

DRAFT
FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

FEBRUARY 1998

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

With Prefatory Note and Comments

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ON UNIFORM STATE LAWS

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**DRAFTING COMMITTEE TO REVISE
UNIFORM LIMITED PARTNERSHIP ACT (1976) WITH 1985 AMENDMENTS**

HOWARD J. SWIBEL, Suite 1200, 120 S. Riverside Plaza, Chicago, IL 60606, Chair
REX BLACKBURN, Suite 200, 1101 W. River Street, P.O. Box 959, Boise, ID 83701
HARRY J. HAYNSWORTH, IV, William Mitchell College of Law, 875 Summit Avenue, St.
Paul, MN 55105
HARRIET LANSING, Court of Appeals, Judicial Building, 25 Constitution Avenue, St. Paul,
MN 55155
REED L. MARTINEAU, P.O. Box 45000, 10 Exchange Place, Salt Lake City, UT 84145
THOMAS A. SHIELS, Legislative Council, Legislative Hall, Dover, DE 19901
ANN E. CONAWAY STILSON, Widener University, School of Law, P.O. Box 7474,
Wilmington, DE 19803
DAVID S. WALKER, Drake University Law School, Des Moines, IA 50311
DAN KLEINBERGER, William Mitchell College of Law, 875 Summit Avenue, St. Paul, MN
55105, Reporter

EX OFFICIO

GENE N. LEBRUN, P.O. Box 8250, 9th Floor, 909 St. Joseph Street, Rapid City, SD 57709,
President
HENRY M. KITTLESON, P.O. Box 32092, 92 Lake Wire Drive, Lakeland, FL 33802, Division
Chair

AMERICAN BAR ASSOCIATION ADVISORS

GEORGE W. COLEMAN, 1445 Ross Avenue, Suite 3200, Dallas, TX 75202-2770, Business
Law Section Advisor
THOMAS EARL GEU, University of South Dakota, School of Law, 414 Bulow Street,
Vermillion, SD 57069, Probate Division/ Real Property Section Advisor
SANFORD J. LIEBSCHUTZ, 1600 Crossroads Building, Rochester, NY 14614, Real Property
Division/ Real Property Section Advisor
MARTIN I. LUBAROFF, One Rodney Square, P.O. Box 551, Wilmington, DE 19899, Advisor

EXECUTIVE DIRECTOR

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman,
OK 73019, Executive Director
WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, Executive Director
Emeritus

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195

Prefatory Note to the Drafting Committee and its Advisors and Observers

Role of Endnotes

Like the first draft, this draft is accompanied by extensive endnotes. It is not necessary to read the endnotes, but you may find them helpful as background. For example, because underlining and strikeouts refer to the text of RULPA, those techniques are not available to indicate changes between Draft #1 and Draft #2 of Re-RULPA. Endnotes perform that function as to significant changes between the drafts. Also, many of the endnotes trace language in Draft #2 to the Revised Uniform Partnership Act ("RUPA"), the Uniform Limited Liability Company Act ("ULLCA"), or the Revised Model Business Corporations Act ("RMBCA"). In that connection, the word "Source" indicates that this draft has borrowed language without significant change. The phrase "Derived from" indicates that this draft began with borrowed language but changed that language in some substantive way.

Some endnotes explain the Reporter's rationale for taking a particular position, and other endnotes state issues that the Reporter plans to bring to the Committee's attention at the March, 1998 meeting.

Temporary Section Numbers

Consistent with the Drafting Committee's instructions, Draft #2 continues to de-link RULPA from the general partnership act while seeking to preserve as much as possible RULPA's basic organization, language and "look and feel." De-linking requires the inclusion of many new sections, but it seems important for temporary reference purposes to preserve RULPA's current section numbers. As a result most of the new sections carry temporary numbers, inappropriate to any final version (e.g., Section 101C, Section 802A). In addition, Draft #2 has relocated several sections from Article 4 to Article 8. To preserve as much continuity in section numbers as possible between Draft #1 and Draft #2, these relocated sections have even more unusual section numbers (e.g., Section 803A-2).

Noteworthy Differences Between Draft #2 and Draft #1

1. Draft #2 does not attempt to improve on language borrowed from RUPA.

When Draft #2 incorporates a RUPA provision, it does so essentially verbatim and makes only those changes necessitated by the differences between a general partnership and a limited partnership. In a couple of places, at the Drafting Committee's instance, the Reporter has provided in the text a proposed alternate to the RUPA language. Elsewhere, if the Reporter has a suggestion for improving RUPA's language, the suggestion appears in an endnote.

2. Draft #2 removes the concept of a "discharged" general partner.

At its July, 1997 meeting, the Drafting Committee made that concept unnecessary by deciding that a person who loses the status of general partner simply becomes a transferee of his, her, or its own transferable interest. Without at the time using the term "dissociation," the Committee in essence decided that a general partner who ceases to be a general partner simply dissociates. Draft #2 therefore uses the concept of dissociation as the sole marker for that change in status. For "look and feel" reasons, Sections 401A through 401F from Draft #1 have been relocated to Article 8 in Draft #2.

3. Draft #2 changes the rights of partners to obtain information from the limited partnership.

For example, Draft #2 does not require the limited partnership to provide a limited partner any information beyond specified required records. Draft #2 increases the power of the limited partnership to impose use restrictions on information partners do obtain. Draft#2 also contemplates two tiers of required records. The first tier, to be listed first in Section 105 (the required records section), will comprise records to which limited partners have "no cause" access and will be kept in the in-state office. The second tier, to be listed second in Section 105, will comprise records to which limited partners may have access only for good cause shown and will be kept where the limited partnership chooses. Draft #2's present list of required records does NOT reflect the two tier approach. The Reporter anticipates that the Committee will divide the list into two tiers at its March, 1998 meeting.

4. Draft #2 defines "good faith and fair dealing."

The Reporter developed this definition at the request of the Committee. The proposed definition, Section 101(10), views the obligation narrowly.

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1 ARTICLE 1

2 GENERAL PROVISIONS

3 SECTION 101. DEFINITIONS. As used in this [Act], unless the
4 context otherwise requires:

5 (1) "Bare transferable interest" means a transferable interest whose original owner is dissociated.¹

6 (2) "Business" includes every trade, occupation, and profession.²

7
8 (13) "Certificate of limited partnership" means the certificate referred
9 to in Section 201, and the certificate as amended or restated.

10
11 (24) "Contribution" means any ~~cash, property, services rendered, or a~~
12 ~~promissory note or other binding obligation to contribute cash or property or to perform~~
13 ~~services, which a partner contributes~~ consideration provided by a person to a limited
14 partnership in order to become a partner or in his the person's capacity as a partner.³

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

16 _____

17 _____

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

20 _____

21 _____

(ii) a comparable order under federal, state, or foreign law governing
insolvency.⁴

5

(6) "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 a transferee on account of a transferable interest owned by the transferee.⁶

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

~~(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 402.⁸~~

(48) "Foreign limited partnership" means a partnership formed under the laws of any state other than this State and ~~having~~ required by those laws to have⁹ as partners one or more general partners and one or more limited partners.

(59) 6"General partner" means a person who has been admitted to a limited partnership as a general partner in

~~accordance with the partnership agreement and named in the certificate of limited~~

~~partnership as a general partner as provided in Section 401.¹⁰~~

190) "Good faith and fair dealing" requires a person to act honestly and with the honest belief that the act

serves a legitimate business purpose.¹¹

(11) "Limited liability limited partnership" means a limited partnership whose certificate of limited

partnership states that the limited partnership is a limited liability limited partnership.¹²

(612) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner
2 in accordance with the partnership agreement as provided in Section 301.¹³

(7B3) "Limited partnership" and "domestic limited partnership" mean ~~a partnership formed by two or more~~
4 ~~persons under the laws of this State and having one or more general partners and one or~~
5 ~~more limited partners~~ an entity formed under this [Act] and include both ordinary limited
6 partnerships and limited liability limited partnerships.¹⁴

7 (14) "Ordinary limited partnership" means a limited partnership that is not a limited liability limited
8 partnership.

10 (815) "Partner" means a limited or general partner.

12 (916) "Partnership agreement" means any valid agreement, written or
13 oral, of the partners as to the affairs of a limited partnership and the conduct of its
14 business.

16 ~~(10) "Partnership interest" means a partner's share of the profits and~~
17 ~~losses of a limited partnership and the right to receive distributions of partnership assets.~~¹⁵

19 ~~(1117) "Person" means a natural person, partnership, limited~~
20 ~~partnership (domestic or foreign), trust, estate, association, or corporation.~~
21 an individual, corporation, business trust, estate, trust, general
22 partnership, limited partnership, limited liability company, association, joint venture,

1 government, governmental subdivision, agency, or instrumentality, or any other legal or
2 commercial entity, regardless of the jurisdiction under whose laws the entity is
3 incorporated, organized, formed, or achieves its fundamental organizational status.¹⁶

(18) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or
5 other medium and is retrievable in perceivable form.¹⁷

6 (19) "Required records" means the records that Section 105 requires a limited partnership to maintain.

7 (20) "Sign" means to identify a record, whether in writing, electronically or otherwise, by means of a
8 signature, mark, or other symbol, with intent to authenticate the record.¹⁸

9
10 (~~12~~21) "State" means a state, territory, or possession of the United
11 States, the District of Columbia, or the Commonwealth of Puerto Rico a State of the
12 United States, the
13 District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular
14 possession subject to the jurisdiction of the United States.¹⁹

(~~12~~2) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance as well as a
16 transfer by operation of law.²⁰

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

19 (24) "Transferee" means a person to whom has been transferred all or part of the transferable interest
20 originally owned by a partner.

21 **SECTION 101A.**²² **KNOWLEDGE AND NOTICE.**²³

1 _____

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

3 _____

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

5 _____

6 _____

7 _____ (1) knows of it;

8 _____

9 _____

10 _____ (2) has received a notification of it; or

11 _____

12 _____

13 _____ (3) has reason to know it exists from all of the facts known to the

14 person at the time in question.

(c) ~~A~~ person notifies or gives a notification to another by taking steps reasonably required to inform the other

16 person in ordinary course, whether or not the other person learns of it.

17 _____

18 _____ (d) A person receives a notification when the notification:

19 _____

20 _____

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

22 _____

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

4 _____
5 _____ (e) Except as otherwise provided in subsection (f), an entity²⁴ knows,
6 has notice, or receives a notification of a fact for purposes of a particular transaction
7 when the individual conducting the transaction for the entity²⁵ knows, has notice, or
8 receives a notification of the fact, or in any event when the fact would have been brought
9 to the individual's attention if the entity had exercised reasonable diligence. An entity
10 exercises reasonable diligence if it maintains reasonable routines for communicating
11 significant information to the individual conducting the transaction for the entity²⁶ and
12 there is reasonable compliance with the routines. Reasonable diligence does not require
13 an individual acting for the entity to communicate information unless the communication
14 is part of the individual's regular duties or the individual has reason to know of the
15 transaction and that the transaction would be materially affected by the information.

16 _____
17 _____ (f) A general²⁷ partner's knowledge, notice, or receipt of a notification
18 of a fact relating to the limited partnership is effective immediately as knowledge by,
19 notice to, or receipt of a notification by the limited partnership, except in the case of a
20 fraud on the limited partnership committed by or with the consent of that general partner.

1 **SECTION 101B. EFFECT OF PARTNERSHIP AGREEMENT;**

2 **NONWAIVABLE PROVISIONS.**²⁸

3 _____

4 _____ (a) Except as otherwise provided in subsection (c),²⁹ relations among

5 the partners and between the partners and the partnership are governed by the partnership

6 agreement.³⁰ To the extent the partnership agreement does not otherwise provide, this

7 [Act] governs relations among the partners and between the partners and the

8 partnership.³¹

9 ³²(b) The partnership agreement may be oral, written, implied from the conduct of the partners and the

10 partnership, or any combination. A written partnership agreement may exclude

11 **[alternate language: preclude]** oral agreements and may specify the extent, if any, that

12 the conduct of the partners and the partnership are to be considered in determining and

13 interpreting the partnership agreement. Unless otherwise stated in a³³ partnership

14 agreement, amending the partnership agreement requires the consent of all partners. A

15 partnership agreement may be made before the formation of a limited partnership to take

16 effect upon formation, if the agreement provides that it is effective on the formation of

17 the limited partnership and is signed, before formation, by all persons who will be

18 partners at the moment of formation.

19 _____

20 _____ (c) The partnership agreement may not:

1 _____ (1) [reserved]³⁴

2

3

4 _____ (2) unreasonably restrict the right of access to information under

5 Sections 305 and 403E;³⁵

6 _____

7 _____

8 _____³⁶ (3) eliminate the duty of loyalty under Section 403D(b), but:

9 _____

(i) provision of the partnership agreement may, if not unconscionable,³⁷ identify specific types or categories

11 of activities that do not violate the duty of loyalty, delimit the issues to be considered in

12 determining whether a breach of the duty of loyalty has occurred³⁸ and prescribe the

13 applicable burden of proof;³⁹ and⁴⁰

14 _____

15 ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or

16 ratify, after full disclosure of all material facts, a specific act or transaction that otherwise

17 would violate the duty of loyalty;⁴¹

18 _____

19 _____

20 _____ (4) unreasonably reduce the duty of care under Section 403D(c);⁴²

21 _____

22 _____

⁴³(5) eliminate the obligation of good faith and fair dealing under Sections 302A(c) and 403D(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, including delimiting the issues to be considered and prescribing the burden of proof,⁴⁴ if the standards are not unconscionable;⁴⁵

(6) vary the power of a partner to dissociate, except to require the notice under Section 602(1) or 603(b)(1) to be in writing;⁴⁶

_____

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

_____

(8) vary the requirement to wind up the partnership business as stated in

Section 803;⁴⁷

(9) vary the rights of partners to consent to a merger pursuant to Section 1102(e).⁴⁸

(10) restrict rights of a third party under this [Act].⁴⁹

1 **SECTION 101C. SUPPLEMENTAL PRINCIPLES OF LAW.**⁵⁰

2 _____

3 _____ (a) Unless displaced by particular provisions of this [Act], the

4 principles of law and equity supplement this [Act], but⁵¹ those principles may not be used

5 to evade the plain meaning of a partnership agreement or to allow a partner to escape the

6 reasonably foreseeable consequences of a partnership agreement.

⁵²(b) The law governing general partnerships must not be assumed to be relevant in interpreting this [Act],

8 but a court may use that law by way of analogy if:

9 _____

10 _____ (1) the matter before the court involves a provision of this [Act] for

11 which a comparable provision exists under the law of general partnerships; and

12 _____

13 _____ (2) the fundamental differences between a general and limited

14 partnership are immaterial to the matter.

15

16 (c) If an obligation to pay interest arises under this [Act] and the rate is

17 not specified, the rate is that specified in [applicable statute].

18 **SECTION 101D. LAW GOVERNING INTERNAL RELATIONS.**

The law of this State governs relations among the partners and between the partners and the partnership.⁵³

1 **SECTION 102. NAME.**⁵⁴

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

3
4 ~~(1) shall contain without abbreviation the words "limited partnership";~~

5 must contain "limited partnership" or the abbreviation "L.P." or "LP". The name of a

6 limited liability limited partnership must end with "limited liability limited partnership"

7 or "LLLP" or "L.L.L.P.". "Limited" may be abbreviated as "Ltd." "Partnership" may be

8 abbreviated as "Pshp.". "Liability" may be abbreviated as "Liab.".⁵⁵

9 (b) The name of a limited liability limited partnership may not include the name of a partner unless:

10 _____

11 (1) the limited liability limited partnership previously carried on

12 business as an ordinary limited partnership;

13 _____

14 (2) the name of that ordinary limited partnership included the partner's

15 name;

16 _____

17 (3) and the inclusion did not violate this Section.⁵⁶

18 ~~(2)~~ (c) The name of an ordinary limited partnership may not contain the name of a limited partner unless (i)

19 it is also the name of a general partner or the corporate name of a corporate general

20 partner, or (ii) the business of the limited partnership had been carried on under that name

21 before the admission of that limited partner without violating this Section.;

~~1(3) may not be the same as, or deceptively similar to, the name of any corporation or limited partnership~~
2 ~~organized under the laws of this State or licensed or registered as a foreign corporation or~~
3 ~~limited partnership in this State; and~~

4 ~~. (4) may not contain the following words [here insert prohibited words].~~

5 ⁵⁷(d) Except as authorized by subsections (e) and (f), the name of a limited partnership must be
6 distinguishable upon the records of the [Secretary of State] from:

7 _____

8 _____ (1) the name of any domestic entity⁵⁸ and of any foreign entity
9 authorized to transact business in this State; and

10 _____

11 _____ (2) any name reserved or registered under Section 103, Section
12 [reserved for section in Article 9 re: foreign limited partnerships], or [insert citations
13 to other State laws allowing the reservation or registration of business names].⁵⁹

14 ~~(b)~~ A limited partnership may apply to the [Secretary of State] for authorization to use⁶⁰ a name that is not
15 distinguishable upon the records of the [Secretary of State] from one or more of the
16 names described in subsection (d). The [Secretary of State] shall authorize use of the
17 name applied for if, as to each conflicting name:

18 _____

19 _____ (1) the present user, registrant, or owner of the conflicting⁶¹ name
20 consents to the use in a signed⁶² record and submits an undertaking in form satisfactory to
21 the [Secretary of State] to change the conflicting name to a name that is distinguishable
22 upon the records of the [Secretary of State] from the name applied for and from all of the

names described in subsection (b);⁶³ or

_____.

(2) the applicant delivers to the [Secretary of State] a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this State the name applied for.⁶⁴

(f) A limited partnership may use a name, including a fictitious name, shown upon the records of the [Secretary of State] as being used by, registered to, or owned by another entity⁶⁵ if the limited partnership proposing to use the name has:⁶⁶

_____.

(1) merged with the other entity;

_____.

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

_____.

(3) been converted from the other entity;⁶⁷ or

_____.

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

SECTION 103. RESERVATION OF NAME.

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

1
2
3 (1) any person intending to organize a limited partnership under this
4 [Act] and to adopt that name;

5
6
7 (2) any domestic limited partnership or any foreign limited partnership
8 registered in this State which, in either case, intends to adopt that name;

9
10
11 (3) any foreign limited partnership intending to register in this State and
12 adopt that name; and

13
14
15 (4) any person intending to organize a foreign limited partnership and
16 intending to have it register in this State and adopt that name.

17
18 (b) The reservation shall be made by filing with the [Secretary of State]
19 an application, executed by the applicant, to reserve a specified name. If the [Secretary of
20 State] finds that the name is available for use by a domestic or foreign limited
21 partnership, ~~he or she~~ the [Secretary of State] shall reserve the name for the exclusive
22 use of the applicant for a period of 120 days. Once having so reserved a name, the same

1 applicant may not again reserve the same name until more than 60 days after the
2 expiration of the last 120-day period for which that applicant reserved that name. The
3 right to the exclusive use of a reserved name may be transferred to any other person by
4 filing in the office of the Secretary of State a notice of the transfer, executed by the
5 applicant for whom the name was reserved and specifying the name and address of the
6 ~~transferee~~ person to whom the transfer was made.⁶⁸

7 ⁶⁹

8 **SECTION 104. ~~SPECIFIED~~ IN-STATE OFFICE ~~AND AGENT~~.**

9 (a) A limited partnership may be formed and exist without doing business in this State.⁷⁰

10 . (b) Each limited partnership shall continuously maintain in this State:

11 _____

12 _____ ~~(1)~~ an office,⁷¹ which may but need not be a place of its business in this
13 State, at which shall be kept the required records described in ~~required by~~ Section
14 105(TBD) to (TBD)⁷² ~~to be maintained; and~~

15 _____

16 _____ ~~(2) an agent for service of process on the limited partnership, which~~
17 ~~agent must be an individual resident of this State, a domestic corporation, or a foreign~~
18 ~~corporation authorized to do business in this State.~~

19
20

SECTION 104A. APPOINTED AGENT FOR SERVICE OF

1 **PROCESS.**⁷³

2(a) A limited partnership and a foreign limited partnership authorized to do business in this State⁷⁴ shall
3 appoint and continuously maintain an agent for service of process on the limited
4 partnership or foreign limited partnership. An appointed agent for service of process
5 must be an individual resident of this State, a domestic entity or a foreign entity
6 authorized to do business in this State.⁷⁵ An appointed agent that is an entity must
7 continuously maintain an office in this State.

(b)8 A limited partnership appoints an agent for service of process by designating the agent in the certificate
9 of limited partnership and has the power to change the appointment at any time by
10 amending the certificate.⁷⁶ A foreign limited partnership appoints an agent for service of
11 process by designating the agent in the foreign limited partnership's application for
12 registration delivered to the [Secretary of State] pursuant to Section [reserved for
13 **reference to section in Article 9]**⁷⁷ and has the power to change the appointment at any
14 time by making a correction pursuant to Section [reserved for reference to section in
15 **Article 9].**

1(c) An appointed agent for service of process is an agent of the appointing limited partnership or foreign
17 limited partnership for service of any process, notice, or demand required or permitted by
18 law to be served on that limited partnership or foreign limited partnership.⁷⁸

⁷⁹(d) Version #1 -- If an appointed agent for service of process delivers to the [Secretary of State] a signed
20 record resigning as agent, the [Secretary of State] shall file the record and send a copy
21 showing the date of filing to the most current address shown in the records of the
22 [Secretary of State] for the limited partnership or foreign limited partnership that had

1 appointed the agent.⁸⁰ Thirty days after the [Secretary of State] files the record of
2 resignation, the appointment ends.⁸¹

Version #2 -- An appointed agent for service of process has the power to resign at any time by delivering to
4 the [Secretary of State] a signed record resigning as agent, but the appointment does not
5 end until thirty days after the [Secretary of State] files the record. Upon receiving a
6 signed record of resignation, the [Secretary of State] shall file it and send a copy showing
7 the date of filing to the most current address shown in the records of the [Secretary of
8 State] for the limited partnership or foreign limited partnership that had appointed the
9 agent.

10 ⁸²

11 **SECTION 104B. SUBSTITUTED SERVICE OF PROCESS.⁸³**

(a) If a limited partnership or foreign limited partnership fails to appoint or maintain an agent for service of
13 process in this State or the agent for service of process cannot with reasonable diligence
14 be found,⁸⁴ the [Secretary of State] is an agent of the limited partnership or foreign
15 limited partnership upon whom process, notice, or demand may be served. To serve
16 process, notice, or demand under this subsection, a person must deliver to the [Secretary
17 of State] duplicate copies of the process, notice, or demand.⁸⁵ The [Secretary of State]
18 shall forward one of the copies by certified mail, return receipt requested, to the most
19 current address shown in the records of the [Secretary of State] for the limited partnership
20 or foreign limited partnership that is the addressee of the process, notice, or demand.⁸⁶

21 _____ (b) Service under this section is effective at the earliest of:

.....
..... (1) the date the limited partnership or foreign limited partnership
receives the copy of the process, notice, or demand mailed by the [Secretary of State];

.....
..... (2) the delivery date shown on the return receipt, if the receipt was
signed on behalf of the limited partnership or foreign limited partnership.⁸⁷

.....
..... (3) five days after the [Secretary of State] deposits the copy in the mail,
postpaid and addressed as provided by subsection (a).

(c) The [Secretary of State] shall keep a record of all processes, notices, and demands served pursuant to this
section and record the time of and the action taken regarding the service.⁸⁸

(d) This section does not affect the right to serve process, notice, or demand in any manner otherwise
provided by law.⁸⁹

SECTION 105. REQUIRED RECORDS ~~TO BE KEPT~~.⁹⁰

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

(1) a current list of the full name and last known business address of

1 each partner, separately identifying the general partners (in alphabetical order) and the
2 limited partners (in alphabetical order);

3
4
5 (2) a copy of the certificate of limited partnership and all ~~certificates of~~
6 amendments ~~thereto~~ to the certificate,⁹¹ together with executed copies of any powers of
7 attorney pursuant to which any certificate or amendment has been executed;

8
9
10 (3) copies of the limited partnership's federal, state, and local income
11 tax returns and reports, if any, for the three most recent years;

12
13
14 (4) copies in chronological order of any written partnership agreements
15 in effect during the existence of the limited partnership and any amendments to any of
16 those agreements;

17
18 (5) copies ~~and~~ of any financial statements of the limited partnership for
19 the three most recent years;

20
21 (6) a history of all distributions made by the partnership, stating for
22 each distribution the aggregate amount distributed, the date on which the limited

partnership decided to make the distribution, and the date on which the distribution was made, and in the case of an in-kind distribution permitted by section 605 the nature of the fungible property to be distributed;⁹²

.....

(7) a listing of each transaction between the limited partnership and a general partner or affiliate,⁹³ stating the date or dates of the transaction and a brief description of the consideration provided by and to the general partner or affiliate;⁹⁴

.....

(8) a copy of all written and electronic communications made within the past three years to the limited partners generally by the limited partnership or a general partner;⁹⁵

.....

(9) a copy of all written consents given within the past three years pursuant to any of the following sections: [TBD]⁹⁶ and

(10) unless contained in a written partnership agreement, a writing setting out:

(i) the amount of cash and a description and statement of the agreed

1 value of the other property or services contributed by each partner and which each partner
2 has agreed to contribute;

3
4
5
6 (ii) the times at which or events on the happening of which any
7 additional contributions agreed to be made by each partner are to be made;

8
9
10
11 (iii) any right of a partner to receive, or of a general partner to make,
12 distributions to a partner which include a return of all or any part of the partner's
13 contribution; and

14
15
16
17 (iv) any events upon the happening of which the limited partnership is
18 to be dissolved and its affairs wound up.

19
20 (b) ~~Records kept under this section are subject to inspection and~~
21 ~~copying at the reasonable request and at the expense of any partner during ordinary~~
22 ~~business hours.~~ Sections 305 and 403E govern access to the records required by this

Section.

SECTION 106. NATURE OF BUSINESS AND POWERS.⁹⁷

(a) A limited partnership may be formed for and carry on any business **[alternative language: lawful enterprise? lawful purpose? lawful activity?]**⁹⁸ ~~that a partnership without limited partners may carry on~~⁹⁹

Version #1 -- except [here designate prohibited activities].

Version #2: subject to any law of this State governing or regulating business.¹⁰⁰

(b) ¹⁰¹Version #1 -- Except as stated in subsection (c),¹⁰² a limited partnership has all the powers of a corporation incorporated under the laws of this State.

Version #2 -- Except as stated in subsection (c),¹⁰³ a limited partnership has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:

.....

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

.....

(2) purchase, receive, lease, or otherwise acquire, and own, hold,

improve, use, and otherwise deal with real or personal property, or any legal or equitable

interest in property, wherever located;

.....

(3) sell, convey, mortgage, grant a security interest in, lease, exchange,

and otherwise encumber or dispose of all or any part of its property;

1 _____

2 _____ (4) purchase, receive, subscribe for, or otherwise acquire, own, hold,

3 vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and

4 deal in and with, ownership interests in¹⁰⁴ or obligations of any other entity;

5 _____

6 _____ (5) make contracts and guarantees, incur liabilities, borrow money,

7 issue its notes, bonds, and other obligations, which may be convertible into or include the

8 option to purchase other securities of the limited partnership, and secure any of its

9 obligations by a mortgage on or a security interest in any of its property, franchises, or

10 income;

11 _____

12 _____ (6) lend money, invest and reinvest its funds, and receive and hold real

13 and personal property as security for repayment;

14 _____

15 _____ (7) be a promoter, partner, member, associate, or manager of any

16 partnership, joint venture, trust, or other entity;¹⁰⁵

17 _____

18 _____ (8) conduct its business, locate offices, and exercise the powers granted

19 by this [Act] within or without this State;

20 _____

21 _____ (9) ¹⁰⁶appoint officers, employees, and agents of the limited

22 partnership, define their duties, fix their compensation, and lend them money and credit;

1 _____

2 _____ (10) pay pensions and establish pension plans, pension trusts, profit

3 sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its

4 current or former general¹⁰⁷ partners, officers, employees, and agents;

5 _____

6 _____ (11) make donations for the public welfare or for charitable, scientific,

7 or educational purposes;

8 _____

9 _____ (12) make payments or donations, or do any other act, not inconsistent

10 with law, that furthers the business [if "business" restriction eliminated; substitute

11 "affairs" or "activities"] of the limited partnership; and

12 _____

13 _____ (13) transact any lawful business that will aid governmental policy.¹⁰⁸

(c) 14 The certificate of limited partnership may limit the powers of a limited partnership but may not affect the

15 power of a limited partnership to sue, be sued, and defend in its own name.¹⁰⁹ A

16 limitation of a limited partnership's powers is not for the purposes of Section 208(c) a

17 statement limiting the authority of a general partner to execute an instrument transferring

18 real property held in the name of the partnership.¹¹⁰

19

20 SECTION 107. BUSINESS TRANSACTIONS OF PARTNER

21 **WITH PARTNERSHIP.**¹¹¹ Except as provided in the partnership agreement, a partner

22 may lend money to and transact other business with the limited partnership and, subject

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

3 **ARTICLE 2**
4 **FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP**

5 **SECTION 200.¹¹² LIMITED PARTNERSHIP AS ENTITY.**

6 A limited partnership is an entity distinct from its partners.¹¹³
7

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

9
10 (a) In order to form a limited partnership, a certificate of limited
11 partnership must be executed and filed in the office of the Secretary of State. The
12 certificate shall ~~set forth~~ state:

13
14
15 (1) the name of the limited partnership;
16
17
18
19

1
2 (2) the address of the office required to be maintained by Section 104
3 and the name and address of the agent for service of process required to be maintained by
4 Section 104A;

5
6
7 (3) the name and the business address of each general partner;

8
9
10
11
12
13 (4) the term of the limited partnership, which is the latest date upon
14 which the limited partnership is to dissolve;¹¹⁴ and

15
16 (5) whether the limited partnership is a limited liability limited
17 partnership.

(b) 18 A certificate of limited partnership may state the authority, or limitations on the authority, of some or all
19 of the general partners to execute an instrument transferring real property held in the
20 name of the partnership.¹¹⁵

(c) 21 A certificate of limited partnership may also contain ~~(5)~~ any other matters the general partners determine
22 to include therein, except that a certificate may not vary the nonwaivable provisions of

1 [this Act] listed in Section 101B.¹¹⁶ As to all other matters, if any provision of a
2 partnership agreement is inconsistent with the certificate of limited partnership:

3 _____.

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

6 _____.

7 (2) the certificate of limited partnership controls as to persons, other
8 than partners and transferees, who reasonably rely on the certificate to their detriment.¹¹⁷

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the
10 office of the Secretary of State or, subject to Section 206(d),¹¹⁸ at any later time specified
11 in the certificate of limited partnership if, in either case, there has been substantial
12 compliance with the requirements of this section.

16 **SECTION 202. AMENDMENT TO CERTIFICATE.**

18 (a) A certificate of limited partnership is amended by filing an
19 ~~certificate of~~¹¹⁹ amendment ~~thereto~~ in the office of the Secretary of State. The ~~certificate~~
20 amendment shall ~~set forth~~ state:

23 (1) the name of the limited partnership;

1
2
3 (2) the date of filing the certificate; and
4

5
6 (3) the changes the amendment makes to the certificate.
7

8 (b) Within 30 days after the happening of any of the following events,
9 a limited partnership shall file an amendment to a certificate of limited partnership
10 reflecting the occurrence of the event or events ~~shall be filed:~~¹²⁰
11
12

13 (1) the admission of a new general partner;
14
15

16 (2) the ~~withdrawal~~ dissociation¹²¹ of a general partner; or
17
18

19 (3) ~~the continuation of the business under Section 801 after an event of~~
20 ~~withdrawal of a general partner~~ the dissolution of the limited partnership;¹²²
21
22

(4) the appointment of a person to wind up the limited partnership's

1 business under Section 803(b) or (c) .

2
3 (c) A general partner¹²³ who becomes aware that any statement in a
4 certificate of limited partnership was false when made or that any arrangements or other
5 facts described have changed, making the certificate inaccurate in any respect, shall
6 promptly ~~amend~~ cause the certificate to be amended.¹²⁴

7
8 (d) A certificate of limited partnership may be amended at any time for
9 any other proper purpose the general partners determine.¹²⁵

10
11 (e) No person has any liability because an amendment to a certificate
12 of limited partnership has not been filed to reflect the occurrence of any event referred to
13 in subsection (b) of this section if the amendment is filed within the 30-day period
14 specified in subsection (b).

15
16 (f) A restated certificate of limited partnership may be ~~executed and~~¹²⁶
17 filed in the same manner as a ~~certificate~~ of amendment.

18
19 ¹²⁷**~~SECTION 203. CANCELLATION OF CERTIFICATE~~**
20 **DECLARATION OF TERMINATION.** ~~A certificate of limited partnership shall be~~
21 ~~cancelled upon the dissolution and the commencement of winding up of the partnership~~
22 ~~or at any other time there are no limited partners. A certificate of cancellation shall be~~

1 ~~filed~~ Promptly after winding up its affairs under Section 803, a dissolved limited
2 partnership shall file in the [office of the Secretary of State] a declaration of termination
3 that and sets forth:

4
5 (1) the name of the limited partnership;

6
7 (2) the date of filing of its original¹²⁸ certificate of limited partnership;

8
9 (3) the ~~reason for filing the certificate of cancellation~~ date the limited
10 partnership dissolved and the event that caused the dissolution;

11 (4) a statement that the limited partnership's business has been fully wound up; and

12
13 (~~4~~ 5) the effective date (which shall be a date certain and shall be
14 subject to Section 206(d)) of cancellation termination if it the declaration is not to be
15 effective upon ~~the filing of the certificate;~~¹²⁹ and

16 _____

17 ~~_____ (5) any other information the general partners filing the certificate~~
18 ~~determine.~~

19
20 **SECTION 204. EXECUTION OF ~~CERTIFICATES~~**
21 **DOCUMENTS.**

(a) Each certificate, amendment, and declaration filed pursuant to
~~required by this Article to be filed~~ in the office of the [Secretary of State] ~~shall~~ must¹³⁰ be
executed in the following manner:

(1) an original certificate of limited partnership must be signed by all
general partners listed in the certificate,¹³¹

.....
(2) an amendment causing a limited partnership to become or cease to
be a limited liability limited partnership must be signed by all general partners listed in
the certificate,¹³²

.....
(3) an amendment designating as general partner a person admitted
under Section 801(5) following the dissociation of a limited partnership's last general
partner must be signed by that person;

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

1 (25) ~~a certificate of any other~~ amendment must be signed by at least one
2 existing general partner and by each other ~~general partner person~~ designated in the
3 certificate as a new general partner; ~~and~~

4
5 (6) a restated certificate of limited partnership must be signed by at
6 least one general partner, but to the extent the restated certificate effects a change
7 encompassed by any other paragraph of this subsection the certificate must be signed in a
8 manner that satisfies that paragraph; and

9
10
11 (37) ~~a certificate of cancellation~~ declaration of termination must be
12 signed by all general partners and if the dissolved limited partnership has no general
13 partners then by the person appointed under section 803(b) or 803(c) to wind up the
14 dissolved limited partnership's business.

15
16 (b) Any person may sign a certificate, amendment, or declaration by an
17 attorney-in-fact, ~~but~~ If a person gives a power of attorney to sign a certificate or
18 amendment relating to the admission of that causes the person to be newly designated as
19 a general partner, the power of attorney must specifically describe the admission state that
20 the attorney-in-fact is authorized to sign a certificate or amendment designating the
21 person as a general partner.¹³³

1 (c) The execution of a certificate, amendment, or declaration by a
2 ~~general partner~~ person pursuant to this section constitutes an affirmation under the
3 penalties of perjury that the facts stated therein are true.
4

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

6 If a person required by ~~Section 204~~ [this Act]¹³⁴ to execute any certificate, amendment, or
7 declaration fails or refuses to do so, any other person who is adversely affected by the
8 failure or refusal may petition the [designate the appropriate court] to direct the execution
9 of the ~~certificate~~ document. If the court finds that it is proper for the ~~certificate~~ document
10 to be executed and that any person so designated has failed or refused to execute the
11 ~~certificate~~ document, it shall order the Secretary of State to ~~record~~ file an appropriate
12 certificate, amendment or declaration.¹³⁵
13

14 **SECTION 206. FILING IN OFFICE OF [SECRETARY OF**
15 **STATE].**¹³⁶

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

conform to law, upon receipt of all filing fees required by law he [or she] shall:

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

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

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

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

(a) No record authorized to be filed under this [Act] must be in a medium permitted by the [Secretary of State] and must be delivered to the office of the [Secretary of State]. Unless the [Secretary of State] determines that a record fails to comply as to form with the filing requirements of this [Act], and if all filing fees have been paid, the [Secretary of State] shall file the

1 record and send a receipt for the record and the fees to the limited partnership or its
2 representative.

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

(c) ~~Except as otherwise provided in subsection (d), a record accepted for filing¹³⁷ by the [Secretary of State]~~
6 is effective:

7 _____

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

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

10 _____

11 _____ (2) at the time specified in the record as its effective time on the date it

12 is filed.

(d) ~~3A~~ A record may specify a delayed effective time and date, and if it does so the record becomes effective at
14 the time and date specified. If a delayed effective date but no time is specified, the record
15 is effective at the close of business on that date. If a delayed effective date is later than
16 the 90th day after the record is filed, the record is effective on the 90th day.

18 **SECTION 207. LIABILITY FOR FALSE STATEMENT IN**

19 **CERTIFICATE.** ~~If any certificate of limited partnership, or certificate of amendment,~~
20 ~~or cancellation~~ declaration of termination contains a false statement, one who suffers loss
21 by reliance on the statement may recover damages for the loss from:

(1) any person who executes the ~~certificate~~ document, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the ~~certificate~~ document was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate of limited partnership¹³⁸ has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to ~~cancel or~~ amend the certificate or file a declaration of termination, or to file a petition for ~~its~~ cancellation or an amendment or declaration under Section 205.¹³⁹

SECTION 208. SCOPE OF NOTICE EFFECT OF
INFORMATION CONTAINED IN CERTIFICATE OF LIMITED
PARTNERSHIP.¹⁴⁰

~~(a)~~ The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice¹⁴¹ that the partnership is a limited partnership and the persons designated ~~therein~~ in the certificate as general partners are general partners, but, except as provided in subsections (b), (c) and (d), it is not notice of any other fact.¹⁴²

~~(b)~~ Subject to Section 803A(b) regarding an amendment indicating dissolution, if the certificate of limited partnership contains a statement granting authority to a general partner to execute an instrument transferring real property held in the name of the partnership, that statement is

conclusive in favor of a person¹⁴³ who gives value without knowledge to the contrary.¹⁴⁴

(c) If the certificate of limited partnership contains a statement limiting the authority of a general partner to execute an instrument transferring real property held in the name of the partnership, a person not a partner is deemed to know of the limitation.¹⁴⁵

(d) If the certificate of limited partnership has been amended to indicate that a general partner is dissociated, for the purposes of Sections 602C and 602D a person not a partner is deemed to have notice of the dissociation 90 days after the amendment is filed.¹⁴⁶

.....

SECTION 209. DELIVERY OF ~~CERTIFICATES~~ DOCUMENTS
TO LIMITED PARTNERS.¹⁴⁷ ~~Upon the return by the Secretary of State pursuant to~~
~~Section 206 of a certificate marked "Filed", the general partners~~ Promptly after the
[Secretary of State] files a certificate of limited partnership, amendment to certificate, or a
declaration of termination, the limited partnership¹⁴⁸ shall promptly deliver or mail a copy
of the ~~certificate of limited partnership and each certificate of amendment or cancellation~~
~~document~~ to each limited partner unless the partnership agreement provides otherwise.

¹⁴⁹

ARTICLE 3

LIMITED PARTNERS

1 **SECTION 301. ADMISSION OF LIMITED PARTNERS.**

2

3 (a) A person becomes a limited partner:

4 _____

5 _____

6 _____ ~~(1)~~ at the time the limited partnership is formed if the person has
7 entered into¹⁵⁰ a partnership agreement in accordance with¹⁵¹ Section 101B(b); or

8 _____

9 _____

10 _____ ~~(2)~~ at any later time specified in the records of the limited partnership
11 for becoming a limited partner.¹⁵²

12

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

15 _____

16 _____

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

20 _____

21 _____

22 _____ ~~(2) in the case of an assignee of a partnership interest of a partner who~~

has the power, as provided in Section 704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.¹⁵³ After formation of the limited partnership, a person becomes a limited partner as provided in the partnership agreement, with the consent of all the partners, as the result of a merger under [Article] 11, or as the result of a conversion under [Article] TBD.¹⁵⁴

Alternative Version (in lieu of subsections (a) and (b))¹⁵⁵ -- A person becomes a limited partner as provided in the partnership agreement, with the consent of all the partners, as the result of a merger under [Article] 11, or as the result of a conversion under [Article] TBD.¹⁵⁶

¹⁵⁷

SECTION 302. ~~VOTING~~ MANAGEMENT RIGHTS AND

POWERS OF LIMITED PARTNERS. Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote ~~(on a per capita or other basis) upon any matter.~~¹⁵⁸

(d) A limited partner has no right to participate in the management of the limited partnership, except for:¹⁵⁹

.....

¹⁶⁰(1) the amendment to the partnership agreement under Section

101B(b);

.....

(2) the authorization or ratification under Section 101B(c)(3)(ii) of acts

1 or transactions that would otherwise violate the duty of loyalty;

2 _____

3 (3) a decision under subsection (b) to have an ordinary limited
4 partnership become a limited liability limited partnership or to have a limited liability
5 limited partnership become an ordinary limited partnership;

6

7 (4) access to the required records under Section 305;¹⁶¹

8

9 (5) the admission of a new partner under Sections 301(b), 401(a)(ii) or
10 801(5);¹⁶²

11

12 (6) the expulsion of a general partner under Section 602(4) or a limited
13 partner under Section 603(4);

14

15 (7) a decision under Section 703(c)(3) to use limited partnership
16 property to redeem an interest subject to a charging order;

17

18 (8) a decision under Section 801(3) whether to dissolve the limited
19 partnership;

20 _____

21 (9) a decision under Section 801(5) whether to avoid dissolution of the
22 limited partnership following the dissociation of a general partner;¹⁶³

1
2 (10) a decision under Section 803(b) to appoint a person to wind up the
3 dissolved limited partnership's business;
4
5 (11) application to a court pursuant to Section 803(b) for the
6 appointment of a person to wind up the dissolved limited partnership's business;
7
8 (12) the bringing of a derivative action under Article 10;
9
10 (13) a decision under Section 1102 to have the limited partnership
11 participate in a merger; and
12
13 (14) a decision under Section **TBD** to have the limited partnership
14 participate in a conversion.
15 (b) The consent of each partner is necessary for:
16
17 (1) an ordinary limited partnership to become a limited liability limited
18 partnership; and
19
20 (2) a limited liability partnership to become an ordinary limited
21 partnership.
22 (c) Action requiring the consent or vote of limited partners under this [Act]¹⁶⁴ may be taken without a

meeting.¹⁶⁵

(d) A limited partner may appoint a proxy to vote or otherwise act for the limited partner by signing an

appointment instrument, either personally or by the limited partner's attorney-in-fact.¹⁶⁶

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

partnership.¹⁶⁷

.....¹⁶⁸

SECTION 302A. LIMITED DUTIES OF LIMITED PARTNERS

(a) Except as stated in subsection (b), a limited partner does not¹⁶⁹ owe any fiduciary duty to the limited

partnership or to any other partner.

[two alternative versions of subsection (b) follow]

Version #1 (pro tanto; from ULLCA) -- (b) A limited partner who pursuant to the limited partnership

agreement¹⁷⁰ exercises some or all of the rights of a general partner in the management

and conduct of the limited partnership's business¹⁷¹ is held to the standards of conduct for

a general partner to the extent that the limited partner exercises the managerial authority

vested in a general partner by this [Act].¹⁷²

Version #2 (pro tanto) (inspired by RMBCA) -- (b) To the extent the partnership agreement vests the

discretion or powers of a general partner in a limited partner, that limited partner has the

duties of a general partner with respect to the vested discretion or powers.¹⁷³

.....¹⁷⁴

Alternative to Subsections (a) and (b).¹⁷⁵ -- (a) A limited partner does not owe any fiduciary duty to the limited

1 partnership or to any other partner, even if in accordance with the partnership agreement
2 or other agreement the limited partner possesses and exercises some or all of the rights of
3 a general partner in the management and conduct of the limited partnership's business.

(c) A limited partner shall discharge the duties to the partnership and the other partners under this [Act] or
5 under the partnership agreement and exercise any rights consistently with the obligation
6 of good faith and fair dealing.¹⁷⁶ The obligation stated in this subsection displaces any
7 common law or other obligation of good faith and fair dealing.¹⁷⁷
8 (d) A limited partner does not violate a duty or obligation under this [Act] merely because the limited
9 partner's conduct furthers the limited partner's own interest.¹⁷⁸

10 179

1 **SECTION 303. LIABILITY TO THIRD PARTIES.**

2
3 ~~(a) Except as provided in subsection (d), a limited partner is not liable~~
4 ~~for the obligations of a limited partnership unless he [or she] is also a general partner or,~~
5 ~~in addition to the exercise of his [or her] rights and powers as a limited partner, he [or~~
6 ~~she] participates in the control of the business. However, if the limited partner~~
7 ~~participates in the control of the business, he [or she] is liable only to persons who~~
8 ~~transact business with the limited partnership reasonably believing, based upon the~~
9 ~~limited partner's conduct, that the limited partner is a general partner.~~

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

3 ~~_____~~

4 ~~_____~~

5 ~~_____ (1) being a contractor for or an agent or employee of the limited~~
6 ~~partnership or of a general partner or being an officer, director, or shareholder of a~~
7 ~~general partner that is a corporation;~~

8 ~~_____~~

9 ~~_____~~

10 ~~_____ (2) consulting with and advising a general partner with respect to the~~
11 ~~business of the limited partnership;~~

12 ~~_____~~

13 ~~_____~~

14 ~~_____ (3) acting as surety for the limited partnership or guaranteeing or~~
15 ~~assuming one or more specific obligations of the limited partnership;~~

16 ~~_____~~

17 ~~_____~~

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

20 ~~_____~~

21 ~~_____~~

22 ~~_____~~

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

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

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

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

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

1 _____
2 _____
3 ~~_____ (iv) a change in the nature of the business;~~
4 _____
5 _____
6 _____
7 ~~_____ (v) the admission or removal of a general partner;~~
8 _____
9 _____
10 _____
11 ~~_____ (vi) the admission or removal of a limited partner;~~
12 _____
13 _____
14 _____
15 ~~_____ (vii) a transaction involving an actual or potential conflict of interest~~
16 ~~between a general partner and the limited partnership or the limited partners;~~
17 _____
18 _____
19 _____
20 ~~_____ (viii) an amendment to the partnership agreement or certificate of~~
21 ~~limited partnership; or~~
22 _____

1 _____

2 _____

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

6 _____

7 _____

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

9 _____

10 _____

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

13 _____

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

(a) A limited partner is not liable for a debt, obligation, or other liability of the limited partnership solely by
18 reason of being a limited partner, even if the limited partner participates in the
19 management and control of the limited partnership.¹⁸⁰

(b) A limited partner who knowingly permits his [or her] the partner's name to be used in the name of the
21 limited partnership, except under circumstances permitted by Section 102(2)(b) or (c) or
22 while the limited partnership is a limited liability limited partnership,¹⁸¹ is liable to

creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

**SECTION 304. PERSON ERRONEOUSLY BELIEVING
HIMSELF [OR HERSELF] LIMITED PARTNER.¹⁸²**

(a) Except as provided in subsection (b), a person who makes a contribution to an investment in¹⁸³ a business¹⁸⁴ enterprise and erroneously but in good faith believes that he [or she] has become a limited partner in the enterprise is not a general partner in the enterprise and¹⁸⁵ is not bound by its obligations by reason of making the contribution investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to¹⁸⁶ a limited partner, if, on ascertaining the mistake, he [or she] the person:

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

(2) withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring

1 declaration of¹⁸⁷ withdrawal under this section.¹⁸⁸

2
3 (b) A person who makes a ~~contribution~~ an investment of the kind
4 described in subsection (a) is liable to the same extent¹⁸⁹ as a general partner to any third
5 party who transacts business with the enterprise (i) before the person withdraws and an
6 appropriate ~~certificate~~ declaration is filed to show withdrawal, or (ii) before an
7 appropriate certificate or amendment is filed to show that ~~he [or she]~~ the person is not a
8 general partner, but in either case only if the third party actually believed in good faith
9 that the person was a general partner at the time of the transaction.

10 (c) If a person makes a good faith and diligent effort to comply with
11 subsection (a)(1) and is unable to cause the appropriate certificate or amendment to be
12 executed and filed, the person has the right to withdraw from the enterprise pursuant to
13 subsection (a)(2) even if the person would otherwise be prohibited from withdrawing
14 from the enterprise.¹⁹⁰

15 **SECTION 305.¹⁹¹ LIMITED¹⁹² PARTNER'S AND FORMER**
16 **LIMITED PARTNER'S RIGHT TO INFORMATION ~~INFORMATION.~~** Each
17 ~~limited partner has the right to:~~

18 _____
19 _____ (1) inspect and copy any of the partnership records required to be
20 maintained by Section 105; and

_____ (2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

7(a) On 10 days written demand to the limited partnership, a limited partner may inspect and copy during regular business hours in the limited partnership's in-state office the required records described in Section 105(TBD).¹⁹³ A partner making demand pursuant to this subsection need not demonstrate, state, or have any particular purpose for seeking the information.¹⁹⁴

(b) A limited partner may inspect and copy during regular business hours at a reasonable location specified by the limited partnership¹⁹⁵ the required records described in Section 105(TBD)¹⁹⁶ if:

.....
_____ (1) the limited partner seeks the other information for a purpose reasonably related to the partner's interest as a limited partner;¹⁹⁷

.....
_____ (2) the limited partner makes a written demand on the limited partnership, describing with reasonable particularity the other information sought and the purpose for seeking that information; and

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

1 purpose.¹⁹⁸

(c) ~~2~~ Within 10 days of receiving a demand pursuant to subsection (b), the limited partnership shall in writing

3 inform the limited partner who made the demand:

4 _____

5 _____ (1) what records the limited partnership will provide in response to the
6 demand;

7 _____

8 _____ (2) when the limited partnership will provide those records; and

9 _____

10 _____ (3) if the limited partnership declines to provides a demanded record,
11 the limited partnership's reasons for declining.¹⁹⁹

12 _____²⁰⁰

13 _____

(d) ~~14~~ dissociated limited partner²⁰¹ may have access to the records as described in subsection (a) to the extent

15 that:

16 _____

17 _____ (1) the record pertains to the period during which the dissociated
18 partner was a limited partner;

19 _____

20 _____ (2) the dissociated limited partner seeks the information in good faith;

21 and

22 _____

1 ~~partnership, additional general partners may be admitted as provided in writing in the~~
2 ~~partnership agreement or, if the partnership agreement does not provide in writing for the~~
3 ~~admission of additional general partners, with the written consent of all partners.~~

4 A person becomes a general partner as provided in the partnership
5 agreement, with the consent of all the partners, under Section 801(5) following the
6 dissociation of a limited partnership's last general partner, as the result of a merger under
7 [Article] 11, or as the result of a conversion under [Article] **TBD**.²⁰⁹

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

9 ²¹⁰~~SECTION 402. EVENTS OF WITHDRAWAL. Except as approved~~
10 ~~by the specific written consent of all partners at the time, a person ceases to be a general~~
11 ~~partner of a limited partnership upon the happening of any of the following events:~~

12 _____

13 _____ (1) ~~the general partner withdraws from the limited partnership as~~
14 ~~provided in Section 602;~~

15 _____

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

18 _____

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

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

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

1 _____
2 _____ (6) in the case of a general partner who is a natural person,
3 _____
4 _____
5 _____ (i) his [or her] death; or
6 _____
7 _____
8 _____ (ii) the entry of an order by a court of competent jurisdiction
9 adjudicating him [or her] incompetent to manage his [or her] person or his [or her] estate;
10 _____
11 _____ (7) in the case of a general partner who is acting as a general partner by
12 virtue of being a trustee of a trust, the termination of the trust (but not merely the
13 substitution of a new trustee);
14 _____
15 _____ (8) in the case of a general partner that is a separate partnership, the
16 dissolution and commencement of winding up of the separate partnership;
17 _____
18 _____ (9) in the case of a general partner that is a corporation, the filing of a
19 certificate of dissolution, or its equivalent, for the corporation or the revocation of its
20 charter; or
21 _____
22 _____ (10) in the case of an estate, the distribution by the fiduciary of the

1 ~~estate's entire interest in the partnership.~~

2
3 **SECTION 403. ~~GENERAL POWERS AND LIABILITIES~~**

4 **MANAGEMENT RIGHTS OF GENERAL PARTNERS.**²¹¹

5
6 ~~(a) Except as provided in this [Act] or in the partnership agreement, a~~
7 ~~general partner of a limited partnership has the rights and powers and is subject to the~~
8 ~~restrictions of a partner in a partnership without limited partners.~~

9 _____
10 _____ ~~(b) Except as provided in this [Act], a general partner of a limited~~
11 ~~partnership has the liabilities of a partner in a partnership without limited partners to~~
12 ~~persons other than the partnership and the other partners. Except as provided in this [Act]~~
13 ~~or in the partnership agreement, a general partner of a limited partnership has the~~
14 ~~liabilities of a partner in a partnership without limited partners to the partnership and to~~
15 ~~the other partners.~~

16 (a) Each general partner has equal rights in the management and conduct of the limited partnership's business.

17 Except for matters listed in Section 302(a) (rights of limited partners), any matter relating
18 to the business of the limited partnership may be exclusively decided by the general
19 partner, or, if there is more than one general partner, by a majority of the general
20 partners.²¹²

21 (b) Action requiring the consent or vote of general partners under this [Act]²¹³ may be taken without a
22 meeting.²¹⁴

1(c) A general partner may appoint a proxy to vote or otherwise act for the general partner by signing an
appointment instrument, either personally or by the general partner's attorney-in-fact.²¹⁵

(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.²¹⁶

(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.²¹⁷

(f) A payment or advance made by a general partner which gives rise to a limited partnership obligation
under subsection (d) or (e) constitutes a loan to the limited partnership which accrues
interest from the date of the payment or advance.²¹⁸

(g) A general partner is not entitled to remuneration for services performed for the partnership.²¹⁹
.....²²⁰

SECTION 403A. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.²²¹

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

(8) Each general partner is an agent of the limited partnership for the purpose of its business. An act of a
general partner, including the execution of an instrument in the partnership name, for
apparently carrying on in the ordinary course the limited partnership business or business

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

5 _____
6 (2) An act of a general partner which is not apparently for carrying on
7 in the ordinary course the limited partnership's business or business of the kind carried on
8 by the limited partnership binds the limited partnership only if the act was authorized by
9 the other partners.²²²

10²²³

11 **SECTION 403B. LIMITED PARTNERSHIP LIABLE FOR**
12 **GENERAL PARTNER'S ACTIONABLE CONDUCT.**²²⁴

(a) ~~13~~ 13 limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of
14 a wrongful act or omission, or other actionable conduct, of a general partner acting in the
15 ordinary course of business of the limited partnership or with authority²²⁵ of the limited
16 partnership.

17 (b) If, in the course of the limited partnership's business or while acting with authority²²⁶ of the limited
18 partnership, a general partner receives or causes the limited partnership to receive money
19 or property of a person not a partner, and the money or property is misapplied by a
20 general partner, the limited partnership is liable for the loss.²²⁷

SECTION 403C. GENERAL PARTNER'S LIABILITY.²²⁸

2 (a) Except as otherwise provided in subsections (b) and (c),²²⁹ all general partners are liable jointly and
3 severally for all obligations of the limited partnership unless otherwise agreed by the
4 claimant or provided by law.

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

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited
partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the
limited partnership. A general partner is not personally liable, directly or indirectly, by
way of contribution or otherwise, for such an obligation solely by reason of being or
acting as a general partner.²³⁰ This subsection applies despite anything inconsistent in the
partnership agreement that existed immediately before the vote required to become a
limited liability limited partnership under Sections 302(b).

SECTION 403C-2. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.²³¹

(a) A limited partnership may²³² sue and be sued in the name of the limited partnership.

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

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

.....

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

_____

_____ (3) the partner is a limited partner²³³ and is bringing a derivative action
pursuant to Article 10.

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

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

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

_____

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

_____

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

.....
(3) the general partner has agreed that the creditor need not exhaust
limited partnership assets;
.....
(4) a court grants permission to the judgment creditor to levy execution
against the assets of a general partner based on a finding that limited partnership assets
subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of
limited partnership assets is excessively burdensome, or that the grant of permission is an
appropriate exercise of the court's equitable powers; or
.....
(5) liability is imposed on the general partner by law or contract
independent of the existence of the limited partnership.
.....
(f) This section applies to any limited partnership liability or obligation
resulting from a representation by a general partner or purported general partner under
Section 403C-3.

²³⁴**SECTION 403C-3. LIABILITY OF PURPORTED PARTNER.**

**(8) If a person, by words or conduct, purports to be a general partner, or consents to being represented by
another as a general partner, in an actual or purported limited partnership,²³⁵ the purported
partner is liable to a person to whom the representation is made, if that person, relying on**

1 the representation, enters into a transaction with the actual or purported limited
2 partnership. If the representation, either by the purported general partner or by a person
3 with the purported general partner's consent, is made in a public manner, the purported
4 general partner is liable to a person who relies upon the purported²³⁶ limited partnership
5 even if the purported partner is not aware of being held out as a general partner to the
6 claimant. If limited partnership liability results, the purported partner is liable with
7 respect to that liability as if the purported general partner were a general partner. If no
8 limited partnership liability results, the purported general partner is liable with respect to
9 that liability jointly and severally with any other person consenting to the representation.

(b) ~~10~~ If a person is thus represented to be a general partner in an existing²³⁷ or purported limited partnership,²³⁸

11 the purported general partner is an agent of persons consenting to the representation to
12 bind them to the same extent and in the same manner as if the purported partner were a
13 general partner, with respect to persons who enter into transactions in reliance upon the
14 representation.²³⁹ If all of the general partners of the existing limited partnership consent
15 to the representation, a limited partnership act or obligation results. If fewer than all of
16 the general partners of the existing partnership consent to the representation, the person
17 acting and the general partners consenting to the representation are jointly and severally
18 liable.²⁴⁰

(c) ~~19~~ A person is not liable as a general partner merely because the certificate of limited partnership names that
20 person as a general partner.²⁴¹

(d) ~~21~~ Except as otherwise provided in subsections (a) and (b), persons who are not general partners of a limited
22 partnership²⁴² are not liable as general partners to other persons.

1 **SECTION 403D. GENERAL STANDARDS OF GENERAL**
2 **PARTNER'S CONDUCT.**²⁴³

3 _____

4 _____ (a) The only fiduciary duties a general partner owes to the limited

5 partnership and the other partners²⁴⁴ are the duty of loyalty and the duty of care stated in

6 subsections (b) and (c).

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

8 following:

9 _____

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

11 property, profit, or benefit derived by the general partner in the conduct and winding up

12 of the limited partnership business or derived from a use by the general partner of limited

13 partnership property, including the appropriation of a limited partnership opportunity;

14 _____

15 _____ (2) to refrain from dealing with the limited partnership in the conduct or

16 winding up of the limited partnership business as or on behalf of a party having an

17 interest adverse to the limited partnership; and

18 _____

19 _____ (3) to refrain from competing with the limited partnership in the

20 conduct of the limited partnership business before the dissolution of the limited

21 partnership.

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

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

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

11 ²⁴⁵

12 SECTION 403E. GENERAL PARTNER'S AND FORMER

13 GENERAL PARTNER'S RIGHT TO INFORMATION.²⁴⁶

(a) A general partner may inspect and copy during regular business hours in the limited partnership's in-state
15 office any of the required records described in Section 105(TBD).²⁴⁷ A general partner
16 may inspect and copy during regular business hours at a reasonable location specified by
17 the limited partnership any other records maintained by the limited partnership regarding
18 the limited partnership's business, affairs, and financial condition.²⁴⁸

19 ²⁴⁹(b) Each general partner and the limited partnership shall furnish to a general partner:

20 _____

1 (1) without demand, any information concerning the limited
2 partnership's business and affairs reasonably required for the proper exercise of the
3 general partner's rights and duties under the partnership agreement or this [Act];²⁵⁰ and
4
5 (2) on demand, any other information concerning the limited
6 partnership's business and affairs, except to the extent the demand or the information
7 demanded is unreasonable or otherwise improper under the circumstances.²⁵¹

²⁵²(c)8On ten days written demand to the limited partnership, a dissociated general partner may have access to

9 the records described in subsection (a)²⁵³ to the extent that:
10
11 (1) the record pertains to the period during which the dissociated
12 general partner was a general partner;
13
14 (2) the dissociated general partner seeks the information in good faith;
15 and
16
17 (3) the dissociated general partner meets the requirements stated in
18 Section 305(b).

(d)9The limited partnership shall respond to a demand made pursuant to subsection (c) in the same manner as
20 provided in Section 305(c).

(e)1A partnership agreement or the limited partnership²⁵⁴ may impose reasonable limitations on the use²⁵⁵ of
22 information obtained under this Section. A partnership agreement may define appropriate

1 remedies for a breach of any use limitation, and those remedies may include liquidated
2 damages.²⁵⁶ In any dispute concerning the reasonableness of a restriction under this
3 subsection, the limited partnership has the burden of proving reasonableness.²⁵⁷
(f) A limited partnership may charge a dissociated general partner who makes a demand under this section
5 reasonable costs of copying.²⁵⁸
(g) A general partner or dissociated general partner may exercise the rights stated in this section through an
7 attorney or other agent. In that event, any use limitations under subsection (e) apply to
8 the attorney or other agent as well as to the general partner or dissociated general partner.
9 The rights stated in this section do not apply to a transferee, except that subsection (c)
10 grants rights to a dissociated general partner.²⁵⁹

11 **SECTION 404. ~~CONTRIBUTIONS BY GENERAL PARTNER~~**

12 **DUAL CAPACITY.** ~~A general partner of a limited partnership may make contributions~~
13 ~~to the partnership and share in the profits and losses of, and in distributions from, the~~
14 ~~limited partnership as a general partner. A general partner also may make contributions~~
15 ~~to and share in profits, losses, and distributions as a limited partner. A person who is~~
16 ~~both a general partner and a limited partner has the rights and powers, and is subject to~~
17 ~~the restrictions and liabilities, of a general partner and, except as provided in the~~
18 ~~partnership agreement, also has the powers, and is subject to the restrictions, of a limited~~
19 ~~partner to the extent of his [or her] participation in the partnership as a limited partner. A~~
20 person may be both a general partner and a limited partner. A person who is both a

1 general and limited partner has the rights and powers provided by this [Act] and the
2 partnership agreement for each of those capacities. When that person acts as a general
3 partner, that act is subject to the obligations and restrictions provided by this [Act] and
4 the partnership agreement for general partners. When that person acts as a limited
5 partner, that act is subject to the obligations and restrictions provided by this [Act] and
6 the partnership agreement for limited partners.

7 ~~SECTION 405. VOTING. The partnership agreement may grant to all~~
8 ~~or certain identified general partners the right to vote (on a per capita or any other basis);~~
9 ~~separately or with all or any class of the limited partners, on any matter.~~²⁶⁰

11 **ARTICLE 5**

12 **FINANCE**

13 **SECTION 501. FORM OF CONTRIBUTION.**²⁶¹

~~The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other~~
15 ~~obligation to contribute cash or property or to perform services. A contribution may~~
16 ~~consist of any benefit provided to the limited partnership, including money, property,~~
17 ~~services rendered, and any written obligation to furnish money, property, services, or~~
18 ~~other benefit.~~²⁶²

19

1 **SECTION 502. LIABILITY FOR CONTRIBUTION.**

2

3 (a) A promise by a ~~limited partner~~ person to contribute to the limited

4 partnership is not enforceable unless ~~set out~~ stated in a writing signed by the ~~limited~~

5 partner person.²⁶³

6

7 (b) ~~Except as provided in the partnership agreement, a partner is~~

8 ~~obligated to the limited partnership to perform any enforceable promise to contribute cash~~

9 ~~or property or to perform services, even if he [or she] is unable to perform because of~~

10 ~~death, disability, or any other reason. If a partner does not make the required contribution~~

11 ~~of property or services, he [or she] is obligated at the option of the limited partnership to~~

12 ~~contribute cash equal to that portion of the value, as stated in the partnership records~~

13 ~~required to be kept pursuant to Section 105, of the stated contribution which has not been~~

14 ~~made.~~²⁶⁴ A person's death, disability, or other inability to perform personally does not

15 excuse that person from an otherwise enforceable obligation to contribute to a limited

16 partnership.

(c) If a person fails to make any part of a promised nonmonetary contribution, the limited partnership may on

18 written notice to the person convert the unperformed obligation to an obligation

19 immediately to contribute money equal in value, according to the valuation stated in the

20 required records, to the unperformed part of the obligation.

21 (c) ~~Unless otherwise provided in the partnership agreement, the obligation of a partner to make a~~

22 ~~contribution or return money or other property paid or distributed in violation of this~~

1 ~~[Act] may be compromised only by consent of all partners.~~²⁶⁵ Notwithstanding the
2 ~~compromise, a creditor of a limited partnership who extends credit or otherwise acts in~~
3 ~~reliance on that obligation after the partner signs a writing which reflects the obligation~~
4 ~~and before the amendment or cancellation thereof to reflect the compromise may enforce~~
5 ~~the original obligation.~~²⁶⁶

Version #1 (current approach) -- (d) A person's obligation to contribute may be compromised only with the
7 consent of all partners.²⁶⁷

Version #2 (power to the general partners, via "the limited partnership") -- A limited partnership may agree
9 to compromise a person's obligation to contribute, but if the obligation is owed by a
10 general partner or an affiliate of a general partner:
11 _____
12 (1) the general partner may not participate in the limited partnership's
13 decision to compromise, and
14 _____
15 (2) if no general partner is eligible to participate in the decision the
16 obligation may be compromised only with the consent of all the partners.²⁶⁸

17 **SECTION 503. SHARING ALLOCATION OF PROFITS AND**
18 **LOSSES.** The profits and losses of a limited partnership shall be allocated among the
19 partners annually²⁶⁹ and without distinction between general and limited partners, and
20 among classes of partners, in the manner provided in writing in the partnership

1 ~~agreement. If the partnership agreement does not so provide in writing, profits and losses~~
2 ~~shall be allocated~~²⁷⁰ ~~on the basis of the value, as stated in the partnership~~ required ~~records~~
3 ~~required to be kept pursuant to Section 105, of the contributions made by each partner to~~
4 ~~the extent they~~ those contributions ~~have been received by the limited partnership and~~
5 ~~have not been returned. Whether a distribution is a return of a partner's contribution is~~
6 determined according to generally accepted accounting principles.²⁷¹

7 **SECTION 504. SHARING OF DISTRIBUTIONS.** ~~Distributions of~~
8 ~~cash or other assets of a limited partnership shall be allocated among the partners and~~
9 ~~among classes of partners in the manner provided in writing in the partnership agreement.~~
10 ~~If the partnership agreement does not so provide in writing, distributions shall be made on~~
11 ~~the basis of the value, as stated in the partnership records required to be kept pursuant to~~
12 ~~Section 105, of the contributions made by each partner to the extent they have been~~
13 ~~received by the partnership and have not been returned.~~²⁷² Except as provided in Section
14 804(b) for winding up distributions, any distributions made shall be in proportion to the
15 partners' allocation of profit and losses in effect at the time the limited partnership
16 decides to make the distribution.

17 **ARTICLE 6**

18 **DISTRIBUTIONS AND WITHDRAWAL**

1 **SECTION 601. INTERIM DISTRIBUTIONS.** ~~Except as provided~~
2 ~~in this Article, a partner is entitled to receive distributions from a limited partnership~~
3 ~~before his [or her] withdrawal from the limited partnership and before the dissolution and~~
4 ~~winding up thereof to the extent and at the times or upon the happening of the events~~
5 ~~specified in the partnership agreement~~²⁷³ A partner has no right to any distribution before
6 the dissolution and winding up of the limited partnership, but, subject to Section 607
7 (improper distributions), the limited partnership may in its discretion make interim
8 distributions.²⁷⁴

10 **SECTION 602. ~~WITHDRAWAL~~ DISSOCIATION OF GENERAL**
11 **PARTNER.**²⁷⁵ ~~A general partner may withdraw from a limited partnership at any time~~
12 ~~by giving written notice to the other partners, but if the withdrawal violates the~~
13 ~~partnership agreement, the limited partnership may recover from the withdrawing general~~
14 ~~partner damages for breach of the partnership agreement and offset the damages against~~
15 ~~the amount otherwise distributable to him [or her].~~ A general partner is dissociated from
16 a limited partnership upon the occurrence of any of the following events:²⁷⁶

- 17(1) the limited partnership's having notice of the general partner's express will to withdraw as a general
18 partner or on a later date specified by the partner;
19 (2) an event agreed to in the partnership agreement as causing the general partner's dissociation;
20 _____ (3) the general partner's expulsion pursuant to the partnership agreement;
21 _____ (4) the general partner's expulsion by the unanimous vote of the other partners if:

1 _____

2 _____ (i) it is unlawful to carry on the limited partnership business with that

3 general partner;

4 _____

5 _____ (ii) there has been a transfer of all or substantially all of that general

6 partner's transferable interest in the limited partnership, other than a transfer for security

7 purposes, or a court order charging the general partner's interest, which has not been

8 foreclosed;

9 _____

10 _____ (iii) within 90 days after the limited partnership notifies a corporate

11 general partner that it will be expelled because it has filed a certificate of dissolution or

12 the equivalent, its charter has been revoked, or its right to conduct business has been

13 suspended by the jurisdiction of its incorporation, there is no revocation of the certificate

14 of dissolution or no reinstatement of its charter or its right to conduct business;²⁷⁷ or

15 _____

16 _____ (iv) a partnership that is a partner has been dissolved and its business is

17 being wound up;

(5) On application by limited the partnership or another partner,²⁷⁸ the general partner's expulsion by judicial

19 determination because:

20 _____

21 _____ (i) the general partner engaged in wrongful conduct that adversely and

22 materially affected the partnership business;

1 _____

2 _____ (ii) the general partner willfully or persistently committed a material

3 breach of the partnership agreement or of a duty owed to the partnership or the other

4 partners under Section 403D; or

5 _____

6 _____

7 _____ (iii) the general partner engaged in conduct relating to the limited

8 partnership business which makes it not reasonably practicable to carry on the business

9 with the general partner as general partner;²⁷⁹

10 _____ (6) the general partner's:

11 _____

12 _____

13 _____ (i) becoming a debtor in bankruptcy;

14 _____

15 _____

16 _____ (ii) executing an assignment for the benefit of creditors;

17 _____

18 _____

19 _____ (iii) seeking, consenting to, or acquiescing in the appointment of a

20 trustee, receiver, or liquidator of that partner or of all or substantially all of that general

21 partner's property; or

22 _____

_____ (iv) failing, 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 general partner's property obtained without the general partner'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 general partner who is an individual:

_____ (i) the general partner's death;

_____ (ii) the appointment of a guardian or general conservator for the general partner;²⁸⁰ or

_____ (iii) a judicial determination that the general partner has otherwise become incapable of performing the general partner's duties under the partnership agreement;

(8) ~~in~~ the case of a general partner 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;²⁸¹

(9) in the case of a general partner 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

1 personal representative;²⁸²

2 (10) termination of a general partner who is not an individual, partnership, corporation, trust, or estate;²⁸³

3 (11) the limited partnership participates in a merger under [Article] 11 and:

4

5 (i) is not the surviving organization;²⁸⁴ or

6 (ii) is the surviving organization but as a result of the merger the

7 general partner ceases to a general partner;²⁸⁵

8 (12) any other occurrence that causes the general partner to cease to be a general partner.²⁸⁶

9 **SECTION 602A. GENERAL PARTNER'S POWER TO**

10 **DISSOCIATE; WRONGFUL DISSOCIATION**²⁸⁷

11 (a) A general partner has the power to dissociate at any time, rightfully or wrongfully, by express will
12 pursuant to Section 602(1).

13 (b) A general partner's dissociation is wrongful only if:

14

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

16 agreement;²⁸⁸ or

17

18 (2) it occurs before the expiration of the term of the limited partnership

19 as stated in the certificate of limited partnership in effect when the general partner

20 became a general partner;²⁸⁹ and:

21

1 _____
2 (i) the general partner withdraws²⁹⁰ by express will,²⁹¹
3 _____.

4 _____
5 (ii) the general partner is expelled by judicial determination under
6 Section 601(5);
7 _____.

8 _____
9 (iii) the general partner is dissociated by becoming a debtor in
10 bankruptcy;²⁹² or
11 _____.

(b) in the case of a general partner who is not an individual, trust other than a business trust, or estate, the
13 partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A general partner who wrongfully dissociates is liable to the limited partnership and to the other partners
15 for damages caused by the dissociation.²⁹³ The liability is in addition to any other
16 obligation of the general partner to the limited partnership or to the other partners.
17 _____.

18 **SECTION 602B. EFFECTS OF GENERAL PARTNER'S**
19 **DISSOCIATION²⁹⁴**
20 _____. Upon a general partner's dissociation:²⁹⁵
21 _____.

1 (1) the general partner's right to participate as a general partner in the
2 management and conduct of the partnership business terminates;²⁹⁶

3

4 (2) the general partner's duty of loyalty under Section 403D(b)(3)
5 terminates;

6

7 (3) the general partner's duty of loyalty under Section 403D(b)(1) and
8 (2) and duty of care under Section 403D(c) continue only with regard to matters arising
9 and events occurring before the partner's dissociation;²⁹⁷

10

11 (4) subject to Article 11, any transferable interest owned by the general
12 partner immediately before dissociation is owned by the dissociated general partner as a
13 mere transferee; and²⁹⁸

14

15 (5) the limited partnership shall promptly amend the certificate of
16 limited partnership to indicate the general partner is dissociated.

17

18 ²⁹⁹

19 **SECTION 602C. DISSOCIATED GENERAL PARTNER'S**
20 **POWER TO BIND AND LIABILITY TO PARTNERSHIP.**³⁰⁰

21 Version #1 -- RUPA

1
2 (a) For two years after a general partner dissociates without resulting in
3 a dissolution and winding up of the limited partnership business,³⁰¹ the limited
4 partnership, including a surviving limited partnership under [Article] 11, is bound by an
5 act of the dissociated partner which would have bound the limited partnership under
6 Section 403A before dissociation only if at the time of entering into the transaction the
7 other party:

8 _____
9 _____

10 _____ (1) reasonably believed that the dissociated general partner was then a
11 general partner;

12 _____
13 _____

14 _____ (2) did not have notice of the general partner's dissociation; and

15 _____
16 _____

17 _____ (3) is not deemed to have had knowledge under Section 208(c) or notice
18 under Section 208(d).

19
20 (b) A dissociated general partner is liable to the limited partnership for
21 any damage caused to the limited partnership arising from an obligation incurred by the
22 dissociated partner after dissociation for which the partnership is liable under subsection

- 1
- 2
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- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1

(a) After a general partner is dissociated, the limited partnership is
bound by an act of the dissociated general partner only if:

(1) the act would have bound the limited partnership under Section
403A before the dissociation; and

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

..... (i) less than two years has passed since the dissociation;

.....

90 days have passed since the certificate of limited partnership was amended to state that
dissociated general partner is dissociated;³⁰² and

.....

r party does not have notice of the dissociation and reasonably believes that the dissociated
general partner is still a general partner.³⁰³

(b) A dissociated general partner is liable to the limited partnership for

1 any damage caused to the limited partnership arising from an obligation incurred by the
2 limited partnership under subsection (a).³⁰⁴

3 (c) This section is subject to Section 803A(e).³⁰⁵

4 **SECTION 602D. DISSOCIATED PARTNER'S LIABILITY TO**
5 **OTHER PERSONS.**³⁰⁶

6
7 (a) A general partner's dissociation does not of itself discharge the
8 general partner's liability for a limited partnership obligation incurred before dissociation.
9 A dissociated general partner is not liable for a limited partnership obligation incurred
10 after dissociation, except as otherwise provided in subsection (b).

11 _____
12 (b) A general partner who dissociates without resulting in a dissolution
13 and winding up of the partnership business is liable as a general partner to the other party
14 in a transaction entered into by the partnership, or a surviving partnership under [Article]
15 11, within two years after the general partner's dissociation, only if a general partner
16 would be liable on the transaction³⁰⁷ and at the time of entering into the transaction the
17 other party:

18 _____
19 _____
20 (1) reasonably believed that the dissociated general partner was then a

1 general partner;

2 _____

3 _____

4 _____ (2) did not have notice of the general partner's dissociation; and

5 _____

6 _____

7 _____ (3) is not deemed to have had knowledge under Section 208(c) or notice
8 under Section 208(d).

9 _____

10 _____ (c) By agreement with the limited partnership creditor and the limited
11 partnership,³⁰⁸ a dissociated general partner may be released from liability for a limited
12 partnership obligation.

13 _____

14 _____ (d) A dissociated general partner is released from liability for a limited
15 partnership obligation if a limited partnership creditor, with notice of the general partner's
16 dissociation³⁰⁹ but without the dissociated³¹⁰ general partner's consent, agrees to a material
17 alteration in the nature or time of payment of a limited partnership obligation.

18 **SECTION 603. ~~WITHDRAWAL~~ DISSOCIATION OF LIMITED**
19 **PARTNER.³¹¹**

20 (a) A limited partner has no right to dissociate before the termination of the limited partnership. may

~~withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his [or her] address on the books of the limited partnership at its office in this State.~~

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

(1) the limited partnership's having notice of the limited partner's express will to withdraw as a partner or on a later date specified by the partner;³¹²

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

_____ (3) the limited partner's expulsion pursuant to the partnership agreement;

_____ (4) the limited partner's expulsion by the unanimous vote of the other partners if:

_____

_____ (i) it is unlawful to carry on the limited partnership business with that limited partner;

_____

_____ (ii) there has been a transfer of all of that limited partner's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;³¹³

_____

1 (iii) within 90 days after the limited partnership notifies a corporate

2 limited partner that it will be expelled because it has filed a certificate of dissolution or

3 the equivalent, its charter has been revoked, or its right to conduct business has been

4 suspended by the jurisdiction of its incorporation, there is no revocation of the certificate

5 of dissolution or no reinstatement of its charter or its right to conduct business; or

6 _____.

7 _____ (iv) a partnership that is a limited partner has been terminated;³¹⁴

(5) on application by the limited partnership or another partner,³¹⁵ the limited partner's expulsion by judicial

9 determination because:

10 _____.

11 _____ (i) the limited partner engaged in wrongful conduct that adversely and

12 materially affected the partnership business;

13 _____.

14 _____ (ii) the limited partner willfully or persistently committed a material

15 breach of the partnership agreement or of the obligation of good faith and fair dealing

16 under Section 302A(c);³¹⁶ or

17 _____

18 _____

19 _____ (iii) the limited partner engaged in conduct relating to the limited

20 partnership business which makes it not reasonably practicable to carry on the business if

21 the limited partner remains a limited partner;³¹⁷

22 ³¹⁸ (6) in the case of a partner who is an individual, the limited partner's death;³¹⁹

(7) in the case of a limited partner that is a trust or is acting as a limited partner by virtue of being a trustee of

2 a trust, distribution of the trust's entire transferable interest in the limited partnership, but

3 not merely by reason of the substitution of a successor trustee;

4 (8) in the case of a limited partner that is an estate or is acting as a partner by virtue of being a personal

5 representative of an estate, distribution of the estate's entire transferable interest in the

6 limited partnership, but not merely by reason of the substitution of a successor personal

7 representative;

(8) termination of a limited partner who is not an individual, partnership, corporation, trust, or estate;³²⁰ or

9 (10) the limited partnership participates in a merger under [Article] 11 and:

10

11 (i) is not the surviving organization; or

12 (ii) is the surviving organization but as a result of the merger the

13 general partner ceases to a general partner.

14 **SECTION 603A. EFFECT OF LIMITED PARTNER**

15 **DISSOCIATION.**

16 (a) When a limited partner dissociates,

17

18 (1) the dissociated limited partner has no further rights as a limited

19 partner;³²¹

20

21 (2) the obligation of good faith and fair dealing under Section 302A(c)

continues only as to matters arising and events occurring before the dissociation;³²² and

.....
(3) subject to [Article] 11, any transferable interest owned by the

limited partner immediately before dissociation is owned by the dissociated limited

partner as a mere transferee.³²³

(b) ~~A~~ limited partner who dissociates before the termination of the limited partnership is liable to the limited

partnership and to other partners for any damages caused by the dissociation.³²⁴

SECTION 604. NO DISTRIBUTION UPON WITHDRAWAL ON
ACCOUNT OF DISSOCIATION. ~~Except as provided in this Article, upon withdrawal~~
~~any withdrawing partner is entitled to receive any distribution to which he [or she] is~~
~~entitled under the partnership agreement and, if not otherwise provided in the agreement,~~
~~he [or she] is entitled to receive, within a reasonable time after withdrawal, the fair value~~
~~of his [or her] interest in the limited partnership as of the date of withdrawal based upon~~
~~his [or her] right to share in distributions from the limited partnership. A partner's~~
~~dissociation does not entitle that partner to any distribution.~~³²⁵

SECTION 605. DISTRIBUTION IN KIND. ~~Except as provided in~~
~~writing in the partnership agreement, a partner, regardless of the nature of his [or her]~~
~~contribution, has no right to demand and receive any distribution from a limited~~
~~partnership in any form other than cash. Except as provided in writing in the partnership~~

1 agreement, a partner may not be compelled to accept a distribution of any asset in kind
2 from a limited partnership to the extent that the percentage of the asset distributed to him
3 [or her] exceeds a percentage of that asset which is equal to the percentage in which he
4 [or she] shares in distributions from the limited partnership.³²⁶ A partner is not required
5 to accept a distribution in kind, except to the extent that the distribution is part of a
6 distribution of fungible property being made to all partners in proportion to their rights
7 under Section 504. A partner has no right to receive a distribution in kind, unless the
8 partner is entitled pursuant to Section 606 to receive a share of an in-kind distribution
9 authorized by this section.

10 **SECTION 606. RIGHT TO DISTRIBUTION.** A partner is entitled
11 to receive a distribution when the limited partnership notes in its required records the date
12 on which the limited partnership made its decision to distribute, the date the distribution
13 is to be made, the aggregate amount to be distributed, and, in the case of an in-kind
14 distribution permitted by Section 605, a description of the fungible property to be
15 distributed.³²⁷ At the time a partner becomes entitled to receive a distribution, ~~he [or she]~~
16 the partner has the status of, and is entitled to all remedies available to, a creditor of the
17 limited partnership with respect to the distribution, except that the limited partnership's
18 obligation to make a distribution is subject to offset for any amount owed to the limited
19 partnership by the partner or dissociated partner on whose account the distribution is
20 made.³²⁸

1

2 **SECTION 607. LIMITATIONS ON DISTRIBUTION.** ³²⁹ ~~A partner~~

3 ~~may not receive a distribution from a limited partnership to the extent that, after giving~~
4 ~~effect to the distribution, all liabilities of the limited partnership, other than liabilities to~~
5 ~~partners on account of their partnership interests, exceed the fair value of the partnership~~
6 ~~assets.~~

7 (a) A limited partnership may not make a distribution in violation of the partnership agreement. ³³⁰

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

9

10 (1) the limited partnership would not be able to pay its debts as they
11 become due in the ordinary course of business;³³¹ or

12

13 (2) the limited partnership's total assets would be less than the sum of
14 its total liabilities plus the amount that would be needed, if the limited partnership were to
15 be dissolved, wound up, and terminated at the time of the distribution, to satisfy the
16 preferential rights upon dissolution, winding up, and termination of partners whose
17 preferential rights are superior to those receiving the distribution. ³³²

(c) 8A limited partnership may base a determination that a distribution is not prohibited under subsection (b)

19 on financial statements prepared on the basis of accounting practices and principles that
20 are reasonable in the circumstances or on a fair valuation or other method that is
21 reasonable in the circumstances. ³³³

1 ³³⁴(d) Except as otherwise provided in subsection (f), the effect of a distribution under subsection (b) is

2 measured:

3 _____.

4 _____ (1) in the case of distribution by purchase, redemption, or other

5 acquisition of a transferable interest in the limited partnership, as of the date money or

6 other property is transferred or debt incurred by the company;³³⁵ and

7 _____.

8 _____ (2) in all other cases,³³⁶ as of the date:

9 _____.

10 (i) the distribution is authorized,³³⁷ if the payment occurs within 120 days after that date; or

11 _____.

12 _____ (ii) the payment is made, if payment occurs after that 120 days.

(d) ~~13~~ A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance

14 with this section is at parity with the limited partnership's indebtedness to its general,

15 unsecured creditors.³³⁸

16 ~~(e)~~ A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a

17 distribution, is not considered a liability for purposes of determinations under subsection

18 (b) if the terms of the indebtedness provide that payment of principal and interest are

19 made only to the extent that a distribution could then be made to partners under this

20 section.

21 ~~(f)~~ If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is

22 treated as a distribution, the effect of which is measured on the date the payment is

made.³³⁹

³⁴⁰**SECTION 608. LIABILITY ~~UPON RETURN OF~~**
CONTRIBUTION FOR IMPROPER³⁴¹ DISTRIBUTIONS.

(a) ~~If a partner has received the return of any part of his [or her] contribution without violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.~~

~~_____ (b) If a partner has received the return of any part of his [or her] contribution in violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.~~

~~_____ (c) A partner receives a return of his [or her] contribution to the extent that a distribution to him [or her] reduces his [or her] share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to Section 105, of his contribution which has not been~~

distributed to him [or her].

(a) A general partner who votes for or assents to a distribution made in violation of Section 607³⁴² is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in voting for or assenting to the distribution the general partner failed to comply with Section 607(c) or Section 403D.³⁴³

(b) A partner who knew a distribution was made in violation of Section 607 is personally liable to the limited partnership, but only to the extent that the distribution received by the partner exceeded the amount that could have been properly paid under Section 607.³⁴⁴

(c) A general partner³⁴⁵ against whom an action is brought under this section may implead in the action all:

.....

(1) other general partners and dissociated general partners who voted for or assented to the distribution in violation of subsection (a) and may compel contribution from them; and

.....

³⁴⁶(2) partners and dissociated general partners who received a distribution in violation of subsection (b) and may compel contribution from the partner or dissociated partner in the amount received in violation of subsection (b).³⁴⁷

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.³⁴⁸

1 ARTICLE 7

2 ~~ASSIGNMENT OF PARTNERSHIP~~ TRANSFERABLE INTERESTS AND
3 RIGHTS OF TRANSFEREES AND CREDITORS³⁴⁹

4 SECTION 701. ~~NATURE OF PARTNERSHIP~~ PARTNER'S
5 TRANSFERABLE INTEREST. The only transferable interest of a partner is the
6 partner's allocation³⁵⁰ of the profits and losses of the partnership and the partner's right to
7 receive distributions.³⁵¹ ~~The A partnership~~ interest is personal property.

8
9 SECTION 702.³⁵² ~~ASSIGNMENT OF PARTNERSHIP~~
10 ~~INTEREST~~ TRANSFER OF PARTNER'S TRANSFERABLE INTEREST. ~~Except~~
11 ~~as provided in the partnership agreement, a partnership interest is assignable in whole or~~
12 ~~in part. An assignment of a partnership interest does not dissolve a limited partnership or~~
13 ~~entitle the assignee to become or to exercise any rights of a partner. An assignment~~
14 ~~entitles the assignee to receive, to the extent assigned, only the distribution to which the~~
15 ~~assignor would be entitled. Except as provided in the partnership agreement, a partner~~
16 ~~ceases to be a partner upon assignment of all his [or her] partnership interest.~~

17 Version #1 -- RUPA, essentially verbatim

18 (a) A transfer, in whole or in part, of a partner's transferable interest in the limited partnership:
19 _____.

1 (1) is permissible;
2
3 (2) does not by itself cause the partner's dissociation or a dissolution
4 and winding up of the limited partnership business; and
5
6 (3) does not, as against the other partners or the limited partnership,
7 entitle the transferee, during the continuance of the limited partnership, to participate in
8 the management or conduct of the limited partnership business, to require access to
9 information concerning limited partnership transactions, or to inspect or copy the limited
10 partnership books or records.
11 (b) A transferee of a partner's transferable interest in the limited partnership has a right:
12
13 (1) to receive, in accordance with the transfer, distributions to which the
14 transferor would otherwise be entitled;
15
16 (2) to receive upon the dissolution and winding up of the limited
17 partnership business, in accordance with the transfer, the net amount otherwise
18 distributable to the transferor; and
19
20 (3) to seek under Section 802(b) a judicial determination that it is
21 equitable to wind up the limited partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of limited partnership transactions

1 only from the date of the latest account agreed to by all of the partners.

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

4 _____

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

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

10 Version #2 -- RUPA, reorganized and revised

11 (a) A transfer, in whole or in part, of a partner's transferable:

12 _____.....

13 _____ (1) is permissible³⁵³ and,

14 _____.....

15 _____ (2) subject to subsection (c), entitles the transferee only to:

16 _____.....

17 (i) receive, in accordance with the transfer, distributions to which the transferor would otherwise be
18 entitled.³⁵⁴

19 _____.....

20 (ii) seek under Section 802(b) a judicial determination that it is equitable to wind up the partnership
21 business.³⁵⁵

1 _____

(iii) obtain from the limited partnership, if the interest held by the transferee is a bare transferable interest, a

3 brief written explanation of how the limited partnership calculates any amounts payable

4 to the transferee.³⁵⁶

5 _____

(iv) obtain, if the limited partnership has dissolved, a final statement of the amount due the transferee.³⁵⁷

7 _____

8 _____

9 (1) release the transferor partner from any obligations to the limited

10 partnership or other partners, regardless of whether the transferee becomes a partner.³⁵⁸

11 _____

12 (2) cause the transferor partner's dissociation or affect any of the

13 transferor partner's rights other than the transferred rights except as provided in Section

14 602(4)(ii) or 603(4)(ii).³⁵⁹ and

15 _____

16 (3) cause the transferee to become a partner or entitle the transferee to

17 any rights other than those expressly stated in subsection (a).³⁶⁰

18 _____

19 (c) A transfer is effective against the limited partnership only when the

20 limited partnership has notice of the transfer.³⁶¹

21 (d) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership

22 agreement is ineffective as to a person having notice of the restriction at the time of

transfer.³⁶²

.....

SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR

(a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee,³⁶⁴

the court may charge the partnership transferable interest of the partner judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of ~~an assignee of the partnership interest~~ a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.³⁶⁵

(b) 3A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a
foreclosure of the interest subject to the charging order at any time. The purchaser at the
foreclosure sale has the rights of a transferee.³⁶⁶

³⁶⁷(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than limited partnership property, by one or

1 more of the other partners; or

2
3 Version #1 (RUPA) -- (3) with limited partnership property, by one or
4 more of the other partners with the consent of all of the partners whose interests are not
5 so charged.³⁶⁸

6
7 Version #2 (ULLCA) -- (3) with limited partnership property, but only if
8 permitted by the partnership agreement.³⁶⁹

9
10 Version #3 -- (3) with limited partnership property, but only if:

11
12 (i) permitted by the partnership agreement, or

13
(ii) no general partner who, either directly or through an affiliate, has ever owned the interest being redeemed
15 participates in the decision to make the redemption.³⁷⁰

~~(d)~~ This [Act] does not deprive any partner or transferee of the benefit of any exemption laws applicable to
17 his [or her] partnership the partner's or transferee's transferable interest.

~~(e)~~ This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may
19 satisfy a judgment out of the judgment debtor's transferable interest.³⁷¹

1 **SECTION 704. NO RIGHT OF TRANSFEREE ASSIGNEE TO**
2 **BECOME LIMITED PARTNER.**

3
4 ~~(a) An assignee of a partnership interest, including an assignee of a~~
5 ~~general partner, may become a limited partner if and to the extent that (i) the assignor~~
6 ~~gives the assignee that right in accordance with authority described in the partnership~~
7 ~~agreement;³⁷² or (ii) all other partners consent.~~

8
9 ~~(b) An assignee who has become a limited partner has, to the extent~~
10 ~~assigned, the rights and powers, and is subject to the restrictions and liabilities, of a~~
11 ~~limited partner under the partnership agreement and this [Act]. An assignee who~~
12 ~~becomes a limited partner also is liable for the obligations of his [or her] assignor to make~~
13 ~~and return contributions as provided in Articles 5 and 6. However, the assignee is not~~
14 ~~obligated for liabilities unknown to the assignee at the time he [or she] became a limited~~
15 ~~partner.³⁷³~~

16
17 ~~(c) If an assignee of a partnership interest becomes a limited partner,~~
18 ~~the assignor is not released from his [or her] liability to the limited partnership under~~
19 ~~Sections 207 and 502.³⁷⁴~~

20 A transferee has no right to become a partner or to exercise any rights other than those
21 provided in Section 702.³⁷⁵

**SECTION 705. POWER OF ESTATE OF DECEASED OR
INCOMPETENT PARTNER.**³⁷⁶

(a) If a partner who is an individual dies, for the purpose of settling the decedent's estate the deceased partner's executor, administrator, or other legal representative may exercise the rights of a transferee as provided in Section 702;³⁷⁷

~~(b) If a partner who is an individual is adjudged by~~ or a court of competent jurisdiction adjudges him [or her]
to be incompetent to manage ~~his [or her]~~ the partner's person or ~~his [or her]~~ property,

.....

(1) if the partner is a limited partner, the partner's executor,
~~administrator,~~ guardian, conservator, or other legal representative may exercise all the
limited partner's rights for the purpose of ~~settling his [or her] estate or administering his~~
~~[or her] the limited partner's property, including any power the partner had to give an~~
~~assignee the right to become a limited partner;~~³⁷⁸ and

.....

(2) if before the adjudication the partner was a general partner, the
guardian, conservator, or other legal representative may not exercise any right or power
of a general partner but for the purpose of administering the adjudicated partner's
property may exercise the rights of a transferee as provided in Section 702.³⁷⁹

~~If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner~~
~~may be exercised by its legal representative or successor.~~³⁸⁰

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1 ~~the limited partnership is not dissolved and is not required to be wound up by reason of~~
2 ~~any event of withdrawal if, within 90 days after the withdrawal, all partners agree in~~
3 ~~writing to continue the business of the limited partnership and to the appointment of one~~
4 ~~or more additional general partners if necessary or desired;~~

5 Version #1 (limited partnership most susceptible to dissolution)³⁸⁴

6 (5) the passage of 90 days after dissociation of a general partner, unless before the end of the 90 days:

7 _____

8 (i) if at least one general partner remains,³⁸⁵ partners owning a majority
9 of the profit interests owned by partners immediately following the dissociation³⁸⁶
10 consent to avoid dissolution of the limited partnership; or

11 _____

12 (ii) if no general partner remains, partners owning a majority of the
13 profit interests owned by partners immediately following the dissociation consent to
14 avoid dissolution of the limited partnership and to admit at least one general partner and
15 at least one person is admitted a general partner in accordance with that consent.

16 _____

17 Version #2 (limited partnership less susceptible to dissolution)

18 (5) after the dissociation of a general partner,

19 _____

20 (i) if the limited partnership has at least one remaining general partner,
21 written consent to dissolve the limited partnership given within 90 days after the

dissociation by partners owning a majority of the profit interests owned by partners
immediately following the dissociation; or

_____.

_____ (ii) if the limited partnership has no remaining general partner, the
passage of 90 days after the dissociation unless within that 90 days partners owning a
majority of the profit interests owned by partners immediately following the dissociation
consent to avoid dissolution of the limited partnership and to admit at least one general
partner and at least one person is admitted as a general partner in accordance with that
consent.

..... Version #3 (limited partnership least susceptible to dissolution)

..... (5) the dissociation of a general partner unless:

_____.

_____ (i) at least one general partner remains immediately following the
dissociation, or

_____.

_____ (ii) if no general partner remains, within 90 days after the dissociation
partners owning a majority of the profit interests owned by partners immediately
following the dissociation consent to avoid dissolution of the limited partnership and to
admit at least one general partner and at least one person is admitted as a general partner
in accordance with that consent.³⁸⁷

(6) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before

2 the end of the 90 days the limited partnership admits at least one limited partner;

3 or

4

5 (57) entry of a decree of judicial dissolution under Section 802.

6

7 **SECTION 802. JUDICIAL DISSOLUTION.**³⁸⁸

(a) 8On application by or for a partner the [designate the appropriate court] court may decree dissolution of a

9 limited partnership whenever;³⁸⁹

10 _____

11 (1) the economic purpose of the limited partnership is likely to be

12 unreasonably frustrated;

13 _____

14 (2) another partner has engaged in conduct relating to the limited

15 partnership business which makes it not reasonably practicable to carry on the business in

16 partnership with that partner; or³⁹⁰

17

18 (3) it is not reasonably practicable to carry on the business in

19 conformity with the partnership agreement.

(b) 20On application by or for a transferee the [designate the appropriate court] court may decree dissolution of

21 a limited partnership if;³⁹¹

.....
(1) the limited partnership amended its certificate of limited partnership
to extend the limited partnership's term after having notice of the transfer or entry of the
charging order that gave rise to the transferee's interest;³⁹²
.....
(2) the limited partnership's term would have expired but for that
amendment; and
.....
(3) it is equitable to dissolve the limited partnership and wind up its
business.³⁹³

SECTION 802A. LIMITED PARTNERSHIP CONTINUES

AFTER DISSOLUTION.³⁹⁴ A limited partnership continues after dissolution only for
the purpose of winding up its business.³⁹⁵ A limited partnership terminates under Section
805. Dissolution does not relieve the limited partnership, any general partner or any
dissociated general partner of liability for the debts and other obligations of the limited
partnership.

SECTION 803. WINDING UP.³⁹⁶ ~~Except as provided in the~~
~~partnership agreement, the general partners who have not wrongfully dissolved a limited~~

partnership or, if none, the limited partners, may wind up the limited partnership's affairs;
but the [designate the appropriate court] court may wind up the limited partnership's
affairs upon application of any partner, his [or her] legal representative, or assignee.

(a) ~~A~~ dissolved limited partnership shall promptly amend its certificate of limited partnership to state that the

limited partnership is dissolved and is winding up its business³⁹⁷ and shall promptly wind
up its business. In winding up its business the limited partnership may preserve the
limited partnership business or property as a going concern for a reasonable time,
prosecute and defend actions and proceedings, whether civil, criminal, or administrative,
settle and close the limited partnership's business, dispose of and transfer the limited
partnership's property, discharge the limited partnership's liabilities, distribute the assets
of the limited partnership under Section 804, settle disputes by mediation or arbitration,
and perform other necessary acts.³⁹⁸ Promptly after winding up is completed, the limited
partnership shall file a declaration of termination as provided in Section 805.

~~(b)~~ If a dissolved limited partnership has no general partners, limited partners owning at least a majority of

the profit interests owned by partners immediately following the dissolution may
appoint³⁹⁹ a person to wind up the dissolved limited partnership's business. A person
appointed under this subsection:

.....

(1) has the powers of a general partner under Section 803A and the
duties of a general partner under Section 403D; and⁴⁰⁰

.....

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

1 _____
2 _____ (i) state that the limited partnership is dissolved and has no general partner;
3 _____
4 _____ (ii) state that the person has been appointed to wind up the limited partnership; and
5 _____
6 _____ (iii) give the business address of the person.

(c) On the application of any partner or transferee, a court may order judicial supervision of the winding up,

8 including the appointment of a person to wind up the dissolved limited partnership's
9 business, if:

10 _____

11 _____ (1) a limited partnership has no general partner and within a reasonable

12 time following the dissolution no person has been appointed pursuant to subsection (b),

13 or

14 _____

15 _____ (2) the applicant establishes other good cause.

(d) Except as ordered by the court, a person appointed under subsection (c) has the same powers and duties of
17 a person appointed under subsection (b).

18 **SECTION 803A. GENERAL PARTNER'S POWER TO BIND**

19 **PARTNERSHIP AFTER DISSOLUTION.**⁴⁰¹

(a) ~~Subject~~ Subject to subsections (b) and (c), a limited partnership is bound by a general partner's act after dissolution

1 that:
2 _____
3 _____(1) is appropriate for winding up the limited partnership business; or
4 _____
5 _____(2) would have bound the partnership under Section 403A before
6 dissolution, if the other party to the transaction did not have notice of the dissolution.⁴⁰²

(b) If the certificate of limited partnership has been amended to state that the limited partnership is dissolved,

8 the amendment:
9 _____.
10 _____(1) nullifies any statement granting authority pursuant to Section
11 201(b);⁴⁰³ and
12
13 _____(2) operates as a statement limiting authority pursuant to Section
14 201(b).⁴⁰⁴

(c) For the purposes of subsection (a)(2) and Section 403A, a person not a partner is deemed to have notice of

16 a limited partnership's dissolution and the limitation on the general partners' authority 90
17 days after the certificate of limited partnership is amended to state that the limited
18 partnership is dissolved.⁴⁰⁵

19 (d) After amending its certificate of limited partnership to state that the limited partnership is dissolved, a
20 dissolved limited partnership may amend its certificate to include new statements
21 regarding authority pursuant to Section 201(b) which will operate as provided in Section
22 208 for subsequent transactions, whether or not a transaction is appropriate for winding

up the limited partnership business.⁴⁰⁶

(e) This Section's limitations on a general partner's power to bind a dissolved limited partnership also apply to

a dissociated general partner's power under Section 602C.

SECTION 803A-2. GENERAL PARTNER'S LIABILITY TO

OTHER GENERAL PARTNERS AFTER DISSOLUTION.⁴⁰⁷

(a) Except as otherwise provided in subsection (b) and Section 403C, 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 803A.

(b) A general partner who, with knowledge of the dissolution, incurs a limited partnership liability under

Section 803A(a)⁴⁰⁸ by an act that is not appropriate for winding up the partnership

business is liable to the limited partnership for any damage caused to the limited

partnership arising from the liability.⁴⁰⁹

SECTION 803B. KNOWN CLAIMS AGAINST DISSOLVED

LIMITED PARTNERSHIP.⁴¹⁰

(a) A dissolved limited partnership may dispose of the known claims against it by following the procedure

described in this section.

(b) A dissolved limited partnership shall notify its known claimants in writing of the dissolution. The notice

must:

.....

1 (1) specify the information required to be included in a claim;
2
3 (2) provide a mailing address where the claim is to be sent;
4
5 (3) state the deadline for receipt of the claim, which may not be less
6 than 120 days after the date the written notice is received by the claimant;
7
8 (4) state that the claim will be barred if not received by the deadline;
9 and
10
11 (5) unless the limited partnership has been a limited liability limited
12 partnership throughout its existence, state that the barring of a claim against the limited
13 partnership will also bar any corresponding claim against any present or dissociated
14 general which is based on Section 403C.⁴¹¹
(5) A claim against a dissolved limited partnership is barred if the requirements of subsection (b) are met,
16 and:
17
18 (1) the claim is not received by the specified deadline; or
19
20 (2) in the case of a claim that is timely received but rejected by the
21 dissolved limited partnership, the claimant does not commence a proceeding to enforce
22 the claim against the limited partnership⁴¹² within 90 days after the receipt of the notice of

1 the rejection.

(d) 2 For purposes of this section, "claim" does not include a contingent liability or a claim based on an event
3 occurring after the effective date of dissolution.

4 **SECTION 803C. OTHER CLAIMS AGAINST DISSOLVED**
5 **LIMITED PARTNERSHIP.**⁴¹³

(a) 6 A dissolved limited partnership may publish notice of its dissolution and request persons having claims
7 against the limited partnership to present them in accordance with the notice.

8 _____ (b) The notice must:

9 _____

10 _____ (1) be published at least once in a newspaper of general circulation in
11 the [county] in this State⁴¹⁴ in which the dissolved limited partnership's principal office is
12 located or, if none in this State, in which its in-state office⁴¹⁵ is or was last located;

13 _____

14 _____ (2) describe the information required to be contained in a claim and
15 provide a mailing address where the claim is to be sent;

16 _____

17 _____ (3) state that a claim against the limited partnership is barred unless a
18 proceeding to enforce the claim is commenced within five years after publication of the
19 notice; and

20 _____

_____ (4) unless the limited partnership has been a limited liability limited partnership throughout its existence, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any present or dissociated general which is based on Section 403C.⁴¹⁶

(c) ~~5~~ 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 803B;

_____

_____ (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 partner⁴¹⁷

1 or transferee⁴¹⁸ to the extent of that person's pro rata⁴¹⁹ share of the claim or the limited
2 partnership's assets distributed to the partner or transferee in liquidation, whichever is
3 less, but a person's total liability for all claims under this paragraph⁴²⁰ may not exceed the
4 total amount of assets distributed to the person as part of the winding up of the dissolved
5 limited partnership.⁴²¹

6
7 (3) any person liable on the claim under Section 403C.⁴²²

8 **SECTION 803D. EFFECT OF CLAIMS BAR ON PERSONAL**
9 **LIABILITY OF PARTNERS AND DISSOCIATED PARTNERS.**⁴²³

10 Version #1 -- If Section 803B or 803C bars a claim against a dissolved limited
11 partnership, any corresponding claim under Section 403C⁴²⁴ is also barred.

12 Version #2 -- No person is liable under Section 403C on account of any obligation of a
13 limited partnership with regard to which Section 803B or 803C has barred a claim.

14 **SECTION 803E. GROUNDS FOR ADMINISTRATIVE**
15 **DISSOLUTION.**⁴²⁵ The [Secretary of State] may commence a proceeding to dissolve a
16 limited partnership administratively if the limited partnership does not pay any fees,

1 taxes, or penalties imposed by this [Act] or other law within 60 days after they are due.⁴²⁶

2 **SECTION 803F. PROCEDURE FOR AND EFFECT OF**

3 **ADMINISTRATIVE DISSOLUTION.**⁴²⁷

4 (a) If the [Secretary of State] determines that a ground exists for administratively dissolving a limited
5 partnership, the [Secretary of State] shall enter a record of the determination and serve the
6 limited partnership with a copy of the record.

(b) If within 60 days⁴²⁸ after service of the copy⁴²⁹ the limited partnership does not correct each ground for
8 dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that
9 each ground determined by the [Secretary of State] does not exist, the [Secretary of State]
10 shall administratively dissolve the limited partnership by signing a notice of dissolution⁴³⁰
11 that recites the grounds for dissolution and its effective date. The [Secretary of State]
12 shall file the original of the notice and serve the limited partnership with a copy.⁴³¹

(d) A limited partnership administratively dissolved continues its existence but may carry on only business
14 necessary to wind up and liquidate its business and affairs under Section 803 and to
15 notify claimants under Sections 803B and 803C.

(e) The administrative dissolution of a limited partnership does not terminate the authority of its agent for
17 service of process.⁴³²

18 **SECTION 803G. REINSTATEMENT FOLLOWING**

1 **ADMINISTRATIVE DISSOLUTION.**⁴³³

(a) 2 A limited partnership administratively dissolved may apply to the [Secretary of State] for reinstatement

3 within two years after the effective date of dissolution. The application must:

4 _____

5 _____ (1) recite the name of the limited partnership and the effective date of
6 its administrative dissolution;

7 _____

8 _____ (2) state that the ground or grounds⁴³⁴ for dissolution either did not exist
9 or have been eliminated;

10 _____

11 _____ (3) state that the limited partnership's name satisfies the requirements of
12 Section 102; and

13 _____

14 _____ (4) contain a certified statement from the [taxing authority] reciting that
15 all taxes owed by the limited partnership have been paid.

(b) 1 If the [Secretary of State] determines that the application contains the information required by subsection

17 (a) and that the information is correct, the [Secretary of State] shall cancel the notice⁴³⁵ of
18 dissolution and prepare a notice⁴³⁶ of reinstatement that recites this determination and the
19 effective date of reinstatement, file the original of the notice, and serve the limited
20 partnership with a copy.

21 (c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the
22 administrative dissolution and the limited partnership may resume its business as if the

1 administrative dissolution had never occurred.⁴³⁷

2 **SECTION 804. SETTLING OF ACCOUNTS AND**
3 **DISTRIBUTION OF ASSETS.**⁴³⁸ ~~Upon the winding up of a limited partnership, the~~
4 ~~assets shall be distributed as follows:~~

5 _____
6 _____ (1) ~~to creditors, including partners who are creditors, to the extent~~
7 ~~permitted by law, in satisfaction of liabilities of the limited partnership other than~~
8 ~~liabilities for distributions to partners under Section 601 or 604;~~

9 _____
10 _____ (2) ~~except as provided in the partnership agreement, to partners and~~
11 ~~former partners in satisfaction of liabilities for distributions under Section 601 or 604;~~
12 ~~and~~

13 _____
14 _____ (3) ~~except as provided in the partnership agreement, to partners first for~~
15 ~~the return of their contributions and secondly respecting their partnership interests, in the~~
16 ~~proportions in which the partners share in distributions.~~

17
18 ⁴³⁹(a) In winding up a limited partnership's business, the assets of the
19 limited partnership, including the contributions required by this section, must be applied
20 to discharge its obligations to creditors, including, to the extent permitted by law, partners
21 who are creditors.⁴⁴⁰ Any surplus must be applied to pay in cash the net amount

distributable to partners in accordance with subsection (b).

.....441

(b) Any surplus existing under subsection (a) shall be distributed first as a return of all contributions that have not previously been returned and second as a distribution of profits allocated under Section 504. If the surplus does not suffice to return all contributions, the surplus shall be allocated among partners in proportion to their respective unreturned contributions.⁴⁴²

(c) If the limited partnership's assets are insufficient to discharge all its obligations under section (a), then
with respect to each undischarged obligation incurred when the limited partnership was
an ordinary limited partnership:⁴⁴³

.....

(1) each person who was a general partner when the obligation was incurred and who has not been released under Section 602D shall contribute to the limited partnership for the purpose of enabling the limited partnership to discharge that obligation and the contribution due from each of those persons shall be in proportion to the share of limited partnership losses in effect for each of those persons when the obligation was incurred;

.....

(2) if a person fails to contribute the full amount required under paragraph (1), the other persons required to contribute by that paragraph shall contribute the additional amount necessary to discharge the limited partnership obligation and the

1 additional contribution due from each of those other persons shall be in proportion to the
2 share of limited partnership losses in effect for each of those other persons when the
3 obligation was incurred; and

4 _____

5 _____ (3) if any person fails to make the additional contribution required by
6 paragraph (2), further additional contributions shall be due and determined in the same
7 manner as provided in that paragraph.

8 _____

9 _____ (d) A person who makes an additional contribution under subsection
10 (c)(2) or (c)(3) may recover from any person whose failure to contribute under subsection
11 (c)(1) or (c)(2) necessitated the additional contribution. A person may not recover
12 pursuant to this subsection more than the amount additionally contributed. A person's
13 liability under this subsection shall not 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 Section.⁴⁴⁴

15

16 _____ (f) An assignee for the benefit of creditors of a limited partnership or a
17 partner, or a person appointed by a court to represent creditors of a limited partnership or
18 a partner, may enforce a person's obligation under subsection (c) to contribute to the
19 limited partnership.⁴⁴⁵

20 **SECTION 805. TERMINATION.** The existence of a limited

1 partnership is terminated upon the filing, pursuant to Section 203, of a declaration of
2 termination, or, subject to Section 206(d),⁴⁴⁶ at a later date specified in that declaration.
3 Termination of a limited partnership does not affect the application of Sections 803B,
4 803C and 803D (barring of claims).
5

6 **[revisions to Article 9 are reserved pending the Committee's decision**
7 **on the RULPA "look and feel" issue]**

8 ARTICLE 9

9 FOREIGN LIMITED PARTNERSHIPS

10 SECTION 901. LAW GOVERNING. Subject to the Constitution of
11 this State, (i) the laws of the state under which a foreign limited partnership is organized
12 govern its organization and internal affairs and the liability of its limited partners, and
13 (ii) a foreign limited partnership may not be denied registration by reason of any
14 difference between those laws and the laws of this State.
15

16 SECTION 902. REGISTRATION. Before transacting business in this
17 State, a foreign limited partnership shall register with the Secretary of State. In order to
18 register, a foreign limited partnership shall submit to the Secretary of State, in duplicate,

1 an application for registration as a foreign limited partnership, signed and sworn to by a
2 general partner and setting forth:

3
4 (1) the name of the foreign limited partnership and, if different, the
5 name under which it proposes to register and transact business in this State;

6
7 (2) the State and date of its formation;

8
9
10
11 (3) the name and address of any agent for service of process on the
12 foreign limited partnership whom the foreign limited partnership elects to appoint; the
13 agent must be an individual resident of this State, a domestic corporation, or a foreign
14 corporation having a place of business in, and authorized to do business in, this State;

15
16 (4) a statement that the Secretary of State is appointed the agent of the
17 foreign limited partnership for service of process if no agent has been appointed under
18 paragraph (3) or, if appointed, the agent's authority has been revoked or if the agent
19 cannot be found or served with the exercise of reasonable diligence;

20
21 (5) the address of the office required to be maintained in the state of its
22 organization by the laws of that state or, if not so required, of the principal office of the

1 foreign limited partnership;
2
3
4

5 (6) the name and business address of each general partner; and
6

7 (7) the address of the office at which is kept a list of the names and
8 addresses of the limited partners and their capital contributions, together with an
9 undertaking by the foreign limited partnership to keep those records until the foreign
10 limited partnership's registration in this State is cancelled or withdrawn.
11

12 SECTION 903. ISSUANCE OF REGISTRATION.
13

14 (a) If the Secretary of State finds that an application for registration
15 conforms to law and all requisite fees have been paid, he [or she] shall:
16
17

18 (1) endorse on the application the word "Filed," and the month, day and
19 year of the filing thereof;
20
21

1 (2) file in his [or her] office a duplicate original of the application; and

2
3
4 (3) issue a certificate of registration to transact business in this State.

5
6 (b) The certificate of registration, together with a duplicate original of
7 the application, shall be returned to the person who filed the application or his [or her]
8 representative.
9

10 SECTION 904. NAME. A foreign limited partnership may register
11 with the Secretary of State under any name, whether or not it is the name under which it
12 is registered in its state of organization, that includes without abbreviation the words
13 "limited partnership" and that could be registered by a domestic limited partnership.
14

15 SECTION 905. CHANGES AND AMENDMENTS. If any statement
16 in the application for registration of a foreign limited partnership was false when made or
17 any arrangements or other facts described have changed, making the application
18 inaccurate in any respect, the foreign limited partnership shall promptly file in the office
19 of the Secretary of State a certificate, signed and sworn to by a general partner, correcting
20 such statement.

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SECTION 906. CANCELLATION OF REGISTRATION. A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to [claims for relief] [causes of action] arising out of the transactions of business in this State.

SECTION 907. TRANSACTION OF BUSINESS WITHOUT REGISTRATION.

(a) A foreign limited partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited partnership to register in this State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

1 (c) A limited partner of a foreign limited partnership is not liable as a
2 general partner of the foreign limited partnership solely by reason of having transacted
3 business in this State without registration.

4
5 (d) A foreign limited partnership, by transacting business in this State
6 without registration, appoints the Secretary of State as its agent for service of process
7 with respect to [claims for relief] [causes of action] arising out of the transaction of
8 business in this State.

9
10 SECTION 908. ACTION BY [APPROPRIATE OFFICIAL]. The
11 [designate the appropriate official] may bring an action to restrain a foreign limited
12 partnership from transacting business in this State in violation of this Article.

13
14 **ARTICLE 10⁴⁴⁷**

15 **DERIVATIVE ACTIONS⁴⁴⁸**

16 **SECTION 1001. RIGHT OF ACTION.** A limited partner may bring
17 ~~an a derivative action in the to enforce a right of a limited partnership to recover a~~
18 ~~judgment in its favor if general partners with authority to do so have refused to bring the~~

1 ~~action or if an effort to cause those general partners to bring the action is not likely to~~
2 succeed if:

(B) ~~the limited partner first makes a demand on the general partners, requesting that they cause the limited~~
4 ~~partnership to bring an action to enforce the right, and the general partners do not bring~~
5 ~~the action within a reasonable time, or~~
6 ~~_____ (2) a demand will be futile.~~⁴⁴⁹

8 **SECTION 1002. PROPER PLAINTIFF.**⁴⁵⁰ In a derivative action,

9 the plaintiff must be a limited⁴⁵¹ partner at the time of bringing the action and:

(1) ~~the plaintiff (i) must have been a partner~~⁴⁵² ~~at the time of the transaction of which he [or she] complains~~
11 ~~when the conduct giving rise to action occurred;~~⁴⁵³ or

12 ~~(ii) his [or her] the plaintiff's status as a partner must have devolved upon him [or her] the plaintiff by~~
13 ~~operation of law or pursuant to the terms of the partnership agreement from a person who~~
14 ~~was a partner at the time of the transaction~~ conduct.

16 **SECTION 1003. PLEADING.** In a derivative action, the complaint

17 shall ~~set forth~~ state with particularity ~~the effort of the plaintiff to secure initiation of the~~
18 ~~action by a general partner or the reasons for not making the effort;~~

19 (1) the date and content of plaintiff's demand and the general partners' response to the demand, or
20 ~~_____ (2) why demand is excused as futile.~~⁴⁵⁴

SECTION 1004. PROCEEDS AND⁴⁵⁵ EXPENSES.⁴⁵⁶ If a

~~derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited partnership the remainder of those proceeds received by him [or her].~~

..... (a) Subject to subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement,⁴⁵⁷ belong to the limited partnership and not to the derivative plaintiff;

_____

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

ivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees.

SECTION 1005. DIRECT ACTIONS BY PARTNERS.. . . . 458

19 (a) Subject to subsection (b), a partner may maintain a direct⁴⁶⁰ action against the partnership or another
20 partner for legal or equitable relief, with or without an accounting as to partnership
21 business, to:

1 _____

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

3 _____

4 _____ (2) enforce the partner's rights under this [Act];⁴⁶¹ or

5 _____

6 _____ (3) enforce the rights and otherwise protect the interests of the partner,

7 including rights and interests arising independently of the partnership relationship.

(b) 8A partner bringing a direct claim under this section must plead and prove an injury caused or threatened

9 by the breach which is not solely the result of an injury suffered or threatened to be

10 suffered by the limited partnership.⁴⁶²

11

12 (c) The accrual of, and any time limitation on, a right of action for a

13 remedy under this section is governed by other law. A right to an accounting upon a

14 dissolution and winding up does not revive a claim barred by law.⁴⁶³

CONVERSIONS

The question of conversions presents some unusual drafting and policy questions that relate particularly to existing uniform laws (i.e., RUPA and ULLCA) and to the potential overlap and redundancy among those laws. Existing uniform laws already provide for the conversion of:

•

- limited partnerships into general partnerships (RUPA, § 903),
- general partnerships into limited partnerships (RUPA, § 902), and
- general and limited partnerships into limited liability companies (ULLCA § 902).

Neither RUPA nor ULLCA provide for the conversion of:

- limited liability companies into any form of partnership, or
- any form of partnership or limited liability company into a corporation.

Assuming that the reasons for those omissions remain in force, the Drafting Committee has at least the following options regarding conversion provisions:

1. include none, relying on the coverage provided by RUPA and ULLCA;
2. replicate the RUPA and ULLCA provisions as optional provisions in case a state has not adopted those provisions as parts of its general partnership and limited liability company acts;
3. propose a paradigm for determining which statute should contain which conversion provision (e.g., each statute to control conversion into the entity covered by the statute, but not conversion out of that organizational form) and, consistent with that paradigm, draft not only language for this Act but also appropriate amendments for RUPA and ULLCA;
4. move toward the "hub and spoke" notion by developing a conversion provision that applies generally to conversions of all the entity types it encompasses.

Even if the Drafting Committee decides to provide for additional types of conversions (e.g., from a limited liability company into a limited partnership, or from a corporation into a limited partnership), the options listed above remain relevant for the types of conversions already permitted.

This draft follows the first option, because:

a.if the Committee chooses the second option, RUPA and ULLCA provide the necessary language and that language can be easily incorporated into the next draft;

b.if the Committee chooses the third option, it is necessary to decide on the paradigm before undertaking detailed drafting; and

c.if the Committee chooses the fourth option, this draft's Article 11 (providing a generic approach to mergers) can be adapted to encompass conversions as well.

MERGERS

Mergers involve some of the same overlap issues involved in conversions. The overlap is not quite as extensive, however. In particular, no current uniform law provides for the merger of limited partnerships with corporations. Following is a merger provision that broadly allows a limited partnership to merge with any other form of organization. The only limitation is that a participating organization must have a group of interest holders recognized as owners by the law under which the organization is formed.

1

2

ARTICLE 11

3

MERGERS

4

SECTION 1101. DEFINITIONS. In this [Article]:

5

(1) "Constituent organization" means an organization that is party to a merger.

(2) "Former owner" includes a partner who is dissociated from a limited partnership formed under this [Act].

(3) "Governing statute" of an organization means the statute under which the organization is incorporated,

8

organized, formed, or achieves its fundamental organizational status and which governs

9

the structure, governance, operations, and other internal affairs of the organization.

(4) "Limited partnership" includes not only a limited partnership formed under this [Act] but also any limited partnership formed under a predecessor statute of this State or under a comparable statute of any other State.

(5) "Organization" includes a domestic or foreign general partnership, limited liability partnership, limited partnership, limited liability limited partnership, limited liability company, corporation, and any other entity considered by its governing statute to have owners and ownership interests.⁴⁶⁴

..... (6) "Owner" means with respect to:
.....
(i) a general or limited partnership, a partner;
.....
(ii) a limited liability company, a member;
.....
(iii) a corporation, a shareholder; and
.....
(iv) any other organization, a person recognized by the organization's governing statute as being an owner of the organization.

(7) "Ownership interest" means an owner's equity interest in an organization, including any right of the owner to acquire additional equity interests and excluding bare transferable interests.

(8) "Owner vicarious liability." means vicarious personal liability for an organization's debts and other obligations which is imposed by the organization's governing statute on an owner through a provision making owner status an essential element for establishing personal liability.⁴⁶⁵

1 (9) "Surviving organization" means a constituent organization that exists after the merger takes effect.

2 **SECTION 1102. MERGER OF ENTITIES.**⁴⁶⁶

(a) A limited partnership may participate in a merger with one or more other organizations pursuant to this

4 [Article], except for an organization whose governing statute prohibits it from

5 participating in the merger.⁴⁶⁷ To participate in a merger a constituent organization must

6 approve a plan of merger pursuant to subsections (d) and (e).

7 (b) A plan of merger must state:

8

9 (1) the name of each constituent organization;

10

11 (2) the name, type of organization, and street address of the principal

12 place of business of the surviving organization;

13

14 (3) the terms and conditions of the merger;

15

16 (4) the manner and basis for converting the ownership interests of each

17 constituent organization that is not the surviving organization into any combination of

18 money, ownership interests in the surviving organization, and other consideration; and

19

20 (5) if the merger involves a limited partnership formed under this [Act],

1 that limited partnership will not be the surviving organization, and immediately before
2 the merger takes effect that limited partnership will have outstanding bare transferable
3 interests, the manner and basis for converting those bare transferable interests into any
4 combination of money, ownership interests in the surviving organization, and other
5 consideration.⁴⁶⁸

6 (c) A plan of merger may also state the manner and basis for changing or cancelling some or all of the
7 ownership interests of some or all of the persons who are owners of the surviving
8 organization immediately before the merger takes effect.

9 (d) A plan of merger must be approved, subject to subsection (e):

10

11 (1) in the case of a constituent organization that is a limited partnership
12 organized under [this Act], by the consent all of the partners.⁴⁶⁹

13 and

14

15 (2) in the case of any other constituent organization, in the manner
16 provided by the organization's governing statute, including any appraisal rights given by
17 that statute, and if that statute does not provide for approving a merger, then by the
18 consent of all the organization's owners.

(e) The merger must be approved by each partner of a limited partnership formed under this [Act] who will be
20 an owner of the surviving organization and will as a result of the merger face increased
21 susceptibility to owner vicarious liability for any of the following reasons:⁴⁷⁰

22

(1) The person will have owner vicarious liability for a debt or obligation of the surviving organization which was incurred before the merger but for which the person did not have owner vicarious liability before the merger.

.....
(2) The surviving organization's governing statute provides less protection against owner vicarious liability than does this [Act].⁴⁷¹

.....
(3) The merger causes the person to have an ownership interest that, under the surviving organization's governing statute, has less protection from owner vicarious liability than the person had under [this Act] as a partner.⁴⁷²

(f) After a plan of merger is approved and before the merger takes effect, unless the governing statute of a constituent organization provides to the contrary, the plan may be amended or abandoned as provided in the plan.

SECTION 1103. ARTICLES OF MERGER.⁴⁷³

(a) After approval of the plan of merger under Section 1102, the organization that will be the surviving organization shall deliver articles of merger to the [Secretary of State] and to any other public official or office to whom delivery is required by a constituent entity's governing statute. The surviving organization must provide a copy of the articles of merger to each owner of each constituent organization.

..... (b) The articles of merger must contain:

1 _____

2 _____ (1) the name of each constituent organization, together with the name of

3 the jurisdiction of the organization's governing statute;

4 _____

5 _____ (2) the name and address of the surviving organization;⁴⁷⁴

6 _____

7 _____ (3) the plan of merger;⁴⁷⁵

8 _____

9 _____ (4) a statement that each constituent organization has approved the plan

10 of merger and a description for each constituent organization of:

11 _____

12 (i) the approval process mandated by the organization's governing statute or [this Act];⁴⁷⁶ and

13 _____

(ii) the organization's compliance with the mandated approval process, including the dates on or by which any

15 necessary consents or votes were obtained;

16 _____

17 _____ (5) if a limited partnership formed under this [Act] is the surviving

18 organization and the merger necessitates changes in the limited partnership's certificate of

19 limited partnership, an amendment to that certificate making the necessary changes;

20 _____

21 _____ (6) any other information required by the governing statute of a

22 constituent organization that is not a limited partnership formed under this Act; and

1 _____

2 _____ (7) the effective date of the merger.⁴⁷⁷

3 **SECTION 1104. EFFECTIVE DATE AND EFFECT OF**

4 **MERGER.**⁴⁷⁸

5 (a) A merger is effective under this [Article] upon the earlier of:

6 _____

7 _____ (1) compliance with Section 1103 and the performance of any acts

8 required to effectuate the merger under the governing statute of any constituent

9 organization;⁴⁷⁹ or

10 _____

11 _____ (2) a later date specified in the articles of merger.

12 _____ (b) When a merger takes effect:

13 _____

14 _____ (1) each constituent organization other than the surviving organization

15 ceases its separate existence and merges into the surviving organization;

16 _____

17 _____ (2) except as prohibited by other law,⁴⁸⁰ all property and rights owned

18 by each constituent organization vest in the surviving organization without reversion or

19 impairment;

20 _____

21 _____ (3) all obligations of each constituent organization become the

1 obligations of the surviving organization;⁴⁸¹

2
3 (4) a proceeding pending by or against a constitutive organization may
4 be continued as if the merger had not occurred or the surviving organization may be
5 substituted as a party in the proceeding in place of an organization whose existence has
6 ceased;⁴⁸² and

7
8 (5) the conversion of interests⁴⁸³ stated in the articles of merger occurs.

(b) Subject to subsection (c), an owner who is personally liable for an obligation of a constituent organization
9 which is incurred before the merger takes effect remains liable on that obligation
10 regardless of the merger.

12 (c) If a constituent organization's governing statute provides that a person's owner vicarious liability is
13 affected by the person ceasing to be an owner,

14
15 (1) the provision applies:

16
(i) Despite the merger to any former owner of the constituent organization who ceased to be an owner before
17 the merger; and

18
20 (ii) as a result of the merger to any person who was an owner of the surviving organization immediately
21 before the merger but is not an owner of the surviving organization immediately after the
22 merger and to each owner of each other constituent organization; and

1 _____

2 _____ (2) if the constituent organization is not the surviving organization, the

3 surviving organization will be considered to be the constituent organization for the

4 purposes of applying the provision.

(d) If a constituent organization's governing statute provides that a former owner has the power to bind the

6 organization and the constituent organization is not the surviving organization, that power

7 terminates when the merger takes effect.⁴⁸⁴

(e) ~~Unless~~ otherwise agreed,⁴⁸⁵ the participation in a merger pursuant to this [Article] of a limited partnership

9 formed under this [Act] does not cause a dissolution for the purposes of [Article] 8.⁴⁸⁶

(f) ~~The~~ surviving organization consents to the jurisdiction of the courts of this State and to service of process

11 in this State to enforce any obligation owed:

12 _____

13 _____ (1) by any constituent organization, if before the merger the constituent

14 organization was subject to suit in this State on that obligation; and

15 _____

16 _____ (2) by the surviving organization to any person who immediately before

17 the merger was a partner of a limited partnership formed under this Act or who owned a

18 bare transferable interest of a limited partnership formed under this [Act].

(g) The surviving organization shall appoint and maintain an agent for service of process which meets the

20 requirements stated in Section 104A(a). If the surviving organization fails to do so, or the

21 agent for service of process cannot with reasonable diligence be found, the [Secretary of

22 State] is an agent of the surviving organization upon whom process may be served.

1 Service on the [Secretary of State] is made in the same manner and with the same
2 consequences as stated in Section 104B.⁴⁸⁷

(h) ~~A~~ foreign surviving organization is not authorized to do business in this State unless it complies with the
4 laws of this State granting that authority.⁴⁸⁸

5
6 **SECTION 1105. [ARTICLE] MANDATORY. A limited**
7 partnership formed under this [Act] which participates in a merger must comply with this
8 [article]. If this [article] and another applicable governing statute require delivery of the
9 same document, a copy may be delivered to comply with this [Article].

10 **[revisions to current Article 11 are reserved for the next draft]**

11 ARTICLE 11

12 MISCELLANEOUS

13 SECTION 1101. CONSTRUCTION AND APPLICATION. This
14 [Act] shall be so applied and construed to effectuate its general purpose to make uniform
15 the law with respect to the subject of this [Act] among states enacting it.

16 SECTION 1102. SHORT TITLE. This [Act] may be cited as the

1 Uniform Limited Partnership Act.

2 SECTION 1103. SEVERABILITY. If any provision of this [Act] or
3 its application to any person or circumstance is held invalid, the invalidity does not affect
4 other provisions or applications of the [Act] which can be given effect without the invalid
5 provision or application, and to this end the provisions of this [Act] are severable.

6 SECTION 1104. EFFECTIVE DATE, EXTENDED EFFECTIVE
7 DATE AND REPEAL. Except as set forth below, the effective date of this [Act] is
8 _____ and the following acts [list existing limited partnership acts] are hereby
9 repealed:

10
11 (1) The existing provisions for execution and filing of certificates of
12 limited partnerships and amendments thereunder and cancellations thereof continue in
13 effect until [specify time required to create central filing system], the extended effective
14 date, and Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until
15 the extended effective date.

16
17 (2) Section 402, specifying the conditions under which a general
18 partner ceases to be a member of a limited partnership, is not effective until the extended
19 effective date, and the applicable provisions of existing law continue to govern until the
20 extended effective date.

1
2 (3) Sections 501, 502 and 608 apply only to contributions and
3 distributions made after the effective date of this [Act].
4

5 (4) Section 704 applies only to assignments made after the effective
6 date of this [Act].
7

8 (5) Article 9, dealing with registration of foreign limited partnerships,
9 is not effective until the extended effective date.
10

11 (6) Unless otherwise agreed by the partners, the applicable provisions
12 of existing law governing allocation of profits and losses (rather than the provisions of
13 Section 503), distributions to a withdrawing partner (rather than the provisions of
14 Section 604), and distribution of assets upon the winding up of a limited partnership
15 (rather than the provisions of Section 804) govern limited partnerships formed before the
16 effective date of this [Act].

17 SECTION 1105. RULES FOR CASES NOT PROVIDED FOR IN
18 THIS [ACT]. In any case not provided for in this [Act] the provisions of the Uniform
19 Partnership Act govern.

1 SECTION 1106. SAVINGS CLAUSE. The repeal of any statutory
2 provision by this [Act] does not impair, or otherwise affect, the organization or the
3 continued existence of a limited partnership existing at the effective date of this [Act], nor
4 does the repeal of any existing statutory provision by this [Act] impair any contract or
5 affect any right accrued before the effective date of this [Act].

ENDNOTES

1. Unlike RUPA and ULLCA, this draft contemplates a partner dissociating without being bought out. It is therefore possible that transferees will exist even though the partner who originally owned the transferable interest is no longer a partner. This term refers to that situation.

This draft gives owners of bare transferable interests very limited rights to information about the limited partnership. See Section 702(a)(2)(iii) -- Version #2. So long as the transferor partner remains a partner, the transferee has no right to information from the limited partnership. Sections 305(h) and 403E(g). The transferor partner does have information access rights, Sections 305 and 403E, and a transferee for value might well insist via contract that the transferor partner exercise those access rights to the benefit of the transferee. If the transferor partner dissociates, however, the information stream from the transferor to the transferee will dry up. A dissociated partner's access rights are limited to information relevant to the pre-dissociation period. Sections 305(d)(1) and 403E(c)(1).

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

3. The definition has been changed to replace a list of items with a more general term ("consideration") that encompasses those items and to avoid using the word "contribute" as part of the definition of the term "contribution."

4. Source: RUPA § 101(2).

5. At its July, 1997 meeting, the Committee directed the Reporter to consider providing a definition of "dissociation." After reviewing UPA, RUPA, and ULLCA, the Reporter decided that Draft #2 should not define "dissociation." UPA § 29 defines dissolution in a way that gave rise to the RUPA/ULLCA concept of dissociation: "Dissolution . . . is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business." However, neither RUPA nor ULLCA define "dissociation." Instead, those statutes list events causing "dissociation" and explain the meaning of the term through a Comment. Each Comment essentially mirrors UPA § 29. See RUPA § 601, Comment 1, first paragraph; ULLCA § 601, Comment, first sentence.

In this instance, the Reporter sees no reason for Re-RULPA to deviate from the pattern established by RUPA and ULLCA.

6. Derived from RUPA § 101(3). This 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 difference between Draft #2 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.

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

New Article 11 (mergers) contains a special definition of the term "organization." That term refers to a subset of entities -- those with owners.

8This definition is no longer needed because this draft uses the term "dissociation." As for why this Draft does not define "dissociation", see note 5, above.

9The change is to correct an inaccuracy. A limited partnership does not cease being a limited partnership merely because it ceases to have at least one general and one limited partner. A dissolved limited partnership continues in existence through winding up and until termination.

10There are two reasons for this change. First, Re-RULPA changes the rules on how a person becomes a general partner. Second, putting those rules in the definition section would make for a very cumbersome definition.

11At its July, 1997 meeting, the Committee directed the Reporter to propose a definition of "good faith." Although courts and commentators agree that the concept is incapable of precise definition, fools rush in where angels fear to tread and Reporters have a duty of obedience to the Committee they serve. The proposed definition defines "good faith and fair dealing" narrowly, eschewing any objective element (e.g., observance of reasonable commercial standards).

Following is a proposed Comment on the obligation of good faith and fair dealing. In Draft #1 this Comment appeared following Section 302A.

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

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

12The mechanism for creating an LLLP is a far simpler than the mechanism for creating an LLP. For the latter, RUPA had to create an elaborate structure for public filing. That structure already exists for limited partnerships.

13See note 10, above, explaining the change in the definition of "General partner."

14The old definition was inaccurate. A limited partnership does not cease being a limited partnership merely because it ceases to have at least one general and one limited partner. A dissolved limited partnership continues in existence through winding up and until termination.

15In a modified form this concept now appears in the definition of "Transferable interest."

16The expanded definition is based on RUPA § 101(10) and ULLCA 101(14).

17Source: ULLCA § 101(16). ULLCA moved into, or at least into contemplation of, the brave new world in which documents need no longer exist in paper. In Draft #2, Re-RULPA follows suit. See Section 206(a). ULLCA § 101(16) portends more than it commands. ULLCA § 206(a) requires the Secretary of State to determine what media are permissible for filing, and in general "[o]ther law must be consulted to determine admissibility in evidence, the applicability of statute of frauds, and other questions regarding the use of records." ULLCA § 101, Comment.

18Derived from ULLCA § 101(17). The phrase "whether in writing, electronically or otherwise" has been added to make clear that signing may occur electronically.

19Source: RUPA § 101(12). (Replicated in ULLCA § 101(18).)

20Derived from RUPA § 101(14). The reference to "operation of law" does not appear in RUPA. The Reporter, emboldened by his experience at attempting to define "good faith and fair dealing," see note 11, above, would prefer the following definition: "'Transfer' means a shift from one person to another of the ownership of a right and includes a shift by operation of law."

21Source: RUPA § 502. This definition appears here, rather than later in the statute (as in

RUPA), because the term is used throughout the statute.

22This numbering is to preserve for initial reference purposes the section numbers from RULPA.

The final version will not contain this numbering.

23Source: RUPA § 102.

24ULLCA § 102 (which follows RUPA § 102 almost verbatim) uses "entity." RUPA § 102 refers to "a person other than an individual."

25RUPA lacks the phrase "for the entity."

26Unlike ULLCA, RUPA lacks the phrase "for the entity."

27RUPA merely refers to a "partner's knowledge," etc., and the Comment to RUPA § 102 states in part: "It is anticipated that RULPA will address the issue of whether notice to a limited partner is imputed a limited partnership." Under this draft, limited partner status does not cause information possessed by a limited partner to be attributed to the limited partnership. Attribution is an aspect of agency power, and in the default mode limited partners have neither the right to manage the limited partnership nor the power to bind it. Section 302(a) and (e). Of course, a limited partner who acts in a different capacity viz a viz the limited partnership might have agency power in that capacity. See notes to Section 302(d).

28Source: RUPA § 103. There are some substantive differences, as indicated by the notes that accompany this section. (ULLCA § 103 follows RUPA § 103 with only a couple of changes.)

29What happens if the partnership agreement and the required records conflict? Section 101B(a) contains no reference to the required records, and by that omission Re-RULPA prefers the partnership agreement over the required records. (That is, Section 101B(a) states that the partnership agreement -- and not the required records -- governs among the partners.)

30The Reporter would prefer to restyle this clause to use the active rather than the passive voice;

i.e. -- "the partnership agreement governs relations among the partners and between the partners and the partnership."

31Query: is it sufficiently clear which statutory provisions are outside the domain of "relations among the partners" (and therefore not susceptible to change by the partnership agreement)? For example, may the partnership agreement change Section 104's requirement that the limited partnership maintain an in-state office?

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

32This subsection is new.

33Draft #1 included the word "written" here. At its July, 1997 meeting, the Committee did not address this provision but did remove several other writing requirements. Query whether nonunanimous amendment of a partnership agreement is sufficiently extraordinary as to warrant a writing requirement.

34This paragraph is reserved as a reminder that, as the Committee makes decisions on various provisions governing relations among partners, those decisions may add to the list of nonwaivable provisions.

35This provision is derived from RUPA § 103(b)(2), which imposes this standard viz a viz "access to books and records." The first section refers to a limited partner's right of access and the second to a general partner's right.

36Derived from RUPA § 103(b)(3). Notes 37 to 41, below, indicate differences from RUPA.

37The standard in both RUPA and ULLCA is "if not manifestly unreasonable." This draft's standard is laxer toward the partnership agreement. That is, someone challenging the agreement would have a more difficult time in winning. Showing unconscionability involves showing more than substantive unreasonableness. There must also have been some substantial defect in the process of contract bargaining or formation. Moreover, unconscionability is judged as of the time of formation, while the "manifestly unreasonable" standard probably takes into account the circumstances that exist when the objectionable provision comes into play.

38Neither RUPA nor ULLCA contain this language.

39Neither RUPA nor ULLCA contain this language.

40RUPA uses "or" here, but ULLCA uses "and."

41This provision is derived verbatim from RUPA § 103(b)(3)(ii), and nothing in the language requires that the partnership agreement limit the ratification process to disinterested partners.

Suppose, for example, that, given the ratification mechanism stated in the partnership agreement and the interests owned by the general partner, the general partner has enough votes to ratify its own self-dealing. Would the duty of good faith impose some limitation?

ULLCA § 103(b)(2)(ii) differs from RUPA by requiring that any ratification mechanism involving managers be limited to "disinterested" managers. ULLCA does not, however, impose any comparable requirement on member ratification or define the term "disinterested."

RMBCA, chapter 8, subchapter F contains an extraordinarily complex set of provisions for dealing with corporate directors' conflicts of interest. Both the provisions dealing with director approval and shareholder approval require ratification by disinterested persons and define in detail the concept of disinterestedness. RMBCA §§ 8.62 (directors) and 8.63

(shareholders).

The RUPA approach has the virtue of allowing a more succinct statutory provision and the defect of "punting" to the courts the task of determining the extent to which disinterestedness is important. The ULLCA approach signals that, at least in one context, disinterestedness is essential, but leaves to the court the task of defining the concept. Moreover, ULLCA leaves unexplained why manager disinterest is essential but member disinterest is not. Suppose, for example, that a person serves as the sole manager of an LLC, while owning a majority of the membership interests. The operating agreement could not provide for that person qua manager to ratify its own loyalty conflicts and but could permit ratification qua member.

The RMBCA approach is of daunting complexity. The Reporter recommends either (i) following the RUPA approach (as in this draft), or (ii) imposing a disinterestedness requirement and providing a succinct definition of disinterestedness.

42Source: RUPA § 103(b)(4).

43Derived from RUPA § 103(b)(5). Notes 44 and 45, below, indicate differences from RUPA.

44Neither RUPA nor ULLCA contain this language.

45In RUPA: manifestly unreasonable. See note 37, above, for a discussion of the difference.

46Source: RUPA § 103(b)(6). This provision means that even limited partners will always have the power to dissociate, even though in the default mode they lack the right to do so. See Sections 603(a) and 603A(b). Note, however, that in the default mode a limited partner's dissociation merely means that the limited partner becomes a transferee of its own transferable interest; i.e. dissociation means the abandonment of all nonfinancial rights. Even if the dissociating limited partner is the only limited partner, the general partners can avoid dissolution

by admitting a new limited partners. See Section 801(6).

47This provision derives from RUPA § 103(b)(8) but may be superfluous given that the obligation to wind up affects rights of third parties and therefore is not in the first instance subject to change by the partnership agreement.

48The referenced provision requires written approval from each partner "who will be an owner of the surviving organization and will as a result of the merger face increased susceptibility to owner vicarious liability."

49Source: RUPA § 103(b)(10). A partnership agreement may of course affect the rights of transferees, who merely stand in the shoes of the partner who originally owned the transferred interest. But query: what about owners of bare transferable interests? May an amendment to the partnership agreement affect the rights of an owner of a bare transferable interest if the owner acquired its interest before the amendment? The same issue exists with regard to mergers. See note 468, below.

50Derived from RUPA § 104, but with significant changes as noted below in notes 51 and 52. (ULLCA § 104 replicates RUPA § 104 verbatim.)

Note that RULPA addresses this topic at § 1105 but that both RUPA and ULLCA will condition readers to look for this provision in this location.

51Neither RUPA nor ULLCA includes the language in this "but" clause.

52This subsection appears in neither RUPA nor ULLCA.

53Derived from RUPA § 106, which refers to "[t]he law of the jurisdiction in which a partnership has its chief executive office." According to the Comment to RUPA § 106: "The choice-of-law rule provided by Section 106 is only a default rule, and the partners may by agreement select the law of another State to govern their internal affairs, subject to generally

applicable conflict of laws requirements."

In Draft #1, this Section had a subsection relating to the law governing liability of partners to third parties:

The law of this State determines whether a partner is liable merely on account of the partner's status as a partner for the partnership's debts and other obligations or under other rule of law or equity making owner status an essential element for establishing that personal liability.

Draft #2 deletes that language, because the matter is better left to general conflicts of law principles.

54This section has been substantially rewritten, reflecting more modern attitudes toward permissible names and abbreviations. The advent of LLLPs requires that a choice be made as to the use of a partner's name in the name of the limited partnership. Either general partners' names must be prohibited from the name of a LLLP or limited partners' names should be includable in the name of both ordinary limited partnerships and LLLPs.

This draft takes the former approach, but the latter is certainly plausible. The name limitation derives from the 1916 Uniform Limited Partnership Act. In 1916, most business organizations were either unshielded (i.e., general partnerships) or partially shielded (i.e., limited partnerships), and it was reasonable for third parties to believe that an individual whose own name appeared in the name a business would "stand behind" the business. Today most businesses have a full shield (e.g., corporations or limited liability companies), and neither

corporate nor LLC statutes preclude the use of an owner's name in the name of the business.

Consider, for instance, the names of law firms organized as professional corporations, LLCs or LLPs. Why should the rule be different for limited partnerships?

55Source: ULLCA § 105(a).

56This subsection is new but is analogous to both RULPA's and Re-RULPA's treatment of limited partner names. See subsection (c).

57Derived from ULLCA § 105(b).

58This formulation differs from ULLCA § 105(b)(1) in two ways. First, ULLCA lists "corporation, limited partnership, or [limited liability] company" and appears to omit other types of entities whose names appear in the records of the Secretary of State (e.g., a partnership that has filed an assumed name certificate). Re-RULPA avoids that problem by using the defined term "entity." Second, ULLCA refers to its organizations as being "incorporated, organized or authorized to transact business, in the State." Re-RULPA uses the last category but replaces "incorporated, organized" with the concept of a "domestic entity."

59ULLCA § 105(b) does not have this provision. If Re-RULPA allows foreign limited partnerships to register fictitious names, see ULLCA § 1005, those names will be included on this list.

60Bert Black, the representative of the International Association of Corporation Administrators, has expressed concerns about the word "use." He notes that "use" encompasses or at least connotes intellectual property issues outside the purview of a Secretary of State. However, ULLCA § 105(c) refers to "use," and, in a limited sense, the Secretary of State does grant authority to use a name. When a name conflict exists under subsection (d), a limited partnership may not use the name in its certificate of limited partnership without the Secretary of State's

permission. If the Committee decides to retain the ULLCA language, the Reporter will prepare a comment explaining the limited scope of the word "use" and the limited effect of the Secretary of State's authorization.

61ULLCA § 105(c)(1) refers only to "reserved name," but that reference appears underinclusive. Subsection (d) [in ULLCA, subsection (b)] also encompasses other names.

62ULLCA § 105(c)(1) does not required the record to be signed.

63Derived from ULLCA § 105(c)(1). The ULLCA version does not include the phrase "and from the all of the names described in subsection (b)."

64Derived from ULLCA § 105(c)(2). The ULLCA version places the phrase "in this State" at the end of the provision. That placement makes the provision arguably ambiguous, since the name has been applied for "in this State."

65Although this provision is derived from ULLCA § 105(d), the reference to the records of the Secretary of State is new. This provision is part of a set of rules that enable the Secretary of State to determine whether a limited partnership's name is acceptable. As to possible conflicts with other names, the Secretary of State's exclusive reference is to the Secretary of State's records. The added language makes that situation explicit.

This language also differs from ULLCA § 105(d) by: (i) broadening the referred-to entities that might own a conflicting name, see note 58, above; and (ii) deleting ULLCA's reference to entities "organized or authorized to transact business in this State."

66This version omits ULLCA's precondition that "the other company [i.e., the name owner/registrant/user] is organized or authorized to transact business in this State."

67Not present in ULLCA.

68ULLCA § 106 essentially derives from the RULPA language in this section.

Consistent with the Drafting Committee's instructions to preserve current RULPA language absent good cause to do otherwise, this draft follows RULPA rather than ULLCA. There is, however, a substantive difference worth noting. Under RULPA § 103 (as preserved in this draft), when a reservation expires the registrant must wait 61 days before re-applying for the same name. ULLCA § 106(a) states merely that a reservation is for "a nonrenewable 120-day period." It is unclear whether that language means that: (i) once the first reservation expires the same applicant can never apply for the same name, or (ii) once a 120-day period actually expires the same applicant can apply for the same name immediately, with the application being considered a new application rather than as a renewal.

The word "transferee" has been changed because that word is a defined term in this draft. 69ULLCA § 107 allows a foreign LLC to register its name without having to do business in the State. As the comment to ULLCA § 106 notes, registration is more advantageous than reservation (longer term; renewable without limitation). If a comparable provision makes sense for this Act, it will appear in the article dealing with foreign limited partnerships.

70This provision goes further, or at least less obliquely, than RULPA § 104(1). The RULPA provision states that the in-state office "may but need not be a place of its business in this State." That language leaves open whether a limited partnership must have "a place of its business in this state." There is no reason to require that type of nexus, and Re-RULPA's language makes clear that no such requirement exists.

71The certificate of limited partnership must state the address of the in-state office. Section 201(a)(2). If the limited partnership changes the address of its in-state office, Section 202(c) will require the limited partnership to amend the certificate.

72Draft #2 contemplates two tiers of required records. The first tier, to be listed first in Section 105, will comprise records to which limited partners have "no cause" access, see Section 305(a), and will be kept in the in-state office. The second tier, to be listed second in Section 105, will comprise records to which limited partners may have access only for good cause shown, see Section 305(b), and will be kept where the limited partnership chooses.

73This section takes some of the concepts found in ULLCA §§ 108--111 but expresses them in a different form.

74It might make better organizational sense to collect all provisions on foreign limited partnerships in Article 9, which deals with those partnerships. If the Committee prefers that approach, the next draft will delete from this section all references to foreign limited partnerships and include in Article 9 a brief section incorporating by reference the provisions of this section.

75This provision allows any entity, including a nonprofit, to function as an agent for service of process. Compare RULPA § 104(b): "[the] agent must be an individual resident of this State, a domestic corporation, or a foreign corporation authorized to do business in this State." Compare ULLCA § 108(b): " An agent must be an individual resident of this State, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in this State."

76The draft purposely uses "has the power" rather than "may," because "may" suggests right as well as power. Consistent with generally-applicable agency rules, a limited partnership always has the power to terminate the appointment of an agent for service of process even though that termination might breach a contract.

77This language is appropriate assuming that the draft preserves the RULPA nomenclature for

registration of foreign limited partnerships.

78Source: ULLCA § 111(a). Re-RULPA differs from ULLCA by separating into different sections those provisions dealing with an agent for service of process and those provisions dealing with substituted service on the Secretary of State.

79Derived from ULLCA § 110.

80Bert Black, the representative of the International Association of Corporation Administrators, suggests that the copy should be sent to the resigning agent rather than to the address of the limited partnership. This approach is consistent with the 30-day time lag but adds to the problem discussed in note 81, below.

81The delayed effective date follows ULLCA § 110(c) but is at odds with the general law of agency. Moreover, if the would-be resigning agent fails to forward documents during the 30-day interim, the appointing limited partnership or foreign limited partnership might be significantly prejudiced. It might be better to allow an immediate effective date and provide for service on the Secretary of State if a resignation leaves the appointing partnership without an agent for service of process.

82In Draft #1, subsection (d) continued as follows:

The power of an agent for service of process to resign pursuant to this Section does not affect rights that may exist under a contract between the agent and the domestic or foreign limited partnership for which the agent served as agent.

Draft #2 omits that sentence as more appropriate to a Comment.

83Derived from ULLCA § 111(b)--(e), but reorganized.

84Possible alternative language: "cannot be found with reasonable diligence at the address stated

in the records of the [Secretary of State]." The alternative language creates a laxer standard. For example, under the alternative language a person has no obligation to check with the post office for a forwarding address and then attempt service at that address.

85Bert Black, the representative of the International Association of Corporation Administrators, suggests that this provision accommodate electronic filings. Section 206 has been revised accordingly, following ULLCA § 206. Section 206 now permits the Secretary of State to determine "the medium permitted." Although under Section 104B(a) the original document (i.e., "the process, notice, or demand") may be in hard copy, nothing prevents the Secretary of State from accepting an electronic copy of the original. (Filing two copies of a computer file is arguably redundant, but that redundancy seems a minor problem.)

86Bert Black also suggests that the Secretary of State be authorized to deliver via an electronic method if the method provides a receipt (e.g. fax, or delivery-confirmed email). The suggestion is quite intriguing, but do faxes and email have the same "weight" as certified mail in the eyes of a recipient?

87Source: ULLCA § 111(c)(2). The language does not indicate whether, for this paragraph to apply, the person signing must have had some form of authority to sign (e.g., actual, apparent, inherent). However, the omission is unlikely to cause problems or generate litigation, since the next clause will provide a definitive effective date.

88Source: ULLCA § 111(d).

89Source: ULLCA § 111(e).

90This change is in keeping with the use of "required records" as a defined term. Draft #2 contemplates two tiers of required records. The first tier, to be listed first in Section 105, will comprise records to which limited partners have "no cause" access, see Section 305(a), and will

be kept in the in-state office. The second tier, to be listed second in Section 105, will comprise records to which limited partners may have access only for good cause shown, see Section 305(b), and will be kept where the limited partnership chooses. **The present list does NOT reflect the two tier approach. The Reporter anticipates that the Committee will divide the list into two tiers at its March, 1998 meeting.**

91It can be confusing to have the same word -- certificate -- refer both to an original document and to the documents that amend that original document. This draft therefore refers to "amendments" rather than "certificates of amendments." The changes in this paragraph reflect that change.

92This provision is proposed for two reasons. First, this information is relevant to the new provision dealing with improper distributions. See Section 607. Second, Section 606 now provides that a partner becomes entitled to a distribution when the distribution is noted in the limited partnership's required records.

93If the Committee decides to retain this provision, the next draft will include a definition of "affiliate."

94This provision is proposed on the theory that, even if the partnership agreement authorizes self-dealing, a nonwaivable aspect of the duty of loyalty requires disclosure of any self-dealing transaction.

95Derived from RMBCA § 16.01(e)(5).

96This provision is moot if Re-RULPA never requires written consent. Even if Re-RULPA requires some consents to be in writing, at least these questions remain:

- Should those consents even be part of the required records?
- Will making those consents part of the required records keep limited partners

adequately informed, or should the Act require that notice of those consents be given directly to all limited partners?

97De-linking makes it necessary to expand this section to specify a limited partnership's powers.

98This subsection raises two issues: (1) whether a limited partnership must have some business purpose, and, if so, (2) how broadly the term "business" applies. The first issue has at least two components: (a) should the law allow limited partnerships to undertake endeavors that have traditionally belonged to the province of non-profit ventures; and (b) is this Drafting Committee the appropriate place to make that policy determination. Recognizing that ULLCA authorizes LLCs to "be organized . . . for any lawful purpose," ULLCA § 112(a), a nonprofit limited partnership nonetheless seems oxymoronic. The very nature of a limited partnership presupposes profit-making, at least eventually. A limited partnership has owners, and sooner or later those owners are due a distribution of any "surplus." See Section 804(b) (providing for liquidating distributions).

As to the second issue, it is important that limited partnerships be able to engage in the widest range of activity intended to produce economic gain for the limited partnership's owners. Hence, the draft eschews the phrase "a business for profit," UPA § 6; RUPA § 101(6), because the phrase could be read to exclude activities other than operating businesses.

99This changes merely de-links the current RULPA provision from the law of general partnerships.

100Source: ULLCA § 112(a).

101This version would not promote formal uniformity among states but would aid intra-state uniformity.

102ULLCA § 112(b) expresses the exception right here. Note 109, below explains why this

draft locates the exception in a separate subsection.

103 Derived from ULLCA § 112, which in turn appears to have relied heavily on RMBCA § 3.02

104 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.

105 ULLCA did not mention limited liability companies, but perhaps Re-RULPA should.

106 This provision differs from ULLCA § 112(9) by omitting "elect managers." The ULLCA provision is taken essentially verbatim from RMBCA § 3.02(11), which begins with the phrase "elect directors."

107 RMBCA § 3.02(12) and ULLCA § 112(10) differ as to whether the entity has the power to provide pensions for a mere passive owner. The RMBCA provision does not mention shareholders, while the ULLCA provision refers to members. The ULLCA provision therefore appears to allow pensions for members in manager-managed LLC. This draft follows the RMBCA. Of course, a limited partnership has the power to provide pensions for a limited partner who serves the limited partnership as an officer, employee or agent.

108 This provision appears at RMBCA § 3.02(14) but not in ULLCA.

109 This exception derives from ULLCA § 112(b)(1), but is separately stated to preserve the power of a limited partnership to sue and be sued in its own name. This power is of the essence of a limited partnership's nature as a legal entity. Moreover, any change in this power would significantly affect the rights of nonpartners.

That issue aside, the exception is problematic for ULLCA and doubly problematic for Re-RULPA. If a statute authorizes restrictions on an entity's normal powers, the statute should also

contemplate what will happen if restrictions exist and the entity transgresses them. See, e.g., RMBCA §§ 3.02 (allowing the articles of incorporation to restrict a corporation's powers) and 3.04 (dealing with ultra vires acts). ULLCA contemplates restrictions but not transgressions.

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

In light of the "weak" role of a certificate of limited partnership, it seems anomalous to empower the certificate to restrict a limited partnership's powers. The Reporter therefore believes that the restriction language should be deleted. If a limited partnership wishes to restrict its operations, it should indicate so in its partnership agreement. Whether those restrictions will bind third parties will depend on Sections 403A (general partner agent of limited partnership) and 403B (limited partnership liable for general partner's actionable conduct).

110The opposite approach is certainly plausible. For example, Section 803A(b) takes that opposite approach regarding the certificate's reference to dissolution. Section 803A(b) provides that:

If the certificate of limited partnership has been amended to state that the limited partnership is dissolved, the amendment:

(1) nullifies any statement granting authority pursuant to Section 201(b); and

(2) operates as a statement limiting authority pursuant to Section 201(b).

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

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

112 Like the Section numbers containing a capital letter (e.g. 403A), this number is temporary.

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

114 People often refer to this "latest date" as the term of a limited partnership. This change conforms the statutory language to that usage.

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

116 Derived from ULLCA § 203(c), which refers a bit inaccurately (albeit more succinctly) to "the nonwaivable provisions of Section"

117 Source: ULLCA § 203(c).

118 Section 206(d) limits the delay period to 90 days.

119It is confusing to use the same term to refer both to an initial document (i.e., the certificate of limited partnership) and subsequent documents that amend the initial document.

120The change is to switch from the passive to active voice.

121"Withdrawal" is no longer the term of art. "Dissociation" is.

122What concerns third parties is whether the limited partnership has dissolved, because that event affects the power of general partners to bind the entity. See Section 803A. It seems more sensible, therefore, to have the certificate directly address the question of dissolution.

123What if the partnership agreement places all responsibility and power to amend the certificate on one general partner and another partner becomes aware of an inaccuracy? Does the agreement relieve the second partner of responsibility under this provision? Presumably not -- the certificate is not squarely within the domain of the partnership agreement, because inaccuracies in the certificate have an effect on third parties. Moreover, Section 207 imposes personal liability on general partners for failure to correct the public record. If there is doubt on this point, however, perhaps this provision should be included in the list of nonwaivable provisions.

124In some circumstances, an amendment requires more than one general partner's signature. See Section 204. This change is to accommodate those circumstances. Section 205 (Execution and Filing by Judicial Act) is available to a general partner who cannot convince fellow general partners to sign.

125It would generally not be a "proper purpose" to amend the certificate to undercut or conflict with the partnership agreement. However, if the partnership agreement gets out of synch with reality -- e.g., if a general partner is dissociated but the partnership agreement has not been amended to reflect that change -- this provision would oblige the general partners to amend the

certificate despite the resulting nonconformity with the partnership agreement.

126As a matter of organization, the reference to execution belongs in Section 204, which deals with execution requirements. Also, moving the reference will make it easier to correct the current rule's simplistic approach. Who must sign a restated certificate depends on the nature of the changes reflected in the restated certificate. Some changes might require a single general partner's signature, while others might require two or more.

127This Section is modified for several reasons. First, cancelling the certificate upon dissolution is misleading because a dissolved limited partnership is not terminated. Second, amending the certificate to indicate dissolution (as required by this draft) provides the public the appropriate information. Third, given past usage it would be confusing to apply the word "cancellation" to a document filed to indicate the termination of a limited partnership's existence. This draft uses "declaration of termination" for that purpose. It is a close organizational question whether treatment of that declaration belongs here (in fealty to the current statute's organizational structure) or in the article dealing with dissolution, winding up and termination. Consistent with the Committee's instructions, this draft opts for the former.

128The adjective is to distinguish any restated certificates.

129ULLCA § 805(b) accords with RULPA in allowing this final document to have a delayed effective date. Query: why should an entity whose business has been fully wound up continue to exist after the entity has publicly stated that its business is wound up? In any event, Section 206(d) limits the delay period to 90 days.

130The change is to make the introductory language consistent with the items in the list.

131At its July, 1997 meeting, the Committee decided that a person can be a general partner even though not listed in the certificate. This change reflects that decision.

132As proposed below, Section 302(b), in the default mode as among the partners this change requires the consent of all partners. However, execution of the necessary publicly-filed document remains the province of the general partners.

133The changes to subsection (b) address three issues: First, as a merely technical matter, the language encompasses the new categories of amendments and declarations.

Second, the current language of subsection (b) suggests that the paragraph's requirement does not apply to the original certificate. See RULPA § 401 (captioned "Admission of Additional General Partners" and referring only to events "[a]fter the filing of a limited partnership's original certificate"). If subsection (b)'s protections make sense for additional general partners, they make sense for the original general partners as well. The changes therefore apply subsection (b) to the original certificate.

Third, subsection (b) could be read to apply even when the attorney-in-fact is not signing on behalf of the new partner. Consider, for example, an amendment that both converts an ordinary limited partnership into an LLLP and adds a new partner. Section 204(a)(2) [new] would require all the old partners to sign the amendment. If one of these old partners wishes to sign through an attorney-in-fact, is there any reason to require the authorization to specifically refer to that part of the amendment that designates the new partner? The changes make clear that subsection (b) applies only to an authorization from a person who is about to be newly designated as a partner.

134Strictly speaking, Section 204 does not require a person to execute a document; the section merely specifies whose signatures are required for a document to be properly executed.

135RUPA contains another approach, allowing various persons to file documents to correct the

public record. See RUPA §§ 304 (authorizing a person "named as a partner in a filed statement of partnership authority" to file "a statement of denial"); 704 (authorizing a dissociated partner to file a statement of dissociation); and 805(a) (authorizing a partner who has not wrongfully dissociated to file a statement of dissolution). Re-RULPA could easily incorporate a comparable approach, either in place of or addition to the current approach, by: (i) permitting a statement of denial and providing that the statement negates any contrary provision in the certificate of limited partnership; (ii) permitting a dissociated general partner to file a statement of dissociation and providing that the statement negates any contrary provision in the certificate; (iii) permitting both general partners and dissociated general partners to file a statement of dissolution and providing that the statement operates as an amendment to the certificate.

Whether Re-RULPA should include such provisions is a different matter. RUPA assumes decentralized management, so decentralizing the power to affect the entity's public record is consistent with RUPA's overall paradigm. Re-RULPA, however, assumes centralized management. The general partners run the business and, it can be argued, should have exclusive authority and responsibility to maintain the limited partnership's public record.

The Reporter accepts that argument, so Draft #2 does not include provisions analogous to RUPA §§ 304, 704 and 805(a).

136This Section has been completely revised, following ULLCA § 206 essentially verbatim.

137"[A]ccepted for filing" does not precisely correspond with the language in subsection (a).

Perhaps the phrase should read "filed by the [Secretary of State]."

138Because "certificate of limited partnership" is defined to include the certificate as amended, Section 101(3), this provision also obligates a general partner with reference to

information contained in amendments to the certificate. The provision states no obligations with regard to declarations of cancellation, because the filing of that declaration terminates the limited partnership and perforce the status of general partner.

139 This section reaches much further than the comparable ULLCA provision. ULLCA § 209 provides:

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

140 This Section attempts to centralize most of the provisions that deal directly with this subject. There are other relevant provisions, however; e.g., Sections 602C -- Version # 2 (cutting off a dissociated general partner's power to bind the limited partnership when "90 days have passed since the certificate of limited partnership was amended so that the certificate indicates that the dissociated general partner is no longer a general partner"); 602D(b) (functional equivalent as to general partner's liability for post-dissociation debts of the limited partnership); 803A(b) (stating that an amendment to the certificate which states that the limited partnership is dissolved has consequences with regard to a general partner's authority to transfer real property); 803A(c) (imputing notice to non-partners of the dissolution of the limited partnership "90 days after the certificate of limited partnership has been amended to state that the limited partnership is dissolved"). Query: will a Comment cross referencing these other relevant provisions suffice, or should the statute itself list them?

141Notice to whom and to what effect?

142Draft #1 significantly changed this provision, but at its July, 1997 meeting the Committee rejected the approach underlying those revisions. Accordingly, Draft #2 returns most of RULPA's original language. In addition, Draft #2 deletes what was subsection (c). That subsection provided:

(c) A certificate of limited partnership's designation of a person as a general partner **[alternative language: If a certificate of limited partnership designates a person as a general partner, that designation]** is conclusive in favor of a person who gives value without knowledge to the contrary. A person not a partner is deemed to know that the persons designated as general partners in the certificate of limited partnership are a limited partnership's only general partners.

143Following RUPA, this provision applies even in favor of a partner.

144Source: RUPA § 302(b)(1) and (2). N.b. -- this draft does not require duplicate filings.

145Source: RUPA § 303(e). N.b. -- this draft does not require duplicate filings. Note also that, following RUPA, this provision operates even if the partnership agreement differs from the statement and a third party knows of the differing provision of the partnership agreement. In that event, this provision operates to impute knowledge "of the limitation" to the third party. What result if the third party relies on the partnership agreement and ignores the filed limitation? Comment 2 to RUPA § 303 suggests that the third party acts at its peril, because the publicly-

filed limitation means the partner lacks the power to bind the entity: "Of course, a transferee with actual knowledge of a limitation on a partner's authority is bound under Section 301, whether or not there is a recorded statement of limitation." However, the Comment does not seem to contemplate a third party "knowing" two conflicting things.

146Derived from RUPA §§ 303(e) and 704(c).

147The complete revision of Section 206 made it necessary to completely revise this Section.

148The obligation runs from the entity to its owners, although the managers (i.e., the general partners) are obliged to carry out this as well as other obligations of the entity.

149ULLCA provisions not added to this draft: §§ 207 (correcting filed record, allowing for retroactive effect except for persons who detrimentally relied on the pre-corrected version); 208 (permitting a person to request from the [Secretary of State] a certificate of existence for a domestic LLC and a certificate of authorization of a foreign LLC); 211 (requiring limited liability companies and foreign LLCs authorized to do business in the state to file an annual report).

150Draft #1 read "has before that time signed".

151Draft #1 read "valid under".

152Paragraph (2) is deleted because it is unclear how a limited partner admitted under that clause differs from a limited partner admitted under subsection (b). In particular, it is unclear why paragraph (2) allows the required records to provide for admission, while subsection (b) requires compliance with the partnership agreement.

153At its last meeting, the Committee decided to eliminate this language in favor of a simpler approach.

154This version boils down the current subsection (b) to its essence. Since the partnership

agreement governs this area, why have the statute address separately the two pathways by which a person can become a limited partner after formation? On both pathways the rule is the same: no default right to become a member. It is likewise unnecessary to expressly refer to unanimous partner consent as a fallback mode of admission, since that consent will always suffice to amend the partnership agreement. However, because that point is not obvious, the draft specifically refers to "the consent of all the partners." Draft #1 required that consent to be written. At its July, 1977 meeting, the Committee decided to delete that requirement. At that meeting the Committee also noted the possibility of a person becoming a limited partner via a merger. Draft #2 therefore accommodates that possibility as well as the possibility of conversion.

155 This version furthers the process of simplification and removes the formal distinction between obtaining membership pre- and post-formation. Section 101B(b) permits a partnership agreement to be signed prior to formation, to be effective upon formation.

156 This version boils down the current subsection (b) to its essence. Since the partnership agreement governs this area, why have the statute address separately the two pathways by which a person can become a limited partner after formation? On both pathways the rule is the same: no default right to become a member. It is likewise unnecessary to expressly refer to unanimous partner consent as a fallback mode of admission, since that consent will always suffice to amend the partnership agreement. However, because that point is not obvious, the draft specifically refers to "the consent of all the partners."

157 Draft #1 included a subsection (c), requiring the limited partnership to update its required records when a person becomes a limited partner. The Committee directed that that requirement appear in the required records section.

158 Including this particularized statement conflicts with the paradigm established in Section 101B -- namely, that the partnership agreement has power generally to govern the internal relations of a limited partnership.

159 Draft #1 first listed various nonfinancial rights of a limited partner and then stated that a limited partner had no other management rights. At the Committee's direction, Draft #2 begins with the restrictive language.

ULLCA contains a comparable list. See ULLCA § 404(c) (management of limited liability company). For Re-RULPA there are two possible locations for the list: here, in the section dealing with limited partners, or Section 403, dealing with the management rights of general partners. Draft #2 continues the approach of Draft #1 and locates the list here.

Accordingly, Section 403 refers to this section. If the Committee wishes, the list can be relocated to Section 403 and this section will then refer to the list in Section 403.

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

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

partnership's assets would typically be outside the ordinary course. The Committee deleted Section 403(c).

161Draft #1 included the phrase "and other information regarding the limited partnership's business, affairs and financial condition". The Committee deleted provisions requiring the limited partnership to compile that additional information -- hence the deletion here.

162The first cross reference is to the generally applicable provision on admitting limited partners. The second cross reference is to the generally applicable provision on admitting general partners. The third cross reference is to the provision allowing the admission of a new general partner following the dissociation of the limited partnership's last general partner. In the default mode, the first two of the cross referenced provisions require unanimous partner consent. The third requires consent from partners owning a majority of profits interests.

163Draft #1 referred to "discharge." Like Draft #1, this Draft offers several alternatives as to the connection between a general partner ceasing to be a general partner and the threat of dissolution. The language in this paragraph may have to be changed slightly, depending on how the Committee deals with those alternatives. Each alternative refers to consent from partners owning a majority of profits interests.

164Perhaps this provision should be expanded to include action under the partnership agreement.

165Source: ULLCA § 404(d). The same provision appears in Section 302. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

166Source: ULLCA § 404(e). The phrase "by signing an appointment instrument" seems inappropriately placed. The same provision appears in Section 302. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

167For the Comment: The phrase "as a limited partner" means that: (i) this provision does not

disable a general partner that also owns a limited partner interest, and (ii) a separate agreement could empower and entitle a person who is a limited partner to act for the limited partnership in another capacity; e.g., as an agent.

Also for the Comment: The fact that a limited partner has no power to bind the limited partnership means that information possessed by a limited partner is not attributed to the limited partnership. Attribution of information is an aspect of the power to bind.

168Draft #1 contained a paragraph (d), that stated: "This section does not prevent a limited partner from bringing a direct action to enforce rights personal to that limited partner. A limited partner may bring a direct action with or without an accounting." The Committee directed that those issues be addressed elsewhere. See Section 1005(a) of Draft #2.

169Deleted from Draft #1 -- the phrase "on account of that status". The Comment will state that a limited partner can assume fiduciary obligations on account of some other relationship to the limited partnership. For example, a limited partner who acts as a broker or attorney for the limited partnership will owe the limited partnership fiduciary duties in that role. See also Section 404 (Dual Capacity).

170Note that by its terms this rule does not apply if the limited partner exercises powers under a separate agreement. A limited partner who acts under a separate agreement will have at least whatever contractual duties that agreement provides. If the agreement reflects or defines a fiduciary relationship (e.g., an agent), that relationship will impose fiduciary duties as well.

171If the Committee prefers this version, the Reporter will propose a Comment indicating that any management rights beyond those specified in Section 302(a) constitute "rights of a general partner."

172Derived from ULLCA § 409(h)(3). Like the ULLCA provision, this provision could be read

to omit nonfeasance; i.e. to not apply to a limited partner who is given rights but fails to exercise them.

Query: should the section dealing with duties of a general partner include an appropriate analog to ULLCA § 409(h)(4)? That provision states:

a manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) through (f) to the extent of the managerial authority delegated to the members by the operating agreement.

This draft omits any such provision, on the theory that general partners have a nondelegable duty towards the limited partnership. The application of that duty may change to the extent management power is shared; for example, due care makes different demands depending on whether a general partner is performing a function or merely keeping adequate watch over a co-manager's performance. However, at least according to the current draft no delegation -- whether to a fellow general partner, a limited partner or a non-partner -- can completely relieve a general partner of its obligations.

173Derived (loosely) from RMBCA § 7.32(e).

174Deleted from Draft #1 -- Version #3, which triggered fiduciary duties only when a limited partner had "discretion and powers substantially equivalent" to those of a general partner.

175The Reporter's notes indicate that at the July, 1997 meeting there was some support for this Alternative. If the Committee adopts this Alternative, the Reporter will propose a Comment indicating that this language does not immunize a person from liability for usurping a general

partner's functions.

176Source: RUPA § 404 (d). Draft #1 included a proposed Comment to Section 302A(c), explicating the concept of good faith and fair dealing. Since Draft #2 contains a proposed definition of that concept, the proposed Comment has been relocated to Section 101.

177This sentence follows the Committee's instructions. The rule stated here adds significance to the proposed Comment.

178Source: RUPA § 404(e). Draft #1 used slightly different language and inserted this statement into the paragraph on good faith and fair dealing. Consistent with the Committee's instructions, Draft #2 follows more completely the RUPA approach.

179Draft #1 contained the following statement, which the Committee deleted as more appropriate for a Comment: "This section does not prevent a limited partner from assuming fiduciary or other duties in some capacity other than limited partner."

180The Comment will indicate that in this respect limited partners are analogous to shareholders. (That statement could serve as fodder for a "piercing" claim. See note 230, below.) Draft #1 included a paragraph stating: "This section does not prevent a limited partner from being liable as a result of the limited partner's own conduct, to the extent that the same conduct would result in liability for a person who is not a limited partner." The Committee deleted that paragraph as inappropriate for the statutory text. A Comment will address the issue, noting that nothing in the limited partner's shield affects claims for which owner status is not an element.

181Under the current draft, in most circumstances a limited partner's name does not belong in the name of an LLLP. However, violation of that rule should not subject the limited partner to personal liability. No third party has the right to expect any general partner to be vicariously

responsible for an LLLP's debts. This entire paragraph could be eliminated if the Committee adopts a more modern approach to using the names of owners in the name of the entity. See notes to Section 102.

182This is an elliptically drafted provision. Its components function to produce the desired result, but the reader has to work through the details before seeing the big picture. To state the rule directly would, however, require a much longer provision. In light of the rare use of the current provision and the need to keep the statute to a manageable length, this draft makes no substantial revisions.

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

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

If the Committee wishes, the next draft can include a provision immunizing general partners who in good faith but erroneously believe themselves to be general partners of an LLLP. It can be argued that such people are indistinguishable from "persons purporting to act as or on behalf of a corporation [not] knowing there was no incorporation." RMBCA § 2.04.

In deciding this point, it is well to consider that a LLLP resembles an LLC at least as

much as a corporation and that ULLCA is a very recent Uniform Act. Absent a good reason to the contrary, why not follow ULLCA rather than the RMBCA?

183In this draft "contribution" is a defined term and relates to an investment in a de jure limited partnership. This provision is not limited to that situation.

184Even if the Committee decides that a limited partnership need not have a "business" purpose, the word "business" should probably remain here. This provision addresses the vicarious liability that arises from co-ownership of a would-be profit-making enterprise.

185The phrase "is not a general partner" is redundant to the extent the phrase is intended to protect the would-be limited partner from vicarious liability to third parties. Moreover, the phrase may be confusing in relation to Section 403A. If this section is intended to override Section 403A, this section should say so explicitly. If not (which the Reporter thinks is and should be the case) the phrase "is not a general partner" does not belong here.

186The addition is intended to cover situations in which no certificate of limited partnership is on file and therefore no limited partnership has come into existence. In those circumstances, a person cannot have the rights of a limited partner because no limited partner interests can yet exist.

187This change is intended to aid clarity by reserving the term "certificate" for the certificate of limited partnership.

188The Comment will indicate that: (i) this provision permits a withdrawing person to receive as an ordinary creditor payment equal to the amount by which the value of the person's investment exceeds any distributions received prior to withdrawal, but no greater amount; (ii) this provision does not require the return of any greater amount received prior to withdrawal; and (iii) whether the withdrawing person has a right viz a viz the enterprise or others connected with it to receive

any return at all is a matter for other law.

189Under the added language, if at the relevant moment the limited partnership is a LLLP, no personal liability results.

190This rule is perhaps implicit in the current language, but seems worth stating directly, especially in light of the new approach to limited partner withdrawal.

191This Section has been substantially rewritten, essentially to provide greater guidance to partners and courts.

192Limited and general partners have different roles in the management of the business and therefore have different needs for information. Section 403E discusses the information rights of general partners.

193At the July, 1997 meeting, the Committee deleted "other than a statement of another partner's account as partner." This deletion reflected a decision to exclude such accounts from the scope of required records. For an explanation of the reference to Section 105, see note 196, below.

194 Given the passive nature of limited partners and the presumed entrenchment of general partners, this draft provides limited partners broad access to some of the required records. Case law involving objections to limited partner access is scant, and mostly concerns limited partners seeking the names of fellow limited partners or information on alleged general partner misconduct. The information has been sought either to find support for litigation or preparatory to making a bid to take over the partnership business. Barring access in those circumstances would prefer or entrench the general partners. If a limited partnership wishes to maintain its financial information as confidential, Section 305(f) allows the partnership agreement and the general partners to impose use limitations. Even if the partnership fails to do so, the limited partner's obligation of good faith and fair dealing should provide some constraints.

195Draft #1 referred to "the limited partnership's in-state office." The Committee deleted that reference in favor of the current language, which is taken from RMBCA § 16.02.

196Draft #1 required the limited partnership to create or compile information. The Committee rejected that requirement and directed that this paragraph refer only to information already in existence as a "record." That change would indeed narrow limited partner access rights, but probably not as much as the Committee intended. The term "record" is much broader than the notion of "required records," and the language as contemplated by the Committee at its July, 1997 meeting would give limited partners potential access to any information the limited partnership happens to maintain as a record. Compare the RMBCA, which limits access to specified records. RMBCA § 16.02.

Consistent with what he hopes was the spirit of the Committee's decision, the Reporter has gone beyond the express language discussed at the July, 1997 meeting and:

- bifurcated the required records into two categories:
 - ~ records to which limited partners have "no cause" access, and
 - ~ records to which limited partners may have access only for cause
- restructured the access provisions of this section accordingly.

197Derived from RMBCA, § 16.02(c). That provision refers to "proper purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment. Draft #1 followed RMBCA § 16.02(c)(1) in imposing a "good faith" requirement. This Draft deletes that specific requirement as redundant, given a limited partner's generally-applicable duty of good faith.

198Derived from RMBCA § 16.03(c). Draft #1 included another requirement, -- i.e., that the information sought could "be compiled, created, or otherwise obtained by the limited partnership

without undue hardship." The Committee's decision to limit access to existing records renders superfluous the undue hardship provision.

Note, however, that in unusual circumstances a limited partner might be able to compel the creation or compilation of information. If the limited partnership has failed to maintain required records, a limited partner might bring a mandamus action seeking to compel the creation of those records, coupled with an action pursuant to this section seeking access to those records once created.

199In a dispute concerning demanded records, general principles of civil procedure will impose the burden of proof on the party seeking relief; i.e. the person making demand. If the Committee wishes to emphasize that point, the Comment could state: "In any dispute under this section, under general principles of civil procedure the limited partner making the demand has the burden of proving a right to the demanded record."

200Deleted from Draft #1 -- paragraph (d):

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

Paragraph (d) derived from ULLCA § 408(b), which provides comparable rights to LLC members even in a manager-managed LLC. Discussion at the Committee's July, 1997 meeting

suggested that the applicability of ULLCA § 408(b) to manager-managed LLCs was an "oversight."

201For the notion that former owners should have access rights, see ULLCA 408(a).

202This paragraph is new.

203At the July, 1997 meeting, the Committee decided that the general partners should have the right to impose use limitations, even if the partnership agreement is silent. Consistent with Re-RULPA's entity approach, the new language refers to the limited partnership, rather than the general partners.

204A Comment will indicate that "limitations on use" include confidentiality restrictions.

205This language allows only the partnership agreement to define remedies. At its July, 1997 meeting, the Committee specifically decided to mention remedies, but the discussion did not -- to the best of the Reporter's recollection -- contemplate the radical step of allowing one party (i.e., the limited partnership) to unilaterally define remedies. The Committee did specifically contemplate liquidated damages, so that concept appears in this Draft. The Reporter wonders, however, whether a specific reference is necessary. Liquidated damages are an ordinary phenomenon in agreements. If the partnership agreement may define remedies, then perforce the agreement can specify liquidated damages. If the Committee wishes to do more than reaffirm ordinary contract law principles (e.g., by relaxing the standards for enforcing liquidated damages), the statute must do more than merely mention liquidated damages.

206Under Draft #2 the limited partnership may itself impose use restrictions. That authority renders superfluous the language in Draft #1 which had authorized the limited partnership to apply to court to impose such restrictions. Accordingly, Draft #2 deletes that language.

207To protect a limited partner's right of access this draft imposes a special requirement on

partnership agreement provisions purporting to limit the information's use -- namely, the restrictions must be reasonable. Per the Committee's instructions, Draft #2 deletes the following language from Draft #1: "A restriction relating to the use of the names and addresses of the partners is not reasonable."

208At its July, 1997 meeting, the Committee decided that a person could be a general partner without being so designated in the certificate of limited partnership. Therefore, if a person is a general partner according to the partnership agreement but not according to the certificate, that person has:

- all the rights and duties of a general partner as to the limited partnership and the other partners; and
- the powers of a general partner to bind the limited partnership under Section 403A and 403B.

The certificate of limited partnership is consequently a far less powerful document that envisioned in Draft #1. With regard to the status of general partners, the certificate merely serves as notice that those persons so listed are general partners. The absence of a name is not affirmatively significant. Suppose, for example, that a third party believes X to be a general partner, but the certificate of limited partnership does not list X as a general partner. That omission does not undercut X's bona fides in the eyes of the third party -- even if the third party has reviewed the certificate.

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

209This language follows the simplified approach proposed as alternative language for the admission of limited partners. See Section 301.

210This section was deleted in Draft #1, because under that draft's "discharge" paradigm it was not necessary to deal separately with the dissociation of general and limited partners. In Draft #1 treatment of dissociation was therefore relocated to Article 8.

Draft #2 dispenses with the notion of general partner discharge, so it is once again necessary to treat the dissociation of general and limited partners at least somewhat differently. Many of the causes of dissociation overlap, and the Reporter favors dealing with general and limited partner dissociation in one section. Nonetheless, consistent with the Committee's instructions to maintain as much as possible of RULPA's structure and "look and feel," Draft #2 includes separate sections on general and limited partner dissociation. See, for example, Sections 602 and 603.

211Derived from ULLCA § 404 and RUPA § 401.

212At 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).

213Perhaps this provision should be expanded to include action under the partnership agreement.

214Source: ULLCA § 404(d). The same provision appears in Section 302. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

215Source: ULLCA § 404(e). The phrase "by signing an appointment instrument" seems

inappropriately placed. The same provision appears in Section 302. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

216Source: RUPA § 401(c). The draft does not include any parallel provision for limited partners, because they are assumed to be passive. To the extent a limited partner has authority to act on behalf of the limited partnership, agency law principles will apply to create an indemnity obligation. In other situations, principles of restitution might apply.

217Source: RUPA § 401(d).

218Source: RUPA § 401(e).

219Derived from RUPA § 401(h), but this draft omits RUPA's exception "for reasonable compensation for services rendered in winding up the business of the partnership." In a limited partnership, winding up is a foreseeable consequence of being a general partner. See Section 403(a).

220At its July, 1997 meeting, the Committee decided to delete subsection (h). That section, sourced from RUPA § 401(k), provided: "This section does not affect the obligations of a limited partnership to other persons under Section 403A." An endnote to subsection (h) questioned that subsection's accuracy, noting that some provisions of this section do affect a general partner's actual authority and therefore can affect a limited partnership's obligations to third parties.

221Source: RUPA § 301.

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

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

Draft #2 returns to the RUPA language, in accordance with the Committee's instructions at the July, 1997 meeting. The Reporter urges the Committee to return to Draft #1's approach in this instance and notes that RUPA comments ascribe various meanings to the word "authority." See RUPA §§ 301, Comment 3 (interpreting RUPA § 301(2), which contemplates an act "not apparently for carrying on in the ordinary course" as being "authorized by the other partners; stating that the subsection "makes clear that the partnership is bound by a partner's actual authority, even if the partner has no apparent authority"); 305, Comment, third paragraph (explaining that the phrase "with the authority of the partnership" in § 305(a) "is intended to include a partner's apparent, as well as actual, authority"); 305, Comment, fifth paragraph (interpreting, without quoting, the phrase "with authority of the partnership" in § 305(b) and indicating that the phrase refers to "the scope of the partner's actual authority").

223This draft follows ULLCA in omitting any parallel to RUPA § 302, Transfer of Partnership Property. RUPA § 302 derives from UPA § 10, and both those sections address issues arising from the former aggregate aspect of general partnerships.

224Source: RUPA § 305.

225For the sake of clarity, Draft #1 included at this point the phrase "actual or apparent." RUPA § 305(a) is the source of this provision, and the Comment to RUPA § 305(a) states "[t]his is intended to include a partner's apparent, as well as actual, authority." Remarkably, the Comment

to RUPA § 305(b) interprets the phrase "acting with the authority of the partnership" to refer only to "the scope of the partner's actual authority." To avoid confusion, Draft #1 inserted the applicable adjective into the text of the statute.

In accordance with the Committee's instructions at the July, 1997 meeting, Draft #2 returns to the RUPA language. The Reporter urges the Committee to return to the Draft #1 language.

226According to the Comment to RUPA § 305(b), that subsection's phrase "acting with authority of the partnership" refers only to "the scope of the partner's actual authority." At to various meanings RUPA Comments ascribe to the word authority, see notes 222 and 225, above.

227ULLCA omits this provision. Subsection (a) would suffice to cover subsection (b), except that -- according to the RUPA comments -- subsection (a) includes apparent authority while subsection (b) does not.

228Source: RUPA § 306.

229Draft #1 included within the exception "Section 401F (discharged [now 'dissociated'] partner's liability to other persons"). Draft #2 omits that reference because, strictly speaking, Section 401F [now Section 602D] does not refer to a general partner's liability. The Comment will note that Section 602D governs the personal liability of a dissociated partner.

230The Committee needs to consider what, if anything, the Act should say about the doctrine of "piercing the [corporate] veil." The doctrine has little relevance for ordinary limited partnerships, because, except in the most extraordinary circumstances, the general partner's management control and personal liability render the doctrine moot. (Piercing remains relevant, as a matter of corporate law, with regard to the shareholders of a corporate general partner.)

Piercing is, however, an important issue with regard to LLLPs, because an LLLP has a

full, corporate-like liability shield. Following ULLCA, this draft does not directly mention piercing. However, following ULLCA, RUPA and UPA, Section 101C(a) of this draft provides that "[u]nless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act]." Piercing is an equitable doctrine. Unless the Committee directs otherwise, the Reporter will prepare a Comment that refers to piercing as an available equitable doctrine.

231Draft #1 included most of this material in the preceding section, Section 403C. Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2 follows RUPA more closely. This Section follows RUPA § 307 essentially verbatim, except for the insertion of subparagraph (b).

232Shouldn't this be "must"?

233This draft follows RULPA and limits derivative claims to limited partners. See Section 1001.

234Draft #1 omitted this section as unnecessary, given the powerful role of the certificate of limited partnership. At its July, 1997 meeting, the Committee deflated that role considerably, and Draft #2 accordingly includes a provision sourced from RUPA § 308.

235At this point RUPA § 308(a) reads: "or with one or more persons not partners." That phrase does not fit a purported limited partnership.

236This formulation, taken from RUPA § 308(a), seems underinclusive. The passage should perhaps read "a person who relies upon the purported general partner being a general partner in an actual or purported limited partnership." (Italics indicate additional language.)

237RUPA § 308 uses "actual" in subsection (a) and "existing" in subsection (b). The Reporter sees no reason for the different usage and urges the Committee to choose one word or the other

for both subsections.

238RUPA § 308(b) reads "existing partnership, or with one or more persons not partners". Note 235, above, explains why Draft #2 substitutes "purported limited partnership" for "one or more persons not partners."

239Applying this formulation can be quite complicated. Some of the complexity exists within the RUPA provision. Some of the complexity results from the possible involvement of actual and purported limited partners. The following chart illustrates the complexity.

characteristics of "person[]" consenting"	extent to which "person[]" consenting" is bound
general partner in an actual limited partnership	personally liable
limited partner in an actual limited partnership and <u>not</u> represented as a general partner	not personally liable under this provision, but other law may create liability
not a general partner in an actual limited partnership, but purports to be	questionable whether personally liable under this provision, but most likely liable under subsection (a)
not a general partner and purports to be only a limited partner in a purported limited partnership	not personally liable under this provision, but other law may create liability
does not purport to be a general or limited partner in a purported limited partnership	not personally liable under this provision, but other law may create liability

It is possible, perhaps, to reduce the complexity, but not without significantly restating this

RUPA-based provision.

240 Like RUPA § 308(b), this sentence does not address the liability of "persons consenting" who are not general partners. Liability for that category of persons is governed by the first sentence of the subsection.

241 If the certificate designates a person as a general partner, that designation suffices by itself to satisfy the representation and public manner elements of subsection (a). Other elements remain, however; e.g., consent.

A Comment will cross-reference Sections 207 (Liability for false statement in certificate) and 304 (Person erroneously believing himself [or herself] limited partner).

242 RUPA § 308(e) reads: "as to each other" rather than "of a limited partnership".

243 Source: RUPA § 404.

244 This formulation invites confusion as to the direct/derivative distinction. A Comment will make clear that this provision does not eradicate that distinction.

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

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

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

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

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

246This 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 follow the section listing required records, i.e. Section 105. In that event, current subsection (b), obligating a general partner to volunteer information to other general partner, could be relocated to Section 403D, General Standards of General Partner Conduct

247See note 196, above, explaining Draft #2's bifurcation of required records.

248This formulation follows Section 305(b), which derives from the RMBCA. See notes 197 and 198, above. This sentence refers to a category of records which includes the required records. N.b. -- there is no requirement of proper purpose. General partners are the top managers of the limited partnership business.

249Source: RUPA § 403(c). The RUPA provision also requires disclosure "to the legal representative of a deceased partner or partner under legal disability." Draft #2 omits that language, because a deceased or incompetent general partner is dissociated and becomes a mere transferee of its own transferable interest. See Section 602B(4).

250Like RUPA, Draft #2 leaves unclear the relation between information available from the limited partnership's records and a general partner's obligation under this subsection. The question boils down to this: does a general partner who knows of material information in the limited partnership's records have an affirmative obligation to disseminate that information to

fellow general partners, or does each general partner have an individual obligation to keep up to date on the information in those records?

251Source: RUPA § 403(c). The exception seems very vaguely stated, but it appears both in both in RUPA § 403(c) and ULLCA § 408(b)(2).

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 protect from mandated disclosure confidential information generated in that competing enterprise.

252This provision mirrors Section 305's approach to former limited partners.

253For the notion that former owners should have access rights, see RUPA § 403(b) and ULLCA 408(a). The 10-day period corresponds to the 10-day period provided for limited partner access under Section 305(a).

Arguably, a dissociated general partner's access should be restricted to required records, or even the "first tier" of required records to be listed in Section 105. If a dissociated general partner needs further records to assert or defend a claim in litigation, the rules of discovery will apply. However, neither RUPA § 403(b) nor ULLCA § 408(a) take such a restrictive approach.

254At the July, 1997 meeting, the Committee decided that the general partners should have the right to impose use limitations, even if the partnership agreement is silent. Consistent with Re-RULPA's entity approach, the new language refers to the limited partnership, rather than the general partners.

255A Comment will indicate that "limitations on use" include confidentiality restrictions.

256This language allows only the partnership agreement to define remedies. At its July, 1997 meeting, the Committee specifically decided to mention remedies, but the discussion did not -- to

the best of the Reporter's recollection -- contemplate the radical step of allowing one party (i.e., the limited partnership) to unilaterally define remedies. The Committee did specifically contemplate liquidated damages, so that concept appears in this Draft. The Reporter wonders, however, whether a specific reference is necessary. Liquidated damages are an ordinary phenomenon in agreements. If the partnership agreement may define remedies, then perforce the agreement can specify liquidated damages. If the Committee wishes to do more than reaffirm ordinary contract law principles (e.g., by relaxing the standards for enforcing liquidated damages), the statute must do more than merely mention liquidated damages.

Under Draft #2 the limited partnership may itself impose use restrictions. That authority renders superfluous the language in Draft #1 which had authorized the limited partnership to apply to court to impose such restrictions. Accordingly, Draft #2 deletes that language.

257To protect a limited partner's right of access this draft imposes a special requirement on partnership agreement provisions purporting to limit the information's use -- namely, the restrictions must be reasonable. Per the Committee's instructions, Draft #2 deletes the following language from Draft #1: "A restriction relating to the use of the names and addresses of the partners is not reasonable."

258No charge is allowed for current general partners, because in almost all cases they would be entitled to reimbursement under Section 403(d).

259The "except" clause is necessary because a dissociated general partner is treated as a transferee of his, her or its own transferable interest. See Section 602B(4).

260Sections 101B(a) (providing broad powers to the partnership agreement) and 403 (describing the management authority of general partners) make this provision unnecessary.

261Draft #1 expanded this caption to read Necessity, Form, and Valuation of Contribution.

Draft #2 returns to RULPA's more minimalist approach, deleting: (i) a default rule that would have required a person to make a contribution in order to become a partner, and (ii) a requirement for establishing and documenting the value of non-monetary contributions.

262The new language is for stylistic improvement. No substantive change is intended. Both the old, stricken language and the new language partially overlap Section 101(4)'s definition of "contribution." That overlap is present in RULPA as well.

263No reason appears to treat general partners differently than limited partners. "Person" is used to encompass situations in which a non-partner promises a contribution and does not become a partner until the contribution is made.

N.b. -- ULLCA omits any comparable provision. See ULLCA § 402.

264Changes are made to encompass non-partners who have promised contributions in order to become partner, to streamline the language, and to emphasize that the limited partnership's conversion right does not depend on the obligor being dead, disabled, or otherwise incapable of performing.

265This sentence's meaning is carried forward in Version #1 of subsection (d).

266In accord with the sense of the first drafting session, the creditor's remedy is deleted as anachronistic. But see ULLCA § 402(b).

267If the Committee chooses this version, the next draft will revise the list of limited partner rights, Section 302(a), accordingly.

268If the Committee prefers Version #2, the next draft will contain an appropriate definition of affiliate and will also revise the list of limited partner rights, Section 302(a).

269Absent a provision of the partnership agreement or some strong reason to the contrary, the

annual accounting period would coincide with the limited partnership's tax year.

270The stricken language is inconsistent with this draft's treatment of the partnership agreement.

271RULPA § 608(c) purports to provide a rule for determining when a distribution constitutes a return of capital:

A partner receives a return of his [or her] contribution to the extent that a distribution to him [or her] reduces his [or her] share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to Section 105, of his contribution which has not been distributed to him [or her].

To the Reporter, RULPA § 608(c) seems too recondite and byzantine to be worth preserving.

The draft's reference to generally accepted accounting principles is an attempt to eschew RULPA § 608(c) without having to include a complicated set of provisions related to capital accounts.

Compare, e.g., RUPA §§ 401(a) and 807(b).

272The changes are mostly for stylistic reasons, although this draft does state a different default rule on sharing -- namely that distribution allocation follows profit and loss allocation.

Thus, any change in the default rule on profit and loss allocation will automatically change the distribution sharing rule.

273The major change is the elimination of any reference to a partner's "put" right, since in the default mode that right no longer exists. Others changes are stylistic or to conform with this draft's approach to the powers of a partnership agreement.

274Although it will be the limited partnership that actually makes any interim distributions, it

will be the general partners who decide whether interim distributions will be made. See Section 403(a).

275At its July, 1997 meeting, the Committee decided that, in the default mode, a general partner who ceases to be a general partner becomes a mere transferee of the transferable interest formerly associated with its status as a general partner. That decision makes it possible to greatly simplify Draft #2's approach to general partners. It is no longer necessary to treat separately the termination of a general partner's management and ownership roles. As a consequence, it is no longer necessary to maintain Draft #1's separate concepts of "discharge" and "dissociation." Under Draft #2, in the default mode, a general partner who ceases to be a general partner simply dissociates from the limited partnership.

Draft #1's Sections 401 through 401F are revised accordingly and relocated here. That relocation is consistent with the Committee's desire to maintain the structure and "look and feel" of RULPA and, moreover, causes Draft #2 to further resemble RUPA.

276As decided by the Committee at its July, 1997 meeting, this Draft adopts the RUPA provision essentially verbatim. See RUPA § 601.

277This provision seems underinclusive. What about a general partner that is a limited liability company? Why should an LLC general partner be treated differently than a corporate general partner?

This provision also portends another kind of anomaly. Suppose the corporate general is dissolved and terminated, but the other partners cannot muster a unanimous vote to expel. Does the limited partnership continue with a non-existent general partner? Are the remaining partners forced to seek dissolution under Section 802?

278The Reporter recommends deleting the phrase "or another partner." Otherwise, this provision will invite confusion as to the distinction between direct and derivative claims and will undermine the general partner's authority to manage the business. (Draft #1 did omit that phrase, and -- according to the Reporter's notes -- the Committee did not object to that approach. However, given the Committee's strong instruction to hew to RUPA provisions verbatim, Draft #2 includes the phrase.)

279RUPA states "in partnership with the partner." The change is to accommodate the possibility that (i) the partnership agreement will provide that an expelled general partner becomes or has the option of becoming a limited partner, and (ii) it will be "reasonably practicable to carry on the business of the limited partnership" will the former general member in the role of a limited partner.

280In this respect, in the default mode a general partner has fewer rights than a limited partner. If a guardian or general conservator is appointed for a limited partner, that guardian or conservator may exercise the limited partner's rights ad infinitum. See Section 705. For a general partner, in contrast, the appointment causes dissociation, which in turns relegates the dissociated general partner to a mere transferee of the transferable interest associated with the general partnership interest.

281RUPA's approach here seems anomalous when compared with the status of a general partner who transfers "all or substantially of that partner's transferable interest in the partnership."

RUPA § 601(4)(ii), incorporated in Draft #2 as section 602(4)(ii). In that latter event, dissociation occurs only upon "the unanimous vote of the other partners." Why should a harsher rule apply to a trust, especially if the distribution of the trust's transferable interest was

foreseeable (e.g., ordained by the terms of the trust) at the time the trust became a general partner?

282The comment made in note 281, above, regarding trusts applies equally to estates.

283See note 277, above. The Reporter can see no reason why LLCs should be treated differently than corporations.

284The main impact of this subparagraph is to trigger the personal liability discharge provisions of Section 602D. Section 1104(c) states that such provisions continue to apply to former owners, even if the organization has disappeared through a merger. This subparagraph also triggers Section 602B(2)and (3), ending a dissociated general partner's fiduciary duties. The subparagraph is not necessary to "start the clock" on the dissociated general partner's lingering power to bind, Section 602C, because Section 1104(d) cuts off that power immediately when a constituent organization is merged out of existence.

285This subparagraph triggers all the standard dissociation consequences, including: Section 602B(2) and (3), (dissociated general partner's fiduciary duties), Section 602C (dissociated general partner's lingering power to bind), and Section 602D (personal liability discharge provisions).

286This paragraph is new and intended to indicate that, in the default mode, a general partner cannot cease to be a general partner without becoming dissociated.

287As decided by the Committee at its July, 1997 meeting, this section follows RUPA § 602 more closely than did Draft #1.

288This language limits the remedies available if a general partner's dissociation breaches the partner's fiduciary duty or obligation of good faith.

289The analogous passage of RUPA § 602(2) reads: " 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." That language is inappropriate here because (i) every limited partnership is a term partnership, and (ii) "partnership for . . . a particular undertaking" is not common usage for limited partnerships. The language used here makes premature dissociation wrongful, even if the partnership agreement does not so provide. RUPA takes a comparable approach.

290RUPA uses "withdrawal." For the sake of internal consistency sake, the Reporter would prefer "dissociates."

291The analogous RUPA passage continues: "unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection." RUPA § 601(6) through (10) provide for automatic dissociation in the event of, e.g., bankruptcy, death, distribution of a trust's entire transferable interest in the partnership. That default rule seems inappropriate for a limited partnership. Where a limited partnership has more than one general partner, absent a contrary agreement the limited partners probably expect each general partner to "stay the course," regardless of whether the other general partners do. In any event, this provision should correspond to whatever approach the Committee adopts for Section 801(5) (avoiding dissolution following the dissociation of a general partner). If the dissociation of a general partner threatens dissolution even though another general partner remains, then the first general partner's premature dissociation should give the remaining general partner the right to dissociate.

292Why not also include the events that Section 602(5), following RUPA 601(5), considers comparable or tantamount to becoming a debtor in bankruptcy?

293A Comment will indicate that: (i) the phrase "or other partners" is not intended to eliminate

the distinction between direct and derivative claims, and (ii) a partner seeking to claim damages will have to prove some harm independent of harm suffered by the limited partnership. See Section 1005(b).

294As decided by the Committee at its July, 1997, most of this Section has been deleted as more appropriate for a Comment. Accordingly, a Comment will cross-reference the various Sections that detail other consequences of a general partner's dissociation.

295Source: RUPA § 603(b), except for paragraph (4), which is new.

296This clause differs from its RUPA analog in two respects. First, this clause 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.

297The RUPA provision continues certain duties if the dissociated general partner participates in winding up. RUPA § 603(b)(3). For the reasons stated in note 296, above, this Draft eschews that approach.

298Clause (4) is a default rule and sweeps all of the dissociated general partner's transferable interest into "mere transferee" status. If a person is both a general partner and a limited partner, the partnership agreement might identify particular transferable interests that are associated with the limited partner role. If so, the partnership agreement should expressly protect the limited partner transferable interests from the sweep of paragraph (4), just in case an event occurs that causes dissociation qua general partner but not qua limited partner. The partnership agreement may also override paragraph (4) entirely, for example providing for a dissociated general partner

to become a limited partner and to retain ownership of its transferable interest in that latter capacity.

The "subject to" language refers to a merger in which, for example, the general partner dissociates because the limited partnership ceases to exist. In that event, no transferable interest of the old limited partnership will survive the merger.

299Draft #1's section 401D (Transformation of the discharged general partner's general partner interest) has been deleted. The Committee's decision to convert a dissociated general partner's transferable interest to "mere transferee" status made Section 401D unnecessary.

300As instructed by the Committee at its July, 1997 meeting, the Reporter has prepared two versions of this Section. The first version follows RUPA § 702 as closely as possible. The second version reorganizes and restates the RUPA provision for the sake of readability.

301Suppose that the limited partnership does dissolve. Does the dissociated general partner have the power to bind the dissolved limited partnership? Version #1's language is taken from RUPA, and RUPA's section on post-dissolution power to bind addresses only "a partner's act after dissolution." RUPA § 804 (emphasis added). Suppose, in the alternative, that the limited partnership does not dissolve as a result of a general partner's dissociation but does subsequently dissolve for some other reason. Does the dissociated partner have some lingering power to bind? Version #2 attempts to deal with these issues.

302This clause is intended to function in a manner equivalent to RUPA § 702(a)(3).

303The phrase "did not have notice" seems redundant. A party that has notice of a general partner's dissociation cannot reasonably believe that the dissociated general partner is still a general partner.

304RUPA's phrase "after dissociation" has been deleted as redundant. Subsection (a) refers

exclusively to post-dissociation events. RUPA's phrase "an obligation incurred by the dissociated partner" has been deleted as ambiguous or at least unartful. Under subsection (a) a dissociated partner can cause the limited partnership to incur an obligation. On casual reading the RUPA language seems to refer to the dissociated partner incurring an obligation him, her or itself.

305 Upon dissolution, Section 803A takes over. RUPA may intend the same result, but its language refers only to dissolution caused by the partner's dissociation. Version #2 defers to the dissolution provision even if the dissolution occurs for some other reason.

306 This section has been rewritten to follow RUPA § 703 essentially verbatim. However, if the Committee chooses Version #2 of Section 602C (the reorganized and restated version), a comparable change should be made here.

307 To the extent the limited partnership is an LLLP, this clause will bar any personal liability for the dissociated general partner.

308 RUPA § 703(c) reads: "the partners continuing the business." Draft #2's differing language reflects the Draft's entity view of limited partnerships.

309 If the creditor is not a partner, this notice will occur by operation of law 90 days after an appropriate amendment to the certificate of limited partnership. See Section 208(d).

310 Draft #2 differs from RUPA § 703(d) by adding "dissociated" and, of course, by adding "general."

311 The causes of limited partner dissociation substantially overlap the causes of general partner dissociation. That overlap could be avoided (or, rather, exploited) by sacrificing some of RULPA's look and feel and having one section captioned "Partner Dissociation." That section would list separately events that cause dissociation of any partner and events that cause

dissociation only for general partners.

312N.b. -- this provision must be read in conjunction with subsection (a), Section 603(b), and Section 604. Under subsection (a) and Section 603(b), in the default mode a limited partner has the power but not the right to dissociate. Under Section 604, a wrongful dissociation does not entitle a limited partner to any payout.

313For a general partner this provision applies following a transfer of "all or substantially all" of the transferable interest. Given the passive role of limited partners, why authorize expulsion when the limited partner retains some financial stake in the enterprise?

314For general partners the comparable provision operates upon dissolution. Given the passive role of limited partners, why force dissociation prior to termination?

315See note 293, above.

316RUPA § 601(5)(ii) refers not to the obligation of good faith but, instead, more broadly to "a duty owed to the partnership or the other partners under Section 404." RUPA § 404 includes fiduciary duties and the duty of care. Limited partners have no such duties, at least in ordinary circumstances. A limited partner's sole comparable statutory obligation is the obligation of good faith and fair dealing.

This situation will change, however, if the Committee decides that a limited partner assumes fiduciary duties by obtaining or exercising the powers of a general partner. See Section 302A(b). Accordingly, this provision's final wording depends on the Committee's decision with regard to Section 302A(b).

317RUPA § 601(5)(iii) uses the broader phrase "in partnership with the partner." A limited partner's passive role justifies the narrower phrase used in this Draft.

318In light of the limited partner's passive role, this Draft does not include RUPA § 601(6),

pertaining to bankruptcy and insolvency. Moreover, bankruptcy law probably precludes operation of the insolvency trigger in the case of limited partners.

319In light of the limited partner's passive role, this Draft does not include RUPA § 601(7)(ii) and (iii), pertaining to incompetency. The exclusion is moreover consistent with RULPA § 705 (authorizing a partner's "guardian [or] conservator" to "exercise all of the partner's rights for the purpose of . . . administering his [or her] property").

320See note 277, above for concerns about limited liability companies.

321Derived from RUPA § 603(b)(1)

322Derived from RUPA § 603(b)(3).

323This clause will create a "bare transferable interest," as defined in Section 101(1), and presents a small and largely theoretical coordination problem with Section 602B(4). Section 602B(4) converts a dissociated general partner's transferable interest into a bare transferable interest. A person can be simultaneously a general and limited partner, and some events will dissociate a person in one capacity but not the other. For example, incompetency dissociates a person as a general partner but not as a limited partner. Also, a "dual capacity" partner might chose to dissociate "by express will" in one capacity but not the other. In such circumstances, Draft #2 will sweep all of the person's transferable interest into the status of bare transferable interest, unless the partnership agreement: (i) clearly identifies some of the transferable interest as pertaining to the person's status as a limited partner, or (ii) otherwise overrides the default rule. To address that issue, language would have to be added to both this section and Section 602B(4). For the sake of simplicity, it seems wiser to let dual capacity partners address the issue in the partnership agreement.

The "subject to" language refers to a merger in which, for example, the limited partner dissociates because the limited partnership ceases to exist. In that event, no transferable interest of the old limited partnership will survive the merger.

324A limited partner's dissociation will rarely cause damages, because at least in the default mode: (i) a limited partner provides no essential services to the limited partnership, (ii) dissociation does not entitle the dissociated limited partner to any distribution, and (iii) unless the dissociated limited partner is the sole limited partner, the dissociation does not even threaten dissolution.

325Under sections 602B(4) (dissociated general partner) and 603A(a)(3) (dissociated limited partner), the dissociated partner's status "degrades" to that of a transferee.

326Changes here are essentially stylistic.

327The greater formality is necessary due to this draft's new, more corporate-like approach to recapturing distributions. See Sections 607 and 608.

328 The reference to "dissociated partner" is to encompass circumstances where the partner is gone and all that remains are the bare transferable interests.

329The new language is derived mostly from ULLCA § 406, which appears to have derived, almost verbatim, from RMBCA § 6.40.

330ULLCA § 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.

331Source: ULLCA § 406(a)(1).

332Source: ULLCA § 406(a)(2).

333Source: ULLCA § 406(b). N.b. -- this subsection imposes a more rigorous standard of care than the "gross negligence" standard applicable under Section 403D(c).

334Source: ULLCA § 406(c).

335The RMBCA has an alternate date, if earlier -- when the owner being redeemed ceases to be an owner. The Comment to ULLCA § 406 does not explain why ULLCA omits the alternate date.

336The RMBCA has another category -- distributions of indebtedness not involved in a redemption. The Comment to ULLCA § 406 does not explain why ULLCA omits this additional category.

337This language follows ULLCA verbatim, but the provision would link better with Section 606 if the phrase "the date the distribution is authorized" were replaced with "the date Section 606 creates an entitlement to the distribution".

338This subsection is redundant of what is now the second sentence of Section 606. One or the other should be deleted. Assuming the Committee decides that the next draft will, like this draft, maintain as much of the basic structure of RULPA as possible, the Reporter recommends deleting this provision and retaining the second sentence of Section 606. If, however, that sentence is deleted in favor of this provision, the exception (re: set-offs) included in that sentence should be inserted here.

339 This provision is stated here as a separate subsection, to make clear that "indebtedness" is not limited to the types of indebtedness covered by the preceding subsection.

340Consistent with the Drafting Committee's tentative decision, this draft replaces

RULPA's antiquated "clawback" provisions with a more modern approach derived from RMBCA § 8.33(a) and ULLCA § 407(a). (The ULLCA provision closely follows the RMBCA provision.)

341RMBCA § 8.33 and ULLCA § 407 both use "Unlawful." That term fits poorly with liability imposed for distributions that merely breach the partnership agreement or some comparable document (e.g., a corporation's articles of incorporation, an LLC's articles of organization, or operating agreement). This draft therefore uses "Improper" instead of "Unlawful."

342Note that a distribution that violates the partnership agreement violates Section 607(a).

343Section 403D contains the general duties of general partners. Section 607(c) imposes a separate duty with regard to reliance on financial statements, accounting principles, etc.

N.b. -- section 607(c) imposes a higher standard of care than does Section 403D. This anomaly does not exist under the RMBCA (from which both this draft and ULLCA derive their respective provisions on liability for improper distributions). The RMBCA's general standard of care is ordinary care, RMBCA § 8.30(a)(2), not the mere avoidance of gross negligence.

ULLCA does not expressly contain this anomaly. The ULLCA provision on "Limitations on distributions" states a reasonableness standard with regard to reliance on financial statements, accounting principles, etc., ULLCA § 406(b), but the ULLCA provision on "Liability for unlawful distributions" makes no reference to that standard. ULLCA § 407.

344This subsection comes essentially verbatim from ULLCA § 407(b). The Committee may wish to consider the following alternative language:

(b) A partner who receives a distribution that the partner knows

violates Section 607 is personally liable to the limited partnership, but the partner's liability under this subsection is limited to the amount by which the distribution received by the partner exceeded the amount that could have been paid without causing the violation.

345 This section does not allow a limited partner to implead anyone else, because a limited partner's liability is limited to the amount by which the limited partner's distribution exceeded the permissible amount.

346 Source: ULLCA § 407(c). The ULLCA language is a bit imprecise. In particular, § 407(c)(2) refers first to "members" and then to "the member." It is important to make clear that the limitation applies to each member severally, not to all members jointly. The following alternative language makes that point and also makes clear that any funds paid by a recipient in a separate action (i.e., under subsection (b)) count against the recipient's contribution limit:

(c) A general partner against whom an action is brought under subsection (a) may implead in the action and obtain contribution from:

(1) any other general partner or dissociated general partner who could be held liable under subsection (a) for the improper distribution; and

(2) any partner or dissociated partner who could be held liable under subsection (b), but a person's total liability under this clause and subsection (b) with respect to any distribution is limited to the total amount for which the person could be liable under subsection (b) for that distribution.

347Strictly speaking, subsection (b) does not establish a prohibition that can be violated; it states a remedy. The implied prohibition is against receiving an improper distribution while knowing that the distribution is improper.

348This subsection follows ULLCA § 407(d), which differs from the RMBCA . Under RMBCA § 8.33(c) the clock runs from "the date on which the effect of the distribution [is] measured" under the provision limiting distributions. The Comments to ULLCA do not explain ULLCA's departure from the RMBCA.

349In RUPA and ULLCA roughly analogous provisions appear in Article 5, captioned "TRANSFEREES AND CREDITORS OF PARTNER [MEMBER]."

350Draft #1 used "share" instead of "allocation." The change to "allocation" conforms with a change in the caption of Section 503. RULPA § 503 is captioned "Sharing of Profits and Losses," but the section's text refers to "allocation." Draft #1 changed Section 503's caption to follow the text but did not conform Section 701. Draft #2 maintains the change to Section 503's caption and revises section 701 accordingly.

351Source: RUPA § 502. The Comment will cross reference Section 606, which provides that a partner's right to distributions is subject to offset.

352Although for the most part RULPA's language "works," the formulation is oblique. In this instance, the benefits (especially for the uninitiated) of a more direct formulation outweigh the preference for retaining familiar language. The new language is derived from RUPA § 503.

Draft #1 rearranged the RUPA provisions so that the affirmative aspects were stated first and the limitations or negative aspects are stated second. Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2 provides the RUPA provisions without significant change.

Draft #1's language is preserved as an alternative version.

353Source: RUPA § 503(a)(1).

354Source: RUPA § 503(b)(1). RUPA § 503(b)(2) (referring specifically to liquidating distributions) is omitted as redundant. The Comment will cross reference Section 606, which makes all distributions subject to offset.

355Source: RUPA § 503(b)(3). The RUPA provision refers to a judicial determination under RUPA § 801(6). Under that provision, that transferee must show that the general partnership has continued beyond its term or that the partnership is at will. The latter concept is irrelevant to limited partnerships. As to the former, at least two questions arise: can the limited partnership avoid this remedy by amending its partnership agreement and certificate to state a new, longer term? (ii) why should a mere transferee have standing to cause a wind up if no partner wishes it to happen? For further discussion, see Section 802(b).

356For Comment -- So long as a transferee's interest traces back to a person still a partner, this Act provides the transferee no direct right of information. The partner has access rights, and the transferee will have access to information only to the extent that the partner exercises those rights and then provides information to the transferee.

If, however, the transferee holds a "bare transferable interest" -- i.e., there is no longer a partner associated with the transferred interest -- this provision directly entitles the transferee to a minimal amount of information. Of course, if a limited partnership fails to make payments due a transferee, the transferee will have a right under general principles of law to bring suit and to have discovery as part of that suit.

N.b. -- even if the Committee chooses Version #1, the Committee should independently

consider including this provision.

357Derived from RUPA § 503(c). RUPA's reference to "dissolution and winding up" is restated as "dissolution." More substantively, this version does not entitle a transferee to a full "account of partnership transactions . . . from the latest account agreed to by all of the [general] partners."

358Derived from RUPA § 503(d) (referring to both duties and rights).

359Under the referenced provisions, the other partners may by unanimous consent expel respectively: (i) a general partner who has transferred all or substantially all of its transferable interest, and (b) limited partner who has transferred all of its transferable interest.

360Derived from RUPA § 503(a)(3). Two phrases included in the RUPA provision are omitted here. First, RUPA characterizes this limitation "as against the other partners or the partnership." That phrase seems at best superfluous; at worst it could be read to suggest that a transfer has the power create partner-like rights in some other, unspecified contexts. Second, RUPA gives a list of the items comprising the limitation. "During the continuance of the partnership" a transferee has no right "to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records." This draft merely states that a transferee's rights are strictly limited to those granted by the Act.

RUPA § 503(d) ("Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.") is omitted because: (i) to the extent that it is accurate it goes without saying and (ii) it is not accurate when the transfer allows unanimous partner consent to cause dissociation.

361Derived from RUPA § 503(e), which provides: "A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer." That provision seems too

open-ended.

362Source: RUPA § 503(f).

363RUPA captions its comparable section "PARTNER'S INTEREST SUBJECT TO CHARGING ORDER." RUPA § 504. ULLCA captions its comparable section "Rights of creditor." ULLCA § 504.

364This expansion comports with both RUPA § 504(a) and ULLCA § 504(a).

365This sentence originated in RUPA § 504(a). ULLCA § 504(a) incorporated the RUPA language but added the last phrase ("to give effect . . ."), apparently in an effort to limit the extent to which the "or which" clause empowers a court to intervene in the entity's affairs. The Committee should consider why a receiver should have greater rights of inquiry than the judgment debtor.

366Source: RUPA § 504(b).

367Source: RUPA § 504(c) and ULLCA § 504(c).

368Source: RUPA § 504(c)(3).

369 Source: ULLCA § 504(c)(3).

370To the extent the general partners are disinterested, why not allow them to make an ordinary business decision to redeem the interest? If the Committee chooses this version, the next draft will define "affiliate".

371Source: RUPA § 504(e).

372It is not necessary to provide that a transferee may become a partner if the partnership agreement gives the transferor the power to so provide, because the provisions on becoming a partner expressly refer to the partnership agreement. That agreement can create whatever mechanism may be desired.

373 This draft differs from RULPA in not automatically providing that the transferor's obligations "run with" a transfer when the transferee becomes a partner. The transferable interest is subject to offset, see Section 606, but this draft does not make a transferee who becomes a partner affirmatively liable for the contribution debts and distribution recapture obligations of the transferor. Creating such an affirmative obligation seems mainly intended to protect creditors of the limited partnership. This draft elsewhere removes similar protections (e.g., ability to override the compromise of a contribution obligation, RULPA § 502(c); the "clawback" provision for proper distributions, RULPA § 608(a)) and should do likewise here. If the limited partnership wishes to impose an affirmative obligation on transferees who become partners, the partnership agreement can make it so.

374 This provision now appears in Section 702(b)(1) -- Version #2.

375 Once the Committee makes a decision on the RULPA "look and feel" issue, this section may well be superfluous.

376 Neither RUPA nor ULLCA contains a comparable provision.

377 Under Sections 602B(4) (consequences of general partner dissociation) and 603A(a)(3) (consequences of limited partner dissociation) the decedent partner's interest will convert to a bare transferable interest.

378 Incompetency does not cause a limited partner to dissociate. See Section 603. This power can therefore continue indefinitely.

379 The adjudication will cause the general partner's dissociation. See Section 602(7)(ii) and (iii).

380 Dovetailing this section's approach to entity demise with the RUPA-based interrelationship of entity demise and partner dissociation will be quite complicated. Because the Committee may

decide to follow RUPA and ULLCA and omit this section entirely, the Reporter has decided to leave the dovetailing to another day.

381Section 803(a) makes this phrase redundant.

382This change corresponds to the change made in Section 201(a)(4).

383Derived from RUPA § 801(4) and ULLCA § 801(3), but restyled to eliminate the notion of retroactive cure. The RUPA and ULLCA provisions can be read as if the entity can be dissolved and then un-dissolved.

384The susceptibility pertains to the default mode, since the partnership agreement can alter this provision.

385This language applies if at least one remaining general partner is willing to carry on as a general partner. If the sole remaining general partner expressly refuses to do so, that "express will" causes the remaining general partner to dissociate. See Section 602(1). In that event, subparagraph (ii) applies.

386Profit interests owned by transferees do not figure in this calculation. As a result, the profit interest owned by the dissociated general partner is not counted. (Upon dissociation, that interest converts to a bare transferable interest. See Section 602B(4).)

387Whatever approach the Committee chooses, the next draft will make sure that this provision properly handles situations in which a subsequent dissociation occurs before the expiration of a 90-day period triggered by an earlier dissociation.

388Both RUPA § 801 and ULLCA § 801 include nonjudicial and judicial dissolution in the same section. This draft preserves RULPA's approach, dividing the two types of dissolution into two sections.

389The additions come from RUPA § 801(5), which is also the source of most of ULLCA

§ 801(4).

N.b. -- ULLCA § 801(4)(v) states as a basis for judicial dissolution a concept developed in the law of closely held corporations: "the managers or member in control of the company have acted in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner." This draft does not include any analogous provision.

390For Comment -- It would be unusual to invoke this clause in connection with the conduct of a limited partner, unless the partnership agreement gives that limited partner a substantial role in the limited partnership's affairs. Moreover, courts considering dissolution pursuant to this clause should also consider the less drastic remedy of dissociating the offending partner.

391This provision is derived from RUPA § 801(6)(i), which was also the source for ULLCA § 801(5)(i).

392RUPA § 801(6)(i) refers more simply to the expiration of the partnership's term. However, RUPA § 406(a) contemplates a term general partnership continuing its business after its term expires and "be[ing] treated as a partnership at will." RUPA § 801, Comment 5. No comparable provision exists in RULPA or Re-RULPA. The expiration of a limited partnership's term causes dissolution. Therefore, Section 802(b)(1) refers to the roughly analogous situation of a limited partnership amending its certificate to extend its term.

393This provision does not protect transferees from the consequences of a merger in which the limited partnership is not the surviving organization. See note 468, below.

394Derived from RUPA § 802, which is also the source of ULLCA § 802. Both RUPA § 802(b) and ULLCA § 802(b) allow the unanimous consent of partners/members to "un-do" a dissolution. For two reasons this draft 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. This draft, in contrast, freezes in a dissociated owner (as a transferee of its on 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.

395Both 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."

396This Section has been changed 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.)

397This amendment helps curtail the power of a general partner to bind the limited partnership during winding up, see Section 803A(b) and (c), and the statute must either allow any partner to file it (which would be at odds with the governance structure and require additional provisions re: limited partner filings) or obligate the limited partnership itself (in functional terms, the general partners) to do so.

398This sentence 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 read as follows:

In winding up its business the limited partnership:

(1) may preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration and perform other necessary acts; and

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's business, under Section 804 martial and distribute the assets of the partnership, and, promptly after winding up is completed, file a declaration of termination as provided in Section 805.

399At its July, 1997 meeting, the Committee eliminated writing requirements pertaining to most consents. Consistent with that action, Draft #2 eliminates Draft #1's requirement that the partners consent in writing to this appointment. However, given the special circumstances involved here, the Committee might wish to reinsert the writing requirement.

400The appointee does not have the liabilities of a general partner to third parties. Under Section 403D(b)(3), the appointee will have the right to compete with the dissolved limited partnership.

401Derived from RUPA §§ 804, 805 and 806.

402Source: RUPA § 804. The only change is to make the attribution rules expressly subject to subsections (b) and (c) (which are in turn sourced from RUPA § 805).

403Derived from the first clause of RUPA § 805(b). The only substantive change is that, unlike RUPA § 805(a), this provision does not allow any "partner who has not wrongfully dissociated" to affect the relevant document. (Under RUPA, the relevant act is the filing of a statement of dissolution. Under Re-RULPA [so far, in any event] the relevant act is amending the certificate of limited partnership.)

Note that under both RUPA and Re-RULPA previously documented restrictions on authority remain in effect.

404Source: the second clause of RUPA § 805(b). For two reasons the Reporter prefers the reformulation provided below. First, the full import of RUPA's language comes clear only with reference to Comment 2 to RUPA § 805 (see especially the second paragraph, third sentence [beginning "In effect . . ."]). The reformulation puts the sense of that Comment into the statutory text. Second, the reformulation more closely dovetails Re-RULPA's use of the certificate of limited partnership as the repository of statements expressing and limiting general partner authority. The reformulation would read as follows:

operates as a statement, made pursuant to Section 201(b), limiting to circumstances appropriate for winding up the limited partnership business the authority of each general partner to execute an instrument transferring real property held in the name of the limited partnership.

405Source: RUPA § 805(c).

406Source: RUPA § 805(d).

407Source: RUPA § 806(a). This section is new in Draft #2. Draft #1 included RUPA § 806(b) as part of Section 802 and omitted RUPA § 806(a) as unnecessary. (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.)

At its July, 1997 meeting, the Committee expressed a presumption in favor of RUPA provisions. Accordingly, Draft #2 incorporates RUPA § 806(a) and creates a new section to parallel RUPA § 806. In order to maintain the temporary numbering system used in Draft #1, the new section has an especially unusual, temporary section number.

408Strictly speaking, the general partner does not "incur a limited partnership liability." The Reporter would therefore prefer: "causes the limited partnership to incur a liability under"

409Source: RUPA § 806(b).

410If this draft did not allow for LLLPs, Sections 803B and 803C would probably be unnecessary. The sections seem warranted, however, because many (and perhaps most) limited partnerships will be fully-shielded.

ULLCA lifted its provisions on this topic virtually verbatim from the RMBCA. This draft takes the same approach, making a few stylistic changes plus a few substantive additions necessitated by the personal liability of general partners in an ordinary (i.e., non-LLP) limited partnership.

Section 803B is derived from ULLCA § 807 and RMBCA § 14.06.

411This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

412The phrase "against the limited partnership" is added to make clear that bringing a claim against an allegedly liable present or dissociated general partner does not save a claim against the limited partnership.

413Section 803C is derived from ULLCA § 808 and RMBCA § 14.07.

414The phrase "in this State" has been added to the RMBCA/ULLCA formulation.

415The ULLCA/RMBCA formulation refers to "designated office."

416This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

417Arguably the reference should be "dissociated" partner, since the termination of a limited partnership ends partner status, but ULLCA uses "members" and RMBCA uses "shareholders."

418ULLCA § 808(d)(2) does not include transferees.

419RMBCA § 14.07(d)(2) uses "pro rata." ULLCA § 808(d)(2) uses "proportionate." The claim limitation has several elements.

- As to any one claim under this clause, a person's liability can exceed neither:
 - ~ the total amount the person received as a liquidating distribution, nor
 - ~ the portion of the total claim equal to the portion of the limited partnership's assets the person received in the liquidating distribution.
- As to all claims under this paragraph, a person's aggregate liability cannot exceed the total amount the person received as a liquidating distribution.

420RMBCA and ULLCA refer to "this section," but "section" encompasses all of Section 803C.

421This draft adds the concluding phrase ("as part of the winding up of the dissolved limited partnership") to emphasize that the "clawback" relates only to liquidating distributions.

422The referenced provision provides for personal liability of general partners in an ordinary

limited partnership.

423 This Section essentially requires a person to preserve its claim against the limited partnership in order to preserve a vicarious liability claim against the general partners. This requirement is arguably inconsistent with Section 403C-2(e) (requiring claimants generally to exhaust limited partnership resources before pursuing a general partner but allowing some exceptions, most notably when the limited partnership is bankrupt). It might seem more consistent to specify circumstances in which a claimant could preserve its claim against a current or former general partner by proceeding against that partner without having to proceed against the limited partnership. For the following three reasons, however, this draft eschews that approach. First, that approach would add complexity to an already complex series of sections. Second, if one dissociated or present general partner remains at risk, the other dissociated or current partners should have some means of learning of that risk. (They could be at risk by way of a claim for contribution or indemnification.) A proceeding against the limited partnership is a good (albeit imperfect) way of bringing the ongoing risk to the attention of all current and former general partners. Third, futility is the essential rationale for the exceptions provided by Section 403C-2(e) to the exhaustion requirement. That is, there is no reason to require exhaustion when even extensive efforts to collect from the limited partnership are destined to be futile. That rationale does not apply here, because a simple, discrete act (i.e., the commencement of the proceeding against the limited partnership) accomplishes the desired result -- i.e., preventing the bar.

424 The referenced provision provides for personal liability of general partners in an ordinary limited partnership.

425Derived from ULLCA § 809 and included on the assumption that the same reasons of administrative convenience apply here as with LLCs.

426ULLCA also includes an LLC's failure to "deliver its annual report to the [Secretary of State] within 60 days after it is due." ULLCA § 809(2). This draft omits that provision because this draft does not require a limited partnership to file an annual report. RMBCA includes three other grounds, omitted from ULLCA. See RMBCA § 14.20(3)-(5) (being without a registered agent or in-state office for 60 days or more; failing for 60 days or more to notify Secretary of State of certain changes in registered agent or in-state office; expiration of period of duration specified in articles of incorporation). Bert Black, the representative of the International Association of Corporation Administrators, suggests that "there needs to be some 'stick' to get the limited partnership to appoint a new agent" when the old agent resigns. He suggests administrative dissolution as that stick.

427Source: ULLCA § 810, which closely follows RMBCA § 14.21.

428ULLCA § 810(b) locates the "within" phrase in the middle of the sentence. The change from ULLCA is for ease in reading.

429ULLCA § 801(b) refers to "service of the notice" -- an apparent residue from the RMBCA formulation.

430ULLCA § 810(b) refers to a "certificate of dissolution." Re-RULPA reserves the term "certificate" for the certificate of limited partnership.

431ULLCA § 810(b) adds "of the certificate".

432The same thing is true for non-administrative dissolution, but this draft does not say so.

Query: should it?

433Source: ULLCA § 811, which closely follows RMBCA § 14.22.

434ULLCA § 811(a)(3) refers only to "ground." RMBCA § 14.22(a)(2) refers to "ground or grounds." The ULLCA version may reflect an oversight, since that version uses "have" -- i.e., "the ground for dissolution either did not exist or have [sic] been eliminated."

435As for why Re-RULPA uses "notice" instead of "certificate," see note 430, above.

436ULLCA § 811(b) refers to "certificate of reinstatement." As for why Re-RULPA uses "notice" instead of "certificate," see note 430, above.

437This draft omits any parallel provision to ULLCA § 812, which establishes special rules for an LLC to appeal a denial of reinstatement. Absent good reason to the contrary, a State's generally applicable provisions for appealing the actions of an administrative agency should apply to the Secretary of State's denial of reinstatement.

438This Section has been substantially revised to accord with RUPA § 807.

439Source: RUPA § 807(a).

440A partner entitled to receive a distribution is a creditor. See Section 606. However, a partner is not a creditor with respect to any unreturned contribution.

N.b. -- this section does not require general partners to contribute so as to equalize losses among partners or to bring actual losses into accord with loss shares. Capital losses lay where they fall, just as with a corporation or an LLC.

441RUPA § 807(b) is omitted, because that provision rests on RUPA's concept of a partner's account. RUPA § 401(a). Re-RULPA does not adopt the "partner's account" approach.

442This subsection differs substantially in form from RUPA § 807(b), because this draft does not specify the structure of each partner's "account." Compare RUPA § 401(a). RUPA § 807(b) depends on RUPA § 401(a)'s concept of a partner's account.

443This draft's approach is more complex than RUPA's, because this draft expressly

contemplates contributions from dissociated general partners. Compare RUPA § 807.

444Derived from RUPA § 807(e), but query: why is this provision necessary? Is there something in other law that would excuse or release the estate? In any event, RUPA's formulation has been changed to include all obligations under this Section; i.e., not only a person's obligation to contribute to the limited partnership but also the liability of under-contributors to over-contributors.

445Source: RUPA § 807(f). The phrase "under subsection (c)" has been added to make clear that the rights extended to creditors of a partner are limited to this section and do not apply generally.

446Section 206(d) limits the delay period to 90 days.

447In this Draft, Article 10 includes a Section unrelated to derivative actions -- i.e., Section 1005, dealing with direct actions by partners. It is unclear whether Section 1005 should remain in Article 10. The Committee should decide that question after (or as part of) deciding the RULPA "look and feel" issue.

448RUPA has no provisions on derivative actions, and ULLCA follows closely the current language of RULPA. The Committee has at least three approaches from which to choose: maintain RULPA's language; adopt ULLCA's relatively minor revisions to RULPA's language, or make the more substantial changes indicated in Draft #2.

449The proposed revisions make three changes. First, the revised language uses the concept of demand futility, rather than the older, more oblique formulation that "an effort to cause those general partners [to act] is not likely to succeed." Second, the revised language refers to the general partners causing the limited partnership to bring suit, rather than the general partners themselves bringing suit. This change reflects this draft's pure entity approach. The third

difference concerns the addressees of the demand. The current provision refers to those "general partners with authority" to bring suit on behalf of the partnership, and ULLCA has a comparable formulation. See ULLCA § 1101. As in other instances, the word "authority" is confusing. Does it mean the right, the power, either, or both? In any event, the phrase "with authority" seems superfluous. A limited partner makes demand on the general partners collectively. If the partnership agreement allocates the decision on the demand to fewer than all of the general partners, that allocation affects the way in which the general partners process a demand, not the way in which the limited partner addresses the demand.

450 Changes to this section are either necessary to conform to the proposed revisions to Section 1001 or purely stylistic. Neither RULPA nor this draft (nor ULLCA) expressly require a derivative plaintiff to be a proper representative of other owners.

451 This change merely makes explicit a qualification that follows from the previous section. Both currently in RULPA and in this draft, Section 1001 refers only to derivative actions by limited partners. Note that a person who is both a limited partner and a general partner will satisfy this requirement. See Section 404 (stating that a person who is both a general and a limited partner has the rights pertaining to each status).

452 Here the more expansive category of "partner" is appropriate, because a derivative suit may be brought by person who was a general partner when the underlying events occurred and a limited partner when the suit is brought. The change in status could occur under a provision of the partnership agreement. For example, the partnership agreement might provide that, in specified circumstances, a dissociated general partner becomes a limited partner rather than a mere transferee.

453 There are two reasons for this change: to eliminate the "his [or her]" formulation and to exclude the narrowing connotation associated with "transaction." As to the latter, for example, inaction can give rise to a derivative claim.

454 Changes to this section are either necessary to conform to the proposed revisions to Section 1001 or purely stylistic.

455 The phrase "PROCEEDS AND" is new in the caption, but that subject matter has been part of this section since RULPA was first promulgated.

456 This Section is restated to improve style and to make explicit propositions that are implied in the current language.

457 "Compromise" and "settlement" seem to refer to the same category of events. If so, the next draft will delete one or the other.

458 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."

The provision makes sense but clearly does not belong in Article 10. Once the Committee has decided the RULPA "look and feel" question, the next draft will insert RUPA § 405(a) in an appropriate location.

459 Derived from RUPA § 405(b).

460 RUPA 405(b) does not include the word "direct."

461 RUPA § 405(b)(2) includes a non-exhaustive lists of those rights. The Comment does not explain why some rights warrant special mention.

462 For Comment -- 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.

463Source: RUPA § 405(c).

464This definition will allow limited partnerships to merge with organizations formed under the laws of other nations.

465This definition does not encompass an owner's personal liability for approving or receiving improper distributions from the organization because that liability is not liability for an organization's debts and other obligations." (Emphasis added.)

466Derived from RUPA § 905 and ULLCA § 904.

467If another entity's governing law is silent on mergers with limited partnerships, this sentence purports to authorize the other entity's participation in the merger. This approach is certainly effective if the limited partnership acting under this Act and the other entity are both creatures of the same state. The approach is arguably problematic, however, if the other entity is a creature of another state. Even if that other state's law does not prohibit the merger, by what power does one

state authorize another state's entity to participate in a merger? Nonetheless, a number of LLC statutes have taken this approach.

468 What protection exists for holders of such "bare" interests? They have no right to vote and no right to seek appraisal. Contrast the situation for partners who lack enough votes to block a merger. Suppose, for example, that: (i) a limited partnership has two classes of limited partner interests, (ii) the partnership agreement allows a merger to occur if a majority of all interests, voting in the aggregate, concur, and (iii) a merger is proposed and approved with provisions that significantly prejudice one of the classes. At least the owners of interests of the disadvantaged class can claim breach of the duty of good faith and fair dealing. Transferees do not even have that recourse. One possible solution -- extend the obligation of good faith and fair dealing to transferees, but only in the context of a merger.

469 The partnership agreement can vary this default rule. Query: should the Act provide that the vote or consent necessary to approve a merger must be no less than the vote necessary to amend the partnership agreement? Otherwise, a craftily or clumsily drafted agreement might allow circumvention of the agreement's amendment provision.

470 This provision is nonwaivable, giving a partner veto rights over any merger that would increase the partner's exposure to owner vicarious liability. The provision does not protect a limited partner who desires to have the general partners remain personally liable for the debts of the entity. That desire is not nearly so fundamental as a person's own exposure to owner vicarious liability and can be adequately addressed by the limited partner insisting on appropriate protections in the partnership agreement.

471 N.b. -- this general principle triggers the nonwaivable veto right for each particular partner

only to the extent the weaker shield affects that particular partner. For example, if a Re-RULPA limited partnership merges into a RULPA limited partnership, this clause will not trigger a veto right for the Re-RULPA limited partnership's general partners. Their shield is not degraded, although the shield for the Re-RULPA limited partners would be.

472The increased susceptibility described in this paragraph could happen in two ways: (1) The surviving organization could have a lesser shield than the limited partnership (e.g., a limited partnership merging into a general partnership, an LLLP merging into an ordinary limited partnership, a Re-RULPA limited partnership merging into a RULPA limited partnership [the Re-RULPA shield is more protective for limited partners]). (2) The merger might cause a partner to change to an ownership capacity with a lesser shield (e.g., a limited partner becoming a general partner).

473Derived from ULLCA § 905.

474ULLCA § 905(4) refers to "the name and address of the surviving limited liability company." RMBCA § 11.03 does not require any address for the surviving corporation.

475 Neither RUPA nor ULLCA requires the articles of merger to include the plan of merger. See RUPA §§ 905(e)(2) (providing merely that a merger does not take effect until "the filing of all documents required by law to be filed as a condition to the effectiveness of the merger" but not requiring the filing of the plan) and 907 (providing for the optional filing of a statement of merger and not requiring that statement to contain the plan of merger) and ULLCA § 905(a) (listing the required contents of the articles of merger and omitting any reference to the contents of the plan of merger). In contrast, RMBCA § 11.05(a)(1) does require the articles of merger to include the of plan of merger.

476This Act would mandate the approval process either if the constituent organization is a

limited partnership formed under this Act or if the organization's own governing statute provides no approval process. See Section 1102(d)(2) (providing in the latter circumstances for approval by unanimous consent of the owners)

477The effective date may simply be the date upon which Section 1104(a)(1) is satisfied.

478Derived from RUPA §§ 905(e) and 906 and ULLCA § 906.

479Under this provision the merger is not effective as to a Re-RULPA limited partnership until the merger is effective as to each constituent organization. The provision aims principally at filing requirements imposed by other governing statutes.

480ULLCA has this exception, but applies it only to transfer of rights. ULLCA § 906(a)(5). If the exception makes sense, it should apply equally to property. Indeed, property ownership is often viewed as comprising a bundle of rights. In contrast, RMBCA § 11.06 makes no reference to the transfer of non-property rights and states no exception for the property transfer.

481For Comment -- This provision encompasses any obligations created by appraisal rights that may be contained in a constituent organization's governing statute.

482RMBCA § 11.06(a)(4), RUPA § 906(a)(4), and ULLCA 906(a)(4) all have this disjunctive provision, but none explain who makes the choice between the two options.

483The reference to "interests" rather than "ownership interests" is purposeful. The merger might involve conversion of bare transferable interests.

484This subsection may seem unnecessary, because no one can have the power to bind a nonexistent organization. However, a contrary argument is possible under Section 1103(b)(3). That section, derived from ULLCA § 906(a)(3), provides that "all obligations of each constituent organization become the obligations of the surviving organization." It could be argued that:

- where a constituent organization's governing statute provides for a former owner's

lingering power to bind, and

- where the merger statute makes the surviving organization liable for the debts of the non-surviving organization, then
- the lingering power to bind should bind the surviving organization.

This subsection negates and precludes that argument.

485The contrary agreement could occur in the partnership agreement or in the plan of merger.

486Since the merger is not an event of dissolution, there is no obligation to marshal assets, pay off creditors, settle accounts among partners, or deliver to the Secretary of State a declaration of termination. Presumably the Secretary of State's records will connect the articles of merger with the limited partnership's certificate of limited partnership.

487This subsection will be re-worked in conjunction with the revisions to Article 9.

488For Comment -- A foreign surviving organization will be the successor in interest to a domestic limited partnership (which of course is authorized to do business in the State) and perhaps to other organizations authorized to do business in the State. The foreign surviving organization does not succeed to that authorization but must instead comply with the applicable state statute granting authority to transact business.