

DRAFT

FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MARCH, 2000

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

With Prefatory Note and Reporter's Notes

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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Prefatory Note

Re-RULPA's Overall Approach

Re-RULPA is a “stand alone” act, “de-linked” from the general partnership act. To be able to stand alone, Re-RULPA incorporates many provisions from RUPA and some from ULLCA. As a result, Re-RULPA is far longer and more complex than RULPA.

Re-RULPA is being drafted for a business world in which limited liability partnerships and limited liability companies can meet many of the needs formerly met by limited partnerships. Re-RULPA therefore targets two types of enterprises that seem largely beyond the scope of LLPs and LLCs: (i) sophisticated, manager-entrenched commercial deals whose participants commit for the long term, and (ii) estate planning arrangements (family limited partnerships). Re-RULPA accordingly assumes that, more often than not, people utilizing the act will want:

- C strong centralized management, strongly entrenched, and
- C passive investors with little right to exit the entity

Re-RULPA's rules, and particularly its default rules, have been designed to reflect these assumptions.

Noteworthy Differences Between March, 2000 Draft and July, 1999 Draft

LLLP Status as the Default Setting

At its October, 1999 meeting, the Drafting Committee voted to change the Act's “default setting” with respect to LLLP status. Under all prior drafts, a limited partnership could become a limited liability limited partnership simply by including a one line statement in the certificate of limited partnership. The March, 2000 Draft, in contrast, provides that a Re-RULPA limited partnership will be an LLLP unless the certificate of limited partnership provides otherwise. In this respect, Re-RULPA now parallels ULLCA. See ULLCA §§ 303(c) and 203(a)(7).

The Drafting Committee recognizes that this decision is important and controversial and plans to revisit the issue. The Drafting Committee's decision on this point – like all other decisions made to date – is merely provisional.

Nonetheless, some strong arguments favor the Drafting Committee's current

position. The overwhelming majority of limited partnerships formed under current law use indirect means to provide a liability shield for the general partner. Typically, the general partner is itself a corporation or a limited liability company. It therefore seems likely that almost every Re-RULPA limited partnership will be an LLLP.

Except in extraordinary circumstances, a statute's default setting should mirror the choices that most users of the statute would make on their own. It therefore seems logical to make LLLP status the default setting for Re-RULPA.

The Reporter is aware that some very experienced and knowledgeable practitioners currently oppose making LLLP status the default setting, and the Reporter is trying to understand in detail the rationale behind this opposition. The Reporter is also trying to identify situations in which a knowledgeable practitioner would recommend to a person forming a limited partnership that the general partner go "unshielded" vis á vis all creditors and obligees of the limited partnership.

Eliminating Dissenters Rights from the Conversion and Merger Provisions

The July, 1999 Draft provided limited dissenters rights for partners opposing a proposed conversion or merger. The provision protected partners who would be personally liable for the debts of the converted or surviving entity and provided such partners a non-waivable right to block any such merger or conversion. The blocking right was subject to the limited partnership's right to buy out the objecting partner.

At its October, 1999 meeting, the Drafting Committee rejected this approach as overly elaborate and decided instead to give such partners a veto right over the conversion or merger. The veto right disappears for any partner who has assented to a provision of the partnership agreement which permits non-unanimous approval of conversions or mergers.

Changes Made in Response to Suggests from the Representative of the Style Committee

The March, 2000 Draft reflects editorial changes suggested by the representative of the Style Committee.

1 [ARTICLE] 1

2 GENERAL PROVISIONS

3 **SECTION 101. SHORT TITLE.** This [Act] may be cited as the Revised
4 Uniform Limited Partnership Act (20__).

5 **SECTION 101 102. DEFINITIONS.** ~~As used in this [Act], unless the context~~
6 ~~otherwise requires:~~ In this [Act]:

7 (1) "Business" means any lawful activity, whether or not carried on for
8 profit.

9 (2) "Certificate of limited partnership" means the certificate referred to in
10 Section 201; and the certificate as amended or restated.

11 (3) "Contribution" means any benefit provided by a person to a limited
12 partnership in order to become a partner or in the person's capacity as a partner.

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

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

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

18 (5) "Designated office" means:

19 (i) (A) with ~~regard~~ respect to a limited partnership, the office that
20 ~~Section 113 requires the~~ a limited partnership is required to maintain under Section 114;

1 and

2 (ii) ~~(B)~~ with ~~regard~~ respect to a foreign limited partnership, its
3 principal office.

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

7 (7) "Domestic limited partnership" means a limited partnership formed
8 under this [Act]. The term includes a limited liability limited partnership. The term does
9 not include a foreign limited partnership or foreign limited liability limited partnership.

10 ~~(7)~~ (8) "Entity" means a person other than an individual.

11 ~~(8)~~ (9) "Foreign limited partnership" means a partnership formed under the
12 laws of ~~any state~~ a jurisdiction other than this State and required by those laws to have as
13 partners one or more general partners and one or more limited partners, ~~and~~. The term
14 includes a foreign limited liability limited partnership.

15 ~~(9)~~ (10) "Foreign limited liability limited partnership" means a foreign
16 limited partnership whose general partners are protected, ~~under a provision similar to~~
17 ~~Section 404(c)~~, from liability for the obligations of the foreign limited partnership under a
18 provision similar to Section 404(c).

19 ~~(10)~~ (11) "General partner" means:

20 (A) with respect to a domestic limited partnership, a person who
21 has been admitted to a limited partnership as a general partner ~~as provided in~~ under
22 Section 401; and

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

4 ~~(11)~~ (12) "Limited liability limited partnership" means a limited partnership
5 whose certificate of limited partnership states that the limited partnership is a limited
6 liability limited partnership does not include a statement made pursuant to Section 404(b).

7 ~~(12)~~ (13) "Limited partner" means:

8 (A) with respect to a domestic limited partnership, a person who
9 has been admitted to a limited partnership as a limited partner ~~as provided in~~ under Section
10 301; and

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

14 ~~(13)~~ (14) "Limited partnership" and "domestic limited partnership" mean an
15 entity formed under this [Act] and include a limited liability limited partnership, except in
16 the phrase "foreign limited partnership", means a domestic limited partnership.

17 (15) "Ownership interest" means an owner's proprietary interest in a
18 business organization.

19 ~~(14)~~ (16) "Partner" means a limited or general partner.

20 ~~(15)~~ (17) "Partnership agreement" means ~~any~~ a valid agreement, written;
21 or oral, of the partners as to the affairs of a limited partnership and the conduct of its
22 business.

1 ~~(16)~~ (18) "Person" means an individual, corporation, business trust, estate,
2 trust, partnership, limited liability company, association, joint venture, government,
3 governmental subdivision, agency, or instrumentality, or any other legal or commercial
4 entity.

5 ~~(17)~~ (19) "Principal office" means the office, ~~whether or not in this State,~~
6 where the principal executive office of a domestic or foreign limited partnership is located,
7 whether or not the office is located in this State.

8 ~~(18)~~ (20) "Record" means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is retrievable in perceivable
10 form.

11 ~~(19)~~ (21) "Required records" means the records that ~~Section 105 requires a~~
12 limited partnership is required to maintain under Section 106.

13 ~~(20)~~ (22) "Sign" means to identify a record, whether in writing,
14 electronically, or otherwise, by means of a signature, mark, or other symbol, with intent to
15 authenticate the record.

16 ~~(21)~~ (23) "State" means a State of the United States, the District of
17 Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession
18 subject to the jurisdiction of the United States.

19 ~~(22)~~ (24) "Transfer" includes an assignment, conveyance, deed, bill of sale,
20 lease, mortgage, security interest, encumbrance, and gift.

21 ~~(23)~~ (25) "Transferable interest" means a partner's share of the profits and
22 losses of the limited partnership and the partner's right to receive distributions.

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

Reporter's Notes

Issues for Consideration: whether the definition of "business" should be revised, so that the definition better comports with common usage (see Reporter's Notes to paragraph (1), below); whether definitions of and references to "limit liability limited partnership" (paragraphs 7, 9 10 and 12) are necessary in light of the Drafting Committee's decision to make LLLP status the Act's default setting; whether the definition of foreign limited partnership is too restrictive (given Re-RULPA's significantly more powerful liability shield for limited partners); whether the definition of limited partner with respect to foreign limited partnerships is too restrictive (given Re-RULPA's significantly more powerful liability shield for limited partners); whether "signing" should require some written method of authentication.

"Business" [(1)] – At its October, 1998 meeting, the Drafting Committee decided not to confine limited partnerships to "business" activities and to permit a limited partnership to pursue any lawful purpose. The word "business" appears throughout RULPA, and at its March, 1999 meeting the Committee adopted this definition of "business" to allow the word to encompass whatever activities a limited partnership may undertake. So, for example, Section 105(b) provides that, subject to an exception not relevant here, "a limited partnership has the same powers as an individual to do all things necessary or convenient to carry on its business." Earlier drafts had followed RUPA § 101(1), stating: "'Business' includes every trade, occupation, and profession." *Compare* ULLCA § 101(3) (defining "business" to include "every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.")

The Reporter respectfully disagrees with the Committee's decision. The term "business" connotes *economic* activity. *See* BLACK'S LAW DICTIONARY ("Employment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood. Enterprise in which person engaged shows willingness to invest time and capital on future outcome. That which habitually busies or occupies or engages the time, attention, labor, and effort of persons as a principal serious concern or interest or for livelihood or profit.") (citations omitted). A defined term should not contradict common usage, because a Humpty Dumpty definition makes trouble for the non-expert reader. "Definitions should not be too artificial. For example–'dog' includes a cat is asking too much of the reader; 'animal' means a dog or a cat would be better." Memorandum on Drafting of Acts of Parliament and Subordinate Legislation (1951), Department of Justice, Ottawa, Canada, quoted in Ritchie, Alice Through the Statutes, 21 McGill L.J. 685 (1975) and in In re Elbridge, 61 B.R. 484, 489

(Bankr. E.D.Mich. 1986). *See also* TVA v. Hill, 437 U.S. 153, 98 S.Ct. 2279, 2291 n. 18 (1978) (decrying a Humpty Dumpty approach to defining a term).

"Certificate" [(2)] – RULPA § 101(2), unchanged.

"Contribution" [(3)] – RULPA's definition has been changed to replace a list of items with a more general term ("benefit") that encompasses those items and to avoid using the word "contribute" as part of the definition of the term "contribution." The word "benefit" comes from Section 501 (Form of contribution), which in turn is taken, per the Committee's instruction, from ULLCA § 401. Some earlier drafts used "consideration" rather than "benefit." Changes from RULPA § 201(2) are as follow:

"Contribution" means any ~~cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes~~ benefit provided by a person to a limited partnership in order to become a partner or in his the person's capacity as a partner.

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

"Designated office" [(5)] – Defining this term makes for easier drafting of certain provisions that relate both to foreign and domestic limited partnerships.

"Distribution" [(6)] – Derived from RUPA § 101(3). Changes from RUPA are as follows:

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

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

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

1 “Domestic limited partnership” [(7)] – This definition is added per the
2 recommendation of the Style Committee representative.

3 “Entity” [(8)] – Source: ULLCA § 101(7). “Entity” is somewhat of a misnomer,
4 because the term encompasses legal persons that might still be thought of as aggregates,
5 or part aggregate/part entity (i.e., UPA general partnerships).

6 “Event of withdrawal” [deleted; formerly RULPA § 101(3)] – This definition is
7 no longer needed because this draft follows RUPA and uses the term “dissociation.” At its
8 July, 1997 meeting, the Committee directed the Reporter to consider providing a
9 definition of “dissociation.” After reviewing UPA, RUPA, and ULLCA, the Reporter
10 decided that Re-RULPA should not define “dissociation.” Accordingly, Draft #2 did not
11 define the term. Draft #3 preserved Draft#2’s approach and produced no objection at the
12 October, 1998 meeting.

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

22 “Foreign limited partnership” [(9)] – RULPA § 101(4), changed slightly to correct
23 an inaccuracy. The RULPA provision defines a foreign limited partnership as “having as
24 partners one or more general partners and one or more limited partners.” A limited
25 partnership does not cease being a limited partnership merely because it ceases to have at
26 least one general and one limited partner. A dissolved limited partnership continues in
27 existence through winding up and until termination. The March, 2000 Draft expands the
28 definition to include limited partnerships formed under the laws of other jurisdictions and
29 not just other U.S. states.

30 “Foreign limited liability limited partnership” [(10)] – This definition was new in
31 the July, 1999 Draft and is used both in Section 107 (Name) and Section 902 (Application
32 for certificate of authority).

33 “General partner” [(11)] – RULPA § 101(5) provides: “‘General partner’ means a
34 person who has been admitted to a limited partnership as a general partner in accordance
35 with the partnership agreement and named in the certificate of limited partnership as a
36 general partner.” There are two reasons for the change. First, Re-RULPA changes the
37 rules on how a person becomes a general partner. Second, putting those rules in the
38 definition section would make for a very cumbersome definition. The reference to foreign

1 limited partnerships is necessary, because definitions pertaining to foreign limited
2 partnerships refer to general partners of those partnerships.

3 “Limited liability limited partnership” [(12)] – This definition is changed in the
4 March, 2000 Draft to reflect the Drafting Committee’s decision to make LLLP the Act’s
5 default setting. See the Prefatory Note and the Reporter’s Notes to Section 404.

6 “Limited partner” [(13)] – The reference to foreign limited partnerships is
7 necessary, because definitions pertaining to foreign limited partnerships refer to limited
8 partners of those partnerships.

9 “Ownership interest” [(15)] – This definition is located here per the suggestion of
10 the Style Committee’s representative. However, this location is problematic for two
11 reasons. First, paragraph (1)’s very broad definition of “business” is troubling in this
12 context. Second, this definition depends on the term “business organization,” which is
13 defined in Article 11. Resolution of these problems is deferred pending the Drafting
14 Committee’s reconsideration of the broad definition of “business.”

15 The adjective “proprietary” comes from the RMBCA’s new provisions, § 11.01.
16 “Equity” is a possible alternative. Whatever the adjective, the definition excludes
17 transferable interests in a limited partnership which are owned by a person who is not a
18 partner. This [Act] does not recognize that person as an owner. The same is true for
19 RUPA transferable interests owned by non-partners.

20 “Partner” [(16)] – RULPA § 101(8), without change.

21 “Partnership agreement” [(17)] – RULPA § 101(9), without change, except a style
22 change suggested by the Style Committee’s representative. Earlier drafts proposed adding
23 “implied from conduct.” At its October, 1998 meeting, the Drafting Committee rejected
24 the proposed addition.

25 “Partnership interest” [deleted; formerly RULPA § (10)] – In a modified form this
26 concept now appears in the definition of “Transferable interest.”

27 “Person” [(18)] – Source: ULLCA § 101(14). ULLCA § 101(14) adds “limited
28 liability company” to the list contained in RUPA § 110(10). RULPA § 101(11) listed few
29 examples: “‘Person’ means a natural person, partnership, limited partnership (domestic or
30 foreign), trust, estate, association, or corporation.”

31 “Principal office” [(19)] – This term appears in several places, and previous Drafts
32 inadvertently omitted the definition. The definition comes, essentially verbatim, from
33 ULLCA § 101(15).

34 “Record” [(20)] – Source: ULLCA § 101(16). ULLCA moved into, or at least

1 into contemplation of, the brave new world in which documentation no longer requires
2 documents. Beginning with Draft #2, Re-RULPA has followed suit. See Section 206(a).
3 ULLCA § 101(16) portends more than it commands. ULLCA § 206(a) requires the
4 [Secretary of State] to determine what media are permissible for filing, and in general
5 "[o]ther law must be consulted to determine admissibility in evidence, the applicability of
6 statute of frauds, and other questions regarding the use of records." ULLCA § 101,
7 Comment.

8 "Sign" [(22)] – Derived from ULLCA § 101(17). The phrase "whether in writing,
9 electronically or otherwise" has been added to make clear that signing may occur
10 electronically. This definition will be re-visited in light of the Uniform Electronic
11 Transactions Act ("UETA"). With regard to each instance in which Re-RULPA requires
12 someone to "sign" something, the question is whether Re-RULPA means to require some
13 written method of authentication

14 "State" [(23)] – Source: RUPA § 101(12). Replicated in ULLCA § 101(18).

15 "Transfer" [(24)] – Source: ULLCA § 101(20), which states more examples than
16 the comparable RUPA provision, RUPA § 101(14). Draft #3 used the RUPA provision
17 but added a reference to "transfer by operation of law." This reference prompted concerns
18 about unintended effects. The key reason for referring to operation of law is to buttress
19 Article 7's limitations on transferability. Draft #4 deleted the reference to operation of
20 law.

21 "Transferable interest" [(25)] – Source: RUPA § 502. This definition appears
22 here, rather than later in the statute (as in RUPA), because the term is used throughout the
23 statute.

24 "Transferee" [(26)] – The last phrase ("whether or not the transferor is a partner")
25 was added at the October, 1998 drafting meeting.

26 **SECTION ~~102~~ 103. KNOWLEDGE AND NOTICE.**

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

28 (b) ~~A~~ Except as otherwise provided in subsections (c) and (d), a person
29 has notice of a fact if the person:

30 (1) knows of it;

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

1 (3) has reason to know it exists from all of the facts known to the
2 person at the time in question; ~~or,~~

3 ~~_____ (4) has notice as provided in subsections (c) and (d).~~

4 (c) Subject to subsection (d), ~~the fact that~~ a certificate of limited
5 partnership is on file in the [office of the {Secretary of State}] is notice that the partnership
6 is a limited partnership and the persons designated in the certificate as general partners are
7 general partners but is not notice of any other fact.

8 (d) A person has notice of:

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

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

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

18 (4) of a limited partnership's conversion under ~~Article~~ [Article] 11
19 90 days after the effective date of the articles of conversion; and

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

22 (e) A person notifies or gives a notification to another by taking steps

1 reasonably required to inform the other person in ordinary course, whether or not the
2 other person learns of it.

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

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

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

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

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

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

3 **Reporter's Notes**

4 **Issues for Consideration:** whether subsection (c) should continue to follow
5 RULPA § 208 and provide constructive “notice that the partnership is a limited
6 partnership”

7 Source: RUPA § 102, except for subsections (c) and (d), which are new,
8 subsection (g) which follows ULLCA in using "entity," and subsection (h), which confines
9 the information attribution rule to general partners.

10 Subsection (c) – This subsection was new in the July, 1999 Draft, and, together
11 with subsection (d), centralizes the Act's constructive notice provisions. The first
12 sentence is taken verbatim from RULPA § 208. At its October, 1999 meeting, the
13 Drafting Committee decided to restore the last clause of that sentence (“but it is . . .”).

14 It remains unclear why RULPA § 208 provides constructive notice “that the
15 partnership is a limited partnership.” See *Water, Waste & Land, Inc. v. Lanham*, 955 P.2d
16 997, 1001-1003 (Colo. 1998) (interpreting a comparable provision of the Colorado LLC
17 statute and holding that the provision neither changes common law agency principles nor
18 provides “constructive notice of the company's limited liability status, without regard to
19 whether any part of the company's name or even the fact of its existence has been
20 disclosed”). To the extent a limited partnership has a liability shield, that shield functions
21 because the statute establishes it – not because third parties have constructive notice of the
22 shield.

23 Subsection (d) — Subsection (d) will work in conjunction with several sections to
24 curtail the power to bind and personal liability of general partners and dissociated general
25 partners. Following RUPA (in substance, although not in form), the constructive notice
26 has a 90-day delay. The 90 days will run from the date of filing, unless the filed record
27 states a later effective date. See Section 206(c).

28 Subsection (h) – RUPA merely refers to a "partner's knowledge," etc., and the
29 Comment to RUPA § 102 states in part: "It is anticipated that RULPA will address the
30 issue of whether notice to a limited partner is imputed to a limited partnership." At its
31 October, 1999 meeting, the Drafting Committee decided to state expressly that
32 information possessed by a limited partner is not attributed to the limited partnership.
33 Attribution is an aspect of agency power, and in the default mode limited partners have
34 neither the right to manage the limited partnership nor the power to bind it. Sections 302
35 and 304. Of course, a limited partner who acts in a different capacity viz a viz the limited
36 partnership might have agency power in that capacity.

1 **SECTION ~~103~~ 104. NATURE AND DURATION OF ENTITY; WHEN**
2 **PARTNER PROPER PARTY.**

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

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

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

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

11 (3) the partner is bringing a derivative action ~~pursuant to~~ under
12 ~~Article~~ [Article] 10.

13 ~~(b)~~ (c) A limited partnership remains the same entity regardless of whether
14 ~~it becomes or ceases to be a limited liability limited partnership~~ its certificate of limited
15 partnership includes or ceases to include a statement made under Section 404(b).

16 ~~(c)~~ (d) A limited partnership has a perpetual ~~term~~ duration.

17 **Reporter's Notes**

18 **Issues for Consideration:** whether the partnership agreement should be able to
19 vary the perpetual term or whether that change should be reserved to the certificate of
20 limited partnership.

21 Subsection (a) – Source: RUPA § 201. ULLCA § 201 contains essentially the
22 same provision. Before the July, 1999 Draft, this sentence appeared as part of Section
23 200.

1 Subsection (b) – In Drafts before the July, 1999 Drafts, this language appeared as
2 Section 403C-2. The language applies to limited as well as general partners and therefore
3 does not belong in Article 4. This subsection seems a proper location, because the “not a
4 proper party” rule follows conceptually from the status of a limited partnership as “an
5 entity distinct from its partners.”

6 Subsection (b)(1) – The March, 2000 Draft changes “the” to “an”, because a
7 proceeding might involve other issues.

8 Subsection (b)(3) – In Draft #4, this provision referred only to limited partners.
9 For an explanation of the change, see Reporter’s Notes to Section 1002.

10 Subsection (c) – A similar provision appears at RUPA § 201(b). The March,
11 2000 Draft switches the order of “ceases to be” and “becomes” in response to the Drafting
12 Committee’s decision to make LLLP status the default rule.

13 Subsection (d) – In Drafts before the July, 1999 Draft, this subsection appeared as
14 part of Section 200. Draft #3 required that changes in the default term be made in the
15 certificate of limited partnership. At its October, 1998 meeting, the Drafting Committee
16 decided that the partnership agreement could change the default. This decision puts Re-
17 RULPA at odds with ULLCA and the RMBCA. *See* ULLCA § 203(a)(5) (requiring a
18 limited liability company’s articles of organization to state “whether the company is to be a
19 term company and, if so, the term specified”) and RMBCA § 3.02 (providing that
20 “[u]nless its articles of incorporation provide otherwise, every corporation has perpetual
21 duration”).

22 **SECTION ~~104~~ 105. PURPOSE AND POWERS.**

23 (a) A limited partnership may be organized under this [Act] for any lawful
24 purpose.

25 (b) ~~Except as stated in subsection (c), a~~ A limited partnership has the same
26 powers as an individual to do all things necessary or convenient to carry on its business,
27 including the power to:

28 (1) sue and be sued and defend in its own name, including an action
29 against a partner for a breach of the partnership agreement, or for the violation of a duty

1 to the partnership, causing harm to the partnership;

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

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

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

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

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

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

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

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

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

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

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

~~(c) The certificate of limited partnership may limit the powers of a limited partnership except the power of a limited partnership to sue, be sued, and defend in its own name.~~

Reporter's Notes

Subsection (a) – In Drafts before the July, 1999 Draft, this subsection appeared as Section 106(a). At its October, 1998 meeting, the Drafting Committee decided not to confine limited partnerships to "business" activities and to permit a limited partnership to pursue any lawful purpose. This subsection differs from ULLCA § 112(a) in omitting that provision's concluding phrase ("subject to any law of this State governing or regulating business"). The Committee deleted that phrase at the October, 1998 meeting as both redundant and under inclusive. As to redundancy – if some other law prohibits a limited partnership from engaging in a particular activity, pursuing that activity would not be a "lawful purpose." As to under inclusiveness – the reference to "any law of this State governing or regulating business" appears too limited because a limited partnership is not restricted to business activities.

Subsection (b) – Derived from ULLCA § 112, which in turn appears to have relied heavily on RMBCA § 3.02. In Drafts before the July, 1999 Draft, this subsection appeared as Section 106(b).

Subsection (b)(1) – The last phrase ("including . . .") comes from RUPA § 405(a).

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

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

3 Subsection (b)(10) – In Drafts before the July, 1999 Draft, this provision referred
4 to "general" partners. At its October, 1998 meeting, the Drafting Committee deleted the
5 word "general." (RMBCA § 3.02(12) and ULLCA § 112(10) differ as to whether the
6 entity has the power to provide pensions for a mere passive owner. The RMBCA
7 provision does not mention shareholders, while the ULLCA provision refers to members.
8 The ULLCA provision therefore appears to allow pensions for members in manager-
9 managed LLC. Perhaps ULLCA's approach reflects the statutory default mode of member
10 management.)

11 Earlier versions of subsection (b) included the following additional provision:
12 "(13) transact any lawful business that will aid governmental policy." That provision
13 appears at RMBCA § 3.02(14) but not in ULLCA. At its October, 1998 meeting, the
14 Drafting Committee decided to follow ULLCA.

15 Former Subsection (c) – At its October, 1999 meeting, the Drafting Committee
16 decided to delete subsection (c), even though ULLCA § 112(b) recognizes the power of
17 the publicly-filed document to alter an LLC's powers. (Re-RULPA had stated this power
18 separately to make mandatory the power of a limited partnership to sue and be sued in its
19 own name. That power is of the essence of a limited partnership's nature as a legal entity,
20 and any change in that power would significantly affect the rights of nonpartners.)

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

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

34 In light of the weak role of a certificate of limited partnership, it seemed
35 anomalous to empower the certificate to restrict a limited partnership's powers. The
36 Drafting Committee therefore decided to delete the language allowing the certificate to
37 restrict a limited partnership's powers. If a limited partnership wishes to restrict its
38 operations, it should indicate so in its partnership agreement. Whether those restrictions

1 will bind third parties will depend on Sections 402 (general partner agent of limited
2 partnership) and 403 (limited partnership liable for general partner's actionable conduct).

3 **SECTION ~~105~~ 106. GOVERNING LAW.** The law of this State governs
4 relations among the partners and between the partners and the limited partnership and the
5 liability of partners for an obligation of a limited partnership.

6 **Reporter's Notes**

7 Derived from RUPA § 106. In Drafts before the July, 1999 Draft, this material
8 appeared as Section 101D.

9 RUPA provides two different choice-of-law rules, one applicable to ordinary
10 general partnerships and one applicable to LLPs. As to the former, RUPA provides, *as a*
11 *default rule*, that the partnership's internal affairs are governed by "the law of the
12 jurisdiction in which a partnership has its chief executive office." RUPA § 106(a). RUPA
13 does not indicate which law governs the liability of partners for an obligation of an
14 ordinary general partnership. As to LLPs, RUPA provides that "[t]he law of this State"
15 governs both an LLP's internal affairs and "the liability of partners for an obligation of a
16 limited liability partnership." The partnership agreement cannot change this rule. RUPA §
17 103(b)(9).

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

26 The rationale for the mandatory rule thus seems to be as follows: where the situs
27 of organization is clear, the choice of that situs constitutes a nonwaivable decision as to
28 choice-of-law. Since the situs of organization is always clear for a limited partnership,
29 Section 105 states a nonwaivable rule applicable to all limited partnerships. (The term
30 "limited partnership" includes limited liability limited partnerships. See Section 101(13).)

31 Like RUPA § 106(b), Section 105 chooses the law applicable both to a
32 partnership's internal affairs and to "the liability of partners for an obligation of" the
33 organization. Unlike RUPA § 106(b), Section 105 applies that choice even for a limited

1 partnership that has not elected "limited liability" status. Even an ordinary limited
2 partnership has a shield, and general choice of law principles suggest that the law of the
3 state of organization should govern the interpretation and application of that shield.

4 **SECTION ~~106~~ 107. SUPPLEMENTAL PRINCIPLES OF LAW.**

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

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

9 **Reporter's Notes**

10 **Issue for Consideration:** determining what, if any, guidance to give courts as they
11 seek to determine how de-linking affects (i) existing, "settled" limited partnership case
12 law, and (ii) the applicability of general partnership cases to limited partnership disputes.

13 In Drafts before the July, 1999 Draft, this material appeared as Section 101C.

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

21 **SECTION ~~107~~ 108. NAME.**

22 (a) The name of a limited partnership must contain "~~limited partnership~~" or
23 ~~the abbreviation "L.P." or "LP"~~ "limited liability limited partnership" or the abbreviation
24 "LLLP" or "L.L.L.P." and may contain the name of any partner. ~~The name of a limited~~
25 ~~liability limited partnership must include "limited liability limited partnership" or the~~

1 ~~abbreviation "LLP" or "L.L.L.P."~~. Subject to Section 905, the same requirements apply
2 to the name of a foreign limited partnership authorized to transact business in this State.

3 (b) ~~Except as~~ Unless authorized by subsections (c) and (d), the name of a
4 limited partnership and, subject to Section 905, of a foreign limited partnership authorized
5 to transact business in this State, must be distinguishable upon the records of the
6 [Secretary of State] from:

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

9 (2) any name reserved or registered under Section ~~108~~ 109, Section
10 or 906; or [insert citations to other State laws allowing the reservation or registration of
11 business names, including fictitious name statutes].

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

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

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

1 of the final judgment of a court of competent jurisdiction establishing the applicant's right
2 to use in this State the name applied for.

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

7 (1) has merged with the other entity;

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

9 (3) has been converted from the other entity; or

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

12 **Reporter's Notes**

13 This section is substantially different than RULPA § 102, and the differences
14 reflect more modern attitudes toward permissible names. The advent of LLLPs requires
15 that a choice be made as to the use of a partner's name in the name of the limited
16 partnership. Either general partners' names must be prohibited from the name of a LLLP
17 or limited partners' names should be includable in the name of both ordinary limited
18 partnerships and LLLPs.

19 At its October, 1998 meeting, the Drafting Committee choose the latter approach.
20 That choice makes sense. RULPA's approach derives from the 1916 Uniform Limited
21 Partnership Act. In 1916, most business organizations were either unshielded (i.e., general
22 partnerships) or partially shielded (i.e., limited partnerships), and it was reasonable for
23 third parties to believe that an individual whose own name appeared in the name of a
24 business would "stand behind" the business. Today most businesses have a full shield
25 (e.g., corporations, limited liability companies, most limited liability partnerships), and
26 corporate, LLC and LLP statutes generally pose no barrier to the use of an owner's name
27 in the name of the entity.

28 Subsection (a) does require particular phrases or abbreviations to signify the
29 limited partnership's status. Permitting abbreviations differs from RULPA but is certainly
30 consistent with current views. *See, e.g.*, ULLCA § 105(a) and RMBCA § 4.01(a)(1).

1 Subsection (a) arguably permits fewer abbreviations than ULLCA. ULLCA § 105(a)
2 allows both initials (e.g., LLC) and partial abbreviations (Ltd. and Co.)

3 As to the location of the specified signifiers within the limited partnership's name,
4 subsection(a) follows current law and does not require that the signifiers appear at the end
5 of the limited partnership's name. *Accord* ULLCA § 105(a) (requiring signifiers but
6 omitting any "end with" requirement) and RMBCA § 4.01(a)(1) (same). *Compare* RUPA
7 §§ 1002 (requiring the name of an LLP to "end with" specified signifiers) and 1102(a)(1)
8 (requiring a foreign LLP to file a statement of foreign qualification containing the foreign
9 LLP's name "which . . . ends with" specified signifiers.)

10 Subsections (b), (c) and (d) are derived from ULLCA § 105(b). At its October,
11 1998 meeting, the Drafting Committee decided to replace ULLCA's list of other entities
12 with a more generic term.

13 Applicability to foreign limited partnerships – To streamline the provisions relating
14 to certificates of authority for foreign limited partnerships, the July, 1999 Draft made this
15 section applicable both to domestic and foreign limited partnerships. Subsections (a) and
16 (b) refer to Section 905. That section permits a foreign limited partnership to obtain a
17 certificate of authority under a fictitious name if the foreign limited partnership's actual
18 name does not comply with this Section.

19 Subsection (a) – The March, 2000 Draft revises subsection (a) in light of the
20 Drafting Committee's decision to make LLLP status the Act's default setting. The March,
21 2000 Draft further assumes that fully shielded limited partnerships will become the norm.

22 Subsection (b)(2) – This provision does not appear in ULLCA.

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

27 Subsection (c)(1) – This provision differs from ULLCA § 105(c)(1) in four
28 respects: (i) ULLCA refers only to "reserved name," but that reference appears under
29 inclusive. Subsection (b) also encompasses other names, i.e. names in use. So long as the
30 owner of the conflicting name agrees to change it, why shouldn't the applicant have a right
31 to the formerly conflicting name? (ii) ULLCA does not require the record of consent to
32 be signed. (iii) ULLCA does not include the phrase "and from all of the names described
33 in subsection (b)." The phrase "an undertaking in form satisfactory to the [Secretary of
34 State]" is arguably inadequate to express the substantive requirement that the new name
35 "be distinguishable" from other names "upon the records of the [Secretary of State]." (iv)
36 This provision applies both to domestic and foreign limited partnerships.

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

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

6 (d) A domestic or foreign limited liability company
7 partnership may use the name, including a fictitious name, shown upon the
8 records of the [Secretary of State] as being used by ^Aof another domestic
9 or foreign company entity which is used in this State if the other company
10 is organized or authorized to transact business in this State and the
11 company^B if the domestic or foreign limited partnership proposing to use
12 the name has:

13 (1) has merged with the other company entity;

14 (2) has been formed by reorganization with the other company
15 entity;

16 (3) has been converted from the other entity; or

17 (3) (4) has acquired substantially all of the assets, including the
18 name, of the other company.

19 ^AThe reference to the records of the Secretary of State is added because this
20 provision is part of a set of rules that enable the Secretary of State to determine
21 whether a limited partnership's name is acceptable. As to possible conflicts with
22 other names, the Secretary of State's exclusive reference is to the Secretary of
23 State's records. The added language makes that situation explicit.

24 ^BThis language differs from ULLCA § 105(d) by: (i) broadening the referred-to
25 entities that might be using a conflicting name; and (ii) deleting ULLCA's reference
26 to entities "organized or authorized to transact business in this State." The added
27 reference to the records of the [Secretary of State] make that precondition
28 unnecessary.

29 **SECTION ~~108~~ 109. RESERVATION OF NAME.**

30 (a) The Subject to Section 108, the exclusive right to the use of a name
31 may be reserved by:

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

1 (2) ~~any~~ a domestic limited partnership or any foreign limited
2 partnership authorized to transact business in this State which, in either case, intends to
3 adopt that name;

4 (3) ~~any~~ a foreign limited partnership intending to obtain a certificate
5 of authority to transact business in this State and adopt that name; ~~and~~

6 (4) ~~any~~ a person intending to organize a foreign limited partnership
7 and intending to have it obtain a certificate of authority to transact business in this State
8 and adopt that name; ;

9 (5) a foreign limited partnership formed under the name: and

10 (6) a foreign limited partnership formed under a name that does not
11 comply with Section 108(a), but the named reserved under this paragraph may differ from
12 the foreign limited partnership's name only as necessary to comply with Section 108(a).

13 (b) The reservation ~~shall~~ must be made by filing with the [Secretary of
14 State] an application, signed by the applicant, to reserve a specified name. If the
15 [Secretary of State] finds that the name is available for use by a domestic or foreign
16 limited partnership, the [Secretary of State] shall reserve the name for the exclusive use of
17 the applicant for a period of 120 days. ~~Once having so reserved~~ An applicant who has so
18 reserved a name, ~~the same applicant~~ may reserve the same name for additional 120-day
19 periods. A person ~~with~~ having a current reservation for a name may not file for another
20 120-day period pertaining to the same name until 90 days have elapsed in the current
21 reservation. The right to the exclusive use of a reserved name may be transferred to any
22 other person by filing in the [office of the Secretary of State] a notice of the transfer,

1 signed by the applicant for whom the name was reserved and specifying the name and
2 address of the person to whom the transfer was made.

3 **Reporter's Notes**

4 **Issues for Consideration:** whether to use ULLCA rather than RULPA language
5 for this section.

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

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

22 At its October, 1998 meeting, the Drafting Committee decided to explicitly allow
23 reservations for successive 120-day periods. The Committee did not decide how far in
24 advance of the expiration of one 120-period a person can apply for next 120-day period.
25 Some limitation must exist; otherwise a person could effectively eliminate the 120-day
26 limit by filing simultaneously reservations for several successive periods. Draft #4 created
27 a 30-day window at the end of each 120-day period, and at the March, 1999 meeting no
28 one objected to that approach. That approach was therefore preserved.

29 Subsection (a)(1) – The March, 2000 draft adds the introductory language to
30 make clear that a person may not reserve a name that does not comply with Section 108.

31 Subsection (a)(5) and (6) – These paragraphs are added, because at its October,
32 1999 meeting the Drafting Committee decided this section's authorization of successive
33 renewals made Section 906 unnecessary. That section had permitted a foreign limited
34 partnership to register its name without having to obtain or intend to obtain a certificate of
35 authority.

1 **SECTION ~~109~~ 110. EFFECT OF PARTNERSHIP AGREEMENT;**
2 **NONWAIVABLE PROVISIONS.**

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

7 (b) The partnership agreement may not:

8 (1) vary the law applicable to a limited partnership under Section
9 ~~105~~ 106;

10 (2) vary the rights and duties under Section 204;

11 (3) unreasonably restrict the right to information under Sections
12 305 and 407, but the partnership agreement may impose reasonable limitations on the
13 availability and use of information obtained under those sections and may define
14 appropriate remedies, including liquidated damages, for a breach of any reasonable
15 limitation on use;

16 (4) eliminate the duty of loyalty under Section 408, but the
17 partnership agreement may:

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

21 (ii) ~~(B)~~ specify the number or percentage of partners or
22 disinterested general partners that may authorize or ratify, after full disclosure of all

1 material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

2 (5) unreasonably reduce the duty of care under Section 408(c);

3 (6) eliminate the obligation of good faith and fair dealing under
4 Sections 306(c) and 408(d), but the partnership agreement may prescribe the standards by
5 which the performance of the obligation is to be measured, if the standards are not
6 manifestly unreasonable;

7 (7) vary the power of a person to dissociate as a general partner
8 under ~~section~~ Section 604, except to require that the notice under Section 603(1) ~~to~~ be in
9 writing;

10 (8) vary the right of a court to expel a partner in the events
11 specified in Sections 601(5) and 603(b)(5);

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

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

16 (11) unreasonably restrict the right to bring a derivative action
17 under ~~Article~~ [Article] 10;

18 (12) restrict the right of a partner to approve a merger or
19 conversion under Section 1110;

20 ~~(12)~~ (13) restrict rights of a third party under this [Act].

21 **Reporter's Notes**

22 **Issues for Consideration:** whether, in light of Re-RULPA's "target audience"
23 (see Prefatory Note), a Re-RULPA partnership agreement should have more power than a

1 RUPA partnership agreement – in particular, more power to affect the rules relating to
2 fiduciary duty; whether the Act identifies with sufficient clarity which statutory sections
3 are subject to change by the partnership agreement; whether subsection (b)(3)'s reference
4 to liquidated damages is unnecessary; whether the partnership should have the burden of
5 proving reasonableness as to restrictions permitted under subsection (b)(3); whether
6 subsection (b)(4)(B) adequately handles approval of conflict of interest situations – in
7 particular, whether the Act should define the key term “disinterested” and impose a
8 disinterestedness requirement on approval by limited as well as general partners; whether,
9 as is currently the case, the partnership agreement should be able to deprive a limited
10 partner of the power to dissociate, even though a dissociating limited partner has no right
11 to any payout; whether the partnership agreement should be able to provide for a limited
12 partnership's continued existence even though the limited partnership falls permanently
13 below the one general/one limited minimum; whether the partnership agreement should be
14 able to impose reasonable restrictions on derivative actions.

15 In Drafts before the July, 1999 Draft, this material appeared as Section 101B.

16 Source: RUPA § 103. At its October, 1998 meeting the Drafting Committee
17 deleted proposed variations from RUPA § 103(a), including a reference to implied-in-fact
18 agreements, an express authorization for a partnership agreement to "exclude [alternate
19 language: preclude] oral agreements and . . . specify the extent, if any, that the conduct of
20 the partners and the partnership are to be considered in determining and interpreting the
21 partnership agreement," and an express authorization for a partnership agreement to be
22 executed before the limited partnership is formed. Following the Drafting Committee's
23 instructions, the Section 304(b)(1) now contains the rule on amending the partnership
24 agreement.

25 The Reporter remains concerned as to whether it is sufficiently clear which
26 statutory provisions are outside the domain of “relations among the partners” (and
27 therefore not susceptible to change by the partnership agreement). For example, may the
28 partnership agreement change Section 114's requirement that a limited partnership
29 maintain an in-state office?

30 As discussed at the Committee's July, 1997 meeting, the Reporter believes that the
31 Committee should eventually review each section of the Act in light of subsection (a).
32 The Committee will be far more familiar with the Act than the typical attorney or judge.
33 If the Committee has difficulty determining which provisions of the Act are subject to
34 change by the partnership agreement, *a fortiori* attorneys and judges will be confused.

35 Subsection (a) – The first sentence deviates from RUPA so as to substitute the
36 active for the passive voice.

37 Subsection (b)(1) – Source: RUPA § 103(9). Understanding this provision
38 requires understanding RUPA's approach to choice of law. See the Reporter's Notes to

1 Section 105.

2 Subsection (b)(2) – Source: RUPA § 103(b)(1). The referenced section describes
3 who must sign various documents.

4 Subsection (b)(3) – This provision is derived from RUPA § 103(b)(2), which
5 imposes this standard viz a viz "access to books and records." The first section refers to a
6 limited partner's right of access and the second to a general partner's right. At its October,
7 1998 meeting, the Drafting Committee significantly changed the information rights of
8 limited partners. At its October, 1999 meeting, the Drafting Committee decided to
9 relocate to this paragraph references to the partnership agreement imposing reasonable
10 restrictions on availability and use. Sections 305 and 407 address the unilateral right of
11 the limited partnership to impose restrictions.

12 Subsection (b)(4) – Paragraph (i) is taken essentially verbatim from RUPA §
13 103(b)(3)(i). At its October, 1998 meeting, the Drafting Committee decided to follow
14 ULLCA rather than RUPA and use "and" instead of "or" between paragraphs (i) and (ii)
15 and use in paragraph (ii) ULLCA's reference to "disinterested managers" [in Re-RULPA:
16 disinterested general partners].

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

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

1 Subsection (b)(8) – Source: RUPA § 103(b)(7). As discussed at the October,
2 1998 meeting, this provision could be read to limit a partnership agreement's power to
3 provide for arbitration. That is, an agreement to arbitrate all disputes – including
4 expulsion disputes – could be seen as an attempt to "vary the right of a court expel a
5 partner." Such a reading would put this statute at odds with federal law. *See Southland*
6 *Corp. v. Keating*, 465 U.S. 1 (1984) (holding that the Federal Arbitration Act preempts
7 state statutes that seek to invalidate agreements to arbitrate) and *Allied-Bruce Terminix*
8 *Cos., Inc. v. Dobson*, 513 U.S. 265 (1995) (same). A Comment will indicate that an
9 agreement to arbitrate expulsion disputes is permissible.

10 Subsection (b)(9) – At its October, 1998 meeting, the Drafting Committee decided
11 to add this provision to the list of nonwaivable provisions. The caveat concerning
12 arbitration applies here as well.

13 Subsection (b)(11) – This subsection was new in The July, 1999 Draft. ULLCA §
14 103 has no corresponding provision. However, derivative suits were originally equitable
15 in nature; they originated without statutory sanction to protect passive owners against
16 management abuses. *See* Bishop & Kleinberger, LIMITED LIABILITY COMPANIES: TAX
17 AND BUSINESS LAW, ¶ 10.07[2], nn. 233 and 234. This Act should not permit a
18 partnership agreement to eviscerate the derivative remedy. At its October, 1999 meeting,
19 the Drafting Committee decided that the partnership agreement may impose reasonable
20 restrictions on a partner's rights to bring a derivative suit. The March, 2000 Draft
21 therefore authorizes the partnership agreement to limit a court's power to do equity.

22 Subsection (b)(12) – This paragraph is new in the March, 2000 Draft and pertains
23 to mergers and conversions that result in a partner being personally liable for the debts of
24 the surviving or converted business organization. See Section 1110 and the Reporter's
25 Notes to that section.

26 **SECTION ~~110~~ 111. REQUIRED RECORDS.**

27 (a) A limited partnership shall maintain at its designated office the
28 following required records:

29 (1) a current list of showing the full name and last known ~~business~~
30 address of each partner, separately identifying the general partners (in alphabetical
31 order), and the limited partners (in alphabetical order);

32 (2) a copy of the certificate of limited partnership and all

1 amendments to the certificate, together with signed copies of any powers of attorney
2 pursuant to which any certificate or amendment has been signed;

3 (3) ~~copies~~ a copy of any ~~plan or~~ filed articles of conversion or
4 merger, ~~if the merger or conversion has become effective and the limited partnership is the~~
5 ~~converted or surviving entity~~;

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

8 (5) ~~copies~~ a copy of any written partnership agreements and any
9 written amendments to any of those agreements and of any financial statements of the
10 limited partnership for the three most recent years;

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

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

16 (8) unless contained in a written partnership agreement, a writing
17 setting out:

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

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

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

4 ~~(iv)~~ (D) any events upon the happening of which the limited
5 partnership is to be dissolved and its affairs wound up.

6 (b) Sections 305 and 407 govern access to the records required by this
7 ~~Section~~ section.

8 **Reporter's Notes**

9 **Issues for Consideration:** whether to replace subsection (a)(5)'s reference to
10 "written" agreements and amendments with the more modern concept of a "record";
11 whether to retain Section 110(8)(D).

12 Source: RULPA § 105. In Drafts before the July, 1999 Draft, this material
13 appeared at Section 105. Changes from RULPA are stylistic except as stated below.

14 Subsection (a)(1) – At its October, 1999 meeting, the Drafting Committee decided
15 to delete "business". The Act's very broad definition of that word, *see* Section 102(1),
16 makes the word unuseable here.

17 Subsection (a)(2) – It can be confusing to have the same word – certificate – refer
18 both to an original document and to the documents that amend that original document.
19 Re-RULPA therefore refers to "amendments" rather than "certificates of amendments."

20 Subsection (a)(3) – At its October, 1999 meeting, the Drafting Committee decided
21 to both restrict and expand the scope of this paragraph. Only files articles need be
22 maintained, even a limited partnership that is not the converted or surviving entity must
23 maintain the copies until it ceases to be a limited partnership.

24 Subsection (a)(5) — RULPA § 105(4) does not mention amendments.

25 Subsection (a)(6) — RULPA does not require annual reports, so RULPA § 105
26 does not include this requirement.

27 Subsection (a)(7) – This provision reflects a decision made by the Drafting
28 Committee at its October, 1998 meeting. The provision does not require a limited
29 partnership to make a record but does create a retention requirement for those records the

1 limited partnership does create. The three years runs from the date the record is created,
2 not from the date the consent or vote occurs.

3 Subsection (a)(8)(A) — RULPA § 105(7)(i) refers to “other property or services”
4 rather than to “other benefits.” The change is to correspond with Re-RULPA’s broader
5 definition of “contribution.” See Section 101(3).

6 Subsection (a)(8)(C) — In RULPA § 105(a)(7), this provision refers to “any right
7 of a partner to receive, or of a general partner to make, distributions to a partner which
8 include a return of all or any part of the partner’s contribution.” For the reasons stated in
9 the Reporter’s Notes to Section 503, beginning with the July, 1999 Draft Re-RULPA
10 eschews the concept of “a return of contribution.” The new provision relates to
11 information needed when a “dual capacity” partner dissociates. See Sections 602 and 606.
12 The former provides that, upon a person’s dissociation as a limited partner, “any
13 transferable interest owned by the person immediately before dissociation *in the person’s*
14 *capacity as a limited partner* is owned by the person as a mere transferee.” (Emphasis
15 added.) The latter states the parallel rule for a person dissociated as a general partner.

16 Subsection (a)(8)(D)— This is a curious provision, albeit taken verbatim from
17 RULPA § 105(7)(iv). Can the required records alone make an occurrence an event of
18 dissolution? Or does this provision mean that, for dissolution to occur under an oral
19 agreement, the required records must memorialize that agreement? The provision was
20 added in the 1985 amendments to RULPA. The official Comment explains:

21 In view of the passive nature of the limited partner’s position, it has been
22 widely felt that limited partners are entitled to access to certain basic
23 documents and information, including the certificate of limited partnership
24 and, any partnership agreement, and a writing setting out certain important
25 matters which, under the 1916 and 1976 Acts, were required to be set out
26 in the certificate of limited partnership. (Underlining and strikeouts
27 indicate changes from the text of the 1976 Comment.)

28 Subsection (b) — RULPA § 105(b) states simply: “Records kept under this section
29 are subject to inspection and copying at the reasonable request and at the expense of any
30 partner during ordinary business hours.” Re-RULPA provides more elaborate access
31 provisions.

32 **SECTION ~~111~~ 112. BUSINESS TRANSACTIONS OF PARTNER WITH**
33 **PARTNERSHIP.** A partner may lend money to and transact other business with the

1 limited partnership and, subject to other applicable law, has the same rights and
2 obligations with respect thereto as a person who is not a partner.

3 **Reporter's Notes**

4 Source: RULPA § 107. In Drafts before the July, 1999 Draft, this material
5 appeared as Section 107.

6 To the uninitiated, this section appears to conflict with Section 408(b)(2) (general
7 partner's loyalty duty includes refraining from acting as or for an adverse party).
8 However, this section has no connection with the duty of loyalty and is intended only to
9 deal with claims by creditors of the limited partnership. The unartful formulation is
10 retained for historical reasons and because including language that differs substantially
11 from RUPA and ULLCA would exacerbate rather than ameliorate the confusion.

12 N.b. – both RUPA and ULLCA locate this provision elsewhere, within the section
13 dealing with fiduciary duty. *See* RUPA § 404(f) and ULLCA § 409(f). Re-RULPA keeps
14 the provision here, because it applies both to limited and general partners.

15 **SECTION ~~112~~ 113. DUAL CAPACITY.** A person may be both a general
16 partner and a limited partner. A person who is both a general and limited partner has the
17 rights, powers, duties, and obligations provided by this [Act] and the partnership
18 agreement ~~for~~ in each of those capacities. When ~~that~~ the person acts as a general partner,
19 ~~that act the person~~ is subject to the obligations and restrictions ~~provided by~~ under this
20 [Act] and the partnership agreement for general partners. When ~~that~~ the person acts as a
21 limited partner, ~~that act the person~~ is subject to the obligations and restrictions ~~provided~~
22 by under this [Act] and the partnership agreement for limited partners.

23 **Reporter's Notes**

24 Derived from RULPA § 404, but redrafted for reasons of style and clarity.
25 RULPA § 404 provides:

1 A general partner of a limited partnership may make contributions to the
2 partnership and share in the profits and losses of, and in distributions from,
3 the limited partnership as a general partner. A general partner also may
4 make contributions to and share in profits, losses, and distributions as a
5 limited partner. A person who is both a general partner and a limited
6 partner has the rights and powers, and is subject to the restrictions and
7 liabilities, of a general partner and, except as provided in the partnership
8 agreement, also has the powers, and is subject to the restrictions, of a
9 limited partner to the extent of his [or her] participation in the partnership
10 as a limited partner.

11 In Drafts before the July, 1999 Draft, this material appeared at Section 404. The
12 July, 1999 Draft relocated the section here, because the section concerns both limited and
13 general partners.

14 The second sentence of the Re-RULPA version originally referred only to "rights
15 and powers." Draft #4 changed the phrase to "the rights, powers, duties and obligations,"
16 so as to clearly encompass sins of omission.

17 **SECTION ~~H3~~ 114. OFFICE AND AGENT FOR SERVICE OF PROCESS.**

- 18 (a) A limited partnership shall designate and continuously maintain in this
19 State:
- 20 (1) an office, which need not be a place of its business in this State;
21 and
22 (2) an agent for service of process ~~on the limited partnership~~.
- 23 (b) A foreign limited partnership shall designate and continuously maintain
24 in this State an agent for service of process.
- 25 (c) An agent for service of process must be an individual resident of this
26 State, a domestic entity, or a foreign entity authorized to do business in this State.

27 **Reporter's Notes**

28 In Drafts before the July, 1999 Draft, this material appeared at Section 104. Draft

1 #3 revised this section to conform to ULLCA § 108. That conformity was necessary,
2 because Draft #3 incorporated ULLCA §§ 109 – 111 and those sections depend on the
3 revised language. However, at its October, 1998 meeting, the Drafting Committee
4 decided to return to RULPA's approach.

5 That decision also entailed deleting Section 104A, Change of Designated Office or
6 Agent for Service of Process. Derived from ULLCA § 109, Section 104A allowed a
7 limited partnership to "change its designated office or agent for service of process by
8 delivering to the [Secretary of State] for filing a statement of change." However, Re-
9 RULPA continued to include former Section 211 [now Section 210] (Annual Report for
10 [Secretary of State]). Beginning with the July, 1999 Draft, Section 210(2) requires a
11 limited partnership to report annually, *inter alia*, "the address of its designated office and
12 the name and address of its agent for service of process in this State."

13 Following the March, 1999 meeting, the Reporter discovered a problem with Re-
14 RULPA's halfway adoption of ULLCA's approach – namely, what would happen if a
15 limited partnership's annual report stated an office or agent that varied from the office or
16 agent stated in the certificate of limited partnership? The [Secretary of State] was not
17 expressly authorized to reject an annual report for that reason, so the possibility existed of
18 having an inconsistent public record.

19 Moreover, upon reflection the Reporter saw no reason to require an amendment to
20 the certificate of limited partnership in order to change either the required in-state office or
21 the agent for service of process. See RMBCA § 5.02 (allowing such changes without
22 amendment to the articles of incorporation) and Official Comment (stating that, in the
23 corporate realm, such changes should not require action by the board of directors).

24 The Reporter therefore believed that Re-RULPA should follow ULLCA and go
25 one step further: adopt the "statement of change" approach (per ULLCA) and further
26 provide that an annual report automatically updates a limited partnership's designation of
27 its in-state office and agent for service of process. See Section 210(e). At its October,
28 1999 meeting, the Drafting Committee accepted the Reporter's suggestion. At that
29 meeting the Committee also decided not to require a foreign limited partnership to
30 maintain an in-state office.

31 Subsection (a) – The initial designation occurs pursuant to Section 201 (certificate
32 of limited partnership). A limited partnership can change the designation in any of three
33 ways: an amendment to the certificate (Section 202), a statement of change (Section
34 114), and the annual report (Section 210).

35 Subsection (a)(2) – At its October, 1999 meeting, the Drafting Committee deleted
36 the concluding phrase ("on the limited partnership") as unnecessary.

37 Subsection (b) — This subsection reflects a compromise between RULPA and

1 ULLCA. RULPA requires neither an in-state agent nor an in-state office for a foreign
2 limited partnership. ULLCA requires both. Compare RULPA § 902 with ULLCA § 108.
3 A State may well prefer that the [Secretary of State] not be agent of first resort, but why
4 require an in-state office for a foreign entity? The initial designation will occur in the
5 application for a certificate of authority. See Section 902. Updating will occur via a
6 statement of change. See Section 115.

7 Subsection (c) — This subsection goes beyond both RULPA and ULLCA in the
8 types of entities permitted to act as agents for service of process.

9 **SECTION ~~H4~~ 115. CHANGE OF DESIGNATED OFFICE OR AGENT**

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

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

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

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

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

19 (5) if the current agent for service of process or street address of that agent
20 is to be changed, the new address or the name and street address of the new agent for
21 service of process.

22 **Reporter's Notes**

23 **Issues for Consideration:** whether the statutory apparatus is adequate for
24 updating and correcting records filed by a foreign limited partnership; whether this
25 section's inclusion of foreign limited partnerships should be deleted in favor of RULPA §

1 905.

2 Derived from ULLCA § 109. The ULLCA provision refers only to domestic
3 entities. *But see* ULLCA § 1006(a)(1)(iv) (grounds for revoking a foreign limited
4 partnership's certificate of authority include failing to “file a statement of a change in the
5 name or business address of the agent as required by this [article]”). Also, the reference
6 to changing “the address of its agent for service of process” does not appear in ULLCA's
7 lead-in phrase. However, ULLCA § 109(5) contemplates that type of change.

8 ULLCA's approach differs from RULPA's. Under RULPA § 201(a)(2), the
9 certificate of limited partnership must include “the address of the office and the name and
10 address of the agent for service of process.” Changing that information therefore requires
11 an amendment to the certificate. RULPA § 202(c). In contrast, ULLCA requires an
12 LLC's articles of organization only to include only “the address of the initial designated
13 office” and “the name and street address of the initial agent for service of process.”
14 ULLCA § 203(a)(2) and (3) (emphasis added). ULLCA does not specifically state who
15 has the authority to file a statement of change on behalf of an LLC.

16 This provision appeared in Draft #3 as Section 104A but was deleted in Draft #4.
17 For an explanation of the provision's resurrection, see the Reporter's Notes to Section
18 114.

19 Correcting/updating records filed by foreign limited partnerships – Beginning with
20 the July, 1999 Draft, Re-RULPA mostly follows ULLCA's approach to records required
21 to be filed by the foreign counterpart entity. ULLCA relies on the following records to
22 update information previously filed by a foreign LLC: a statement of change, the annual
23 report, a statement of correction. There are two potential gaps in ULLCA's approach.
24 First, it is unclear under ULLCA whether a statement of correction can be used to correct
25 a record that was accurate when filed. For Re-RULPA, the answer is no. See Reporter's
26 Notes to Section 207. Second, ULLCA does not require the updating of all the
27 information contained in the application for a certificate of authority. See ULLCA §
28 1006(a).

29 RULPA § 905, which has no analog in ULLCA, takes a more centralized approach
30 to the issue and requires updating of all information:

31 SECTION 905. CHANGES AND AMENDMENTS. If any statement in
32 the application for registration of a foreign limited partnership was false
33 when made or any arrangements or other facts described have changed,
34 making the application inaccurate in any respect, the foreign limited
35 partnership shall promptly file in the office of the Secretary of State a
36 certificate, signed and sworn to by a general partner, correcting such
37 statement.

1 **SECTION ~~H5~~ 116. RESIGNATION OF AGENT FOR SERVICE OF**
2 **PROCESS.**

3 (a) An agent for service of process of a limited partnership or foreign
4 limited partnership may resign by delivering to the [Secretary of State] for filing a record
5 of the statement of resignation.

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

10 (c) An agency is terminated on the 31st day after the statement is filed in
11 the [office of the {Secretary of State}].

12 **Reporter's Notes**

13 **Issues for Consideration:** whether to preserve the mandatory delayed effective
14 date for an agent's resignation.

15 Source: ULLCA § 110, which applies only to agents of domestic limited liability
16 companies. In Drafts before the July, 1999 Draft, this material appeared as Section 104B
17 and, following ULLCA, referred only to agents of domestic limited partnerships.

18 Subsection (b) – The reference to a limited partnership's principal office is from
19 ULLCA § 110(b). Under ULLCA, a *foreign* limited liability company's application for a
20 certificate of authority must designate the principal office. As to a *domestic* limited
21 liability company, the [Secretary of State] must glean the information from the annual
22 report. *See* ULLCA § 211(a)(3). Because the annual report is not due upon formation,
23 ULLCA § 211(c), for some months after an LLC's organization the [Secretary of State]
24 does not know the LLC's principal office and therefore cannot strictly comply with
25 ULLCA § 110(b). The same anomaly exists under this Draft. To recognize the anomaly,
26 beginning with the July, 1999 Draft, Re-RULPA adds the phrase "if the address of that
27 office appears in the records of the [Secretary of State]."

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

7 **SECTION ~~H6~~ 117. SERVICE OF PROCESS.**

8 (a) An agent for service of process appointed by a limited partnership or a
9 foreign limited partnership is an agent of the limited partnership or foreign limited
10 partnership for service of any process, notice, or demand required or permitted by law to
11 be served upon the limited partnership or foreign limited partnership.

12 (b) If a limited partnership or foreign limited partnership fails to appoint or
13 maintain an agent for service of process in this State or the agent for service of process
14 cannot with reasonable diligence be found at the agent's address, the [Secretary of State]
15 is an agent of the limited partnership or foreign limited partnership upon whom process,
16 notice, or demand may be served.

17 (c) Service of any process, notice, or demand on the [Secretary of State]
18 may be made by delivering to and leaving with the [Secretary of State], the [Assistant
19 Secretary of State], or clerk having charge of the limited partnership department of the
20 [office of the Secretary of State's State] ~~office~~ duplicate copies of the process, notice, or
21 demand. If the process, notice, or demand is served on the [Secretary of State], the
22 [Secretary of State] shall forward one of the copies by registered or certified mail, return
23 receipt requested, to the limited partnership or foreign limited partnership at its designated
24 office. Service is effected under this subsection at the earliest of:

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

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

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

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

10 (e) This section does not affect the right to serve process, notice, or
11 demand in any manner otherwise provided by law.

12 **Reporter's Notes**

13 Source: ULLCA § 111. Requiring a foreign limited partnership to name an agent
14 for service of process is a change from RULPA. *See* RULPA § 902(3).

15 Subsection (c) – ULLCA § 108(a)(1) requires both domestic and foreign LLCs to
16 "maintain in this State . . . an office." RULPA does not require an "out-of-state" limited
17 partnership to have an "in-state" office. RULPA § 902(5). Neither does Re-RULPA.
18 Section 902.

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

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

22 (b) A partner may appoint a proxy to vote or otherwise act for the limited partner
23 by signing an appointment instrument, either personally or by the limited partner's attorney

in fact.

Reporter's Notes

Source: ULLCA § 404(d) and (e). In prior Drafts, these provisions appeared twice – in Section 304(c), pertaining to limited partners, and in Section 406, pertaining to general partners. At its October, 1999 meeting, the Drafting Committee directed the Reporter to consolidate the provisions and locate them in Article 1.

[ARTICLE] 2

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

SECTION 201. CERTIFICATE OF LIMITED PARTNERSHIP.

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

(1) the name of the limited partnership;

(2) the address of the initial designated office and the name and address of the initial agent for service of process;

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

(4) if the limited partnership is a limited liability limited partnership one or more of the general partners, or categories of general partners, are liable for the limited partnership's debts and obligations under Section 404(b), a statement to that effect; and

(5) any additional information required by ~~Article~~ Article 11.

(b) A certificate of limited partnership may also contain any other matters,

1 ~~except that a certificate~~ but may not vary the nonwaivable provisions of [this [Act] listed
2 in Section ~~109~~ 110.

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

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

8 (2) the certificate of limited partnership, statement of dissociation,
9 termination, or change, or articles of conversion or merger ~~controls~~ prevails as to persons,
10 other than partners and transferees, who reasonably rely on the filed record to their
11 detriment.

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

16 **Reporter's Notes**

17 **Issue for Consideration:** whether the partnership agreement should be able to
18 vary the perpetual term or whether that change should be reserved to the certificate of
19 limited partnership; whether it is appropriate to include in Subsection (c) the new language
20 referring to articles of conversion and merger.

21 Subsection (a)(2) – ULLCA allows updating of this information without formal
22 amendment to the formation document. ULLCA § 203(a)(2). Draft #3 conformed Re-
23 RULPA to that approach, but at the October, 1998 meeting the Drafting Committee
24 decided to return to RULPA. Beginning with the July, 1999 Draft, Re-RULPA returns to
25 the ULLCA approach, for reasons explained in the Reporter's Notes to Section 114.

26 Subdivision (a)(3) – At its October, 1999 meeting, the Drafting Committee

1 decided to delete “business”. The Act’s very broad definition of that word, *see* Section
2 102(1), makes the word unuseable here.

3 Former subsection (a)(4) – The reference to the limited partnership's term is
4 deleted, following the Drafting Committee's decision at the October, 1998 meeting.

5 Subdivision (a)(4) – This paragraph is revised to reflect the Draft Committee’s
6 decision to establish LLLP status as the Act’s default mode. See Section 404 and
7 Reporter’s Notes to that section. *Compare* ULLCA § 203(7) (requiring an LLC’s articles
8 of organization to state “whether one or more of the members of the company are to be
9 liable for its debts and obligations under Section 303(c).”

10 Former subsection (a)(5) – The reference to optional matters is relocated to
11 subsection (b).

12 Former subsection (b) – At its March, 1999 meeting, the Drafting Committee
13 deleted provision that had been a much slimmed-down version of RUPA's statement of
14 authority. *Compare* RUPA § 303.

15 Subsection (b) – The exception is derived from ULLCA § 203(c), which refers a
16 bit inaccurately (albeit more succinctly) to "the nonwaivable provisions of Section"

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

25 The July, 1999 Draft expanded the conflict provision to include “ a filed statement
26 of dissociation, termination or change.” The March, 2000 Draft includes “filed articles of
27 conversion or merger”. A third party should be able to reasonably rely on these publicly
28 filed records. Indeed, with regard to statements of dissociation and termination and
29 articles of conversion and merger, third parties (as well as partners) are subject to
30 constructive notice. See Section 103(d). If the information in those records can be held
31 against a person, a person should certainly be able to reasonably rely on the information.

32 Subsection (d) – Section 206(d) limits the delay period to 90 days.

33 **SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE.**

1 (a) A certificate of limited partnership ~~is~~ may be amended by filing an
2 amendment in the [office of the {Secretary of State}] or ~~as provided in~~ pursuant to [Article]

3 11. An amendment and a filing made as provided in [Article] 11 ~~shall~~ must each set forth:

4 (1) the name of the limited partnership;

5 (2) the date of filing the certificate; and

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

7 (b) A limited partnership shall file an amendment to a certificate of limited
8 partnership reflecting the occurrence of any of these events:

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

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

11 (3) the appointment of a person to wind up the limited
12 partnership's business under Section 803(b) or (c).

13 (c) A general partner who becomes aware that any statement in a
14 certificate of limited partnership was false when made or that any arrangements or other
15 facts described have changed, making the certificate inaccurate in any respect, shall
16 promptly:

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

18 (2) if appropriate, file a statement of change pursuant to Section
19 ~~114~~ 115 or a statement of correction pursuant to Section 207.

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

22 (e) A restated certificate of limited partnership may be filed in the same

1 manner as an amendment.

2 **Reporter's Notes**

3 **Issue for Consideration:** whether to reinstate a requirement that the certificate be
4 amended to indicate dissolution.

5 Source: RULPA § 202.

6 Caption – The 1986 amendments to RULPA added subsection (f) [now (e)],
7 providing for restated certificates. Re-RULPA changes the caption to reflect that
8 addition.

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

13 Subsection (b) – This subsection differs from its RULPA counterpart both stylistic
14 and substantively. The stylistic change is to switch from the passive to active voice. The
15 substantive change, made at the October, 1998 meeting, is to delete the 30-day time
16 period allowed to make the amendment.

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

20 Subsection (b)(2) – In RULPA this provision refers to “withdrawal,” rather than
21 “dissociation.” “Withdrawal” is no longer the term of art. “Dissociation” is.

22 Subsection (b)(3) – Earlier drafts deleted RULPA language referring to “the
23 continuation of the business under Section 801 after an event of withdrawal of a general
24 partner” and required that the certificate be amended to indicate “the dissolution of the
25 limited partnership.” However, at its October, 1998 meeting, the Drafting Committee
26 decided to delete the “dissolution” language.

27 That decision creates serious problems for limited partners and for non-controlling
28 general partners. Amending the certificate to indicate dissolution serves a constructive
29 notice function. That notice aids the limited partners by curtailing the power to bind of
30 the general partners and aids non-controlling general partners by curtailing not only the
31 power to bind but also the general partners' lingering personal liability. If amending the
32 certificate is merely permissive (as decided by the Drafting Committee), aggrieved
33 partners cannot use Section 205 (Filing by Judicial Act). That section applies only “[i]f a
34 person *required* . . . to sign any record fails or refuses to do so.” (Emphasis added).

1 If the Committee does not reconsider this point, it will be necessary at minimum to
2 revise Section 202(c). That subsection requires amendments in the event of known
3 inaccuracies. Since dissolution has significant legal effects on third parties, it is arguably
4 "inaccurate" for a certificate to omit the fact of dissolution.

5 Subsection (c) – This subsection differs from the RULPA provision in three
6 respects: (i) “knows of” has replaced “becomes aware that,” (ii) the requirement is to
7 “cause” an appropriate amendment rather than to actually amend, and (iii) subsection
8 recognizes that, in appropriate circumstances, other filings can correct the public record.
9 The first difference merely implements a defined term. The second recognizes that in
10 some circumstances an amendment requires a signature from more than one general
11 partner. See Section 204. Section 205 (Filing by Judicial Act) is available to a general
12 partner who cannot convince fellow general partners to sign. The third difference
13 encompasses statements of change and statements of correction.

14 What if the partnership agreement places all responsibility and power to amend the
15 certificate on one general partner and another partner becomes aware of an inaccuracy?
16 Does the agreement relieve the second partner of responsibility under this provision?
17 Presumably not – the certificate is not squarely within the domain of the partnership
18 agreement, because inaccuracies in the certificate have an effect on third parties.
19 Moreover, Section 208 imposes personal liability on general partners for failure to correct
20 the public record. If there is doubt on this point, however, perhaps this provision should
21 be included in the list of nonwaivable provisions.

22 Former subsection (e) [personal liability for inaccuracies] – The Drafting
23 Committee dwelled on this subsection at the October, 1998 meeting, initially deciding to
24 delete the provision and then deciding to reinstate it. The July, 1999 Draft relocated the
25 provision to Section 208.

26 That section now provides extensive rules on liability for inaccuracies in filed
27 records. N.b. — those rules do not relate to the liability of the limited partnership itself.
28 Suppose, for example, that (i) the certificate of limited partnership states that X is a
29 general partner with the power to bind the limited partnership to transactions involving
30 amounts less than \$100,000, (ii) X has dissociated as a general partner but the remaining
31 general partner has not caused the certificate to be appropriately amended and X has not
32 filed a statement of dissociation, (iii) X purports to commit the limited partnership to a
33 third party through a contract involving \$50,000, and (iv) that third party reasonably relies
34 on the unamended certificate in entering into the contract. The limited partnership is
35 bound on the contract. See Section 606. Section 208 is irrelevant to that outcome but will
36 apply to determine whether the remaining general partner is liable to the limited
37 partnership for any harm suffered by the limited partnership as a result of the contract.

38 Subsection (e) – This subsection comes almost verbatim from RULPA § 202(f)
39 and appeared as subsection (f) in Drafts before the July, 1999 Draft. Re-RULPA omits

1 RULPA's reference to execution of documents. As a matter of organization, that
2 reference belongs in Section 204, which deals with signing requirements. Also, moving
3 the reference will make it easier to correct the current rule's simplistic approach. Who
4 must sign a restated certificate depends on the nature of the changes reflected in the
5 restated certificate. Some changes might require a single general partner's signature, while
6 others might require two or more.

7 **SECTION 203. STATEMENT OF TERMINATION.**

8 (a) A dissolved limited partnership that has completed winding up may file
9 in the [office of the Secretary of State] a statement of termination that sets forth:

- 10 (1) the name of the limited partnership;
11 (2) the date of filing of its original certificate of limited partnership;
12 (3) the effective date of termination ~~(, which shall must~~ be a date
13 certain and ~~shall be~~ is subject to Section 206(d)) ~~, of termination~~ if the statement is not to
14 be effective upon filing; and
15 (4) any other information the general partners filing the statement
16 determine.

17 ~~(b) The existence of a limited partnership is terminated upon the filing of a~~
18 ~~statement of termination, or, subject to Section 206(d), at a later date specified in that~~
19 ~~statement. Termination of a limited partnership does not of itself discharge any person's~~
20 ~~liability under Section 404 for a limited partnership obligation incurred before termination~~
21 ~~or affect the application of Sections 803B, 803C, and 803D (barring of claims).~~

22 **Reporter's Notes**

23 **Issue for Consideration:** how to clarify the consequences filing a statement of
24 termination; whether to provide that a limited partnership continues in existence for some
25 period after the filing of a statement of termination, for the purposes of being sued.

1 Derived from RULPA § 203, which is captioned “Cancellation of Certificate” and
2 mandates the filing of a certificate of cancellation “upon the dissolution and the
3 commencement of winding up of the partnership or at any other time there are no limited
4 partners.”

5 Re-RULPA switches the focus from dissolution to termination. Canceling the
6 certificate upon dissolution (current law) is misleading because a dissolved limited
7 partnership is not terminated. However, given past usage it would be confusing to apply
8 the word "cancellation" to a document filed to indicate the termination of a limited
9 partnership's existence. Re-RULPA therefore uses "statement of termination" for that
10 purpose. (Drafts before the July, 1999 Draft referred to a “declaration of termination.”)

11 Re-RULPA also makes the filing permissive rather than mandatory. The Drafting
12 Committee took this position at its October, 1998 meeting. At the same meeting the
13 Committee deleted a provision requiring a limited partnership to amend its certificate to
14 indicate dissolution.

15 Subsection (a)(2) – Re-RULPA adds “original” to RULPA's language, to
16 distinguish any restated certificates.

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

18 Former Subsection (b) – At its October, 1999 meeting, the Drafting Committee
19 decided to delete this subsection. The statement of termination retains its constructive
20 notice function. See Section 103(d)(3).

21 **SECTION 204. SIGNING OF RECORDS.**

22 (a) Each record pertaining to a domestic or foreign limited partnership and
23 filed pursuant to this Act in the [office of the {Secretary of State}] must be signed in the
24 following manner:

25 (1) ~~an~~ An original certificate of limited partnership must be signed
26 by all general partners listed in the certificate;

27 (2) ~~an~~ An amendment ~~causing a limited partnership to become or~~
28 ~~cease to be a limited liability limited partnership~~ making, modifying or deleting a statement
29 under Section 404(b) must be signed by all general partners listed in the certificate;

1 (3) ~~an~~ An amendment designating as general partner a person
2 admitted under Section 801(3)(ii) 801(3)(B) following the dissociation of a limited
3 partnership's last general partner must be signed by that person;.

4 (4) ~~an~~ An amendment required by Section 803(b) or 803(d)
5 following the appointment of a person to wind up the dissolved limited partnership's
6 business must be signed by that person;.

7 (5) ~~any~~ Any other amendment must be signed by:

8 (i) (A) at least one general partner listed in the certificate;.

9 (ii) (B) each other person designated in the amendment as a
10 new general partner; and

11 (iii) (C) by each person ~~whom~~ who the amendment indicates
12 has dissociated as a general partner, unless:

13 (i) the person is deceased or a guardian or general
14 conservator has been appointed for the person and the amendment so states; or

15 (ii) the person has previously filed a statement of
16 dissociation;.

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

21 (7) ~~a~~ A statement of termination must be signed by all general
22 partners listed in the certificate or, if the certificate of a dissolved limited partnership lists

1 no general partners, ~~then~~ by the person appointed under section 803(b) or 803(c) to wind
2 up the dissolved limited partnership's business;.

3 (8) ~~articles~~ Articles of conversion must be signed by each general
4 partner listed in the certificate of limited partnership;.

5 (9) ~~articles~~ Articles of merger must be signed as provided in Section
6 1108(a);.

7 (10) ~~any~~ Any other record signed by or on behalf of a limited
8 partnership must be signed by at least one general partner listed in the certificate;.

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

11 (12) ~~a~~ A statement of withdrawal by a person pursuant to Section
12 307 must be signed by that person;.

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

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

18 **Reporter's Notes**

19 **Issues for Consideration:** whether “signing” should require some written method
20 of authentication.

21 Subsection (a) – ULLCA § 205 (Signing of records) refers to "a record to be filed
22 by or on behalf of a limited liability company." This draft omits that language because
23 paragraph (a)(9) contemplates a dissociated general partner filing a record on his, her or
24 its own behalf. Departing from ULLCA, Re-RULPA states a signing requirement for
25 records filed by or on behalf of foreign limited partnerships (e.g., annual reports,

1 applications for a certificate of authority).

2 Subsection (a)(1) – At its July, 1997 meeting, the Committee decided that a person
3 can be a general partner even though not listed in the certificate. This phrase “listed in the
4 certificate” reflects that decision.

5 Subsection (a)(2) – Per Section 304(b), in the default mode *as among the partners*
6 this change requires the consent of all partners. However, execution of the necessary
7 publicly-filed document remains the province of the general partners.

8 Subsection (a)(3) – At its October, 1998 meeting, the Drafting Committee directed
9 the Reporter to consider the “interloper” problem – i.e., whether this provision allows a
10 stranger to the limited partnership to muddle the public record with a false filing. The
11 Reporter recognizes the problem but believes this provision should remain as drafted. A
12 false filing risks both criminal and civil liability. Section 208. Moreover, no simple
13 solution exists. For example, requiring the signature of at least one limited partner does
14 not help, because the public record does not identify limited partners. ULLCA suffers
15 from a comparable problem. Any member may execute a record on behalf of a member-
16 managed LLC, ULLCA § 205(a)(2), but the public record does not identify an LLC's
17 members. ULLCA §§ 203(a) (stating the information required in the articles of
18 organization and omitting the identity of members) and 211(a) (same as to the contents of
19 the LLC's annual report).

20 Subsection a(4) – This subsection has the same “interloper” problem as exists
21 under subsection a(3).

22 Subsection (a)(5)(C) – This provision was new in the July, 1999 Draft. Both the
23 limited partnership and the dissociated general partner have reasons for wanting the public
24 record to reflect the dissociation. If a person dissociated as a general partner fails or
25 refuses to sign an amendment to the certificate, the limited partnership can invoke Section
26 205 (Filing By Judicial Act). If the limited partnership fails to amend the certificate, the
27 person dissociated as a general partner can file a statement of dissociation. Section
28 605(4).

29 The March, 2000 Draft adds the reference to a person for whom “a guardian or
30 general conservator of the person has been appointed.” That language comes from
31 Section § 603(7)(C).

32 Subsection (a)(7) – In early Drafts this subsection's alternative provision applied if
33 “the dissolved limited partnership has no general partners.” Draft #4 added language to
34 recognize that a person can be a general partner without being listed in the certificate.
35 Such persons may have rights and obligations despite their unlisted status, but they cannot
36 act as general partners for the purpose of affecting the public record.

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

7 Subsection(a)(8) – If articles of conversion are filed, the limited partnership will be
8 converting to some other type of business organization. If some other type of business
9 organization is converting to a limited partnership, the converting business organization
10 will file a certificate of limited partnership containing the additional information required
11 by Section 1104.

12 Subsection (a)(10) – This subsection applies, e.g., to annual reports, Section 210,
13 and articles of correction, Section 207. The signature of one general partner is sufficient
14 to sign articles of correction, even if the record being corrected required additional
15 signatures. A general partner who uses articles of correction to make a substantive
16 change to a record will run afoul of Section 208(b).

17 Former subsection (a)(10) – At its October, 1998 meeting, the Drafting Committee
18 deleted a proposed paragraph (10), which referred to " a statement by a person pursuant
19 to Section [TBD] declaring that the person is not and has not been a general partner must
20 be signed by that person." Two remedies remain. If the person has invested in the limited
21 partnership, the person can file a declaration of withdrawal under Section 307. In any
22 event, the person can sue under Section 205 (Filing by Judicial Act) to force a correction.

23 Subsection (a)(13) – This provision was new in the July, 1999 Draft, has no analog
24 in ULLCA, and is derived from RULPA §§ 902, 905 and 906.

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

28 Former subsection (c) – This provision has been relocated to Section 208(b).

29 **SECTION 205. FILING BY JUDICIAL ACT.**

30 (a) If a person required by [this Act] to sign any record fails or refuses to
31 do so, any other person who is adversely affected by the failure or refusal may petition the
32 [~~designate the appropriate court~~] to ~~direct~~ order the person to ~~signing of~~ sign the record or

1 order the [Secretary of State] to file the record unsigned. If the adversely affected person
2 is not the limited partnership or foreign limited partnership to which the record pertains,
3 the adversely affected person must make that limited partnership or foreign limited
4 partnership a party to the action.

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

11 **Reporter's Notes**

12 Derived from RULPA § 205. This section differs from RULPA § 205 in four
13 ways. First, following ULLCA, Re-RULPA uses "sign" as a defined term. Second, at the
14 request of the representative of the International Association of Corporate
15 Administrators, the section deletes as inappropriate RULPA's mandate that the [Secretary
16 of State] sign a record. Third, pursuant to the Committee's decision at its October, 1999
17 meeting, the section makes clear that an adversely affected party may seek an order for an
18 unsigned filing without first showing that the non-signer has disobeyed a prior court order
19 mandating signing. Fourth, the section requires that the limited partnership or foreign
20 limited partnership to which the record pertains be or be made a party to the action.

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

26 It makes sense for Re-RULPA to differ from RUPA in this respect. RUPA
27 assumes decentralized management, so decentralizing the power to affect the entity's
28 public record is consistent with RUPA's overall paradigm. Re-RULPA, however, assumes
29 centralized management. The general partners run the business and, it can be argued,
30 should have exclusive authority and responsibility to maintain the limited partnership's
31 public record. So far the only exceptions relate to a person dissociated as a general

1 partner, Sections 204(a)(11) and 605(4), and a person who has invested in the business
2 and has been erroneously listed as a general partner, Sections 204(a)(12) and 307(a)(2).
3 (The latter two provisions apply in other situations as well.)

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

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

11 (a) A record authorized to be filed under this [Act] must be in a medium
12 permitted by the [Secretary of State] and must be delivered to the [office of the {Secretary
13 of State}]. Unless the [Secretary of State] determines that a record fails to comply as to
14 form with the filing requirements of this [Act], and if all filing fees have been paid, the
15 [Secretary of State] shall file the record and:

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

17 (i) (A) a receipt for the statement and the fees to the person
18 whom the statement indicates has dissociated as a general partner; and

19 (ii) (B) a copy of the statement and receipt to the limited
20 partnership;

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

22 (i) (A) a receipt for the statement and the fees to the person
23 on whose behalf the record was filed; and

24 (ii) (B) if the statement refers to an existing limited
25 partnership, a copy of the statement and receipt to the limited partnership; and

1 (3) for all other records, send a receipt for the record and the fees
2 to the person on whose behalf the record was filed.

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

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

7 (1) at the time of filing on the date it is filed, as evidenced by the
8 [Secretary of State's] endorsement of the date and time ~~endorsement~~ on the record; or

9 (2) at the time specified in the record as its effective time on the
10 date it is filed.

11 (d) A record may specify a delayed effective time and date, and if it does
12 so the record becomes effective at the time and on the date specified. If a delayed
13 effective date is specified but ~~no the~~ time is not specified, the record is effective at the
14 close of business on that date. If a delayed effective date is later than the 90th day after
15 the record is filed, the record is effective on the 90th day.

16 **Reporter's Notes**

17 **Issues for Consideration:** whether subsection (c) should refer to “filed by the
18 [Secretary of State]” instead of “accepted for filing”; whether subsection (d) takes the
19 correct position in providing for a truncated delayed effective date rather than requiring
20 the [Secretary of State] to reject a record which seeks a delay of more than 90 days;
21 whether the official action should be referred to as “filing” and, if so, whether the private
22 act should be referred to as “delivering to the [Secretary of State] for filing.”

23 Source: ULLCA § 206.

24 Subsection (a)(1) and (2) – These provisions have no analog in ULLCA.

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

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

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

14 **SECTION 207. CORRECTING FILED RECORD.**

15 (a) A limited partnership or foreign limited partnership may correct a
16 record filed by the [Secretary of State] if at the time of filing the record ~~contains~~ contained
17 false or erroneous information or was defectively signed.

18 (b) A record is corrected by:

19 (1) preparing a statement of correction that:

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

22 (††) (B) specifies the incorrect information and the reason it
23 is incorrect or the manner in which the signing was defective; and

24 (†††) (C) corrects the incorrect information or defective
25 signing; and

26 (2) delivering the corrected record to the [Secretary of State] for

1 filing.

2 (c) A statement of correction is effective retroactively on the effective date
3 of the record the statement corrects, ~~except that~~ but the statement is effective when filed;

4 (1) for the purposes of Section ~~102~~ 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 **Issues for Consideration:** whether the reliance referred to in subsection (c)(2)
9 should be reasonable reliance.

10 This Section is derived mostly verbatim from ULLCA § 207, which in turn derives
11 mostly verbatim from RMBCA § 1.24. In Drafts before the July, 1999 Draft, this material
12 appeared as Section 206A.

13 The ULLCA provision has no Comment. The RMBCA Comment explains that:

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

18 ULLCA § 207 refers to “articles of correction.” Beginning with the July, 1999
19 Draft, Re-RULPA uses “statement of correction” and replaces ULLCA’s references to
20 inaccurate “statements” with references to inaccurate information.

21 Subsection (a) – Pursuant to discussion at the Drafting Committee’s July, 1999
22 meeting, the March, 2000 Draft makes clear that a statement of correction cannot be used
23 to correct a record that was accurate when filed but has become inaccurate due to
24 subsequent events.

25 Subsection (c)(1) – This provision makes clear that, for the purposes of
26 constructive notice, a statement of correction carries its own 90 day delay. The provision
27 does not exist in ULLCA.

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

1 (a) If a record ~~authorized or required to be~~ filed under this [Act] contains
2 false information, ~~one~~ a person who suffers loss by reliance on the information may
3 recover damages for the loss from:

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

7 (2) a general partner who has notice that the information is false
8 within a sufficient time before the information was relied upon to have reasonably enabled
9 that general partner to effect an amendment under Section 202 or file a statement of
10 change pursuant to Section ~~114~~ 115, a petition pursuant to Section 205, or a statement of
11 correction pursuant to Section 207.

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

15 **Reporter's Notes**

16 **Issues for Consideration:** whether to retain this Section's rules (which mostly
17 follow RULPA) or choose ULLCA's far narrower approach.

18 Derived from RULPA §§ 207 and 204(e). In Drafts before the July, 1999 Draft,
19 this material appeared as Section 207.

20 General Background – At its October, 1998 meeting, the Drafting Committee
21 struggled with this section, initially deciding to delete it and then deciding to reinstate it.
22 Draft #4 did some "clean up" work on the section, and the Committee made no changes
23 during its March, 1999 meeting.

24 The July, 1999 Draft further refined Re-RULPA's approach, and the March, 2000
25 deletes as unnecessary a phrase from subsection (a).. The following redlined version
26 shows the variations from RULPA § 207:

1 **SECTION 207 208. LIABILITY FOR FALSE STATEMENT**
2 **INFORMATION IN CERTIFICATE RECORD.**

3 (a) ~~If any certificate of limited partnership or certificate of~~
4 ~~amendment or cancellation~~ a record filed under this [Act] contains a false
5 ~~statement information~~, one who suffers loss by reliance on the ~~statement~~
6 ~~information~~ may recover damages for the loss from:

7 (1) ~~any~~ a person who ~~executes the certificate signed the~~
8 ~~record~~, or ~~causes~~ caused another to ~~execute~~ sign it on ~~his~~ the person's behalf, and
9 knew, and ~~any general partner who knew or should have known~~, the statement to
10 be false at the time the ~~certificate was executed~~ record was signed; and

11 (2) ~~any~~ a general partner who has notice that the
12 information is false ~~knows or should have known that any arrangement or other~~
13 ~~fact described in the certificate has changed, making the statement inaccurate in~~
14 ~~any respect~~ within a sufficient time before the ~~statement information~~ was relied
15 upon ~~reasonably~~ to have reasonably enabled that general partner to ~~cancel or~~
16 ~~amend the certificate~~ effect an amendment under Section 202, ~~or to~~ file a petition
17 ~~for its cancellation or amendment~~ under Section 205 or file a statement of
18 correction under Section 207.

19 (b) The signing of a record authorized or required to be filed under
20 this [Act] constitutes an affirmation under the penalties of perjury that the facts
21 stated in the record are true.
22

23 Technical changes from RULPA – Several technical points warrant attention in this
24 revision:

25 C "Sign" replaces "execute," and "record" replaces "certificate." These changes
26 conform to terminology changes made throughout Re-RULPA.

27 C The defined term "has notice" replaces the "knows or has reason to know"
28 formulation.

29 C "Information" replaces "statement," because the latter is a term of art in this [Act].
30

31 Substantive differences with RULPA – Two substantive points also warrant attention:

32 C The 30-day grace period from RULPA § 202(e) is not preserved. The "sufficient
33 time" provision adequately protects general partners.

34 C A general partner's liability extends to circumstances omitted by RULPA §207 –

1 namely, a general partner who after the signing of a record gains notice of an
2 initially false statement.

3 Liability of the limited partnership – The October, 1998 meeting raised but did not resolve
4 the issue of whether the limited partnership should itself be liable for loss suffered in reliance on a
5 false statement. ULLCA does not create any such liability for an LLC. The Reporter believes
6 that the liability of the limited partnership should depend on other provisions of the Act. See
7 Reporter’s Notes to Section 202, Former subsection (e). This section can, however, create
8 liability *to* the limited partnership.

9 Overarching policy issue (ULLCA vs. RULPA) – In addition to these narrower points, the
10 Drafting Committee must reconcile Re-RULPA with ULLCA. Section 208 reaches much further
11 than the comparable ULLCA provision. ULLCA § 209 provides:

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

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

20 It is difficult to justify Re-RULPA and ULLCA having such radically different approaches.
21 In particular, it is difficult to justify imposing a more demanding standard on those who manage a
22 limited partnership than on those who manage an LLC. It is true that general partners have
23 personal liability for the entity's debts and LLC members and managers do not. However, Section
24 208 liability is not liability for the entity's debt; it is liability for mismanaging the public record.
25 How does the existence of the former type of liability justify imposing the latter?

26 **Reporter’s Notes to Former Sections 208 (Scope of Notice) and**
27 **209 (Delivery of Certificates to Limited Partners)**

28 Former Section 208 has been subsumed into Section 102(c). Section 209 was deleted by the
29 Drafting Committee at its October, 1998 meeting.

30 **SECTION 209. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.**

31 (a) A person may request the [Secretary of State] to furnish a certificate of

1 existence for a limited partnership or a certificate of authorization for a foreign limited
2 partnership.

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

4 (1) the limited partnership's name;

5 (2) that it is duly formed under the laws of this State and the date of
6 formation;

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

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

11 (5) that no statement of termination has been filed; and

12 (6) other facts of record in the [office of the {Secretary of State}] which
13 may be requested by the applicant.

14 (c) A certificate of authorization for a foreign limited partnership must ~~set forth~~
15 state:

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

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

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

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

(5) that its certificate of authority to transact business has not been revoked
and a certificate of cancellation has not been filed; 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 domestic or foreign limited partnership is in existence or is authorized to transact business in
this State.

Reporter's Notes

Source: ULLCA § 208. In Drafts before the July, 1999 Draft, this material appeared at
Section 210.

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

Subsection (b)(3) – In previous Drafts, this provision followed ULLCA essentially
verbatim and stated:

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

The current version reflects a decision made on Section 803E(1) [now Section 809(1)] by the
Drafting Committee at its March, 1999 meeting. Following ULLCA, Section 803E(1) provided
for administrative dissolution for nonpayment of fees, taxes and penalties "imposed by this [Act]
or other law." The Committee decided to restrict the provision to "any fees, taxes and penalties
due to the [Secretary of State] under this [Act] or other law."

Subsection (b)(5) – If the Committee decides to require a limited partnership to amend its
certificate of limited partnership to state that the limited partnership is dissolved, see Reporter's
Notes to Section 104, this provision should be expanded to encompass such amendments and also
declarations of dissolution. See Section 810 (administrative dissolution).

1 Subsection (c)(3) – Changed in the July, 1999 Draft to differ with Draft #4 (and ULLCA)
2 for the reasons stated above, in the Notes to subsection (b)(3).

3 Subsection (c)(5) – The March, 2000 Draft expands this paragraph to encompass
4 involuntary as well as voluntary ends to a foreign limited partnership’s authority to transact
5 business.

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

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

10 (1) the name of the limited partnership or foreign limited partnership
11 (~~including any alternate name adopted under Section 905(a)~~)~~2~~ and the State or ~~country~~ other
12 jurisdiction under whose law the domestic or foreign limited partnership is formed;

13 (2) the address of its designated office and the name and address of its
14 agent for service of process in this State; and

15 (3) in the case of a limited partnership, the address of its principal office.

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

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

23 (d) If an annual report does not contain the information required in subsection (a),

1 the [Secretary of State] shall promptly notify the reporting limited partnership or foreign limited
2 partnership and return the report to it for correction. If the report is corrected to contain the
3 information required in subsection (a) and delivered to the [Secretary of State] within 30 days
4 after the effective date of the notice, it is timely filed.

5 (e) If a filed annual report contains an address of a designated office or the name
6 or address of an agent for service of process that differs from the information shown upon the
7 records of the [Secretary of State] immediately before the filing, the annual report's differing
8 information ~~shall be~~ is considered a statement of change under Section ~~114~~ 115.

9 **Reporter's Notes**

10 Derived from ULLCA § 211. In Drafts before the July, 1999 Draft, this material appeared
11 at Section 211.

12 Subsection (a)(2) – At its October, 1998 meeting, the Drafting Committee rejected
13 ULLCA's concept of a "designated" in-state office for domestic and foreign limited partnerships.
14 Accordingly, Draft #4 removed a reference to a "designated office" and substituted appropriate
15 cross-references. For the reasons stated in the Reporter's Notes to Section 114, beginning with
16 the July, 1999 Draft, Re-RULPA returns to ULLCA's concept of a "designated office."

17 Subsection (a)(3) – For a foreign limited partnership, the designated office is the principal
18 office. See Section 102(5).

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

28 Subsection (e) – This subsection was new in the July, 1999 Draft and was included for the
29 reasons stated in the Reporter's Notes to Section 114.

1 [ARTICLE] 3

2 LIMITED PARTNERS

3 SECTION 301. ADMISSION OF LIMITED PARTNERS. A person becomes a
4 limited partner:

5 ————— (1) at the time the limited partnership is formed, if the person has entered into a
6 partnership agreement which that takes effect when the limited partnership is formed and provides
7 that the person is a limited partner; and

8 ————— (2) after formation of the limited partnership, as provided in the partnership
9 agreement, with the consent of all the partners, or as the result of a conversion or merger under
10 [Article] 11 as provided in the partnership agreement, as the result of a merger or conversion
11 under [Article] 11 or with the consent of all the partners.

12 Reporter's Notes

13 Issues for Consideration: whether to combine this Section and Section 401 into a single
14 section (to be included in Article 1) on the admission of partners.

15 Derived loosely from RULPA § 301.

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

19 Reporter's Notes

20 In Drafts before the July, 1999 Draft, this material appeared as Section 302(e). The
21 concept is so fundamental to Re-RULPA's vision of a limited partnership, however, that the July,

1 1999 Draft gave the provision a section of its own. As for “the vision thing,” see the Prefatory
2 Note.

3 The phrase "as a limited partner" means that: (i) this provision does not disable a general
4 partner that also owns a limited partner interest, and (ii) a separate agreement can empower and
5 entitle a person who is a limited partner to act for the limited partnership in another capacity; e.g.,
6 as an agent.

7 The fact that a limited partner has no power to bind the limited partnership means that
8 information possessed by a limited partner is not attributed to the limited partnership. Attribution
9 of information is an aspect of the power to bind. Beginning with the March, 2000 Draft, Section
10 103(h) makes that point explicitly.

11 At its October, 1999 meeting, the Drafting Committee directed the Reporter to relocate
12 this section’s concluding phrase. However, the original syntax was approved by the
13 representative of the Style Committee. In consequence, the March, 2000 Draft does not relocate
14 the concluding phrase.

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

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

19 **Reporter’s Notes**

20 In Drafts before the July, 1999 Draft, this material appeared at Section 303.

21 This section eliminates the RULPA rule that makes a “limited partner [who] participates
22 in the control of the business . . . liable . . . to persons who transact business with the limited
23 partnership reasonably believing, based upon the limited partner's conduct, that the limited
24 partner is a general partner.” RULPA § 303(a). This Section also eliminates RULPA’s lengthy
25 list of safe harbors. RULPA § 303(b).

26 This section establishes a liability shield for limited partners which will be analogous to the
27 corporate shield for shareholders. Nothing in the limited partner's shield affects claims for which
28 limited partner status is not an element. Thus, this section does not prevent a limited partner from
29 being liable as a result of the limited partner's own conduct to the extent that the same conduct
30 would result in liability for a person who is not a limited partner. Moreover, this section does not

1 eliminate a limited partner's liability for promised contributions, Section 502, and improper
2 distributions. Section 510. That liability is not on account of a person's status as a limited
3 partner.

4 The Drafting Committee has not yet discussed whether Re-RULPA should address the
5 concept of "piercing the veil." The concept is an equitable doctrine and presumably applies to
6 limited partnerships through Section 106.

7 **SECTION 304. MANAGEMENT RIGHTS OF LIMITED PARTNERS.**

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

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

11 (2) ~~the~~ authorization or ratification under Section ~~109(b)(3)(ii)~~
12 110(b)(3)(B) of acts or transactions that would otherwise violate the duty of loyalty;

13 (3) a decision under subsection (b) to authorize the limited partnership to
14 ~~become or cease to be a limited liability limited partnership~~ amend its certificate of limited
15 partnership to include, modify or delete a statement under Section 404(b);

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

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

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

21 (7) ~~the~~ expulsion of a limited partner under Section 601(b)(4) or a general
22 partner under Section 603(4);

23 (8) a decision under Section 703(c)(3) to use limited partnership property

1 to redeem an interest subject to a charging order;

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

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

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

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

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

13 (14) the bringing of a derivative action under ~~Article~~ [Article] ~~11~~ 10; and

14 (15) approval under [Article] 11 of a plan of conversion or merger.

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

16 (i) ~~(1)~~ amend the partnership agreement; and

17 (ii) ~~(2)~~ to authorize a limited partnership to ~~become or cease to be a limited~~
18 ~~liability limited partnership~~ amend its certificate of limited partnership to include, modify or delete
19 a statement under Section 404(b).

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

22 ~~_____ (d) A limited partner may appoint a proxy to vote or otherwise act for the limited~~

1 partner by signing an appointment instrument, either personally or by the limited partner's
2 attorney-in-fact.

3 **Reporter's Notes**

4 **Issues for Consideration:** whether sale of substantially all of the assets of the business
5 should require approval of the limited partners.

6 In Drafts before the July, 1999 Draft, this material appeared at Section 302.

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

10 ULLCA contains a comparable list. *See* ULLCA § 404(c) (management of limited liability
11 company). For Re-RULPA there are two plausible locations for the list: here, in the section
12 dealing with limited partners, or Section 406, dealing with the management rights of general
13 partners. The March, 2000 Draft continues the approach of prior Drafts and locates the list here.
14 Accordingly, Section 406 refers to this section.

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

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

27 Subsection (a)(3) – This paragraph is revised to reflect the Drafting Committee's decision,
28 made at the Committee's July, 1999 meeting, to make LLLP status the Act's default setting.

29 At its October, 1999 meeting, the Drafting Committee voted to change the Act's "default
30 setting" with respect to LLLP status. All prior drafts have permitted a limited partnership to
31 become a limited liability limited partnership merely by including a statement in the certificate of
32 limited partnership. The March, 2000 Draft, in contrast, provides that a Re-RULPA limited
33 partnership will be an LLLP unless the certificate of limited partnership provides otherwise. In
34 this respect, Re-RULPA now parallels ULLCA. *See* ULLCA §§ 303(c) and 203(a)(7).

1 The Drafting Committee recognizes that this decision is important and controversial and
2 plans to revisit the issue. The Drafting Committee’s decision on this point – like all other
3 decisions made to date – is merely provisional.

4 Nonetheless, some strong arguments favor the Drafting Committee’s current position.
5 Anecdotal evidence suggests that the overwhelming majority of limited partnerships formed under
6 current law use indirect means to provide a liability shield for the general partner. Typically, the
7 general partner is itself a corporation or a limited liability company. It therefore seems likely that
8 almost every Re-RULPA limited partnership will be an LLLP.

9 Except in extraordinary circumstances, a statute’s default setting should mirror the choices
10 that most users of the statute would make on their own. It therefore seems logical to make LLLP
11 status the default setting for Re-RULPA.

12
13 The Reporter is aware that some very experienced and knowledgeable practitioners
14 currently oppose making LLLP status the default setting, and the Reporter is trying to understand
15 in detail the rationale behind this opposition. The Reporter is also trying to identify situations in
16 which a knowledgeable practitioner would recommend to a person forming a limited partnership
17 that the general partner go “unshielded” vis á vis all creditors and obligees of the limited
18 partnership.

19 Subsection (a)(4) – Draft #1 included the phrase "and other information regarding the
20 limited partnership's business, affairs and financial condition". Draft #2 deleted that phrase,
21 because at the July, 1997 meeting the Drafting Committee deleted provisions requiring the limited
22 partnership to compile that additional information. At its October, 1998 meeting, the Committee
23 partially reversed itself and added language requiring the limited partnership to provide
24 information beyond the required records. Accordingly, Draft #4 inserted the words “and other
25 information.” Subsequent Drafts have preserved that insertion

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

28 Subsection (a)(5) – The first cross reference is to the generally applicable provision on
29 admitting limited partners. The second cross reference is to the generally applicable provision on
30 admitting general partners. The third cross reference is to the provision allowing the admission of
31 a new general partner following the dissociation of the limited partnership's last general partner.
32 In the default mode, the first two of the cross referenced provisions require unanimous partner
33 consent. The third requires consent from limited partners owning a majority of profits interests.

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

1 management.

2 Former Subsections (c) and (d) – Relocated to Section 118. See Reporter's Notes to that
3 section.

4 Former subsection (e) – This provision has been relocated to Section 302.

5 Draft #1 contained an additional subsection, which stated: "This section does not prevent
6 a limited partner from bringing a direct action to enforce rights personal to that limited partner. A
7 limited partner may bring a direct action with or without an accounting." The Committee directed
8 that those issues be addressed elsewhere. See Section 1001.

9 **SECTION 305. LIMITED PARTNER'S AND FORMER LIMITED PARTNER'S**
10 **RIGHT TO INFORMATION.**

11 (a) On 10 ~~days~~ days' written demand to the limited partnership, a limited partner
12 may inspect and copy the required records during regular business hours in the limited
13 partnership's designated office. A partner making demand pursuant to this subsection need not
14 demonstrate, state, or have any particular purpose for seeking the information.

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

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

22 (2) the limited partner makes a written demand on the limited partnership,
23 describing with reasonable particularity the information sought and the purpose for seeking the

1 information; and

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

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

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

8 (2) when and where the limited partnership will provide that information;
9 and

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

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

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

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

18 (3) the person meets the requirements stated in ~~paragraphs (1) to (3) of~~
19 subsection (b).

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

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

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

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

10 (i) A limited partner or person dissociated as a limited partner may exercise the
11 rights stated in this section through an attorney or other agent. In that event, any limitations on
12 availability and use ~~limitations~~ under subsection (g) apply both to the limited partner or person
13 and to the attorney or other agent. The rights stated in this section extend to the legal
14 representative of a person under legal disability who is a limited partner or person dissociated as a
15 limited partner. The rights stated in this section do not ~~apply~~ extend to a transferee, ~~except that~~
16 but subsection (d) creates rights for a person dissociated as a limited partner and subsection (f)
17 recognizes the rights of the executor or administrator of a deceased limited partner.

18 **Reporter's Notes**

19 **Issues for Consideration:** whether to preserve the language in subsection (g) that gives a
20 limited partnership the unilateral right to impose use restrictions; whether to relocate Section 704
21 (Power of Estate of Deceased Partner) as a subsection of this section.

22 At its October, 1998 meeting, the Drafting Committee made substantial changes to this
23 Section, in accordance with the Committee's rejection of the two-tiered approach to required
24 records. See Reporter's Notes to Section 111. The Committee decided to retain Draft #3's
25 corporate-like provisions relating to process but to change the substance of the information

1 accessible for cause.

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

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

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

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

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

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

28 Subsection (b)(1) – Derived from RMBCA, § 16.02(c). That provision refers to "proper
29 purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment.
30 Draft #1 followed RMBCA § 16.02(c)(1) in imposing a "good faith" requirement. Subsequent
31 Drafts have omitted that specific requirement as redundant, given a limited partner's generally-
32 applicable duty of good faith.

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

1 Subsection (d) – For the notion that former owners should have access rights, see ULLCA
2 408(a). The reference to subsection (f) was new in the July, 1999 Draft and is explained below.

3 Subsection (f) – This subsection is new and has been added consonant with a decision
4 made by the Drafting Committee at its March, 1999 meeting. Reviewing Section 705 of Draft #4
5 [now Section 704], the Committee decided to reinstate RULPA's language as to the estate of a
6 deceased partner. That decision gives the estate considerably more informational rights than
7 those enjoyed by other dissociated limited partners. See Section 704.

8 Subsection (g) – Following discussion at the October, 1998 meeting, this subsection was
9 revised to authorize the partnership agreement to restrict availability (as well as use) of
10 information. The March, 2000 Draft relocates to Section 110 the provisions pertaining to the
11 partnership agreement. As revised, the subsection still has two noteworthy aspects:

- 12 i. It permits the general partners to impose use limitations, even if the partnership
13 agreement is silent. The Committee adopted this position at its the July, 1997
14 meeting.
- 15 ii. It imposes on the limited partnership the burden of proving the reasonableness of
16 any restriction.

17 Subsection (h) – At its October, 1998 meeting, the Drafting Committee directed the
18 Reporter to consider expanding this subsection to encompass costs a limited partnership incurs in
19 generating information under subsection (b). In fealty to RUPA and ULLCA, the subsection is
20 not expanded. *See* RUPA § 403(b) and ULLCA § 408(a) (charges limited to copying costs). The
21 phrase "limited to the costs of labor and material" has been added, following ULLCA. (The
22 RUPA provision refers to "covering the costs . . .")

23 Subsection (i) – At the Committee's March, 1998 meeting the Reporter was directed to
24 refer to ULLCA § 408(b) and provide comparable protections for the estate of a deceased
25 partner. New subsection (f) takes care of that issue.

26 **SECTION 306. LIMITED DUTIES OF LIMITED PARTNERS.**

27 (a) Except as ~~stated~~ otherwise provided in subsection (b), a limited partner does
28 not owe any fiduciary duty to the limited partnership or to any other partner.

29 **[two alternative different versions of subsection (b) follow;**
30 **Drafting Committee is to choose between them]**

31 **Version #1 (pro tanto; from ULLCA) – (b) A limited partner who pursuant to**

1 the limited partnership agreement exercises some or all of the rights of a general partner in the
2 management and conduct of the limited partnership's business is held to the standards of conduct
3 for a general partner to the extent that the limited partner exercises the managerial authority
4 vested in a general partner by this [Act].

5 **Version #2 (pro tanto) (inspired by RMBCA) – (b)** To the extent the
6 partnership agreement vests the discretion or powers of a general partner in a limited partner, that
7 limited partner has the duties of a general partner with respect to the vested discretion or powers.

8 **[end of different versions]**

9 (c) A limited partner shall discharge ~~the~~ duties to the partnership and the other
10 partners under this [Act] or under the partnership agreement and exercise ~~any~~ rights consistently
11 with the obligation of good faith and fair dealing. The obligation stated in this subsection
12 displaces any ~~common law or other~~ obligation of good faith and fair dealing at common law or
13 otherwise.

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

16 **Reporter's Notes**

17 **Issues for Consideration:** whether to approve Version #1 or #2 of subsection (b);
18 whether to delete or revise the second sentences of subsection (c); whether to relocate
19 subsections (c) and (d) to Article 1 where they would avoid duplication by referring to both
20 limited and general partners.

21 In Drafts before the July, 1999 Draft, this material appeared as Section 302A.

22 Subsection (a) – Draft #1 included the phrase "on account of that status" following the
23 word "not." The Drafting Committee deleted that phrase as unnecessary. A limited partner can
24 assume fiduciary obligations on account of some other relationship to the limited partnership. For
25 example, a limited partner who acts as a broker or attorney for the limited partnership will owe

the limited partnership fiduciary duties in that role. See also Section 113 (Dual Capacity).

Subsection (b), Version #1 – Derived from ULLCA § 409(h)(3). Like the ULLCA provision, this provision could be read to omit nonfeasance; i.e. a limited partner who is given rights but fails to exercise them would not be liable. In any event, this rule does not apply if the limited partner exercises powers under a separate agreement.

Re-RULPA does provide some protection against the “separate agreement” problem. A general partner is relieved from fiduciary duty only when a delegation occurs via the partnership agreement. See Section 408(f). When a separate agreement delegates power to a limited partner, that delegation will not discharge the general partner’s fiduciary duty.

Of course, a limited partner who enters a separate agreement will have whatever contractual duties that agreement provides. Moreover, if the agreement reflects or establishes a fiduciary relationship (e.g., an agency), that relationship will impose fiduciary duties as well.

Subsection (b), Version #2 – Derived (loosely) from RMBCA § 7.32(e). The “separate agreement” problem exists under this version as well.

Alternative to Subsections (a) and (b)– The Reporter's notes indicate that at the July, 1997 meeting there was some support for the following alternative:

A limited partner does not owe any fiduciary duty to the limited partnership or to any other partner, even if in accordance with the partnership agreement or other agreement the limited partner possesses and exercises some or all of the rights of a general partner in the management and conduct of the limited partnership's business.

Subsection (c) – The first sentence comes from RUPA § 404 (d). The second sentence follows the Committee's instructions.

Professor Ribstein has suggested that the second sentence will prevent courts from using common law cases to interpret the very vague concept of good faith and fair dealing. Larry E. Ribstein, “Limited Partnerships Revisited,” work in progress, draft of March 19, 1999. In any event, the second sentence adds significance to the following proposed Comment on good faith. (In Drafts ##1 and 4 this Comment appeared following Section 302A. In Drafts ## 2 and 3 the Comment appeared following Section 101. Underlining and strikeouts indicate changes to the proposed Comment made in Draft #3 and continued in subsequent drafts).

Draft Comment on Good Faith and Dealing: The obligation of good faith and fair dealing is *not* a fiduciary duty, does not command altruism or self-abnegation, and does not prevent a partner from acting in the partner's own self-interest. Courts should not use the obligation to change *ex post facto* the parties' or this [Act's] allocation of risk and power. To the contrary, the obligation should be used only to protect agreed-upon

1 arrangements from conduct that is manifestly beyond what a reasonable person could have
2 contemplated when the arrangements were made. The more open-ended is a grant of
3 power or discretion, the less plausible is a claim of breach of the obligation of good faith
4 and fair dealing.

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

15 Subsection (c) also appears in Section 406, pertaining to general partners. Relocating the
16 subsection to Article 1 would avoid the repetition.

17 Subsection (d) – Source: RUPA § 404(e). This provision also appears in Section 406,
18 pertaining to general partners. Relocating the provision to Article 1 would avoid the repetition.
19 Draft #1 contained the following statement, which the Committee deleted as more appropriate for
20 a Comment: "This section does not prevent a limited partner from assuming fiduciary or other
21 duties in some capacity other than limited partner."

22 **SECTION 307. PERSON ERRONEOUSLY BELIEVING ~~HIMSELF~~ ~~OR~~**
23 **~~HERSELF OR ITSELF~~ SELF LIMITED PARTNER.**

24 (a) Except as otherwise provided in subsection (b), a person who makes an
25 investment in a business enterprise and erroneously but in good faith believes that ~~he~~ ~~for she or it~~
26 the person has become a limited partner in the enterprise is not ~~bound by~~ liable for its obligations
27 by reason of making the investment, receiving distributions from the enterprise, or exercising any
28 rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

29 (1) causes an appropriate certificate of limited partnership, amendment, or
30 statement of correction to be signed and filed; or

1 (2) withdraws from future equity participation in the enterprise by signing
2 and filing in the [office of the Secretary of State] a statement of withdrawal under this section.

3 (b) A person who makes an investment of the kind described in subsection (a) is
4 liable to the same extent as a general partner to any third party who transacts business with the
5 enterprise (i) before the person withdraws and an appropriate statement of withdrawal is filed, or
6 (ii) before an appropriate certificate, amendment, or statement of correction is filed to show that
7 the person is not a general partner, but in either case only if the third party actually believed in
8 good faith that the person was a general partner at the time of the transaction.

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

14 **Reporter's Notes**

15 **Issues for Consideration:** whether Re-RULPA should include a “defective formation”
16 provision to protect a general partner who starts an enterprise erroneously believing the enterprise
17 to be an LLLP; whether this section should be rewritten in a more modern, straightforward style.

18 Source: RULPA § 304. In Drafts before the July, 1999 Draft, this material appeared at
19 Section 304.

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

25 Defective formation of LLLPs – Neither this provision nor any other in this Draft protects
26 a general partner who starts an enterprise erroneously believing the enterprise to be an LLLP.

1 This issue can be labeled "defective formation" and only arises with regard to full shield entities.
2 The Drafting Committee's decision to make LLLP status the Act's default setting increases the
3 importance of this issue. With an ordinary limited partnership, the general partner is always liable
4 for the business' debts and so the niceties of formation have little impact on a general partner's
5 liability.

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

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

17 Changes from RULPA § 304 – The following redlined version shows how this section
18 differs from RULPA § 304:
19
20

21 **SECTION 304 309. PERSON ERRONEOUSLY BELIEVING**
22 **~~HIMSELF [OR HERSELF]~~ SELF LIMITED PARTNER.**

23 (a) Except as otherwise provided in subsection (b), a person who
24 makes ~~a contribution to an investment in~~ a business enterprise and erroneously but
25 in good faith believes that ~~he [or she]~~ the person has become a limited partner in
26 the enterprise ~~is not a general partner in the enterprise and is not bound by~~ liable
27 for its obligations by reason of making the ~~contribution investment~~, receiving
28 distributions from the enterprise, or exercising any rights of or appropriate to a
29 limited partner, if, on ascertaining the mistake, ~~he [or she]~~ the person:

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

32 (2) withdraws from future equity participation in the
33 enterprise by ~~executing signing~~ and filing in the office of the [Secretary of State] a
34 ~~certificate declaring statement of~~ withdrawal under this section.

35 (b) A person who makes ~~a contribution~~ an investment of the kind
36 described in subsection (a) is liable to the same extent as a general partner to any
37 third party who transacts business with the enterprise (i) before the person
38 withdraws and an appropriate ~~certificate statement~~ is filed to show withdrawal, or
39 (ii) before an appropriate certificate, ~~amendment or statement of correction~~ is filed
40 to show that ~~he [or she]~~ the person is not a general partner, but in either case only
41 if the third party actually believed in good faith that the person was a general

1 partner at the time of the transaction.

2 (c) If a person makes a diligent effort in good faith to comply with
3 subsection (a)(1) and is unable to cause the appropriate certificate of limited
4 partnership or amendment to be executed and filed, the person has the right to
5 withdraw from the enterprise pursuant to subsection (a)(2) even if otherwise the
6 withdrawal would breach an agreement with others who are or have agreed to
7 become co-owners of the enterprise.

8 Subsection (a) – "Investment" replaces "contribution," because in this Draft "contribution"
9 is a defined term and relates to an investment in a de jure limited partnership. This provision is
10 not limited to that situation. As to the phrase "business enterprise" – even though the Committee
11 has decided that a limited partnership need not have a "business" purpose, the word "business"
12 should probably remain here. This provision addresses the personal liability that arises from co-
13 ownership of a would-be profit-making enterprise.

14 The deleted phrase "is not a general partner" is redundant to the extent the phrase is
15 intended to protect the would-be limited partner from personal liability to third parties.
16 Moreover, the phrase may be confusing in relation to Section 402 (General Partner Agent of
17 Limited Partnership). If this section is intended to override Section 401, this section should say
18 so explicitly. If not (which the Reporter thinks is and should be the case) the phrase "is not a
19 general partner" does not belong here.

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

24 Subsection (a)(2) – This change is intended to aid clarity by reserving the term
25 "certificate" for the certificate of limited partnership.

26 Subsection (b) – The phrase "to the same extent" is added to accommodate the possibility
27 that the certificate of limited partnership will make some or all general partners liable for the debts
28 of the limited partnership. The use of "any" rather than "a" covers situations in which the
29 certificate makes liable some but not all general partners. If at the relevant moment the limited
30 partnership is a LLLP, no personal liability results.

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

1 [ARTICLE] 4

2 GENERAL PARTNERS

3 SECTION 401. ADMISSION OF GENERAL PARTNERS. A person becomes a
4 general partner as provided in the partnership agreement, ~~with the consent of all the partners,~~
5 under Section ~~801(3)(ii)~~ 801(3)(B) following the dissociation of a limited partnership's last
6 general partner, ~~or~~ as the result of a conversion or merger under [Article] 11 or with the consent
7 of all the partners.

8 Reporter's Notes

9 Style issue – At its October, 1999 meeting, the Drafting Committee decided on the revised
10 formulation for this section and Section 301.

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

- 15 • all the rights and duties of a general partner as to the limited partnership and the
16 other partners;
- 17 • the powers of a general partner to bind the limited partnership under Section 402
18 and 403
- 19 • no power to sign records on behalf of the limited partnership for filing with the
20 [Secretary of State] (see Comment to Section 204(a)(7))

21 The certificate of limited partnership is consequently a far less powerful document that
22 envisioned in Draft #1. With regard to the status of general partners, the certificate merely serves
23 as notice that those persons so listed are general partners. See Section 103 (c) and (d). The
24 absence of a name is not affirmatively significant. Suppose, for example, that a third party
25 believes X to be a general partner, but the certificate of limited partnership does not list X as a
26 general partner. That omission does not dispositively undercut X's bona fides in the eyes of the
27 third party – even if the third party has reviewed the certificate. (It might be argued, however,
28 that such a third party has at least a duty to inquire further.)

1 At its March, 1999 meeting, the Drafting Committee deleted provisions that gave the
2 certificate power over the authority of general partners to transfer real property.

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

4 (a) Each general partner is an agent of the limited partnership for the purpose of
5 its business. An act of a general partner, including the execution of an instrument in the
6 ~~partnership~~ partnership's name, for apparently carrying on in the ordinary course the limited
7 ~~partnership~~ partnership's business or business of the kind carried on by the limited partnership
8 binds the limited partnership, unless the general partner ~~had no~~ did not have authority to act for
9 the limited partnership in the particular matter and the person with whom the general partner was
10 dealing knew, had received a notification, or had notice under ~~section 102(d)~~ Section 103(d) that
11 the general partner lacked authority.

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

15 **Reporter's Notes**

16 **Issues for Consideration:** whether subsection (a) appropriately balances the interests of
17 limited partners and third parties by negating a general partner's apparently/usual power when the
18 third party "knew, had received a notification, or had notice under section 103(d) that the general
19 partner lacked authority;" whether subsection (a) will continue to use the vague concept of
20 "authority."

21 Source: RUPA § 301. In Drafts before the July, 1999 Draft, this material appeared at
22 Section 403A.

23 Location of constructive notice provisions – Prior Drafts made this section subject to
24 former Section 208 (Effect of Information Contained in Certificate of Limited Partnership). Re-
25 RULPA now centralizes all constructive notice provisions in Section 103. See the Reporter's
26 Notes to Section 103. Subsection (a) now refers not only to knowledge and "notification" (as in

1 RUPA) but also to “notice under Section 103(d).”

2 Authority to transfer real estate – Like RUPA, prior Drafts specifically contemplated
3 statements granting or restricting a general partner’s authority to transfer real property and gave
4 special legal effect to those statements. See Draft #4, Sections 201(b) (authorizing the certificate
5 of limited partnership to contain such statements) and 208 (b) and (c) (detailing the effect of such
6 statements). At its March, 1999 meeting, the Drafting Committee decided that a limited
7 partnership’s tightly centralized management structure made such statements unnecessary.

8 Like prior Drafts, the March, 2000 Draft follows ULLCA in omitting any parallel to
9 RUPA § 302, Transfer of Partnership Property. RUPA § 302 derives from UPA § 10, and both
10 those sections address issues arising from the former aggregate aspect of *general* partnerships.

11 Allocating the risk of a general partner’s unauthorized acts – When a general partner acts
12 in an apparently/usual manner but without actual authority, both the third party and the entity are
13 at risk. The entity’s risk essentially devolves on the entity’s owners, even those who benefit from
14 a shield (e.g., limited partners, general partners in an LLP). Unauthorized conduct endangers
15 their equity.

16 The law must allocate the risk between the third party and the owners, and RUPA chose
17 to favor strongly the third party. Under RUPA § 301(1), a general partner’s apparently/usual act
18 binds the general partnership unless “the person with whom the partner was dealing knew or had
19 received a notification that the partner lacked authority.” Even if the third party “has reason to
20 know [of the lack of authority] from all of the facts known to the [third party] at the time in
21 question,” the partnership is bound. The quoted language is from RUPA’s definition of “notice.”
22 RUPA § 102(b)(3).)

23 RUPA thus tilts further toward the third party than did the UPA. *See* J. Dennis Hynes,
24 “Notice and Notification under the Revised Uniform Partnership Act: Some Suggested Changes,”
25 2 J. SMALL & EMERGING BUS. L. 299. UPA § 9(1) negates a general partner’s apparently/usual
26 power if “the person with whom [the partner] is dealing has knowledge of the fact that [partner]
27 has no . . . authority.” UPA § 3(1) states that “[a] person has ‘knowledge’ of a fact within the
28 meaning of this act not only when he has actual knowledge thereof, but also when he has
29 knowledge of such other facts as in the circumstances shows bad faith.”

30 Professor Hynes argues that RUPA is mistaken on this issue. *Id.* Whether or not RUPA
31 is correct, on this point Re-RULPA should not follow RUPA. The equities are different. In a
32 general partnership, absent a contrary agreement “each partner has equal rights in the
33 management and conduct of the partnership business.” RUPA § 401(f). Therefore, arguably at
34 least:

35 C the general partners collectively are better positioned than a third party to
36 determine whether an individual general partner is acting without authority;

1 C general partners are thus always “on notice” of the need to monitor their fellow
2 partners; and

3 C it is fair to bind the general partnership even when the third party has “notice” of
4 the lack of authority.

5 With a limited partnership, the situation is quite different. A general partner’s unauthorized
6 act puts the limited partners at risk, and they have less ability than the typical third party to
7 oversee individual acts by the general partner. A third party can always demand evidence of the
8 general partner’s authority, but limited partners have no significant “right to participate in the
9 management of the limited partnership,” Section 304(a), and no say over most “matter[s] relating
10 to the business of the limited partnership.” Section 406(a).

11 The Reporter therefore recommends that the last clause of subsection (a) be revised to
12 read “the person with whom the general partner was dealing had notice that the general partner
13 lacked authority.”

14 Ambiguous and conflicting meanings for “authority” – Draft #1 substituted the phrase “the
15 general partner had actual authority for the act or the limited partnership ratified the act” for
16 RUPA § 301(2)’s phrase “authorized by the other partners.” An endnote to Draft #1 explained
17 the substitution as follows:

18 The Comment to RUPA § 301 explains what RUPA means by “authority” in this
19 context. This draft merely takes RUPA’s explanation and puts that explanation
20 into the statute.

21 Draft #2 returned to the RUPA language, in accordance with the Drafting Committee’s
22 instructions at the July, 1997 meeting, and of course subsequent Drafts have continued that
23 approach.

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

34 The March, 2000 Draft revises subsection (b) to clarify that, absent a contrary provision of
35 the partnership agreement, the authorization must come from all the partners. This revision
36 responds to a question posed by the representative of the Style Committee.

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

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

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

11 **Reporter's Notes**

12 **Issue for Consideration:** whether this section will continue to use the vague concept of
13 "authority."

14 Source: RUPA § 305. In Drafts before the July, 1999 Draft, this material appeared at
15 Section 403B.

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

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

25 Subsection (b) – ULLCA omits this provision. Subsection (a) would suffice to cover
26 subsection (b), except that – according to the RUPA comments – subsection (a) includes apparent
27 authority while subsection (b) does not. According to the Comment to RUPA § 305(b), that

1 subsection's phrase "acting with authority of the partnership" refers only to "the scope of the
2 partner's actual authority." As to various meanings RUPA Comments ascribe to the word
3 authority, see the Reporter's Notes to subsection (a), above.

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

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

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

11 ~~(c) An obligation of a limited partnership incurred while the limited partnership is~~
12 ~~a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the~~
13 ~~obligation of the limited partnership. A general partner is not personally liable, directly or~~
14 ~~indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or~~
15 ~~acting as a general partner. This subsection applies despite anything inconsistent in the~~
16 ~~partnership agreement that existed immediately before the vote required to become a limited~~
17 ~~liability limited partnership under Section 304(b).~~

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

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

(1) a provision to that effect is contained in the certificate of limited partnership; and

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

Reporter's Notes

Source: ULLCA § 303(a) and (c). The phrase “or specified categories of general partners” does not appear in ULLCA § 303(a).

LLLP Status as the Act's Default Setting – At its October, 1999 meeting, the Drafting Committee voted to change the Act's "default setting" with respect to LLLP status. Under all prior drafts, a limited partnership could become a limited liability limited partnership simply by including a one line statement in the certificate of limited partnership. The March, 2000 Draft, in contrast, provides that a Re-RULPA limited partnership will be an LLLP unless the certificate of limited partnership provides otherwise. In this respect, Re-RULPA now parallels ULLCA. See ULLCA §§ 303(c) and 203(a)(7).

The Drafting Committee recognizes that this decision is important and controversial and plans to revisit the issue. The Drafting Committee’s decision on this point – like all other decisions made to date – is merely provisional.

Nonetheless, some strong arguments favor the Drafting Committee's current position. The overwhelming majority of limited partnerships formed under current law use indirect means to provide a liability shield for the general partner. Typically, the general partner is itself a corporation or a limited liability company. It therefore seems likely that almost every Re-RULPA limited partnership will be an LLLP.

Except in extraordinary circumstances, a statute's default setting should mirror the choices that most users of the statute would make on their own. It therefore seems logical to make LLLP status the default setting for Re-RULPA.

The Reporter is aware that some very experienced and knowledgeable practitioners currently oppose making LLLP status the default setting, and the Reporter is trying to understand in detail the rationale behind this opposition. The Reporter is also trying to identify situations in

1 which a knowledgeable practitioner would recommend to a person forming a limited partnership
2 that the general partner go “unshielded” vis á vis all creditors and obligees of the limited
3 partnership.

4 Subsection (b) – The Committee needs to consider what, if anything, the Act should say
5 about the doctrine of "piercing the [corporate] veil." The doctrine has little relevance for ordinary
6 limited partnerships, because, except in the most extraordinary circumstances, the general
7 partner's management control and personal liability render the doctrine moot. (Piercing remains
8 relevant, as a matter of corporate law, with regard to the shareholders of a corporate general
9 partner.)

10 Piercing is, however, an important issue with regard to LLLPs, because an LLLP has a
11 full, corporate-like liability shield. Following ULLCA, this draft does not directly mention
12 piercing. However, ULLCA § 303(b) does state: “(b) The failure of a limited liability company
13 to observe the usual company formalities or requirements relating to the exercise of its company
14 powers or management of its business is not a ground for imposing personal liability on the
15 members or managers for liabilities of the company.” That language makes sense only in
16 reference to piercing.

17 In any event, following ULLCA, RUPA and UPA, Section 107(a) of this draft provides
18 that “[u]nless displaced by particular provisions of this [Act], the principles of law and equity
19 supplement this [Act].” Piercing is an equitable doctrine.

20 Former Section 403C-3 (Liability of Purported Partner) – Beginning with the July, 1999
21 Draft, Re-RULPA omits this provision as unwarranted, because:

- 22 • a third party can use the public record to check assertions that a person is a general
23 partner in a limited partnership; and
- 24 • doctrines such as apparent authority, agency by estoppel and warranty of authority
25 will suffice to protect third parties.

26 **SECTION 405. ACTIONS BY AND AGAINST PARTNERSHIP AND** 27 **PARTNERS.**

28 (a) An action may be brought against the limited partnership and, to the extent not
29 inconsistent with Sections ~~103(a)~~ 104(a) and 404, any or all of the general partners may be joined
30 in the same action or in separate actions may be brought.

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

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

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

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

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

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

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

20 **Reporter's Notes**

21 Derived from RUPA § 307.

22 Effect on this section of using LLLP status as the Act's default setting – Much of this
23 section may be unnecessary if the Drafting Committee maintains its decision to use LLLP status

as the Act's default setting. Given the tentative nature of that decision, the March, 2000 Draft does not make major changes to the section.

SECTION 406. MANAGEMENT RIGHTS OF GENERAL PARTNERS.

(a) Each general partner has equal rights in the management and conduct of the limited partnership's business. Except for matters listed in Section 304(a) (~~rights of limited partners~~), any matter relating to the business of the limited partnership may be exclusively decided by the general partner; or, if there is more than one general partner, by a majority of the general partners.

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

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

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

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

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

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

partnership.

Reporter's Notes

Derived from ULLCA § 404 and RUPA § 401. In Drafts before the July, 1999 Draft, this material appeared at Section 403.

Subsection (a) – At its July, 1997 meeting, the Committee decided to use ULLCA's language for this provision. Accordingly, this paragraph follows ULLCA § 404(b)(1) and (2) essentially verbatim. ULLCA does not specifically address deadlock, i.e., when the decision-makers split 50-50 on an issue. In that situation, any proposed decision will fail, because a majority is more than 50%. The consequences of deadlock will depend on the seriousness of the situation. If the deadlock involves a crucial issue, a court might order dissolution under Section 802(a).

At its March, 1999 meeting, the Drafting Committee discussed (but did not decide) whether one of several general partners has the authority to commence and prosecute a lawsuit in the name of the limited partnership. The discussion arose during the Committee's review of Article 10, and in particular with regard to the question of whether a *general* partner may bring a derivative lawsuit. For an analysis of that particular issue, see the Reporter's Notes to Section 1002.

As for the broader question, Re-RULPA's provisions essentially follow RUPA's, with some complex results. That is:

C Section 402 determines whether a general partner has the *power* viz a viz third parties (including the court and other parties to the suit) to institute and prosecute the lawsuit.

C Section 406(a) determines whether a general partner has the *right* viz a viz the limited partnership to institute and prosecute the lawsuit. Common law doctrines of actual authority supplement this subsection. See Section 107. According to those doctrines, if: (i) the limited partnership has more than one general partner, and (ii) one of those general partners is contemplating initiating a suit but has reason to believe that other general partners may disagree, then (iii) the one general partner lacks the right to bring the suit without first receiving the approval of a majority of the general partners.

Of course, a partnership agreement may provide that a general partner has the right to bring suit without first receiving approval from, or even consulting, fellow general partners.

Due to the interplay between the *power* and the *right* to prosecute a lawsuit, a general partner who initially has the power may subsequently lose it. Suppose, for example, that:

- 1 ~ One of three general partners initiates a lawsuit in the name of the limited
2 partnership against one of the limited partnership's suppliers.
- 3 ~ The lawsuit fits within Section 402's apparently/usual rubric. Therefore, when the
4 summons and complaint are served and filed, the one general partner has the
5 apparently/usual power to bring the suit.
- 6 ~ When the other two general partners learn of the suit, they voice their strong
7 disapproval and then vote to withdraw the suit. The first general partner disagrees
8 and vows to continue the suit.
- 9 ~ The other two general partners make the circumstances known to the defendant
10 and the court and seek on the limited partnership's behalf to voluntarily dismiss the
11 lawsuit.

12 Assuming that the rules of civil procedure allow voluntary dismissal, the court should dismiss the
13 lawsuit. Under Section 406(a) and common law principles, the first general partner lacks the right
14 to continue the suit. Because this lack of "authority" is known to the court and defendant, under
15 Section 402(a) the first general partner lacks the power as well. As to whether the first general
16 partner could prosecute the suit as a derivative action, see Section 1002.

17 Under this analysis, a minority general partner lacks the actual authority to cause a limited
18 partnership to initiate a lawsuit against another general partner or an affiliate of another general
19 partner. Obviously, the minority partner will have reason to believe that the other general partner
20 will disagree. Except in the most extraordinary circumstances, a minority general partner who
21 uses the apparently/usual power to begin such a suit will be engaging in vexatious litigation. The
22 appropriate course is a derivative lawsuit. See Section 1002.

23 Subsection (b) – Source: ULLCA § 404(d). The same provision appears in Section
24 304(c). The repetition follows from Re-RULPA's bifurcated approach to limited and general
25 partners. Perhaps this provision should be expanded to include action under the partnership
26 agreement.

27 Subsection (c) – Source: ULLCA § 404(e). The same provision appears in Section
28 304(d). The repetition follows from Re-RULPA's bifurcated approach to limited and general
29 partners.

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

34 Subsection (e) – Source: RUPA § 401(d).

1 Subsection (f) – Source: RUPA § 401(e).

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

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

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

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

15 (1) in the limited partnership's required office, the required records; and
16 (2) at a reasonable location specified by the limited partnership any other
17 records maintained by the limited partnership regarding the limited partnership's business, affairs,
18 and financial condition.

19 (b) Each general partner and the limited partnership shall furnish to a general
20 partner:

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

24 (2) on demand, any other information concerning the limited partnership's

1 business and affairs, except to the extent the demand or the information demanded is unreasonable
2 or otherwise improper under the circumstances.

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

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

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

9 (3) the person meets the requirements stated in ~~paragraphs (1) to (3) of~~
10 Section 305(b).

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

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

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

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

(h) A general partner or person dissociated as a general partner may exercise the rights stated in this section through an attorney or other agent. In that event, any limitation on availability and use ~~limitations~~ under subsection (f) apply to the attorney or other agent as well as to the general partner or person dissociated as a general partner. The rights stated in this section extend to the legal representative of a person who has dissociated as a general partner ~~due to~~ because of death or legal disability. The rights stated in this section do not ~~apply~~ extend to a transferee, ~~except that~~ but subsection (c) creates rights for a dissociated general partner and subsection (e) recognizes the rights of the executor or administrator of a deceased limited partner.

Reporter's Notes

Issue for Consideration: whether this section and Section 305 should be combined and relocated to Article 1.

In Drafts before the July, 1999 Draft, this material appeared as Section 403E.

This Section and Section 305 have substantial overlap, which could be reduced by combining the sections. The combined section might be captioned "Access to Required Records and Other Information" and follow the section listing required records, i.e. Section 110. In that event, current subsection (b), obligating a general partner to volunteer information to other general partners, could be relocated to Section 408 (General Standards of General Partner Conduct).

Draft #4 revised this Section in light of the revisions made in Section 305, and for the same reason the July, 1999 Draft added subsection (e). For detailed explanation, see the Reporter's Notes to Section 305.

Subsection (a) – In contrast to Draft #3, Draft #4 stated explicitly that a general partner need have no particular purpose to examine or copy existing records. At the March, 1999 meeting, no one objected to this language. Subsequent drafts therefore preserve it.

Subsection (b) – Source: RUPA § 403(c). The RUPA provision also requires disclosure "to the legal representative of a deceased partner or partner under legal disability." See Reporter's Notes to Section 305(f).

Subsection (b) states a very broad disclosure obligation. If the partnership agreement authorizes a general partner to compete with the limited partnership, it would be wise to explicitly

1 protect from mandated disclosure confidential information generated in that competing enterprise.

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

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

12 Subsection (c) – This provision mirrors Section 305's approach to former limited partners.

13 Subsection (e) – For an analysis of this language, see the Reporter's Notes to Section
14 305(f).

15 Subsection (f) – Following discussion at the October, 1998 meeting, this subsection was
16 revised to authorize the partnership agreement to restrict availability (as well as use) of
17 information. The March, 2000 Draft relocates to Section 110 the provisions pertaining to the
18 partnership agreement. As revised, the subsection still has two noteworthy aspects:

19 i. It permits the general partners to impose use limitations, even if the partnership
20 agreement is silent. The Committee adopted this position at its the July, 1997
21 meeting.

22 ii. It imposes on the limited partnership the burden of proving the reasonableness of
23 any restriction.

24 Subsection (g) – No charge is allowed for current general partners, because in almost all
25 cases they would be entitled to reimbursement under Section 406(d).

26 Subsection (h) – At the Committee's March, 1998 meeting the Reporter was directed to
27 refer to ULLCA § 408(b) and provide comparable protections for the estate of a deceased
28 partner. See Reporter's Notes to Section 305.

29 **SECTION 408. GENERAL STANDARDS OF GENERAL PARTNER'S**
30 **CONDUCT.**

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

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

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

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

13 (3) to refrain from competing with the limited partnership in the conduct of
14 the limited ~~partnership~~ partnership's business before the dissolution of the limited partnership.

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

19 (d) A general partner shall discharge the duties to the partnership and the other
20 partners under this [Act] or under the partnership agreement and exercise any rights consistently
21 with the obligation of good faith and fair dealing. The obligation stated in this subsection
22 displaces any ~~common law or other~~ obligation of good faith and fair dealing at common law or

1 otherwise.

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

5 (f) A general partner is relieved of liability imposed by law for violation of the
6 standards prescribed by subsections (b) through (e) to the extent of the managerial authority
7 delegated to one or more of the limited partners by the partnership agreement.

8 **Reporter's Notes**

9 **Issues for Consideration:** whether subsection (a)'s restrictive approach to fiduciary duty
10 is appropriate, in light of the limited partners' dependence on the general partners; whether a
11 general partner's non-compete obligation should end at dissolution, in light of the limited
12 partners' dependence on the general partners; whether the second sentence of subsection (d)
13 should be retained; whether the language added to subsection (f) properly clarifies that provision;
14 whether subsection (f) should also apply when the delegation is to one or more *general* partners.

15 Source: RUPA § 404.

16 Subsection (a) – In general, the extent of a person's fiduciary duties tends to correspond
17 with the amount of power that person has over the interests of the person to whom the duties are
18 owed. Given the availability of LLP status, a general partner in a general partnership has less
19 power over the interests of fellow partner than does a general partner in a limited partnership. In
20 a general partnership, absent a contrary agreement all the partner have equal management rights,
21 RUPA § 401(f), and therefore the ability to monitor and even control their co-partners. In
22 contrast, limited partners are passive and general partners have correspondingly greater power.
23 See Sections 304 and 406. Arguably, therefore, RUPA's approach is too narrow for Re-
24 RULPA.

25 The reference to "the other partners" is not intended to blur the distinction between direct
26 and derivative claims. See Section 1001(b).

27 Subsection (b)(3) – This provision comes essentially verbatim from RUPA, but the
28 Reporter questions whether RUPA's permissive approach – ending the non-compete duty when
29 the partnership dissolves – fits a limited partnership. When a general partnership dissolves, absent
30 a contrary agreement each partner who has not wrongfully dissociated has an equal right to
31 participate in winding up. RUPA § 803(a). If one partner chooses to compete with the
32 partnership during winding up, the other partners can look out for the interests of the partnership.

1 With a limited partnership, in contrast, the limited partners are passive and consequently more
2 vulnerable.

3 Subsection (d) – The second sentence was new in the July, 1999 Draft and was added to
4 correspond with Section 306(c). For a discussion of that language and the concept of good faith,
5 see the Reporter’s Notes to that section.

6 Subsection (f) – Source: ULLCA § 409(h)(4). The phrase “one or more of” was new in
7 the July, 1999 Draft and does not appear in ULLCA. The added language makes clear that the
8 subsection applies whether the delegation is to limited partners collectively, to one or more
9 classes of limited partners, or to one or more particular limited partners.

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

13 RUPA § 404(f) has been omitted, because Section 112 covers the topic. RUPA § 404(f)
14 provides:

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

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

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

23 In this draft, Section 803(b)(1) covers the issue addressed by RUPA § 404(g).

24 [ARTICLE] 5

25 CONTRIBUTIONS, PROFITS, AND DISTRIBUTIONS

26 **SECTION 501. FORM OF CONTRIBUTION.** A contribution of a partner may
27 consist of tangible or intangible property or other benefit to the limited partnership, including

1 money, promissory notes, services performed, or other agreements to contribute cash or property,
2 or contracts for services to be performed.

3 **Reporter's Notes**

4 Per the Committee's instructions at its March, 1998 meeting, this language (added in Draft
5 #3) is taken, essentially verbatim, from ULLCA § 401. RULPA § 501 provides: "The
6 contribution of a partner may be in cash, property, or services rendered, or a promissory note or
7 other obligation to contribute cash or property or to perform services." Both RULPA's language
8 and the new language partially overlap Section 102(3)'s definition of "contribution." That overlap
9 is present in RULPA as well.

10 **SECTION 502. LIABILITY FOR CONTRIBUTION.**

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

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

18 (c) The obligation of a partner to make a contribution or return money or other
19 property paid or distributed in violation of this [Act] may be compromised only by consent of all
20 partners. A creditor of a limited partnership who extends credit or otherwise acts in reliance on an
21 obligation described in subsection (a), and without notice of any compromise under this
22 subsection, may enforce the original obligation.

23 **Reporter's Notes**

24 **Issue for Consideration:** whether subsection (b) should be expanded to apply to a person

1 who has promised to make a contribution, whose admission as a partner is contingent on making
2 that contribution and who fails to make the contribution.

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

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

9 Deleting the writing requirement will make more open-ended litigation about allegedly
10 promised contributions. *See, e.g., Wilson v. Friedberg*, 473 S.E.2d 854, 857, n. 3 (S.C.App.
11 1996; *cert. granted June 4, 1997*) (invoking the writing requirement of current law and rejecting
12 limited partners' claim that general partner had breached an oral promise to contribute).

13 Subsection (b) – At its March, 1998 meeting, the Committee decided to begin a new
14 subsection here. The separation makes clear that the obligation to pay money applies whenever,
15 and for whatever reason, the partner fails to make a required in-kind contribution. The reference
16 to required records does not appear in ULLCA, because ULLCA has no required records
17 provision.

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

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

24 **SECTION 503. ALLOCATION OF PROFITS AND LOSSES.** The profits and losses
25 of a limited partnership ~~shall be~~ are allocated among the partners on the basis of the value, as
26 stated in the required records, of the contributions made by each partner to the extent those
27 contributions have been received by the limited partnership.

28 **Reporter's Notes**

29 **Issue for Consideration:** whether the revised language does, as the Reporter asserts,

1 produce the same results as the more complicated formulation of current law.

2 The July, 1999 Draft stated a much simpler formulation than RULPA and previous drafts
3 of Re-RULPA. The October, 1999 meeting did not consider this section, and the March, 2000
4 Draft continues the language first proposed in the July, 1999 Draft.

5 The March, 2000 Draft allocates according to contributions received *without reference to*
6 *the return of contributions*. Both RULPA and ULLCA use the concept of returned contributions,
7 but RULPA's definition of the concept is, at best, abstruse and ULLCA provides no definition.
8 See RULPA § 608(c) and ULLCA § 806(b).

9 Re-RULPA's reformulation is not substantive. So long as a limited partnership applies the default
10 rules on distributions, Section 504, the profit allocations under the March, 2000 Draft will be
11 identical to the allocations under the far more complex formulation of the current law and prior
12 Drafts.

13 At its March, 1998 meeting, the Committee discussed substituting the phrase "in
14 proportion to" for the phrase "on the basis of" in the first sentence in order to handle situations in
15 which all contributions have been returned. The Reporter does not recall a decision having been
16 reached on this point. The point is now moot.

17 **SECTION 504. SHARING OF DISTRIBUTIONS.** Any distributions made by a
18 limited partnership ~~shall be~~ are in proportion to the partners' allocation of profits and losses in
19 effect when the limited partnership decides to make the distribution.

20 **Reporter's Notes**

21 Re-RULPA differs from RULPA in directly linking the distribution allocation to the profit
22 and loss allocation. The result is the same under RULPA, absent some contrary agreement,
23 because RULPA states identical rules for allocating profits and losses and sharing distributions.
24 See RULPA §§ 503 and 504. Under Re-RULPA, any change in the default rule on profit and
25 loss allocation will automatically change the distribution sharing rule.

26 Draft #2 included language establishing a formal mechanism by which a limited partnership
27 would announce distributions. At its March, 1998 meeting, the Committee rejected that
28 language. In Drafts ##3 and 4, the Section referred to the declaration of a distribution. The July,
29 1999 Draft removed the concept of declaration.

1 **SECTION 505. INTERIM DISTRIBUTIONS.** A partner ~~has no~~ does not have a right
2 to any distribution before the dissolution and winding up of the limited partnership; unless the
3 limited partnership decides to make an interim distribution.

4 **Reporter's Notes**

5 Re-RULPA's major change from RULPA § 601 is the elimination of any reference to a
6 partner's "put" right. In the default mode that right no longer exists. Other changes are stylistic
7 or to conform with this Draft's approach to the powers of a partnership agreement.

8 Although it will be the limited partnership that actually makes any interim distributions, it
9 will be the general partners who decide whether interim distributions will be made. See Section
10 406(a).

11 **SECTION 506. NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION.** A
12 person has no right to receive any distribution on account of dissociation.

13 **Reporter's Notes**

14 In Drafts before the July, 1999 Draft, this material appeared at Section 604. (In Draft #2
15 this provision read: "A partner's dissociation does not entitle that partner to any distribution."
16 The change reflects a style suggestion made by a Committee member at the March, 1998
17 meeting.)

18 Under Sections 602 (Effect of Dissociation as a Limited Partner) and 605 (Effect
19 Dissociation as a General Partner), the person's status degrades to that of a transferee.

20 **SECTION 507. DISTRIBUTION IN KIND.** A partner has no right to demand or
21 receive any distribution from a limited partnership in any form other than cash. A limited
22 partnership may distribute an asset in kind, subject to Section 813(b) and only to the extent that
23 each partner receives a percentage of the asset equal to the partner's share of distributions.

24 **Reporter's Notes**

Issue for Consideration: whether the section's second sentence accurately restates the second sentence of RULPA § 605.

Derived from RULPA § 605. In Drafts before the July, 1999 Draft, this material appeared at Section 605.

The second sentence was new in the July, 1999 Draft. The second sentence of RULPA § 605 states:

A partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

The July, 1999 Draft revised that language so as to accommodate Section 813(b) (which requires liquidating distributions to be made in cash) and to express more directly and explicitly the restrictions of RULPA § 605's second sentence.

SECTION 508. RIGHT TO DISTRIBUTION. At the time 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, ~~except that~~ . 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 last sentence does not appear in RULPA. In Drafts before the July, 1999 Draft, this material appeared at Section 606.

The reference to "dissociated partner" encompasses circumstances in which the partner is gone and all that remains are that dissociated partner's transferable interests.

SECTION 509. LIMITATIONS ON DISTRIBUTION.

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

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

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

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

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

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

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

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

21 ~~(i)~~ (A) the distribution is authorized, if the payment occurs within
22 120 days after that date; or

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

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

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

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

Reporter's Notes

Issue for Consideration: whether to retain the "reasonable" care standard in subsection (c)

This section is derived mostly from ULLCA § 406, which appears to have derived, almost verbatim, from RMBCA § 6.40. In Drafts before the July, 1999 Draft, this material appeared at Section 607.

Subsection (a) – ULLCA § 406 does not include this provision, but ULLCA § 407 (Liability for Unlawful Distributions) establishes personal liability for anyone "who votes for or assents to a distribution made in violation of . . . the articles of organization, or the operating agreement." Similarly, RULPA § 608(b) imposes consequences for receiving a return of contribution "in violation of the partnership agreement." It makes for cleaner drafting to directly prohibit distributions that violate the partnership agreement.

Subsection (b)(1) – Source: ULLCA § 406(a)(1).

1 Subsection (b)(2) – Source: ULLCA § 406(a)(2).

2 Subsection (c) – Source: ULLCA § 406(b). N.b. – this subsection imposes a more
3 rigorous standard of care than the "gross negligence" standard applicable under Section 408(c).
4 For further discussion on this point, see Reporter's Notes to Section 510(a).

5 Subsection (d) – Source: ULLCA § 406(c).

6 Subsection (d)(1) – The RMBCA has an alternate date, if earlier – when the owner being
7 redeemed ceases to be an owner. The Comment to ULLCA § 406 does not explain why ULLCA
8 omits the alternate date.

9 Subsection (d)(2) – The RMBCA has another category – distributions of indebtedness not
10 involved in a redemption. The Comment to ULLCA § 406 does not explain why ULLCA omits
11 this additional category.

12 Subsection (e) – This subsection and Section 508 refer to different things. This subsection
13 refers to indebtedness issued as a distribution. Section 508 refers to the obligation that exists
14 when a limited partnership has declared but not yet made a distribution. In contrast to Section
15 508, this subsection contains no explicit set-off right. Such a right might interfere with
16 negotiability.

17 Subsection (g) – This provision is stated as a separate subsection, to make clear that
18 "indebtedness" is not limited to the types of indebtedness referred to in the immediately preceding
19 sentence – i.e., "indebtedness [whose terms] provide that payment of principal and interest are
20 made only to the extent that a distribution could then be made to partners under this section."

21 **SECTION 510. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

22 (a) A general partner who votes for or assents to a distribution made in violation
23 of Section 509 is personally liable to the limited partnership for the amount of the distribution
24 which exceeds the amount that could have been distributed without the violation if it is established
25 that in voting for or assenting to the distribution the general partner failed to comply with Section
26 509(c) or ~~Section~~ 408.

27 (b) A partner or transferee who knew a distribution was made in violation of

1 Section 509 is personally liable to the limited partnership, but only to the extent that the
2 distribution received by the partner or transferee exceeded the amount that could have been
3 properly paid under Section 509.

4 (c) A general partner against whom an action is brought under subsection (a) may
5 ~~implead in the action any~~:

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

9 (2) implead in the action any person who received a distribution in
10 violation of subsection (b) and ~~may~~ compel contribution from that person in the amount that
11 person received in violation of subsection (b).

12 (d) A proceeding under this section is barred unless it is commenced within two
13 years after the distribution.

14 **Reporter's Notes**

15 **Issues for Consideration:** whether transferees should be subject to recapture liability.

16 Re-RULPA replaces RULPA's antiquated "clawback" provisions with a more modern
17 approach derived from RMBCA § 8.33(a) and ULLCA § 407(a). (The ULLCA provision closely
18 follows the RMBCA provision.) In Drafts before the July, 1999 Draft, this material appeared at
19 Section 608.

20 Caption – RMBCA § 8.33 and ULLCA § 407 both refer to "Unlawful" distributions, but
21 that term fits poorly with liability imposed for distributions that merely breach the partnership
22 agreement or some comparable document (e.g., a corporation's articles of incorporation, an LLC's
23 articles of organization or operating agreement).

24 Subsection (a) – Section 408 contains the general duties of general partners. Section
25 509(c) imposes a separate duty with regard to reliance on financial statements, accounting
26 principles, etc.

1 N.b. – section 509(c) imposes a higher standard of care than does Section 408. This
2 anomaly does not exist under the RMBCA (from which both this draft and ULLCA derive their
3 respective provisions on liability for improper distributions). The RMBCA's general standard of
4 care is ordinary care, RMBCA § 8.30(a)(2), not the mere avoidance of gross negligence. ULLCA
5 does not *expressly* contain this anomaly. The ULLCA provision on "Limitations on distributions"
6 states a reasonableness standard with regard to reliance on financial statements, accounting
7 principles, etc., ULLCA § 406(b), but the ULLCA provision on "Liability for unlawful
8 distributions" makes no reference to that standard. ULLCA § 407.

9 The Reporter views that approach as anomalous, and, moreover, believes that the
10 reasonableness standard is appropriate in a provision aimed at protecting creditors. Therefore the
11 March, 2000 Draft (like previous drafts) deviates from ULLCA in this regard.

12 Subsection (b) – The July, 1999 Draft made transferees subject to liability, and the March,
13 2000 Draft continues that approach..

14 Subsection (c) – This subsection does not allow a limited partner to implead anyone else,
15 because a limited partner's liability is limited to the amount by which the limited partner's
16 distribution exceeded the permissible amount. Following ULLCA, Draft #2 referred to "this
17 section." At its March, 1998 meeting, the Committee approved the narrower reference to
18 subsection (a).

19 Subsection (c)(2) – Source: ULLCA § 407(c). Consistent with the change to subsection
20 (b) in the July, 1999 Draft, this paragraph encompasses transferees.

21 The ULLCA language is a bit imprecise. For example, strictly speaking, subsection (b)
22 does not establish a prohibition that can be violated; it states a remedy. The implied prohibition is
23 against receiving an improper distribution while knowing that the distribution is improper.

24 Moreover, § 407(c)(2) refers first to "members" and then to "the member." It is important
25 to make clear that the limitation applies to each member severally, not to all members jointly.

26 Subsection (d) – This subsection follows ULLCA § 407(d), which differs from the
27 RMBCA. Under RMBCA § 8.33(c) the clock runs from "the date on which the effect of the
28 distribution [is] measured" under the provision limiting distributions. The Comments to ULLCA
29 do not explain ULLCA's departure from the RMBCA.

30 [ARTICLE] 6

31 DISSOCIATION

1 **SECTION 601. DISSOCIATION AS A LIMITED PARTNER.**

2 (a) A person ~~has no~~ does not have a right to dissociate as a limited partner before
3 the termination of the limited partnership.

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

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

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

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

12 (4) the person's expulsion as a limited partner by the unanimous vote of the
13 other partners if:

14 ~~(i)~~ (A) it is unlawful to carry on the limited ~~partnership~~ partnership's
15 business with that person as a limited partner;

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

19 ~~(iii)~~ (C) the person is a corporation and, within 90 days after the
20 limited partnership notifies the person that it will be expelled as a limited partner because it has
21 filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to
22 conduct business has been suspended by the jurisdiction of its incorporation, there is no

1 revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct
2 business; or

3 ~~(iv)~~ (D) the person is a limited liability company or partnership that
4 has been dissolved and whose business is being wound up;

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

7 ~~(i)~~ (A) the person engaged in wrongful conduct that adversely and
8 materially affected the limited ~~partnership~~ partnership's business;

9 ~~(ii)~~ (B) the person willfully or persistently committed a material
10 breach of the partnership agreement or of the obligation of good faith and fair dealing under
11 Section 306(c); or

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

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

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

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

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

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

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

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

Reporter's Notes

Issues for Consideration: whether to create a separate Article for provisions relating to
partner dissociation; whether to revise subsection (b)(4)(C).

In Drafts before the July, 1999 Draft, this material appeared at Section 603.

Organizational issue – The causes of limited partner dissociation substantially overlap the
causes of general partner dissociation. That overlap could be avoided (or, rather, exploited) by
having one section captioned "Partner Dissociation." That section would list separately events
that cause dissociation of any partner and events that cause dissociation only for general partners.

Substantive issues – As decided by the Drafting Committee at its March, 1998 meeting,
Re-RULPA adopts the RUPA dissociation provision essentially verbatim, except for the omission
of provisions inappropriate to limited partners. At its October, 1998 meeting, the Committee
discussed whether limited partners should lack the power as well as the right to withdraw by
express will. To the best of the Reporter's recollection, the Committee decided to preserve that
power in the default mode but to allow the partnership agreement to negate the power. *See*
Section 110(b)(7) and Reporter's Notes to that paragraph.

Subsection (b)(4)(C) – Suppose a corporate limited partner is dissolved and terminated,
but the other partners cannot muster a unanimous vote to expel. Does the limited partnership
continue with a non-existent limited partner? Are the remaining partners forced to seek
dissolution under Section 802?

Subsection (5) – Following RUPA, this provision originally included the phrase "or
another partner." The Reporter recommended deleting the phrase, out of concern that the phrase
would invite confusion as to the distinction between direct and derivative claims and undermine
the limited partner's authority to manage the business. At its March, 1998 meeting, the
Committee accepted the Reporter's recommendation.

1 Subsection (b)(5)(C) – In RUPA the concluding phrase is "carry on the business in
2 partnership with the partner." Given the possible dual status of a general partner in a limited
3 partnership, RUPA's phrase "in partnership with the partner" would be overbroad in Re-RULPA.

4 In contrast to the Re-RULPA provision on dissociation as a general partner, this provision
5 does not provide for dissociation on account of bankruptcy or insolvency.

6 Subsection (b)(6) – In contrast to the provision on dissociation as a general partner, this
7 provision does not provide for dissociation on account of an individual's incompetency.

8 Subsection (b)(9) – This paragraph is not as necessary here as in the provision on
9 dissociation as a general partner. The paragraph appears here to avoid confusion likely to result
10 from an absence of parallelism.

11 **SECTION 602. EFFECT OF DISSOCIATION AS A LIMITED PARTNER.**

12 Upon a person's dissociation as a limited partner,

13 (1) subject to section 704, the person has no further rights as a limited partner;

14 (2) the person's obligation of good faith and fair dealing as a limited partner under
15 Section 306(c) continues only as to matters arising and events occurring before the dissociation;

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

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

21 **Reporter's Notes**

22 **Issues for Consideration:** whether this section should contain a rule to parallel Section
23 604(c) (stating that a general partner who dissociates before the termination of the limited
24 partnership is liable to the limited partnership and to other partners for any damages caused by the
25 dissociation).

26 In Drafts before the July, 1999 Draft, this material appeared at Section 603A.

1 Paragraph (1) – Derived from RUPA § 603(b)(1). At its October, 1998 meeting, the
2 Drafting Committee directed that this paragraph be subject to the rights of the estate of a
3 deceased partner. Section 704 states those rights.

4 Paragraph (2) – Section 605 (Effect of Dissociation as a General Partner) has no parallel
5 provision, because RUPA § 603(b)(3) does not refer to the duty of good faith and fair dealing.

6 Paragraph (3) – Section 605(4) contains parallel language pertaining to a person's
7 dissociation as a general partner. The Reporter's Notes to that provision explain the language in
8 detail.

9 Paragraph (4) – Discussion at the Committee's March, 1998 meeting suggested the need
10 for this type of provision with regard to limited partners. The language is included in Section 605
11 as well, to preclude any misunderstanding that might result from a lack of parallel treatment. The
12 word "discharge" is derived from RUPA § 703(a).

13 In Draft #4 this provision referred to any obligation “which pertains to the time during
14 which the person was a general partner.” That language seems ambiguous, and the July, 1999
15 Draft substituted the concept of incurring an obligation. The latter concept is used elsewhere in
16 the [Act].

17 At its March, 1998 meeting, the Committee voted to delete subsection (b), which had
18 provided:

19 (b) A limited partner who dissociates before the termination of the limited
20 partnership is liable to the limited partnership and to other partners for any
21 damages caused by the dissociation.

22 Compare Section 605(c)(stating the rule for persons who dissociate as general partners).

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

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

28 (2) an event agreed to in the partnership agreement as causing the person's

1 dissociation as a general partner;

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

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

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

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

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

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

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

20 (i) (A) the person engaged in wrongful conduct that adversely and
21 materially affected the limited partnership affairs;

22 (ii) (B) the person willfully or persistently committed a material breach of

the partnership agreement or of a duty owed to the partnership or the other partners under
Section 408; or

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

(6) the person's:

~~(i)~~ (A) becoming a debtor in bankruptcy;

~~(ii)~~ (B) ~~executing~~ execution of an assignment for the benefit of creditors;

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

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

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

~~(i)~~ (A) the person's death;

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

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

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

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

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

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

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

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

Reporter's Notes

Issues for Consideration: whether to combine this section with the section on dissociation as a limited partner; whether paragraph (4)'s reference to "vote" should be changed to "consent"; whether expulsion by unanimous consent should exclude from the vote/consent any partner who is an affiliate of the general partner being expelled; whether paragraph (4)'s expulsion provision should be retained; whether paragraph (4)(C) is correct in requiring a unanimous vote to expel a corporate general partner whose existence has terminated.

Source: RUPA § 601. In Drafts before the July, 1999 Draft, this material appeared as Section 602.

Strictly speaking, general partner dissociation involves the dissociation of a person *as a general partner* rather than the dissociation *of a general partner*. This distinction, adopted at the Committee's March, 1998 meeting, is important because a person may be simultaneously a general and limited partner. *See* Section 113 (Dual Capacity). Dissociation therefore applies to the

1 capacity rather than to the person.

2 Paragraph (1) – This provision could be problematic if a limited partnership has a sole
3 general partner and no employees or other agents of its own. Whom does the would-be
4 withdrawing general partner notify? Telling every limited partner will not suffice, because “[t]he
5 fact that a limited partner has no power to bind the limited partnership means that information
6 possessed by a limited partner is not attributed to the limited partnership.” Section 302,
7 Reporter’s Notes. The same problem might exist under ULLCA § 601(1) when the LLC has one
8 manager, who is a member, and that member-manager wishes to dissociate as a member.

9 Paragraph (4) – At its March, 1998 meeting, the Committee discussed but did not decide
10 whether affiliates of the would-be expelled person should be excluded from the vote. Query –
11 should "vote" be changed to "consent"? Given that Section 406(b) provides that “Acting
12 requiring the consent or vote of general partners under this [Act] may be taken without a
13 meeting,” what is the difference between “consent” and “vote”?
14

15 Paragraph (4)(C) – Suppose a corporate general partner is dissolved and terminated, but
16 the other partners cannot muster a unanimous vote to expel. Does the limited partnership
17 continue with a non-existent general partner? Are the remaining partners forced to seek
18 dissolution under Section 802?

19 Paragraph (5) – Following RUPA, this provision originally permitted the application to
20 come either from the limited partnership "or another partner." The Reporter recommended
21 deleting the latter reference, out of concern that the reference would invite confusion as to the
22 distinction between direct and derivative claims and undermine the general partner's authority to
23 manage the business. At its March, 1998 meeting, the Committee accepted the Reporter's
24 recommendation.

25 Paragraph (5)(C) – In RUPA the concluding phrase is "carry on the business in partnership
26 with the partner." Given the possible dual status of a general partner in a limited partnership,
27 RUPA's phrase "in partnership with the partner" would be overbroad in Re-RULPA.

28 Paragraph (7)(B) – In this respect, in the default mode a general partner has fewer rights
29 than a limited partner. If a guardian or general conservator is appointed for a limited partner, the
30 limited partner is not dissociated and the guardian or conservator may exercise the limited
31 partner's rights *ad infinitum*. For a general partner, in contrast, the appointment causes
32 dissociation, which in turns relegates the dissociated general partner to a mere transferee of the
33 transferable interest associated with the general partnership interest.

34 Paragraph (8) – RUPA's approach, replicated here, might seem anomalous when
35 compared with the status of a general partner who transfers "all or substantially all of that
36 partner's transferable interest in the partnership." RUPA § 601(4)(ii), incorporated in Re-RULPA
37 as section 602(4)(B). In that latter event, dissociation occurs only upon "the unanimous vote of
38 the other partners." Why should a harsher rule apply to a trust, especially if the distribution of the

1 trust's transferable interest was foreseeable (e.g., ordained by the terms of the trust) at the time
2 the trust became a general partner? At the March, 1998 meeting, Committee members explained
3 this approach as beneficial to the trust, since the trustee will not wish to remain a general partner
4 once that trust has no further economic interest in the limited partnership.

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

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

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

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

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

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

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

15 (iii) (C) the person is dissociated as a general partner by becoming a
16 debtor in bankruptcy; or

17 (iv) (D) in the case of a person ~~who~~ that is not an individual, trust
18 other than a business trust, or estate, the person is expelled or otherwise dissociated as a general
19 partner because it willfully dissolved or terminated.

20 (c) A person who wrongfully dissociates as a general partner is liable to the
21 limited partnership and, subject to Section 1001, to the other partners for damages caused by the
22 dissociation. The liability is in addition to any other obligation of the general partner to the
23 limited partnership or to the other partners.

Reporter's Notes

Issue for Consideration: whether subsection (b)(1) should be revised so that a dissociation that breaches the duty of good faith is wrongful.

In Drafts before the July, 1999 Draft, this material appeared at 602A.

Subsection (b)(1) – This language, taken verbatim from RUPA, limits and may even preclude remedies if a general partner's dissociation “merely” breaches the partner's obligation of good faith. Consider subsection (c), under which wrongful dissociation gives rise to a remedy, in light of the interpretative maxim of *expressio unius est exclusio alterius*.

Arguably at least, RUPA's approach does not fit limited partnerships, because general and limited partnerships differ both as the presumed balance of negotiating power at formation and in the assumed allocation of management power during operations. It seems implicit in RUPA that the typical general partnership involves an arrangement among co-equals. Indeed, RUPA's default rules are “set” at that expectation. See RUPA § 401(h).

Re-RULPA, in contrast, envisions a very different situation. As to ongoing operations, the presumption for limited partners is passivity. See Sections 302, 304 and 406. As to formation, discussions at past meetings of the Drafting Committee suggest that – more often than not (but, of course, not always) – the general partner will be “driving the deal.” Thus, in most limited partnerships the general partner(s) will have far greater influence over the drafting of the “express provision[s] of the partnership agreement” and far greater control over the circumstances that become the context in which those express provisions operate. In short, a general partner's opportunity for sharp dealing through premature dissociation seems greater in a limited partnership than in a general partnership.

Therefore, when it comes to determining the wrongfulness of general partner dissociation in a limited partnership, perhaps Re-RULPA should not only enforce the “express provision[s] of the partnership agreement” but also “protect [the limited partners' interests in the] agreed-upon arrangements from conduct [by a dissociating general partner] that is manifestly beyond what a reasonable person could have contemplated when the [express] arrangements were made.” Section 306, Reporter's Notes (proposed Comment on good faith). In sum, perhaps subsection (b)(1) should be revised to read: “it is in breach of an express provision of the partnership agreement or the person's obligations of good faith under Section 408(d).”

Subsection (b)(2) – The roughly analogous passage of RUPA, § 602(2), states: “in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking.” The different language in the March, 2000 Draft originated in Draft #3 and reflects a different assumption about the partners' deal – namely, that in a limited partnership, absent a contrary agreement, the general partner is expected to shepherd the limited partnership through winding up.

1 Under this Draft, a person's obligation to remain as general partner through winding up
2 continues even if another general partner dissociates and even if that dissociation leads to the
3 limited partnership's premature dissolution under Section 801(3)(A). The obligation also
4 continues if for some other reason dissolution occurs before the expiration of the limited
5 partnership's term. Other default rules are certainly plausible, but would require more
6 complicated language. *See, e.g.*, RUPA § 602(b)(2). This Draft's approach seems at least equally
7 plausible and has the virtue of greater simplicity.

8 Following the dissociation of a person as general partner, each remaining general partner
9 has the power to dissolve the limited partnership by "express will." Section 801(3)(A). A
10 remaining general partner can exercise that power without thereby dissociating as a general
11 partner. The "express will" to dissolve is different from the "express will" to dissociate.

12 Subsection (b)(2)(A) – RUPA uses "withdrawal." For the sake of internal consistency, the
13 Reporter would prefer "dissociates." The analogous RUPA passage continues: "unless the
14 withdrawal follows within 90 days after another partner's dissociation by death or otherwise under
15 Section 601(6) through (10) or wrongful dissociation under this subsection." RUPA § 601(6)
16 through (10) provide for automatic dissociation in the event of, e.g., bankruptcy, death,
17 distribution of a trust's entire transferable interest in the partnership. It is unclear whether that
18 default rule is appropriate for a limited partnership. Where a limited partnership has more than
19 one general partner, absent a contrary agreement the limited partners might expect each general
20 partner to "stay the course" at least for the purposes of winding up, regardless of whether the
21 other general partners do.

22 Subsection (b)(2)(C) – Why not also include the events that Section 602(5), following
23 RUPA 601(5), considers comparable or tantamount to becoming a debtor in bankruptcy?

24 Subsection (c) – Source: RUPA § 602(c). The language "subject to Section 1001" was
25 new in Draft #3 (where it referred to former Section 1005) and was inserted in accord with
26 discussions at the March, 1998 meeting. The language is intended to preserve the distinction
27 between direct and derivative claims and to make clear that a partner seeking to claim damages
28 under Section 604(c) has to prove some harm independent of harm suffered by the limited
29 partnership.

30 **SECTION 605. EFFECT OF DISSOCIATION AS A GENERAL PARTNER.** Upon
31 a person's dissociation as a general partner:

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

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

(4) the person shall sign, at the request of the limited partnership, an amendment to the certificate of limited partnership which states that the person has dissociated, and may sign and file a statement of dissociation pertaining to the person;

(5) subject to Section 704 and ~~Article~~ 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.

Reporter's Notes

Source: RUPA § 603(b), except for paragraphs (4) and (5), which are new. In Drafts before the July, 1999 Draft, this material appeared at Section 602B.

Paragraph (1) – This paragraph differs from its RUPA analog in two respects. First, the paragraph adds the phrase "as a general partner" to cover circumstances in which a person dissociates as a general partner but remains as a limited partner. Second, this clause omits RUPA's exception for winding up. Unlike a dissociated RUPA general partner, a dissociated Re-RULPA general partner has no rights to participate in winding up.

Paragraph (3) – The RUPA provision continues certain duties if the dissociated person participates in winding up. RUPA § 603(b)(3). For the reasons stated in the Reporter's Notes to Paragraph (1), this Draft eschews that approach.

Following RUPA, this section does not refer to the duty of good faith and fair dealing. Compare section 602(2) (stating how limited partner dissociation affects that duty).

Paragraph (4) – This provision was new in the July, 1999 Draft.

Paragraph (5) – As decided at the March, 1998 meeting, Paragraph (5) refers only to transferable interests owned by the dissociated person in the capacity of a general partner rather than to all of the person's transferable interests. Comparable language appears in Section 602(3), in connection with a person's dissociation as a limited partner. The July, 1999 Draft added language to Section 111 so that "for any person who is both a general partner and a limited partner, [the limited partnership's records must include] a specification of what transferable interest the person owns in each capacity." Section 111(8)(C).

The reference to Section 704 is to the power of the estate of a deceased individual general partner. The reference to "subject to [Article] 11" encompasses mergers and conversions. If a person dissociates as a general partner through a merger or conversation, Paragraph (4) will not apply if:

C the limited partnership survives but the person is bought out, in which case the person no longer owns a transferable interest in any capacity, or

C the limited partnership does not survive, in which case no transferable interest of the limited partnership will exist to be owned by anybody.

Paragraph (6) – Discussion at the Committee's March, 1998 meeting suggested the need for this type of provision with regard to *limited* partners. See Section 602(4). The language has been included here, as well, to preclude any misunderstanding that might result from a lack of parallel treatment. The word "discharge" is derived from RUPA § 703(a).

In Draft #4 this provision referred to any obligation "which pertains to the time during which the person was a general partner." That language seems ambiguous, and the July, 1999 Draft substituted the concept of incurring an obligation. The latter concept is used elsewhere in the [Act].

SECTION 606. DISSOCIATED GENERAL PARTNER'S POWER TO BIND AND LIABILITY TO PARTNERSHIP (~~PRE-DISSOLUTION~~) BEFORE DISSOLUTION.

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

(1) the act would have bound the limited partnership under Section 402

1 before the dissociation; and

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

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

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

6 (b) If a limited partnership incurs an obligation under subsection (a), the person
7 dissociated as a general partner is liable:

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

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

13 **Reporter's Notes**

14 Derived from RUPA § 702. In Drafts before the July, 1999 Draft, this material appeared
15 at Section 602C.

16 **SECTION 607. DISSOCIATED GENERAL PARTNER'S LIABILITY TO** 17 **OTHER PERSONS.**

18 (a) A person's dissociation as a general partner does not of itself discharge the
19 person's liability as a general partner for a limited ~~partnership~~ partnership's obligation incurred
20 before dissociation. ~~The~~ Except as otherwise provided in subsections (b) and (c), the person is
21 not liable for a limited ~~partnership~~ partnership's obligation incurred after dissociation, ~~except as~~
22 ~~otherwise provided in subsections (b) and (c).~~

1 (b) A person ~~who has dissociated~~ whose dissociation as a general partner ~~with that~~
2 ~~dissociation resulting~~ resulted in a dissolution and winding up of the limited partnership
3 partnership's business is liable to the same extent as a general partner under Section 404 on an
4 obligation incurred by the limited partnership under Section 804.

5 (c) A person who has dissociated as a general partner ~~without that~~ but whose
6 ~~dissociation resulting~~ did not result in a dissolution and winding up of the limited partnership
7 partnership's business is liable to the same extent as a general partner under Section 404 on a
8 transaction entered into after the dissociation by the limited partnership, only if:

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

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

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

12 (ii) (B) the other party does not have notice of the dissociation and
13 reasonably believes that the person is ~~still~~ a general partner.

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

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

22 Reporter's Notes

1 Derived from RUPA § 703. In Drafts before the July, 1999 Draft, this material appeared
2 at Section 602D.

3 Subsection (a) – The second sentence of this subsection varies from its RUPA analog to
4 make clear that a different rule applies when the person's dissociation does result in dissolution.
5 The *rule* is the same under RUPA. The deviation from RUPA's *language* is a follows:

6 ~~The~~ Except as otherwise provided in subsections (b) and (c), the person is not
7 liable for a limited partnership obligation incurred after dissociation, except as
8 otherwise provided in subsection (b).

9 (The exception is moved to the beginning of the sentence per the suggestion of the representative
10 of the Style Committee.)

11 Subsection (b) – This provision is new and makes explicit a point left implicit in RUPA.

12 Subsection (c) – This provision is taken from RUPA, with changes made in the lead-in
13 language to indicate more clearly or succinctly that (i) the subsection applies even after
14 dissolution occurs *if* the dissolution did *not* result from the person's dissociation as a general
15 partner, (ii) a different rule applies when the person's dissociation does result in dissolution, and
16 (iii) a dissociated person is only liable under this subsection only if a general partner would be
17 liable. The *rule* is the same under RUPA. The deviation from RUPA's *language* is mostly per
18 the suggestions of the representative of the Style Committee

19 A detailed comparison of RUPA and Re-RULPA on this issue was posted in June, 1999 on the
20 Drafting Committee's list serv and is available from the Reporter.

21 Subsection (c)(2) – This provision has been changed in the same manner and for the same
22 reasons as Section 606(a).

23 Subsection (d) – RUPA § 703(c) reads: "the partners continuing the business." Re-
24 RULPA's differing language reflects the Draft's entity view of limited partnerships.

25 [ARTICLE] 7

26 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

27 **SECTION 701. PARTNER'S TRANSFERABLE INTEREST.** The only transferable

1 interest of a partner is the partner's allocation of the profits and losses of the partnership and the
2 partner's right to receive distributions. The interest is personal property.

3 **Reporter's Notes**

4 Source: RUPA § 502. Section 508 provides that a partner's right to distributions is
5 subject to offset.

6 **SECTION 702. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.**

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

9 (1) is permissible;

10 (2) does not by itself cause the partner's dissociation or a dissolution and
11 winding up of the limited ~~partnership~~ partnership's business; and

12 (3) does not, as against the other partners or the limited partnership, entitle
13 the transferee, during the continuance of the limited partnership, to participate in the management
14 or conduct of the limited ~~partnership~~ partnership's business, to require access to information
15 concerning the limited ~~partnership~~ partnership's transactions, or to inspect or copy the limited
16 ~~partnership~~ partnership's books or records.

17 (b) A transferee of a partner's transferable interest in the limited partnership has a
18 right:

19 (1) to receive, in accordance with the transfer, distributions to which the
20 transferor would otherwise be entitled; and

21 (2) to receive upon the dissolution and winding up of the limited

1 ~~partnership~~ partnership's business, in accordance with the transfer, the net amount otherwise
2 distributable to the transferor.

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

5 (d) Upon transfer, the transferor retains the rights and duties of a partner other
6 than the interest in distributions transferred, including the transferor's liability to the limited
7 partnership under Sections 208 and 502.

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

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

13 (g) A transferee who becomes a partner with respect to a transferable interest is
14 liable for the transferor's obligations under Sections 502 and 510. However, the transferee is not
15 obligated for liabilities unknown to the transferee at the time the transferee became a partner.

16 **Reporter's Notes**

17 **Issues for Consideration:** whether to retain the last phrase of subsection (d)
18 ("including . . ."); whether the notice element in subsection (e) should be changed to "received
19 notification"; whether the knowledge element in the second sentence of subsection (g) should be
20 changed to notice.

21 Source: RUPA § 503. Although for the most part RULPA's language "works," the
22 formulation is oblique. In this instance, the benefits (especially for the uninitiated) of a more
23 direct formulation outweigh the preference for retaining familiar language. Re-RULPA therefore
24 takes RUPA language in place of RULPA language. (Draft #1 rearranged the provisions of RUPA
25 § 503 so that the affirmative aspects were stated first and the limitations or negative aspects were
26 stated second. Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2
27 provided the RUPA provisions without significant change, while preserving Draft #1's language as

1 an alternative version. At its March, 1998 meeting, the Committee rejected the alternative
2 version, and that version has therefore been omitted from subsequent drafts.)

3 Subsection (b) – Drafts before the July, 1999 Draft included subsection (b)(3), which
4 authorized a transferee to “to seek under Section 802(b) a judicial determination that it is
5 equitable to wind up the limited partnership business.” The July, 1999 Draft eliminated
6 subsection 802(b).

7 Subsection (c) – RUPA § 503(c) reads: “the latest account agreed to by all of the
8 partners.” At its March, 1998 meeting, the Committee decided to deviate from RUPA.

9 Subsection (d) – The phrase beginning “including” does not appear in RUPA. See RUPA
10 § 503(d). At its March, 1998 meeting, the Committee decided to append the language of RULPA
11 § 704(c), which provides:

12 (c) If an assignee of a partnership interest becomes a limited partner, the assignor
13 is not released from his [or her] liability to the limited partnership under
14 Sections 207 [now 208] and 502.

15 That language appears redundant, given the broad statement carried over from RUPA.
16 Moreover, specifying this subset of continuing obligations might raise questions as to the status of
17 other subsets; e.g., a transferor general partner’s liability for breach of the duty of loyalty or care.

18 Subsection (g) – This subsection is derived from RULPA § 704(b). At its March, 1998
19 meeting, the Committee instructed the Reporter to preserve the substance of RULPA § 704(b)’s
20 second and third sentences. Changes from RULPA § 704(b) are as follows:

21 ~~An assignee who has become a limited partner has, to the extent assigned, the~~
22 ~~rights and powers, and is subject to the restrictions and liabilities, of a limited~~
23 ~~partner under the partnership agreement and this [Act]. An assignee~~ A transferee
24 who becomes a limited partner with respect to a transferable interest also is liable
25 for the transferor’s obligations ~~of his [or her] assignor to make and return~~
26 ~~contributions as provided in Articles 5 and 6 under Sections 502 and 510.~~
27 However, the ~~assignee~~ transferee is not obligated for liabilities unknown to the
28 ~~assignee~~ transferee at the time ~~he [or she]~~ the transferee became a limited partner.

29 In the first sentence of subsection (g), the phrase “with respect to a transferable interest”
30 was new in the July, 1999 Draft. The following example illustrates the operation of subsection
31 (g).

32 Ann and Tom are both partners in a limited partnership. Ann transfers all of her
33 transferable interest to Howard, who does not become a partner. Howard is not liable for
34 Ann’s obligations under Sections 502 and 510.

1 Later, Tom transfers one-half of his transferable interest to Howard, who does become a
2 partner with respect to that transfer. Howard is liable for *all* of Tom's obligations under
3 Sections 502 and 510. However, Howard's status as a partner does not retroactively
4 make him liable for Ann's obligation's under those Sections.

5 **SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFeree.**

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

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

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

- 18 (1) by the judgment debtor;
- 19 (2) with property other than limited partnership property, by one or more
20 of the other partners; or
- 21 (3) with limited partnership property, by the limited partnership with the
22 consent of all partners whose interests are not so charged.

23 (d) This [Act] does not deprive any partner or transferee of the benefit of any

1 exemption laws applicable to the partner's or transferee's transferable interest.

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

4 **Reporter's Notes**

5 **Issues for Consideration:** whether a receiver with respect to a charging order should
6 have greater rights of inquiry than the judgment debtor [subsection (a)]; whether the redemption
7 by the limited partnership of "an interest charged" should require the consent of all the partners or
8 merely a decision by disinterested general partners.

9 Caption – RUPA captions its comparable section "PARTNER'S INTEREST SUBJECT
10 TO CHARGING ORDER." RUPA § 504. ULLCA captions its comparable section "Rights of
11 creditor." ULLCA § 504.

12 Subsection (a) – RULPA § 703 does not refer to transferees; Re-RULPA's approach
13 comports with both RUPA § 504(a) and ULLCA § 504(a). Subsection (a)'s last sentence
14 originated in RUPA § 504(a). ULLCA § 504(a) incorporated the RUPA language but added the
15 last phrase ("to give effect . . ."), apparently in an effort to limit the extent to which the "or
16 which" clause empowers a court to intervene in the entity's affairs. The Drafting Committee
17 should consider why a receiver should have greater rights of inquiry than the judgment debtor.

18 Subsection (b) – Source: RUPA § 504(b).

19 Subsection (c) – Source: RUPA § 504(c) and ULLCA § 504(c).

20 Subsection (c)(3) – Source: RUPA § 504(c)(3). According to the RUPA provision, the
21 redemption is by "one or more of the other partners." At its March, 1998 meeting, the Committee
22 substituted the phrase "the limited partnership," making clear that the entity does the redemption.
23 The Committee rejected language that would have allowed disinterested general partners to make
24 the redemption decision.

25 Subsection (e) – Source: RUPA § 504(e).

26 **SECTION 704. POWER OF ESTATE OF DECEASED PARTNER.** If a partner
27 who is an individual dies, the deceased partner's executor, administrator, or other legal
28 representative may exercise the rights of a transferee as provided in Section 702 and, for the

1 purposes of settling the estate, may exercise the rights ~~under Section 305~~ of a current limited
2 partner under Section 305.

3 **Reporter's Notes**

4 Before the July, 1999 Draft, Re-RULPA gave no special powers to the estate of a
5 deceased partner or the guardian of an incompetent partner. Although this section appeared in
6 those Drafts, in essence it restated the rules relating to dissociation: for a deceased partner and an
7 incompetent general partner, transformation to a mere transferee; for an incompetent limited
8 partner, no change.

9 At its March, 1999 meeting, the Drafting Committee directed the Reporter to reinstate
10 RULPA language so as to provide sufficient informational rights to the estate of a deceased
11 partner. Unfortunately, however, much of RULPA's language conflicts with major policy
12 decisions made by the Committee. For example, under RULPA § 705 the estate of a deceased
13 partner appears to have the power to manage the limited partnership until the estate is wound up.
14 The guardian of an incompetent partner appears to have the power to manage the limited
15 partnership indefinitely. ("If a partner who is an individual dies or a court of competent
16 jurisdiction adjudges him [or her] to be incompetent to manage his [or her] person or his [or her]
17 property, the partner's executor, administrator, guardian, conservator, or other legal
18 representative may exercise all the partner's rights for the purpose of settling his [or her] estate or
19 administering his [or her] property, including any power the partner had to give an assignee the
20 right to become a limited partner.")

21 Therefore, the July, 1999 Draft eschewed much of RULPA's language while seeking to
22 provide additional informational rights to the estate of a deceased partner. Giving the estate the
23 informational rights of a current limited partner allows the estate information about the ongoing
24 operations and value of the limited partnership.

25 **[ARTICLE] 8**

26 **DISSOLUTION**

27 **SECTION 801. NONJUDICIAL DISSOLUTION.** A limited partnership is dissolved,
28 and its business must be wound up, only upon the occurrence of any of the following events:

29 (1) the happening of an event specified in writing in the partnership agreement;

1 (2) written consent of all general partners and of limited partners owning a
2 majority of the interests in profit interests owned by persons as limited partners;

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

4 (i) (A) if the limited partnership has at least one remaining general partner,

5 (A) (i) the limited partnership's having notice within 90 days after
6 the dissociation of the express will of any remaining general partner to dissolve the limited
7 partnership; or

8 (B) (ii) written consent to dissolve the limited partnership given
9 within 90 days after the dissociation by limited partners owning a majority of the interests in profit
10 interests owned by persons as limited partners immediately following the dissociation; or

11 (ii) (B) if the limited partnership has no remaining general partner, the
12 passage of 90 days after the dissociation unless within that 90 days partners owning a majority of
13 the interests in profit interests owned by limited partners immediately following the dissociation
14 consent to continue the business and to admit at least one general partner and at least one person
15 is admitted as a general partner in accordance with that consent;

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

19 (5) the signing of a declaration of dissolution by the [Secretary of State] under
20 Section 810(b); or

21 (6) entry of a decree of judicial dissolution under Section 802.

22 **Reporter's Notes**

1 **Issues for Consideration:** whether the partnership agreement should be able to vary the
2 term of a limited partnership; assuming that the partnership can vary that term, how to resolve
3 conflicts between the certificate and the partnership agreement regarding the term; whether to
4 retain the reference to “writing” in Paragraph (1), in light of the UETA; whether, for the purposes
5 of Paragraphs 3(A)(ii) and 3(B), the majority should be calculated against the profits interest
6 owned by persons as limited partners immediately after dissolution (as in this Draft) or against the
7 profits interests owned at the time the consent is obtained; whether under paragraph 3(B) the
8 limited partners should have more than 90 days to actually admit a new general partner.

9 Paragraph (1) – This Paragraph raises three major issues.

10 *Varying the term without affecting the public record* – In Draft #3, Section 201 provided
11 that only the certificate of limited partnership could vary a limited partnership's perpetual term.
12 At its October, 1998 meeting, the Drafting Committee deleted that provision and directed that the
13 corresponding deletion be made in this section. Under Drafts # 4 and subsequent drafts, a limited
14 partnership can establish a term through the partnership agreement and the expiration of that term
15 will cause dissolution as "the happening of an event specified in writing in the partnership
16 agreement."

17 The Reporter believes that the Committee's decision may produce anomalous results.
18 Assume, for example, that a partnership agreement states a limited duration but that the general
19 partner -- for whatever reason -- continues operations past that date. Among other things, the
20 general partner continues to file timely annual reports. In those circumstances:

21 C at least in some respects the limited partnership will have been dissolved [the
22 contrary conclusion negates the idea of a term], but

23 C the public record will give no clue of that legal situation, and moreover

24 C the public record -- through the annual reports -- will actually suggest the contrary.

25 It is true that a similar problem exists under RULPA § 801(2) (providing for dissolution upon “the
26 happening of events specified in writing in the partnership agreement”) and Section 801(1) (same,
27 as to “an event”). The problem seems more troubling, however, when the discrepancy involves a
28 limited partnership's perpetual duration.

29 *Conflicts between the certificate and the partnership agreement* – The current approach
30 may also be problematic in another way. Suppose a limited partnership states a term in its
31 certificate (permissible under Section 201(b)) but neglects to include precisely the same term in
32 the partnership agreement. That problem could be resolved by revising paragraph (1) to state:
33 "the happening of an event specified in the certificate of limited partnership or in writing in the
34 partnership agreement." However, that approach could produce awesome difficulties if the
35 certificate and a written partnership agreement happened to disagree about dissolution.

1 Section (c) will not suffice to resolve those difficulties. Taken from ULLCA, Section
2 201(c) states that "the partnership agreement controls as to partners and transferees . . . and . . .
3 the certificate of limited partnership . . . controls as to persons, other than partners and
4 transferees, who reasonably rely on the [certificate] to their detriment." This formulation is
5 drafted to address specific, particularized disagreements between the certificate and the
6 partnership agreement, and it fails when the conflict relates to the fundamental notion of
7 dissolution. It would be bizarre to have a public record indicate on its face that an entity has
8 dissolved and yet have the law deem the entity "un-dissolved" for many purposes. Moreover, a
9 disagreement over dissolution could implicate every facet of a limited partnership's operations. It
10 could be a gargantuan task for courts and practitioners to discern, much less resolve, all the
11 ramifications.

12 *The writing requirement* – The reference to "writing" should be reconsidered when the
13 Drafting Committee considers how to reconcile Re-RULPA with the UETA.

14 Paragraph (2) – Draft #2 followed RULPA. Draft #3 showed a revision tentatively
15 adopted at the end of the Committee's March, 1998 meeting. That revision was discussed and not
16 amended at the October, 1998 meeting. Draft #4 therefore preserved Draft #3's language and
17 prompted no objections at the March, 1999 meeting. Subsequent drafts have therefore preserved
18 the approach of Drafts ## 3 and 4.

19 The reference to "interests in profits owned by persons as limited partners" excludes profit
20 interests that are owned by transferees who are not also partners. The phrase also excludes profit
21 interests owned by general partners in their capacity as general partners.

22 At its March, 1998 meeting, the Committee deleted the following proposed new language,
23 which had been derived from RUPA § 801(4) and ULLCA § 801(3):

24 the passage of 90 days after the limited partnership has notice of an event that
25 makes it unlawful for all or substantially all of the business of the limited
26 partnership to be continued, unless the illegality is cured before the end of the 90
27 day period;

28 Paragraph (3) – This language was discussed and not amended at the October, 1998
29 meeting. The language prompted no objections at the March, 1999 meeting. The July, 1999
30 Draft made only one small, stylistic change, substituting in paragraph (3)(i)(B) the phrase "with
31 90 days of the dissociation" for the phrase "within that 90 days."

32 Paragraph (3)(A)(i) – A remaining general partner can exercise this power to cause
33 dissolution without thereby dissociating as a general partner. The "express will" to dissolve is
34 different from the "express will" to dissociate.

35 Paragraph (3)(A)(ii) – Excluded from the calculation are profit interests owned by a
36 transferee who is not a limited partner. Profit interests owned by a person who is both a general

1 and a limited partner figure in *only to the extent those interests can be said to be held in the*
2 *person's capacity as a limited partner*. The July, 1999 Draft added language to Section 110 [now
3 Section 111] so that “for any person who is both a general partner and a limited partner, [the
4 limited partnership’s records must include] a specification of what transferable interest the person
5 owns in each capacity.” Section 111(8)(C).

6 Query: should the majority be calculated against the profits interest owned by persons as
7 limited partners immediately after dissolution (as in this Draft) or against the profits interests
8 owned at the time the consent is obtained? The latter calculation would produce a different result
9 if, prior to the consent, a second dissociation occurs and that dissociation causes a transfer to a
10 person who is not a limited partner. Indeed, under the current approach *all* the remaining general
11 partners might consent and yet be unable to invoke this provision.

12 The following scenario illustrates the problem:

13 An individual is the sole general partner and also holds a majority of limited partner units.
14 A court declares the individual incompetent, which automatically dissociates him or her as
15 a general partner but not as a limited partner. Before the remaining limited partners
16 (including the individual, acting through his or her guardian) can appoint a new general
17 partner, the individual dies, dissociating as a limited partner. As of that moment it is
18 impossible to muster the “majority of the profits interests owned by limited partners
19 immediately following the [individual’s] dissociation [as a general partner],” because a
20 majority of those interests is now owned by a mere transferee.

21 Paragraph (3)(B) – This language requires that all of the following occur within the 90
22 days: consent to avoid dissolution, consent to appoint a new general partner and admission of a
23 new general partner in accordance with that consent. This language is arguably too narrow. For
24 example, suppose that the requisite consent is obtained within the 90 days, in contemplation of a
25 particular person becoming a general partner. Shortly before the end of the 90 days, the person
26 refuses to be admitted as a general partner. To avoid dissolution the limited partners would have
27 to find a substitute general partner and obtain new consents before the 90 day period expires. The
28 rule is, however, merely a default rule. Before the 90 days expire the limited partners can amend
29 the partnership agreement to extend the deadline.

30 The query posed in the Comment to paragraph (3)(A)(ii) applies here as well. The Act
31 should take the same approach to both these provisions.

32 **SECTION 802. JUDICIAL DISSOLUTION.** On application by or for a partner the
33 [~~designate the appropriate court~~] court may decree dissolution of a limited partnership ~~whenever~~

1 if it is not reasonably practicable to carry on the business in conformity with the partnership
2 agreement.

3 **Reporter's Notes**

4 Both RUPA § 801 and ULLCA § 801 include nonjudicial and judicial dissolution in the
5 same section. This draft preserves RULPA's approach, dividing the two types of dissolution into
6 two sections.

7 Subsection (a) – This subsection comes verbatim from RULPA § 802. At its March, 1999
8 meeting, the Drafting Committee deleted an additional provision, taken from RUPA § 801(5).
9 That provision allowed a court to decree dissolution when “the economic purpose of the limited
10 partnership is likely to be unreasonably frustrated.” (RUPA § 801(5) is also the source of most of
11 ULLCA § 801(4).)

12 Draft #3 had included another basis for judicial dissolution, also taken from RUPA §
13 801(5):

14 another partner has engaged in conduct relating to the limited partnership business
15 which makes it not reasonably practicable to carry on the business in partnership
16 with that partner

17 That provision also appears in ULLCA § 801(4)(i).

18 Re-RULPA deviates from ULLCA in another way. ULLCA § 801(4)(v) includes a
19 concept developed in the law of closely held corporations. A court may decree dissolution of an
20 LLC when "the managers or member in control of the company have acted in a manner that is
21 illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner." This draft does not
22 include any analogous provision. At its October, 1998 meeting, the Drafting Committee
23 discussed but did not adopt such a provision.

24 Former subsection (b) – At its March, 1999 meeting the Drafting Committee deleted a
25 provision derived from RUPA § 801(6)(i), which was also the source for ULLCA § 801(5)(i).
26 The deleted provision stated:

27 (b) On application by or for a transferee the [designate the
28 appropriate court] court may decree dissolution of a limited partnership if:
29 (1) at the time of the transfer or entry of the charging order
30 that gave rise to the transferee's interest the partnership agreement provided in
31 writing for the limited partnership to have a term other than perpetual;
32 (2) after having notice of that transfer or entry the limited
33 partnership amended its partnership agreement in writing to extend the limited
34 partnership's term;

1 (3) the limited partnership's term would have expired but for
2 that amendment; and
3 (4) it is equitable to dissolve the limited partnership and
4 wind up its business.

5 **SECTION 803. WINDING UP.**

6 (a) A limited partnership continues after dissolution only for the purpose of
7 winding up its business. In winding up its business the limited partnership may amend its
8 certificate of limited partnership to state that the limited partnership is dissolved, preserve the
9 ~~limited partnership~~ partnership's business or property as a going concern for a reasonable time,
10 prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle
11 and close the limited partnership's business, dispose of and transfer the limited partnership's
12 property, discharge the limited partnership's liabilities, distribute the assets of the limited
13 partnership under Section 813, settle disputes by mediation or arbitration, file a statement of
14 termination under Section 203, and perform other necessary acts.

15 (b) If a dissolved limited partnership has no general partners, limited partners
16 owning a majority of the interests in profit interests owned by partners may appoint a person to
17 wind up the dissolved limited partnership's business. A person appointed under this subsection:

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

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

20 (i) (A) state that the limited partnership has no general partner and
21 that the person has been appointed to wind up the limited partnership; and

22 (ii) (B) give the ~~business~~ address of the person.

23 (c) On the application of any partner, a court may order judicial supervision of

the winding up, including the appointment of a person to wind up the dissolved limited partnership's business, if:

- (1) a limited partnership has no general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (b); or
- (2) the applicant establishes other good cause.

Reporter's Notes

Issues for Consideration: whether to adopt the alternative language proposed below for subsection (a); whether amending the certificate of limited partnership to state that the limited partnership is dissolved should be mandatory; whether filing a statement of termination should be mandatory; whether an appointment under subsection (b) should require the *written* consent of the partners.

This section differs from RULPA § 803 so as to: (i) provide, as a default matter, that so long as a dissolved limited partnership has at least one general partner, the limited partnership management structure remains in place during winding up; and (ii) incorporate many of the mechanical refinements of RUPA § 803. (RUPA § 803 is also the source for ULLCA § 803.)

Both RUPA § 802(b) and ULLCA § 802(b) allow the unanimous consent of partners/members to "un-do" a dissolution. For two reasons Re-RULPA does not include that provision. First, both RUPA and ULLCA provide for the buy-out of a dissociated owner in the event that dissociation does not cause dissolution. Re-RULPA, in contrast, freezes in a dissociated owner (as a transferee of its own transferable interest) until dissolution. It seems inequitable, therefore, to allow a waiver of dissolution without some consent of those transferees who are former partners. Second, providing for transferee consent would require at best an intricate statutory provision, and – given the limited partnership's durability in the default mode – the intricacy hardly seems warranted.

Subsection (a), first sentence – Both RUPA § 802(a) and ULLCA § 802(a) use this language. Based on years of explaining the dissolution and termination to the uninitiated, the Reporter prefers: "A dissolved limited partnership is not terminated but continues its existence only for the purpose of winding up its business."

Subsection (a), style issue – The language of this subsection comes essentially verbatim from RUPA 803(c). For two reasons the Reporter prefers the reformulation set out below. First, the RUPA language is exclusively permissive, and some of the listed items should be mandatory. Second, the reformulation gives more guidance to the uninitiated by creating two functionally distinct categories. The first category concerns the general processes of winding up. The second category concerns specific tasks necessary to close down the business. The reformulation would

1 read as follows:

2 In winding up its business the limited partnership:

3 (1) may amend its certificate of limited partnership to state that the limited
4 partnership is dissolved, preserve the limited partnership business or property as a
5 going concern for a reasonable time, prosecute and defend actions and
6 proceedings, whether civil, criminal, or administrative, transfer the limited
7 partnership's property, settle disputes by mediation or arbitration, file a statement
8 of termination as provided in Section 203, and perform other necessary acts; and

9 (2) shall discharge the limited partnership's liabilities, settle and close the
10 limited partnership's business, and marshal and distribute the assets of the
11 partnership.

12 Subsection (a): amending the certificate of limited partnership to state that the limited
13 partnership is dissolved and filing statements of termination – Both the language currently in this
14 draft and the language just suggested incorporate a decision made by the Drafting Committee at
15 its October, 1998 meeting. At that meeting, the Committee deleted in this subsection and in
16 Section 202 the *requirement* that a dissolved limited partnership amend its certificate to indicate
17 dissolution. Such an amendment is still permitted, Section 201(b), and will often be the prudent
18 way to curtail a general partner's power to bind the limited partnership during winding up.
19 (Under Section 102(d), the amendment provides constructive notice.)

20 Also at the October, 1998 meeting, the Committee made the filing of a statement of
21 termination permissive rather than mandatory. Accordingly, the following sentence has been
22 deleted from Draft #3's version of this subsection: "Promptly after winding up is completed, the
23 limited partnership shall file a declaration of termination as provided in Section 805 [now 203]."

24 For the reasons stated in the Reporter's Notes to Section 202(b)(3), the Reporter believes
25 that filing amendment to the certificate of limited partnership stating that the limited partnership is
26 dissolved and filing a statement of termination should both be mandatory.

27 Subsection (b) – At its July, 1997 meeting, the Committee eliminated writing requirements
28 pertaining to most consents. Consistent with that action, Draft #2 eliminated Draft #1's
29 requirement that the partners consent in writing to this appointment. However, given the special
30 circumstances involved here, the Committee might wish to reinsert the writing requirement here.

31 Subsection (b)(1) – The appointee has neither the liabilities of a general partner to third
32 parties nor the duties of a general partner. Prior Drafts had provided that the appointee would
33 have the duties of a general partner, but at its March, 1999 meeting the Drafting Committee
34 rejected that position. The appointee may well have comparable duties under other law (e.g.,
35 agency).

36 Subsection (b)(2) – Draft #3 also required the amendment to indicate that the limited
37 partnership had dissolved. Such an indication is no longer mandatory, but will often be prudent.

See Reporter's Notes to subsection (a).

Subsection (c) – Derived from RUPA § 803(a), which is replicated in ULLCA § 803(a). Prior Drafts gave standing to a transferee. Like the July, 1999 Draft, this draft does not, in accordance with the Drafting Committee's March, 1999 decision to delete former Section 802(b).

Former subsection (d) – Prior Drafts stated that "Except as ordered by the court, a person appointed under subsection (c) has the same powers and duties of a person appointed under subsection (b)." At its March, 1999 meeting, the Drafting Committee decided that this matter should be left to the court.

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

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

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

(2) would have bound the partnership under Section 402 before
dissolution, if the other party to the transaction did not have notice of the dissolution.

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

(1) at the time the other party enters into the transaction:
(i) ~~(A)~~ less than two years has passed since the person's dissociation
as a general partner; and

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

(2) the act:

(i) (A) is appropriate for winding up the limited partnership

partnership's business; or

(ii) (B) would have bound the limited partnership under Section 402

before dissolution and at the time the other party enters into the transaction the other party does

not have notice of the dissolution.

Reporter's Notes

Changes from Draft #4 – The July, 1999 Draft substantially revised this section.

Relationship between this section and Section 606 – The July, 1999 Draft clarified the relationship between this section and Section 606 (power to bind the partnership before dissolution of person dissociated as a general partner). A new subsection (b) replaces former subsection (e).

Statements regarding real property – The July, 1999 Draft deleted former subsections (b), (c) and (d). Those subsections involved statements granting or limiting authority to transfer real property, and at its March, 1999 meeting the Drafting Committee eliminated those statements.

Subsection (a) – This subsection is taken from RUPA § 804. In Drafts before the July, 1999 Draft, this material appeared at Section 803A(a).

Subsection (b) – Paragraph (1) replicates the provisions stated in Section 606 for disabling a person dissociated as a general partner. Paragraph (2) replicates the provisions of subsection (a) for limiting the post-dissolution power to bind. For a person dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraphs.

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

(a) If a general partner ~~with~~ having knowledge of the dissolution causes a limited

partnership to incur an obligation under Section 804(a) by an act that is not appropriate for winding up the ~~partnership~~ partnership's business, the general partner is liable:

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

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

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

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

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

Reporter's Notes

Derived from RUPA § 806.

Former subsection (a) – The July, 1999 Draft deleted as unnecessary former subsection (a). That provision, taken essentially verbatim from RUPA § 806(a), stated:

Except as otherwise provided in subsection (b), after dissolution a general partner is liable to the other general partners for the general partner's share of any partnership liability incurred under [Section 804].

A limited partnership remains a limited partnership during winding up. The rules regarding loss sharing among general partners are not limited to a limited partnership's pre-dissolution phase. Moreover, strictly speaking, general partners in a limited partnership do not “share” losses.

Subsection (a) – Derived from RUPA § 806(b), with several modifications. The only

1 substantive change is Paragraph (2), which is new and gives a damage action to general partners
2 and persons dissociated as general partners who are personally liable on the limited partnership's
3 obligations.

4 The other changes are stylistic. This subsection refers to limited partnership obligations
5 rather than liabilities, because new Paragraph (2) uses the concept of liability for a different
6 purpose. Also, this subsection refers to a general partner "caus[ing] a limited partnership to incur
7 an obligation" rather than "incur[ring] a partnership liability." Strictly speaking, the partner or
8 person dissociated as a general partner does not incur the obligation. Finally, the syntax is re-
9 styled slightly so as to parallel the syntax of new subsection (b), which does not exist in RUPA.

10 Subsection (b) – This subsection does not exist in RUPA. In Article 8 of RUPA, the term
11 "partner" encompasses dissociated partners.

12 Possible amalgamation of subsections (a) and (b) – These subsections have language in
13 common and could be merged into a single subsection. However, in the Reporter's opinion, the
14 merger would decrease readability. The merged section would be as follows:

15 If a general partner with knowledge of the dissolution causes a limited partnership
16 to incur an obligation under Section 804(a) by an act that is not appropriate for
17 winding up the partnership business, or a person dissociated as a general partner
18 causes the limited partnership to incur an obligation under Section 804(b), the
19 general partner or person is liable:

20 (1) to the limited partnership for any damage caused to the
21 limited partnership arising from the obligation, and

22 (2) if another general partner or other person dissociated as
23 a general partner is liable for the obligation, then to that other general partner or
24 other person for any damage caused to that other general partner or other person
25 arising from that liability.

26 **SECTION 806. KNOWN CLAIMS AGAINST DISSOLVED LIMITED** 27 **PARTNERSHIP.**

28 (a) A dissolved limited partnership may dispose of the known claims against it by
29 following the procedure described in this section.

30 (b) A dissolved limited partnership shall notify its known claimants in writing of
31 the dissolution. The notice must:

1 (1) specify the information required to be included in a claim;
2 (2) provide a mailing address ~~where~~ to which the claim is to be sent;
3 (3) state the deadline for receipt of the claim, which may not be less than
4 120 days after the date the written notice is received by the claimant;
5 (4) state that the claim will be barred if not received by the deadline; and
6 (5) unless the limited ~~partnership has been a limited liability limited~~
7 ~~partnership throughout its existence~~ partnership's certificate of limited partnership has never
8 contained a statement under Section 404(b), state that the barring of a claim against the limited
9 partnership will also bar any corresponding claim against any present or dissociated general
10 partner which is based on Section 404(b).

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

13 (1) the claim is not received by the specified deadline; or
14 (2) in the case of a claim that is timely received but rejected by the
15 dissolved limited partnership, the claimant does not commence a proceeding to enforce the claim
16 against the limited partnership within 90 days after the receipt of the notice of the rejection.

17 (d) ~~For purposes of~~ In this section, "claim" does not include a contingent liability
18 or a claim based on an event occurring after the effective date of dissolution.

19 **Reporter's Notes**

20 Section 806 is derived from ULLCA § 807 and RMBCA § 14.06. In Drafts before the
21 July, 1999 Draft, this material appeared at Section 803B.

22 If this draft did not allow for LLLPs, Sections 806 and 807 would probably be
23 unnecessary. The sections seem warranted, however, because many limited partnerships will be
24 fully-shielded.

1 ULLCA lifted its provisions on this topic virtually verbatim from the RMBCA. This draft
2 takes the same approach, making a few stylistic changes plus a few substantive additions
3 necessitated by the personal liability of general partners in an ordinary (i.e., non-LLP) limited
4 partnership.

5 It is arguable that Sections 806 and 807 should apply only to liabilities incurred while a
6 limited partnership is an LLP. However, that approach would complicate even further two
7 provisions that are already very complicated. An intermediate approach would apply Sections
8 806 and 807 to all liabilities while eliminating Section 808 (barring claims against former general
9 partners when the corresponding claim against the limited partnership has been barred).

10 Subsection (b)(5) – This provision is included due to Section 404(b) and does not appear
11 in the RMBCA formulation. ULLCA has an analog to Section 404(b) but no analog to this
12 provision. *Compare* ULLCA §§ 303(c) and 806.

13 Subsection (c)(2) – The phrase "against the limited partnership" is added to make clear
14 that bringing a claim against an allegedly liable present or dissociated general partner does not
15 save a claim against the limited partnership.

16 **SECTION 807. OTHER CLAIMS AGAINST DISSOLVED LIMITED** 17 **PARTNERSHIP.**

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

21 (b) The notice must:

22 (1) be published at least once in a newspaper of general circulation in the
23 [county] in which the dissolved limited partnership's principal office is located or, if it has none in
24 this State, in which the limited partnership's designated office is or was last located;

25 (2) describe the information required to be contained in a claim and provide
26 a mailing address ~~where~~ to which the claim is to be sent;

27 (3) state that a claim against the limited partnership is barred unless a

proceeding to enforce the claim is commenced within five years after publication of the notice;
and

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

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

- (1) a claimant who did not receive written notice under Section 806;
- (2) a claimant whose claim was timely sent to the dissolved limited
partnership but not acted on; and
- (3) a claimant whose claim is contingent or based on an event occurring
after the effective date of dissolution.

(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

1 person's total liability for all claims under this paragraph may not exceed the total amount of
2 assets distributed to the person as part of the winding up of the dissolved limited partnership; or

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

4 **Reporter's Notes**

5 Derived from ULLCA § 808 and RMBCA § 14.07. In Drafts before the July, 1999 Draft,
6 this material appeared at Section 803C.

7 This section generated intense discussion at the Drafting Committee's March, 1999 but
8 went without objection at the October, 1999 meeting.

9 Subsection (b)(4) – This provision is included due to Section 404(b) and does not appear
10 in the RMBCA formulation. ULLCA has an analog to Section 404(b) but no analog to this
11 provision. *Compare* ULLCA §§ 303(c) and 806.

12 Subsection (d)(2) – This paragraph is quite complex, and variations among ULLCA,
13 RMBCA and Re-RULPA are best indicated through notes, as follow:

14 (2) if the assets have been distributed in liquidation, against a partner ^A or transferee^B to
15 the extent of that person's proportionate^C share of the claim or the limited partnership's
16 assets distributed to the partner or transferee in liquidation, whichever is less, but a
17 person's total liability for all claims under this paragraph^D may not exceed the total
18 amount of assets distributed to the person as part of the winding up of the dissolved
19 limited partnership.^E

20
21 ^A Arguably the reference should be "dissociated" or "former" partner, since
22 the termination of a limited partnership ends partner status, but ULLCA
23 uses "members" and RMBCA uses "shareholders."

24 ^B ULLCA § 808(d)(2) does not include transferees.

25 ^C RMBCA § 14.07(d)(2) uses "pro rata." ULLCA § 808(d)(2) uses
26 "proportionate."

27 ^D RMBCA and ULLCA refer to "this section." In light of
28 subsection (d)(3), that reference is overbroad for Re-RULPA.

29 ^E This draft adds the concluding phrase ("as part of the winding up of the
30 dissolved limited partnership") to emphasize that the "clawback" relates
31 only to liquidating distributions.

1 Subsection (d)(3) – The referenced section provides for personal liability of general
2 partners in an ordinary limited partnership.

3 **SECTION 808. EFFECT OF CLAIMS BAR ON PERSONAL LIABILITY OF**
4 **PARTNERS AND DISSOCIATED PARTNERS.** If Section 806 or 807 bars a claim against a
5 dissolved limited partnership, any corresponding claim under Section 404 is also barred.

6 **Reporter's Notes**

7 **Issues for Consideration:** whether to follow ULLCA and eliminate this provision;
8 whether to use the stated language or instead: “No person is liable under Section 404 because of
9 any obligation of a limited partnership with regard to which Section 806 or 807 has barred a
10 claim.”

11 In Drafts before the July, 1999 Draft, this material appeared at Section 803D.

12 This section requires a person to preserve its claim against the limited partnership in order
13 to preserve a personal liability claim against the general partners. This requirement is arguably
14 inconsistent with Section 405 (requiring claimants generally to exhaust limited partnership
15 resources before pursuing a general partner but allowing some exceptions, most notably when the
16 limited partnership is bankrupt). It might seem more consistent to specify circumstances in which
17 a claimant could preserve its claim against a current or former general partner by proceeding
18 against that partner without having to proceed against the limited partnership.

19 For the following three reasons, however, Re-RULPA eschews that approach. First, that
20 approach would add complexity to an already complex series of sections. Second, if one
21 dissociated or present general partner remains at risk, the other dissociated or current partners
22 should have some means of learning of that risk. (They could be at risk by way of a claim for
23 contribution or indemnification.) A proceeding against the limited partnership is a good (albeit
24 imperfect) way of bringing the ongoing risk to the attention of all current and former general
25 partners. Third, futility is the essential rationale for the exceptions provided by Section 405 to the
26 exhaustion requirement. That is, there is no reason to require exhaustion when even extensive
27 efforts to collect from the limited partnership are destined to be futile. That rationale does not
28 apply here, because a simple, discrete act (i.e., the commencement of the proceeding against the
29 limited partnership) accomplishes the desired result – i.e., preventing the bar.

30 ULLCA has no comparable provision.

1 **SECTION 809. GROUNDS FOR ADMINISTRATIVE DISSOLUTION.** The

2 [Secretary of State] may commence a proceeding to dissolve a limited partnership administratively
3 if the limited partnership does not:

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

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

8 **Reporter's Notes**

9 Source: ULLCA § 809. In Drafts before the July, 1999 Draft, this material appeared at
10 Section 803E.

11 At its March, 1999 meeting, the Drafting Committee decided to limit the scope of
12 Paragraph (1). Following ULLCA, that paragraph formerly read: "pay any fees, taxes, or
13 penalties imposed by this [Act] or other law within 60 days after they are due."

14 RMBCA includes three other grounds, omitted from ULLCA. See RMBCA § 14.20(3)-
15 (5) (being without a registered agent or in-state office for 60 days or more; failing for 60 days or
16 more to notify Secretary of State of certain changes in registered agent or in-state office;
17 expiration of period of duration specified in articles of incorporation). Bert Black, the
18 representative of the International Association of Corporation Administrators, suggests that
19 "there needs to be some 'stick' to get the limited partnership to appoint a new agent" when the old
20 agent resigns. He suggests administrative dissolution as that stick.

21 **SECTION 810. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE**
22 **DISSOLUTION.**

23 (a) If the [Secretary of State] determines that a ground exists for administratively
24 dissolving a limited partnership, the [Secretary of State] shall enter a record of the determination
25 and serve the limited partnership with a copy of the record.

1 (b) If within 60 days after service of the copy the limited partnership does not
2 correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary
3 of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of
4 State] shall administratively dissolve the limited partnership by signing a declaration of dissolution
5 that recites the grounds for dissolution and its effective date. The [Secretary of State] shall file
6 the original of the declaration and serve the limited partnership with a copy of the declaration.

7 (c) A limited partnership administratively dissolved continues its existence but
8 may carry on only business necessary to wind up and liquidate its business and affairs under
9 Sections 803 and 813 {space} and to notify claimants under Sections 806 and 807.

10 (d) The administrative dissolution of a limited partnership does not terminate the
11 authority of its agent for service of process.

12 **Reporter's Notes**

13 **Issues for Consideration:** whether a filed declaration of dissolution should have the same
14 constructive notice effect as amending the certificate of limited partnership to state that the limited
15 partnership is dissolved; whether administrative dissolution should take effect when the
16 declaration is served (or filed) and not when the declaration has merely been signed; whether
17 subsection (d) should be deleted as unnecessary.

18 Source: ULLCA § 810, which closely follows RMBCA § 14.21. In Drafts before the
19 July, 1999 Draft, this material appeared at Section 803F.

20 Subsection (b) – ULLCA § 810(b) locates the "within" phrase in the middle of the
21 sentence. The change from ULLCA is for ease in reading. ULLCA § 801(b) refers to "service of
22 the notice" rather than "service of the copy" – an apparent residue from the RMBCA formulation.
23 ULLCA § 810(b) refers to a "certificate of dissolution." As much as possible, Re-RULPA
24 reserves the term "certificate" for the certificate of limited partnership. This section uses the term
25 "declaration of dissolution" to distinguish the [Secretary of State's] act from the statement a
26 limited partnership may file pursuant to Section 803.

27 Subsection (d) – The same thing is true for non-administrative dissolution, but this draft
28 does not say so. Query: should it?

SECTION 811. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

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

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

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

(3) state that the limited partnership's name satisfies the requirements of Section 107.108.

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

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

Reporter's Notes

Source: ULLCA § 811, which closely follows RMBCA § 14.22. In Drafts before the July, 1999 Draft, this material appeared at Section 803G.

1 Subsection (a)(2) – ULLCA § 811(a)(3) refers only to "ground." RMBCA § 14.22(a)(2)
2 refers to "ground or grounds." The ULLCA version may reflect an oversight, since that version
3 uses "have" – i.e., "the ground for dissolution either did not exist or have [sic] been eliminated."

4 Former subsection (a)(4) – Following ULLCA, prior Drafts also required the application
5 to "(4) contain a certified statement from the [taxing authority] reciting that all taxes owed by the
6 limited partnership have been paid." Consistent with the Drafting Committee's decision as to
7 Section 809(1), The July, 1999 Draft omits that language.

8 Subsection (b) – ULLCA § 811(b) refers to "certificate of reinstatement." Re-RULPA
9 seeks to confine the term "certificate" to the certificate of limited partnership.

10 **SECTION 812. APPEAL FROM DENIAL OF REINSTATEMENT.**

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

14 (b) The limited partnership may appeal from the denial of reinstatement to the
15 [~~name~~ appropriate] court] within 30 days after service of the notice of denial is perfected. The
16 limited partnership appeals by petitioning the court to set aside the dissolution and attaching to
17 the petition copies of the [Secretary of State's] declaration of dissolution, the company's
18 application for reinstatement, and the [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 appropriate.

21 **Reporter's Notes**

22 Source: ULLCA § 812. In Drafts before the July, 1999 Draft, this material appeared at
23 Section 803H.

24 Drafts ## 1 and 2 omitted any parallel provision to ULLCA § 812 on the theory that,
25 absent good reason to the contrary, a State's generally applicable provisions for appealing the
26 actions of an administrative agency should apply to the Secretary of State's denial of

1 reinstatement. Consistent with instructions to follow RUPA/ULLCA, Draft #3 included an
2 analog to ULLCA § 812.

3 At its March, 1999 meeting, the Drafting Committee deleted former subsection (d) as
4 unnecessary. Following ULLCA, that subsection provided: "The court's final decision may be
5 appealed as in other civil proceedings."

6 **SECTION 813. SETTLING OF ACCOUNTS AND DISTRIBUTION OF ASSETS.**

7 (a) In winding up a limited partnership's business, the assets of the limited
8 partnership, including the contributions required by this ~~Section~~ section, must be applied to
9 discharge its obligations to creditors, including, to the extent permitted by law, partners who are
10 creditors.

11 (b) Any surplus remaining after the limited partnership complies with subsection
12 (a) ~~shall be~~ is paid in cash as a distribution.

13 (c) If the limited partnership's assets are insufficient to discharge all of its
14 obligations under section (a), ~~then~~ with respect to each undischarged obligation incurred when ~~the~~
15 ~~limited partnership was not a limited liability limited partnership~~ certificate of limited partnership
16 contained a provision authorized by Section 404(b):

17 (1) each person who was a general partner and bound by that provision
18 when the obligation was incurred and who has not been released from that obligation under
19 Section 607 shall contribute to the limited partnership for the purpose of enabling the limited
20 partnership to discharge that obligation and the contribution due from each of those persons ~~shall~~
21 ~~be~~ is in proportion to the allocation of limited-partnership losses in effect for each of those
22 persons when the obligation was incurred;

23 (2) if a person fails to contribute the full amount required under paragraph

1 (1) with respect to an undischarged limited ~~partnership~~ partnership's obligation, the other persons
2 required to contribute by paragraph (1) on account of that obligation shall contribute the
3 additional amount necessary to discharge the obligation and the additional contribution due from
4 each of those other persons ~~shall be~~ is in proportion to the allocation of limited partnership losses
5 in effect for each of those other persons when the obligation was incurred; and

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

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

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

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

19 **Reporter's Notes**

20 **Issues for Consideration:** whether subsection (a)'s requirement that a limited partnership
21 "discharge its obligations to creditors" should be modified to allow a limited partnership to
22 "discharge or make provision for the discharge of its obligations to creditors"; whether to retain
23 the requirement that liquidating distributions be paid "in cash."

24 Derived from RUPA § 807. RUPA § 807(b) is omitted, however, because that provision

1 rests on RUPA's concept of a partner's account. RUPA § 401(a). Re-RULPA does not adopt the
2 "partner's account" approach. Also, this section does not refer to return of contributions. See
3 Notes to subsection (b), below.

4 In Drafts before the July, 1999 Draft, this material appeared at Section 804.

5 Subsection (a) – Source: RUPA § 807(a). A partner previously entitled to receive a
6 distribution is a creditor. See Section 508.

7 Subsection (b) – This subsection differs substantially in form from RUPA § 807(b), in part
8 because Re-RULPA does not specify the structure of each partner's "account." RUPA § 807(b)
9 depends on RUPA § 401(a)'s concept of a partner's account.

10 Also, this Draft (like the July, 1999 Draft) does not refer to the “return of all contributions
11 that have not previously been returned.” In Drafts before the July, 1999 Draft, subsection (b)
12 provided:

13 (b) Any surplus existing under subsection (a) shall be distributed first as a
14 return of all contributions that have not previously been returned and second as a
15 distribution of profits allocated under Section 504. If the surplus does not suffice
16 to return all contributions, the surplus shall be allocated in proportion to the
17 unreturned contributions.

18 As explained in the Reporter’s Notes the Section 503, beginning with the July, 1999 Draft Re-
19 RULPA eschews the unneeded concept of “return of contribution.” So long as a limited
20 partnership conforms to the default rules on sharing of distributions, Re-RULPA’s simpler
21 approach will produce the same results as RULPA’s abstruse language. See RULPA § 608(c)
22 (defining return of contribution).

23 Subsection (c) – This draft's approach is more complex than RUPA's, because (i) this draft
24 does not rely on the "partner's account" concept, and (ii) does provide for contributions from
25 dissociated general partners. RUPA does not need the latter provision, because in the default
26 mode the buy-out price of a dissociated RUPA partner reflects any liabilities outstanding at the
27 time of dissociation. See RUPA § 701(b).

28 Subsection (e) – Derived from RUPA § 807(e), but query: why is this provision
29 necessary? Is there something in other law that would excuse or release the estate? In any event,
30 RUPA's formulation has been changed to include all obligations under subsection (c); i.e., not
31 only a person's obligation to contribute to the limited partnership but also the liability of under-
32 contributors to over-contributors.

33 [ARTICLE] 9

FOREIGN LIMITED PARTNERSHIPS

SECTION 901. ~~LAW GOVERNING~~ LAW FOREIGN LIMITED PARTNERSHIPS.

(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 and their transferees.

(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.

Although ULLCA's Article 10 is based on RULPA's Article 9, ULLCA does differ from RULPA in some substantial ways. For two reasons Re-RULPA follows ULLCA. First, ULLCA's foreign registration provisions are dovetailed with various other ULLCA provisions adopted by Re-RULPA (e.g. Section 114 [change of designated office or agent], Section 210 [annual report]). Second, many of ULLCA's changes constitute improvements over RULPA.

Subsection (b) – ULLCA 1001(b) refers to “another jurisdiction under which the foreign limited partnership is organized” rather than “the jurisdiction” At its October, 1999 meeting, the Drafting Committee decided that it is unnecessary to make subsection (b) expressly subject to Section 905.

SECTION 902. APPLICATION FOR CERTIFICATE OF AUTHORITY.

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

3 The application must ~~set forth~~ state:

4 (1) the name of the foreign limited partnership and, if that name does not
5 comply with Section ~~407~~ 108, an alternate name adopted pursuant to Section 905(a).

6 (2) the name of the State or country under whose law it is
7 organized;

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

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

13 (5) the name and ~~business~~ address of each of its general partners;

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

16 (b) A foreign limited partnership shall deliver with the completed application a
17 certificate of existence or a record of similar import authenticated by the ~~secretary of state~~
18 [Secretary of State] or other official having custody of limited ~~partnership~~ partnership's records in
19 the State or country under whose law it is organized.

20 **Reporter's Notes**

21 At its October, 1999 meeting, the Drafting Committee decided not to require a foreign
22 limited partnership to have an in-state office and to require a foreign limited partnership to have
23 an in-state agent for service of process (in addition to the Secretary of State).

Source: ULLCA § 1002.

Subsection (a)(1) – This provision differs from ULLCA as follows:

the name of the foreign ~~company or limited partnership and~~, if ~~its~~ that name is ~~unavailable for use in this State does not comply with Section 108, an alternate name adopted pursuant to that satisfies the requirements of Section 1005 905(a).~~

Subsection (a)(3) – ULLCA does not contain the latter requirement, but RULPA §902(5) does. The RULPA provision requires disclosure of the principal office only if the law of the foreign jurisdiction does not require an office in that jurisdiction.

Subsection (a)(4) – This paragraph reflects a change from current law. RULPA does not require a foreign limited partnership to name an in-state agent for service of process. RULPA § 902(3) and (4).

Subsection (a)(5) – RULPA § 902(6) states this requirement. ULLCA § 1002(7) states the parallel requirement as to *initial* managers. At its October, 1999 meeting, the Drafting Committee decided to delete the requirement of a *business* address.

Subsection (a)(6) – This provision is derived from ULLCA § 1002(8). Both provisions pertain to displacing the statutory default rule on owner liability. The ULLCA provision refers to situations in which the articles of organization make owners liable for the entity's debts. The Re-RULPA provision refers to situations in which the certificate of limited partnership produces the opposite result for general partners. This provision may require revision, depending on whether the Drafting Committee maintains its decision to use LLLP status as the Act's default setting.

ULLCA provisions omitted from Re-RULPA – Re-RULPA omits the following provisions from this section.

(4) the address of its initial designated office in this State;^A

...

(6) whether the duration of the company is for a specified term and, if so, the period specified;^B

(7) whether the company is manager-managed, and, if so, the name and address of each initial manager;^C and

(8) whether the members of the company are to be liable for its debts and obligations under a provision similar to Section 303(c).^D

^A RULPA does not require a foreign limited partnership to maintain an in-state office and on this issue Re-RULPA follows RULPA.

^B This provision is inapposite, because the Drafting Committee has decided that the partnership agreement can vary the term of a domestic limited partnership. As a result, domestic limited partnerships need not disclose in

1 their certificates of limited partnership any variation from the perpetual
2 term established by the [Act]. See the Reporter's Notes to Sections 201
3 and 801. It makes no sense, therefore, to require such a disclosure from
4 foreign limited partnerships. If the Drafting Committee changes its
5 decision on domestic limited partnerships, a corresponding change should
6 be made in this section.

7 ^C Subsection(a)(5) makes the analogous provision for general partners.

8 ^D Subsection(a)(6) makes a roughly analogous provision for LLLPs.

9 **SECTION 903. ACTIVITIES NOT CONSTITUTING TRANSACTING**

10 **BUSINESS.**

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

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

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

16 (3) maintaining bank accounts;

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

20 (5) selling through independent contractors;

21 (6) soliciting or obtaining orders, whether by mail or ~~the Internet~~ electronic
22 means or through employees or agents or otherwise, if the orders require acceptance outside this
23 State before they become contracts;

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

1 (8) securing or collecting debts or enforcing mortgages or other security
2 interests in property securing the debts, and holding, protecting, and maintaining property so
3 acquired;

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

6 (10) transacting business in interstate commerce.

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

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

13 **Reporter's Notes**

14 Subsection (a)(6) – The phrase “or electronic means” does not appear in ULLCA.

15 At its October, 1999 meeting, the Drafting Committee decided not to expand the safe
16 harbor list in subsection (a) to include: “having partners who reside, are organized under the laws
17 of, are authorized to transact business in, or in their separate capacities do transact business in this
18 State.” The Drafting Committee deemed such language unnecessary, since the rule follows from
19 the entity nature of a limited partnership. Suppose: (i) a foreign limited partnership has a general
20 partner that is an entity; (ii) the entity is authorized to do business in this state; (iii) the entity does
21 business in this State; and (iv) the business does not relate to the foreign limited partnership. The
22 foreign limited partnership is *not* transacting business in this State.

23 **SECTION 904. ISSUANCE OF CERTIFICATE OF AUTHORITY.** Unless the
24 [Secretary of State] determines that an application for a certificate of authority fails to comply as

1 to form with the filing requirements of this [Act], the [Secretary of State], upon payment of all
2 filing fees, shall file the application, ~~issue~~ file a certificate of authority to transact business in this
3 State and send a conformed copy of the certificate, together with a receipt for the fees to the
4 foreign limited partnership or its representative.

5 **Reporter's Notes**

6 Source: ULLCA § 1004.

7 This section differs from ULLCA in expressly requiring the issuance of an actual
8 certificate. ULLCA seems to implicitly deem the receipt to be the certificate. The difference from
9 ULLCA is as follows.

10 . . . the [Secretary of State], upon payment of all filing fees, shall file the
11 application, issue a certificate of authority to transact business in this State and
12 send the certificate, together with a receipt for ~~it and~~ the fees, to the foreign
13 limited partnership or its representative.

14 The additional language is derived from RULPA § 903(3), which requires the [Secretary of State]
15 to “issue a certificate of registration to transact business in this State.” At its October, 1999
16 meeting, the Drafting Committee decided to preserve RULPA § 903(3)’s provision for an actual
17 certificate of authority. The Committee also decided to have the [Secretary of State] send the
18 foreign limited partnership a “conformed copy of the certificate.”

19 **SECTION 905. NONCOMPLYING NAME OF FOREIGN LIMITED** 20 **PARTNERSHIP.**

21 (a) A foreign limited partnership whose name does not comply with Section ~~107~~
22 108 may not obtain a certificate of authority until it adopts, for the purpose of transacting
23 business in this State, an alternate name that complies with Section ~~107~~ 108. A foreign limited
24 partnership that adopts an alternate name under this subsection and then obtains a certificate of
25 authority with that name need not ~~[designate appropriate action] under~~ comply with ~~[designate~~
26 ~~fictitious name statute]~~. After obtaining a certificate of authority with an alternate name, a foreign

limited partnership must transact business in this State under that 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 ~~107~~ 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

Derived from ULLCA § 1005, but modified substantially to limit overlap with Section 107. ULLCA does not specify the process for amending a certificate of authority, and neither does this Draft.

~~SECTION 906. REGISTERED NAME.~~

~~————— (a) A foreign limited partnership may register its name, if the name complies with Section 107.~~

~~————— (b) If a foreign limited partnership's name fails to comply with Section 107 solely because the name does not comply with Section 107(a), the foreign limited partnership may, for the purpose of registering its name:~~

~~————— (1) adopt an alternate name that complies with Section 107 and differs from the foreign limited partnership's name only as necessary to comply with Section 107(a); and~~

~~————— (2) register that alternate name without needing to [designate appropriate action] under [designate fictitious name statute].~~

~~————— (c) A foreign limited partnership registers its name, or an alternate name adopted under subsection (b), by delivering to the [Secretary of State] for filing an application:~~

~~————— (1) setting forth its name, any alternate name adopted under subsection (b);~~

1 ~~the State or country and date of its organization, and a brief description of the nature of the~~
2 ~~business in which it is engaged; and~~

3 ~~_____ (2) accompanied by a certificate of existence, or a record of similar import,~~
4 ~~from the State or country of organization.~~

5 ~~_____ (d) A foreign limited partnership whose registration is effective may renew it for~~
6 ~~successive years by delivering for filing in the office of the [Secretary of State] a renewal~~
7 ~~application complying with subsection (c) between October 1 and December 31 of the preceding~~
8 ~~year. The renewal application renews the registration for the following calendar year.~~

9 ~~_____ (e) A foreign limited partnership whose registration is effective may obtain a~~
10 ~~certificate of authority under the registered name or consent in writing to the use of the registered~~
11 ~~name by a limited partnership later organized under this [Act] or by another foreign limited~~
12 ~~partnership later authorized to transact business in this State. The registration terminates when~~
13 ~~the foreign limited partnership obtains a certificate of authority under the registered name, the~~
14 ~~limited partnership is organized under the registered name, or the other foreign limited partnership~~
15 ~~obtains a certificate of authority under the registered name.~~

16 **Reporter's Notes to Former Section 906**

17 At its October, 1999 meeting, the Drafting Committee decided to subsume former Section
18 906 into Section 108 [now 109].

19 **SECTION ~~907~~ 906. REVOCATION OF CERTIFICATE OF AUTHORITY.**

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

22 ~~_____ (1) the foreign limited partnership fails to:~~

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

(ii) (2) deliver its annual report required under Section 210 to the
[Secretary of State] within 60 days after it is due;

(iii) (3) appoint and maintain an agent for service of process as required by
Section ~~113(b)~~ 114(b); or

(iv) (4) file a statement of a change under Section ~~114~~ 115 within [TBD]
days after a change has occurred in the name or address of the agent; ~~or~~ .

~~(2) a misrepresentation has been made of any material matter in any
application, report, affidavit, or other record submitted by the foreign limited partnership pursuant
to this [article].~~

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

Reporter's Notes

Issues for Consideration: what deadline to impose on filing a statement of change
pertaining to the name or address of the agent for service of process.

1 Source: ULLCA §1006.

2 Subsection (a)(1) – At its October, 1999 meeting, the Drafting Committee decided to
3 conform the scope of this provision to the comparable provision for administrative dissolution.
4 See Section 809(1).

5 Subsection (a)(4) – ULLCA § 1006(a)(1)(iv) provides: “ file a statement of a change in
6 the name or business address of the agent as required by this [article].” However, Article 10 of
7 ULLCA does not require a statement of change.

8 Former Subsection (a)(2) – At its October, 1999 meeting, the Drafting Committee decided
9 to delete this paragraph as unduly involving the [Secretary of State] in fact finding.

10 ~~**SECTION 908. CANCELLATION OF AUTHORITY.** A foreign limited partnership~~
11 ~~may cancel its certificate of authority to transact business in this State by filing in the office of the~~
12 ~~[Secretary of State] a certificate of cancellation. Cancellation does not terminate the authority of~~
13 ~~the [Secretary of State] to accept service of process on the foreign limited partnership for [claims~~
14 ~~for relief] arising out of the transactions of business in this State.~~

15 **Reporter’s Notes to Former Section 908**

16 At its October, 1999 meeting, the Drafting Committee decided to subsume former Section
17 908 into Section 909 [now 907].

18 ~~**SECTION 909 907. CANCELLATION OF CERTIFICATE OF AUTHORITY;**~~
19 ~~**EFFECT OF FAILURE TO OBTAIN HAVE CERTIFICATE OF AUTHORITY.**~~

20 (a) A foreign limited partnership may cancel its certificate of authority to transact
21 business in this State by filing in the office of the [Secretary of State] a certificate of cancellation.

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

business in this State.

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

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

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

Reporter's Notes

Source: RULPA § 907(d), followed in ULLCA § 1008.

Subsection (c) – This subsection is derived from RULPA rather than ULLCA. RULPA § 907(c) states:

A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this State without registration.

In contrast, ULLCA § 1008(c) states:

Limitations on personal liability of partners and their transferees are not waived solely by transacting business in this State without a certificate of authority.

SECTION 910 908. ACTION BY [ATTORNEY GENERAL]. The [Attorney

General] may maintain an action to restrain a foreign limited partnership from transacting business in this State in violation of this [article].

Reporter's Notes

Source: RULPA § 908, followed in ULLCA § 1009.

[ARTICLE] 10

ACTIONS BY PARTNERS

SECTION 1001. DIRECT ACTIONS BY PARTNERS.

(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~~ partnership's business, to:

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

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

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

(b) A partner bringing a direct ~~claim~~ action under this section must 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

This Section is derived from RUPA § 405 but omits RUPA § 405(a). That subsection provides: "A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership." Beginning with the July, 1999 Draft, that language appears in Section 104 [now 105](b)(1) (powers of a limited partnership).

In Drafts before the July, 1999 Draft, this material appeared at Section 1005.

Subsection (a) – Derived from RUPA § 405(b). RUPA 405(b) does not include the word "direct" to modify "action."

Subsection (a)(2) – RUPA § 405(b)(2) includes a non-exhaustive list of those rights. The Comment does not explain why some rights warrant special mention.

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. For instance, if the partnership agreement recites or establishes the general partners' duties as managers of the enterprise, breach of those duties will create a classic derivative claim. The fact that the partnership agreement incorporates those duties does not transmute the claim into a direct one. Thus, 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.

This provision has no analog in either RUPA or ULLCA.

Subsection (c) – Source: RUPA § 405(c).

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

1 cause the limited partnership to bring an action to enforce the right, and the general partners do
2 not bring the action within a reasonable time; or

3 (2) a demand will be futile.

4 **Reporter's Notes**

5 Derived from RULPA § 1001. In Drafts before the July, 1999 Draft, this material
6 appeared at Section 1001.

7 At its March, 1999 meeting the Drafting Committee made two major decisions concerning
8 the provisions on derivative actions. First, the Committee decided to modernize the language
9 throughout those provisions. Second, after spirited debate, the Committee decided to expressly
10 authorize a *general* partner to bring a derivative lawsuit.

11 Modernizing the language is not intended to change substance. Committee members
12 disagreed as to whether permitting a general partner to bring a derivative suit changes current
13 law. (RULPA is ambiguous, and the cases are few and in conflict.)

14 In any event, only minority general partners will have need of a derivative action. A
15 general partner with majority control has the power to cause the limited partnership to sue in its
16 own name. See Reporter's Notes to Section 406.

17 At the March, 1999 meeting, the Committee also discussed but did not adopt two other
18 propositions: imposing a universal demand requirement, and giving transferees standing to bring
19 a derivative suit.

20 Differences from RULPA language – The language in this section differs from the RULPA
21 language in three ways. First, the Re-RULPA uses the concept of demand futility, rather than the
22 older, more oblique formulation that "an effort to cause those general partners [to act] is not
23 likely to succeed." Second, Re-RULPA refers to the general partners causing the limited
24 partnership to bring suit, rather than the general partners themselves bringing suit. This change
25 reflects Re-RULPA's pure entity approach.

26 The third difference concerns the addressees of the demand. The RULPA provision refers
27 to those "general partners with authority" to bring suit on behalf of the partnership, and ULLCA
28 has a comparable formulation. See ULLCA § 1101. As in other instances, the word "authority"
29 is confusing. Does it mean the right, the power, either, or both? In any event, in the context of a
30 limited partnership the phrase "with authority" seems superfluous. A limited partner makes
31 demand on the general partners collectively. If the partnership agreement allocates the decision
32 on the demand to fewer than all of the general partners, that allocation affects the way in which
33 the general partners process a demand, not the way in which the limited partner addresses the
34 demand.

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

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

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

8 **Reporter's Notes**

9 **Issue for Consideration:** whether this section should require the plaintiff to be a proper
10 representative of the interests of the limited partners.

11 Derived from RULPA § 1002. In Drafts before the July, 1999 Draft, this material
12 appeared at Section 1002.

13 RULPA § 1002 refers to the plaintiff having been a partner "at the time of the transaction
14 of which he [or she] complains." Re-RULPA refers to "when the conduct giving rise to action
15 occurred." Besides eliminating the "his [or her]" formulation, this change excludes the narrowing
16 connotation associated with "transaction."

17 Neither RULPA nor this draft (nor ULLCA) expressly require a derivative plaintiff
18 to be a proper representative of other owners. Compare, e.g., Fed.R.Civ.P. 23.1, which states:

19 The derivative action may not be maintained if it appears that the plaintiff does not
20 fairly and adequately represent the interests of the shareholders or members
21 similarly situated in enforcing the right of the corporation or association.

22 Given the possibility of a general partner bringing a derivative lawsuit, perhaps this requirement
23 should be added.

24 **SECTION 1004. PLEADING.** In a derivative action, the complaint ~~shall~~ must state

1 with particularity:

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

4 (2) why demand is excused as futile.

5 **Reporter's Notes**

6 Derived from RULPA § 1003. In Drafts before the July, 1999 Draft, this material
7 appeared at Section 1003.

8 **SECTION 1005. PROCEEDS AND EXPENSES.**

9 (a) ~~Subject to~~ Except as otherwise provided in subsection (b):

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

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

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

18 **Reporter's Notes**

19 Derived from RULPA § 1004. In Drafts before the July, 1999 Draft, this material
20 appeared at Section 1004.

21 Subsection (b) – A court can also order the defendants (or their counsel) to pay attorneys
22 fees, if some other law allows (e.g., Rule 11).

1 [ARTICLE] 11

2 CONVERSIONS AND MERGERS

3 SECTION 1101. DEFINITIONS. In this [article];

4 (1) "Business organization" ~~includes~~ means a domestic or foreign general
5 partnership, including a limited liability partnership, ~~a~~ limited partnership, including a limited
6 liability limited partnership, a limited liability company, a business trust, a corporation, and any
7 other entity ~~considered by its governing statute to have~~ having owners and ownership interests
8 under its governing statute.

9 (2) "Constituent business organization" means a business organization that is party
10 to a merger.

11 (3) "Converted business organization" means the business organization into which
12 a converting business organization converts pursuant to ~~section~~ Section 1102.

13 (4) "Converting business organization" means a business organization that
14 converts into another business organization pursuant to ~~section~~ Section 1102.

15 (5) "General partner" means a general partner of a limited partnership.

16 (6) "Governing statute" of a business organization means the statute under which
17 the organization is incorporated, organized, formed, or ~~achieves its fundamental organizational~~
18 ~~status created~~ and which governs the ~~structure, governance, operations, and other~~ internal affairs
19 of the organization.

20 ~~(7) "Mere transferee" means a person who is not a partner and who owns a~~
21 ~~transferable interest in a limited partnership.~~

1 ~~(8)~~ (7) "Organizational documents" means:

2 ~~(i)~~ (A) for a domestic or foreign general partnership, its partnership
3 agreement;

4 ~~(ii)~~ (B) for a limited partnership and a foreign limited partnership, its
5 certificate of limited partnership and partnership agreement;

6 ~~(iii)~~ (C) for a domestic or foreign limited liability company, its articles of
7 organization and operating agreement;

8 (D) for a business trust, its agreement of trust and declaration of trust;

9 ~~(iv)~~ (E) for a domestic or foreign corporation, its articles of incorporation,
10 bylaws, and other agreements among its shareholders which are authorized by its governing
11 statute; and

12 ~~(v)~~ (F) for any other business organization, the basic records that create the
13 business organization and determine its internal governance and the relations among its owners.

14 ~~(9)~~ (8) "Owner" means ~~with respect to~~:

15 ~~(i)~~ (A) with respect to a general or limited partnership, a partner;

16 ~~(ii)~~ (B) with respect to a limited liability company, a member;

17 (C) with respect to a business trust, the owner of a beneficial interest in the
18 trust;

19 ~~(iii)~~ (D) with respect to a corporation, a shareholder; and

20 ~~(iv)~~ (E) with respect to any other business organization, a person
21 ~~recognized by the business organization's governing statute as being an owner of the~~ who has an
22 ownership interest in the organization.

1 ~~(10) "Ownership interest" means an owner's proprietary interest in a business~~
2 ~~organization.~~

3 ~~(11) (9) "Owner Owner's vicarious liability" means vicarious personal liability for a~~
4 ~~debt, obligation, or liability of a business organization an organization's obligations which is~~
5 ~~imposed on an owner:~~

6 ~~(A) by the organization's governing statute on an owner through a~~
7 ~~provision of that statute which makes owner status an essential element for establishing personal~~
8 ~~liability solely by reason of the owner's capacity as owner; or~~

9 ~~(B) by the organization's organizational documents under a provision of~~
10 ~~the organization's governing statute authorizing those documents to make one or more specified~~
11 ~~owners or categories of owners liable in their capacity as owners for all or specified debts,~~
12 ~~obligations, or liabilities of the business organization.~~

13 ~~(12) (10) "Person dissociated as a general partner" means a person dissociated as a~~
14 ~~general partner of a limited partnership.~~

15 ~~(13) (11) "Surviving business organization" means a business organization into~~
16 ~~which one or more other business organizations are merged. A surviving business organization~~
17 ~~may preexist the merger or be created by the merger.~~

18 **Reporter's Notes**

19 "Business organization" [(1)] – This definition will permit a limited partnership to engage
20 in an organic change with entities organized under the law of foreign countries but not with non-
21 profit entities. The new provisions proposed for the RMBCA ("RMBCA's new provisions") refer
22 to "any association or legal entity . . . organized to conduct business." RMBCA's new provisions,
23 § 11.01(d).

24 "Constituent business organization" [(2)] – The RMBCA's new provisions refer instead to
25 a "party to a merger." § 11.01(e).

1 “Organizational documents” [(7)] – Derived from RMBCA’s new provisions, § 11.01(c).
2 The specific examples do not appear in the RMBCA’s new provisions.

3 Deleted Definition of “Ownership interest” [(formerly 10)] – Per the suggestion of the
4 representative of the Style Committee, this definition has been relocated to Section 102. That
5 relocation poses some problems, which are discussed in the Reporter’s Notes to Section 102(15).

6 “Owner’s liability” [(9)] – This definition has been revised to track the structure and
7 content of Section 404. This definition does not encompass an owner's personal liability for
8 approving or receiving improper distributions from the organization because that liability is not
9 liability for an *organization's* debts and other obligations." (Emphasis added.)]

10 “Surviving business organization” [(11)] – This definition comes essentially verbatim from
11 the RMBCA’s new provisions, § 11.01(g).

12 **SECTION 1102. CONVERSION.**

13 (a) A business organization other than a limited partnership may convert to a
14 limited partnership, and a limited partnership may convert to another business organization
15 pursuant to Sections 1102 ~~to through~~ 1105 and a plan of conversion, if:

16 (1) those sections are not inconsistent with the governing statute of the
17 other business organization ~~permits a conversion to occur in a manner consistent with Sections~~
18 ~~1102 to 1105~~; and

19 (2) the other business organization complies with its governing statute ~~and~~
20 ~~its organizational documents~~ in effecting the conversion.

21 (b) The plan of conversion ~~shall~~ must include:

22 (1) the name and ~~type~~ form of the business organization ~~prior to~~ before
23 conversion;

24 (2) the name and ~~type~~ form of the business organization after conversion;
25 and

1 (3) the terms and conditions of the conversion; and
2 (4) ~~the manner and basis for converting the ownership interests of the~~
3 ~~converting business organization into any combination of money, ownership interests in the~~
4 ~~converted business organization, and other consideration; and~~
5 ~~_____ (5) if the converting business organization is a limited partnership that has~~
6 ~~outstanding transferable interests owned by mere transferees, the manner and basis for converting~~
7 ~~those transferable interests into any combination of money, ownership interests in the converted~~
8 ~~business organization, and other consideration;~~
9 (6) ~~(4)~~ the organizational documents of the converted business
10 organization; ,
11 (7) any information required by Section 1110 or 1111; and
12 ~~_____ (8) any additional information required by the governing statutes of the~~
13 ~~converting business organization and the converted business organization and by the~~
14 ~~organizational documents of the converting organization.~~
15 (c) ~~The terms described in subsections (b)(4) and (b)(5) may be made dependent~~
16 ~~on facts ascertainable outside the plan of conversion, provided that those facts are objectively~~
17 ~~ascertainable. The term "facts" includes the occurrence of any event, including a determination or~~
18 ~~action by any person or body, including the converting business organization.~~
19 (d) ~~The plan of conversion may state other provisions relating to the conversion.~~

Reporter's Notes

21 Conversion necessarily works cross-entity and may work cross-jurisdiction as well. The
22 only limitations are that:

23 C both the converting and converted entities be business organizations (i.e., that they

1 have “owners”), and
2 C either the converting or converted business organization be a limited partnership
3 (i.e., a domestic limited partnership, formed under this [Act]).

4 Thus, for example, Sections 1102 to 1105 will permit:

- 5 ~ a Re-RULPA limited partnership to convert to a Bermuda limited liability
6 company, if Bermuda law allows; and
- 7 ~ a Delaware corporation to convert to a Re-RULPA limited partnership, if
8 Delaware law allows.

9 Subsection (a) – Whether the other business organization must comply with its
10 organizational documents is determined by the other organization’s governing statute, not this
11 Act.

12 Subsection (b) – At its October, 1999 meeting, the Drafting Committee decided to
13 substantially simplify subsection (b), believing that (b)(3) necessarily encompasses the subject
14 matter of (b)(4) and (5) and that (b)(8) is unnecessary.

15 Former Subsection (c) – The deleted language comes essentially verbatim from RMBCA’s
16 new provisions, § 11.02(d). At its October, 1999 meeting, the Drafting Committee decided to
17 delete subsection (c), believing that (b)(3) necessarily encompasses the subject matter of the
18 former subsection (c).

19 Former Subsection (d) – At its October, 1999 meeting, the Drafting Committee decided to
20 delete this subsection, seeing no reason or need to expressly authorize additional material.

21 **SECTION 1103. ACTION ON PLAN OF CONVERSION BY LIMITED**
22 **PARTNERSHIP.**

- 23 (a) ~~A plan of conversion must be approved, subject to Sections 1110 and 1111:~~
24 ~~—————(1) in the case of~~ If a converting business organization ~~that~~ is a limited
25 partnership, subject to Section 1110 by all the partners must approve the plan of conversion.; and
26 ~~—————(2) in the case of any other business organization:~~
27 ~~—————(i) in the manner provided by the business organization's governing~~

1 ~~statute, including any appraisal rights established by that statute; and~~

2 ~~_____ (2) in conformity with any applicable provisions of the business~~
3 ~~organization's organizational documents.~~

4 (b) After a conversion is approved, and at any time before a filing is made under
5 Section 1104, a converting business organization that is a limited partnership may amend the plan
6 ~~may be amended~~ or abandon the planned conversion ~~may be abandoned~~; subject to any
7 contractual rights:

8 (1) ~~by a converting business organization that is a limited partnership,~~
9 ~~subject to Sections 1110 and 1111:~~

10 ~~_____ (i) as provided in the plan; and~~

11 ~~(ii)~~

12 ~~(2) except as prohibited by the plan, by the same consent as was required~~
13 ~~to approve the plan; and .~~

14 ~~(2) by a converting business organization that is not a limited partnership,~~
15 ~~as permitted by that business organization's governing statute, subject to Section 1110.~~

16 **Reporter's Notes**

17 At its October, 1999 meeting, the Drafting Committee decided to limit the scope of this
18 Section to rules pertaining to a converting *limited partnership*. As for other converting business
19 organizations, the rules are provided by the appropriate governing statute.

20 Subsection (a) – In the July, 1999 Draft, Section 1110 provided nonwaivable rights for
21 persons with owner liability in the converted business organization. At its October, 1999 meeting,
22 the Drafting Committee decided to delete Section 1110. In the March, 2000 Draft a new Section
23 1110 prevents non-unanimous approval of conversion and merger, except to the extent that each
24 objecting partner has assented to a partnership agreement provision providing for non-unanimous
25 approval.

26 The July, 1999 Draft also made Section 1110's protections applicable even when the

1 converting entity was *not* a creature of this [Act]. The Reporter's Notes explained: "This [Act]
2 does not countenance a person being voted into owner vicarious liability." At its July, 1999
3 meeting, the Drafting Committee decided to eliminate that protection.

4 In the July, 1999 Draft, former Section 1111 provided nonwaivable rights for non-partners
5 holding transferable interests in a converting limited partnership. At its July, 1999 meeting, the
6 Drafting Committee decided to delete Section 1111.

7 Subsection (b) – The RMBCA's new provisions, § 11.02(e) appear to allow amendment
8 of a plan of merger only if the plan so provides.

9 **SECTION 1104. FILINGS REQUIRED; EFFECTIVE DATE.**

10 (a) After ~~owners have approved the~~ a plan of conversion is approved:

11 (1) if the converting business organization is a limited partnership, the
12 limited partnership shall:

13 ~~_____ (i) file whatever records are required by the governing statute of the~~
14 ~~business organization into which the limited partnership is to be converted, and~~

15 ~~_____ (ii) file with the [Secretary of State] articles of conversion, which~~
16 must include:

17 (A) a statement that the limited partnership has been converted into
18 another business organization;

19 (B) the name and ~~type~~ form of that business organization and the
20 jurisdiction of its governing statute;

21 (C) the date the conversion is effective according to the governing
22 statute of converted business organization; ~~and~~

23 (D) a statement that the conversion was ~~duly~~ approved as required
24 by this [Act]; and

1 (E) a statement that the conversion was approved as required by
2 the governing statute of the converted business organization; and

3 (2) if the converting business organization is a not a limited partnership, the
4 converting business organization ~~shall file whatever records are required by its governing statute~~
5 ~~and~~ shall file with the [Secretary of State] a certificate of limited partnership, which must include,
6 in addition to the information required by Section 201:

7 (i) ~~(A)~~ (A) a statement that the limited partnership was converted from
8 another form of business organization;

9 (ii) ~~(B)~~ (B) the name and ~~type~~ form of that business organization and
10 the jurisdiction of its governing statute; and

11 (iii) ~~(C)~~ (C) a statement that the conversion was ~~duly~~ approved in a
12 manner that complied with the business organization's governing statute ~~and organizational~~
13 ~~documents~~.

14 (b) ~~The A~~ conversion ~~takes effect~~ becomes effective:

15 (1) if the converted business organization is a limited partnership, when the
16 certificate of limited partnership takes effect; and

17 (2) if the converted business organization is not a limited partnership, ~~at the~~
18 ~~time specified as provided~~ as provided by the governing statute of the converted business organization.

19 **Reporter's Notes**

20 This section does not require public disclosure of the plan of conversion.

21 Subsection (a)(1) – This provision states no special signing requirements because the
22 converting business organization is a limited partnership and Section 204 applies.

23 Subsection (a)(1)(D) – This provision is derived from RMBCA's new provisions,

§ 11.05(a)(3).

Subsection (a)(2) – This provision states no special signing requirements for the converting business organization because Section 204 states the signing requirements for a certificate of limited partnership.

SECTION 1105. EFFECT OF CONVERSION.

(a) ~~When conversion to or from a limited partnership becomes effective:~~

~~_____ (1) the business organization continues its existence despite the conversion and is for all purposes the same business organization that existed before the conversion;~~

~~_____ (2) all property owned, and every contract and other right possessed by, the converting business organization is vested in the converted business organization without reversion or impairment;~~

~~_____ (3) all obligations and liabilities of the converting business organization, including liabilities under Sections 1110 and 1111, are obligations and liabilities of the converted business organization;~~

~~_____ (4) the name of the converted business organization may, but need not be, substituted in any pending proceeding for the name of the converting business organization;~~

~~_____ (5) the ownership interests of each owner are converted as provided in the plan of conversion and those persons are entitled only to the rights provided them in the plan or under Section 1110; and~~

~~_____ (6) if the plan provides for the conversion of transferable interests owned by mere transferees, those transferable interests are converted as provided in the plan of conversion and those transferees are entitled only to the rights provided them in the plan or under~~

1 ~~Section 1111;~~

2 ~~_____ (7) owner vicarious liability for the obligations of the converted business~~
3 ~~organization shall be determined according to that business organization's governing statute and~~
4 ~~as provided in Section 1112(a);~~

5 ~~_____ (8) owner vicarious liability for the obligations incurred by the converted~~
6 ~~business organization before the conversion shall be determined according to that business~~
7 ~~organization's governing statute and as provided in Section 1112(b);~~

8 ~~_____ (9) the power to bind of owners and former owners of the converted entity~~
9 ~~shall be determined according to the converted business organization's governing statute and as~~
10 ~~provided in Section 1113;~~

11 ~~_____ (10) if the converted business organization is a foreign entity, the surviving~~
12 ~~business organization consents to the jurisdiction of the courts of this State to enforce any~~
13 ~~obligation owed:~~

14 ~~_____ (i) by the converting organization, if before the conversion the~~
15 ~~converting business organization was subject to suit in this State on that obligation; and~~

16 ~~_____ (ii) by the converted business organization to any person who~~
17 ~~immediately before the conversion was a partner or a mere transferee in a limited partnership that~~
18 ~~was the converting business organization.~~

19 (a) A business organization that has been converted pursuant to this [article] is for
20 all purposes the same entity that existed before the conversion.

21 (b) When a conversion takes effect:

22 (1) all property owned by the converting business organization vests in the

1 converted business organization;

2 (2) all debts, liabilities, and other obligations of the converting business
3 organization continue as obligations of the converted business organization;

4 (3) an action or proceeding pending by or against the converting business
5 organization may be continued as if the conversion had not occurred;

6 (4) except as prohibited by other law, all of the rights, privileges,
7 immunities, powers, and purposes of the converting business organization vest in the converted
8 business organization; and

9 (5) except as otherwise agreed, if the converting business organization is a
10 limited partnership the conversion does not dissolve the limited partnership for the purpose of
11 [Article] 8.

12 ~~(b)~~ (c) A converted business organization that is a foreign entity consents to the
13 jurisdiction of the courts of this State to enforce any obligation owed by the converting business
14 organization, if before the conversion the converting business organization was subject to suit in
15 this State on that obligation. If the A converted business organization that is a foreign entity and is
16 not authorized to transact business in this State; appoints the [Secretary of State] is the surviving
17 business organization's as its agent for service of process for the purposes of enforcing an
18 obligation described in paragraph (a)(10) under this subsection. Service on the [Secretary of
19 State] under this subsection is made in the same manner and with the same consequences as stated
20 in Section ~~116(c)~~ 117(c) and (d).

21 **Reporter's Notes**

22 At its October, 1999 meeting, the Drafting Committee substantially revised this section.
23 Subsections (a) and (b) are taken, essentially verbatim, from ULLCA § 903(a) and (b).

1 **SECTION 1106. MERGER.**

2 (a) A limited partnership may merge with one or more other constituent business
3 organizations pursuant to Sections 1106 ~~to~~ through 1109 and a plan of merger, if:

4 (1) ~~those sections are not inconsistent with~~ the governing statute of each of
5 the other constituent business organizations ~~permits a merger to occur in a manner consistent with~~
6 ~~Sections 1106 to 1109~~; and

7 (2) each of the other constituent business organizations complies with its
8 governing statute ~~and its organizational documents~~ in effecting the merger.

9 (b) The plan of merger ~~shall~~ must include:

10 (1) the name and ~~type~~ form of each constituent business organization;

11 (2) the name and ~~type~~ form of the surviving business organization and, if
12 the surviving business organization is to be created by the merger, a statement to that effect;

13 (3) the terms and conditions of the merger;

14 ~~(4) the manner and basis for converting the ownership interests of each~~
15 ~~constituent business organization into any combination of money, ownership interests in the~~
16 ~~surviving business organization, and other consideration; and~~

17 ~~_____ (5) for each constituent business organization that is a limited partnership~~
18 ~~with outstanding transferable interests owned by mere transferees, the manner and basis for~~
19 ~~converting those transferable interests into any combination of money, ownership interests in the~~
20 ~~surviving business organization, and other consideration;~~

21 ~~(6)~~ (4) if the surviving business organization is to be created by the merger,

1 the surviving business organization's organizational documents; and

2 ~~(7)~~ (5) if the surviving business organization is not to be created by the
3 merger, any amendments to be made by the merger to the surviving business organization's
4 organizational documents; ,

5 ~~(8) any information required by Section 1110 or 1111; and~~
6 ~~————— (9) any additional information required by the governing statutes or~~
7 ~~organizational documents of a constituent organization.~~

8 ~~(c) The terms described in subsections (b)(4) and (b)(5) may be made dependent~~
9 ~~on facts ascertainable outside the plan of merger, provided that those facts are objectively~~
10 ~~ascertainable. The term "facts" includes the occurrence of any event, including a determination or~~
11 ~~action by any person or body, including the constituent business organization.~~

12 ~~————— (d) The plan of merger may state other provisions relating to the merger.~~

13 **Reporter's Notes**

14 At its October, 1999 meeting, the Drafting Committee substantially revised the Act's
15 provisions dealing with conversions and instructed the Reporter to make analogous changes to the
16 provisions dealing with mergers.

17 **SECTION 1107. ACTION ON PLAN OF MERGER BY LIMITED** 18 **PARTNERSHIP.**

19 (a) ~~A plan of merger must be approved, subject to Sections 1110 and 1111:~~
20 ~~————— (1) in the case of a Subject to Section 1110, all the partners of a constituent~~
21 ~~business organization that is a limited partnership must approve the plan of merger. , by all the~~
22 ~~partners; and~~

1 ~~(2) in the case of any other business organization:~~
2 ~~_____ (i) in the manner provided by the business organization's governing~~
3 ~~statute, including any appraisal rights established by that statute; and~~
4 ~~_____ (ii) in conformity with any applicable provisions of the business~~
5 ~~organization's organizational documents.~~

6 (b) After a merger is approved, and at any time before a filing is made under
7 Section 1108, a constituent business organization that is a limited partnership may amend the plan
8 ~~may be amended or abandon the planned merger may be abandoned~~, subject to any contractual
9 rights:

10 ~~(1) by a constituent business organization that is a limited partnership,~~
11 ~~subject to Sections 1110 and 1111:~~

12 ~~_____ (i) as provided in the plan; and~~

13 ~~(ii)~~

14 (2) except as prohibited by the plan, by the same consent as was required
15 to approve the plan; and

16 ~~(2) by a constituent business organization that is not a limited partnership,~~
17 ~~as permitted by that business organization's governing statute, subject to Section 1110.~~

18 **Reporter's Notes**

19 At its October, 1999 meeting, the Drafting Committee substantially revised the Act's provisions
20 dealing with conversions and instructed the Reporter to make analogous changes to the provisions
21 dealing with mergers.

22 **SECTION 1108. FILINGS REQUIRED; EFFECTIVE DATE.**

1 (a) After each constituent business organization has approved ~~the~~ a merger as
2 ~~required by Section 1107~~, articles of merger ~~shall~~ must be signed on behalf of:

3 (1) each preexisting constituent business organization that is a limited
4 partnership, by each general partner listed in the certificate of limited partnership; and

5 (2) each preexisting constituent business organization that is not a limited
6 partnership, by a duly authorized representative.

7 (b) The articles of merger ~~shall~~ must include:

8 (1) the name and ~~type~~ form of each constituent business organization and
9 the jurisdiction of its governing statute;

10 (2) the name and ~~type~~ form of the surviving business organization, the
11 jurisdiction of its governing statute and, if the surviving business organization is created by the
12 merger, a statement to that effect;

13 (3) the date the merger is effective;

14 (4) if the surviving business organization is to be created by the merger ~~and~~
15 ~~will be~~:

16 (i) ~~(A) if it will be~~ a limited partnership, the limited partnership's
17 certificate of limited partnership; or

18 (ii) ~~(B) if it will be~~ a business organization other than a limited
19 partnership, the organizational document that creates the business organization;

20 (5) if the surviving business organization preexists the merger, any
21 amendments provided for in the plan of merger for the organizational document that created the
22 business organization; and

1 (6) a statement as to each constituent business organization that the merger
2 was ~~duly approved in a manner that complied with~~ as required by the business organization's
3 governing statute ~~and organizational documents~~;

4 (7) ~~whatever~~ any additional information is required by the governing
5 statute of any constituent business organization

6 (c) Each constituent business organization that is a limited partnership shall file the
7 articles of merger in the [office of the {Secretary of State}]. ~~Each other constituent business~~
8 ~~organization shall file the articles of merger as required by its governing statute.~~

9 (d) A merger is becomes effective under this [~~Article~~ article] upon the later of:

10 (1) compliance with subsection (c) and the performance of any acts
11 required to effectuate the merger under the governing statute of each constituent business
12 organization; or

13 (2) subject to Section 206, a later date specified in the articles of merger.

14 **Reporter's Notes**

15 This section does not require public disclosure of the plan of merger.

16 Subsection (a) – A surviving business organization that is to be created by the merger
17 cannot have someone sign on its behalf, because it does not come into existence until the merger
18 becomes effective.

19 Subsection (b)(4) – This provision is derived from RMBCA's new provisions, §
20 11.05(a)(3) and (4).

21 Subsection (c) – Derived from RUPA §§ 905(e) and 906 and ULLCA § 906. Under this
22 provision the merger is not effective as to a Re-RULPA limited partnership until the merger is
23 effective as to each constituent organization. The provision aims principally at filing requirements
24 imposed by other governing statutes.

1 **SECTION 1109. EFFECT OF MERGER.**

2 (a) When a merger becomes effective:

3 (1) the surviving business organization continues or comes into existence;

4 (2) each constituent business organization that merges into the surviving
5 business organization ceases to exist as a separate entity;

6 (3) all property owned, ~~and every contract and other right possessed by,~~
7 each constituent business organization that ceases to exist ~~is vested~~ vests in the surviving business
8 organization ~~without reversion or impairment;~~

9 (4) all ~~obligations and liabilities~~ debts, liabilities, and other obligations of
10 each constituent business organization that ceases to exist, ~~including obligations under Sections~~
11 ~~1110 and 1111, are~~ continue as obligations ~~and liabilities~~ of the surviving business organization;

12 (5) ~~the name of the surviving business organization may, but need not be,~~
13 ~~substituted in any pending proceeding for the name of~~ an action or proceeding pending by or
14 against any constituent business organization that ceases to exist may be continued as if the
15 merger had not occurred;

16 (6) except as prohibited by other law, all of the rights, privileges,
17 immunities, powers, and purposes of each constituent business organization that ceases to exist
18 vest in the surviving business organization;

19 (7) except as otherwise agreed, if a constituent business organization is a
20 limited partnership that ceases to exist, the merger does not dissolve the limited partnership for
21 the purpose of [Article] 8;

22 ~~(6)~~ (8) if the surviving business organization is created by the merger ~~and~~

1 is:

2 (i) (A) if it is a limited partnership, the certificate of limited
3 partnership becomes effective; or

4 (ii) (B) if it is a business organization other than a limited
5 partnership, the organizational document that creates the business organization becomes effective;
6 and

7 ~~(7) (9) if the surviving business organization preexists the merger, any~~
8 ~~amendments provided for in the plan of merger for the organizational document that created the~~
9 ~~business organization become effective; .~~

10 ~~(8) the ownership interests of each owner of each constituent business~~
11 ~~organization are converted as provided in the plan of merger and those persons are entitled only~~
12 ~~to the rights provided them in the plan or under Section 1110; and~~

13 ~~(9) if the plan provides for the conversion of transferable interests owned~~
14 ~~by mere transferees, those transferable interests are converted as provided in the plan of merger~~
15 ~~and those transferees are entitled only to the rights provided them in the plan or under Section~~
16 ~~1111;~~

17 ~~(10) owner's vicarious liability for the obligations of the surviving business~~
18 ~~organization is determined according to that business organization's governing statute and as~~
19 ~~provided in Section 1112(a);~~

20 ~~(11) owner's vicarious liability for the obligations incurred by each~~
21 ~~constituent business organization that ceases to exist shall be determined according to that~~
22 ~~business organization's governing statute and as provided in Section 1112(b);~~

1 ~~(12) the power to bind of former owners of each constituent business~~
2 ~~organization that ceases to exist shall be determined according to the surviving business~~
3 ~~organization's governing statute and as provided in Section 1113;~~

4 ~~(13) The surviving business organization consents to the jurisdiction of the~~
5 ~~courts of this State to enforce any obligation owed:~~

6 ~~(i) by any constituent business organization, if before the merger the~~
7 ~~constituent business organization was subject to suit in this State on that obligation; and~~

8 ~~(ii) by the surviving business organization to any person who~~
9 ~~immediately before the merger was a partner or a mere transferee in a limited partnership that was~~
10 ~~a constituent business organization.~~

11 (b) A surviving business organization that is a foreign entity consents to the
12 jurisdiction of the courts of this State to enforce any obligation owed by the a constituent business
13 organization that ceases to exist, if before the merger the constituent business organization was
14 subject to suit in this State on that obligation. If the A surviving business organization that is a
15 foreign entity and is not authorized to transact business in this State; appoints the [Secretary of
16 State] ~~is the surviving business organization's as its~~ agent for service of process for the purposes
17 of enforcing an obligation ~~described in (a)(13)~~ under this subsection. Service on the [Secretary of
18 State] under this subsection is made in the same manner and with the same consequences as stated
19 in Section ~~116(c)~~ 117(c) and (d).

20 **Reporter's Notes**

21 At its October, 1999 meeting, the Drafting Committee substantially revised the Act's provisions
22 dealing with conversions and instructed the Reporter to make analogous changes to the provisions
23 dealing with mergers.

1 **SECTION 1110. ~~VETO RIGHTS OF PERSONS WITH OWNER VICARIOUS~~**
2 **~~LIABILITY; ORGANIZATION'S OPTION TO PURCHASE~~ RESTRICTIONS ON NON-**
3 **UNANIMOUS APPROVAL OF CONVERSIONS AND MERGERS. A partnership**

4 agreement that provides for the approval of a conversion or merger with the consent of less than
5 all the partners is ineffective against a partner who:

6 (1) will have owner's liability for the obligations of the converted or
7 surviving organization; and

8 (2) did not assent to the provision of the partnership agreement.

9 ~~(a) Except as otherwise provided in subsections (b) to (f), a conversion or merger~~
10 ~~pursuant to this Article requires the consent of each person who will have owner vicarious liability~~
11 ~~for the obligations of the converted or surviving business organization. This requirement applies~~
12 ~~despite anything to the contrary in the governing law and organizational documents of any~~
13 ~~converting, converted, constituent, or surviving business organization.~~

14 ~~————— (b) If a person entitled to consent under section (a) refuses or fails to do so, the~~
15 ~~converting or constituent business organization in which the person is an owner or transferee may~~
16 ~~send the person a notification of option to purchase the person's ownership or transferable~~
17 ~~interest. The notification must include:~~

18 ~~————— (1) a copy of the plan of conversion or merger to which the person has~~
19 ~~refused or failed to consent;~~

20 ~~————— (2) a statement that:~~

21 ~~————— (i) unless the person consents to the plan of conversion or merger~~
22 ~~within [TBD] days after receiving the notification, the converting or constituent business~~

organization will have the right to proceed with the conversion or merger without the person's consent; and

_____ (ii) if the converting or constituent business organization proceeds with the conversion or merger without the person's consent, the person:

_____ (A) will have no interest in the converted or surviving business organization;

_____ (B) will be indemnified by the converted or surviving business organization for any owner vicarious liability the person may have for the obligations of the converted or constituent organization; and

_____ (C) will receive, when the conversion or merger becomes effective, the fair value in cash of the person's ownership or transferable interest calculated as provided in subsection (f); and

_____ (3) the amount of the fair value payment, with a brief explanation of how the converting or constituent business organization figured that amount.

_____ (c) If a person receives a notification pursuant to subsection (b) and does not consent to the conversion or merger within the [TBD]-day deadline stated in subsection (b), for the [TBD] days following the deadline the converting or constituent business organization has the option to purchase the person's ownership or transferable interest at the fair value amount stated in the notification. To exercise that right, the converting or constituent business organization must:

_____ (1) send a notification to the person, stating that the option is being activated and will be exercised if the conversion or merger becomes effective; and

1 ~~_____ (2) amend the plan of conversion or merger to:~~

2 ~~_____ (i) state that the person's ownership or transferable interest will be~~
3 ~~purchased pursuant to this section if the conversion or merger becomes effective and that the~~
4 ~~person will be indemnified by the converted or surviving business organization for any owner~~
5 ~~vicarious liability the person may have for the obligations of the converted or constituent~~
6 ~~organization;~~

7 ~~_____ (ii) describe the interest to be purchased, and~~

8 ~~_____ (iii) state the price to be paid.~~

9 ~~_____ (d) Activating the option under subsection (c) does not:~~

10 ~~_____ (1) obligate the converting or constituent entity to:~~

11 ~~_____ (A) exercise the option and make the purchase unless the~~
12 ~~conversion or merger become effective; or~~

13 ~~_____ (B) do or refrain from doing anything to cause the conversion or~~
14 ~~merger to become effective;~~

15 ~~_____ (2) prevent the converting or constituent entity, even after the conversion~~
16 ~~or merger has been approved as provided in this Article, from:~~

17 ~~_____ (A) amending or consenting to the amendment of the plan of~~
18 ~~conversion or merger; or~~

19 ~~_____ (B) abandoning or consenting to the abandonment of the~~
20 ~~conversion or merger; or~~

21 ~~_____ (3) give the person whose interest is subject to the option to purchase any~~
22 ~~rights against any other person, unless the conversion or merger becomes effective.~~

~~_____ (e) If a converting or constituent organization activates its option under this section and the conversion or merger becomes effective, the converted or surviving business organization shall immediately pay the person whose interest is subject to the option the fair value amount stated in the notification made pursuant to subsection (b) and shall indemnify the person for any owner vicarious liability the person may have for the obligations of the converted or constituent organization. A person who receives payment under this subsection and disputes the tendered price may take the tendered price and bring suit in [designate appropriate court] seeking additional payment. The suit must be commenced within one year after the payment is tendered.~~

~~_____ (f) The purchase price under this section is the amount that would have been distributable to the person whose interest is being purchased if, on the date the conversion or merger becomes effective, the business of the converting or constituent business organization were wound up and its assets sold at a price equal to the greater of:~~

~~_____ (1) the value based on a sale of the entire business as a going concern without the person, or~~

~~_____ (2) the liquidation value.~~

Reporter's Notes

This section is substantially revised, in accordance with the Drafting Committee's decision at its October, 1999 meeting.

If a provision allowing for less-than unanimous approval of a conversion or merger is "ineffective" against a particular partner, the conversion or merger cannot be approved without that partner's consent. A partner does not assent to such a provision merely by assenting to a provision of a partnership agreement that permits less-than-unanimous approval of amendments to the partnership agreement.

~~SECTION 1111. CONSENT REQUIRED FROM CERTAIN TRANSFEREES.~~

1 ~~_____ (a) Except as provided in subsection (b), if a limited partnership is a converting~~
2 ~~business organization or a constituent business organization and mere transferees own transferable~~
3 ~~interests in the limited partnership, the conversion or merger must be approved:~~

4 ~~_____ (1) if the transferable interests owned by mere transferees comprise a single~~
5 ~~class, by mere transferees owning a majority of the profit interests held by mere transferees; and~~

6 ~~_____ (2) if the transferable interests owned by mere transferees comprise more~~
7 ~~than one class, in each class by mere transferees owning a majority of the profit interests of that~~
8 ~~class owned by mere transferees.~~

9 ~~_____ (b) If a converting or constituent business organization fails to obtain the consent~~
10 ~~required by subsection (a), the business organization may use the provisions of Section 1110 to~~
11 ~~proceed with the conversion or merger, but:~~

12 ~~_____ (1) if the transferable interests owned by mere transferees comprise a single~~
13 ~~class, the business organization must invoke Section 1110 to the same extent and to the same~~
14 ~~effect as to every mere transferee; and~~

15 ~~_____ (2) if the transferable interests owned by mere transferees comprise more~~
16 ~~than one class and the business organization invokes Section 1110 as to a transferable interest~~
17 ~~owned by a mere transferee, the business organization must invoke Section 1110 to the same~~
18 ~~extent and to the same effect as to all transferable interests in that class owned by mere~~
19 ~~transferees.~~

20 **Reporter's Notes to Former Section 1111**

21 At its October, 1999 meeting, the Drafting Committee decided to delete this section,
22 leaving mere transferees no protection under this Article.

23 The Reporter continues to believe that this situation is ripe for mischief. Mere transferees

1 are creatures of partnership and LLC law and pose perplexing problems that do not often exist in
2 the corporate realm. Transferee rights should not be subject to forfeiture through a squeeze-out
3 conversion or merger. The problem is to provide some protection for mere transferees without
4 subjecting every conversion and merger to open-ended second guessing by the courts.

5 Relying on “good faith and fair dealing” will not suffice. For one thing, it is not clear that
6 a limited partnership and its partners owe that obligation to mere transferees. The obligation
7 developed as an aspect of contract law, and neither the limited partnership nor its partners
8 collectively have a contractual relationship with mere transferees. (To the extent (i) a person
9 became a mere transferee pursuant to a contract, (ii) the transferor remains a partner, and (iii) the
10 contract is not fully performed or otherwise discharged, that particular partner may owe an
11 obligation of good faith to that particular transferee.)

12 Moreover, even if the obligation exists (or the Act were to create it), the obligation would
13 overhang every conversion or merger contemplated by a limited partnership that has mere
14 transferees. Every such conversion or merger would be subject to a “fairness” challenge.

15 **SECTION ~~1112~~ 1111. LINGERING LIABILITY OF GENERAL PARTNERS**
16 **AFTER CONVERSION OR MERGER.**

17 (a) A conversion or merger under this article does not discharge any liability under
18 Sections 404 and 607 of a person who was a general partner or dissociated as a general partner in
19 a converting or constituent business organization, but:

20 (1) the provisions of this [Act] pertaining to the collection or discharge of
21 that liability continue to apply to that liability;

22 (2) for the purposes of applying those provisions, the converted or
23 surviving business organization is deemed to be the converting or constituent business
24 organization; and

25 (3) if a person is required to pay any amount under this subsection:

26 (A) the person has a right of contribution from each other person

1 who was a general partner when the obligation was incurred and who has not been released from
2 that obligation under Section 607; and

3 (B) the contribution due from each of those persons is in proportion
4 to the allocation of limited partnership losses in effect for those persons.

5 (a) (b) In addition to any other liability provided by law;

6 (1) a person who immediately before a conversion or merger became
7 effective was a general partner in a converting or constituent business organization and had ~~owner~~
8 owner's vicarious liability for that business organization's obligations is personally liable for each
9 obligation of the converted or surviving business organization arising from a transaction with a
10 third party after the conversion or merger becomes effective, if at the time the third party enters
11 into the transaction the third party:

12 (i) (A) does not have notice of the conversion or merger; and

13 (ii) (B) reasonably believes that the converted or surviving business
14 is the converting or constituent business organization and that the person is ~~still~~ a general partner
15 in the converting or constituent business organization;.

16 (2) a person who was dissociated as a general partner from a converting or
17 constituent business organization before the conversion or merger became effective is personally
18 liable for each obligation of the converted or surviving business organization arising from a
19 transaction with a third party after the conversion or merger becomes effective, if:

20 (i) (A) immediately before the conversion or merger became
21 effective the converting or surviving business organization was a limited partnership ~~other than a~~
22 limited liability limited partnership whose certificate of limited partnership included a statement

1 under Section 404(b); and

2 ~~(ii)~~ (B) at the time the third party enters into the transaction less
3 than two years have passed since the person dissociated as a general partner and the third party:

4 ~~(A)~~ (i) does not have notice of the dissociation;

5 ~~(B)~~ (ii) does not have notice of the conversion or merger;

6 and

7 ~~(C)~~ (iii) reasonably believes that the converted or surviving
8 business organization is the converting or constituent business organization and that the person is
9 still a general partner in the converting or constituent business organization.

10 ~~(b) A conversion or merger under this [Article] does not discharge any liability~~
11 ~~under Sections 404 and 607 of a person who was a general partner or dissociated as a general~~
12 ~~partner in a converting or constituent business organization, but:~~

13 ~~_____ (1) the provisions of this [Act] pertaining to the collection or discharge of~~
14 ~~that liability continue to apply to that liability;~~

15 ~~_____ (2) for the purposes of applying those provisions, the converted or~~
16 ~~surviving business organization shall be considered to be the converting or constituent business~~
17 ~~organization; and~~

18 ~~_____ (3) if a person is required to pay any amount under this subsection:~~

19 ~~_____ (i) the person has a right of contribution from each other person~~
20 ~~who was a general partner when the obligation was incurred and who has not been released from~~
21 ~~that obligation under Section 607; and~~

22 ~~_____ (ii) the contribution due from each of those persons shall be in~~

1 ~~proportion to the allocation of limited partnership losses in effect for those persons.~~

2 **Reporter's Notes**

3 At its October, 1999 meeting, the Drafting Committee decided to switch the position of
4 this section's two subsections and delete the word "still" in what is now subsection (b)(1)(B). All
5 other changes are as suggested by the representative of the Style Committee

6 Subsection (b)(1) – The phrase "had owner's liability" excludes general partners in LLPs
7 and LLLPs. There is no need to state an outside limit for the lingering liability, as in, e.g.,
8 Sections 606 and 607 (two years). For the conversion or merger to become effective, a filing
9 must occur. That filing produces constructive notice 90 days after the filing's effective date.

10 Subsection (b)(1)(B) – These requirements are most likely to be met when the converted
11 or surviving business organization does business using the same name as the converting or
12 constituent business used.

13 **SECTION ~~1113~~ 1112. LINGERING POWER ~~TO BIND~~ OF GENERAL** 14 **PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNERS TO BIND** 15 **AFTER CONVERSION OR MERGER.**

16 (a) An act of a person who immediately before a conversion or merger became effective
17 was a general partner in a converting or constituent business organization binds the converted or
18 surviving business organization after the conversion or merger becomes effective, if:

19 (1) before the conversion or merger became effective, the act would have
20 bound the converting or constituent business organization under Section 404; and

21 (2) at the time the third party enters into the transaction the third party:

22 (i) (A) does not have notice of the conversion or merger; and

23 (ii) (B) reasonably believes that the converted or surviving business
24 is the converting or constituent business organization and that the person is ~~still~~ a general partner

1 in the converting or constituent business organization.

2 (b) An act of a person who before a conversion or merger became effective was
3 dissociated as a general partner from a converting or constituent business organization binds the
4 converted or surviving business organization after the conversion or merger becomes effective, if:

5 (1) before the conversion or merger became effective the act would have
6 bound the converting or constituent entity under Section 404 if the person had ~~still~~ been a general
7 partner; and

8 (2) at the time the third party enters into the transaction less than two years
9 have passed since the person dissociated as a general partner and the third party:

10 (i) (A) does not have notice of the dissociation;

11 (ii) (B) does not have notice of the conversion or merger; and

12 (iii) (C) reasonably believes that the converted or surviving business
13 is the converting or constituent business organization and that the person is ~~still~~ a general partner
14 in the converting or constituent business organization.

15 (c) If a person ~~with~~ having knowledge of the conversion or merger causes a
16 converted or surviving business organization to incur an obligation under subsection (a) or (b),
17 the person is liable:

18 (1) to the converted or surviving business organization for any damage
19 caused to the business organization arising from the obligation; and

20 (2) if another person is liable for the obligation, ~~then~~ to that other person
21 for any damage caused to that other person arising from that liability.

22 **Reporter's Notes**

1 Subsection (c)(2) – The other person’s liability might be owner’s liability or might arise
2 from a general guaranty.

3 **~~SECTION 1114. DISSOLUTION NOT CAUSED; AUTHORITY NOT GRANTED.~~**

4 ~~————— (a) Unless otherwise agreed, a limited partnership's conversion or merger pursuant~~
5 ~~to this [Article] does not dissolve the limited partnership for the purposes of [Article] 8.~~

6 ~~————— (b) A foreign converted or surviving business organization is not authorized to do~~
7 ~~business in this State unless it complies with the laws of this State granting that authority.~~

8 **Reporter’s Notes**

9 At its October, 1999 meeting, the Drafting Committee decided to include subsection (a) in
10 Sections 1105 and 1109 and to omit subsection (b) as unnecessary.

11 **SECTION 1113. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an
12 entity from being converted or merged under other law.

13 **Reporter’s Notes**

14 Source: RUPA § 907, followed in ULLCA § 907.

15 At its October, 1999 meeting, the Drafting Committee decided to make Article 11 non-
16 exclusive.

17 **[ARTICLE] 12**

18 **MISCELLANEOUS PROVISIONS**

19 **Reporter’s Notes to [Article] 12**

20 This Article is taken, mostly verbatim, from RUPA, Article 12, which is substantially

1 similar to RULPA’s Article 11. To facilitate review of the effective date and applicability
2 provisions, the Reporter has used the phrase “drag-in date” to refer to the date on which all
3 preexisting limited partnerships become subject to the [Act]. That phrase appears in braces – { } –
4 and will not be included in the official text.

5 **SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

6 ~~This [Act] shall be applied and construed to effectuate its general purpose to make uniform the~~
7 ~~law with respect to the subject of this [Act] among States enacting it.~~ In applying and contruing
8 this Uniform Act, consideration must be given to the need to promote uniformity of the law with
9 respect to its subject matter among States that enact it.

10 ~~**SECTION 1202. SHORT TITLE.** This [Act] may be cited as the Revised Uniform~~
11 ~~Limited Partnership Act (20__).~~

12 ~~**SECTION 1203**~~ **1202. SEVERABILITY CLAUSE.** If any provision of this [Act] or
13 its application to any person or circumstance is held invalid, the invalidity does not affect other
14 provisions or applications of this [Act] which can be given effect without the invalid provision or
15 application, and to this end the provisions of this [Act] are severable.

16 ~~**SECTION 1204**~~ **1203. EFFECTIVE DATE.** This [Act] takes effect January 1, 20__.

17 ~~**SECTION 1205**~~ **1204. REPEALS.** Except as ~~stated~~ otherwise provided in Section ~~1206~~
18 1205 effective January 1, 20__ {drag-in date}, the following acts and parts of acts are repealed:

1 [the State Limited Partnership Act as amended and in effect immediately before the effective date
2 of this [Act]].

3 **Reporter's Notes**

4 The exception does not exist in RUPA and is derived from RULPA § 1104.

5 **SECTION ~~1206~~ 1205. APPLICABILITY.**

6 (a) Before January 1, 20____{drag-in date}, this [Act] governs only:

7 (1) a limited partnership formed on or after the effective date of this [Act];

8 and

9 (2) a limited partnership formed before the effective date of this [Act], that

10 elects, as provided by subsection (d), to be governed by this [Act].

11 (b) Except as ~~stated~~ otherwise provided in subsection (c), beginning January 1,

12 20____{drag-in date}, this [Act] governs all limited partnerships.

13 (c) Each of the following provisions of [the State Limited Partnership Act as
14 amended and in effect immediately before the effective date of this [Act]] continue to apply after
15 January 1, 20____{drag-in date}, to a limited partnership formed before the effective date of this
16 [Act], except as the partners otherwise elect in the manner provided in the partnership agreement
17 or by law for amending the partnership agreement:

18 (1) **[TBD]**

19 (2)

20 (d) Before January 1, 20____{drag-in date}, a limited partnership formed before
21 the effective date of this [Act] voluntarily may elect, in the manner provided in its partnership

1 agreement or by law for amending the partnership agreement, to be governed by this [Act]. If a
2 limited partnership formed before the effective date of this [Act] makes that election, the
3 provisions of this [Act] relating to the liability of the limited partnership's partners to third parties
4 apply:

5 (1) before January 1, 20____{drag-in date}, to:

6 (i) (A) a third party who had not done business with the limited
7 partnership within one year before the limited partnership's election to be governed by this [Act];
8 and

9 (ii) (B) a third party who had done business with the limited
10 partnership within one year before the limited partnership's election to be governed by this [Act],
11 only if the third party knows or has received a notification of the partnership's election to be
12 governed by this [Act]; and

13 (2) after January 1, 20____{drag-in date}, to all third parties.

14 **Reporter's Notes**

15 Subsection (a) – RUPA locates the phrase “a [limited] partnership formed” in the
16 introductory clause, but strictly speaking a partnership cannot be formed both before and after the
17 effective date.

18 Subsection (a)(1) – RUPA refers only to “after,” leaving out partnerships formed on the
19 effective date.

20 Subsection (c) – The concept is derived from RULPA § 1104. The method of election
21 comes, essentially verbatim, from RUPA § 1206(c).

22 Candidates for inclusion in the list: perpetual term; no right of limited partner to withdraw;
23 a court's power to expel a general partner when the partnership agreement does not provide for
24 expulsion; new rules on avoiding dissolution following the dissociation of a general partner.

25 Subsection (d) – Following RUPA, this subsection creates special exposure for partners of
26 a limited partnership that elects in. The [Act] creates no special exposure for preexisting limited

1 partnerships that are “dragged in,” so the special exposure for electing limited partnerships should
2 end at the “drag-in date.” RUPA’s already complex formulation has been expanded to clarify that
3 point. The RUPA formulation reads:

4 The provisions of this [Act] relating to the liability of the partnership’s partners to
5 third parties apply to limit those partners’ liability to a third party who had done
6 business with the partnership within one year before the partnership’s election to
7 be governed by this [Act] only if the third party knows or has received a
8 notification of the partnership’s election to be governed by this [Act].

9 **SECTION ~~1207~~ 1206. SAVINGS CLAUSE.** This [Act] does not affect an action or
10 proceeding commenced or right accrued before this [Act] takes effect.