, this section uses the phrase “relations among the partners of a limited partnership and between the partners and the limited

1 partnership.” Section 110(a) uses essentially identical language in defining the
2 proper realm of the partnership agreement: “relations among the partners and
3 between the partners and the partnership.”

4 Despite the similarity of language, this section has no bearing on the power
5 of a partnership agreement to vary other provisions of this Act. It is quite possible
6 for a provision of this Act to involve “relations among the partners of a limited
7 partnership and between the partners and the limited partnership” and thus come
8 within this section, and yet not be subject to variation by the partnership agreement.
9 Although Section 110(a) grants plenary authority to the partnership agreement to
10 regulate “relations among the partners and between the partners and the
11 partnership,” that authority is subject to Section 110(b).

12 For example, Section 408 (General Standards of General Partners’s
13 Conduct) certainly involves “relations among the partners of a limited partnership
14 and between the partners and the limited partnership.” Therefore, according to this
15 section, Section 408 applies to a limited partnership formed or otherwise subject to
16 this Act. Just as certainly, Section 408 pertains to “relations among the partners and
17 between the partners and the partnership” for the purposes of Section 110(a), and
18 therefore the partnership agreement may properly address matters covered by
19 Section 408. However, Section 110(b)(5), (6), and (7) limit the power of the
20 partnership agreement to vary the rules stated in Section 408. *See also, e.g.,*
21 Section 502(c) (stating creditor’s rights, which are protected under Section
22 110(b)(13) from being restricted by the partnership agreement) and Reporter’s
23 Notes to Section 509.

24 This section also applies to “the liability of partners as partners for an
25 obligation of a limited partnership.” The phrase “as partners” contemplates the
26 liability shield for limited partners under Section 303 and the rules for general
27 partner liability stated in Section 404. Other grounds for liability can be supplied by
28 other law, including the law of some other jurisdiction. For example, a partner’s
29 contractual guaranty of a limited partnership obligation might well be governed by
30 the law of some other jurisdiction.

31 Transferees derive their rights and status under this Act from partners and
32 accordingly this section applies to the relations of a transferee to the limited
33 partnership.

34 The partnership agreement may not vary the rule stated in this section. See
35 Section 110(b)(2).

SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW; RATE OF INTEREST.

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

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

Reporter's Notes

Subsection (a) – This language comes from RUPA § 104 and does not address an important question raised by the de-linking of this Act from the UPA and RUPA – namely, to what extent is the case law of general partnerships relevant to limited partnerships governed by this Act?

Predecessor law, RULPA § 403, expressly equated the rights, powers, restrictions, and liabilities of a general partner in a limited partnership with the rights, powers, restrictions, and liabilities of a partner in a general partnership. This Act has no comparable provision. Therefore, a court should not assume that a case concerning a general partnership is automatically relevant to a limited partnership governed by this Act. A general partnership case may be relevant by analogy, especially if (1) the issue in dispute involves a provision of this Act for which a comparable provision exists under the law of general partnerships; and (2) the fundamental differences between a general partnership and limited partnership are immaterial to the disputed issue.

SECTION 108. NAME.

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

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase “limited partnership” or the abbreviation “L.P.” or “LP” and must not contain the phrase “limited liability limited partnership” or the abbreviation “LLLP” or “L.L.L.P.”.

1 (c) The name of a limited liability limited partnership must contain the
2 phrase “limited liability limited partnership” or the abbreviation “LLLP” or
3 “L.L.L.P.” and must not contain the abbreviation “L.P.” or “LP.”

4 (d) Unless authorized by subsection (e), the name of a limited partnership
5 must be distinguishable upon the records of the [Secretary of State] from:

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

8 (2) each name reserved under Section 109 or [other state laws allowing
9 the reservation or registration of business names, including fictitious name statutes].

10 (e) A limited partnership may apply to the [Secretary of State] for
11 authorization to use a name that does not comply with subsection (d). The
12 [Secretary of State] shall authorize use of the name applied for if, as to each
13 conflicting name:

14 (1) the present user, registrant, or owner of the conflicting name
15 consents in a signed record to the use and submits an undertaking in a form
16 satisfactory to the [Secretary of State] to change the conflicting name to a name
17 that complies with subsection (d) and is distinguishable upon the records of the
18 [Secretary of State] from the name applied for;

19 (2) the applicant delivers to the [Secretary of State] a certified copy of
20 the final judgment of a court of competent jurisdiction establishing the applicant’s
21 right to use in this State the name applied for; or

1 (3) the applicant delivers to the [Secretary of State] proof satisfactory to
2 the [Secretary of State] that the present user, registrant, or owner of the conflicting
3 name:

4 (A) has merged into the applicant;

5 (B) has been converted into the applicant; or

6 (C) has transferred substantially all of its assets, including the
7 conflicting name, to the applicant.

8 (f) Subject to Section 905, this section applies to any foreign limited
9 partnership transacting business in this State, authorized to transact business in this
10 State, or applying for authorization.

11 **Reporter's Notes**

12 **Subsection (a)** – Predecessor law, RULPA § 102, prohibited the use of a
13 limited partner's name in the name of a limited partnership except in unusual
14 circumstances. That approach derived from the 1916 Uniform Limited Partnership
15 Act and has become antiquated. In 1916, most business organizations were either
16 unshielded (*e.g.*, general partnerships) or partially shielded (*e.g.*, limited
17 partnerships), and it was reasonable for third parties to believe that an individual
18 whose own name appeared in the name of a business would “stand behind” the
19 business. Today most businesses have a full shield (*e.g.*, corporations, limited
20 liability companies, most limited liability partnerships), and corporate, LLC and LLP
21 statutes generally pose no barrier to the use of an owner's name in the name of the
22 entity. This Act eliminates RULPA's restriction and puts limited partnerships on
23 equal footing with these other “shielded” entities.

24 **Subsection (f)** – Section 905 permits a foreign limited partnership to obtain
25 a certificate of authority under a fictitious name if the foreign limited partnership's
26 actual name does not comply with this section.

1 **SECTION 109. RESERVATION OF NAME.**

2 (a) The exclusive right to the use of a name that complies with Section 108
3 may be reserved by:

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

6 (2) a limited partnership or a foreign limited partnership authorized to
7 transact business in this State intending to adopt that name;

8 (3) a foreign limited partnership intending to obtain a certificate of
9 authority to transact business in this State and adopt that name;

10 (4) a person intending to organize a foreign limited partnership and
11 intending to have it obtain a certificate of authority to transact business in this State
12 and adopt that name;

13 (5) a foreign limited partnership formed under that name; or

14 (6) a foreign limited partnership formed under a name that does not
15 comply with Section 108(b) or (c), but the name reserved under this paragraph may
16 differ from the foreign limited partnership's name only to the extent necessary to
17 comply with Section 108(b) and (c).

18 (b) A person may apply to reserve a name under subsection (a) by delivering
19 to the [Secretary of State] for filing an application that states the name to be
20 reserved and the provision of subsection (a) which applies. If the [Secretary of
21 State] finds that the name is available for use by the applicant, the [Secretary of

1 State] shall file a statement of name reservation and thereby reserve the name for the
2 exclusive use of the applicant for a period of 120 days.

3 (c) An applicant that has reserved a name pursuant to subsection (b) may
4 reserve the same name for additional 120-day periods. A person having a current
5 reservation for a name may not apply for another 120-day period for the same name
6 until 90 days have elapsed in the current reservation.

7 (d) A person that has reserved a name under this section may deliver to the
8 [Secretary of State] for filing a notice of transfer that states the reserved name, the
9 name and street and mailing address of some other person to which the reservation
10 is to be transferred, and the provision of subsection (a) which applies to that other
11 person. Subject to Section 206(c), the transfer is effective when the [Secretary of
12 State] files the notice of transfer.

13 **SECTION 110. EFFECT OF PARTNERSHIP AGREEMENT;**
14 **NONWAIVABLE PROVISIONS.**

15 (a) Except as otherwise provided in subsection (b), the partnership
16 agreement governs relations among the partners and between the partners and the
17 partnership. To the extent the partnership agreement does not otherwise provide,
18 this [Act] governs relations among the partners and between the partners and the
19 partnership.

20 (b) The partnership agreement may not:

- 1 (1) vary a limited partnership’s power under Section 105 to sue, be sued,
2 and defend in its own name;
- 3 (2) vary the law applicable to a limited partnership under Section 106;
- 4 (3) vary the requirements of Section 204;
- 5 (4) vary the information required under Section 111 or unreasonably
6 restrict the right to information under Sections 304 and 407, but the partnership
7 agreement may impose reasonable limitations on the availability and use of
8 information obtained under those sections and may define appropriate remedies,
9 including liquidated damages, for a breach of any reasonable limitation on use;
- 10 (5) eliminate the duty of loyalty under Section 408, but the partnership
11 agreement may:
- 12 (A) identify specific types or categories of activities that do not
13 violate the duty of loyalty, if not manifestly unreasonable; and
- 14 (B) specify the number or percentage of partners which may
15 authorize or ratify, after full disclosure to all partners of all material facts, a specific
16 act or transaction that otherwise would violate the duty of loyalty;
- 17 (6) unreasonably reduce the duty of care under Section 408(c);
- 18 (7) eliminate the obligation of good faith and fair dealing under Sections
19 305(b) and 408(d), but the partnership agreement may prescribe the standards by
20 which the performance of the obligation is to be measured, if the standards are not
21 manifestly unreasonable;

(8) vary the power of a person to dissociate as a general partner under Section 604(a) except to require that the notice under Section 603(1) be in a record;

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

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

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

(12) restrict the right of a partner under Section 1110(a) to approve a merger or conversion or the right of a general partner under Section 1110(b) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or

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

Reporter's Notes

Source – RUPA § 103.

Subject only to subsection (b), the partnership agreement has plenary power to structure and regulate the relations of the partners *inter se*. Although the certificate of limited partnership is a limited partnership's foundational document, among the partners the partnership agreement controls. See Section 201(d).

The partnership agreement has the power to control the manner of its own amendment. In particular, a provision of the agreement prohibiting oral modifications is enforceable, despite any common law antagonism to “no oral modification” provisions. Likewise, a partnership agreement can impose “in record form” requirements on other aspects of the partners’ relationship, such as requiring consents to be in record form and signed, or rendering unenforceable oral promises to make contributions or oral understandings as to “events upon the happening of

1 which the limited partnership is to be dissolved,” Section 111(9)(D). See also
2 Section 801(1).

3 **Subsection (b)(3)** – The referenced section states who must sign various
4 documents.

5 **Subsection (b)(4)** – In determining whether a restriction is reasonable, a
6 court might consider: (i) the danger or other problem the restriction seeks to avoid;
7 (ii) the purpose for which the information is sought; and (iii) whether, in light of
8 both the problem and the purpose, the restriction is reasonably tailored. Restricting
9 access to or use of the names and addresses of limited partners is not per se
10 unreasonable.

11 Under this Act, general and limited partners have sharply different roles. A
12 restriction that is reasonable as to a limited partner is not necessarily reasonable as
13 to a general partner.

14 Sections 304(g) and 407(f) authorize the limited partnership (as
15 distinguished from the partnership agreement) to impose restrictions on the use of
16 information. For a comparison of restrictions contained in the partnership
17 agreement and restrictions imposed unilaterally by the limited partnership, see the
18 Reporter’s Notes to Section 304(g).

19 **Subsection (b)(5)(A)** – It is not per se manifestly unreasonable for the
20 partnership agreement to permit a general partner to compete with the limited
21 partnership.

22 **Subsection (b)(5)(B)** – The Act does not require that the authorization or
23 ratification be by **disinterested** partners, although the partnership agreement may so
24 provide. The Act does require that the disclosure be made to all partners, even if
25 the partnership agreement excludes some partners from the authorization or
26 ratification process. An interested partner that participates in the authorization or
27 ratification process is subject to the obligation of good faith and fair dealing.
28 Sections 305(b) and 408(d).

29 **Subsection (b)(8)** – This restriction applies only to the power of a person to
30 dissociate as a general partner. The partnership agreement may eliminate the power
31 of a person to dissociate as a limited partner.

32 **Subsection (b)(9)** – This provision should not be read to limit a partnership
33 agreement’s power to provide for arbitration. For example, an agreement to
34 arbitrate all disputes – including dissolution disputes – is enforceable. Any other
35 interpretation would put this Act at odds with federal law. See *Southland Corp. v.*

1 *Keating*, 465 U.S. 1 (1984) (holding that the Federal Arbitration Act preempts state
2 statutes that seek to invalidate agreements to arbitrate) and *Allied-Bruce Terminix*
3 *Cos., Inc. v. Dobson*, 513 U.S. 265 (1995) (same). This provision does prohibit any
4 narrowing of the substantive grounds for judicial dissolution as stated in Section
5 802.

6 **Example:** A provision of a partnership agreement states that no partner may
7 obtain judicial dissolution without showing that a general partner is in material
8 breach of the partnership agreement. The provision is ineffective to prevent a
9 court from decreeing dissolution under Section 802.

10 **Subsection (b)(11)** – Section 1001 codifies a partner’s right to bring a direct
11 action, and the rest of Article 10 provides for derivative actions. The partnership
12 agreement may not restrict a partner’s right to bring either type of action if the effect
13 is to undercut or frustrate the duties and rights protected by Section 110(b).

14 The reasonableness of a restriction on derivative actions should be judged in
15 light of the history and purpose of derivative actions. They originated as an
16 equitable remedy, intended to protect passive owners against management abuses.
17 A partnership agreement may not provide that all derivative claims will be subject to
18 final determination by a special litigation committee appointed by the limited
19 partnership, because that provision would eliminate, not merely restrict, a partner’s
20 right to bring a derivative *action*.

21 **Subsection (b)(12)** – Section 1110 imposes special consent requirements
22 with regard to transactions that might make a partner personally liable for entity
23 debts.

24 **Subsection (b)(13)** – The partnership agreement is a contract, and this
25 provision reflects a basic notion of contract law – namely, that a contract can
26 **directly** restrict rights only of parties to the contract and of persons who derive their
27 rights from the contract. A provision of a partnership agreement can be determined
28 to be unenforceable against third parties under paragraph (b)(13) without therefore
29 and automatically being unenforceable *inter se* the partners and any transferees.
30 How the former determination affects the latter question is a matter of other law.

31 **SECTION 111. REQUIRED INFORMATION.** A limited partnership shall
32 maintain at its designated office the following information:

- 1 (1) a current list showing the full name and last known street and mailing
2 address of each partner, separately identifying the general partners, in alphabetical
3 order, and the limited partners, in alphabetical order;
- 4 (2) a copy of the initial certificate of limited partnership and all amendments
5 to and restatements of the certificate, together with signed copies of any powers of
6 attorney under which any certificate, amendment, or restatement has been signed;
- 7 (3) a copy of any filed articles of conversion or merger;
- 8 (4) a copy of the limited partnership's federal, state, and local income tax
9 returns and reports, if any, for the three most recent years;
- 10 (5) a copy of any partnership agreement made in record form and any
11 amendment made in record form to any partnership agreement;
- 12 (6) a copy of any financial statement of the limited partnership for the three
13 most recent years;
- 14 (7) a copy of the three most recent annual reports delivered by the limited
15 partnership to the [Secretary of State] pursuant to Section 210;
- 16 (8) a copy of any record made by the limited partnership during the past
17 three years of any consent given by or vote taken of any partner pursuant to this
18 [Act] or the partnership agreement; and
- 19 (9) unless contained in a partnership agreement in record form, a record
20 stating:

1 (A) the amount of cash, and a description and statement of the agreed
2 value of the other benefits, contributed and agreed to be contributed by each
3 partner;

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

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

8 (D) any events upon the happening of which the limited partnership is to
9 be dissolved and its activities wound up.

10 **Reporter's Notes**

11 **Source** – RULPA § 105.

12 Sections 304 and 407 govern access to the information required by this
13 section, as well as to other information pertaining to a limited partnership.

14 **Paragraph (5)** – This requirement applies to superceded as well as current
15 agreements and amendments. An agreement or amendment is “made in record
16 form” to the extent the agreement is “integrated” into a record and consented to in
17 that memorialized form. It is possible for a partnership agreement to made in part in
18 record form and in part otherwise. See Reporter’s Notes to Section 110. An oral
19 agreement that is subsequently inscribed in a record (but not consented to as such)
20 was not “made in record form” and is not covered by paragraph (5). However, if
21 the limited partnership happens to have such a record, Section 304(b) might and
22 Section 407(a)(2) will provide a right of access.

23 **Paragraph (8)** – This paragraph does not require a limited partnership to
24 make a record of consents given and votes taken. However, if the limited
25 partnership has made such a record, this paragraph requires that the limited
26 partnership maintain the record for three years. The requirement applies to any
27 record made by the limited partnership, not just to records made contemporaneously
28 with the giving of consent or voting. The three year period runs from when the
29 record was made and not from when the consent was given or vote taken.

1 **Paragraph (9)** – Information is “contained in a partnership agreement in
2 record form” only to the extent that the information is “integrated” into a record
3 and, in that memorialized form, has been consented to as part of the partnership
4 agreement.

5 This paragraph is not a statute of frauds provision. For example, failure to
6 comply with paragraph (9)(A) or (B) does not render unenforceable an oral promise
7 to make a contribution. Likewise, failure to comply with paragraph (9)(D) does not
8 invalidate an oral term of the partnership specifying “events upon the happening of
9 which the limited partnership is to be dissolved and its activities wound up.” See
10 also Section 801(1).

11 Obversely, the mere fact that a limited partnership maintains a record in
12 purported compliance with paragraph (9)(A) or (B) does not prove that a person
13 has actually promised to make a contribution. Likewise, the mere fact that a limited
14 partnership maintains a record in purported compliance with paragraph (9)(D) does
15 not prove that the partnership agreement actually includes the specified events as
16 causes of dissolution.

17 Consistent with the partnership agreement’s plenary power to structure and
18 regulate the relations of the partners *inter se*, a partnership agreement can impose
19 “in record form” requirements which render unenforceable oral promises to make
20 contributions or oral understandings as to “events upon the happening of which the
21 limited partnership is to be dissolved.” See Reporter’s Notes to Section 110.

22 **Paragraph (9)(A) and (B)** – Often the partnership agreement will state in
23 record form the value of contributions made and promised to be made. If not, these
24 provisions require that the value be stated in a record maintained as part of the
25 limited partnership’s required information. The Act does not authorize the limited
26 partnership or the general partners to set the value of a contribution without the
27 concurrence of the person who has made or promised the contribution, although the
28 partnership agreement itself can grant that authority.

29 **Paragraph (9)(C)** – The information required by this provision is essential
30 for determining what happens to the transferable interests of a person who is both a
31 general partner and a limited partner and who dissociates in one of those capacities
32 but not the other. See Sections 602(3) and 605(5).
33

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

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

- 4 (1) an office, which need not be a place of its activity in this State; and
5 (2) an agent for service of process.

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

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

10 **Reporter's Notes**

11 **Subsection (a)** – The initial designation occurs in the original certificate of
12 limited partnership. Section 201(a)(2). A limited partnership may change the
13 designation in any of three ways: a statement of change, Section 115, an amendment
14 to the certificate, Section 202, and the annual report, Section 210(e). If a limited
15 partnership fails to maintain an agent for service of process, substituted service may
16 be made on the Secretary of State. Section 117(b). Although a limited
17 partnership's failure to maintain an agent for service of process is not immediate
18 grounds for administrative dissolution, Section 809(a), the failure will prevent the
19 limited partnership from delivering to the Secretary of State for filing an annual
20 report that complies with Section 210(a)(2). Failure to deliver a proper annual
21 report is grounds for administrative dissolution. Section 809(a)(2).

22 **Subsection (b)** – The initial designation occurs in the application for a
23 certificate of authority. See Section 902(a)(4). A foreign limited partnership may
24 change the designation in either of two ways: a statement of change, Section 115,
25 and the annual report, Section 210(e). If a foreign limited partnership fails to
26 maintain an agent for service of process, substituted service may be made on the
27 Secretary of State. Section 117(b). A foreign limited partnership's failure to
28 maintain an agent for service of process is grounds for administrative revocation of
29 the certificate of authority. Section 906(a)(3).

30 A foreign limited partnership need not maintain an office in this State.

1 **SECTION 115. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**
2 **SERVICE OF PROCESS.**

3 (a) In order to change its designated office, agent for service of process, or
4 the address of its agent for service of process, a limited partnership or a foreign
5 limited partnership may deliver to the [Secretary of State] for filing a statement of
6 change containing:

7 (1) the name of the limited partnership or foreign limited partnership;

8 (2) the street and mailing address of its current designated office;

9 (3) if the current designated office is to be changed, the street and
10 mailing address of the new designated office;

11 (4) the name and street and mailing address of its current agent for
12 service of process; and

13 (5) if the current agent for service of process or an address of that agent
14 is to be changed, the new information.

15 (b) Subject to Section 206(c), a statement of change is effective when filed
16 by the [Secretary of State].

17 **Reporter's Notes**

18 **Source** – ULLCA § 109.

19 **Subsection (a)** – The Act uses “may” rather than “shall” here because other
20 avenues exist. A limited partnership may also change the information by an
21 amendment to its certificate of limited partnership, Section 202, or through its
22 annual report. Section 210(e). A foreign limited partnership may use its annual
23 report. Section 210(e). However, neither a limited partnership nor a foreign limited
24 partnership may wait for the annual report if the information described in the public
25 record becomes inaccurate. See §§ 208 (imposing liability for false information in
26 record) and 117(b) (providing for substitute service).

1 **SECTION 117. SERVICE OF PROCESS.**

2 (a) An agent for service of process appointed by a limited partnership or
3 foreign limited partnership is an agent of the limited partnership or foreign limited
4 partnership for service of any process, notice, or demand required or permitted by
5 law to be served upon the limited partnership or foreign limited partnership.

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

11 (c) Service of any process, notice, or demand on the [Secretary of State]
12 may be made by delivering to and leaving with the [Secretary of State] duplicate
13 copies of the process, notice, or demand. If a process, notice, or demand is served
14 on the [Secretary of State], the [Secretary of State] shall forward one of the copies
15 by registered or certified mail, return receipt requested, to the limited partnership or
16 foreign limited partnership at its designated office.

17 (d) Service is effected under subsection (c) at the earliest of:

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

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

(3) five days after the process, notice, or demand is deposited in the mail,
if mailed postpaid and correctly addressed.

(e) The [Secretary of State] shall keep a record of each process, notice, and demand served pursuant to this section and record the time of and the action taken regarding the service.

(f) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

Reporter's Notes

Source – ULLCA § 111.

Requiring a foreign limited partnership to name an agent for service of process is a change from RULPA. See RULPA § 902(3).

SECTION 118. CONSENT AND PROXIES OF PARTNERS. Action requiring the consent of partners under this [Act] may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

Reporter's Notes

Source – ULLCA § 404(d) and (e).

This Act imposes no meeting requirement and does not distinguish among oral, record, express and tacit consent. The partnership agreement may establish such requirements and make such distinctions.

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

SECTION 201. FORMATION OF LIMITED PARTNERSHIP;
CERTIFICATE OF LIMITED PARTNERSHIP.

(a) In order to form a limited partnership, a certificate of limited partnership must be delivered to the [Secretary of State] for filing. The certificate must state:

- (1) the name of the limited partnership, which must comply with Section 108;
- (2) the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;
- (3) the name and the street and mailing address of each general partner;
- (4) whether the limited partnership is a limited liability limited partnership; 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 provisions specified in Section 110(b) in a manner inconsistent with that section.

(c) If there has been substantial compliance with the requirements of this section, subject to Section 206(c) a limited partnership is formed when the [Secretary of State] files the certificate of limited partnership.

(d) Subject to subsection (b), if any provision of a partnership agreement is inconsistent with the filed 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

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

Reporter's Notes

Source – RULPA § 201.

A limited partnership is a creature of statute, and this section governs how a limited partnership comes into existence. A limited partnership is formed only if (i) a certificate of limited partnership is prepared and delivered to the specified public official for filing, (ii) the public official files the certificate, and (iii) the certificate, delivery and filing are in “substantial compliance” with the requirements of this section. Section 206(c) governs when a limited partnership comes into existence.

Despite its foundational importance, a certificate of limited partnership is far less powerful than a corporation's articles of incorporation. Among partners and transferees, for example, the partnership agreement is paramount. See Section 201(d).

Subsection (a)(1) – Section 108 contains name requirements. To be acceptable for filing, a certificate of limited partnership must state a name for the limited partnership which complies with Section 108.

Subsection (a)(3) – This provision should be read in conjunction with Section 103(c) and Section 401. See the Reporter's Notes to those sections.

Subsection (a)(4) – This Act permits a limited partnership to be a limited liability limited partnership (“LLLP”), and this provision requires the certificate of limited partnership to state whether the limited partnership is an LLLP. Subject to Sections 406(b)(2) and 1110, a limited partnership may amend its certificate of limited partnership to add or delete a statement that the limited partnership is a

1 limited liability limited partnership. An amendment deleting such a statement must
2 be accompanied by an amendment stating that the limited partnership is **not** a limited
3 liability limited partnership. Section 201(a)(4) does not permit a certificate of
4 limited partnership to be silent on this point.

5 **Subsection (d)** – Source: ULLCA § 203(c).

6 A limited partnership is a creature of contract as well as a creature of statute.
7 It will be possible, albeit improper, for the partnership agreement to be inconsistent
8 with the certificate of limited partnership or other specified public filings relating to
9 the limited partnership. For those circumstances, this subsection provides the rule
10 for determining which source of information prevails.

11 For partners and transferees, the partnership agreement is paramount. For
12 third parties seeking to invoke the public record, actual knowledge of that record is
13 necessary and notice under Section 103(c) or (d) is irrelevant. A third party wishing
14 to enforce the public record over the partnership agreement must show reasonable
15 reliance on the public record, and reliance presupposes knowledge.

16 This subsection does not expressly cover a situation in which (i) one of the
17 specified filed records contains information in addition to, but not inconsistent with,
18 the partnership agreement, and (ii) a person, other than a partner or transferee,
19 detrimentally relies on the additional information. However, the policy reflected in
20 this subsection seems equally applicable to that situation.

21 Responsibility for maintaining a limited partnership’s public record rests with
22 the general partner or partners. Section 202(c). A general partner’s failure to meet
23 that responsibility can expose the general partner to liability to third parties under
24 Section 208(a)(2) and might constitute a breach of the general partner’s duties
25 under Section 408.

26 **SECTION 202. AMENDMENT OR RESTATEMENT OF**
27 **CERTIFICATE.**

28 (a) In order to amend its certificate of limited partnership, a limited
29 partnership shall deliver to the [Secretary of State] for filing an amendment or,
30 pursuant to [Article] 11, articles of merger stating:

31 (1) the name of the limited partnership;

1 (2) the date of filing of its initial certificate; and
2 (3) the changes the amendment makes to the certificate as most recently
3 amended or restated.

4 (b) A limited partnership shall promptly deliver to the [Secretary of State]
5 for filing an amendment to a certificate of limited partnership to reflect:

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

7 (2) the dissociation of a person as a general partner; or

8 (3) the appointment of a person to wind up the limited partnership's
9 activities under Section 803(c) or (d).

10 (c) A general partner that knows that any information in a filed certificate of
11 limited partnership was false when the certificate was filed or has become false due
12 to changed circumstances shall promptly:

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

14 (2) if appropriate, deliver to the [Secretary of State] for filing a statement
15 of change pursuant to Section 115 or a statement of correction pursuant to Section
16 207.

17 (d) A certificate of limited partnership may be amended at any time for any
18 other proper purpose as determined by the limited partnership.

19 (e) A restated certificate of limited partnership may be delivered to the
20 [Secretary of State] for filing in the same manner as an amendment.

21 (f) Subject to Section 206(c), an amendment or restated certificate is
22 effective when filed by the [Secretary of State].

1 **Reporter's Notes**

2 **Source** – RULPA § 202.

3 **Subsection (b)** – This subsection lists changes in circumstances which
4 require an amendment to the certificate. Neither a statement of change, Section 115,
5 nor the annual report, Section 210(e), suffice to report the addition or deletion of a
6 general partner or the appointment of a person to wind up a limited partnership that
7 has no general partner.

8 This subsection states an obligation of the limited partnership. However, so
9 long as the limited partnership has at least one general partner, the general partner
10 or partners are responsible for managing the limited partnership's activities. Section
11 406(a). That management responsibility includes maintaining accuracy in the limited
12 partnership's public record. Moreover, subsection (c) imposes direct responsibility
13 on any general partner with knowledge that the filed certificate of limited
14 partnership contains false information.

15 Acquiring or relinquishing LLLP status also requires an amendment to the
16 certificate. See Sections 201(a)(4), 406(b)(2), and 1110(b)(2).

17 **Subsection (c)** – This provision imposes an obligation directly on the
18 general partners rather than on the limited partnership. For the consequences of
19 failing to meet this obligation, see Section 208.

20 **SECTION 203. STATEMENT OF TERMINATION.** A dissolved limited
21 partnership that has completed winding up may deliver to the [Secretary of State]
22 for filing a statement of termination that states:

23 (1) the name of the limited partnership;

24 (2) the date of filing of its initial certificate of limited partnership; and

25 (3) any other information as determined by the general partners filing the
26 statement or by a person appointed pursuant to Section 803(c) or (d).

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Reporter’s Notes

Under Section 103(d)(3), a filed statement of termination provides constructive notice, 90 days after the statement’s effective date, that the limited partnership is terminated. That notice effectively terminates any apparent authority to bind the limited partnership.

However, this section is permissive. Therefore, it is not possible to use Section 205 (Signing and Filing by Judicial Act) to cause a statement of termination to be filed.

This section differs from predecessor law, RULPA § 203, which required the filing of a certificate of cancellation when a limited partnership dissolved.

SECTION 204. SIGNING OF RECORDS.

(a) Each record delivered to the [Secretary of State] for filing pursuant to this [Act] must be signed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(3) An amendment designating as general partner a person admitted under Section 801(3)(B) following the dissociation of a limited partnership’s last general partner must be signed by that person.

(4) An amendment required by Section 803(c) following the appointment of a person to wind up the dissolved limited partnership’s activities must be signed by that person.

(5) Any other amendment must be signed 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 the [Secretary of State]
- 9 for filing a statement of dissociation.
- 10 (6) A restated certificate of limited partnership must be signed by at
- 11 least one general partner listed in the certificate, and, to the extent the restated
- 12 certificate effects a change under any other paragraph of this subsection, the
- 13 certificate must be signed in a manner that satisfies that paragraph.
- 14 (7) A statement of termination must be signed by all general partners
- 15 listed in the certificate or, if the certificate of a dissolved limited partnership lists no
- 16 general partners, by the person appointed pursuant to Section 803(c) or (d) to wind
- 17 up the dissolved limited partnership's activities.
- 18 (8) Articles of conversion must be signed by each general partner listed
- 19 in the certificate of limited partnership.
- 20 (9) Articles of merger must be signed as provided in Section 1108(a).

(10) Any other record delivered on behalf of a limited partnership to the [Secretary of State] for filing must be signed by at least one general partner listed in the certificate.

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

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

(13) A record delivered on behalf of a foreign limited partnership to the [Secretary of State] for filing must be signed by at least one general partner of the foreign limited partnership.

(14) Any other record delivered on behalf of any person to the [Secretary of State] for filing must be signed by that person.

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

Reporter's Notes

Source – ULLCA § 205.

This section pertains only to signing requirements and implies nothing about approval requirements. For example, Section 204(a)(2) requires that an amendment changing a limited partnership's LLLP status be signed by all **general** partners listed in the certificate, but under Section 406(b)(2) **all** partners must consent to that change unless otherwise provided in the partnership agreement.

A person who signs a record without ascertaining that the record has been properly authorized risks liability under Section 208.

Subsection (a) – The recurring reference to general partners “listed in the certificate” recognizes that a person might be admitted as a general partner under Section 401 without immediately being listed in the certificate of limited partnership.

1 Such persons may have rights, powers and obligations despite their unlisted status,
2 but they cannot act as general partners for the purpose of affecting the limited
3 partnership's public record. See the Reporter's Notes to Section 103(c) and the
4 Reporter's Notes to Section 401.

5 **SECTION 205. SIGNING AND FILING BY JUDICIAL ACT.**

6 (a) If a person required by this [Act] to sign a record or deliver a record to
7 the [Secretary of State] for filing fails or refuses to do so, any other person that is
8 aggrieved by the failure or refusal may petition the [appropriate court] to order:

9 (1) the person to sign the record or deliver the record to the [Secretary
10 of State] for filing; or

11 (2) the [Secretary of State] to file the record unsigned.

12 (b) If the person aggrieved under subsection (a) is not the limited
13 partnership or foreign limited partnership to which the record pertains, the
14 aggrieved person shall make that limited partnership or foreign limited partnership a
15 party to the action. A person aggrieved under subsection (a) may seek all remedies
16 provided in subsection (a) in the same action, in the alternative.

17 (c) A record filed unsigned pursuant to this section is effective without
18 being signed.

19 **SECTION 206. DELIVERY TO AND FILING OF RECORDS BY THE**
20 **[SECRETARY OF STATE]; EFFECTIVE TIME AND DATE.**

21 (a) A record authorized or required to be delivered to the [Secretary of
22 State] for filing under this [Act] must be captioned to describe the record's purpose,
23 be in a medium permitted by the [Secretary of State], and be delivered to the

1 [Secretary of State]. Unless the [Secretary of State] determines that a record fails
2 to comply with the filing requirements of this [Act], and if all filing fees have been
3 paid, the [Secretary of State] shall file the record and:

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

5 (A) a copy of the filed statement and a receipt for the fees to the
6 person which the statement indicates has dissociated as a general partner; and

7 (B) a copy of the filed statement and receipt to the limited
8 partnership;

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

10 (A) a copy of the filed statement and a receipt for the fees to the
11 person on whose behalf the record was filed; and

12 (B) if the statement refers to an existing limited partnership, a copy
13 of the filed statement and receipt to the limited partnership; and

14 (3) for all other records, send a copy of the filed record and a receipt for
15 the fees to the person on whose behalf the record was filed.

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

18 (c) Except as otherwise provided in Sections 116 and 207, a record
19 delivered to the [Secretary of State] for filing under this [Act] may specify an
20 effective time and a delayed effective date. Except as otherwise provided in this
21 [Act], a record filed by the [Secretary of State] is effective:

1 (1) if the record does not specify an effective time and does not specify a
2 delayed effective date, at the time of filing on the date the record is filed as
3 evidenced by the [Secretary of State's] endorsement of the date and time on the
4 record;

5 (2) if the record specifies an effective time but not a delayed effective
6 date, on the date the record is filed at the time specified in the record;

7 (3) if the record specifies a delayed effective day but not an effective
8 time, at 12:01 AM on the earlier of:

9 (A) the specified date; or

10 (B) the 90th day after the record is filed; or

11 (4) if the record specifies an effective time and a delayed effective date,
12 at the specified time on the earlier of:

13 (A) the specified date; or

14 (B) the 90th day after the record is filed.

15 **Reporter's Notes**

16 **Source** – ULLCA § 206.

17 In order for a record prepared by a private person to become part of the
18 public record under this Act, (i) someone must put a properly prepared version of
19 the record into the possession of the public official specified in the Act as the
20 appropriate filing officer, and (ii) that filing officer must determine that the record
21 complies with the filing requirements of this Act and then officially make the record
22 part of the public record. This Act refers to the first step as *delivery to the*
23 *[Secretary of State] for filing* and refers to the second step as *filing*. Thus, under
24 this Act “filing” is an official act.

25 **Subsection (a)** – The caption need only indicate the title of the record; *e.g.*,
26 Certificate of Limited Partnership, Statement of Change for Limited Partnership.

1 Filing officers typically note on a filed record the fact, date and time of filing.
2 The copies provided by the filing officer under this subsection should contain that
3 notation.

4 This Act does not provide a remedy if the filing officer wrongfully fails or
5 refuses to file a record.

6 **Subsection (c)** – This subsection allows most records to have a delayed
7 effective date, up to 90 days after the date the record is filed by the filing officer. A
8 record specifying a longer delay will **not** be rejected. Instead, under paragraph
9 (c)(3) and (4), the delayed effective date is adjusted to the “90th day after the record
10 is filed.”

11 **SECTION 207. CORRECTING FILED RECORD.**

12 (a) A limited partnership or foreign limited partnership may deliver to the
13 [Secretary of State] for filing a statement of correction to correct a record
14 previously delivered by the limited partnership or foreign limited partnership to the
15 [Secretary of State] and filed by the [Secretary of State], if at the time of filing the
16 record contained false or erroneous information or was defectively signed.

17 (b) A statement of correction may not state a delayed effective date and
18 must:

19 (1) describe the record to be corrected, including its filing date, or attach
20 a copy of that record as filed;

21 (2) specify the incorrect information and the reason it is incorrect or the
22 manner in which the signing was defective; and

23 (3) correct the incorrect information or defective signature.

1 (c) When filed by the [Secretary of State], a statement of correction is
2 effective retroactively as of the effective date of the record the statement corrects,
3 but the statement is effective when filed:

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

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

7 **Reporter's Notes**

8 **Source** – ULLCA § 207.

9 A statement of correction is appropriate only to correct inaccuracies that
10 existed or signatures that were defective “at the time of filing.” A statement of
11 correction may not be used to correct a record that was accurate when filed but has
12 become inaccurate due to subsequent events.

13 **Subsection (c)** – Although generally a statement of correction “relates
14 back,” the relation back has two important exceptions: (1) for the purposes of
15 constructive notice under Section 103(c) and (d), a statement of correction carries
16 its own 90-day delay; and (2) the relating back is ineffective against persons who
17 have detrimentally relied on the uncorrected record.

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

19 (a) If a record delivered to the [Secretary of State] for filing under this [Act]
20 and filed by the [Secretary of State] contains false information, a person that suffers
21 loss by reliance on the information may recover damages for the loss from:

22 (1) a person that signed the record, or caused another to sign it on the
23 person's behalf, and knew the information to be false at the time the record was
24 signed; and

(2) a general partner that has notice that the information was false when the record was filed or has become false due to changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 202, file a petition pursuant to Section 205, or deliver to the [Secretary of State] for filing a statement of change pursuant to Section 115 or a statement of correction pursuant to Section 207.

(b) Signing a record authorized or required to be filed under this [Act] constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

Reporter's Notes

This section pertains to both limited partnerships and foreign limited partnerships.

LLLP status is irrelevant to this section. The LLLP shield protects only to the extent that (i) the obligation involved is an obligation of the limited partnership or foreign limited partnership, and (ii) a partner is claimed to be liable for that obligation by reason of being a partner. This section does not address the obligations of a limited partnership or foreign limited partnership and instead imposes direct liability on signers and general partners.

Subsection (a) – This subsection’s liability rules apply only to records (i) created by private persons (“delivered to the [Secretary of State] for filing”) (ii) which actually become part of the public record (“filed by the [Secretary of State]”). This subsection does not preempt other law, which might provide remedies for misleading information contained, for example, in a record that is delivered to the filing officer for filing but withdrawn before the filing officer takes the official action of filing the record.

Records filed under this Act are signed subject to the penalties for perjury. See subsection (b). This subsection therefore does not require a party who relies on a record to demonstrate that the reliance was reasonable. Contrast Section 201(d)(2), which provides that, if the partnership agreement is inconsistent with the

1 public record, the public record prevails in favor of a person that is neither a partner
2 nor a transferee and that reasonably relied on the record.

3 **SECTION 209. CERTIFICATE OF EXISTENCE OR**
4 **AUTHORIZATION.**

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

8 (b) Upon payment of a fee, the [Secretary of State] shall furnish a certificate
9 of existence requested under subsection (a) if the filed records in the office of the
10 [Secretary of State] show that the [Secretary of State] has filed a certificate of
11 limited partnership and has not filed a statement of termination. A certificate of
12 existence must state:

13 (1) the limited partnership's name;

14 (2) that it was duly formed under the laws of this State and the date of
15 formation;

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

18 (4) whether the limited partnership's most recent annual report required
19 by Section 210 has been filed by the [Secretary of State];

20 (5) whether the [Secretary of State] has administratively dissolved the
21 limited partnership;

1 (6) whether a statement of dissolution has been filed by the [Secretary of
2 State];

3 (7) that a statement of termination has not been filed by the [Secretary of
4 State]; and

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

7 (c) Upon payment of a fee, the [Secretary of State] shall furnish a certificate
8 of authorization requested under subsection (a) if the filed records in the office of
9 the [Secretary of State] show that the [Secretary of State] has filed a certificate of
10 authority, has not revoked the certificate of authority, and has not filed a notice of
11 cancellation. A certificate of authorization for a foreign limited partnership must
12 state:

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

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

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

18 (4) whether the foreign limited partnership's most recent annual report
19 required by Section 210 has been filed by the [Secretary of State];

20 (5) that the [Secretary of State] has not revoked its certificate of
21 authority and has not filed a notice of cancellation; and

(6) other facts of record in the [office of the Secretary of State] which 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 the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this State.

Reporter's Notes

Source – ULLCA § 208.

A certificate of existence can reveal only information present in the public record, and under this Act significant information bearing on the status of a limited partnership may be outside the public record. For example, while this Act provides for a limited partnership to have a perpetual duration, Section 104(c), the partnership agreement may set a definite term or designate particular events whose occurrence will cause dissolution. Section 801(1). Dissolution is also possible by consent, Section 801(2), and, absent a contrary provision in the partnership agreement, will at least be at issue whenever a general partner dissociates. Section 801(3). Nothing in this Act requires a limited partnership to deliver to the filing officer for filing a record indicating that the limited partnership has dissolved.

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

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

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

(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;

1 (3) in the case of a limited partnership, the street and mailing address of
2 its 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 delivered to the [Secretary of State] for filing.

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 or foreign limited partnership and return the report to it for correction.
16 If the report is corrected to contain the information required in subsection (a) and
17 delivered to the [Secretary of State] within 30 days after the effective date of the
18 notice, it is timely delivered.

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

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

3 **Reporter's Notes**

4 **Source** – ULLCA § 211.

5 **Subsection (d)** – This subsection's rule affects only Section 809(a)(2) (late
6 filing of annual report grounds for administrative dissolution) and any late fees that
7 the filing officer might have the right to impose. For the purposes of subsection (e),
8 the annual report functions as a statement of change only when "filed" by the filing
9 officer. Likewise, a person cannot rely on subsection (d) to escape liability arising
10 under Section 208.

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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; or
- (3) with the consent of all the partners.

Reporter’s Notes

Source – RULPA § 301.

Although Section 801(4) contemplates the admission of a limited partner to avoid dissolution, that provision does not itself authorize the admission. Instead, this section controls. Contrast Section 801(3)(B), which itself authorizes the admission of a general partner in order to avoid dissolution.

SECTION 302. NO RIGHT OR POWER AS LIMITED PARTNER TO BIND LIMITED PARTNERSHIP. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

Reporter’s Notes

In this respect a limited partner is analogous to a shareholder in a corporation; status as owner provides neither the right to manage nor a reasonable appearance of that right.

The phrase “as a limited partner” is intended to recognize that: (i) this section does not disable a general partner that also owns a limited partner interest, (ii) the partnership agreement may as a matter of contract allocate managerial rights to one or more limited partners; and (iii) a separate agreement can empower and entitle a person that is a limited partner to act for the limited partnership in another capacity; *e.g.*, as an agent. See Reporter’s Notes to Section 305

1 The fact that a limited partner *qua* limited partner has no power to bind the
2 limited partnership means that, subject to Section 113 (Dual Capacity), information
3 possessed by a limited partner is not attributed to the limited partnership. See
4 Section 103(h).

5 This Act specifies various circumstances in which limited partners have
6 consent rights, including:

- 7 • admission of a limited partner, Section 301(3)
- 8 • admission of a general partner, Section 401(4)
- 9 • amendment of the partnership agreement, Section 406(b)(1)
- 10 • the decision to amend the certificate of limited partnership so as to obtain or
11 relinquish LLLP status, Section 406(b)(2)
- 12 • the disposition of all or substantially all of the limited partnership's property,
13 outside the ordinary course, Section 406(b)(3)
- 14 • the compromise of a partner's obligation to make a contribution or return an
15 improper distribution, Section 502(c)
- 16 • expulsion of a limited partner by consent of the other partners, Section
17 601(b)(4)
- 18 • expulsion of a general partner by consent of the other partners, Section
19 603(4)
- 20 • redemption of a transferable interest subject to charging order, using limited
21 partnership property, Section 703(c)(3)
- 22 • causing dissolution by consent, Section 801(2)
- 23 • causing dissolution by consent following the dissociation of a general
24 partner, when at least one general partner remains, Section 801(3)(A)
- 25 • avoiding dissolution and appointing a successor general partner, following
26 the dissociation of the sole general partner, Section 801(3)(B)
- 27 • appointing a person to wind up the limited partnership when there is no
28 general partner, Section 803(C)
- 29 • approving, amending or abandoning a plan of conversion, Section 1103(a)
30 and (b)(2)
- 31 • approving, amending or abandoning a plan of merger, Section 1107(a) and
32 (b)(2)

33 **SECTION 303. NO LIABILITY AS LIMITED PARTNER FOR**
34 **LIMITED PARTNERSHIP OBLIGATIONS.** An obligation of a limited
35 partnership, whether arising in contract, tort, or otherwise, is not the obligation of
36 any limited partner. A limited partner is not personally liable, directly or indirectly,

1 by way of contribution or otherwise, for an obligation of the limited partnership
2 solely by reason of being a limited partner, even if the limited partner participates in
3 the management and control of the limited partnership.

4 **Reporter's Notes**

5 This section establishes a liability shield for limited partners that is analogous
6 to the corporate shield for shareholders. The shield protects only against liability for
7 the limited partnership's obligations and only to the extent that the limited partner is
8 claimed to be liable on account of being a limited partner.

9 This section does not prevent a limited partner from being liable as a result
10 of the limited partner's own conduct and is therefore inapplicable when a third party
11 asserts that a limited partner's own wrongful conduct has injured the third party.
12 This section is likewise inapplicable to claims by the limited partnership or another
13 partner that a limited partner has breached a duty under this Act or the partnership
14 agreement.

15 This section does not eliminate a limited partner's liability for promised
16 contributions, Section 502 or improper distributions. Section 509. That liability
17 pertains to a person's status as a limited partner but is **not** liability for an obligation
18 of the limited partnership.

19 **SECTION 304. RIGHT TO INFORMATION OF LIMITED PARTNER**
20 **AND FORMER LIMITED PARTNER.**

21 (a) On 10 days' demand, made in a record received by the limited
22 partnership, a limited partner may inspect and copy the required information during
23 regular business hours in the limited partnership's designated office. A limited
24 partner making demand pursuant to this subsection need not demonstrate, state, or
25 have any particular purpose for seeking the information.

26 (b) A limited partner may, during regular business hours and at a reasonable
27 location specified by the limited partnership, obtain from the limited partnership and

1 inspect and copy true and full information regarding the state of the activities and
2 financial condition of the limited partnership and other information regarding the
3 activities of the limited partnership as is just and reasonable if:

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

6 (2) the limited partner makes a demand in a record received by the
7 limited partnership, describing with reasonable particularity the information sought
8 and the purpose for seeking the information; and

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

11 (c) Within 10 days after receiving a demand pursuant to subsection (b), the
12 limited partnership shall in a record inform the limited partner that made the
13 demand:

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

16 (2) when and where the limited partnership will provide that information;
17 and

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

20 (d) Subject to subsection (f), a person dissociated as a limited partner may
21 inspect and copy required information during regular business hours in the limited
22 partnership's designated office if:

1 (1) the information pertains to the period during which the person was a
2 limited partner;

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

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

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

7 (f) If a limited partner dies, Section 704 applies.

8 (g) The limited partnership may impose reasonable limitations on the use of
9 information obtained under this section. In a dispute concerning the reasonableness
10 of a restriction under this subsection, the limited partnership has the burden of
11 proving reasonableness.

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

15 (i) Whenever this [Act] or a partnership agreement provides for a limited
16 partner to give or withhold consent to a matter, before the consent is given or
17 withheld, the limited partnership shall, without demand, provide the limited partner
18 with all information that the limited partnership knows and is material to the limited
19 partner's decision.

20 (j) A limited partner or person dissociated as a limited partner may exercise
21 the rights under this section through an attorney or other agent. In that event, any

1 limitations on availability and use under subsection (g) apply both to the limited
2 partner or person and to the attorney or other agent.

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

4 (1) subsection (d) creates rights for a person dissociated as a limited
5 partner;

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

8 (3) the rights under this section extend to the legal representative of an
9 individual under legal disability who is a limited partner or person dissociated as a
10 limited partner.

11 **Reporter's Notes**

12 **Subsection (a)** – This subsection's broad right of access is subject not only
13 to reasonable limitations in the partnership agreement, Section 110(b)(4), but also to
14 the power of the limited partnership to impose reasonable limitations on use. Unless
15 the partnership agreement provides otherwise, it will be the general partner or
16 partners that have the authority to use that power. See Section 406(a).

17 **Subsection (b)** – The language describing the information to be provided
18 comes essentially verbatim from RULPA § 305(a)(2)(i) and (iii). The procedural
19 requirements derive from RMBCA § 16.02(c). This subsection does not impose a
20 requirement of good faith, because Section 305(b) contains a generally applicable
21 obligation of good faith and fair dealing for limited partners.

22 **Subsection (d)** – The notion that former owners should have information
23 rights comes from RUPA § 403(b) and ULLCA § 408(a). The access is limited to
24 the required information and is subject to certain conditions.

25 **Example:** A person dissociated as a limited partner seeks data which the limited
26 partnership has compiled, which relates to the period when the person was a
27 limited partner, but which is beyond the scope of the information required by
28 Section 111. No matter how reasonable the person's purpose and how well
29 drafted the person's demand, the limited partnership is not obliged to provide
30 the data.

1 **Example:** A person dissociated as a limited partner seeks access to required
 2 information pertaining to the period during which the person was a limited
 3 partner. The person makes a bald demand, merely stating a desire to review the
 4 required information at the limited partnership’s designated office. In particular,
 5 the demand does not describe “with reasonable particularity the information
 6 sought and the purpose for seeking the information.” See subsection (b)(2).
 7 The limited partnership is not obliged to allow access. The person must first
 8 comply with subsection (d), which incorporates by reference the requirements of
 9 subsection (b).

10 Subsection (f) and Section 704 provide greater access rights for the estate of a
 11 deceased limited partner.

12 **Subsection (d)(2)** – A duty of good faith is needed here, because a person
 13 claiming access under this subsection is no longer a limited partner and is no longer
 14 subject to Section 305(b). See Section 602(2) (dissociation as a limited partner
 15 terminates duty of good faith as to subsequent events).

16 **Subsection (g)** – This subsection permits the limited partnership – as
 17 distinguished from the partnership agreement – to impose use limitations. Contrast
 18 Section 110(b)(4). Under Section 406(a), it will be the general partner or partners
 19 that decide whether the limited partnership will impose use restrictions.

20 The limited partnership bears the burden of proving the reasonableness of
 21 any restriction imposed under this subsection. In determining whether a restriction
 22 is reasonable, a court might consider: (i) the danger or other problem the restriction
 23 seeks to avoid; (ii) the purpose for which the information is sought; and (iii)
 24 whether, in light of both the problem and the purpose, the restriction is reasonably
 25 tailored. Restricting use of the names and addresses of limited partners is not per se
 26 unreasonable.

27 The following table compares the limitations available through the
 28 partnership agreement with those available under this subsection.

	partnership agreement	Section 304(g)
29 how restrictions adopted	by the consent of partners when they adopt or amend the partnership agreement, unless the partnership agreement provides another method of amendment	by the general partners, acting under Section 406(a)

1	what restrictions may be	“reasonable limitations on	“reasonable limitations
2	imposed	the availability and use of	on the use of
		information obtained,”	information obtained”
		Section 110(b)(4)	
3	burden of proof	the person challenging the	“the limited partnership
		restriction must prove that	has the burden of
		the restriction will	proving
		“unreasonably restrict the	reasonableness”
		right of information,”	
		Section 110(b)(4)	

4 **Subsection (h)** – Source: RUPA § 403(b) and ULLCA § 408(a).

5 **Subsection (i)** – Source: ULLCA § 408(b).

6 The duty stated in this subsection is at the core of the duties owed the
7 limited partners by a limited partnership and its general partners. This subsection
8 imposes an affirmative duty to volunteer information, but that obligation is limited to
9 information which is both material and known by the limited partnership. The duty
10 applies to known, material information, even if the limited partnership does not
11 know that the information is material.

12 A limited partnership will “know” what its general partners know. Section
13 103(h). A limited partnership may also know information known by the “individual
14 conducting the transaction for the entity.” Section 103(g).

15 **Subsection (k)** – Section 305 provides no information rights to a transferee
16 as transferee. Transferee status brings only the very limited information rights stated
17 in Section 702(c).

18 It is nonetheless possible for a person that happens to be a transferee to have
19 rights under this section. For example, under Section 602(3) a person dissociated as
20 a limited partner becomes a “mere transferee” of its own transferable interest. While
21 that status provides the person no rights under this section, the status of person
22 dissociated as a limited partner triggers rights under subsection (d).

23

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

2 (a) A limited partner does not have any fiduciary duty to the limited
3 partnership or to any other partner solely by reason of being a limited partner.

4 (b) A limited partner shall discharge the duties to the partnership and the
5 other partners under this [Act] or under the partnership agreement and exercise any
6 rights consistently with the obligation of good faith and fair dealing.

7 (c) A limited partner does not violate a duty or obligation under this [Act]
8 or under the partnership agreement merely because the limited partner's conduct
9 furthers the limited partner's own interest.

10 **Reporter's Notes**

11 **Subsection (a)** – Fiduciary duty typically attaches to a person whose status
12 or role creates significant power for that person over the interests of another person.
13 Under this Act, limited partners have very limited power of any sort in the regular
14 activities of the limited partnership and no power whatsoever justifying the
15 imposition of fiduciary duties either to the limited partnership or fellow partners. It
16 is possible for a partnership agreement to allocate significant managerial authority
17 and power to a limited partner, but in that case the power exists not as a matter of
18 status or role but rather as a matter of contract. The proper limit on such contract-
19 based power is the obligation of good faith and fair dealing, not fiduciary duty,
20 unless the partnership agreement itself expressly imposes a fiduciary duty or creates
21 a role for a limited partner which, as a matter of other law, gives rise to a fiduciary
22 duty. For example, if the partnership agreement makes a limited partner an agent
23 for the limited partnership as to particular matters, the law of agency will impose
24 fiduciary duties on the limited partner with respect to the limited partner's role as
25 agent.

26 **Subsection (b)** – Source: RUPA § 404 (d). The same language appears in
27 Section 408(d), pertaining to general partners.

28 The obligation of good faith and fair dealing is *not* a fiduciary duty, does not
29 command altruism or self-abnegation, and does not prevent a partner from acting in
30 the partner's own self-interest. Courts should not use the obligation to change *ex*
31 *post facto* the parties' or this Act's allocation of risk and power. To the contrary, in
32 light of the nature of a limited partnership, the obligation should be used only to

1 protect agreed-upon arrangements from conduct that is manifestly beyond what a
2 reasonable person could have contemplated when the arrangements were made.

3 The partnership agreement or this Act may grant discretion to a partner, and
4 that partner may properly exercise that discretion even though another partner
5 suffers as a consequence. Conduct does not violate the obligation of good faith and
6 fair dealing merely because that conduct substantially prejudices a party. Indeed,
7 parties allocate risk precisely because prejudice may occur. The exercise of
8 discretion constitutes a breach of the obligation of good faith and fair dealing only
9 when the party claiming breach shows that the conduct has no honestly-held
10 purpose that legitimately comports with the parties' agreed-upon arrangements.
11 Once such a purpose appears, courts should not second guess a party's choice of
12 method in serving that purpose, unless the party invoking the obligation of good
13 faith and fair dealing shows that the choice of method itself lacks any honestly-held
14 purpose that legitimately comports with the parties' agreed-upon arrangements.

15 In sum, the purpose of the obligation of good faith and fair dealing is to
16 protect the arrangement the partners have chosen for themselves, not to restructure
17 that arrangement under the guise of safeguarding it.

18 **SECTION 306. PERSON ERRONEOUSLY BELIEVING SELF**
19 **LIMITED PARTNER.**

20 (a) Except as otherwise provided in subsection (b), a person that makes an
21 investment in a business enterprise and erroneously but in good faith believes that
22 the person has become a limited partner in the enterprise is not liable for the
23 enterprise's obligations by reason of making the investment, receiving distributions
24 from the enterprise, or exercising any rights of or appropriate to a limited partner, if,
25 on ascertaining the mistake, the person:

26 (1) causes an appropriate certificate of limited partnership, amendment,
27 or statement of correction to be signed and delivered to the [Secretary of State] for
28 filing; or

(2) withdraws from future participation as an owner in the enterprise by signing and delivering to the [Secretary of State] for filing a statement of withdrawal under this section.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the [Secretary of State] files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

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

Reporter's Notes

Source – RULPA § 304, substantially redrafted for clarity.

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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; or
- (4) with the consent of all the partners.

Reporter’s Notes

This section does not make a person’s admission as a general partner dependent on the person being so designated in the certificate of limited partnership. If a person does become a general partner under this section without being so designated:

- the limited partnership is obligated to promptly and appropriately amend the certificate of limited partnership, Section 202(b)(1);
- each general partner that knows of the anomaly is personally obligated to cause the certificate to be promptly and appropriately amended, Section 202(c)(1), and is subject to liability for failing to do so, Section 208(a)(2);
- the “non-designated” general partner has:
 - ~ all the rights and duties of a general partner to the limited partnership and the other partners,
 - ~ the powers of a general partner to bind the limited partnership under Sections 402 and 403, and
 - ~ no power to sign records which are to be filed on behalf of the limited partnership under this Act

1 **Example:** By consent of the partners of XYZ Limited Partnership, G is
2 admitted as a general partner. However, XYZ’s certificate of limited
3 partnership is not amended accordingly. Later, G – acting without actual
4 authority – purports to bind XYZ to a transaction with Third Party. Third Party
5 does not review the filed certificate of limited partnership before entering into
6 the transaction. XYZ might be bound under Section 402.

7 That section attributes to a limited partnership “[a]n act of a general partner
8 ... for apparently carrying on in the ordinary course the limited partnership’s
9 activities or activities of the kind carried on by the limited partnership.” The
10 limited partnership’s liability under Section 402 does not depend on the “act of a
11 general partner” being the act of a general partner designated in the certificate of
12 limited partnership. Moreover, the notice provided by Section 103(c) does not
13 undercut G’s appearance of authority. Section 402 refers only to notice under
14 Section 103(d) and, in any event, according to the last clause of Section 103(c),
15 the fact that a person is **not** listed as in the certificate as a general partner is **not**
16 notice that the person is **not** a general partner. See Reporter’s Notes to Section
17 103(c).

18 **Example:** Same facts, except that Third Party does review the certificate of
19 limited partnership before entering into the transaction. The result might still be
20 the same.

21 The omission of a person’s name from the certificate’s list of general
22 partners is **not** notice that the person is **not** a general partner. Therefore, Third
23 Party’s review of the certificate does not mean that Third Party knew, had
24 received a notification or had notice that G lacked authority. At most, XYZ
25 could argue that, because Third Party knew that G was not listed in the
26 certificate, a transaction entered into by G could not appear to Third Party to be
27 for apparently carrying on the limited partnership’s activities in the ordinary
28 course.

29 **SECTION 402. GENERAL PARTNER AGENT OF LIMITED** 30 **PARTNERSHIP.**

31 (a) Each general partner is an agent of the limited partnership for the
32 purposes of its activities. An act of a general partner, including the signing of a
33 record in the partnership’s name, for apparently carrying on in the ordinary course

1 the limited partnership's activities or activities of the kind carried on by the limited
2 partnership binds the limited partnership, unless the general partner did not have
3 authority to act for the limited partnership in the particular matter and the person
4 with which the general partner was dealing knew, had received a notification, or had
5 notice under Section 103(d) that the general partner lacked authority.

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

10 **Reporter's Notes**

11 **Source** – RUPA § 301.

12 The fact that a person is not listed in the certificate of limited partnership as
13 a general partner is **not** notice that the person is **not** a partner and is **not** notice that
14 the person lacks authority to act for the limited partnership. See Reporter's Notes
15 to Section 103(c) and Reporter's Notes to Section 401.

16 Section 103(f) defines receipt of notification. Section 103(d) lists various
17 public filings, each of which provides notice 90 days after its effective date.

18 **Example:** For the past ten years, X has been a general partner of XYZ Limited
19 Partnership and has regularly conducted the limited partnership's business with
20 Third Party. However, 100 days ago the limited partnership expelled X as a
21 general partner and the next day delivered for filing an amendment to XYZ's
22 certificate of limited partnership which stated that X was no longer a general
23 partner. On that same day, the filing officer filed the amendment.

24 Today X approaches Third Party, purports still be to a general partner of
25 XYZ and purports to enter into a transaction with Third Party on XYZ's behalf.
26 Third Party is unaware that X has been expelled and has no reason to doubt that
27 X's bona fides. Nonetheless, XYZ is not liable on the transaction. Under
28 Section 103(d), Third Party has notice that X is dissociated and perforce has
29 notice that X is not a general partner authorized to bind XYZ.

SECTION 403. LIMITED PARTNERSHIP LIABLE FOR GENERAL PARTNER'S ACTIONABLE CONDUCT.

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

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

Reporter's Notes

Source – RUPA § 305.

This section makes the limited partnership vicariously liable for a partner's misconduct. That vicariously liability in no way discharges or diminishes the partner's direct liability for the partner's own misconduct.

A general partner can cause a limited partnership to be liable under this section, even if the general partner is not designated as a general partner in the certificate of limited partnership. See Reporter's Notes to Section 401.

SECTION 404. GENERAL PARTNER'S LIABILITY.

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

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

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under Section 406(b)(2).

Reporter's Notes

Source – RUPA § 306.

SECTION 405. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

(a) To the extent not inconsistent with Section 404, any of the general partners may be joined in an action against the limited partnership or named in separate actions.

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

1 (c) A judgment creditor of a general partner may not levy execution against
2 the assets of the general partner to satisfy a judgment based on a claim against the
3 limited partnership, unless the partner is personally liable for the claim under Section
4 404 and:

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

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

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

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

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

18 **Reporter's Notes**

19 **Source** – RUPA § 307.

20 If a limited partnership is a limited liability limited partnership throughout its
21 existence, this section will bar a creditor of a limited partnership from impleading,
22 suing or reaching the assets of a general partner unless the creditor can satisfy
23 subsection (c)(5).

1 **SECTION 406. MANAGEMENT RIGHTS OF GENERAL PARTNER.**

2 (a) Each general partner has equal rights in the management and conduct of
3 the limited partnership's activities. Except as expressly provided in this [Act], any
4 matter relating to the activities of the limited partnership may be exclusively decided
5 by the general partner or, if there is more than one general partner, by a majority of
6 the general partners.

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

8 (1) amend the partnership agreement;

9 (2) amend the certificate of limited partnership to add or, subject to
10 Section 1110, delete a statement that the limited partnership is a limited liability
11 limited partnership; and

12 (3) sell, lease, exchange, or otherwise dispose of all, or substantially all
13 of the limited partnership's property, with or without the good will, other than in the
14 usual and regular course of the limited partnership's activities.

15 (c) A limited partnership shall reimburse a general partner for payments
16 made and indemnify a general partner for liabilities incurred by the general partner in
17 the ordinary course of the activities of the partnership or for the preservation of its
18 activities or property.

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

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

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

7 **Reporter's Notes**

8 **Source** – RUPA § 401 and ULLCA § 404.

9 **Subsection (a)** – As explained in the Prefatory Note, this Act assumes that,
10 more often than not, people utilizing the Act will want (i) strong centralized
11 management, strongly entrenched, and (ii) passive investors with little control over
12 the entity. Section 302 essentially excludes limited partners from the ordinary
13 management of a limited partnership's activities. This subsection states affirmatively
14 the general partners' commanding role. Only the partnership agreement and the
15 express provisions of this Act can limit that role.

16 The authority granted by this subsection includes the authority to delegate.
17 Delegation does not relieve the delegating general partner or partners of their duties
18 under Section 408. However, the fact of delegation is a fact relevant to any breach
19 of duty analysis.

20 **Example:** A sole general partner personally handles all "important paperwork"
21 for a limited partnership. The general partner neglects to renew the fire
22 insurance coverage on the a building owned by the limited partnership, despite
23 having received and read a warning notice from the insurance company. The
24 building subsequently burns to the ground and is a total loss. The general
25 partner might be liable for breach of the duty of care under Section 408(c)
26 (gross negligence).

27 **Example:** A sole general partner delegates responsibility for insurance renewals
28 to the limited partnership's office manager, and that manager neglects to renew
29 the fire insurance coverage on the building. Even assuming that the office
30 manager has been grossly negligent, the general partner is not necessarily liable
31 under Section 408(c). The office manager's gross negligence is not
32 automatically attributed to the general partner. Under Section 408(c), the
33 question is whether the general partner was grossly negligent (or worse) in

1 selecting the general manager, delegating insurance renewal matters to the
2 general manager and supervising the general manager after the delegation.

3 For the consequences of delegating authority to a person that is a limited partner,
4 see the Reporter's Notes to Section 305.

5 The partnership agreement may also provide for delegation, with potentially
6 greater effect on Section 408 duties. See Section 110(b)(5) – (7) and accompanying
7 Reporter's Notes.

8 **Subsection (b)** – This subsection limits of the managerial rights of the
9 general partners, requiring the consent of each general and limited partner for the
10 specified actions. The subsection is subject to change by the partnership agreement,
11 except as provided in Section 110(b)(12) (pertaining to consent rights established by
12 Section 1110).

13 **Subsection (c)** – This Act does not include any parallel provision for limited
14 partners, because they are assumed to be passive. To the extent that by contract or
15 other arrangement a limited partner has authority to act on behalf of the limited
16 partnership, agency law principles will create an indemnity obligation. In other
17 situations, principles of restitution might apply.

18 **Subsection (f)** – Unlike RUPA § 401(h), this subsection provides no
19 compensation for winding up efforts. In a limited partnership, winding up is one of
20 the tasks for which the limited partners depend on the general partner. There is no
21 reason for the Act to single out this particular task as giving rise to compensation.

22 **SECTION 407. RIGHT TO INFORMATION OF GENERAL PARTNER**
23 **AND FORMER GENERAL PARTNER.**

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

27 (1) in the limited partnership's designated office, the required
28 information; and

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

4 (b) Each general partner and the limited partnership shall furnish to a
5 general partner:

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

9 (2) on demand, any other information concerning the limited
10 partnership's activities, except to the extent the demand or the information
11 demanded is unreasonable or otherwise improper under the circumstances.

12 (c) Subject to subsection (e), on 10 days' demand made in a record received
13 by the limited partnership, a person dissociated as a general partner may have access
14 to the information and records described in subsection (a) at the location specified in
15 subsection (a) if:

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

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

19 (3) the person satisfies the requirements of Section 304(b).

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

22 (e) If a general partner dies, Section 704 applies.

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

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

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. In that event, any limitation on availability and use under subsection (f) applies to the attorney or other agent and the general partner or person dissociated as a general partner.

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

(1) subsection (c) creates rights for a person dissociated as a general partner, and those rights extend to the legal representative of an individual who dissociated as a general partner under Section 603(7)(B) or (C); and

(2) subsection (e) recognizes the rights of the executor or administrator of a deceased general partner.

Reporter's Notes

This section's structure parallels the structure of Section 304 and the Reporter's Notes to that section may be helpful in understanding this section.

Subsection (b) – Source: RUPA § 403(c).

1 **Subsection (b)(1)** – If a particular item of material information is apparent
2 in the limited partnership’s records, whether a general partner is obliged to
3 disseminate that information to fellow general partners depends on the
4 circumstances.

5 **Example:** A limited partnership has two general partners: each of which is
6 regularly engaged in conducting the limited partnership’s activities; both of
7 which are aware of and have regular access to all significant limited partnership
8 records; and neither of which has special responsibility for or knowledge about
9 any particular aspect of those activities or the partnership records pertaining to
10 any particular aspect of those activities. Most likely, neither general partner is
11 obliged to draw the other general partner’s attention to information apparent in
12 the limited partnership’s records.

13 **Example:** Although a limited partnership has three general partners, one is the
14 managing partner with day-to-day responsibility for running the limited
15 partnership’s activities. The other two meet periodically with the managing
16 general partner, and together with that partner function in a manner analogous
17 to a corporate board of directors. Most likely, the managing general partner has
18 a duty to draw the attention of the other general partners to important
19 information, even if that information would be apparent from a review of the
20 limited partnership’s records.

21 In all events under subsection (b)(1), the question is whether the disclosure by one
22 general partner is “reasonably necessary for the proper exercise” of the other general
23 partner’s rights and duties.

24 **Subsection (f)** – This provision is identical to Section 304(g) and the
25 Reporter’s Notes to Section 304(g) is applicable here. Under this Act, general and
26 limited partners have sharply different roles. A restriction that is reasonable as to a
27 limited partner is not necessarily reasonable as to a general partner.

28 **Subsection (g)** – No charge is allowed for current general partners, because
29 in almost all cases they would be entitled to reimbursement under Section 406(c).
30 Contrast Section 304(h), which authorizes charges to current limited partners.

1 **SECTION 408. GENERAL STANDARDS OF GENERAL PARTNER'S**
2 **CONDUCT.**

3 (a) The only fiduciary duties that a general partner has to the limited
4 partnership and the other partners are the duties of loyalty and care under
5 subsections (b) and (c).

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

8 (1) to account to the limited partnership and hold as trustee for it any
9 property, profit, or benefit derived by the general partner in the conduct and winding
10 up of the limited partnership's activities or derived from a use by the general partner
11 of limited partnership property, including the appropriation of a limited partnership
12 opportunity;

13 (2) to refrain from dealing with the limited partnership in the conduct or
14 winding up of the limited partnership's activities as or on behalf of a party having an
15 interest adverse to the limited partnership; and

16 (3) to refrain from competing with the limited partnership in the conduct
17 or winding up of the limited partnership's activities.

18 (c) A general partner's duty of care to the limited partnership and the other
19 partners in the conduct and winding up of the limited partnership's activities is
20 limited to refraining from engaging in grossly negligent or reckless conduct,
21 intentional misconduct, or a knowing violation of law.

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

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

7 **Reporter's Notes**

8 **Source** – RUPA § 404.

9 This section does not prevent a general partner from delegating one or more
10 duties, but delegation does not discharge the duty. For further discussion, see the
11 Reporter's Notes to Section 406.

12 If the partnership agreement removes a particular responsibility from a
13 general partner, that general partner's fiduciary duty must be judged according to
14 the rights and powers the general partner retains. For example, if the partnership
15 agreement denies a general partner the right to act in a particular matter, the general
16 partner's compliance with the partnership agreement cannot be a breach of fiduciary
17 duty. However, the general partner may still have a duty to provide advice with
18 regard to the matter. That duty could arise from the fiduciary duty of care under
19 Section 408(c) and the duty to provide information under Sections 304(i) and
20 407(b).

21 For the partnership agreement's power directly to circumscribe a general
22 partner's fiduciary duty, see Section 110(b)(5) and (6).

23 **Subsection (a)** – The reference to “the other partners” does not affect the
24 distinction between direct and derivative claims. See Section 1001(b) (prerequisites
25 for a partner bringing a direct claim).

26 **Subsection (b)** – A general partner's duty under this subsection continues
27 through winding up, since the limited partners' dependence on the general partner
28 does not end at dissolution. See Reporter's Notes to Section 406(f) (explaining why
29 this Act provides no remuneration for a general partner's winding up efforts).

30 **Subsection (d)** – This provision is identical to Section 305(b) and the
31 Reporter's Notes to Section 305(b) is applicable here.

1 [ARTICLE] 5
2 CONTRIBUTIONS 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, services performed, promissory notes, other
6 agreements to contribute cash or property, and contracts for services to be
7 performed.

8 Reporter's Notes

9 Source – ULLCA § 401.

10 SECTION 502. LIABILITY FOR CONTRIBUTION.

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

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

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

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

3 **Reporter's Notes**

4 In contrast with predecessor law, RULPA § 502(a), this Act does not
5 include a statute of fraud provision covering promised contributions. Section
6 111(9)(A) does require that the value of a promised contribution be memorialized,
7 but that requirement does not affect enforceability. See Reporter's Notes to Section
8 111(9).

9 **Subsection (a) – Source: RULPA § 502(b).**

10 Under common law principles of impracticability, an individual's death or
11 incapacity will sometimes discharge a duty to render performance. Restatement
12 (Second) of Contracts, §§ 261 and 262. This subsection overrides those principles.

13 **Subsection (b) – RULPA § 502(b).**

14 This subsection is a statutory liquidated damage provision, exercisable at the
15 option of the limited partnership, with the damage amount set according to the value
16 of the promised contribution as stated in the required information.

17 **Example:** In order to become a limited partner, a person promises to contribute
18 to the limited partnership various assets which the partnership agreement values
19 at \$150,000. In return for the person's promise, and in light of the agreed value,
20 the limited partnership admits the person as a limited partner with a right to
21 receive 25% of the limited partnership's distributions.

22 The promised assets are subject to a security agreement, but the limited
23 partner promises to contribute them "free and clear." Before the limited partner
24 can contribute the assets, the secured party forecloses on the security interest
25 and sells the assets at a public sale for \$75,000. Even if the \$75,000 reflects the
26 actual fair market value of the assets, under this subsection the limited
27 partnership has a claim against the limited partner for "the value, as stated in the
28 required information, of the stated contribution which has not been made" – i.e.,
29 \$150,000.

30 This section applies "at the option of the limited partnership" and does not
31 affect other remedies which the limited partnership may have under other law.

32 **Example:** Same facts as the previous example, except that the public sale
33 brings \$225,000. The limited partnership is not obliged to invoke this

1 subsection and may instead sue for breach of the promise to make the
2 contribution, asserting the \$225,000 figure as evidence of the actual loss
3 suffered as a result of the breach.

4 **Subsection (c)** – Source: ULLCA § 402(b); RULPA § 502(c). The first
5 sentence of this subsection applies not only to promised contributions but also to
6 improper distributions. See Sections 508 and 509. The second sentence, pertaining
7 to creditor’s rights, applies only to promised contributions.

8 **SECTION 503. SHARING OF DISTRIBUTIONS.** A distribution by a
9 limited partnership must be shared among the partners on the basis of the value, as
10 stated in the required records when the limited partnership decides to make the
11 distribution, of the contributions the limited partnership has received from each
12 partner.

13 **Reporter’s Notes**

14 This Act has no provision allocating profits and losses among the partners,
15 because as a matter of non-tax law no such allocation is necessary. Instead, the Act
16 directly allocates the right to receive distributions.

17 Nearly all limited partnerships will choose to allocate profits and losses in
18 order to comply with applicable tax law. That law, rather than this Act, is the
19 proper source of guidance for that profit and loss allocation.

20 Likewise, if a limited partnership wishes to allocate profits and losses to
21 satisfy some particular accounting concerns, those concerns, rather than this Act, are
22 the proper source of guidance.

23 Unlike predecessor law, RULPA §§ 503 and 504, this section allocates
24 distributions in proportion to the value of contributions received from each partner
25 without regard to whether the limited partnership has returned any of those
26 contributions. This Act’s approach produces the same result as predecessor law, so
27 long as the limited partnership does not vary the Act’s approach on allocating
28 distributions.

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

4 **Reporter's Notes**

5 Under Section 406(a), the general partner or partners make this decision for
6 the limited partnership.

7 **SECTION 505. NO DISTRIBUTION ON ACCOUNT OF**
8 **DISSOCIATION.** A person does not have a right to receive a distribution on
9 account of dissociation.

10 **Reporter's Notes**

11 This section varies substantially from predecessor law. RULPA §§ 603 and
12 604 permitted a limited partner to withdraw on six months notice and receive the
13 fair value of the limited partnership interest, unless the partnership agreement
14 provided the limited partner with some exit right or stated a definite duration for the
15 limited partnership.

16 Under this Act, a partner that dissociates becomes a transferee of its own
17 transferable interest. See Sections 602(3) (person dissociated as a limited partner)
18 and 605(5) (person dissociated as a general partner).

19 **SECTION 506. DISTRIBUTION IN KIND.** A partner does not have a right
20 to demand or receive any distribution from a limited partnership in any form other
21 than cash. A limited partnership may distribute an asset in kind, subject to Section
22 812(b), only to the extent that each partner receives a percentage of the asset equal
23 to the partner's share of distributions.

24 **Reporter's Notes**

25 **Source** – RULPA § 605.

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

Reporter's Notes

Source – RULPA § 606.

The reference to “dissociated partner” encompasses circumstances in which the partner is gone and that dissociated partner’s transferable interest is all that remains.

SECTION 508. LIMITATIONS ON DISTRIBUTION.

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

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

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

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

1 (c) A limited partnership may base a determination that a distribution is not
2 prohibited under subsection (b) on financial statements prepared on the basis of
3 accounting practices and principles that are reasonable in the circumstances or on a
4 fair valuation or other method that is reasonable in the circumstances.

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

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

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

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

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

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

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

1 (g) If indebtedness is issued as a distribution, each payment of principal or
2 interest on the indebtedness is treated as a distribution, the effect of which is
3 measured on the date the payment is made.

4 **Reporter's Notes**

5 **Source** – ULLCA § 406. See also RMBCA § 6.40.

6 **Subsection (c)** – This subsection appears to impose a standard of ordinary
7 care, in contrast with the general duty of care stated in Section 408(c). For a
8 reconciliation of these two provisions, see Reporter's Notes to Section 509(a).

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

10 (a) A general partner that consents to a distribution made in violation of
11 Section 508 is personally liable to the limited partnership for the amount of the
12 distribution which exceeds the amount that could have been distributed without the
13 violation if it is established that in consenting to the distribution the general partner
14 failed to comply with Section 408.

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

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

21 (1) implead in the action any other person that as a general partner
22 consented to the distribution in violation of subsection (a) and compel contribution
23 from that person; and

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

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

6 **Reporter's Notes**

7 **Source** – ULLCA § 407. See also RMBCA § 8.33.

8 In substance and effect this section protects the interests of creditors of the
9 limited partnership. Therefore, according to Section 110(b)(13), the partnership
10 agreement may not change this section in a way that restricts the rights of those
11 creditors.

12 **Subsection (a)** – This subsection refers both to Section 508, which includes
13 in its subsection (c) a standard of ordinary care (“reasonable in the circumstances”),
14 and to Section 408, which includes in its subsection (c) a general duty of care that is
15 limited to “refraining from engaging in grossly negligent or reckless conduct,
16 intentional misconduct, or a knowing violation of law.”

17 A limited partnership’s failure to meet the standard of Section 508(c) cannot
18 by itself cause a general partner to be liable under Section 509(a). *Both* of the
19 following would have to occur before a failure to satisfy Section 508(c) could
20 occasion personal liability for a general partner under Section 509(a):

21 • the limited partnership “base[s] a determination that a distribution is not
22 prohibited . . . on financial statements prepared on the basis of accounting
23 practices and principles that are [not] reasonable in the circumstances or on a
24 [not] fair valuation or other method that is [not] reasonable in the
25 circumstances” [Section 508(c)]

26 *AND*

27 • the general partner’s decision to rely on the improper methodology in
28 consenting to the distribution constitutes “grossly negligent or reckless
29 conduct, intentional misconduct, or a knowing violation of law” [Section
30 408(c)] or breaches some other duty under Section 408.

1 To serve the protective purpose of Sections 508 and 509, in this subsection
2 “consent” must be understood as encompassing any form of approval, assent or
3 acquiescence, whether formal or informal, express or tacit.

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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 consent of the other partners if:
 - (A) it is unlawful to carry on the limited partnership’s 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 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(b); or

14 (C) the person engaged in conduct relating to the limited
15 partnership's activities which makes it not reasonably practicable to carry on the
16 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 **Reporter's Notes**

13 **Source** – RUPA § 601.

14 This section adopts RUPA's dissociation provision essentially verbatim,
15 except for provisions inappropriate to limited partners. For example, this section
16 does not provide for the dissociation of a person as a limited partner on account of
17 bankruptcy, insolvency or incompetency.

18 This Act refers to *a person's dissociation as a limited partner* rather than to
19 the *dissociation of a limited partner*, because the same person may be both a
20 general and a limited partner. See Section 113 (Dual Capacity). It is possible for a
21 dual capacity partner to dissociate in one capacity and not in the other.

22 **Subsection (a)** – This section varies substantially from predecessor law. See
23 Reporter's Notes to Section 505.

24 **Subsection (b)(1)** – This provision gives a person the power to dissociate as
25 a limited partner even though the dissociation is wrongful under subsection (a). See,
26 however, Section 110(b)(8) (prohibiting the partnership agreement from eliminating
27 the power of a person to dissociate as a *general* partner but imposing no comparable
28 limitation with regard to a person's dissociation as a *limited* partner).

Subsection (b)(5) – In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

SECTION 602. EFFECT OF DISSOCIATION AS LIMITED PARTNER.

Upon a person's dissociation as a limited partner:

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

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

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

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

Reporter's Notes

Source – RUPA § 603(b).

Paragraph (1) – In general, when a person dissociates as a limited partner, the person’s rights as a limited partner disappear and, subject to Section 113 (Dual Status), the person’s status degrades to that of a mere transferee. However, Section 704 provides some special rights when an individual dissociates by dying.

Paragraph (3) – For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

1 Article 11 provides for conversions and mergers. A plan of conversion or
2 merger may provide for the dissociation of a person as a limited partner and may
3 override the rule stated in this paragraph.

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

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

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

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

13 (4) the person's expulsion as a general partner by the unanimous consent of
14 the other partners if:

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

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

21 (C) the person is a corporation and, within 90 days after the limited
22 partnership notifies the person that it will be expelled as a general 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 been
6 dissolved and whose business is being wound up;

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

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

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

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

17 (6) the person's:

18 (A) becoming a debtor in bankruptcy;

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

20 (C) seeking, consenting to, or acquiescing in the appointment of a
21 trustee, receiver, or liquidator of that person or of all or substantially all of that
22 person's property; or

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

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

7 (A) the person's death;

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

9 or

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

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

17 (9) in the case of a person that is an estate or is acting as a general partner by
18 virtue of being a personal representative of an estate, distribution of the estate's
19 entire transferable interest in the limited partnership, but not merely by reason of the
20 substitution of a successor personal representative;

21 (10) termination of a general partner that is not an individual, partnership,
22 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.

Reporter's Notes

Source – RUPA § 601.

This section adopts RUPA's dissociation provision essentially verbatim. This Act refers to *a person's dissociation as a general partner* rather than to the *dissociation of a general partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Paragraph (1) – The partnership agreement may not eliminate this power to dissociate. See Section 110(b)(8).

Paragraph (5) – In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

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;

1 (B) the person is expelled as a general partner by judicial
2 determination under Section 603(5);
3 (C) the person is dissociated as a general partner by becoming a
4 debtor in bankruptcy; or
5 (D) in the case of a person that is not an individual, trust other than a
6 business trust, or estate, the person is expelled or otherwise dissociated as a general
7 partner because it willfully dissolved or terminated.
8 (c) A person that wrongfully dissociates as a general partner is liable to the
9 limited partnership and, subject to Section 1001, to the other partners for damages
10 caused by the dissociation. The liability is in addition to any other obligation of the
11 general partner to the limited partnership or to the other partners.

12 **Reporter's Notes**

13 **Source** – RUPA § 602.

14 **Subsection (a)** – The partnership agreement may not eliminate this power.
15 See Section 110(b)(8).

16 **Subsection (b)(1)** – The reference to “an express provision of the
17 partnership agreement” means that a person’s dissociation as a general partner in
18 breach of the obligation of good faith and fair dealing is not wrongful dissociation
19 for the purposes of this section. The breach might be actionable on other grounds.

20 **Subsection (b)(2)** – The reference to “before the termination of the limited
21 partnership” reflects the expectation that each general partner will shepherd the
22 limited partnership through winding up. See Reporter’s Notes to Section 406(f). A
23 person’s obligation to remain as general partner through winding up continues even
24 if another general partner dissociates and even if that dissociation leads to the
25 limited partnership’s premature dissolution under Section 801(3)(A).

26 **Subsection (c)** – The language “subject to Section 1001” is intended to
27 preserve the distinction between direct and derivative claims.

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

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

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

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

Source – RUPA § 603(b).

1 **Paragraph (1)** – Once a person dissociates as a general partner, the person
2 loses all management rights as a general partner regardless of what happens to the
3 limited partnership. This rule contrasts with RUPA § 603(b)(1), which permits a
4 dissociated general partner to participate in winding up in some circumstances.

5 **Paragraph (4)** – Both records covered by this paragraph have the same
6 effect under Section 103(d) – namely, to give notice that the person has dissociated
7 as a general partner. The notice benefits the person by curtailing any further
8 personal liability under Sections 607, 805, and 1111. The notice benefits the limited
9 partnership by curtailing any lingering power to bind under Sections 606, 804, and
10 1112.

11 The limited partnership is in any event obligated to amend its certificate of
12 limited partnership to reflect the dissociation of a person as general partner. See
13 Section 202(b)(2). In most circumstances, the amendment requires the signature of
14 the person that has dissociated. Section 204(a)(5)(C). If that signature is required
15 and the person refuses or fails to sign, the limited partnership may invoke Section
16 205 (Signing and Filing by Judicial Act).

17 **Paragraph (5)** – In general, when a person dissociates as a general partner,
18 the person’s rights as a general partner disappear and, subject to Section 113 (Dual
19 Status), the person’s status degrades to that of a mere transferee. For any person
20 that is both a general partner and a limited partner, the required records must state
21 which transferable interest is owned in which capacity. Section 111(9)(C).

22 Section 704 provides some special rights when an individual dissociates by
23 dying. Article 11 provides for conversions and mergers. A plan of conversion or
24 merger may provide for the dissociation of a person as a limited partner and may
25 override the rule stated in this paragraph.

26 **SECTION 606. POWER TO BIND AND LIABILITY TO**
27 **PARTNERSHIP BEFORE DISSOLUTION OF PERSON DISSOCIATED AS**
28 **GENERAL PARTNER.**

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

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

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

4 (A) less than two years has passed since the dissociation; and

5 (B) the other party does not have notice of the dissociation and
6 reasonably believes that the person is a general partner.

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

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

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

14 **Reporter's Notes**

15 **Source** – RUPA § 702.

16 This Act contains three sections pertaining to the lingering power to bind of
17 a person dissociated as a general partner:

- 18 • this section, which applies until the limited partnership dissolves, converts to
19 another form of organization under Article 11, or is merged out of existence
20 under Article 11;
- 21 • Section 804(b), which applies after a limited partnership dissolves; and
- 22 • Section 1112(b), which applies after a conversion or merger.

23 **Subsection (a)(2)(B)** – A person might have notice under Section 103(d)(1)
24 as well as under Section 103(b).

1 **Subsection (b)** – Paragraphs (1) and (2) both refer to “that obligation.” The
2 reference is to the limited partnership obligation that results when the limited
3 partnership is bound under subsection (a).

4 **SECTION 607. LIABILITY TO OTHER PERSONS OF PERSON**
5 **DISSOCIATED AS GENERAL PARTNER.**

6 (a) A person’s dissociation as a general partner does not of itself discharge
7 the person’s liability as a general partner for a limited partnership’s obligation
8 incurred before dissociation. Except as otherwise provided in subsections (b) and
9 (c), the person is not liable for a limited partnership’s obligation incurred after
10 dissociation.

11 (b) A person whose dissociation as a general partner resulted in a
12 dissolution and winding up of the limited partnership’s activities is liable to the same
13 extent as a general partner under Section 404 on an obligation incurred by the
14 limited partnership under Section 804.

15 (c) A person that has dissociated as a general partner but whose
16 dissociation did not result in a dissolution and winding up of the limited
17 partnership’s activities is liable on a transaction entered into by the limited
18 partnership after the dissociation, only if:

19 (1) a general partner would be liable on the transaction; and

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

21 (A) less than two years has passed since the dissociation; and

1 (B) the other party does not have notice of the dissociation and
2 reasonably believes that the person is a general partner.

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

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

11 **Reporter's Notes**

12 **Source** – RUPA § 703.

13 A person's dissociation as a general partner does not categorically prevent
14 the person from being liable as a general partner for subsequently incurred
15 obligations of the limited partnership. If the dissociation results in dissolution,
16 Section 804 applies to the person. If the dissociation does not result in dissolution,
17 subsection (c) applies. If the limited partnership is a limited liability limited
18 partnership, these liability rules are moot.

19 **Subsection (c)(2)(B)** – A person might have notice under Section 103(d)(1)
20 as well as under Section 103(b).

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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.

Reporter’s Notes
Source – RUPA § 502.

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 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 activities, to require access to information concerning the limited partnership’s transactions except as provided in subsection (c), or to inspect or copy the required information or the limited partnership’s other records.
- (b) A transferee has a right to receive, in accordance with the transfer:
- (1) distributions to which the transferor would otherwise be entitled; and

(2) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(c) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(d) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 502 and 509. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

Reporter's Notes

Source – RUPA § 503.

Subsection (a)(2) – The phrase “by itself” is significant. A transfer of all of a person’s transferable interest could lead to dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

Subsection (a)(3) – Mere transferees have no right to intrude as the partners carry on their activities as partners. Moreover, a partner’s obligation of good faith and fair dealing under Sections 305(b) and 408(d) is framed in reference to “the limited partnership and the other partners.” See also Reporter’s Notes to Section 1102(b)(3) and Reporter’s Notes to Section 1106(b)(3).

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 **Reporter's Notes**

7 **Source** – RUPA § 504.

8 **Subsection (c)(3)** – This provision requires the consent of all the limited as
9 well as general partners.

10 **SECTION 704. POWER OF ESTATE OF DECEASED PARTNER.** If a
11 partner dies, the deceased partner's executor, administrator, or other legal
12 representative may exercise the rights of a transferee as provided in Section 702
13 and, for the purposes of settling the estate, may exercise the rights of a current
14 limited partner under Section 304.

15 **Reporter's Notes**

16 Section 702 strictly limits the rights of transferees. In particular, a transferee
17 has no right to participate in management in any way, no voting rights and, except
18 following dissolution, no information rights. Even after dissolution, a transferee's
19 information rights are limited. See Section 702(c).

20 This section provides special informational rights for a deceased partner's
21 legal representative for the purposes of settling the estate. For those purposes, the
22 legal representative may exercise the informational rights of a current limited partner
23 under Section 304. Those rights are of course subject to the limitations and
24 obligations stated in that section – *e.g.*, Section 304 (g) (restrictions on use) and (h)
25 (charges for copies) – as well as any generally applicable limitations stated in the
26 partnership agreement.

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[ARTICLE] 8
DISSOLUTION

SECTION 801. NONJUDICIAL DISSOLUTION. Except as otherwise provided in Section 802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

- (1) the happening of an event specified in the partnership agreement;
- (2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
- (3) after the dissociation of a person as a general partner:
 - (A) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or
 - (B) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of that period:
 - (i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
 - (ii) at least one person is admitted as a general partner in accordance with that consent;

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

(5) the signing and filing of a declaration of dissolution by the [Secretary of State] under Section 809(c).

Reporter's Notes

This Act does not require that any of the consents referred to in this section be given in the form of a signed record. The partnership agreement has the power to impose that requirement. See Reporter's Notes to Section 110.

In several provisions, this section provides for consent in terms of rights to receive distributions. Distribution rights of non-partner transferees are not relevant. Mere transferees have no consent rights, and their distribution rights are not counted in determining whether majority consent has been obtained.

Paragraph (1) – There is no requirement that an event be specified in record form, unless the partnership agreement creates that requirement.

Paragraph (2) – Rights to receive distributions owned by a person that is both a general and a limited partner figure into the limited partner determination only to the extent those rights are owned in the person's capacity as a limited partner. See Section 111(9)(C).

Example: XYZ is a limited partnership with three general partners, each of whom is also a limited partner, and 5 other limited partners. Rights to receive distributions are allocated as follows:

Partner #1 as general partner – 3%
Partner #2 as general partner – 2%
Partner #3 as general partner – 1%
Partner #1 as limited partner – 7%
Partner #2 as limited partner – 3%
Partner #3 as limited partner – 4%
Partner #4 as limited partner – 5%
Partner #5 as limited partner – 5%
Partner #6 as limited partner – 5%
Partner #7 as limited partner – 5%
Partner #8 as limited partner – 5%

1 as a going concern for a reasonable time, prosecute and defend actions and
2 proceedings, whether civil, criminal, or administrative, transfer the limited
3 partnership's property, settle disputes by mediation or arbitration, file a statement of
4 termination as provided in Section 203, and perform other necessary acts; and

5 (2) shall discharge the limited partnership's liabilities, settle and close the
6 limited partnership's activities, and marshal and distribute the assets of the
7 partnership.

8 (c) If a dissolved limited partnership does not have a general partner, a
9 person to wind up the dissolved limited partnership's activities may be appointed by
10 the consent of limited partners owning a majority of the rights to receive
11 distributions as limited partners at the time the consent is to be effective. A person
12 appointed under this subsection:

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

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

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

17 (B) state the street and mailing address of the person.

18 (d) On the application of any partner, the [appropriate court] may order
19 judicial supervision of the winding up, including the appointment of a person to
20 wind up the dissolved limited partnership's activities, if:

- 1 (1) a limited partnership does not have a general partner and within a
2 reasonable time following the dissolution no person has been appointed pursuant to
3 subsection (c); or
4 (2) the applicant establishes other good cause.

5 **Reporter's Notes**

6 **Subsection (b)(2)** – A limited partnership may satisfy its duty to “discharge”
7 a liability either by paying or by making an alternative arrangement satisfactory to
8 the creditor.

9 **Subsection (c)** – The method for determining majority consent is analogous
10 to the method applicable under Section 801(2). See the Reporter's Notes to that
11 paragraph.

12 A person appointed under this subsection is **not** a general partner and
13 therefore is not subject to Section 408.

14 **SECTION 804. POWER OF GENERAL PARTNER AND PERSON**
15 **DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP**
16 **AFTER DISSOLUTION.**

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

19 (1) is appropriate for winding up the limited partnership's activities; or

20 (2) would have bound the limited partnership under Section 402 before
21 dissolution, if, at the time the other party enters into the transaction, the other party
22 does not have notice of the dissolution.

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

1 (1) at the time the other party enters into the transaction:
2 (A) less than two years has passed since the dissociation; and
3 (B) the other party does not have notice of the dissociation and
4 reasonably believes that the person is a general partner; and
5 (2) the act:
6 (A) is appropriate for winding up the limited partnership's activities;
7 or
8 (B) would have bound the limited partnership under Section 402
9 before dissolution and at the time the other party enters into the transaction the
10 other party does not have notice of the dissolution.

11 **Reporter's Notes**

12 **Subsection (a)** – Source: RUPA §804.

13 **Subsection (a)(2)** – A person might have notice under Section 103(d)(2)
14 (amendment of certificate of limited partnership to indicate dissolution) as well as
15 under Section 103(b).

16 **Subsection (b)** – This subsection deals with the post-dissolution power to
17 bind of a person dissociated as a general partner. Paragraph (1) replicates the
18 provisions of Section 606, pertaining to the pre-dissolution power to bind of a
19 person dissociated as a general partner. Paragraph (2) replicates the provisions of
20 subsection (a), which state the post-dissolution power to bind of a general partner.
21 For a person dissociated as a general partner to bind a dissolved limited partnership,
22 the person's act will have to satisfy both paragraph (1) and paragraph (2).

23 **Subsection (b)(1)(B)** – A person might have notice under Section 103(d)(1)
24 as well as under Section 103(b).

25 **Subsection (b)(2)(B)** – A person might have notice under Section 103(d)(2)
26 (amendment of certificate of limited partnership to indicate dissolution) as well as
27 under Section 103(b).

1 **SECTION 805. LIABILITY AFTER DISSOLUTION OF GENERAL**
2 **PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO**
3 **LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS, AND**
4 **PERSONS DISSOCIATED AS GENERAL PARTNER.**

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

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

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

13 (b) If a person dissociated as a general partner causes a limited partnership
14 to incur an obligation under Section 804(b), the person 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 a general partner or another person dissociated as a general partner
18 is liable for that obligation, to that general partner or other person for any damage
19 caused to that general partner or other person arising from that liability.

1 **Reporter's Notes**

2 **Source** – RUPA § 806.

3 It is possible for more than one person to be liable under this section on
4 account of the same limited partnership obligation. This Act does not provide any
5 rule for apportioning liability in that circumstance.

6 **Subsection (a)(2)** – If the limited partnership is not a limited liability limited
7 partnership, the liability created by this paragraph includes liability under Sections
8 404(a), 607(b), and 607(c). The paragraph also applies when a partner or person
9 dissociated as a general partner suffers damage due to a contract of guaranty.

10 **SECTION 806. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
11 **PARTNERSHIP.**

12 (a) A dissolved limited partnership may dispose of the known claims against
13 it by following the procedure described in subsection (b).

14 (b) A dissolved limited partnership may in a record notify its known
15 claimants of the dissolution. The notice must:

- 16 (1) specify the information required to be included in a claim;
17 (2) provide a mailing address to which the claim is to be sent;
18 (3) state the deadline for receipt of the claim, which may not be less than
19 120 days after the date the notice in a record is received by the claimant;
20 (4) state that the claim will be barred if not received by the deadline; and
21 (5) unless the limited partnership has been throughout its existence a
22 limited liability limited partnership, state that the barring of a claim against the
23 limited partnership will also bar any corresponding claim against any present or
24 dissociated general partner which is based on Section 404.

1 (c) A claim against a dissolved limited partnership is barred if the
2 requirements of subsection (b) are met and:

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

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

8 (d) This section does not apply to a contingent liability or a claim based on
9 an event occurring after the effective date of dissolution.

10 **Reporter's Notes**

11 **Source** – ULLCA § 807. See also RMBCA § 14.06.

12 **Paragraph (b)(5)** – If the limited partnership has always been a limited
13 liability limited partnership, no one can be liable under Section 404.

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 has been throughout its existence a
9 limited liability limited partnership, state that the barring of a claim against the
10 limited partnership will also bar any corresponding claim against any present or
11 dissociated general partner which is based on Section 404.

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

16 (1) a claimant that did not receive notice in a record under Section 806;

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

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

21 (d) A claim not barred under this section may be enforced:

(1) against the dissolved limited partnership, to the extent of its undistributed assets;

(2) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(3) against any person liable on the claim under Section 404.

Reporter's Notes

Source – ULLCA § 808. See also RMBCA § 14.07.

Paragraph (b)(4) – If the limited partnership has always been a limited liability limited partnership, no one can be liable under Section 404.

**SECTION 808. LIABILITY OF GENERAL PARTNER AND PERSON
DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST
LIMITED PARTNERSHIP BARRED.** If a claim against a dissolved limited

LIMITED PARTNERSHIP BARRED. If a claim against a dissolved limited partnership is barred under Section 806 or 807, any corresponding claim under Section 404 is also barred.

Reporter's Notes

The liability under Section 404 of a general partner or person dissociated as a general partner is merely liability for the obligations of the limited partnership.

1 **SECTION 809. ADMINISTRATIVE DISSOLUTION.**

2 (a) The [Secretary of State] may dissolve a limited partnership
3 administratively if the limited partnership does not, within 60 days after the due
4 date:

5 (1) pay any fee, tax, or penalty due to the [Secretary of State] under this
6 [Act] or other law; or

7 (2) deliver its annual report to the [Secretary of State].

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

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

19 (d) A limited partnership administratively dissolved continues its existence
20 but may carry on only activities necessary to wind up and liquidate its activities
21 under Sections 803 and 812 and to notify claimants under Sections 806 and 807.

1 (e) The administrative dissolution of a limited partnership does not
2 terminate the authority of its agent for service of process.

3 **Reporter's Notes**

4 **Source** – ULLCA §§ 809 and 810. See also RMBCA § 14.20 and 14.22.

5 **Subsection (a)(1)** – This provision refers solely to money due the specified
6 filing officer and does not apply to other money due to the State.

7 **Subsection (c)** – The filing of a declaration of dissolution does not provide
8 notice under Section 103(d).

9 **SECTION 810. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
10 **DISSOLUTION.**

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

15 (1) the name of the limited partnership and the effective date of its
16 administrative dissolution;

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

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

21 (b) If the [Secretary of State] determines that the application contains the
22 information required by subsection (a) and that the information is correct, the
23 [Secretary of State] shall prepare a declaration of reinstatement that states this

1 determination, sign and file the original of the declaration of reinstatement, and
2 serve the limited partnership with a copy.

3 (c) When reinstatement becomes effective, it relates back to and takes effect
4 as of the effective date of the administrative dissolution and the limited partnership
5 may resume its activities as if the administrative dissolution had never occurred.

6 **Reporter's Notes**

7 **Source** – ULLCA § 811. See also RMBCA § 14.22.

8 **SECTION 811. APPEAL FROM DENIAL OF REINSTATEMENT.**

9 (a) If the [Secretary of State] denies a limited partnership's application for
10 reinstatement following administrative dissolution, the [Secretary of State] shall
11 prepare, sign and file a notice that explains the reason or reasons for denial and
12 serve the limited partnership with a copy of the notice.

13 (b) Within 30 days after service of the notice of denial, the limited
14 partnership may appeal from the denial of reinstatement by petitioning the
15 [appropriate court] to set aside the dissolution. The petition must be served on the
16 [Secretary of State] and contain a copy of the [Secretary of State's] declaration of
17 dissolution, the limited partnership's application for reinstatement, and the
18 [Secretary of State's] notice of denial.

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

1 **Reporter's Notes**

2 **Source** – ULLCA § 812.

3 **SECTION 812. DISPOSITION OF ASSETS; WHEN CONTRIBUTIONS**
4 **REQUIRED.**

5 (a) In winding up a limited partnership's activities, the assets of the limited
6 partnership, including the contributions required by this section, must be applied to
7 satisfy the limited partnership's obligations to creditors, including, to the extent
8 permitted by law, partners that are creditors.

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

11 (c) If the limited partnership's assets are insufficient to satisfy all of its
12 obligations under subsection (a), with respect to each unsatisfied obligation incurred
13 when the limited partnership was not a limited liability limited partnership, the
14 following rules apply:

15 (1) Each person that was a general partner when the obligation was
16 incurred and that has not been released from that obligation under Section 607 shall
17 contribute to the limited partnership for the purpose of enabling the limited
18 partnership to satisfy that obligation. The contribution due from each of those
19 persons is in proportion to the right to receive distributions in the capacity of
20 general partner in effect for each of those persons when the obligation was incurred.

21 (2) If a person fails to contribute the full amount required under
22 paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the

1 other persons required to contribute by paragraph (1) on account of that obligation
2 shall contribute the additional amount necessary to discharge the obligation. The
3 additional contribution due from each of those other persons is in proportion to the
4 right to receive distributions in the capacity of general partner in effect for each of
5 those other persons when the obligation was incurred.

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

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

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

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

Reporter's Notes

In some circumstances, this Act requires a partner to make payments to the limited partnership. *See, e.g.*, Sections 502(b), 509(a), 509(b), and 812(c). In other circumstances, this Act requires a partner to make payments to other partners. *See, e.g.*, Sections 509(c) and 812(d). In no circumstances does this Act requires a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

Example: XYZ Limited Partnership (“XYZ”) has one general partner and four limited partners. According to XYZ’s required information, the value of each partner’s contributions to XYZ are:

General partner – \$5,000
Limited partner #1 – \$10,000
Limited partner #2 – \$15,000
Limited partner #3 – \$20,000
Limited partner #4 – \$25,000

XYZ is unsuccessful and eventually dissolves without ever having made a distribution to its partners. XYZ lacks any assets with which to return to the partners the value of their respective contributions. No partner is obliged to make any payment either to the limited partnership or to fellow partners to adjust these capital losses. These losses are not part of “the limited partnership’s obligations to creditors.” Section 812(a).

Example: Same facts, except that Limited Partner #4 loaned \$25,000 to XYZ when XYZ was not a limited liability limited partnership, and XYZ lacks the assets to repay the loan. The general partner must contribute to the limited partnership whatever funds are necessary to enable XYZ to satisfy the obligation owed to Limited Partner #4 on account of the loan. Section 812(a) and (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 as 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.

Reporter’s Notes

Source – ULLCA § 1001.

Subsection (a) – This subsection is analogous in scope and effect to Section 106 (choice of law for domestic limited partnerships).

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 other jurisdiction under whose law the foreign limited partnership is organized;

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

(4) the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this State;

(5) the name and street and mailing address of each of the foreign limited partnership's general partners; and

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

(b) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the [Secretary of State] or other official having custody of the foreign limited partnership's publicly filed records in the State or other jurisdiction under whose law the foreign limited partnership is organized.

Reporter's Notes

Source – ULLCA § 1002.

1 **SECTION 903. ACTIVITIES NOT CONSTITUTING TRANSACTING**
2 **BUSINESS.**

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

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

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

8 (3) maintaining accounts in financial institutions;

9 (4) maintaining offices or agencies for the transfer, exchange, and
10 registration of the foreign limited partnership's own securities or maintaining
11 trustees or depositories with respect to those securities;

12 (5) selling through independent contractors;

13 (6) soliciting or obtaining orders, whether by mail or electronic means or
14 through employees or agents or otherwise, if the orders require acceptance outside
15 this State before they become contracts;

16 (7) creating or acquiring indebtedness, mortgages, or security interests in
17 real or personal property;

18 (8) securing or collecting debts or enforcing mortgages or other security
19 interests in property securing the debts, and holding, protecting, and maintaining
20 property so acquired;

21 (9) conducting an isolated transaction that is completed within 30 days
22 and is not one in the course of similar transactions of a like manner; and

1 (10) transacting business in interstate commerce.

2 (b) For purposes of this [article], the ownership in this State of income-
3 producing real property or tangible personal property, other than property excluded
4 under subsection (a), constitutes transacting business in this State.

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

8 **Reporter's Notes**

9 **Source** – ULLCA § 1003.

10 **SECTION 904. FILING OF CERTIFICATE OF AUTHORITY.** Unless
11 the [Secretary of State] determines that an application for a certificate of authority
12 fails to comply with the filing requirements of this [Act], the [Secretary of State],
13 upon payment of all filing fees, shall file the application, prepare, sign and file a
14 certificate of authority to transact business in this State, and send a copy of the filed
15 certificate, together with a receipt for the fees, to the foreign limited partnership or
16 its representative.

17 **Reporter's Notes**

18 **Source** – ULLCA § 1004 and RULPA § 903(3).

SECTION 905. NONCOMPLYING NAME OF FOREIGN LIMITED PARTNERSHIP.

(a) A foreign limited partnership whose name does not comply with Section 108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with Section 108. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with that name need not comply with [fictitious name statute]. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under that name unless the foreign limited partnership is authorized under [fictitious name statute] to transact business in this State under another name.

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

Reporter's Notes

Source – ULLCA § 1005.

SECTION 906. REVOCATION OF CERTIFICATE OF AUTHORITY.

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

1 (1) pay, within 60 days after the due date, any fee, tax, or penalty due to
2 the [Secretary of State] under this [Act] or other law;

3 (2) deliver, within 60 days after the due date, its annual report required
4 under Section 210;

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

7 (4) deliver for filing a statement of a change under Section 115 within 30
8 days after a change has occurred in the name or address of the agent.

9 (b) In order to revoke a certificate of authority, the [Secretary of State]
10 shall prepare, sign and file a notice of revocation and send a copy to the foreign
11 limited partnership's agent for service of process in this State, or if the foreign
12 limited partnership fails to appoint and maintain a proper agent in this State, to the
13 foreign limited partnership's designated office. The notice must state:

14 (1) the revocation's effective date, which must be at least 60 days after
15 the date the [Secretary of State] sends the copy; and

16 (2) the foreign limited partnership's failures under subsection (a) which
17 are the reason for the revocation.

18 (c) The authority of the foreign limited partnership to transact business in
19 this State ceases on the effective date of the notice of revocation unless before that
20 date the foreign limited partnership cures the failures stated in the notice. If the
21 foreign limited partnership cures the failures, the [Secretary of State] shall so
22 indicate on the filed notice.

1 **Reporter's Notes**

2 **Source** – ULLCA § 1006.

3 **SECTION 907. CANCELLATION OF CERTIFICATE OF**
4 **AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE.**

5 (a) In order to cancel its certificate of authority to transact business in this
6 State, a foreign limited partnership shall deliver to the [Secretary of State] for filing
7 a notice of cancellation. The certificate is canceled when the notice becomes
8 effective under Section 206.

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

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

16 (d) A partner of a foreign limited partnership is not liable for the obligations
17 of the foreign limited partnership solely by reason of the foreign limited
18 partnership's having transacted business in this State without a certificate of
19 authority.

20 (e) If a foreign limited partnership transacts business in this State without a
21 certificate of authority or cancels its certificate of authority, it appoints the

1 [Secretary of State] as its agent for service of process for rights of action arising out
2 of the transaction of business in this State.

3 **Reporter's Notes**

4 **Source** – RULPA § 907(d); ULLCA § 1008.

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

8 **Reporter's Notes**

9 **Source** – RULPA § 908; ULLCA § 1009.

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[ARTICLE] 10
ACTIONS BY PARTNERS

SECTION 1001. DIRECT ACTIONS BY PARTNER.

(a) Subject to subsection (b), a partner may maintain a direct action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership’s activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this [Act] or arising independently of the partnership relationship.

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

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

Reporter’s Notes

Subsection (a) – Source: RUPA § 405(b).

Subsection (b) – In ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract. Within a limited partnership, however, different circumstances may exist. A partner does not have a direct claim against another partner merely because the other partner has breached the partnership agreement. Likewise a partner’s violation of this Act does not automatically create a direct claim for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the limited partnership.

The reference to “threatened” harm is intended to encompass claims for injunctive relief and does not relax standards for proving injury.

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

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

(2) a demand would be futile.

Reporter's Notes

Source – RULPA § 1001, revised for clarity.

SECTION 1003. PROPER PLAINTIFF. A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) that was a partner when the conduct giving rise to action occurred; or

(2) whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of that conduct.

Reporter's Notes

Source – RULPA § 1002, revised for clarity.

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

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

5 (2) why demand is excused as futile.

6 **Reporter's Notes**

7 **Source** – RULPA § 1003, revised for clarity.

8 **SECTION 1005. PROCEEDS AND EXPENSES.**

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

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

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

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

18 **Reporter's Notes**

19 **Source** – RULPA § 1004, revised for clarity.

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[ARTICLE] 11
CONVERSION AND MERGER

SECTION 1101. DEFINITIONS. In this [article]:

- (1) “Constituent limited partnership” means a constituent organization that is a limited partnership.
- (2) “Constituent organization” means an organization that is party to a merger.
- (3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 1102 through 1105.
- (4) “Converting limited partnership” means a converting organization that is a limited partnership.
- (5) “Converting organization” means an organization that converts into another organization pursuant to Section 1102.
- (6) “General partner” means a general partner of a limited partnership.
- (7) “Governing statute” of an organization means the statute that governs the organization’s internal affairs.
- (8) “Organization” means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute. The term includes domestic and foreign entities regardless of whether organized for profit.
- (9) “Organizational documents” means:

1 (A) for a domestic or foreign general partnership, its partnership
2 agreement;

3 (B) for a limited partnership or foreign limited partnership, its certificate
4 of limited partnership and partnership agreement;

5 (C) for a domestic or foreign limited liability company, its articles of
6 organization and operating agreement, or comparable records as provided in its
7 governing statute;

8 (D) for a business trust, its agreement of trust and declaration of trust;

9 (E) for a domestic or foreign for profit corporation, its articles of
10 incorporation, bylaws, and other agreements among its shareholders which are
11 authorized by its governing statute, or comparable records as provided in its
12 governing statute; and

13 (F) for any other organization, the basic records that create the
14 organization and determine its internal governance and the relations among the
15 persons that own it, have an interest in it, or are members of it.

16 (10) “Person dissociated as a general partner” means a person dissociated as
17 a general partner of a limited partnership.

18 (11) “Personal liability” means personal liability for a debt, liability, or other
19 obligation of an organization which is imposed on a person that co-owns, has an
20 interest in, or is a member of the organization:

21 (A) by the organization’s governing statute solely by reason of the
22 person co-owning, having an interest in, or being a member of the organization; or

1 (B) by the organization’s organizational documents under a provision of
2 the organization’s governing statute authorizing those documents to make one or
3 more specified persons liable for all or specified debts, liabilities, and obligations of
4 the organization solely by reason of the person or persons co-owning, having an
5 interest in, or being a member of the organization.

6 (12) “Surviving organization” means an organization into which one or
7 more other organizations are merged. A surviving organization may preexist the
8 merger or be created by the merger.

9 **Reporter’s Notes**

10 This section contains definitions specific to this Article.

11 **SECTION 1102. CONVERSION.**

12 (a) An organization other than a limited partnership may convert to a limited
13 partnership, and a limited partnership may convert to another organization pursuant
14 to this section and Sections 1103 through 1105 and a plan of conversion, if:

15 (1) the other organization’s governing statute authorizes the conversion;

16 (2) the conversion is not prohibited by the law of the jurisdiction that
17 enacted that governing statute; and

18 (3) the other organization complies with its governing statute in effecting
19 the conversion.

20 (b) A plan of conversion must be in a record and must include:

21 (1) the name and form of the organization before conversion;

22 (2) the name and form of the organization after conversion; and

- 1 (3) the terms and conditions of the conversion, including the manner and
2 basis for converting interests in the converting organization into any combination of
3 money, interests in the converted organization, and other consideration; and
4 (4) the organizational documents of the converted organization.

5 **Reporter's Notes**

6 In a statutory conversion an existing entity changes its form, the jurisdiction
7 of its governing statute or both. For example, a limited partnership organized under
8 the laws of one jurisdiction might convert to:

- 9 • a limited liability company (or other form of entity) organized under the laws
10 of the same jurisdiction,
11 • a limited liability company (or other form of entity) organized under the laws
12 of another jurisdiction, or
13 • a limited partnership organized under the laws of another jurisdiction.

14 In contrast to a merger, which involves at least two entities, a conversion
15 involves only one. The converting and converted organization are the same entity.
16 See Section 1105(a). For this Act to apply to a conversion, either the converting or
17 converted organization must be a limited partnership subject to this Act. If the
18 converting organization is a limited partnership subject to this Act, the partners of
19 the converting organization are subject to the duties and obligations stated in this
20 Act, including Sections 304 (informational rights of limited partners), 305(b)
21 (limited partner's obligation of good faith and fair dealing), 407 (informational rights
22 of general partners), and 408 (general partner duties).

23 **Subsection (a)(2)** – Given the very broad definition of “organization,”
24 Section 1101(8), this Act authorizes conversions involving non-profit organizations.
25 This provision is intended as an additional safeguard for that context.

26 **Subsection (b)(3)** – A plan of conversion may provide that some persons
27 with interests in the converting organization will receive interests in the converted
28 organization, while other persons with interests in the converting organization will
29 receive some other form of consideration.

30 If the converting organization is a limited partnership, the plan of conversion
31 will determine the fate of any interests held by mere transferees. This Act does not

1 state any duty or obligation owed by a converting limited partnership or its partners
2 to mere transferees. That issue is a matter for other law.

3 **SECTION 1103. ACTION ON PLAN OF CONVERSION BY**
4 **CONVERTING LIMITED PARTNERSHIP.**

5 (a) Subject to Section 1110, a plan of conversion must be approved by all
6 the partners of a converting limited partnership.

7 (b) Subject to Section 1110 and any contractual rights, after a conversion is
8 approved, and at any time before a filing is made under Section 1104, a converting
9 limited partnership may amend the plan or abandon 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 **Reporter's Notes**

14 Section 1110 imposes special consent requirements for transactions which
15 might make a partner personally liable for entity debts. The partnership agreement
16 may not restrict the rights provided by Section 1110. See Section 110(b)(12).

17 **SECTION 1104. FILINGS REQUIRED FOR CONVERSION;**
18 **EFFECTIVE DATE.**

19 (a) After a plan of conversion is approved:

20 (1) a converting limited partnership shall deliver to the [Secretary of
21 State] for filing articles of conversion, which must include:

22 (A) a statement that the limited partnership has been converted into
23 another organization;

1 (B) the name and form of that organization and the jurisdiction of its
2 governing statute;

3 (C) the date the conversion is effective under the governing statute of
4 the converted organization;

5 (D) a statement that the conversion was approved as required by this
6 [Act];

7 (E) a statement that the conversion was approved as required by the
8 governing statute of the converted organization; and

9 (F) if the converted organization is a foreign entity not authorized to
10 transact business in this State, the street and mailing address of an office which the
11 [Secretary of State] may use for the purposes of Section 1105(c); and

12 (2) if the converting organization is not a converting limited partnership,
13 the converting organization shall deliver to the [Secretary of State] for filing a
14 certificate of limited partnership, which must include, in addition to the information
15 required by Section 201:

16 (A) a statement that the limited partnership was converted from
17 another organization;

18 (B) the name and form of that organization and the jurisdiction of its
19 governing statute; and

20 (C) a statement that the conversion was approved in a manner that
21 complied with the organization's governing statute.

22 (b) A conversion becomes effective:

1 (1) if the converted organization is a limited partnership, when the
2 certificate of limited partnership takes effect; and

3 (2) if the converted organization is not a limited partnership, as provided
4 by the governing statute of the converted organization.

5 **Reporter's Notes**

6 **Subsection (b)** – The effective date of a conversion is determined under the
7 governing statute of the converted organization.

8 **SECTION 1105. EFFECT OF CONVERSION.**

9 (a) An organization that has been converted pursuant to this [article] is for
10 all purposes the same entity that existed before the conversion.

11 (b) When a conversion takes effect:

12 (1) all property owned by the converting organization remains vested in
13 the converted organization;

14 (2) all debts, liabilities, and other obligations of the converting
15 organization continue as obligations of the converted organization;

16 (3) an action or proceeding pending by or against the converting
17 organization may be continued as if the conversion had not occurred;

18 (4) except as prohibited by other law, all of the rights, privileges,
19 immunities, powers, and purposes of the converting organization remain vested in
20 the converted organization;

21 (5) except as otherwise provided in the plan of conversion, the terms and
22 conditions of the plan of conversion take effect; and

1 (6) except as otherwise agreed, the conversion does not dissolve a
2 converting limited partnership for the purposes of [Article] 8.

3 (c) A converted organization that is a foreign entity consents to the
4 jurisdiction of the courts of this State to enforce any obligation owed by the
5 converting limited partnership, if before the conversion the converting limited
6 partnership was subject to suit in this State on that obligation. A converted
7 organization that is a foreign entity and not authorized to transact business in this
8 State appoints the [Secretary of State] as its agent for service of process for
9 purposes of enforcing an obligation under this subsection. Service on the [Secretary
10 of State] under this subsection is made in the same manner and with the same
11 consequences as in Section 117(c) and (d).

12 **SECTION 1106. MERGER.**

13 (a) A limited partnership may merge with one or more other constituent
14 organizations pursuant to this section and Sections 1107 through 1109 and a plan of
15 merger, if:

16 (1) the governing statute of each the other organizations authorizes the
17 merger;

18 (2) the merger is not prohibited by the law of a jurisdiction that enacted
19 any of those governing statutes; and

20 (3) each of the other organizations complies with its governing statute in
21 effecting the merger.

- 1 (b) A plan of merger must be in a record and must include:
- 2 (1) the name and form of each constituent organization;
- 3 (2) the name and form of the surviving organization and, if the surviving
- 4 organization is to be created by the merger, a statement to that effect;
- 5 (3) the terms and conditions of the merger, including the manner and
- 6 basis for converting the interests in each constituent organization into any
- 7 combination of money, interests in the surviving organization, and other
- 8 consideration;
- 9 (4) if the surviving organization is to be created by the merger, the
- 10 surviving organization's organizational documents; and
- 11 (5) if the surviving organization is not to be created by the merger, any
- 12 amendments to be made by the merger to the surviving organization's organizational
- 13 documents.

14 **Reporter's Notes**

15 For this Act to apply to a merger, at least one of the constituent

16 organizations must be a limited partnership subject to this Act. The partners of any

17 such limited partnership are subject to the duties and obligations stated in this Act,

18 including Sections 304 (informational rights of limited partners), 305(b) (limited

19 partner's obligation of good faith and fair dealing), 407 (informational rights of

20 general partners), and 408 (general partner duties).

21 **Subsection (a)(2)** – Given the very broad definition of “organization,”

22 Section 1101(8), this Act authorizes mergers involving non-profit organizations.

23 This provision is intended as an additional safeguard for that context.

24 **Subsection (b)(3)** – A plan of merger may provide that some persons with

25 interests in a constituent organization will receive interests in the surviving

26 organization, while other persons with interests in the same constituent organization

27 will receive some other form of consideration.

1 If a constituent organization is a limited partnership, the plan of merger will
2 determine the fate of any interests held by mere transferees. This Act does not state
3 any duty or obligation owed by a constituent limited partnership or its partners to
4 mere transferees. That issue is a matter for other law.

5 **SECTION 1107. ACTION ON PLAN OF MERGER BY CONSTITUENT**
6 **LIMITED PARTNERSHIP.**

7 (a) Subject to Section 1110, a plan of merger must be approved by all the
8 partners of a constituent limited partnership.

9 (b) Subject to Section 1110 and any contractual rights, after a merger is
10 approved, and at any time before a filing is made under Section 1108, a constituent
11 limited partnership may amend the plan or abandon the planned merger:

12 (1) as provided in the plan; and

13 (2) except as prohibited by the plan, by the same consent as was required
14 to approve the plan.

15 **Reporter's Notes**

16 Section 1110 imposes special consent requirements for transactions which
17 might make a partner personally liable for entity debts. The partnership agreement
18 may not restrict the rights provided by Section 1110. See Section 110(b)(12).

19 **SECTION 1108. FILINGS REQUIRED FOR MERGER; EFFECTIVE**
20 **DATE.**

21 (a) After each constituent organization has approved a merger, articles of
22 merger must be signed on behalf of:

23 (1) each preexisting constituent limited partnership, by each general
24 partner listed in the certificate of limited partnership; and

1 (2) each other preexisting constituent organization, by a duly authorized
2 representative.

3 (b) The articles of merger must include:

4 (1) the name and form of each constituent organization and the
5 jurisdiction of its governing statute;

6 (2) the name and form of the surviving organization, the jurisdiction of
7 its governing statute, and, if the surviving organization is created by the merger, a
8 statement to that effect;

9 (3) the date the merger is effective under the governing statute of the
10 surviving organization;

11 (4) if the surviving organization is to be created by the merger:

12 (A) if it will be a limited partnership, the limited partnership's
13 certificate of limited partnership; or

14 (B) if it will be an organization other than a limited partnership, the
15 organizational document that creates the organization;

16 (5) if the surviving organization preexists the merger, any amendments
17 provided for in the plan of merger for the organizational document that created the
18 organization;

19 (6) a statement as to each constituent organization that the merger was
20 approved as required by the organization's governing statute;

1 (7) if the surviving organization is a foreign entity not authorized to
2 transact business in this State, the street and mailing address of an office which the
3 [Secretary of State] may use for the purposes of Section 1109(b); and

4 (8) any additional information required by the governing statute of any
5 constituent organization.

6 (c) Each constituent limited partnership shall deliver the articles of merger
7 for filing in the [office of the Secretary of State].

8 (d) A merger becomes effective under this [article]:

9 (1) if the surviving organization is a limited partnership, upon the later
10 of:

11 (i) compliance with subsection (c); or

12 (ii) subject to Section 206(c), as specified in the articles of merger;

13 and

14 (2) if the surviving organization is not a limited partnership, as provided
15 by the governing statute of the surviving organization.

16 **Reporter's Notes**

17 **Subsection (b)** – The effective date of a merger is determined under the
18 governing statute of the surviving organization.

19 **SECTION 1109. EFFECT OF MERGER.**

20 (a) When a merger becomes effective:

21 (1) the surviving organization continues or comes into existence;

- 1 (2) each constituent organization that merges into the surviving
2 organization ceases to exist as a separate entity;
- 3 (3) all property owned by each constituent organization that ceases to
4 exist vests in the surviving organization;
- 5 (4) all debts, liabilities, and other obligations of each constituent
6 organization that ceases to exist continue as obligations of the surviving
7 organization;
- 8 (5) an action or proceeding pending by or against any constituent
9 organization that ceases to exist may be continued as if the merger had not
10 occurred;
- 11 (6) except as prohibited by other law, all of the rights, privileges,
12 immunities, powers, and purposes of each constituent organization that ceases to
13 exist vest in the surviving organization;
- 14 (7) except as otherwise provided in the plan of merger, the terms and
15 conditions of the plan of merger take effect; and
- 16 (8) except as otherwise agreed, if a constituent limited partnership ceases
17 to exist, the merger does not dissolve the limited partnership for the purposes of
18 [Article] 8;
- 19 (9) if the surviving organization is created by the merger:
- 20 (A) if it is a limited partnership, the certificate of limited partnership
21 becomes effective; or

1 (B) if it is an organization other than a limited partnership, the
2 organizational document that creates the organization becomes effective; and

3 (10) if the surviving organization preexists the merger, any amendments
4 provided for in the articles of merger for the organizational document that created
5 the organization become effective.

6 (b) A surviving organization that is a foreign entity consents to the
7 jurisdiction of the courts of this State to enforce any obligation owed by a
8 constituent organization, if before the conversion the constituent organization was
9 subject to suit in this State on that obligation. A surviving organization that is a
10 foreign entity and not authorized to transact business in this State appoints the
11 [Secretary of State] as its agent for service of process for the purposes of enforcing
12 an obligation under this subsection. Service on the [Secretary of State] under this
13 subsection is made in the same manner and with the same consequences as in
14 Section 117(c) and (d).

15 **SECTION 1110. RESTRICTIONS ON APPROVAL OF CONVERSIONS**
16 **AND MERGERS AND ON RELINQUISHING LLLP STATUS.**

17 (a) If a partner of a converting or constituent limited partnership will have
18 personal liability with respect to a converted or surviving organization, approval and
19 amendment of a plan of conversion or merger are ineffective without the consent of
20 that partner, unless:

1 (1) the limited partnership's partnership agreement provides for the
2 approval of the conversion or merger with the consent of less than all the partners;
3 and

4 (2) that partner has consented to that provision of the partnership
5 agreement.

6 (b) An amendment to a certificate of limited partnership which deletes a
7 statement that the limited partnership is a limited liability limited partnership is
8 ineffective without the consent of each general partner unless:

9 (1) the limited partnership's partnership agreement provides for that
10 amendment with the consent of less than all the general partners; and

11 (2) each general partner that does not consent to the amendment has
12 consented to that provision of the partnership agreement.

13 (c) A partner does not give the consent required by subsection (a) or (b)
14 merely by consenting to a provision of the partnership agreement which permits the
15 partnership agreement to be amended with the consent of less than all the partners.

16 **Reporter's Notes**

17 This section imposes special consent requirements for transactions that might
18 make a partner personally liable for entity debts. The partnership agreement may
19 not restrict the rights provided by this section. See Section 110(b)(12).

1 **SECTION 1111. LIABILITY OF GENERAL PARTNER AFTER**
2 **CONVERSION OR MERGER.**

3 (a) A conversion or merger under this article does not discharge any liability
4 under Sections 404 and 607 of a person that was a general partner in or dissociated
5 as a general partner from a converting or constituent limited partnership, but:

6 (1) the provisions of this [Act] pertaining to the collection or discharge
7 of that liability continue to apply to that liability;

8 (2) for the purposes of applying those provisions, the converted or
9 surviving organization is deemed to be the converting or constituent limited
10 partnership; and

11 (3) if a person is required to pay any amount under this subsection:

12 (A) the person has a right of contribution from each other person that
13 was liable as a general partner under Section 404 when the obligation was incurred
14 and has not been released from that obligation under Section 607; and

15 (B) the contribution due from each of those persons is in proportion
16 to the right to receive distributions in the capacity of general partner in effect for
17 each of those persons when the obligation was incurred.

18 (b) In addition to any other liability provided by law:

19 (1) a person that immediately before a conversion or merger became
20 effective was a general partner in a converting or constituent limited partnership that
21 was not a limited liability limited partnership is personally liable for each obligation
22 of the converted or surviving organization arising from a transaction with a third

1 party after the conversion or merger becomes effective, if, at the time the third party
2 enters into the transaction, the third party:

3 (A) does not have notice of the conversion or merger; and

4 (B) reasonably believes that:

5 (i) the converted or surviving business is the converting or
6 constituent limited partnership;

7 (ii) the converting or constituent limited partnership is not a
8 limited liability limited partnership; and

9 (iii) the person is a general partner in the converting or
10 constituent limited partnership;

11 (2) a person that was dissociated as a general partner from a converting
12 or constituent limited partnership before the conversion or merger became effective
13 is personally liable for each obligation of the converted or surviving organization
14 arising from a transaction with a third party after the conversion or merger becomes
15 effective, if:

16 (A) immediately before the conversion or merger became effective
17 the converting or surviving limited partnership was a not a limited liability limited
18 partnership; and

19 (B) at the time the third party enters into the transaction less than
20 two years have passed since the person dissociated as a general partner and the third
21 party:

22 (i) does not have notice of the dissociation;

1 (ii) does not have notice of the conversion or merger; and
2 (iii) reasonably believes that the converted or surviving
3 organization is the converting or constituent limited partnership, the converting or
4 constituent limited partnership is not a limited liability limited partnership, and the
5 person is a general partner in the converting or constituent limited partnership.

6 **Reporter's Notes**

7 This section extrapolates the approach of Section 607 into the context of a
8 conversion or merger involving a limited partnership.

9 **Subsection (b)(1)(A)** – A person might have notice under Section 103(d)(4)
10 or (5) as well as under Section 103(b).

11 **Subsection (b)(2)(B)(i)** – A person might have notice under Section
12 103(d)(1) as well as under Section 103(b).

13 **Subsection (b)(1)(B)(ii)** – A person might have notice under Section
14 103(d)(4) or (5) as well as under Section 103(b).

15 **SECTION 1112. POWER OF GENERAL PARTNERS AND PERSONS**
16 **DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION**
17 **AFTER CONVERSION OR MERGER.**

18 (a) An act of a person that immediately before a conversion or merger
19 became effective was a general partner in a converting or constituent limited
20 partnership binds the converted or surviving organization after the conversion or
21 merger becomes effective, if:

22 (1) before the conversion or merger became effective, the act would have
23 bound the converting or constituent limited partnership under Section 402; and

24 (2) at the time the third party enters into the transaction, the third party:

1 (A) does not have notice of the conversion or merger; and
2 (B) reasonably believes that the converted or surviving business is the
3 converting or constituent limited partnership and that the person is a general partner
4 in the converting or constituent limited partnership.

5 (b) An act of a person that before a conversion or merger became effective
6 was dissociated as a general partner from a converting or constituent limited
7 partnership binds the converted or surviving organization after the conversion or
8 merger becomes effective, if:

9 (1) before the conversion or merger became effective, the act would have
10 bound the converting or constituent limited partnership under Section 402 if the
11 person had been a general partner; and

12 (2) at the time the third party enters into the transaction, less than two
13 years have passed since the person dissociated as a general partner and the third
14 party:

15 (A) does not have notice of the dissociation;

16 (B) does not have notice of the conversion or merger; and

17 (C) reasonably believes that the converted or surviving organization
18 is the converting or constituent limited partnership and that the person is a general
19 partner in the converting or constituent limited partnership.

20 (c) If a person having knowledge of the conversion or merger causes a
21 converted or surviving organization to incur an obligation under subsection (a) or
22 (b), the person is liable:

1 (1) to the converted or surviving organization for any damage caused to
2 the organization arising from the obligation; and

3 (2) if another person is liable for the obligation, to that other person for
4 any damage caused to that other person arising from that liability.

5 **Reporter's Notes**

6 This section extrapolates the approach of Section 606 into the context of a
7 conversion or merger involving a limited partnership.

8 **Subsection (a)(2)(A)** – A person might have notice under Section 103(d)(4)
9 or (5) as well as under Section 103(b).

10 **Subsection (b)(2)(A)** – A person might have notice under Section 103(d)(1)
11 as well as under Section 103(b).

12 **Subsection (b)(2)(B)** – A person might have notice under Section 103(d)(4)
13 or (5) as well as under Section 103(b).

14 **SECTION 1113. [ARTICLE] NOT EXCLUSIVE.** This [article] does not
15 preclude an entity from being converted or merged under other law.

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[ARTICLE] 12

MISCELLANEOUS PROVISIONS

SECTION 1201. UNIFORMITY OF APPLICATION AND

CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 1202. SEVERABILITY CLAUSE. If any provision of this [Act]

or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 1203. ELECTRONIC SIGNATURES IN GLOBAL AND

NATIONAL COMMERCE ACT. The provisions of this [Act] governing the legal effect, validity, or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Sec. 7002, and supersede, modify, and limit the Electronic Signatures in Global and National Commerce Act.

SECTION 1204. EFFECTIVE DATE. This [Act] takes effect ____, 20__.

1 **SECTION 1205. REPEALS.** Except as otherwise provided in Section 1206,
2 effective ____, 20_ {all-inclusive date}, the following acts and parts of acts are
3 repealed: [the State Limited Partnership Act as amended and in effect immediately
4 before the effective date of this [Act]].

5 **SECTION 1206. APPLICABILITY.**

6 (a) Before ____, 20_ {all-inclusive date}, this [Act] governs only:

7 (1) a limited partnership formed on or after the effective date of this
8 [Act]; and

9 (2) except as otherwise provided in subsections (c) and (d), a limited
10 partnership formed before the effective date of this [Act] which elects, in the manner
11 provided in its partnership agreement or by law for amending the partnership
12 agreement, to be subject to this [Act].

13 (b) Except as otherwise provided in subsection (c), beginning ____, 20_
14 {all-inclusive date}, this [Act] governs all limited partnerships.

15 (c) Even after ____, 20_ {all-inclusive date}, with respect to a limited
16 partnership formed before the effective date of this [Act], the following rules apply
17 except as the partners otherwise elect in the manner provided in the partnership
18 agreement or by law for amending the partnership agreement:

19 (1) Section 104(d) does not apply and the limited partnership has
20 whatever duration it had under the law applicable immediately before the effective
21 date of this [Act];

1 (2) Sections 601 and 602 do not apply and a limited partner has the
2 same right and power to dissociate from the limited partnership, with the same
3 consequences, as existed immediately before the effective date of this [Act];

4 (3) Section 603(4) does not apply;

5 (4) Section 603(5) does not apply and a court has the same power to
6 expel a general partner as the court had immediately before the effective date of this
7 [Act];

8 (5) Section 801(3) does not apply and the connection between a general
9 partner's dissociation and the dissolution of the limited partnership is the same as
10 existed immediately before the effective date of this [Act].

11 (d) With respect to a limited partnership that elects pursuant to subsection
12 (a)(2) to be subject to this [Act], after the election takes effect the provisions of this
13 [Act] relating to the liability of the limited partnership's general partners to third
14 parties apply:

15 (1) before _____, 20_{all-inclusive date}, to:

16 (A) a third party that had not done business with the limited
17 partnership in the year before the election took effect; and

18 (B) a third party that had done business with the limited partnership
19 in the year before the election took effect only if the third party knows or has
20 received a notification of the election; and

21 (2) after _____, 20_ {all-inclusive date}, to all third parties.

1 *Legislative Note: In a State that has previously amended its existing limited*
2 *partnership statute to provide for limited liability limited partnerships (LLLPs),*
3 *this Act should include transition provisions specifically applicable to preexisting*
4 *limited liability limited partnerships. The precise wording of those provisions must*
5 *depend on the wording of the State’s previously enacted LLLP provisions.*
6 *However, the following principles apply generally:*

7 1. *In Sections 806(b)(5) and 807(b)(4) (notice by dissolved limited*
8 *partnership to claimants), the phrase “the limited partnership has been*
9 *throughout its existence a limited liability limited partnership” should be*
10 *revised to encompass a limited partnership that was a limited liability limited*
11 *partnership under the State’s previously enacted LLLP provisions.*

12 2. *Section 1206(d) should provide that, if a preexisting limited liability*
13 *limited partnership elects to be subject to this Act, this Act’s provisions relating*
14 *to the liability of general partners to third parties apply immediately to all third*
15 *parties, regardless of whether a third party has previously done business with*
16 *the limited liability limited partnership.*

17 3. *A preexisting limited liability limited partnership that elects to be subject*
18 *to this Act should have to comply with Sections 201(a)(4) (requiring the*
19 *certificate of limited partnership to state whether the limited partnership is a*
20 *limited liability limited partnership) and 108(c) (establishing name*
21 *requirements for a limited liability limited partnership).*

22 4. *As for Section 1206(b) (providing that, after a transition period, this Act*
23 *applies to all preexisting limited partnerships):*

24 a. *if a State’s previously enacted LLLP provisions have requirements*
25 *essentially the same as Sections 201(a)(4) and 108(c), preexisting limited*
26 *liability limited partnerships should automatically retain LLLP status under*
27 *this Act.*

28 b. *if a State’s previously enacted LLLP provisions have name requirements*
29 *essentially the same as Section 108(c) and provide that a public filing other*
30 *than the certificate of limited partnership establishes a limited partnership’s*
31 *status as a limited liability limited partnership:*

32 i. *that filing can be deemed to an amendment to the certificate of limited*
33 *partnership to comply with Section 201(a)(4), and*

34 ii. *preexisting limited liability limited partnerships should automatically*
35 *retain LLLP status under this Act.*

1 *c. if a State's previously enacted LLLP provisions do not have name*
2 *requirements essentially the same as Section 108(c), it will be impossible both*
3 *to enforce Section 108(c) and provide for automatic transition to LLLP status*
4 *under this Act.*

5 **SECTION 1207. SAVINGS CLAUSE.** This [Act] does not affect an action
6 or proceeding commenced or right accrued before this [Act] takes effect.