

First Draft of

Proposed Revisions to the

Revised Uniform Limited Partnership Act

("RE-RULPA")

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Prefatory Note to the Drafting Committee and its Advisors

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, many of the endnotes trace language in this draft 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 any substantive change. The phrase "Derived from" indicates that this draft began with borrowed language but changed that language in some substantive way.

Other endnotes explain the Reporter's rationale for taking a particular position. In that respect, endnote 192 is especially important. It explains the novel concept of general partner "discharge." A few endnotes pose queries, in order to bring issues to the Committee's attention.

Consistent with the Drafting Committee's instructions, this draft delinks RULPA from the general partnership act while seeking to preserve as much as possible RULPA's basic organization, language and "look and feel." Delinking has required the inclusion of many new sections, but it seemed important for initial 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 200, Section 401A).

The temporary numbering scheme points up a more fundamental issue. In the Reporter's opinion, it is impossible to have a fully consistent paradigm of organization while adding significant new provisions and striving to retain the overall organizational structure of the current Act. Moreover, as RUPA and ULLCA gain wider acceptance there may be value in structuring "Re-RULPA" to "look and feel" more like those Acts.

1 ARTICLE 1

2 GENERAL PROVISIONS

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

5 (1) "Bare transferable interest" means a transferable interest whose original
6 owner is no longer a partner. [alternate language: "owner is dissociated"]¹

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

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

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

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

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

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

19 (6) "Distribution" means a transfer of money or other property from a partnership
20 to a partner in the partner's capacity as a partner [alternative language: to a partner on
21 account of the partner's transferable interest] or to a transferee.⁵

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

~~(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.~~⁷

~~(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 have⁸ as partners one or more general partners and one or more limited partners.

~~(59)~~ "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 401.⁹

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

~~(611)~~ "Limited partner" means a person who has been admitted to a limited partnership as a limited partner ~~in accordance with the partnership agreement~~ as provided in Section 401.¹¹

~~(712)~~ "Limited partnership" and "domestic limited partnership" mean a ~~partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners~~ an entity formed under this [Act] and includes both ordinary limited partnerships and limited liability limited partnerships.¹²

~~(13)~~ "Ordinary limited partnership" means a limited partnership that is not a limited liability limited partnership.

~~(814)~~ "Partner" means a limited or general partner.

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

~~(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.~~¹³

~~(1116) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.~~

an individual, corporation, business trust, estate, trust, general partnership, limited partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity, regardless of the jurisdiction under whose laws the entity is incorporated, organized, formed, or achieves its fundamental organizational status.¹⁴

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

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

(19) "Sign" means to identify a record by means of a signature, mark, or other symbol, with intent to authenticate the record.¹⁷

~~(1220) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico~~ a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.¹⁸

(21) "Transferable interest" means a partner's share of the profits and losses of the

1 limited partnership and the partner's right to receive distributions.¹⁹

2 (22) "Transferee" means a person who owns any part of the transferable interest of
3 a partner or former [alternative language: dissociated] partner.

4 **SECTION 101A.**²⁰ **KNOWLEDGE AND NOTICE.**²¹

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

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

7 (1) knows of it;

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

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

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

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

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

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

18 (e) Except as otherwise provided in subsection (f), an entity²² knows, has notice,
19 or receives a notification of a fact for purposes of a particular transaction when the individual
20 conducting the transaction for the entity²³ knows, has notice, or receives a notification of the fact,

1 or in any event when the fact would have been brought to the individual's attention if the entity
2 had exercised reasonable diligence. An entity exercises reasonable diligence if it maintains
3 reasonable routines for communicating significant information to the individual conducting the
4 transaction for the entity²⁴ and there is reasonable compliance with the routines. Reasonable
5 diligence does not require an individual acting for the entity to communicate information unless
6 the communication is part of the individual's regular duties or the individual has reason to know
7 of the transaction and that the transaction would be materially affected by the information.

8 _____ (f) A general²⁵ partner's knowledge, notice, or receipt of a notification of a fact
9 relating to the limited partnership is effective immediately as knowledge by, notice to, or receipt
10 of a notification by the limited partnership, except in the case of a fraud on the limited
11 partnership committed by or with the consent of that general partner.

12 **SECTION 101B. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE**
13 **PROVISIONS.**²⁶

14 _____ (a) Except as otherwise provided in subsection (c) and Section 208(e),²⁷ the
15 partnership agreement governs relations among the partners and between the partners and the
16 partnership.²⁸ To the extent the partnership agreement does not otherwise provide, this [Act]
17 governs relations among the partners and between the partners and the partnership.²⁹

18 ³⁰(b) The partnership agreement may be oral, written, implied from the conduct of
19 the partners and the partnership or any combination. A written partnership agreement may
20 exclude [alternate language: preclude] oral agreements and may specify the extent, if any, that

1 the conduct of the partners and the partnership are to be considered in determining and
2 interpreting the partnership agreement. Unless otherwise stated in a written partnership
3 agreement, amending the partnership agreement requires the consent of all partners. A
4 partnership agreement may be made before the formation of a limited partnership to take effect
5 upon formation, if the agreement provides that it is effective on the formation of the limited
6 partnership and is signed, before formation, by all persons who will be partners at the moment of
7 formation.

8 _____ (c) The partnership agreement may not:

9 _____ (1) **[reserved]**³¹

10 _____ (2) restrict the right of access to information under Sections 305 and 403E,
11 except as expressly permitted in those sections;³²

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

13 _____ (i) a provision of the partnership agreement may, if not unconscionable,³³
14 identify specific types or categories of activities that do not violate the duty of loyalty, delimit
15 the issues to be considered in determining whether a breach of the duty of loyalty has occurred³⁴
16 and prescribe the applicable burden of proof;³⁵ and³⁶

17 _____ (ii) all of the partners or a number or percentage specified in the
18 partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific
19 act or transaction that otherwise would violate the duty of loyalty;³⁷

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

21 _____ (5) eliminate the obligation of good faith and fair dealing under Sections
22 302A(c) and 403D(e), 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,³⁸ if the standards are not unconscionable;³⁹

(6) vary the power of a general partner to cause its own discharge, except to require the notice under Section 401A(1) to be in writing;⁴⁰

(7) vary the right of a court to discharge a general partner under Section 401A(4);

(8) restrict the causes of dissociation stated in Section 800 except by [TBD];

(9) vary the right of a court to dissociate a partner in the events specified in Section 800(4);⁴¹

(10) vary the requirement to wind up the partnership business as stated in Section 803;⁴²

(9) restrict rights of a third party under this [Act], except to the extent that the third party's rights derive from the rights of a partner or former partner.⁴³

SECTION 101C. SUPPLEMENTAL PRINCIPLES OF LAW.⁴⁴

(a) Unless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act], but⁴⁵ those principles may not be used evade the plain meaning of⁴⁶ a partnership agreement or to allow a partner to escape the reasonably foreseeable consequences of⁴⁷ a partnership agreement.

⁴⁸(b) The law governing general partnerships must not be assumed to be relevant in interpreting this [Act], but a court may use that law by way of analogy if:

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

1 comparable provision exists under the law of general partnerships; and

2 (2) the fundamental differences between a general and limited partnership
3 are immaterial to the matter.

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

6 **SECTION 101D. LAW GOVERNING INTERNAL RELATIONS AND**
7 **LIABILITY OF PARTNERS TO THIRD PARTIES.**⁴⁹

8 (a) The law of this State governs relations among the partners and between the
9 partners and the partnership.⁵⁰

10 (b) The law of this State determines whether a partner is liable merely on account
11 of the partner's status as a partner for the partnership's debts and other obligations
12 or under other rule of law or equity making owner status an essential element for establishing
13 that personal liability.⁵¹

14 **SECTION 102. NAME.**⁵²

15 (a) The name of a limited partnership must contain "limited partnership" or the
16 abbreviation "L.P." or "LP". The name of a limited liability limited partnership must end with
17 "limited liability limited partnership" or "LLLP" or "L.L.L.P.". "Limited" may be abbreviated as
18 "Ltd." "Partnership" may be abbreviated as "Pshp.". "Liability" may be abbreviated as "Liab."⁵³

1 (b) The name of a limited liability limited partnership may not include the name
2 of a partner unless the limited liability limited partnership previously carried on business as an
3 ordinary limited partnership and the name of that ordinary limited partnership lawfully included
4 that partner's name.

5 (c) The name of an ordinary limited partnership may not include the name of a
6 limited partner unless:

7 (1) that limited partner's name is also the name of a general partner, or

8 (2) before the admission of that limited partner that limited partnership
9 carried on business under a name that lawfully included the same words and symbols that
10 comprise the limited partner's name.⁵⁴

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

13 (1) the name of any domestic entity and of any foreign entity authorized to
14 transact business in this State; and

15 (2) any name reserved or registered pursuant to Section 103, Section
16 **[reserved for section in Article 9 re: foreign limited partnerships]**, or [insert citations to other
17 State laws allowing the reservation or registration of business names].⁵⁵

18 (e) A limited partnership may apply to the [Secretary of State] for authorization
19 to use a name that is not distinguishable upon the records of the [Secretary of State] from one or
20 more of the names described in subsection (b). The [Secretary of State] shall authorize use of the
21 name applied for if, as to each conflicting name:

22 (1) the present user, registrant, or owner of the conflicting name consents to

1 the use in a signed record and submits an undertaking in form satisfactory to the [Secretary of
2 State] to change the conflicting name to a name that is distinguishable upon the records of the
3 [Secretary of State] from the name applied for and from the all of the names described in
4 subsection (b);⁵⁶ or
5 _____ (2) the applicant delivers to the [Secretary of State] a certified copy of the
6 final judgment of a court of competent jurisdiction establishing the applicant's right to use in this
7 State the name applied for.⁵⁷
8 _____ (f) A limited partnership may use a name, including a fictitious name, shown
9 upon the records of the [Secretary of State] as being used by, registered to or owned by another
10 entity⁵⁸ if the limited partnership proposing to use the name has:⁵⁹
11 _____ (1) merged with the other entity;
12 _____ (2) been formed by reorganization with the other entity;
13 _____ (3) been converted from the other entity;⁶⁰ or
14 _____ (4) acquired substantially all of the assets, including the name, of the other
15 entity.
16

17 **SECTION 103. RESERVATION OF NAME.**

18 (a) The exclusive right to the use of a name may be reserved by:
19 (1) any person intending to organize a limited partnership under this [Act]
20 and to adopt that name;
21 (2) any domestic limited partnership or any foreign limited partnership
22 registered in this State which, in either case, intends to adopt that name;

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

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

5 (b) The reservation shall be made by filing with the [Secretary of State] an
6 application, executed by the applicant, to reserve a specified name. If the [Secretary of State]
7 finds that the name is available for use by a domestic or foreign limited partnership, ~~he [or she]~~
8 the [Secretary of State] shall reserve the name for the exclusive use of the applicant for a period
9 of 120 days. Once having so reserved a name, the same applicant may not again reserve the
10 same name until more than 60 days after the expiration of the last 120-day period for which that
11 applicant reserved that name. The right to the exclusive use of a reserved name may be
12 transferred to any other person by filing in the office of the Secretary of State a notice of the
13 transfer, executed by the applicant for whom the name was reserved and specifying the name and
14 address of the ~~transferee~~ person to whom the transfer was made.⁶¹

15 ⁶²

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

17 (a) A limited partnership may be formed and exist without doing business in this
18 State.⁶³

19 (b) Each limited partnership shall continuously maintain in this State:
20 (1) an office, which may but need not be a place of its business in this State, at

1 which shall be kept the limited partnership's required records⁶⁴ ~~required by Section 105 to be~~
2 ~~maintained; and~~

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

6 _____
7 **SECTION 104A. APPOINTED AGENT FOR SERVICE OF PROCESS.**⁶⁵

8 _____ (a) A limited partnership and a foreign limited partnership authorized to do
9 business in this State⁶⁶ shall appoint and continuously maintain an agent for service of process on
10 the limited partnership or foreign limited partnership. An appointed agent for service of process
11 must be an individual resident of this State, a domestic entity or a foreign entity authorized to do
12 business in this State.⁶⁷ An appointed agent that is an entity must continuously maintain an
13 office in this State.

14 _____ (b) A limited partnership appoints an agent for service of process by designating
15 the agent in the certificate of limited partnership and has the power to change the appointment at
16 any time by amending the certificate.⁶⁸ A foreign limited partnership appoints an agent for
17 service of process of process by designating the agent in the foreign limited partnership's
18 application for registration delivered to the [Secretary of State] pursuant to Section **[reserved for**
19 **reference to section in Article 9]**⁶⁹ and has the power to change the appointment at any time by
20 making a correction pursuant to Section **[reserved for reference to section in Article 9]**.

21 _____ (c) An appointed agent for service of process is an agent of the appointing limited
22 partnership or foreign limited partnership for service of any process, notice, or demand required

1 or permitted by law to be served on that limited partnership or foreign limited partnership.

2 (d) Version #1 -- If an appointed agent for service of process delivers to the
3 [Secretary of State]⁷⁰ a signed record resigning as agent, the [Secretary of State] shall file the
4 record and send a copy showing the date of filing to the most current address shown in the
5 records of the [Secretary of State] for the limited partnership or foreign limited partnership that
6 had appointed the agent. Thirty days after the [Secretary of State] files the record of resignation,
7 the appointment ends.⁷¹

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

14 **[subsection (d) continued -- for both versions]** The power of an agent for service of process to
15 resign pursuant to this Section does not affect rights that may exist under a contract between the
16 agent and the domestic or foreign limited partnership for which the agent served as agent.

17 **SECTION 104B. SUBSTITUTED SERVICE OF PROCESS.**

18 (a) If a limited partnership or foreign limited partnership fails to appoint or
19 maintain an agent for service of process in this State or the agent for service of process cannot
20 with reasonable diligence be found,⁷² the [Secretary of State] is an agent of the limited
21 partnership or foreign limited partnership upon whom process, notice, or demand may be served.

1 To serve process, notice or demand under this subsection, a person must deliver to the [Secretary
2 of State] duplicate copies of the process, notice, or demand. The [Secretary of State] shall
3 forward one of the copies by certified mail, return receipt requested, to the most current address
4 shown in the records of the [Secretary of State] for the limited partnership or foreign limited
5 partnership that is the addressee of the process, notice or demand.

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

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

9 (2) the delivery date shown on the return receipt, if the receipt was signed on
10 behalf of the limited partnership or foreign limited partnership;⁷³

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

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

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

18 **SECTION 105. REQUIRED RECORDS ~~TO BE KEPT~~.**⁷⁴

19 (a) Each limited partnership shall keep at the office referred to in Section 104(~~to~~)
20 the following:

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

4 (2) a copy of the certificate of limited partnership and all ~~certificates of~~
5 ~~amendments thereto~~ to the certificate⁷⁵, together with executed copies of any powers of attorney
6 pursuant to which any certificate or amendment has been executed;

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

9 (4) copies in chronological order of any written partnership agreements in
10 effect during the existence of the limited partnership and any amendments to any of those
11 agreements;

12 (5) copies and of any financial statements of the limited partnership for the
13 three most recent years and of any information furnished during the past three years pursuant to
14 Section 305(b);⁷⁶

15 (6) a statement of each partner's account as partner, maintained according to
16 generally accepted accounting principles;⁷⁷

17 (7) a history of all distributions made by the partnership, stating for each
18 distribution made the aggregate amount distributed, the date on which the limited partnership
19 decided to make the distribution and the date on which the distribution was made, and in the case
20 of an in-kind distribution permitted by subsection 605(c) the nature of the fungible property to be
21 distributed;⁷⁸

22 (8) a listing of every transaction between the limited partnership and a

1 general partner or affiliate,⁷⁹ including a brief description of the transaction, the goods or services
2 provided by or to the general partner or affiliate, the date or dates of the transaction and the
3 consideration received by the general partner or affiliate;⁸⁰

4 (9) a copy of all written and electronic communications made within the past
5 three years by the limited partnership or any general partner to the limited partners generally;⁸¹

6 (10) a copy of all written consents given within the past three years pursuant
7 to any of the following sections: [TBD]⁸² and

8 (511) unless contained in a written partnership agreement, a writing setting
9 out:

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

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

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

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

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

1 **SECTION 106. NATURE OF BUSINESS AND POWERS.**⁸³

2 (a) A limited partnership may be formed for and carry on any business
3 **[alternative language: lawful enterprise? lawful purpose? lawful activity?]**⁸⁴ ~~that a~~
4 ~~partnership without limited partners may carry on~~
5 Version #1 -- except [here designate prohibited activities].⁸⁵
6 version #2: but a limited partnership may engage in business [conduct? enterprises? activities]
7 regulated by another statute of this State only to the extent that statute permits and subject to all
8 that other statute's requirements and limitations.⁸⁶

9 (b) Version #1 -- Except as stated in subsection (b), a limited partnership has all
10 the powers of a corporation incorporated under the laws of this State.⁸⁷

11 Version #2⁸⁸ -- Except as provided in subsection (c), a limited partnership has
12 the same powers as an individual to do all things necessary or convenient to carry on its business
13 or affairs, including power to:

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

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

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

20 (4) purchase, receive, subscribe for, or otherwise acquire, own, hold, vote,
21 use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with,
22 ownership interests in⁸⁹ or obligations of any other entity;

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

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

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

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

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

13 (10) pay pensions and establish pension plans, pension trusts, profit sharing
14 plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or
15 former general⁹⁰ partners, officers, employees, and agents;

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

18 (12) make payments or donations, or do any other act, not inconsistent with
19 law, that furthers the business [if "**business**" restriction eliminated; substitute "**affairs**" or
20 **"activities"**] of the limited partnership; and

21 (13) transact any lawful business that will aid governmental policy.⁹¹

22 (c) The certificate of limited partnership or a written partnership agreement⁹² may

1 limit the powers of a limited partnership, except that neither may affect the power of a limited
2 partnership to sue, be sued and defend in its own name.⁹³ Sections 101B(a), 208 and 403A
3 govern the effect of a limitation made pursuant to this subsection.⁹⁴ A limitation of a limited
4 partnership's powers is not for the purposes of Section 208(b) a statement limiting the authority
5 of a general partner to transfer real property.

6
7 **SECTION 107. BUSINESS TRANSACTIONS OF PARTNER WITH**
8 **PARTNERSHIP.**⁹⁵ Except as provided in the partnership agreement, a partner may lend money
9 to and transact other business with the limited partnership and, subject to other applicable law,
10 has the same rights and obligations with respect thereto as a person who is not a partner.

11 **ARTICLE 2**

12 **FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP**

13 **SECTION 200.**⁹⁶ **LIMITED PARTNERSHIP AS ENTITY.**

- 14 (a) A limited partnership is an entity distinct from its partners.⁹⁷
- 15 (b) A limited partnership must sue and be sued in its own name. A partner is not
16 a proper party to a proceeding by or against a limited partnership except when:
- 17 (1) the object of the proceeding is to determine or enforce a partner's right
18 against or liability to the limited partnership;
- 19 (2) the proceeding also involves a claim of personal liability of the partner
20 and the claim has some basis other than the partner's status as a partner or asserts that the partner

1 is personally liable under Section 403C;⁹⁸ or

2 _____ (3) the partner is a limited partner⁹⁹ and is bringing a derivative action

3 pursuant to Article 10.

4 **SECTION 201. CERTIFICATE OF LIMITED PARTNERSHIP.¹⁰⁰**

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

7 (1) the name of the limited partnership;

8
9 (2) the address of the office required to be maintained by Section 104 and the
10 name and address of the agent for service of process required to be maintained by Section 104A

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

12
13 (4) the term of the limited partnership, which is the latest date upon which the
14 limited partnership is to dissolve;¹⁰¹ and

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

16 (b) A certificate of limited partnership may contain a statement regarding the
17 authority of some or all of the general partners to execute an instrument transferring real property
18 held in the name of the partnership and that statement may grant authority to or limit the
19 authority of any general partner.¹⁰²

20 (c) A certificate of limited partnership may also contain any other information the

1 general partners decide to include,¹⁰³ except that a certificate may not vary the nonwaivable
2 provisions listed in Section 101B(c).¹⁰⁴

3 ~~(5) any other matters the general partners determine to include therein.~~

4 (b) A limited partnership is formed at the time of the filing of the certificate of
5 limited partnership in the office of the Secretary of State or at any later time specified in the
6 certificate of limited partnership if, in either case, there has been substantial compliance with the
7 requirements of this section.

10 SECTION 202. AMENDMENT TO CERTIFICATE.

11 (a) A certificate of limited partnership is amended by filing an certificate of¹⁰⁵
12 amendment thereto in the office of the Secretary of State. The certificate shall set forth:

- 13 (1) the name of the limited partnership;
14 (2) the date of filing the certificate amendment; and
15 (3) the amendment ~~to the certificate~~.

16 (b) Within 30 days after the happening of any of the following events, an
17 amendment to a certificate of limited partnership reflecting the occurrence of the event or events
18 shall be filed:¹⁰⁶

- 19 (1) the admission of a new general partner;
20 (2) the ~~withdrawal~~ discharge¹⁰⁷ of a general partner; or
21 (3) ~~the continuation of the business under Section 801 after an event of~~
22 withdrawal of a general partner the dissolution of the limited partnership.¹⁰⁸

1 (c) A general partner who becomes aware that any statement in a certificate of
2 limited partnership was false when made or that any arrangements or other facts described have
3 changed, making the certificate inaccurate in any respect, shall¹⁰⁹ promptly ~~amend~~ cause the
4 certificate to be amended.¹¹⁰

5 (d) A certificate of limited partnership may be amended at any time for any other
6 proper purpose the general partners determine.¹¹¹

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

10 (f) A restated certificate of limited partnership may be ~~executed and~~¹¹² filed in the
11 same manner as an certificate of amendment.

12
13 ¹¹³**SECTION 203. CANCELLATION OF CERTIFICATE DECLARATION OF**
14 **TERMINATION.** ~~A certificate of limited partnership shall be cancelled upon the dissolution~~
15 ~~and the commencement of winding up of the partnership or at any other time there are no limited~~
16 ~~partners. A certificate of cancellation shall be filed~~ Promptly after winding up its affairs
17 pursuant to Section 803, a dissolved limited partnership shall file in the office of the Secretary of
18 State a declaration of termination that includes; and set forth:

- 19 (1) the name of the limited partnership;
20 (2) the date of filing of its original¹¹⁴ certificate of limited partnership;
21 (3) the ~~reason for filing the certificate of cancellation~~ date the limited partnership
22 dissolved and the event that caused the dissolution;

1 (4) a statement that the limited partnership's business has been fully wound up;
2 and
3 (4 5) the effective date (which shall be a date certain) of ~~cancellation~~ termination
4 if it the declaration is not to be effective upon ~~the filing of the certificate;~~¹¹⁵ and
5 _____ (5) any other information the general partners filing the certificate determine.
6

7 **SECTION 204. EXECUTION OF ~~CERTIFICATES~~ DOCUMENTS.**

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

11 (1) an original certificate of limited partnership must be signed by all general
12 partners;

13 (2) an amendment causing a limited partnership to become or cease to be a
14 limited liability limited partnership must be signed by all general partners;¹¹⁶

15 _____ (3) an amendment designating as general partner a person appointed pursuant
16 to Section 803(b) following the discharge of a limited partnership's last general partner must be
17 signed by that person;

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

21 (25) a certificate of any other amendment must be signed by at least one

1 general partner and by each other ~~general partner person~~¹¹⁷ designated in the certificate as a new
2 general partner;¹¹⁸ ~~and~~

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

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

11 (b) Any person may sign a certificate, amendment or declaration by an attorney-
12 in-fact, but a person who gives a power of attorney to sign a certificate or amendment relating to
13 ~~the admission of~~ that causes that person to be newly designated as a general partner must in the
14 power of attorney specifically describe the admission state that the attorney-in-fact is authorized
15 to sign a certificate or amendment designating the person as a general partner in the limited
16 partnership.¹¹⁹

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

20
21 **SECTION 205. EXECUTION BY JUDICIAL ACT.** If a person required by

1 ~~Section 204~~ [this Act]¹²⁰ to execute any certificate, amendment or declaration fails or refuses to
2 do so, any other person who is adversely affected by the failure or refusal may petition the
3 [designate the appropriate court] to direct the execution of the ~~certificate~~ document. If the court
4 finds that it is proper for the ~~certificate~~ document to be executed and that any person so
5 designated has failed or refused to execute the ~~certificate~~ document, it shall order the Secretary of
6 State to record an appropriate certificate, amendment or declaration.

7
8 **SECTION 206. FILING IN OFFICE OF SECRETARY OF STATE.**

9 (a) Two signed ~~copies~~ duplicate originals¹²¹ of the certificate of limited
10 partnership and of any ~~certificates of amendment, restated certificate or cancellation~~ declaration
11 of termination (or of any judicial decree of amendment or ~~cancellation~~ declaration) shall be
12 delivered to the [Secretary of State]. A person who executes a certificate, amendment or
13 declaration as an agent or fiduciary need not exhibit evidence of ~~his~~ his or her
14 authority as a prerequisite to filing. Unless the [Secretary of State] finds that ~~any certificate a~~
15 document delivered pursuant to this section does not conform to law, upon receipt of all filing
16 fees required by law ~~he~~ he or she the [Secretary of State] shall:

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

19 (2) file one duplicate original in ~~his~~ his or her office the [Secretary of State's
20 office]; and

21 (3) return the other duplicate original to the person who filed it or ~~his~~ his or her

1 that person's representative.

2 (b) Upon the filing of ~~a certificate of an~~ amendment (or judicial decree of
3 amendment) in the office of the [Secretary of State], the certificate of limited partnership shall be
4 amended as ~~set forth therein~~ stated in the amendment, and upon the effective date of a ~~certificate~~
5 ~~of cancellation~~ declaration of termination (or a judicial ~~decree thereof~~ declaration), the ~~certificate~~
6 existence of the limited partnership is ~~cancelled~~ terminated. Termination of a limited
7 partnership's existence does not affect the application of Sections 803B, 803C and 803D
8 (providing for the barring of claims).¹²²

9
10 **SECTION 207. LIABILITY FOR FALSE STATEMENT IN CERTIFICATE.** If
11 any certificate of limited partnership, ~~or certificate of amendment or cancellation~~ declaration of
12 termination contains a false statement, one who suffers loss by reliance on the statement may
13 recover damages for the loss from:

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

17 (2) any general partner who thereafter knows or should have known that any
18 arrangement or other fact described in the certificate of limited partnership¹²³ has changed,
19 making the statement inaccurate in any respect within a sufficient time before the statement was
20 relied upon reasonably to have enabled that general partner to ~~cancel or~~ amend the certificate or
21 file a declaration of termination, or to file a petition ~~for its cancellation or an~~ amendment or
22 declaration under Section 205.¹²⁴

1

2 **SECTION 208. SCOPE OF NOTICE EFFECT OF INFORMATION**

3 **CONTAINED IN CERTIFICATE OF LIMITED PARTNERSHIP.**¹²⁵ ~~The fact that a~~

4 ~~certificate of limited partnership is on file in the office of the Secretary of State is notice that the~~

5 ~~partnership is a limited partnership¹²⁶ and the persons designated therein as general partners are~~

6 ~~general partners,¹²⁷ but it is not notice of any other fact.~~

7 (a) Subject to Section 803A(b) regarding an amendment indicating dissolution, if

8 the certificate of limited partnership contains a statement granting authority to a general partner

9 to execute an instrument transferring real property held in the name of the partnership, that

10 statement is conclusive in favor of a person¹²⁸ who gives value without knowledge to the

11 contrary.¹²⁹

12 (b) If the certificate of limited partnership contains a statement limiting the

13 authority of a general partner to execute an instrument transferring real property held in the name

14 of the partnership, a person not a partner is deemed to know of the limitation.¹³⁰

15 (c) A certificate of limited partnership's designation of a person as a general

16 partner [alternative language: If a certificate of limited partnership designates a person as a

17 general partner, that designation] is conclusive in favor of a person who gives value without

18 knowledge to the contrary.¹³¹ A person not a partner is deemed to know that the persons

19 designated as general partners in the certificate of limited partnership are a limited partnership's

20 only general partners.¹³²

21 (d) Version #1 -- Any other information contained in the certificate of limited

1 partnership is conclusive in favor of a person who, while not a partner, reasonably and
2 detrimentally relies on that information.¹³³

3 Version #2 -- [Insert the following as subsection (a) and renumber current
4 subsections (a)--(c) accordingly] (a) Except as provided in subsections (b), (c) and (d),
5 information contained in a certificate of limited partnership is conclusive in favor of a person
6 who, while not a partner, reasonably and detrimentally relies on that information.

7 ¹³⁴(e) If any provision of a partnership agreement is inconsistent with the
8 certificate of limited partnership.¹³⁵

9 (1) subsections (a), (b), (c) and (d) operate despite the inconsistency;¹³⁶ and

10 (2) subject to subsection (a), the partnership controls as to partners.¹³⁷

11 **SECTION 209. DELIVERY OF ~~CERTIFICATES~~ DOCUMENTS TO LIMITED**
12 **PARTNERS.** Upon the return by the Secretary of State pursuant to Section 206 of a ~~certificate~~
13 ~~document~~ marked "Filed", the ~~general partners~~ limited partnership¹³⁸ shall promptly deliver or
14 mail a copy of the ~~certificate of limited partnership and each certificate of amendment or~~
15 ~~cancellation document~~ to each limited partner unless the partnership agreement provides
16 ~~otherwise.~~¹³⁹

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18 ¹⁴⁰

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SECTION 301. ADMISSION OF LIMITED PARTNERS.

_____ (1) at the time the limited partnership is formed if the person has before that
time signed a partnership agreement valid under Section 101B(b); or

_____ (2) ~~at any later time specified in the records of the limited partnership for~~
~~becoming a limited partner.~~¹⁴¹

Version #1 (current language) -- (b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

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

(2) in the case of an ~~assignee~~ transferee of a ~~partnership transferable~~ interest of a partner who has the power, as provided in Section 704,¹⁴² to grant the ~~assignee~~ transferee 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.

Version #2 (simplified approach) -- (b) After formation of the limited partnership, a person may become a limited partner as provided in the partnership agreement or with the written consent of all the partners.¹⁴³

1 (c) As soon as a person becomes a limited partner, the limited partnership shall
2 update the required records to reflect the person's admission as a limited partner. If a written
3 partnership agreement and the required records disagree as to whether a person is a limited
4 partner, the partnership agreement controls.¹⁴⁴ **[alternative language: is presumed to control.]**

5 **SECTION 302. ~~VOTING~~ MANAGEMENT RIGHTS AND POWERS OF**
6 **LIMITED PARTNERS.** ~~Subject to Section 303, the partnership agreement may grant to all or a~~
7 ~~specified group of the limited partners the right to vote (on a per capita or other basis) upon any~~
8 ~~matter.~~¹⁴⁵

9 (a) A limited partner has the right:

10 (1) pursuant to Section 101B(b) to give or withhold consent to any
11 amendment to the partnership agreement;

12 (2) pursuant to Section 305 to have access to the required records and other
13 information regarding the limited partnership's business, affairs and financial condition;

14 (3) pursuant to Sections 301(b), 401(a)(ii) and 801(5) to give or withhold
15 consent to the admission of a new partner;¹⁴⁶

16 (4) to give or withhold consent to the limited partnership becoming or ceasing
17 to be a limited liability limited partnership;

18 (5) pursuant to Section 801(3) to give or withhold consent to the dissolution
19 of the limited partnership;

20 (6) pursuant to Section 801(5) to give or withhold consent to avoiding
21 dissolution of the limited partnership following the discharge of a general partner;¹⁴⁷

1 (7) pursuant to Article 10 to bring a derivative action to enforce a right of the
2 limited partnership; and

3 (8) pursuant to Section 1102 to give or withhold consent to a merger.¹⁴⁸

4 (b) Except as stated in subsection (a), a limited partner has as a limited partner no
5 right to participate in the management of the limited partnership and no right to consent to or
6 vote on any matter.¹⁴⁹

7 (c) A limited partner has no right and no power as a limited partner to act for or
8 bind the limited partnership.¹⁵⁰

9 (d) This section does not prevent a limit partner from bring a direct action to
10 enforce rights personal to that limited partner.¹⁵¹ A limited partner may bring a direct action with
11 or without an accounting.¹⁵²

12 **SECTION 302A. LIMITED DUTIES OF LIMITED PARTNERS**

13 (a) Except as stated in subsection (b), a limited partner does not on account of
14 that status¹⁵³ owe any fiduciary duty to the limited partnership or fellow partners.

15 **[three alternative versions of subsection (b) follow]**

16 Version #1 (pro tanto; from ULLCA) -- (b) A limited partner who pursuant to the
17 limited partnership agreement¹⁵⁴ exercises some or all of the rights of a general partner in the
18 management and conduct of the limited partnership's business¹⁵⁵ is held to the standards of
19 conduct for a general partner to the extent that the limited partner exercises the managerial

1 authority vested in a general partner by this [Act].¹⁵⁶

2 Version #2 (pro tanto) (inspired by RMBCA) -- (b) To the extent the partnership
3 agreement vests the discretion or powers of a general partner in a limited partner, that limited
4 partner has the duties of a general partner with respect to the vested discretion or powers.¹⁵⁷

5 Version #3 (substantial involvement threshold) -- (b) If the partnership agreement
6 vests in a limited partner discretion and powers substantially equivalent to the discretion and
7 powers vested in any of the general partners that limited partner has the duties of a general
8 partner with respect to the vested discretion or powers.¹⁵⁸

9 **[two alternative versions of subsection (c) follow; a proposed Comment**
10 **to subsection (c) appears at the end of the Section]**

11 Version #1 (first two sentences from RUPA, essentially verbatim) -- (c) A limited
12 partner shall discharge the duties to the partnership and the other partners under this [Act] or
13 under the partnership agreement and exercise any rights consistently with the obligation of good
14 faith and fair dealing.¹⁵⁹ A limited partner does not violate this obligation merely because the
15 limited partner's conduct furthers the limited partner's own interest.¹⁶⁰ The obligation stated in
16 this subsection displaces any common law or other obligation of good faith and fair dealing.^{161*}

17 Version #2 (slightly different style in the first sentence) -- (c) A limited partner has
18 a duty of good faith and fair dealing in the exercise of any right and the performance of any
19 obligation under [this Act] or a partnership agreement. A limited partner does not violate this
20 duty merely because the limited partner's conduct furthers the limited partner's own interest.¹⁶²
21 The duty stated in this subsection displaces any common law or other duty of good faith and fair
22 dealing.^{163*}

1 (d) This section does not prevent a limited partner from assuming fiduciary or
2 other duties in some capacity other than limited partner.

* Because the concept of good faith and fair dealing is susceptible to many interpretations, the Comment to subsection (c) may be as important as the provision itself. For that reason the Reporter has drafted a proposed Comment for review together with the statutory language.

Draft Comment to Section 302A(c): The duty of good faith and fair dealing recognized by subsection (c) is not a fiduciary duty, does not command altruism or self-abnegation and does not prevent a limited partner from acting in its own self interest. Courts should not use subsection (b) to change ex post facto the parties' allocation of risk and power. To the contrary, subsection (b) 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 untrammelled is a grant of power or discretion, the less plausible is a claim of breach of the duty of good faith and fair dealing.

The partnership agreement may properly 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 subsection (c) 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 duty of good faith and fair dealing shows that

the choice of method itself lacks any genuine, legitimate business purpose.

SECTION 303. LIABILITY TO THIRD PARTIES.

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

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

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

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

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

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

~~—————~~

~~_____ (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;~~

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

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

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

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

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

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

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

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

~~_____ (c) The enumeration in subsection (b) does not mean that the possession or~~

1 ~~exercise of any other powers by a limited partner constitutes participation by him [or her] in the~~
2 ~~business of the limited partnership.~~

3 (a) A limited partner is not liable for a debt, obligation or other liability of the
4 limited partnership solely by reason of being a limited partner, even if [alternative language:
5 regardless of the extent to which] the limited partner participates in the management and
6 control of the limited partnership.¹⁶⁴

7 (b) This section does not prevent a limited partner from being liable as a result of
8 the limited partner's own conduct, to the extent that the same conduct would result in liability for
9 a person who is not a limited partner.¹⁶⁵

10 (d c) A limited partner who knowingly permits his [or her] the partner's name to
11 be used in the name of the limited partnership, except under circumstances permitted by
12 Section 102(2)(b) or (c) or while the limited partnership is a limited liability limited
13 partnership,¹⁶⁶ is liable to creditors who extend credit to the limited partnership without actual
14 knowledge that the limited partner is not a general partner.

15 **SECTION 304. PERSON ERRONEOUSLY BELIEVING HIMSELF [OR**
16 **HERSELF] LIMITED PARTNER.**¹⁶⁷

17 (a) Except as provided in subsection (b), a person who makes a contribution to an
18 investment in¹⁶⁸ a business¹⁶⁹ enterprise and erroneously but in good faith believes that he [or
19 she] has become a limited partner in the enterprise is not a general partner in the enterprise and¹⁷⁰
20 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 to¹⁷¹ 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~~ declaration of¹⁷² withdrawal under this section.¹⁷³

(b) A person who makes ~~a contribution~~ an investment of the kind described in subsection (a) is liable to the same extent¹⁷⁴ as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate ~~certificate~~ declaration is filed to show withdrawal, or (ii) before an appropriate certificate or amendment is filed to show that ~~he [or she]~~ the person is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

(c) If a person makes a good faith and diligent effort to comply with subsection (a)(1) and is unable to cause the appropriate certificate or amendment to be executed and filed, the person has the right to withdraw from the enterprise pursuant to subparagraph (a)(2) even if the person would otherwise be prohibited from withdrawing from the enterprise.¹⁷⁵

SECTION 305.¹⁷⁶ ~~INFORMATION.~~ Each limited partner has the right to:

~~(1) inspect and copy any of the partnership records required to be 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.~~ LIMITED¹⁷⁷ PARTNER'S AND

FORMER LIMITED PARTNER'S RIGHT TO INFORMATION

(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 limited partnership's required records other than a statement of another partner's account as partner. A partner making demand pursuant to this subsection need not demonstrate, state or have any particular purpose for seeking the information.¹⁷⁸

(b) A limited partner may inspect and copy during regular business hours in the limited partnership's in-state office information regarding the limited partnership's business, affairs and financial condition other than the information available under subsection (a), if:

(1) the limited partner seeks the other information in good faith and for a purpose reasonably related to the partner's interest as a limited partner,¹⁷⁹

(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 purpose and can be compiled, created or otherwise obtained by the limited partnership without

1 undue hardship.¹⁸⁰

2 (c) A limited partnership may take a reasonable time in preparing information to
3 provide pursuant to subsection (b). Within 10 days of receiving a demand pursuant to subsection
4 (b), the limited partnership shall in writing the inform the limited partner who made the demand:

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

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

8 (3) if the limited partnership declines to provides any of the information
9 demanded, the limited partnership's reasons for declining.¹⁸¹

10 (d) Whenever [this Act] or a partnership agreement provides for a limited partner
11 to vote on or give or withhold consent to a matter, before the vote is taken or the consent given or
12 withheld the limited partnership shall, without demand, provide the limited partner with all
13 information which the general partners possess or have access to and which is material to the
14 limited partner's decision.¹⁸²

15 (e) A former limited partner¹⁸³ may have access to information as described in
16 subsection (a) to the extent that:

17 (1) the information pertains to the period during which the former partner was
18 a limited partner;

19 (2) the former limited partner seeks the information in good faith and for a
20 purpose reasonably related to the former limited partner's former interest as a limited partner;¹⁸⁴

21 (3) the former limited partner's written demand describes with reasonable
22 particularity the information sought and the purpose for seeking that information; and

(4) the information sought is directly **[reasonably?]** connected to the former
limited partner's purpose.¹⁸⁵

(f) A written partnership agreement may impose reasonable confidentiality requirements on the use of information obtained under this Section. A limited partnership may apply to a court of competent jurisdiction for an order enforcing a confidentiality restriction stated in a written partnership agreement¹⁸⁶ or creating and enforcing confidentiality restrictions not stated in a written partnership agreement but reasonable and necessary under the circumstances to protect the limited partnership from unfair commercial disadvantage or a partner or former partner from an unwarranted disclosure of information relating to that partner.¹⁸⁷ In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.¹⁸⁸ A restriction relating to the use of the names and addresses of the partners is not reasonable.

(g) A limited partnership may charge a limited partner or former limited partner who makes a demand under this section reasonable costs of copying but may not charge for the limited partnership's efforts in compiling, creating or otherwise obtaining the information.

(h) A partner or former partner may exercise the rights stated in this section through an attorney or other agent. In that event, any confidential obligations under subsection (f) apply both to the partner and the attorney or other agent. The rights stated in this section do not apply to a transferee.

ARTICLE 4

GENERAL PARTNERS

1 **SECTION 401. ADMISSION OF ~~ADDITIONAL~~ GENERAL PARTNERS.**

2 (a) A person becomes a general partner:

3 (1) at the time the limited partnership is formed, if the certificate of limited
4 partnership then designates the person as a general partner;¹⁸⁹ or

5 (2) ~~After the filing of a limited partnership's original certificate of limited~~
6 partnership, ~~additional general partners may be admitted as provided in writing in the partnership~~
7 agreement or, if the partnership agreement does not provide in writing for the admission of
8 additional general partners, with ~~when designated a general partner in the certificate of limited~~
9 partnership¹⁹⁰ after any one of the following:

10 (i) compliance with the written provisions of the partnership agreement;

11 (ii) the written consent of all partners¹⁹¹; or

12 (iii) compliance following the discharge of a limited partnership's last general
13 partner with the requirements of Section 801(5).

14 **SECTION 401A. DISCHARGE OF GENERAL PARTNER.¹⁹²** A general partner is
15 discharged and ceases to be a general partner upon the occurrence of any of the following
16 events:¹⁹³

17 (1) the limited partnership's having notice of the general partner's express will to
18 be discharged or on a later date specified by the general partner at or before the time the limited
19 partnership first has notice of the general partner's express will;¹⁹⁴

1 (2) an event agreed to in the partnership agreement as causing the general partner's
2 discharge;¹⁹⁵

3 (3) the general partner's discharge by written consent¹⁹⁶ of the other partners if:

4 (i) it is unlawful to carry on the limited partnership's business with the
5 general partner remaining as general partner;

6 _____
7 (ii) there has been a final, noncontingent transfer of substantially all of the
8 general partner's transferable interest in the limited partnership;¹⁹⁷

9 (4) on application by the partnership,¹⁹⁸ the general partner's discharge by judicial
10 determination because:

11 (i) the general partner engaged in wrongful conduct that adversely and
12 materially affected the partnership business;

13 (ii) the general partner willfully or persistently committed a material breach
14 of the partnership agreement or of a duty owed to the partnership¹⁹⁹ under Section 403D; or

15 (iii) the partner engaged in conduct relating to the partnership business which
16 makes it not reasonably practicable to carry on the business with the general partner remaining as
17 general partner;

18 (5) the general partner's:

19 (i) becoming a debtor in bankruptcy;

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

21 (iii) seeking, consenting to, or acquiescing in the appointment of a trustee,

22 receiver, or liquidator of that general partner or of all or substantially all of that general partner's

1 property; or

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

6 _____ (6) in the case of a partner who is an individual:

7 _____ (i) the partner's death;²⁰⁰

8 _____ (ii) the partner being adjudged by a court of competent jurisdiction to be
9 incompetent to manage the partner's person or property;²⁰¹ or

10 _____ (iii) a judicial determination that the partner has otherwise become incapable
11 of performing the partner's duties under the partnership agreement or this [Act].²⁰²

12 ²⁰³

13 Version #1 -- (7) in the case of a partner that is not an individual, the passage
14 of 90 days after either the termination of that partner as a legal person under the law governing
15 that partner's formation and existence or the suspension under that governing law of that partner's
16 right to conduct business, unless within that 90 days the partner is reinstated as a legal person
17 under that governing law or the suspension ends.

18
19 Version #2 -- (7) in the case of a partner that is not an individual, the
20 termination of that partner as a legal person under the law governing that partner's formation and
21 existence or the suspension under that governing law of that partner's right to conduct business,
22 unless within 90 days after the termination or suspension occurs that partner is reinstated as a

1 legal person under that governing law or the suspension ends.²⁰⁴

2 (8) any other event that causes the general partner to be dissociated.

3 **SECTION 401B. GENERAL PARTNER'S POWER TO BE DISCHARGED;**
4 **WRONGFUL EXERCISE BY THE GENERAL PARTNER**²⁰⁵

5 (a) A general partner has the power cause its own discharge at any time, rightfully
6 or wrongfully, by express will pursuant to Section 401A(1). A general partner's exercise of that
7 power is wrongful if that exercise breaches the partnership agreement, the general partner's duty
8 of loyalty under Section 403D(b) or the obligation of good faith and fair dealing under Section
9 403D(e).

10 (b) A discharged general partner is liable to the limited partnership and to the
11 other partners²⁰⁶ for damages caused by the discharge only if:²⁰⁷

12 (1) the discharged general partner causes the discharge by wrongfully
13 exercising its power pursuant to Section 401A(1),

14 (2) the discharge occurs by judicial determination under Section 401A(4);

15 (3) the discharge occurs because the general partner becomes a debtor in
16 bankruptcy or as otherwise provided in Section 401A(5);²⁰⁸ or

17 (4) the discharge occurs because the general partner willfully terminated its
18 existence, unless the general partner was a trust that terminated as required by its terms as were
19 in existence when the trust became a general partner, an estate or an individual.²⁰⁹

1 **SECTION 401C. EFFECTS OF GENERAL PARTNER'S DISCHARGE**

2 (a) Upon a general partner's discharge:

3 (1) the discharged general partner's general partner interest is converted into a
4 limited partner interest pursuant to Section 401D, unless the general partner is dissociated under
5 Section 800 simultaneously with being discharged;

6 (2) the discharged general partner's right to participate as a general partner in
7 the management and conduct of the limited partnership business terminates and the discharged
8 general partner has no duty of loyalty under Section 403D(b) and no duty of care under Section
9 403D(c) and (d) with regard to matters arising and events occurring after the discharge.

10 (3) any right of the discharged partner to remuneration or other compensation
11 on account of service or status as a general partner ends, but, subject to damages under section
12 401B(b) for wrongful discharge, the discharge does not affect any right to remuneration or other
13 compensation on account of service or status as a general partner before the discharge;

14 (4) the discharged general partner's power to bind the limited partnership is
15 curtailed as stated in Section 401E;

16 (5) the discharged partner's liability for the debts, obligations and other
17 liabilities of the limited partnership is governed by Section 401F;

18 (6) Version #1 (discharge gives partners holding majority of profits interests
19 right and power to cause dissolution)²¹⁰ -- Section 801(5) determines whether the limited
20 partnership dissolves.

21 Version #2 (no threat of dissolution if at least one general partner

1 remains) -- if the discharge causes the limited partnership with the limited partnership to have no
2 remaining general partner, Section 801(5) determines whether the limited partnership dissolves.

3 (b) Upon the discharge of a general partner, the limited partnership shall
4 promptly amend the certificate of limited partnership so that the certificate no longer identifies
5 the discharged general partner as a general partner.²¹¹
6

7 **SECTION 401D. TRANSFORMATION OF THE DISCHARGED GENERAL**
8 **PARTNER'S GENERAL PARTNER INTEREST**

9 (a) Subject to Section 401C(a)(1) and subsections (b) and (c) of this section, the
10 discharge of a general partner automatically transforms the discharged general partner's general
11 partner interest into a limited partner interest having the same transferable interest as the former
12 general partner interest.

13 (b) If the partnership agreement provides that some portion of a general partner's
14 transferable interest is on account of that general partner's status or service as a general partner,
15 that portion is not included the limited partner interest created under subsection (a).

16 (c) If a partnership agreement provides for different classes of limited partner
17 interest, the discharged general partner's limited partner interest is determined by:

18 (1) identifying the class having the fewest rights to participate in
19 management and making the discharged general partner's limited partner interest of that class;
20 and

21 (2) if the determination pursuant to clause (1) identifies more than one class,

1 selecting from among the identified classes the class with the lowest priority with regard to
2 distributions and making the discharged general partner's limited partner interest of that class.²¹²

3 **SECTION 401E. DISCHARGED GENERAL PARTNER'S POWER TO BIND**
4 **AND LIABILITY TO PARTNERSHIP.**²¹³

5 (a) For two years after a general partner is discharged, the limited partnership is
6 bound by an act of the discharged general partner which would have bound the limited
7 partnership under Section 403A before the discharge only if at the time the other party entered
8 into the transaction: the other party.²¹⁴

9 (1) fewer than 90 days have passed since the certificate of limited partnership
10 was amended to so that the certificate no longer identifies the discharged general partner as a
11 general partner;²¹⁵ and

12 (2) the other party reasonably believed that the discharged general partner
13 was still a general partner.²¹⁶

14 (b) A discharged general partner is liable to the limited partnership for any
15 damage caused to the limited partnership arising from an obligation incurred by the limited
16 partnership under subsection (a).

17 **SECTION 401F. DISCHARGED PARTNER'S LIABILITY TO OTHER**
18 **PERSONS.**²¹⁷

1 (a) A general partner's discharge does not of itself end or satisfy²¹⁸ the discharged
2 general partner's liability for a limited partnership obligation incurred before discharge. A
3 discharged general partner is not liable for a limited partnership obligation incurred after
4 discharge, except as otherwise provided in subsection (b).

5 (b) A discharged general partner is liable as a general partner to the other party in
6 a transaction entered into by the limited partnership after the discharge only if a general partner
7 would be liable on the transaction²¹⁹ and at the time the other party enters into the transaction:

8 (1) less than two years have passed since the discharge;

9 (2) fewer than 90 days have passed since the certificate of limited partnership
10 was amended to so that the certificate no longer identifies the discharged general partner as a
11 general partner; and

12 (3) the other party reasonably believed that the discharged partner was still a
13 general partner.

14 (c) By agreement with the limited partnership creditor and the limited
15 partnership, a discharged general partner may be released from liability for a limited partnership
16 obligation.

17 (d) A discharged general partner is released from liability for a limited
18 partnership obligation if:

19 (1) a limited partnership creditor agrees, without the discharged general
20 partner's consent, to a material alteration in the nature or time of payment of a limited partnership
21 obligation; and

22 (2) at the time the creditor agrees the creditor has notice of the partner's

1 discharge 90 days have passed since the certificate of limited partnership was amended to so that
2 the certificate no longer identifies the discharged general partner as a general partner.²²⁰

3 ²²¹~~SECTION 402. EVENTS OF WITHDRAWAL. Except as approved by the specific~~
4 ~~written consent of all partners at the time, a person ceases to be a general partner of a limited~~
5 ~~partnership upon the happening of any of the following events:~~

6 ~~————— (1) the general partner withdraws from the limited partnership as provided in~~
7 ~~Section 602;~~

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

10 ~~————— (3) the general partner is removed as a general partner in accordance with the~~
11 ~~partnership agreement;~~

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

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

9 ~~_____ (6) in the case of a general partner who is a natural person,~~

10 ~~_____ (i) his [or her] death; or~~

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

13 ~~_____ (7) in the case of a general partner who is acting as a general partner by virtue of~~
14 ~~being a trustee of a trust, the termination of the trust (but not merely the substitution of a new~~
15 ~~trustee);~~

16 ~~_____ (8) in the case of a general partner that is a separate partnership, the dissolution~~
17 ~~and commencement of winding up of the separate partnership;~~

18 ~~_____ (9) in the case of a general partner that is a corporation, the filing of a certificate~~
19 ~~of dissolution, or its equivalent, for the corporation or the revocation of its charter; or~~

20 ~~_____ (10) in the case of an estate, the distribution by the fiduciary of the estate's entire~~
21 ~~interest in the partnership.~~

1 **SECTION 403. ~~GENERAL POWERS AND LIABILITIES~~ MANAGEMENT**
2 **RIGHTS OF GENERAL PARTNERS.**²²²

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

6 ~~———— (b) Except as provided in this [Act], a general partner of a limited partnership has~~
7 ~~the liabilities of a partner in a partnership without limited partners to persons other than the~~
8 ~~partnership and the other partners. Except as provided in this [Act] or in the partnership~~
9 ~~agreement, a general partner of a limited partnership has the liabilities of a partner in a~~
10 ~~partnership without limited partners to the partnership and to the other partners.~~

11 (a) Except as provided in Section 302(a), the general partners have the exclusive
12 authority to manage the limited partnership and to decide any matter relating to the ordinary
13 course or the proper winding up of the limited partnership's business. This authority includes the
14 discretion to make or withhold interim distributions.

15 (b) If a limited partnership has more than one general partner:

16 (1) each general partner has equal rights in the conduct and management of
17 the limited partnership's business;

18 (2) a difference as to a matter within the general partner's authority as
19 provided in subsection (a) may be decided by

20 Version #1 -- a majority of the general partners;²²³

21 Version #2 -- the general partners holding a majority of profit interests then held by general
22 partners;²²⁴

1 and

2 _____ (3) action requiring a decision by the general partners may be taken without
3 a meeting and a general partner may participate in that decision by a proxy appointed in writing.

4 _____ (c) Without the consent of all the partners, the general partners may not:

5 _____ (1) take any action listed in Section 302(a) (management rights of limited
6 partners).²²⁵ or

7 _____ (2) take any action outside the ordinary course or the proper winding up of
8 the limited partnership's business;²²⁶

9 _____ (d) A limited partnership shall reimburse a general partner for payments made
10 and indemnify a partner for liabilities incurred by the general partner in the ordinary course of
11 the business of the partnership or for the preservation of its business or property.²²⁷

12 _____ (e) A limited partnership shall reimburse a general partner for an advance to the
13 limited partnership beyond the amount of capital the general partner agreed to contribute.²²⁸

14 _____ (f) A payment or advance made by a general partner which gives rise to a limited
15 partnership obligation under subsection (d) or (e) constitutes a loan to the limited partnership
16 which accrues interest from the date of the payment or advance.²²⁹

17 _____ (g) A general partner is not entitled to remuneration for services performed for
18 the partnership.²³⁰

19 _____ (h) This section does not affect the obligations of a limited partnership to other
20 persons under Section 403A.²³¹

1 **SECTION 403A. PARTNER AGENT OF PARTNERSHIP.**²³²

2 (a) Subject to Section 208 (scope of notice for certificate of limited
3 partnership).²³³

4 (1) Each general partner is an agent of the limited partnership for the purpose of
5 its business. An act of a general partner, including the execution of an instrument in the
6 partnership name, for apparently carrying on in the ordinary course the limited partnership
7 business or business of the kind carried on by the limited partnership binds the limited
8 partnership, unless the general partner had no authority to act for the limited partnership in the
9 particular matter and the person with whom the general partner was dealing knew or had received
10 a notification that the general partner lacked authority.

11 (2) An act of a general partner which is not apparently for carrying on in the
12 ordinary course the limited partnership's business or business of the kind carried on by the
13 limited partnership binds the limited partnership only if the general partner had actual authority
14 for the act or the limited partnership ratified the act.²³⁴

15 ²³⁵

16 **SECTION 403B. LIMITED PARTNERSHIP LIABLE FOR GENERAL**
17 **PARTNER'S ACTIONABLE CONDUCT.**²³⁶

18 (a) A limited partnership is liable for loss or injury caused to a person, or for a
19 penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a
20 general partner acting in the ordinary course of business of the limited partnership or with actual
21 or apparent²³⁷ authority of the limited partnership.

1 (b) If, in the course of the limited partnership's business or while acting with
2 actual authority²³⁸ of the limited partnership, a general partner receives or causes the limited
3 partnership to receive money or property of a person not a partner, and the money or property is
4 misapplied by a general partner, the limited partnership is liable for the loss.²³⁹

5 **SECTION 403C. GENERAL PARTNER'S LIABILITY.**²⁴⁰

6 (a) Except as otherwise provided in subsections (b) and (c) and Section 401F
7 (discharge partner's liability to other persons), all general partners are liable jointly and severally
8 for all obligations of the limited partnership unless otherwise agreed by the claimant or provided
9 by law.

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

13 (c) An obligation of a limited partnership incurred while the limited partnership is
14 a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the
15 obligation of the limited partnership. A general partner is not personally liable, directly or
16 indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being
17 or acting as a general partner.²⁴¹ This subsection applies despite anything inconsistent in the
18 partnership agreement that existed immediately before the consent required to become a limited
19 liability partnership under Sections 302(a)(4) and 403(C)(1).²⁴²

20 (d) An action may be brought against the limited partnership and, to the extent

1 not inconsistent with subsection (c), any or all of the general partners in the same action or in
2 separate actions.

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

6 (f) A judgment creditor of a general partner may not levy execution against the
7 assets of the partner to satisfy a judgment based on a claim against the partnership unless the
8 partner is personally liable for the claim under subsection (c) and:

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

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

13 (3) the general partner has agreed that the creditor need not exhaust
14 partnership assets;

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

20 (5) liability is imposed on the general partner by law or contract independent
21 of the existence of the partnership.

1

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

3 **CONDUCT.**²⁴⁴

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

5 the other partners²⁴⁵ are the duty of loyalty and the duty of care stated in subsections (b) and (c)

6 and the duty of compliance stated in subsection (d).

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

8 partners is limited to the following:

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

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

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

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

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

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

15 adverse to the limited partnership; and

16 (3) to refrain from competing with the limited partnership in the conduct of

17 the limited partnership business before the

18 Version #1 (RUPA) -- dissolution of the limited partnership.

19 Version #2 -- termination of the limited partnership.²⁴⁶

20 (c) Except as stated in subsection (d), a general partner's duty of care to the

21 limited partnership and the other partners in the conduct and winding up of the limited

22 partnership business is limited to refraining from engaging in grossly negligent or reckless

1 conduct, intentional misconduct, or a knowing violation of law.

2 (d) Each general partner shall use reasonable care to cause the limited partnership
3 to comply with each obligation that this [Act] imposes on the limited partnership.

4 (e) A general partner shall discharge the duties to the partnership and the other
5 partners under this [Act] or under the partnership agreement and exercise any rights consistently
6 with the obligation of good faith and fair dealing.²⁴⁷

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

10 ²⁴⁸

11 **SECTION 403E. GENERAL PARTNER'S RIGHT TO INFORMATION.**

12 (a) A general partner may inspect and copy during regular business hours in the
13 limited partnership's in-state office any of the limited partnership's required records.²⁴⁹ A general
14 partner may inspect and copy during regular business hours any other information, wherever
15 located, maintained by the limited partnership regarding the limited partnership's business, affairs
16 and financial condition.²⁵⁰

17 (b) Each general partner and the limited partnership shall furnish to each general
18 partner:

19 (1) without demand, any information concerning the limited partnership's
20 business and affairs reasonably required for the proper exercise of the general partner's rights and

1 duties under the partnership agreement or this [Act];²⁵¹ and

2 _____ (2) on demand, any other information concerning the limited partnership's
3 business and affairs, except to the extent the demand or the information demanded is
4 unreasonable or otherwise improper under the circumstances.²⁵²

5 _____ ²⁵³(c) On ten days written demand to the limited partnership, a former general
6 partner may have access to information as described in subsection (a)²⁵⁴ to the extent that:

7 _____ (1) the information pertains to the period during which the former general
8 partner was a general partner;

9 _____ (2) the former general partner seeks the information in good faith and for a
10 purpose reasonably related to the former general partner's former interest as a general partner;²⁵⁵

11 _____ (3) the former general partner's written demand describes with reasonable
12 particularity the information sought and the purpose for seeking that information; and

13 _____ (4) the information sought is directly [reasonably?] connected to the former
14 general partner's purpose.²⁵⁶

15 _____ ²⁵⁷(d) A written partnership agreement may impose reasonable confidentiality
16 requirements on the use of information obtained under this Section. A limited partnership may
17 apply to a court of competent jurisdiction for an order enforcing a confidentiality restriction
18 stated in a written partnership agreement²⁵⁸ or creating and enforcing confidentiality restrictions
19 not stated in a written partnership agreement but reasonable and necessary under the
20 circumstances to protect the limited partnership from unfair commercial disadvantage or a
21 partner or former partner from an unwarranted disclosure of information relating to that
22 partner.²⁵⁹ In any dispute concerning the reasonableness of a restriction under this subsection, the

1 limited partnership has the burden of proving reasonableness.²⁶⁰ A restriction relating to the use
2 of the names and addresses of the partners is not reasonable.

3 (e) A limited partnership may charge a former general partner who makes a
4 demand under this section reasonable costs of copying but may not charge for the limited
5 partnership's efforts in compiling, creating or otherwise obtaining the information.²⁶¹

6 (f) A general partner or former general partner may exercise the rights stated in
7 this section through an attorney or other agent. In that event, any confidential obligations under
8 subsection (d) apply both to the general partner and the attorney or other agent. The rights stated
9 in this section do not apply to a transferee.²⁶²

10 **SECTION 404. ~~CONTRIBUTIONS BY GENERAL PARTNER~~ ACTING ALSO**
11 **AS LIMITED PARTNER.** ~~A general partner of a limited partnership may make contributions~~
12 ~~to the partnership and share in the profits and losses of, and in distributions from, the limited~~
13 ~~partnership as a general partner. A general partner also may make contributions to and share in~~
14 ~~profits, losses, and distributions as a limited partner. A person who is both a general partner and~~
15 ~~a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a~~
16 ~~general partner and, except as provided in the partnership agreement, also has the powers, and is~~
17 ~~subject to the restrictions, of a limited partner to the extent of his [or her] participation in the~~
18 ~~partnership as a limited partner. A person may be both a general partner and a limited partner.~~
19 A person who is both a general and limited partner has the rights and powers provided by this
20 [Act] and the partnership agreement for each of those capacities.

1 [new language continues, with two alternative versions]

2 Version #1 -- When the person's conduct occurs in the person's capacity as a general partner, that
3 conduct is subject to the obligations and restrictions provided by this [Act] and the partnership
4 agreement for general partners. When the person's conduct occurs in the person's capacity as a
5 limited partner, that conduct is subject to the obligations and restrictions provided by this [Act]
6 and the partnership agreement for limited partners.

7 Version #2 (more succinct but more elliptical) -- Which obligations and restrictions apply to the
8 person's conduct depend on whether the conduct occurs in the person's capacity as a general or
9 limited partner.²⁶³

10 ~~SECTION 405. VOTING. The partnership agreement may grant to all or certain~~
11 ~~identified general partners the right to vote (on a per capita or any other basis), separately or with~~
12 ~~all or any class of the limited partners, on any matter.~~²⁶⁴

14 **ARTICLE 5**

15 **FINANCE**

16 **SECTION 501. NECESSITY, FORM, AND VALUATION OF CONTRIBUTION.**

17 (a) Unless a written partnership agreement expressly allows otherwise, a person
18 must make a contribution in order to become a partner.

1 ~~_____ (b) The contribution of a partner may be in cash, property, or services rendered,~~
2 ~~or a promissory note or other obligation to contribute cash or property or to perform services. A~~
3 ~~contribution may consist of any benefit provided to the limited partnership, including money,~~
4 ~~property, services rendered, and any written obligation to furnish money, property, services or~~
5 ~~other benefit.~~²⁶⁵

6 (c) For a contribution other than money,²⁶⁶ the document through which the
7 limited partnership consents to accept the contribution must state a value for the contribution.²⁶⁷
8 After the limited partnership receives the contribution, the limited partnership shall record the
9 stated value in the required records.

10 **SECTION 502. LIABILITY FOR CONTRIBUTION.**

11 (a) A promise by a ~~limited partner~~ person to contribute to the limited partnership
12 is not enforceable unless set out in a writing signed by the ~~limited partner~~ person.²⁶⁸

13 (b) ~~Except as provided in the partnership agreement, a partner is obligated to the~~
14 ~~limited partnership to perform any enforceable promise to contribute cash or property or to~~
15 ~~perform services, even if he [or she] is unable to perform because of death, disability, or any~~
16 ~~other reason. If a partner does not make the required contribution of property or services, he [or~~
17 ~~she] is obligated at the option of the limited partnership to contribute cash equal to that portion of~~
18 ~~the value, as stated in the partnership records required to be kept pursuant to Section 105, of the~~
19 ~~stated contribution which has not been made.~~²⁶⁹ A person's death, disability or other inability to
20 perform personally does not excuse that person from an otherwise enforceable obligation to

1 contribute to a limited partnership.

2 (c) If a person a person fails to make any part of a promised nonmonetary
3 contribution, the limited partnership may on written notice to the person convert the unperformed
4 obligation to an obligation immediately to contribute money equal in value, according to the
5 valuation stated in the required records, to the unperformed part of the obligation.

6 ~~_____ (c) Unless otherwise provided in the partnership agreement, the obligation of a~~
7 ~~partner to make a contribution or return money or other property paid or distributed in violation~~
8 ~~of this [Act] may be compromised only by consent of all partners.²⁷⁰ Notwithstanding the~~
9 ~~compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance~~
10 ~~on that obligation after the partner signs a writing which reflects the obligation and before the~~
11 ~~amendment or cancellation thereof to reflect the compromise may enforce the original~~
12 ~~obligation.²⁷¹~~

13 Version #1 (current approach) -- (d) A person's obligation to contribute may be
14 compromised only with the consent of all partners.²⁷²

15 Version #2 (power to the general partners, via "the limited partnership") -- A
16 limited partnership may agree to compromise a person's obligation to contribute, but if the
17 obligation is owed by a general partner or an affiliate of a general partner:

18 _____ (1) that general partner may not participate in the limited partnership's
19 decision to compromise, and

20 _____ (2) if no general partner is eligible to participate in the decision the
21 obligation may be compromised only with the consent of all the partners.²⁷³

1 **SECTION 503. ~~SHARING~~ ALLOCATION OF PROFITS AND LOSSES.** The
2 profits and losses of a limited partnership shall be allocated among the partners annually²⁷⁴ and
3 without distinction between general and limited partners, and among classes of partners, in the
4 manner provided in writing in the partnership agreement. If the partnership agreement does not
5 so provide in writing, profits and losses shall be allocated²⁷⁵ on the basis of the value, as stated in
6 the partnership required records required to be kept pursuant to Section 105, of the contributions
7 made by each partner to the extent ~~they~~ those contributions have been received by the limited
8 partnership and have not been returned. Whether a distribution is a return of a partner's
9 contribution is determined according to generally accepted accounting principles.²⁷⁶

10 **SECTION 504. SHARING OF DISTRIBUTIONS.** ~~Distributions of cash or other~~
11 ~~assets of a limited partnership shall be allocated among the partners and among classes of~~
12 ~~partners in the manner provided in writing in the partnership agreement. If the partnership~~
13 ~~agreement does not so provide in writing, distributions shall be made on the basis of the value, as~~
14 ~~stated in the partnership records required to be kept pursuant to Section 105, of the~~
15 ~~contributions made by each partner to the extent they have been received by the partnership and~~
16 ~~have not been returned.~~²⁷⁷ Except as provided in Section 804(b) for liquidating distributions, any
17 distributions made shall be in proportion to the partners' allocation of profit and losses in effect at
18 the time the limited partnership decides to make the distribution.

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DISTRIBUTIONS AND WITHDRAWAL

SECTION 601. INTERIM DISTRIBUTIONS. ~~Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his [or her] withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement~~²⁷⁸ A partner has no right to any distribution before the dissolution and winding up of the limited partnership, but, subject to Section 607 (improper distributions), the limited partnership may in its discretion make interim distributions.²⁷⁹

SECTION 602. WITHDRAWAL OF GENERAL PARTNER. ~~A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him [or her].²⁸⁰~~ A general partner has no right to dissociate before the termination of the limited partnership.²⁸¹ Dissociation occurs solely as provided in Section 800.

SECTION 603. WITHDRAWAL OF LIMITED PARTNER. A limited partner has

1 ~~no right to dissociate before the termination of the limited partnership. may withdraw from a~~
2 ~~limited partnership at the time or upon the happening of events specified in writing in the~~
3 ~~partnership agreement. If the agreement does not specify in writing the time or the events upon~~
4 ~~the happening of which a limited partner may withdraw or a definite time for the dissolution and~~
5 ~~winding up of the limited partnership, a limited partner may withdraw upon not less than six~~
6 ~~months' prior written notice to each general partner at his [or her] address on the books of the~~
7 ~~limited partnership at its office in this State. Dissociation occurs solely as provided in Section~~
8 ~~800.~~²⁸²
9

10 **SECTION 604. NO DISTRIBUTION UPON WITHDRAWAL DISSOCIATION.**

11 ~~Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to~~
12 ~~receive any distribution to which he [or she] is entitled under the partnership agreement and, if~~
13 ~~not otherwise provided in the agreement, he [or she] is entitled to receive, within a reasonable~~
14 ~~time after withdrawal, the fair value of his [or her] interest in the limited partnership as of the~~
15 ~~date of withdrawal based upon his [or her] right to share in distributions from the limited~~
16 ~~partnership. A partner's dissociation does not entitle that partner to any distribution.~~²⁸³
17

18 **SECTION 605. DISTRIBUTION IN KIND.** ~~Except as provided in writing in the~~
19 ~~partnership agreement, a partner, regardless of the nature of his [or her] contribution, has no right~~
20 ~~to demand and receive any distribution from a limited partnership in any form other than cash.~~
21 ~~Except as provided in writing in the partnership agreement, a partner may not be compelled to~~

1 ~~accept a distribution of any asset in kind from a limited partnership to the extent that the~~
2 ~~percentage of the asset distributed to him [or her] exceeds a percentage of that asset which is~~
3 ~~equal to the percentage in which he [or she] shares in distributions from the limited~~
4 ~~partnership.~~²⁸⁴ A partner is not required to accept a distribution in kind, except to the extent that
5 the distribution is part of a distribution of fungible property being made to all partners in
6 proportion to their rights under Section 504. A partner has no right to receive a distribution in
7 kind, unless the partner has become entitled pursuant to Section 606 to receive a share of an in-
8 kind distribution authorized by this subsection.

9 **SECTION 606. RIGHT TO DISTRIBUTION.** A partner becomes entitled to receive
10 a distribution when the limited partnership notes in its required records the date on which the
11 limited partnership made its decision to distribute, the date the distribution is to be made, the
12 aggregate amount to be distributed, and, in the case of an in-kind distribution permitted by
13 Section 605, a description of the fungible property to be distributed.²⁸⁵ At the time a partner
14 becomes entitled to receive a distribution, ~~he [or she]~~ that partner has the status of, and is entitled
15 to all remedies available to, a creditor of the limited partnership with respect to the distribution,
16 except that the limited partnership's obligation to make a distribution is subject to offset for any
17 amount owed to the limited partnership by the partner or former partner on whose account the
18 distribution is made.²⁸⁶

1 **SECTION 607. LIMITATIONS ON DISTRIBUTION.** ²⁸⁷ ~~A partner may not receive~~
2 ~~a distribution from a limited partnership to the extent that, after giving effect to the distribution,~~
3 ~~all liabilities of the limited partnership, other than liabilities to partners on account of their~~
4 ~~partnership interests, exceed the fair value of the partnership assets.~~

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

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

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

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

15 (c) In determining whether subsection (b) permits a distribution, a limited
16 partnership may rely on financial statements prepared on the basis of accounting practices and
17 principles that are reasonable in the circumstances or on a fair valuation or other method that is
18 reasonable in the circumstances. ²⁸⁸

19 (d) Except as otherwise provided in subsection (f), the effect of a distribution
20 under subsection (b) is measured:

21 (1) in the case of distribution by purchase, redemption, or other acquisition of
22 a transferable interest in the limited partnership, as of the date money or other property is

1 transferred or debt incurred by the company;²⁸⁹ and

2 _____ (2) in all other cases,²⁹⁰ as of the date:

3 _____ (i) Section 606 creates an entitlement to the distribution, if the payment
4 occurs within 120 days after that date; or

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

6 _____ (d) A limited partnership's indebtedness to a partner incurred by reason of a
7 distribution made in accordance with this section is at parity with the limited partnership's
8 indebtedness to its general, unsecured creditors.²⁹¹

9 _____ (e) A limited partnership's indebtedness, including indebtedness issued in
10 connection with or as part of a distribution, is not considered a liability for purposes of
11 determinations under subsection (b) if the terms of the indebtedness provide that payment of
12 principal and interest are made only to the extent that a distribution could then be made to
13 partners under this section.

14 _____ (f) If indebtedness is issued as a distribution, each payment of principal or interest
15 on the indebtedness is treated as a distribution, the effect of which is measured on the date the
16 payment is made.²⁹²

17
18 ²⁹³**SECTION 608. LIABILITY UPON RETURN OF CONTRIBUTION FOR**
19 **IMPROPER²⁹⁴ DISTRIBUTIONS.**

20 (a) If a partner has received the return of any part of his [or her] contribution
21 without violation of the partnership agreement or this [Act], he [or she] is liable to the limited

1 partnership for a period of one year thereafter for the amount of the returned contribution, but
2 only to the extent necessary to discharge the limited partnership's liabilities to creditors who
3 extended credit to the limited partnership during the period the contribution was held by the
4 partnership.

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

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

12 (a) A general partner who votes for or assents to a distribution made in violation
13 of Section 607²⁹⁵ is personally liable to the limited partnership for the amount of the distribution
14 which exceeds the amount that could have been distributed without the violation if it is
15 established that in voting for or assenting to the distribution the general partner failed to comply
16 with Section 607(c) or Section 403D.²⁹⁶

17 (b) A partner who receives a distribution that the partner knows violates Section
18 607 is personally liable to the limited partnership, but the partner's liability under this
19 subsection²⁹⁷ is limited to the by which the distribution received by the partner exceeded the
20 amount that could have been paid without causing the violation.

21 (c) A general partner against whom an action is brought under subsection (a)
22 may implead in the action and obtain contribution from:²⁹⁸

1 (1) any other general partner or former general partner who could be held
2 liable under subsection (a) for the improper distribution; and
3 (2) any partner or former partner who could be held liable under subsection
4 (b), but a person's total liability under this clause and subsection (b) with respect to any
5 distribution is limited to the total amount for which the person could be liable under subsection
6 (b) for that distribution.
7 (d) A proceeding under this section is barred unless it is commenced within two
8 years after the date on which the effect of the distribution is to be measured under section 607.

9 ARTICLE 7

10 ~~ASSIGNMENT OF PARTNERSHIP~~ TRANSFERABLE INTERESTS AND RIGHTS OF 11 TRANSFEREES AND CREDITORS²⁹⁹

12 **SECTION 701. ~~NATURE OF PARTNERSHIP~~ PARTNER'S TRANSFERABLE**
13 **INTEREST.** The only transferable interest of a partner is the partner's share of the profits and
14 losses of the partnership and the partner's right to receive distributions.³⁰⁰ ~~The A partnership~~
15 interest is personal property.

16 17 **SECTION 702.**³⁰¹ ~~ASSIGNMENT OF PARTNERSHIP INTEREST~~ TRANSFER

1 **OF PARTNER'S TRANSFERABLE INTEREST.** ~~Except as provided in the partnership~~
2 ~~agreement, a partnership interest is assignable in whole or in part. An assignment of a~~
3 ~~partnership interest does not dissolve a limited partnership or entitle the assignee to become or to~~
4 ~~exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent~~
5 ~~assigned, only the distribution to which the assignor would be entitled. Except as provided in the~~
6 ~~partnership agreement, a partner ceases to be a partner upon assignment of all his [or her]~~
7 ~~partnership interest.~~

8 (a) A transfer, in whole or in part, of a partner's transferable interest in the
9 partnership:

10 _____ (1) is permissible³⁰² and,

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

12 _____ (i) receive, in accordance with the transfer, distributions to which the
13 transferor would otherwise be entitled;³⁰³

14 _____ (ii) seek under Section 802(b) a judicial determination that it is equitable
15 to wind up the partnership business;³⁰⁴

16 _____ (iii) obtain from the limited partnership, if the interest held by the
17 transferee is a bare transferable interest, a brief written explanation of how the limited
18 partnership calculates any amounts payable to the transferee.³⁰⁵

19 _____ (iv) obtain, if the limited partnership has dissolved, a final statement of
20 the amount due the transferee.³⁰⁶

21 (b) A transfer does not:

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

partnership or other partners, regardless of whether the transferee becomes a partner;³⁰⁷

(2) cause the transferor partner's dissociation or affect any of the transferor partner's rights other than the transferred rights except as provided in Section 401A(3)(ii) (discharge of general partner) or 800(3)(ii) (dissociation);³⁰⁸ and

(3) cause the transferee to become a partner or entitle the transferee to any rights other than those expressly stated in subsection (a).³⁰⁹

(c) A transfer is effective against the limited partnership only when the limited partnership has notice of the transfer.³¹⁰

(d) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.³¹¹

SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFEEE.³¹²

(a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee,³¹³ 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.³¹⁴

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

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

5 **(1) by the judgment debtor;**

6 **(2) with property other than limited partnership property, by one or more of**
7 **the other partners; or**

8 **Version #1 -- (3) with limited partnership property, but only if permitted by a**
9 **written partnership agreement.**³¹⁵

10 **Version #2 -- (3) with limited partnership property, but only if permitted by a**
11 **written partnership agreement or the interest being redeemed does not belong to and did not**
12 **originate as the property of any general partner, or affiliate of a general partner, participating in**
13 **the decision to make the redemption.**³¹⁶

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

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

19 **SECTION 704. NO RIGHT OF TRANSFeree ASSIGNEE TO BECOME**

1 ~~LIMITED PARTNER.~~

2 ~~(a) An assignee of a partnership interest, including an assignee of a general~~
3 ~~partner, may become a limited partner if and to the extent that (i) the assignor gives the assignee~~
4 ~~that right in accordance with authority described in the partnership agreement,³¹⁷ or (ii) all other~~
5 ~~partners consent.~~

6 ~~_____ (b) An assignee who has become a limited partner has, to the extent assigned, the~~
7 ~~rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the~~
8 ~~partnership agreement and this [Act]. An assignee who becomes a limited partner also is liable~~
9 ~~for the obligations of his [or her] assignor to make and return contributions as provided in~~
10 ~~Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at~~
11 ~~the time he [or she] became a limited partner.~~³¹⁸

12 ~~_____ (c) If an assignee of a partnership interest becomes a limited partner, the assignor~~
13 ~~is not released from his [or her] liability to the limited partnership under Sections 207 and 502.~~³¹⁹

14 A transferee has no right to become a partner or to exercise any rights other than those provided
15 in Section 702(a)(2).

16 **SECTION 705. POWER OF ESTATE OF DECEASED OR INCOMPETENT**
17 **PARTNER.**

18 (a) If a partner who is an individual dies:

19 _____ (1) if the partner was a limited partner, the deceased partner's executor,
20 administrator, or other legal representative may exercise all the rights provided in Section 800A

1 for the purpose of settling the decedent's estate;³²⁰ and

2 (2) if the partner was a general partner, the deceased partner's executor,
3 administrator, or other legal representative has no right to exercise any right or power that the
4 decedent had as a general partner but may exercise all the rights provided in Sections 401C³²¹ and
5 800A³²² for the purpose of settling the decedent estate.³²³

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

9 (1) if the partner is a limited partner, the partner's ~~executor, administrator,~~
10 guardian, conservator, or other legal representative may exercise all the partner's rights for the
11 purpose of settling his [or her] estate or administering his [or her] the partner's property;
12 including any power the partner had to give an assignee the right to become a limited
13 partner;³²⁴ and

14 (2) if before the adjudication the partner was a general partner,³²⁵ the
15 guardian, conservator, or other legal representative has no right to exercise any right or power of
16 a general partner but may exercise all the rights provided in Section 401C³²⁶ for the purpose of
17 administering the adjudicated partner's property.

18 (c) If a partner is a corporation, trust, or other an entity and is dissolved or
19 terminated or has had its right to conduct business suspended, after the 90 days referred to in
20 Sections 401A(7) or 800(7) has expired;³²⁷

21 (1) if the partner was a limited partner, the powers of that partner under
22 Section 800A may be exercised by its legal representative or successor;³²⁸ and

1 (2) if the partner was a general partner, the former partner's legal
2 representative or successor has no right to exercise any right or power that the former partner had
3 as a general partner but may exercise all the rights provided in Sections 401C³²⁹ and 800A.³³⁰

4 **ARTICLE 8**
5 **DISSOLUTION**

6 **SECTION 800.³³¹ PARTNER DISSOCIATION.³³²** A partner is dissociated from a
7 limited partnership and ceases to be a partner upon the occurrence of any of the following
8 events:³³³

9 (1) the limited partnership's having notice of the partner's express will to be
10 dissociated or on a later date specified by the partner at or before the time the limited partnership
11 first has notice of the partner's express will;³³⁴

12 (2) an event agreed to in the partnership agreement as causing the
13 dissociation;³³⁵

14 (3) the partner's dissociation by written consent³³⁶ of the other partners if:

15 (i) it is unlawful to carry on the limited partnership's business with the
16 partner remaining as partner;³³⁷

17 (ii) there has been a final, noncontingent transfer of all of the partner's
18 transferable interest in the limited partnership;³³⁸

19 (4) on application by the limited partnership,³³⁹ the partner's dissociation by

1 judicial determination because:

2 (i) the partner engaged in wrongful conduct that adversely and materially
3 affected the partnership business;

4 (ii) the partner willfully or persistently committed a material breach of
5 the partnership agreement or of a duty owed to the partnership³⁴⁰ under Section 403D; or

6 (iii) the partner engaged in conduct relating to the partnership business
7 which makes it not reasonably practicable to carry on the business with the partner remaining as
8 partner;³⁴¹

9 (5) the partner's:

10 (i) becoming a debtor in bankruptcy;

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

12 (iii) seeking, consenting to, or acquiescing in the appointment of a
13 trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's
14 property; or

15 (iv) failing, within 90 days after the appointment, to have vacated or
16 stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially
17 all of the partner's property obtained without the partner's consent or acquiescence, or failing
18 within 90 days after the expiration of a stay to have the appointment vacated;³⁴²

19 (6) in the case of a partner who is an individual, the partner's death;³⁴³

20 (7) in the case of a partner that is not an individual, the passage of 90 days
21 after either the termination of that partner as a legal person under the law governing that partner's
22 formation and existence or the suspension under that governing law of that partner's right to

1 conduct business, unless within that 90 days the partner is reinstated as a legal person under that
2 governing law or the suspension ends.³⁴⁴

3 **SECTION 800A. EFFECT OF PARTNER DISSOCIATION.**

4 (a) The dissociation of a partner causes dissolution of a limited partnership only
5 under the circumstances stated in Section 801.

6 (b) Upon a partner's dissociation, regardless of whether the dissociation causes the
7 limited partnership to dissolve,³⁴⁵ the dissociated partner:

8 (1) loses all its rights as a partner;³⁴⁶

9 (2) is no longer subject to the obligation of good faith and fair dealing under
10 Section 302A(c) as to events occurring after the dissociation;³⁴⁷

11 (3) is deemed to be a transferee of the transferable interest the person owned
12 as a partner immediately before the dissociation;³⁴⁸ and

13 (4) remains liable to the limited partnership for any obligations incurred
14 before the dissociation.

15 (c) Unless the partnership agreement authorizes a partner's dissociation, a partner
16 who dissociates before the termination of the limited partnership is liable to the limited
17 partnership and to other partners for any damages caused by the dissociation.³⁴⁹

18 **SECTION 801. NONJUDICIAL DISSOLUTION.** A limited partnership is dissolved
19 ~~and its affairs shall be wound up~~³⁵⁰ upon the happening of the first to occur of the following:

1 (1) at the ~~time~~ expiration of the limited partnership's term as that term is³⁵¹
2 specified in the certificate of limited partnership;

3 (2) upon the happening of events specified in writing in the partnership
4 agreement;

5 (3) written consent of all partners;

6 (4) the passage of 90 days after the limited partnership has notice of an event that
7 makes it unlawful for all or substantially all of the business of the partnership to be continued,
8 unless the illegality is cured before the end of the 90 day period.³⁵²
9 ~~_____ an event of withdrawal of a general partner unless at the time there is at least one~~
10 ~~other general partner and the written provisions of the partnership agreement permit the~~
11 ~~business of the limited partnership to be carried on by the remaining general partner and that~~
12 ~~partner does so, but the limited partnership is not dissolved and is not required to be wound up by~~
13 ~~reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in~~
14 ~~writing to continue the business of the limited partnership and to the appointment of one or more~~
15 ~~additional general partners if necessary or desired;~~

16 Version #1 (limited partnership most susceptible to dissolution)³⁵³

17 (5) the passage of 90 days after discharge of a general partner, unless before the
18 end of the 90 days:

19 (i) if at least one general partner remains,³⁵⁴ partners owning a majority of
20 those profit interests owned by partners immediately following the discharge³⁵⁵ consent in
21 writing to avoid dissolution of the limited partnership; or

1 (ii) if no general partner remains, partners owning a majority of those profit
2 interests owned by partners immediately following the discharge consent in writing to avoid
3 dissolution of the limited partnership and to appoint at least one general partner and at least one
4 appointee undertakes to be a general partner in accordance with the appointment.

5
6 Version #2 (limited partnership less susceptible to dissolution)

7 (5) after the discharge of a general partner,

8 (i) if the limited partnership has at least one remaining general partner,
9 written consent to dissolve the limited partnership given within 90 days after the discharge by
10 partners owning a majority of those profit interests owned by partners immediately following the
11 discharge; or

12 (ii) if the limited partnership has no remaining general partner, the passage of
13 90 days after the discharge unless within that 90 days partners owning a majority of those profit
14 interests owned by partners immediately following the discharge consent in writing to avoid
15 dissolution of the limited partnership and to appoint at least one general partner and at least one
16 appointee undertakes to be a general partner in accordance with the appointment.

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

18 (5) the discharge of a general partner unless:

19 (i) at least one general partner remains immediately following the discharge,
20 or

21 (ii) if no general partner remains, within 90 days after the discharge partners

1 owning a majority of those profit interests owned by partners immediately following the
2 discharge consent in writing to avoid dissolution of the limited partnership and to appoint at least
3 one general partner and at least one appointee undertakes to be a general partner in accordance
4 with the appointment. consent in writing to avoid dissolution of the limited partnership.³⁵⁶

5 (6) the passage of 90 days after the dissociation of the limited partnership's last
6 limited partner, unless before the end of the 90 days the limited partnership admits at least one
7 limited partner;

8 or

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

10
11 **SECTION 802. JUDICIAL DISSOLUTION.**³⁵⁷

12 (a) On application by or for a partner the [designate the appropriate court] court
13 may decree dissolution of a limited partnership whenever;³⁵⁸

14 (1) the economic purpose of the partnership is likely to be unreasonably
15 frustrated;

16 (2) another partner has engaged in conduct relating to the partnership
17 business which makes it not reasonably practicable to carry on the business in partnership with
18 that partner;³⁵⁹

19 (3) it is not reasonably practicable to carry on the business in conformity with
20 the partnership agreement.

1 (b) On application by or for a transferee the [designate the appropriate court]
2 court may decree dissolution of a limited partnership if:³⁶⁰
3 (1) the limited partnership amended its certificate of limited partnership to
4 extend the limited partnership's term after having notice of the transfer or entry of the charging
5 order that gave rise to the transferee's interest;
6 (2) the limited partnership's term would have expired but for that amendment;
7 and
8 (3) it is equitable to dissolve the limited partnership and wind up its
9 business.³⁶¹

10 **SECTION 802A. LIMITED PARTNERSHIP CONTINUES AFTER**
11 **DISSOLUTION.**³⁶² A dissolved limited partnership is not terminated but continues its existence
12 only for the purpose of winding up its business.³⁶³ A limited partnership terminates pursuant to
13 Section 206(b).³⁶⁴ Dissolution does not relieve the limited partnership or any general partner of
14 liability for the debts and other obligations of the limited partnership.

15 **SECTION 803. WINDING UP.**³⁶⁵ ~~Except as provided in the partnership agreement, the~~
16 ~~general partners who have not wrongfully dissolved a limited partnership or, if none, the limited~~
17 ~~partners, may wind up the limited partnership's affairs; but the [designate the appropriate court]~~
18 ~~court may wind up the limited partnership's affairs upon application of any partner, his [or her]~~

1 ~~legal representative, or assignee.~~

2 (a) A dissolved limited partnership shall promptly amend its certificate of limited partnership to
3 state that the limited partnership is dissolved and is winding up its business and shall promptly
4 wind up its business.³⁶⁶ In winding up its business the limited partnership:

5 _____ (1) may preserve the limited partnership business or property as a going
6 concern for a reasonable time, prosecute and defend actions and proceedings, whether civil,
7 criminal, or administrative, dispose of and transfer the partnership's property, settle disputes by
8 mediation or arbitration and perform other necessary acts; and

9 _____ (2) shall discharge the limited partnership's liabilities, settle and close the
10 limited partnership's business, pursuant to Section 804 martial and distribute the assets of the
11 partnership, and, promptly after winding up is completed, file a declaration of termination as
12 provided in Section 203.

13 (b) If a dissolved limited partnership has no general partners, limited partners
14 owning at least a majority of the profit interests owned by partners immediately following the
15 dissolution may through written consent appoint a person to wind up the dissolved limited
16 partnership's business. A person appointed under this subsection shall:

17 _____ (1) promptly amend the certificate of limited partnership to indicate that the
18 limited partnership no longer has any general partners and is dissolved and that the person has
19 been appointed to wind up the limited partnership and to state the person's name and business
20 address; and

21 _____ (2) shall have the powers of a general partner under Section 803A and the
22 duties of a general partner under Section 403D.³⁶⁷

1 (c) On the application of any partner or transferee, a court may order judicial
2 supervision of the winding up, including the appointment of a person to wind up the dissolved
3 limited partnership's business, if:

4 (1) a limited partnership has no general partner and within a reasonable time
5 following the dissolution no person has been appointed pursuant to subsection (b), or

6 (2) the applicant establishes other good cause.

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

9 **SECTION 803A. GENERAL PARTNER'S POWER TO BIND PARTNERSHIP**
10 **AFTER DISSOLUTION.**³⁶⁸

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

13 (1) is appropriate for winding up the limited partnership business; or

14 (2) would have bound the partnership under Section 403A before dissolution, if
15 the other party to the transaction did not have notice of the dissolution.³⁶⁹

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

18 (1) nullifies any statement granting authority pursuant to Section 201(b);³⁷⁰

19 and

20 (2) operates as it were a statement, made pursuant to Section 201(b), limiting

1 to circumstances appropriate for winding up the limited partnership business the authority of
2 each general partner to execute any instrument transferring real property held in the name of the
3 partnership.³⁷¹

4 (c) For the purposes of subsection (a)(2), a person not a partner is deemed to have
5 notice of a limited partnership's dissolution 90 days after the certificate of limited partnership has
6 been amended to state that the limited partnership is dissolved.³⁷²

7 (d) After amending its certificate of limited partnership to state that the limited
8 partnership is dissolved, a dissolved limited partnership may amend its certificate to include new
9 statements regarding authority pursuant to Section 201(b) which will operate as provided in
10 Section 208 for subsequent transactions regardless of whether a transaction is appropriate for
11 winding up the limited partnership business.³⁷³

12 (e) A general partner who, with knowledge of the dissolution, incurs a partnership
13 liability under subsection (a) by an act that is not appropriate for winding up the partnership
14 business is liable to the partnership for any damage caused to the partnership arising from the
15 liability.³⁷⁴

16 **SECTION 803B. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
17 **PARTNERSHIP.**³⁷⁵

18 (a) A dissolved limited partnership may dispose of the known claims against it by
19 following the procedure described in this section.

20 (b) A dissolved limited partnership shall notify its known claimants in writing of

1 the dissolution. The notice must:

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

3 (2) provide a mailing address where the claim is to be sent;

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

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

7 (5) unless the limited partnership has been a limited liability limited
8 partnership throughout its existence, state that the barring of a claim against the limited
9 partnership will also bar any claim against any present or former general partner which is based
10 solely on the status of general partner.³⁷⁶

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

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

14 (2) in the case of a claim that is timely received but rejected by the dissolved
15 limited partnership, the claimant does not commence a proceeding to enforce the claim against
16 the limited partnership³⁷⁷ within 90 days after the receipt of the notice of the rejection.

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

19 **SECTION 803C. OTHER CLAIMS AGAINST DISSOLVED LIMITED**
20 **PARTNERSHIP.**³⁷⁸

1 (a) A dissolved limited liability company may publish notice of its dissolution
2 and request persons having claims against the company to present them in accordance with the
3 notice.

4 (b) The notice must:

5 (1) be published at least once in a newspaper of general circulation in the
6 [county] in this State³⁷⁹ in which the dissolved limited partnership' principal office is located or,
7 if none in this State, in which its in-state office³⁸⁰ is or was last located;

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

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

13 (4) unless the limited partnership has been a limited liability limited
14 partnership throughout its existence, state that the barring of a claim against the limited
15 partnership will also bar any claim against any present or former general partner which is based
16 solely on the status of general partner.³⁸¹

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

21 (1) a claimant who did not receive written notice under Section 803B;

22 (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 partner³⁸² or transferee to the extent of that person's pro rata³⁸³ share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this clause³⁸⁴ may not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership.³⁸⁵

(3) any person liable on the claim under Section 403C.³⁸⁶

SECTION 803D. EFFECT OF CLAIMS BAR ON PERSONAL LIABILITY OF PARTNERS AND FORMER PARTNERS.³⁸⁷

Version #1 -- If Section 803B or 803C bars a claim against a dissolved limited partnership, no person is liable under Section 403C³⁸⁸ on account of the limited partnership obligation that would have given rise to the barred claim.

Version #2 -- If Section 803B or 803C bars a claim against a dissolved limited partnership, then

1 with respect to the limited partnership obligation for which the claim is barred claims under
2 Section 403C are also barred.

3 Version #3 -- No person is liable under Section 403C on account of any obligation of limited
4 partnership with regard to which Section 803B or 803C has barred a claim.

5 **SECTION 803E. GROUNDS FOR ADMINISTRATIVE DISSOLUTION.**³⁸⁹ The
6 [Secretary of State] may commence a proceeding to dissolve a limited partnership
7 administratively if the limited partnership does not pay any fees, taxes, or penalties imposed by
8 this [Act] or other law within 60 days after they are due.³⁹⁰

9 **SECTION 803F. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE**
10 **DISSOLUTION.**³⁹¹

11 (a) If the [Secretary of State] determines that a ground exists for administratively
12 dissolving a limited partnership, the [Secretary of State] shall enter a written notice of the
13 determination and serve the limited partnership with a copy of the notice.

14 (b) If within 60 days after service of the notice the limited partnership does not
15 correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary
16 of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of
17 State] shall administratively dissolve the limited partnership by signing a notice of dissolution

1 that recites the grounds for dissolution and the dissolution's effective date. The [Secretary of
2 State] shall file the original of the notice and serve the limited partnership with a copy.

3 (c) A company administratively dissolved continues its existence but may carry
4 on only business necessary to wind up and liquidate its business and affairs pursuant to Section
5 803 and to notify claimants pursuant to Sections 803B and 803C.

6 (d) The administrative dissolution of a company does not terminate the authority
7 of its agent for service of process.³⁹²

8 **SECTION 803G. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
9 **DISSOLUTION.**³⁹³

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

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

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

17 (3) state that the limited partnership's name satisfies the requirements of
18 Section 102; and

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

1 (b) If the [Secretary of State] determines that the application contains the
2 information required by subsection (a) and that the information is correct, the [Secretary of State]
3 shall cancel the notice of dissolution and prepare a notice of reinstatement that recites this
4 determination and the effective date of reinstatement, file the original of the notice, and serve the
5 limited partnership with a copy.

6 (c) When reinstatement is effective, it relates back to and takes effect as of the
7 effective date of the administrative dissolution and the limited partnership may resume its
8 business as if the administrative dissolution had never occurred.³⁹⁴

9 **SECTION 804. SETTLING OF ACCOUNTS AND DISTRIBUTION OF**
10 **ASSETS.**³⁹⁵ ~~Upon the winding up of a limited partnership, the assets shall be distributed as~~
11 ~~follows:~~

12 ~~————— (1) to creditors, including partners who are creditors, to the extent permitted by~~
13 ~~law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to~~
14 ~~partners under Section 601 or 604;~~

15 ~~————— (2) except as provided in the partnership agreement, to partners and former~~
16 ~~partners in satisfaction of liabilities for distributions under Section 601 or 604; and~~

17 ~~————— (3) except as provided in the partnership agreement, to partners first for the return~~
18 ~~of their contributions and secondly respecting their partnership interests, in the proportions in~~
19 ~~which the partners share in distributions.~~

20 (a) In winding up a partnership's business, the assets of the partnership, including
21 the contributions required by subsection (c), must be applied to discharge its obligations to

creditors, including, to the extent permitted by law, partners who are creditors.³⁹⁶ Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with subsection (b).³⁹⁷

(b) Any surplus existing pursuant to 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 pursuant to 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.³⁹⁸

(c) If the limited partnership's assets are insufficient to discharge all its obligations pursuant to subparagraph (a), then with respect to each undischarged obligation incurred when the limited partnership was an ordinary limited partnership:³⁹⁹

(1) each person who was a general partner when the obligation was incurred and who has not been released pursuant to Section 401F 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 clause (1), the other persons required to contribute by that clause shall contribute the additional amount necessary to discharge the limited partnership obligation and the additional contribution due from each of those other persons shall be in proportion to the share of limited partnership losses in effect for each of those other persons when the obligation was incurred; and

(3) if any person fails to make the additional contribution required by clause

1 (2), further additional contributions shall be due and determined in the same manner as provided
2 in that clause.

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

8 (e) The estate of a deceased person is liable for the person's obligations under this
9 Section.⁴⁰⁰

10 (f) An assignee for the benefit of creditors of a limited partnership or a partner, or
11 a person appointed by a court to represent creditors of a limited partnership or a partner, may
12 enforce a person's obligation under subsection (c) to contribute to the limited partnership.⁴⁰¹

13 **SECTION 805. TERMINATION.** The existence of a limited partnership is terminated
14 upon the filing, pursuant to Section 203, of a declaration of termination, or at a later date
15 specified in that declaration. Termination of a limited partnership does not affect the application
16 of Sections 803B, 803C and 803D (barring of claims).⁴⁰²

17
18 **[revisions to Article 9 are reserved to the next draft]**

1 ARTICLE 9

2 FOREIGN LIMITED PARTNERSHIPS

3 SECTION 901. LAW GOVERNING. Subject to the Constitution of this State, (i) the
4 laws of the state under which a foreign limited partnership is organized govern its organization
5 and internal affairs and the liability of its limited partners, and (ii) a foreign limited partnership
6 may not be denied registration by reason of any difference between those laws and the laws of
7 this State.
8

9 SECTION 902. REGISTRATION. Before transacting business in this State, a foreign
10 limited partnership shall register with the Secretary of State. In order to register, a foreign
11 limited partnership shall submit to the Secretary of State, in duplicate, an application for
12 registration as a foreign limited partnership, signed and sworn to by a general partner and setting
13 forth:

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

16 (2) the State and date of its formation;
17

18 (3) the name and address of any agent for service of process on the foreign
19 limited partnership whom the foreign limited partnership elects to appoint; the agent must be an
20 individual resident of this State, a domestic corporation, or a foreign corporation having a place

1 of business in, and authorized to do business in, this State;

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

6 (5) the address of the office required to be maintained in the state of its
7 organization by the laws of that state or, if not so required, of the principal office of the foreign
8 limited partnership;

9
10 (6) the name and business address of each general partner; and

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

15
16 SECTION 903. ISSUANCE OF REGISTRATION.

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

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

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

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

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

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

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

17 SECTION 906. CANCELLATION OF REGISTRATION. A foreign limited partnership
18 may cancel its registration by filing with the Secretary of State a certificate of cancellation signed
19 and sworn to by a general partner. A cancellation does not terminate the authority of the

1 Secretary of State to accept service of process on the foreign limited partnership with respect to
2 [claims for relief] [causes of action] arising out of the transactions of business in this State.
3

4 SECTION 907. TRANSACTION OF BUSINESS WITHOUT REGISTRATION.

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

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

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

14 (d) A foreign limited partnership, by transacting business in this State without
15 registration, appoints the Secretary of State as its agent for service of process with respect to
16 [claims for relief] [causes of action] arising out of the transaction of business in this State.
17

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

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ARTICLE 10
DERIVATIVE ACTIONS

SECTION 1001. RIGHT OF ACTION. A limited partner may bring ~~an~~ a derivative action ~~in the~~ to enforce a right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed if:

- (1) the limited partner has made demand on the general partners that they cause the limited partnership to bring an action to enforce the right, or
- (2) a demand will likely be futile.⁴⁰³

SECTION 1002. PROPER PLAINTIFF.⁴⁰⁴ In a derivative action, the plaintiff must be a limited⁴⁰⁵ partner at the time of bringing the action and:

- (1) the plaintiff (i) must have been a partner⁴⁰⁶ ~~at the time of the transaction of which he [or she] complains when the conduct giving rise to action occurred,⁴⁰⁷ or~~
- (2) (ii) his [or her] the plaintiff's status as a partner must have devolved upon ~~him~~ him ~~[or her] the partner~~ by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the ~~transaction~~ conduct.

1 **SECTION 1003. PLEADING.** In a derivative action, the complaint shall set forth with
2 particularity ~~the effort of the plaintiff to secure initiation of the action by a general partner or the~~
3 ~~reasons for not making the effort;~~

4 (1) the date and content of plaintiff's demand and the general partners' response to
5 that demand, or

6 (2) the circumstances that excused a demand as likely futile.⁴⁰⁸

7
8 **SECTION 1004. PROCEEDS AND**⁴⁰⁹ **EXPENSES.**⁴¹⁰ ~~If a derivative action is~~
9 ~~successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment,~~
10 ~~compromise or settlement of an action or claim, the court may award the plaintiff reasonable~~
11 ~~expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited~~
12 ~~partnership the remainder of those proceeds received by him [or her].~~

13 (a) Except as stated in subsection (b):

14 (1) any proceeds or other benefits of a derivative action, whether as a result of
15 a judgment, compromise or settlement, belong to the limited partnership and not to the derivative
16 plaintiff;

17 (2) the court shall order those proceeds paid to the limited partnership; and

18 (3) if the derivative plaintiff receives any of those proceeds, the derivative
19 plaintiff shall immediately transfer them to the limited partnership.

20 (b) If a derivative action is successful in whole or in part, the court may award the
21 plaintiff reasonable expenses, including reasonable attorney's fees.

1 **SECTION 1005. BREACH OF PARTNERSHIP AGREEMENT NOT**

2 **NECESSARILY A DIRECT CLAIM.** A partner bringing a direct claim on account of breach
3 of the partnership agreement must plead and prove some injury caused or threatened by the
4 breach which is not solely the result of an injury suffered or threatened to be suffered by the
5 limited partnership.⁴¹¹

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]:

1 (1) "Constituent organization" means an organization that is party to a merger.⁴¹²

2 (2) "Governing statute" of an organization means the statute under which the
3 organization is incorporated, organized, formed, or achieves its fundamental organizational status
4 and which governs the structure, governance, operations, and other internal affairs of the
5 organization.

6 (3) "Limited partnership" includes not only a limited partnership formed under
7 this Act but also any limited partnership formed under a predecessor statute of this State or under
8 a comparable statute of any other State.

9 (4) "Organization" includes a domestic or foreign general partnership, limited
10 liability partnership, limited partnership, limited liability limited partnership, limited liability
11 company, corporation and other entity considered by its governing statute to have owners and
12 ownership interests.⁴¹³

13 (5) "Owner" means with respect to:

14 (i) a general or limited partnership, a partner;

15 (ii) a limited liability company, a member;

16 (iii) a corporation, a shareholder; and

17 (iv) any other organization, a person recognized by the organization's
18 governing statute as being an owner of the organization.

19 (6) "Ownership interest" means an owner's equity interest in an organization,
20 including any right of the owner to acquire additional equity interests and excluding bare
21 transferable interests.

22 (7) "Owner vicarious liability" means personal liability for an organization's debts

1 and other obligations which is imposed by the organization's governing statute on an owner
2 through a provision making owner status an essential element for establishing personal
3 liability.⁴¹⁴

4 (8) "Surviving organization" means a constituent organization that exists after the
5 merger takes effect.⁴¹⁵

6 **SECTION 1102. MERGER OF ENTITIES.**⁴¹⁶

7 (a) A limited partnership may participate in a merger with one or more other
8 organizations pursuant to this [Article], except for a organization whose governing statute
9 prohibits it from participating in the merger.⁴¹⁷ To participate in a merger a constituent
10 organization must approve a plan of merger pursuant to subsections (d) and (e).

11 (b) A plan of merger must state:

12 (1) the name of each constituent organization;

13 (2) the name, type of organization, and street address of the principal place of
14 business of the surviving organization;

15 (3) the terms and conditions of the merger;

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 money,
18 ownership interests in the surviving organization, and other consideration; and

19 (5) if the merger involves a limited partnership formed under this [Act], that
20 limited partnership will not be the surviving organization, and immediately before the merger

1 takes effect that limited partnership will have outstanding bare transferable interests, the manner
2 and basis for converting those bare transferable interests into any combination of money,
3 ownership interests in the surviving organization, and other consideration.⁴¹⁸

4 (c) A plan of merger may also state the manner and basis for changing or
5 cancelling some or all of the ownership interests of some or all of the persons who are owners of
6 the surviving organization immediately before the merger takes effect.

7 (d) A plan of merger must be approved, subject to subparagraph (e):

8 (1) in the case of a constituent organization that is a limited partnership
9 organized under [this Act], by the written consent all of the partners;⁴¹⁹
10 and

11 (2) in the case of any other constituent organization, in the manner provided
12 by the organization's governing statute, including any appraisal rights given by that statute, and if
13 that statute does not provide for approving a merger, then by the written consent of all the
14 organization's owners.

15 (e) The merger must be approved in writing by any partner of a limited
16 partnership formed under this [Act] who will be an owner of the surviving organization and will
17 as a result of the merger face increased susceptibility to owner vicarious liability for any of the
18 following reasons:⁴²⁰

19 (1) The person will have owner vicarious liability for a debt or obligation of
20 the surviving organization which was incurred before the merger but for which the person did not
21 have owner vicarious liability before the merger.

22 (2) The surviving organization's governing statute provides less protection

1 against owner vicarious liability than does this [Act].⁴²¹

2 (3) The merger causes the person to have an ownership interest that, under the
3 surviving organization's governing statute, has less protection from owner vicarious liability than
4 the person had under [this Act] as a partner.⁴²²

5 (f) After a plan of merger is approved and before the merger takes effect, unless
6 the governing statute of a constituent organization provides to the contrary, the plan may be
7 amended or abandoned as provided in the plan.

8 **SECTION 1103. ARTICLES OF MERGER.**⁴²³

9 (a) After approval of the plan of merger under Section 1102, the organization that
10 will be the surviving organization shall deliver articles of merger to the [Secretary of State] and
11 to any other public official or office to whom delivery is required by a constituent entity's
12 governing statute. The surviving organization must provide a copy of the articles of merger to
13 each owner of each constituent organization.

14 (b) The articles of merger must contain:

15 (1) the name of each constituent organization, together with the name of the
16 jurisdiction of the organization's governing statute;

17 (2) the name of the surviving organization and address of that organization's
18 principal place of business;⁴²⁴

19 (3) the plan of merger;⁴²⁵

20 (4) a statement that each constituent organization has approved the plan of

1 merger and a description for each constituent organization of:

2 (i) the approval process mandated by the organization's governing statute
3 or [this Act];⁴²⁶ and

4 (ii) the organization's compliance with the mandated approval process,
5 including the dates on or by which any necessary consents or votes were obtained;

6 (5) if a limited partnership formed under this [Act] is the surviving
7 organization and the merger necessitates changes in the limited partnership's certificate of limited
8 partnership, an amendment to that certificate making the necessary changes;

9 (6) any other information required by the governing statute of a constituent
10 organization that is not a limited partnership formed under this Act; and

11 (7) the effective date of the merger.⁴²⁷

12 **SECTION 1104. EFFECTIVE DATE AND EFFECT OF MERGER.⁴²⁸**

13 (a) A merger is effective under this [Article] upon the earlier of:

14 (1) compliance with Section 1103 and the performance of any acts required to
15 effectuate the merger under the governing statute of any constituent organization;⁴²⁹ or

16 (2) a later date specified in the articles of merger.

17 (b) When a merger takes effect:

18 (1) each constituent organization other than the surviving organization ceases
19 its separate existence and merges into the surviving organization;

20 (2) except as prohibited by other law,⁴³⁰ all property and rights owned by each
21 constituent organization vest in the surviving organization without reversion or impairment;

1 (3) all obligations of each constituent organization become the obligations of
2 the surviving organization;⁴³¹

3 (4) a proceeding pending by or against a constitutive organization may be
4 continued as if the merger had not occurred or the surviving organization may be substituted as a
5 party in the proceeding in place of the organization whose existence has ceased;⁴³² and

6 (5) the conversion of interests⁴³³ stated in the articles of merger occurs.

7 (b) Subject to subparagraph (c), an owner who is personally liable for an
8 obligation of a constituent organization which is incurred before the merger takes effect remains
9 liable on that obligation regardless of the merger.

10 (c) If a constituent organization's governing statute has a provision under which
11 an owner's personal liability for an obligation of the organization is affected by the owner
12 ceasing to be an owner, that provision applies:

13 (1) despite the merger to any former owner of the constituent organization
14 who ceased to be an owner before the merger; and

15 (2) as a result of the merger to any person who was an owner of a constituent
16 organization immediately before the merger but is not an owner of the surviving organization.

17 (d) Unless otherwise agreed,⁴³⁴ the participation of a limited partnership formed
18 under this [Act] in a merger pursuant to this [Article] does not cause a dissolution for the
19 purposes of [Article 8].⁴³⁵

20 (e) The surviving organization consents to the jurisdiction of the courts of this
21 State and to service of process in this State to enforce any obligation owed:

22 (1) by any constituent organization, if before the merger the constituent

1 organization was subject to suit in this State on that obligation; and

2 _____ (2) by the surviving organization under the plan of merger to any person who
3 immediately before the merger was a partner of a limited partnership formed under this Act or
4 was the owner of a bare transferable interest of a limited partnership formed under this [Act].

5 _____ (f) The surviving organization shall appoint and maintain an agent for service of
6 process which meets the requirements stated in Section 104A. If the surviving organization fails
7 to do so, or the agent for service of process cannot with reasonable diligence be found, the
8 [Secretary of State] is an agent of the surviving organization upon whom process may be served.
9 Service on the [Secretary of State] is made in the same manner and with the same consequences
10 as stated in Section 104B.

11 _____ (g) A foreign surviving organization is not authorized to do business in this State
12 unless it complies with the laws of this State granting that authority.⁴³⁶

13
14 **SECTION 1105. [ARTICLE] MANDATORY.** A limited partnership formed under
15 this [Act] which participates in a merger must comply with this [article]. If this [article] and
16 another applicable governing statute require delivery of the same document, a duplicate original
17 may be delivered to comply with this [article].

18 **[revisions to current Article 11 are reserved for the next draft]**

19 **ARTICLE 11**

1 MISCELLANEOUS

2 SECTION 1101. CONSTRUCTION AND APPLICATION. This [Act] shall be so
3 applied and construed to effectuate its general purpose to make uniform the law with respect to
4 the subject of this [Act] among states enacting it.

5 SECTION 1102. SHORT TITLE. This [Act] may be cited as the Uniform Limited
6 Partnership Act.

7 SECTION 1103. SEVERABILITY. If any provision of this [Act] or its application to
8 any person or circumstance is held invalid, the invalidity does not affect other provisions or
9 applications of the [Act] which can be given effect without the invalid provision or application,
10 and to this end the provisions of this [Act] are severable.

11 SECTION 1104. EFFECTIVE DATE, EXTENDED EFFECTIVE DATE AND
12 REPEAL. Except as set forth below, the effective date of this [Act] is _____ and the
13 following acts [list existing limited partnership acts] are hereby repealed:

14 (1) The existing provisions for execution and filing of certificates of limited
15 partnerships and amendments thereunder and cancellations thereof continue in effect until
16 [specify time required to create central filing system], the extended effective date, and
17 Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended

1 effective date.

2 (2) Section 402, specifying the conditions under which a general partner ceases to
3 be a member of a limited partnership, is not effective until the extended effective date, and the
4 applicable provisions of existing law continue to govern until the extended effective date.

5 (3) Sections 501, 502 and 608 apply only to contributions and distributions made
6 after the effective date of this [Act].

7 (4) Section 704 applies only to assignments made after the effective date of this
8 [Act].

9 (5) Article 9, dealing with registration of foreign limited partnerships, is not
10 effective until the extended effective date.

11 (6) Unless otherwise agreed by the partners, the applicable provisions of existing
12 law governing allocation of profits and losses (rather than the provisions of Section 503),
13 distributions to a withdrawing partner (rather than the provisions of Section 604), and
14 distribution of assets upon the winding up of a limited partnership (rather than the provisions of
15 Section 804) govern limited partnerships formed before the effective date of this [Act].

16 SECTION 1105. RULES FOR CASES NOT PROVIDED FOR IN THIS [ACT]. In any
17 case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.

18 SECTION 1106. SAVINGS CLAUSE. The repeal of any statutory provision by this

1 [Act] does not impair, or otherwise affect, the organization or the continued existence of a
2 limited partnership existing at the effective date of this [Act], nor does the repeal of any existing
3 statutory provision by this [Act] impair any contract or affect any right accrued before the
4 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). 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(f). 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(e)(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. This definition is an amalgam of RUPA § 101(3) and ULLCA 101(5). This draft follows RUPA in referring to a partner's economic interest as a "transferable interest" (compare ULLCA: "distributional interest") and in conceiving of distributions as limited to "money or other property" (compare ULLCA: ". . . or other benefit"). The definition of "transferee," Section 101(22), allows this definition to be slightly shorter than the ULLCA version while retaining some clarity added by ULLCA. (Compared to RUPA, the ULLCA approach more easily encompasses a transferee who did not obtain its interest directly from the partner.)

6. Source: ULLCA § 7. "Entity" is somewhat a misnomer, because the term encompasses legal persons that might still be thought of as aggregates, or part aggregate/part entity. The Article on mergers contains a special definition of the term "organization." That term refers to a subset of entities -- those with owners.

7. This definition is no longer needed because this draft uses the term "dissociation."

8. The 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 partnership continues through winding up and until termination.

9. There are two reasons for this change. First, this draft changes the rules on how a

general partner becomes a general partner. Second, putting those rules in the definition section would make for a very cumbersome definition.

10. The 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.

11. See note 9, above, explaining the change in the definition of "General partner."

12. The 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 partnership continues through winding up and until termination.

13. In a modified form this concept now appears in the definition of "Transferable interest."

14. The more expanded definition is based on RUPA § 101(9) and ULLCA 101(14).

15. Source: 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. This draft includes ULLCA's definition of "record" so that Committee will be sure to discuss to what extent that brave new world should appear in Re-RULPA. 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.

16. Section 104 requires that these records be kept at the limited partnership's in-state office.

17. Source: ULLCA § 101(17). (If the Committee decides against the expansive concept of a "record," this definition will have to be changed accordingly.)

18. Source: RUPA § 101(10). (Replicated in ULLCA § 101(18).)

19. Source: RUPA § 502. This definition appears here, rather than later in the statute (as in RUPA), because the term is used throughout the statute.

20. This numbering is to preserve for initial reference purposes the section numbers from RULPA. The final version will not contain this numbering.

21. Source: RUPA § 102.

22. ULLCA § 102 (which follows RUPA § 102 almost verbatim) uses "entity." RUPA § 102 refers to "a person other than an individual."

23. RUPA lacks the prepositional phrase.

24. RUPA lacks the prepositional phrase.

25. RUPA 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 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(c). 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(c).

26. Source: 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.)

27. This provision addresses conflicts between the partnership agreement and the certificate of authority. Following ULLCA's organizational approach, this draft places the conflict provision in the section relating to the certificate rather than in the section relating to the partnership agreement. See ULLCA § 203(c).

The potential of conflict also exists between the partnership agreement and the required records. Section 101B(a) contains no reference to the required records, and by that omission this draft 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.)

28. Changed from RUPA in style only. This draft uses the active rather than the passive voice.

29. Query: 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, or Section 105's requirement that the required

records be maintained at that office?

30. This subsection is new.

31. This clause 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.

32. The first section refers to a limited partner's right of access and the second to a general partner's right. The analogous RUPA and ULLCA provisions begin with the word "unreasonably." RUPA § 103(b)(2); ULLCA 103(b)(1). The information access provisions in this draft include significant protections against improper access and are therefore proposed to be essentially nonwaivable.

33. The 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.

34. Neither RUPA nor ULLCA contain this language.

35. Neither RUPA nor ULLCA contain this language.

36. RUPA uses "or" here, but ULLCA uses "and."

37. This 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.

38. Neither RUPA nor ULLCA contain this language.

39. In RUPA: manifestly unreasonable. See above, note 33, for a discussion of the difference.

40. General partner status has two major aspects: manager and owner. Under RULPA, those aspects are inextricably connected, and a general partner that exercises its power to resign as manager simultaneously dissociates as an owner. This draft approaches separately a general partner's termination of management position and ownership status. The general partner always has the power to resign as a general partner but lacks the power to dissociate as an owner. In the latter respect, a general partner is no better off than a limited partner. See Section 401C.

41. This provision derives from RUPA § 103(b)(7) but may be superfluous in light of this draft's prohibition on constricting the causes of dissociation. Judicial expulsion is one of those causes.

42. This 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.

43. The exception aims principally at transferees.

44. Derived from RUPA § 104, but with significant changes as noted below in notes 45 and 48. (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. However,.

45. Neither RUPA nor ULLCA includes the language in this "but" clause.

46. Query: insert here the phrase "an enforceable provision of "?

47. Query: insert here the phrase "an enforceable provision of "?

48. This subsection appears in neither RUPA nor ULLCA.

49. Derived from RUPA § 106.

50. The partnership agreement could change this rule. Is that okay?

51. This provision is not subject to change by the partnership agreement, since the provision affects the rights of third parties. Governing law for other theories of liability -- e.g., guaranty, warranty of authority, misrepresentation -- will be determined under generally applicable choice of law principles. This draft does not include a provision on partnership by estoppel, see note 132 below.

52. This 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 LLPs.

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?

53. Derived from ULLCA § 105(a).

54. Derived from RULPA § 102(2).

55. Derived from ULLCA § 105(b).

56. Derived from ULLCA § 105(c)(1). The ULLCA version does not include the phrase "and from the all of the names described in subsection (b)".

57. Derived from ULLCA § 105(c)(2). The ULLCA version does not include the phrase "in this State."

58. Although 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.

59. This 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."

60. Not present in ULLCA.

61. ULLCA § 106 essentially derives from 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 a substantive difference worth noting. Under RULPA § 106 and 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.

62. ULLCA § 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.

63. This 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 this draft's language makes clear that no such requirement exists.

64. The 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.

65. This section takes some of the concepts found in ULLCA §§ 108--111 but expresses them in a different form.

66. It 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.

67. This provision allows any entity, including a nonprofit, to function as an agent for service of process. Compare RULPA § 104(a): "[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."

68. The 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.

69. This language is appropriate assuming that the draft preserves the RULPA nomenclature for registration of foreign limited partnerships.

70. As stated above, note 69, this language reflects RULPA's provisions on registration. They need some refurbishing, and this language will likely change to reflect that refurbishing.

71. The 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.

72. Possible 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.

73. Source: ULLCA § 111(c)(2). The language does not indicate whether, for this clause 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.

74. This change is in keeping with the use of "required records" as a defined term.

75. It 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 clause reflect that change.

76. This section requires the limited partnership to compile additional information beyond what is generally required to be maintained in the required records.

77. If the Committee decides to retain this new provision, the Committee should determine whether information of this type relating to one partner should be accessible to other partners. This draft denies automatic access to limited partners but allows it for general partners. See Sections 305(a) (limited partners) and 403E(a) (general partners).

78. This provision is proposed for two reasons. First, this information is relevant to the new provision dealing with improper distributions. See Section 607. Second, Section 605 now provides that a partner becomes entitled to a distribution when the distribution is noted in the limited partnership's required records.

79. If the Committee decides to retain this provision, the next draft will include a definition of "affiliate."

80. This 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.

81. Derived from RMBCA § 16.01(e)(5).

82. Query: is this provision sufficient to provide information to all the limited partners, or should the Act require that notice of these consents be given directly to all limited partners?

83. Delinking makes it necessary to expand this section to specify a limited partnership's powers.

84. This 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(4), because the phrase could be read to exclude activities other than operating businesses.

85. This changes merely delinks the current RULPA provision from the law of general partnerships.

86. Derived from ULLCA § 112(a).

87. This version would not promote formal uniformity among states but would aid intra-state uniformity.

88. This version relies on ULLCA § 112, which in turn appears to have relied heavily on RMBCA § 3.02

89. ULLCA § 112(a)(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.

90. 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.

91. This provision appears at RMBCA § 3.02(14) but not in ULLCA.

92. Both RMBCA § 3.02 and ULLCA § 112(b) require a publicly filed document. Given the fundamental importance of the partnership agreement, this draft allows that agreement also to

constrict a limited partnership's powers.

93. 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.

94. If the Act is to contemplate restrictions, the Act should contemplate the consequences of transgressing those restrictions. RMBCA does both. See RMBCA §§ 3.02 (allowing the articles of incorporation to restrict a corporation's powers) and 3.04 (dealing with ultra vires acts). ULLCA allows for restrictions, ULLCA § 112(b), but appears not expressly to address consequences. This draft does not include an ultra vires provision but does attempt to specify the effect of restricting a limited partnership's powers. Section 208 deals with the effect of information stated in the certificate of limited partnership, and Section 403A describes a general partner's power to bind the limited partnership. Section 101B(a) states the general proposition that the partnership agreement governs inter se relations. The upshot of all these provisions is that:

- A purpose limitation adversely affects the rights of a third party only if at the relevant moment the third party "knew or had received a notification" of the limitation. Section 403A(a)(1).
- A purpose limitation stated in the certificate "is conclusive in favor of a person who, while not a partner, reasonably and detrimentally relies on that information." Section 208(d).
- Among the partners (e.g., as to a claim that a general partner is liable for acting without authority), the partnership agreement controls over any inconsistent

statement in the certificate. Section 208(e)(2).

A purpose limitation would also be relevant for determining whether a partner's conduct is within "the ordinary course of business of the limited partnership," Section 403B(a) or "in the course of the limited partnership's business." Section 403B(b). (Section 403B determines when a limited partnership liable for general partner's actionable conduct.) Query: will a Comment suffice on this point, or is it necessary for the statute to include a cross reference to Section 403B?

95. To the uninitiated, this section appears to conflict with Section 403(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 both locate this provision elsewhere, within the section dealing with fiduciary duty. See RUPA § 404(f) and ULLCA § 409(f).

96. Like the Section numbers containing a capital letter (e.g. 403A), this number is temporary.

97. Source: RUPA § 201. ULLCA § 201 contains essentially the same provision.

98. Subsections 403C(d)--(f), derived from RUPA § 307, provide in greater detail rules concerning joinder of these claims with claims against the limited partnership, as well as rules relating to enforcement of judgments.

99. This draft follows RULPA and limits derivative claims to limited partners. See Section 1001.

100. It would certainly be possible to improve the style of this section. However, in keeping with the Committee's tentative decision to conserve the current statute to the extent possible, this draft makes only substantive changes to the section.

101. People often refer to this "latest date" as the term of a limited partnership. This change conforms the statutory language to that usage.

102. This provision is a much slimmed-down version of RUPA's statement of authority. RUPA's more elaborate and extensive approach seems unnecessary given the sharp division of authority between general and limited partners.

103. If the Committee decides to retain Section 702(d), regarding additional restrictions on transfer and the effect of mentioning such restrictions in the certificate, the Comment will cross reference that provision.

104. The Comment will state that, except in unusual circumstances, a general partner who causes the certificate to differ from the partnership agreement has breached a duty under Section 403C.

105. It 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.

106. Note the use of the passive voice. It would be better drafting to re-style this sentence

to the effect of "a limited partnership shall file . . . "

107. As explained above, note 40, this draft approaches separately a general partner's termination of management position and ownership status. This change corresponds to that approach. For a more detailed discussion, see Section 401A.

108. What 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.

109. What 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.

110. In 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 by Judicial Act) is available to a general partner who cannot convince fellow partners to sign.

111. It would generally not be a "proper purpose" to amend the certificate so as 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 discharged 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.

Query: will a comment along the lines of this endnote sufficiently deal with this issue, or should the statute address the matter?

112. As 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.

113. This 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.

114. The adjective is to distinguish any restated certificates.

115. ULLCA § 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?

116. As proposed below, Sections 302(a)(4) and 403(c)(4), in the default mode as among the partners this change requires the written consent of all partners. However, execution of the necessary publicly-filed document remains the province of the general partners.

117. This change corresponds with the new approach of Section 401, which makes designation in the certificate of limited partnership a precondition to being a general partner.

118. The present language of clause (2) [now essentially preserved in clause (5)] seems a bit obscure. Clause (2) could plausibly be read to require, in the case of an amendment adding a partner, a signature from both the new partner and a preexisting partner. That reading appears incorrect, however, because: (i) the Comment to RULPA § 204 contradicts it ("Certificates of amendment are required to be signed by only one general partner"), and (ii) the reading would leave a statutory gap for situations in which the last general partner withdraws and the remaining partners choose to continue the business and select a new general partner. If the meaning of clause (2) [now (5)] is clear on its face to the Committee, the language should be left as is. If not, the next draft will revise the language.

N.b. -- this draft gives one general partner the power to file an amendment stating that another general partner has been discharged as general partner.

119. The changes to paragraph (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 paragraph (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 paragraph (b)'s protections make sense for additional general partners, they make sense for the original general partners as well. The changes therefore apply paragraph (b) to the original certificate.

Third, paragraph (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 paragraph (b) applies only to an authorization from a person who is about to be newly designated as a partner.

120. Strictly 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.

121. This change conforms this phrase with the current language of clause (1).

122. This paragraph raises two organizational issues. First, note that -- consistent with RULPA -- this paragraph does not discuss the effect of filing the original certificate of limited partnership. That effect remains the province of § 201(b). It might make sense to centralize the effect provisions. Compare ULLCA § 206. Second -- and running in the contrary direction -- it

might make sense to relocate to Article 8 the language dealing with the effect of a declaration of termination. To generalize -- here, as elsewhere, it is impossible to have a fully consistent paradigm of organization while adding significant new provisions and striving to retain the overall organizational structure (and "look and feel") of the current act.

123. Because "certificate of limited partnership" is defined to include the certificate as amended, Section 101(3), this clause 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.

124. 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.

125. This Section attempts to centralize most of the provisions that deal directly with the newly-described subject. There are other relevant provisions, however; e.g., Sections 401E(a)(1) (cutting off a discharged 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 no longer identifies the discharged general partner as a general partner"), 401F(b)(2) (same as to

general partner's liability for post-discharge 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?

126. Notice to whom and to what effect? "The fact that a certificate of limited partnership is on file in the office of the Secretary of State" establishes the legal existence of the limited partnership but does not constitute notice of that existence.

127. New subsection (c) now addresses this issue.

128. Following RUPA, this provision applies even in favor of a partner.

129. Source: RUPA § 302(d)(1) and (2). N.b. -- this draft does not require duplicate filings. Note also that, following RUPA, this provision does not explicitly determine what happens if the stated grant contradicts the partnership agreement and the person seeking to rely on the statement had knowledge of the conflicting provision. Comment 2 to RUPA § 303 suggests (by what it does not say) that the statement controls:

The presumption of authority created by subsection (d)(2) operates only so long as and to the extent that a limitation on the partner's authority is not contained in another recorded statement. This is intended to condition reliance on the record to situations where there is no conflict among recorded statements, amendments, or denials of authority. . . . If the record is in conflict regarding a partner's authority, transferees must go outside the record to determine the partners' actual authority.

(Emphasis added.)

130. Source: RUPA § 302(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.

131. Since this provision borrows the language of subsection (a), this provision raises the same difficulty as discussed above in note 129.

132. Since this provision borrows the language of subsection (b), this provision raises the same difficulty as discussed above in note 130.

Also, n.b. -- this provision eliminates any need to include RUPA § 308 (Liability of Purported Partner), because the deemed knowledge makes unreasonable any reliance on a person falsely claimed to be a general partner. Other law -- e.g., fraud, warranty of authority -- may aid persons misled by assertions of general partner status.

133. In some circumstances, this provision would encompass reliance on what the certificate does not include. For example, a third party might reasonably rely on a certificate not

indicating that the partnership has dissolved, since Section 803(a) requires the limited partnership to amend its certificate to indicate that dissolution has occurred.

134. This subsection derives from ULLCA § 203(c).

135. Of course, if the inconsistent certificate provision attempts to waive a nonwaivable provision of the Act, the no real inconsistency exists. The certificate provision is ineffective. See Section 201(c) precluding a certificate from changing nonwaivable provisions of the Act. Query: will a Comment to this effect suffice, or should the statutory language be "subject to Section 201(c) regarding nonwaivable provisions of this [Act]"?

136. This provision leaves unresolved the issues discussed above in notes 129 and 130. Consider, in particular, whether a person's knowledge of the inconsistency constitutes "knowledge to the contrary" under subsection (a).

137. This approach could leave some gaps. Suppose that: (i) an inconsistency relates to a topic other than those covered in subsections (a) -- (d), (ii) a dispute relating to the inconsistency involves both a partner and a non-partner; (iii) at the time of the events giving rise to the dispute the non-partner knew of the certificate information but not of the partnership agreement, (iv) by the time the dispute arises circumstances have changed so that the non-partner wishes not to assert the certificate information and the partners would prefer to have that information control.

Subsection (d) [Version #1] arguably will not apply because the certificate information will not operate "in favor of" the non-partner. Subsection(e)(2) seems to condemn the partner to the partnership agreement, but the draft does not specifically govern the non-partner.

The analogous language in ULLCA, § 203(c)(2), might in theory produce a different

result, because the partners might be able to prove that at the relevant moment the non-partner did "reasonably rely on the articles to [the non-partner's] detriment." There are, however, obvious practical difficulties in proving another party's reasonable reliance on information that party later prefers to ignore. Moreover, ULLCA § 203(c)(1) states that "the operating agreement controls as to . . . members." That provision makes doubtful a member's ability even to assert that the publicly-filed information controls.

In contrast, less (if any) gap will exist when a limited partnership and a non-partner dispute an inconsistency. In most such circumstances, Section 403A will solve the problem. Suppose, for instance, that: (i) the certificate states that a particular partner has the authority to enter into certain types of transactions not relating to real property; (ii) a third party relies on that information and makes a contract with the limited partnership; (iii) the contract later turns out to be a very bad deal for the third party and a very good deal for the limited partnership; and (iv) the third party discovers that the partnership agreement denies the partner the authority described in the certificate. Before the limited partnership can ratify the deal, the third party seeks to avoid the contract on the grounds that the partner lacked authority to enter into it, therefore the limited partnership is not bound and therefore the contract fails for lack of mutuality of obligation. For the reasons stated above, the certificate information does not operate "in favor" of the non-partner. However, Section 403A(a)(1) will bind the limited partnership because at the relevant time the non-partner neither "knew [nor] had received a notification that the partner lacked authority." The mutuality of obligation argument will therefore fail.

138. The 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. See

Section 403D(d).

139. The deleted phrase is unnecessary, given Section 101B(a).

140. ULLCA 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).

141. Clause (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 clause (2) allows the required records to provide for admission, while subsection (b) requires compliance with the partnership agreement.

142. Because the Reporter prefers Version #2, this draft has eliminated the language in Section 704 that corresponds to this reference. If the Committee chooses Version #1, Section 704 will have to be redrafted accordingly.

143. This version boils down the current paragraph (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 written consent of all the partners."

144. The rationale for this rule is that, at least in the default mode, the partnership agreement cannot be changed without the consent of all partners while the required records are maintained and therefore controlled by just the general partners. To the extent that the partnership agreement differs with the certificate of limited partnership (i.e., the former designating a person a limited partner while the latter designates the person a general partner), Section 208 controls.

145. 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.

146. The 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 appointment of a new general partner following the discharge 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.

147. This draft offers several alternatives as to the connection between a general partner's discharge and the threat of dissolution. The language in this clause 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.

148. This subsection is referenced in Section 403(c), which lists actions that the general partners may not take without the consent of the limited partners.

149. For the Comment: The phrase "as a limited partner" means that this provision does not disable a general partner that also owns a limited partner interest.

150. For 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.

151. This issue is discussed further in Section 1005, which states a rule for distinguishing between a limited partner's direct and derivative claims.

152. This draft follows RUPA § 405(b) in eliminating an accounting as a precondition to an individual action. The draft does not, however, include all of RUPA § 405's detail. In RUPA that detail is appropriate, because it helps RUPA reject the "aggregate" characteristics that the common law and the UPA imparted to general partnerships. Those characteristics reached limited partnership law barely, if at all. RUPA's detail therefore appears unnecessary.

153. The phrase "on account of that status" indicates 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.

154. Note 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.

155. If the Committee prefers this version, the Reporter will propose a Comment indicating that any management rights beyond those specified in Section 302(a) [new language] constitute "rights of a general partner."

156. Derived 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.

157. Derived (loosely) from RMBCA § 7.32(e).

158. This version's advantage: not every little accession of power triggers fiduciary duty. For fiduciary duty to kick in, a limited partner's role must be at least equivalent to the role of the most junior of general partners. The version's disadvantage: there is no easy, mechanical way to determine the point at which the duty kicks in.

159. Source: RUPA § 404 (d).

160. Derived from RUPA § 409(e).

161. This sentence follows the Committee's instructions. The rule stated here adds significance to the proposed Comment.

162. Derived from RUPA § 409(e).

163. This sentence follows the Committee's instructions. The rule stated here adds significance to the proposed Comment.

164. The 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 241, below.)

165. In essence this subsection preserves claims for which owner status is not an element.

The subsection thus does not preserve or even refer to "piercing" claims, because owner status is an element of the piercing theory. For a discussion of piercing, see below, note 241.

166. Even though under the current draft in most circumstances a limited partner's name does not belong in the name of an LLLP, 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.

167. This 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?

168. In 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.

169. Even 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.

170. The 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 is confusing in relation to Section 208(c) and Section 403A. Under Section 208(c), if a certificate of limited partnership designates a person as a general partner, that designation -- erroneous or otherwise -- has implications under Section 403A for that person's power to bind the limited partnership. If this section is intended to override Sections 208(c) and 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" must be removed.

171. The 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.

172. This change is intended to aid clarity by reserving the term "certificate" for the certificate of limited partnership.

173. The Comment will indicate that: (i) this provision permits a withdrawing person to receive as 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.

174. Under the added language, if at the relevant moment the limited partnership is a LLLP, no personal liability results.

175. This rule is perhaps implicit in the current language, but seems worth stating directly, especially in light of the new approach to limited partner withdrawal.

176. This Section has been substantially rewritten, essentially to provide greater guidance to partners and courts.

177. Limited 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.

178. Given the passive nature of limited partners and the presumed entrenchment of general partners, this draft provides limited partners broad access to 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 to impose reasonable confidentiality requirements.

179. Derived from RMBCA, § 16.02(c). That provision refers to "proper purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment.

180. Derived from RMBCA § 16.03(c). A Comment will state that a limited partnership may not claim undue hardship for compiling information that for other reasons it should already have or be compiling.

181. In a dispute concerning demanded information, 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, either the statute or the Comment could state: "In any dispute under section, the limited partner making the demand has the burden of proving a right to the demanded information."

182. The limited partnership does not fulfill its obligation by merely informing the limited partners that they can find what they need in the required records. This provision creates an

affirmative obligation of detailed disclosure.

A limited partner claiming breach of this obligation will have a direct claim, because the obligation presupposes a limited partner having the right to vote or to give or withhold consent. Such a right is personal. Moreover, the right to information is itself personal.

183. For the notion that former owners should have access rights, see ULLCA 408(a).

184. Derived from RMBCA § 16.02(c). That provision refers to "proper purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment.

185. Derived from RMBCA § 16.03(c).

186. This clause does not lessen the burden a plaintiff normally has in seeking injunctive relief.

187. This provision refers to the privacy interests of both general and limited partners.

188. To 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. If the partnership agreement does not meet the needs of the moment, the limited partnership must carry an even heavier burden to obtain a court-ordered restriction.

189. This provision makes explicit the mechanism left implicit by RULPA.

190. This provision differs from RULPA in making designation in the publicly-filed document a precondition to obtaining general partner status.

191. RULPA § 401 appears to limit the unanimous consent mechanism to limited partnerships whose "partnership agreement does not provide in writing for the admission of additional general partners." This limitation does not make sense, since unanimous consent would always suffice to amend the partnership agreement and thereby effect the admission of a new general partner. Under this draft, unanimous consent is always an appropriate mechanism to admit a new partner, even if a written partnership agreement also addresses the issue.

192. This Section, and this draft's overall approach to general partner dissociation, differ from the approach discussed at the first drafting session. This draft treats separately the termination of a general partner's management and ownership roles. The new term "discharge" refers to the former. The RUPA term "dissociation" refers to the latter and applies both to general and limited partners.

The change reflects the Reporter's belief that -- at least in the default mode -- a general partner should have no greater ability than a limited partner to be bought out by the limited partnership. Of course a general partner should retain the power to cease being the limited partnership's manager, but there is no overriding reason that ceasing that role should automatically entitle the former general partner to dissociate as an owner.

That automatic entitlement does exist under RULPA, which views the general partner's two roles (manager and owner) as inseparable and gives each general partner the power to terminate the roles at will. RULPA § 602. As a consequence, in the default mode a RULPA general partner always has the power to withdraw "the fair value of his [or her] interest in the limited partnership . . . based upon his [or her] right to share in distributions," *id.*, § 604, although the payout is subject to an offset for damages on account of wrongful withdrawal. *Id.*, §

602. RULPA also gives a limited partner the default mode right to "put" its interest to the limited partnership, but that right is essentially illusory. If the partnership agreement even states a term for the limited partnership, the put right disappears. *Id.* § 603.

RULPA's preference for the general partner seems unjustified and perhaps even paradoxical. The typical general partner has far more influence than the typical limited partner over the contents of the partnership agreement. If the "put" default rules are to tilt in favor of anyone, they should tilt in favor of the limited partners.

At the first drafting session the Committee made a decision that, left by itself, would have exacerbated RULPA's pro-general partner tilt. The Committee tentatively decided to eliminate outright any default mode put right for limited partners.

This draft accords general partners the same treatment. A general partner always has the power to cease being a general partner (i.e., be discharged) but in the default mode lacks any right to withdraw capital (i.e., be dissociated). Upon discharge, a general partner has its general partner interest converted into a limited partner interest, unless the circumstances causing discharge also cause dissociation. In that latter event, the former general partner receives essentially the same treatment as a dissociated limited partner.

193. The language in this section is drawn largely from RUPA § 601. In most respects, ULLCA § 601 follows the RUPA provision essentially verbatim.

194. This provision is derived from RUPA § 601(1) and ULLCA 601(1), but those Acts lack the concluding phrase ("at or before . . ."). The RUPA/ULLCA formulation could have confusing consequences. Suppose a general partner gives notice of its express will and then later

notifies the limited partnership that the discharge will have a delayed effective date. The added phrase addresses that issue.

195. Both RUPA and ULLCA have a separate provision referring to "expulsion pursuant to the partnership [operating] agreement. RULPA § 601(3); ULLCA § 601(4). That provision seems redundant, clearly encompassed by "an event agreed to in the partnership agreement as causing" For that reason, this draft does not include a provision analogous to RULPA § 601(3) and ULLCA § 601(4).

196. RUPA § 601(4) and ULLCA § 601(5) both refer to "unanimous vote." Vote connotes a gathering of partners (or their proxies) in one location. Why should not the default rule allow for written action?

197. RUPA § 601(4)(ii) states this proposition more obliquely:

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

The Reporter intends this draft's language to have the same effect. Note that this provision is not triggered if a general partner transfers all of the economic rights associated with the general partner interest but still retains some economic rights associated with a limited partner interest.

Note also that ULLCA takes a different approach than RUPA. ULLCA § 601(3) provides for dissociation automatically "upon [the final, noncontingent] transfer of all of a member's distributional interest," and ULLCA § 601(5)(ii) provides for expulsion by unanimous vote if "there has been a [final, noncontingent] transfer of substantially all of the member's

distributional interest." The Reporter's Notes to ULLCA do not explain why ULLCA differs from RUPA, and on this point this draft follows RUPA.

This draft omits here any analog to RUPA §601(4)(iii) and (iv). The former refers to the dissolution of a corporate partner and in this context would be both underinclusive (what about other entities?) and improperly placed (if an entity ceases to exist or to have the right to function, discharge should not require unanimous consent). Subsection (7) handles these issues.

RUPA §601(4)(iv) refers to a dissolved partnership. If a general partner is itself a dissolved partnership, why not allow the partnership to remain a general partner until its winding up is over? At that point, this draft's subsection (7) would apply.

198. RUPA § 601(5) and ULLCA § 601(6) each allow a fellow owner (i.e., partner or member) to petition the court. This draft hews more completely to the "entity" approach and limits standing to the limited partnership. Limited partners could seek a general partner's discharge through a derivative suit.

There are at least two other possible approaches: (i) allow partners standing directly, or (ii) allow other general partners standing regardless of how the partnership agreement allocates management authority among the general partners. If the Committee chooses the first alternative, either the Act or the Comment should make clear that an individual limited partner has standing only to the extent that the limited partner can show direct injury. If not, this provision would eviscerate the direct/derivative distinction.

199. RUPA's phrase "or the other partners" has been deleted in keeping with the provision's more restricted approach to standing. See note 198, above.

200. This event will simultaneously cause dissociation. See Section 800(6).

201. The analogous RUPA provision reads: "the appointment of a guardian or general conservator for the partner." RUPA § 601(7)(ii). This draft uses instead the wording found in RULPA § 705, because this draft's Section 705 preserves the RULPA formulation. However phrased, incompetency will not simultaneously cause dissociation. See Section 800.

202. This event will not simultaneously cause dissociation. See Section 800. Neither RUPA § 601(7)(iii) nor ULLCA § 601(8)(iii) include the phrase "or this [Act]."

203. Omitted here is RUPA § 601(8), which provides for automatic dissociation:

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee; For a trust to serve as a limited partnership's general partner, the parties must have so agreed. Why should the trust's distribution of its "entire transferable interest in the partnership" automatically cause discharge, when the analogous conduct by another general partner (i.e., the final, noncontingent transfer of all or substantially all of its transferable interest) only occasions discharge by unanimous vote? See subsection (3)(ii). (If the Committee decides to follow ULLCA § 601(3) and provide for automatic discharge in that event, a blanket provision to that the effect will cover trusts.)

For the same reason, this draft omits any analog to RUPA § 601(9) regarding estates.

204. Both versions are derived from RUPA §§ 601(4)(iii) and 601(10), although both versions apply the idea of § 601(4)(iii) to entities other than corporations and make discharge

automatic rather than dependent on unanimous partner consent. Both versions are intricate. The problem with version #1 is that its syntax is even a bit more intricate than the syntax of version #2. The problem with version #2 is that it suggests the notion of discharge occurring and then being undone.

Stylistic questions aside, it is a close policy question whether the 90 day grace period should apply with regard to discharge. In effect, the Act seems to be condoning an entity continuing to function for 90 days during which, according to the entity's governing law, the entity has ceased either to exist or to have the right to operate.

205. Derived from RUPA § 602, which also gave rise to ULLCA § 602.

206. A 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.

207. This draft uses a slightly different structure than RUPA § 602 to emphasize that a discharge can be wrongful on the part of a general partner even though the actions of others directly cause the discharge.

208. The "or otherwise" phrase appears in neither RUPA nor ULLCA. Why not include the events that Section 401A(5) considers comparable or tantamount to becoming a debtor in bankruptcy?

209. This language reflects the Reporter's attempt to restate RUPA § 602(b)(2)(iv) to fit slightly different circumstances.

210. Which of these versions is used depends on the version selected for Section 801(5), regarding dissolution.

211. If the discharge leaves the limited partnership without any general partner and the limited partners do not select a new general partner pursuant to Section 801(5), the limited partnership is dissolved. In those circumstances, Section 204 provides for the signing of the necessary amendment by the person appointed by the limited partners pursuant to section 803(b) or the court pursuant to section 803(c) to wind up the dissolved limited partnership's business.

212. Some apparatus of this type is necessary if: (i) a general partner is to lack the default power to "put" its interest, and (ii) a discharged general partner is to be "demoted" to limited partner status rather than all the way "down" to the status of owning a bare transferable interest.

213. Derived from RUPA § 702.

214. Section 401F uses a somewhat different structure to expresses parallel concepts. Section 401E's structure follows RUPA more closely. The Reporter recommends that the next draft use the approach shown in Section 401F for both that Section and Section 401E.

215. This clause is intended to function in a manner equivalent to RUPA § 702(a)(3).

216. Derived from RUPA §§ 702(a)(1). RUPA § 702(a)(2), omitted here, contains an additional element -- that the third party "not have notice of the partner's dissociation [here: discharge]." A party that has notice of a general partner's discharge cannot reasonably believe that the discharged general partner is still a general partner.

217. Derived from RUPA § 703.

218. RUPA § 703(a) uses "discharge," which would be confusing here. **[Alternative language: does not release the discharged general partner from liability]**

219. To the extent the limited partnership is an LLLP, this clause will bar any personal liability for the discharged general partner.

220. RUPA § 703(d) is almost to the same effect. That provision refers to the creditor having "notice of the partner's dissociation." RUPA § 704(c) provides that "a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed" for the purpose of RUPA § 703(b)(3) but not, it appears, for the purpose of RUPA § 703(d). The Comment to RUPA § 704 does not explain why constructive notice is appropriate "for the purposes of cutting off the dissociated partner's continuing liability" for post-dissociation partnership obligations but not for the purposes of the material alteration rule.

221. Under the new paradigm for dealing with general partners, see note 192 above, it is no longer necessary to deal separately with the dissociation of general and limited partners. Treatment of dissociation is therefore relocated to Article 8.

222. Derived from ULLCA § 401 and RUPA § 401.

223. This version follows RUPA and ULLCA and employs the per capita rule, which is not otherwise adopted in this draft.

224. Like RUPA and ULLCA, neither of these versions provides specifically for

deadlock, i.e., when the general partners 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).

225. Under this clause, whenever a matter requires the consent of each limited partner the matter also requires the consent of each general partner.

226. For Comment: Sale of substantially all of the limited partnership's assets would typically be outside the ordinary course of the partnership's business, unless done during winding up.

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

228. Source: RUPA § 401(d).

229. Source: RUPA § 401(e).

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

231. Source: RUPA § 401(k). Although this provision is taken essentially verbatim from RUPA, the provision is an overstatement. Section 403A provides rules under which a general partner's actions bind a limited partnership, and those rules include the concept of actual authority. Therefore, any section affecting the scope of a general partner's actual authority will "affect" Section 403A.

Several of this section's subsections do affect the scope of actual authority. For example, subsection (b)(1) provides that "each general partner has equal rights in the conduct and management of the limited partnership's business." That provision implies some actual authority for each general partner in the everyday course of the limited partnership's affairs. Similarly, subsection (c)(2) denies actual authority for "any action outside the ordinary course or proper winding up of the limited partnership's business."

Thus, at least in the default mode some "output" from this section may be "input" to Section 403A. It is, therefore, not strictly accurate to state that "This section does not affect the obligations of a limited partnership to other persons under Section 403A." This draft uses that language nonetheless, for the sake of consistency with RUPA.

232. Source: RUPA § 301.

233. This draft attempts to describe in one location most effects of information contained in the certificate of limited partnership; hence the cross reference to Section 208. RUPA takes a different approach. Compare RUPA § 301(b).

234. The phrase "the general partner had actual authority for the act or the limited partnership ratified the act" does not appear in RUPA. Instead, RUPA refers to an act being

"authorized by the other partners." 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.

235. This 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.

236. Source: RUPA § 305.

237. RUPA § 305(a) does not include "actual or apparent," but the Comment 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, this draft inserts the applicable adjective into the text of the statute.

238. See note 237.

239. ULLCA omits this provision.

240. Source: RUPA §§ 306 and 307. Subsections (a), (b) and (c) are from RUPA § 306 (as amended by the LLP provisions). The other subsections are from RUPA § 307(b) -- (d). RUPA § 307(a) has been expanded and relocated to Section 200(b).

241. The 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.

242. These provisions combine to state the consent required for a limited partnership to become an LLLP. The first provision is an item in the list of matters requiring limited partner consent. The second provision requires unanimous partner consent for any action on that list.

243. For the reasons stated in note 132, this draft has no provision analogous to RUPA § 308, Liability of Purported Partner.

244. Derived from RUPA § 404.

245. This formulation invites confusion as to the direct/derivative distinction. A Comment will make clear that this provision does not eradicate that distinction.

246. RUPA chose to end a general partner's non-compete obligation at dissolution. The circumstances typical for a limited partnership may argue for a different approach. In a general

partnership, each partner has authority to wind up the business. In a limited partnership, the limited partners remain completely dependant on the general partner. Perhaps this dependence warrants continuing the general partner's non-compete obligation.

247. Section 302A(c) offers two alternative versions for a limited partner's obligation of good faith and fair dealing. Those versions differ only as to style. The style used here should be the same as the style used there.

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

(g) 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).

249. Unlike Section 305, pertaining to limited partners, this provision does not exclude "a statement of another partner's account as partner."

250. This provision derives from Sections 305(a) and (b) of this draft. N.b. -- there is no requirement of proper purpose. General partners are the top managers of the limited partnership

business. Subsection (d) provides some protections -- either via the partnership agreement or judicial action.

251. What is the relation between information available from the limited partnership's records and a general partner's obligation under this subsection? Should the Comment indicate that no further obligation exists for information obtainable from a review of the required records? What about records maintained elsewhere? For limited partners, the draft (or at least a contemplated Comment) envisions an affirmative obligation of detailed disclosure, an obligation that is not satisfied by a mere reference to the required records. However, this draft assumes that limited partners are typically passive. General partners are typically active.

The question boils down to this: does a general partner who knows of material information in the limited partnership's books and 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 books and records?

252. Source: RUPA § 403(c). The exception seems very vaguely stated, but it appears both in both in RUPA § 403(c) and ULLCA § 408(b)(2). Note that this restriction relates to access, while the protections under subsection (f) relate to use.

253. This provision mirrors Section 305's approach to former limited partners.

254. For the notion that former owners should have access rights, see RUPA § 403(b) and ULLCA 408(a). The ten day period corresponds to the 10-day period provided for limited partner access under Section 305(a).

255. Derived from RMBCA § 16.02(c). That provision refers to "proper purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment.

256. Derived from RMBCA § 16.03(c).

257. This provision mirrors Section 305(f) relating to limited partners and could be replaced by a provision to the effect that "the provisions of Section 305(f) also apply"

258. This clause does not lessen the burden a plaintiff normally has in seeking injunctive relief.

259. This provision refers to the privacy interests of both general and limited partners.

260. To 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. If the partnership agreement does not meet the needs of the moment, the limited partnership must carry an even heavier burden to obtain a court-ordered restriction.

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

262. There is considerable overlap and repetition between this Section and Section 305 (regarding limited partners). Consolidation would involve a further deviation from the current structure of RULPA.

263. Both versions reflect the notion that "role determines responsibility." For example,

suppose that: (i) the limited partnership has several general partners, (ii) the partnership agreement allows the removal of any one of the general partners by a vote of the limited partners, and (iii) one of the general partners has a substantial limited partner interest and votes that interest to remove another general partner. That vote is subject to the good faith and fair dealing obligation of a limited partner but not to the fiduciary duty of a general partner.

This approach might differ with RULPA's approach. RULPA § 404 could be read to impose general partner obligations on every action taken by the general partner.

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

265. The new language is for stylistic improvement. No substantive change is intended. Both the old, stricken language and the new language partially overlap Section 101's definition of "contribution." That overlap is present in RULPA as well.

266. N.b. -- a promise to furnish money in the future would come within this provision, if that promise is itself considered the contribution.

267. In the default mode, the only relevant documents will be a partnership agreement signed before formation or a writing giving the partners' unanimous consent to the admission of a new partner. (In the default mode, there is no possibility of additional capital calls on existing partners and admission of any new partner requires unanimous consent of the partners.)

268. No 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.

269. Changes 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.

270. This sentence's meaning is carried forward in Version #1 of subsection (d).

271. In accord with the sense of the first drafting session, the creditor's remedy is deleted as anachronistic. But see ULLCA § 402(b).

272. If the Committee chooses this version, the next draft will revise the list of limited partner rights, Section 302(a), accordingly.

273. If 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).

274. Absent 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.

275. The stricken language is inconsistent with this draft's treatment of the partnership agreement.

276. RULPA § 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).

277. The 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.

278. The 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.

279. Although 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).

280. See note 192 for an explanation of this draft's approach to general partner discharge and dissociation.

281. Whether a general partner's has the right to cause it own discharge depends primarily on the partnership agreement. See Section 401B(a).

282. This change implements the Committee's tentative decision to deny limited partners any default right to exit prior to the end of the limited partnership's term.

283. In the default mode, dissociation will be a rare occurrence. If dissociation does occur, Section 800A(b)(3) provides that the dissociated partner's financial rights continue, although the dissociated partner's status "degrades" to that of a transferee.

284. Changes here are essentially stylistic.

285. The greater formality is necessary due to this draft's new, more corporate-like approach to recapturing distributions. See Sections 607 and 608.

286. The reference to "former partner" is to encompass circumstances where the partner is gone and all that remains are the bare transferable interests.

287. The new language is derived mostly from ULLCA § 406, which appears to have derived, almost verbatim, from RMBCA § 6.40.

288. N.b. -- this subsection imposes a more rigorous standard of care than the "gross negligence" standard applicable under Section 403D(c).

289. The RMBCA has an alternate date, if earlier -- when the owner being redeemed ceases to be an owner. The Comment to ULLCA § 406 does not explain why ULLCA omits the alternate date.

290. The RMBCA has another category -- distributions of indebtedness not involved in a redemption. The Comment to ULLCA § 406 does not explain why ULLCA omits this additional category.

291. This 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.

292. 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.

293. Consistent 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 and ULLCA § 407. (The ULLCA provision closely follows the RMBCA provision.)

294. RMBCA § 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."

295. Note that a distribution that violates the partnership agreement violates Section 607(a).

296. Section 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.

297. A general partner might be liable not only under this subsection but also under subsection (a).

298. 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.

299. In RUPA and ULLCA roughly analogous provisions appear in Article 5, captioned "TRANSFEREES AND CREDITORS OF PARTNER [MEMBER]."

300. Source: RUPA § 502. The Comment will cross reference Section 606, which

provides that a partner's right to distributions is subject to set-off.

301. Although for the most part RULPA's language "works," the formulation is oblique. In this instance, the benefits (especially for the uninitiated) of a more direct formulation outweigh the preference for retaining familiar language. The new language is derived from RUPA § 503, although the RUPA provisions have been rearranged so that the affirmative aspects are stated first and the limitations or negative aspects are stated second.

302. Source: RUPA § 503(a)(1).

303. Source: 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 set-off.

304. Source: 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).

305. For 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.

306. Derived from RUPA § 503(c). RUPA's reference to "dissolution and winding up" is restated as "dissolution."

307. Derived from RUPA § 503(d) (referring to both duties and rights).

308. The referenced provisions concern respectively discharge of a general partner and dissociation of any partner when, after a transfer, there has been a final, noncontingent transfer of all of that partner's transferable interest in the partnership. In both instances, the transfer does not automatically cause the change of status but instead allows the other partners to effect the change by unanimous consent.

309. Derived 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, 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.

310. Derived 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.

311. Source: RUPA § 503(f).

312. RUPA captions its comparable section "PARTNER'S INTEREST SUBJECT TO CHARGING ORDER." RUPA § 504. ULLCA captions its comparable section "Rights of creditor." ULLCA § 504.

313. This expansion comports with both RUPA § 504(a) and ULLCA § 504(a).

314. This 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 the receiver should have greater rights of inquiry than the judgment debtor has. At the very least, the Comment should indicate a very high standard to be met before a court intrudes beyond where the judgement debtor itself has a right to go.

315. Source: RUPA § 504(c) and ULLCA § 504(c). Clause (3) derives from ULLCA. The RUPA clause states: "with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged."

316. To the extent the general partners are disinterested, why not allow them to make an ordinary business judgment about redeeming the interest? If the Committee chooses this version, the new draft will define "affiliate."

317. It 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.

318. 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 set-off, 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 transferees who become partners to have the affirmative obligations, the partnership agreement can make it so.

319. This provision now appears in Section 702(b)(1).

320. The referenced section states the consequences of partner dissociation. (Death dissociates any partner.) The estate will not become a limited partner. The decedent's limited partner interest will convert to a bare transferable interest.

321. The referenced section states the consequences of a general partner's discharge. If an individual is a general partner, death simultaneously causes discharge and dissociation.

322. The referenced section states the consequences of partner dissociation. The estate will not become a partner but will instead obtain a bare transferable interest.

323. If the deceased owned both general and limited partner interests, Section 404 will cause clause (1) to operate on the limited partner interest and clause (2) on the general partner interest.

324. Incompetency does not cause dissociation. The power stated here can therefore continue indefinitely.

325. The adjudication will cause the general partner's discharge. See Section 401A(6)(2).

326. The cited section states the consequences of a general partner's discharge. In essence, the adjudicated general partner will become a limited partner. The guardian, conservator, etc. will be able to exercise all of the rights pertaining to that limited partner interest.

327. The referenced section pertain respectively to causes of discharge and dissociation. Each section provides a 90 day grace period before the termination or suspension causes

discharge or dissociation. As to whether the grace period makes sense with regard to discharge, see note 204.

328. The referenced section pertains the consequences of dissociation. Neither the legal representative nor successor will become a limited partner. The limited partner interest will convert to a bare transferable interest.

329. The referenced section states the consequences of a general partner's discharge. When an entity is a general partner, the entity's termination simultaneously causes discharge and dissociation.

330. The referenced section pertains the consequences of dissociation. Neither the legal representative nor successor will become a partner. The general partner interest will convert to a bare transferable interest.

331. Like the Section numbers containing a capital letter (e.g., 403A), this number is temporary.

332. Consistent with the Committee's tentative decision on limited partner dissociation and the approach suggested by the Reporter on general partner discharge and dissociation, this Section encompasses general and limited partner dissociation without distinction.

It is arguable that, unlike RUPA and RULPA, this Act should in the default mode limit effect dissociation only when a partner wishes to relinquish its governance rights, a partner has ceased to exist, or a court has found that dissociation is essential to preserve the partnership or its business or a partner . If the Committee chooses to take that approach, the next draft would

simply eliminate clauses (3) and (5).

333. The language in this section is drawn from RUPA § 601. In most respects, ULLCA § 601 follows the RUPA provision essentially verbatim. RUPA § 601 is also the source of Section 401A (discharge of general partners). For further comments about the difference and similarities between this draft and RUPA § 601, see the notes to Section 401A.

334. This provision is derived from RUPA § 601(1) and ULLCA 601(1), but those provisions lack the concluding phrase ("at or before . . ."). The RUPA/ULLCA formulation could have confusing consequences. Suppose a partner gives notice of its express will and then later notifies the limited partnership that the dissociation will have a delayed effective date. The added phrase addresses that issue.

N.b. -- in the default mode dissociation produces no economic advantage. The dissociated partner merely becomes the transferee of its own pre-dissociation transferable interest. See Section 800A(b). Dissociation achieves nothing other than the relinquishment of whatever governance rights and duties the partner may have had.

335. Both RUPA and ULLCA have a separate provision referring to "expulsion pursuant to the partnership [operating] agreement. RUPA § 601(3); ULLCA § 601(4). That provision seems redundant, clearly encompassed by "an event agreed to in the partnership agreement as causing" For that reason, this draft does not include a provision analogous to RUPA § 601(3) and ULLCA § 601(4).

336. RUPA § 601(4) and ULLCA § 601(5) both refer to "unanimous vote." Vote connotes a gathering of partners (or their proxies) in one location. Why shouldn't the default rule

allow for written action?

337. This provision does not entitle the other partners to dissociate a general partner if mere discharge would solve the problem. See Section 401A(3)(i) (providing for discharge of the general partner).

338. Unlike RUPA § 601(4)(ii), this provision allows dissociation only if the partner has transferred all of its transferable interest. A transfer of merely "substantially all" of that interest occasions the discharge of a general partner, see Section 401A(3)(ii), but there is no reason why a person owning a very small interest should be subject to ouster from the passive role of a limited partner. (ULLCA makes dissociation automatic upon the final, noncontingent of all of a member's interest and allows dissociation by unanimous vote upon the transfer of substantially all of a member's interest. ULLCA § 601(3) and (5)(ii).)

339. RUPA § 601(5) and ULLCA § 601(6) each allow a fellow owner (i.e., a partner or member) to petition the court. This draft hews more completely to the "entity" approach and limits standing to the limited partnership. Limited partners could seek a partner's dissociation through a derivative suit. For a discussion of other possible approaches, see note 198 above.

340. RUPA's phrase "or the other partners" has been deleted in keeping with the provision's more restricted approach to standing. See note 339, above.

341. Invocation of this provision should be rare, because: (i) a limited partner will rarely have this type of influence over the affairs of the limited partnership; and (ii) except in rare instances, discharge rather than dissociation should resolve problems created by a miscreant

general partner.

342. Although bankruptcy law may respect Section 401A(5) (under which these events cause the discharge of a general partner), there is considerable doubt that bankruptcy law will allow these events to cause a partner's dissociation. In any event, what goal is served by dissociating a limited partner on account of bankruptcy? The bankrupt's estate will have no greater power than the bankrupt. In particular, the estate will be unable to sell anything more than the transferable interest.

343. Section 401A(6)(ii) (discharge of general partner) will demote to limited partner status any general partner who is adjudicated incompetent. There is, therefore, no need for the Act to automatically dissociate a partner who is adjudicated incompetent. That partner will have only the rights of a limited partner, and those rights can be exercised by the adjudicated partner's guardian, conservator, etc. See Section 703.

344. This provision parallels Section 401A(7) pertaining to general partner discharge. This draft offers two versions for Section 401A(7), and this provision parallels Version #1. If the Committee chooses Version #2 for Section 401A(7), the same approach should be used here.

345. The essence of partner dissociation is the loss of whatever governance rights pertain to partner status. There is no apparent reason why that loss should be avoided just because a particular dissociation causes dissolution. The partnership agreement can of course change this rule.

346. Compare ULLCA § 603(b), which lists some of those rights. The Comment will

include a similar list.

347. In the case of a general partner, the discharge as general partner will have ended the general partner's fiduciary duty.

348. The clause will create a "bare transferable interest," as defined in Section 101(1).

349. At first glance, this subsection may seem overbroad and even draconian, but the rule follows from the notion that, in the default mode, no partner has the right to dissociate before the termination of the limited partnership. See Sections 602 and 603. Moreover, dissociation will rarely cause damages, because: (i) it is discharge and not dissociation that deprives the limited partnership of the services of a general partner, and (ii) dissociation does not entitle the dissociated partner to any distribution.

350. Section 801A makes this phrase redundant.

351. This change corresponds to the change made in Section 201(4).

352. Derived from RUPA § 801(4) and ULLCA § 801(4), 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.

353. The susceptibility pertains to the default mode, since the partnership agreement can alter this provision.

354. This language applies if at least one remaining general partner to continue to serve. If the sole remaining general partner refuses to serve, the resulting discharge will trigger clause

(ii).

355. Profits interests owned by transferees do not figure in this calculation. As a result, if a general partner's discharge is accompanied by dissociation, the profit interest owned by the discharged/dissociated general partner is not counted. (Upon dissociation, that interest converts to a bald transferable interest.)

356. Whatever approach the Committee chooses, the next draft make sure that this provision had adequate mechanics to handle situations in which a subsequent discharge occurs before the expiration of a 90-day period put into play by an earlier discharge.

357. Both 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.

358. The additions come from RUPA § 801(5), which is also the source of most of ULLCA § 801(5).

N.b. -- ULLCA § 801(5)(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.

359. For 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.

360. This provision is derived from RUPA § 801(6)(i), which was also the source for ULLCA § 801(6)(i).

361. This provision does not protect transferees from the consequences of a merger in which the limited partnership is not the surviving organization.

362. Derived 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.

363. Both RUPA § 802(a) and ULLCA § 802(a) state: "a limited partnership continues after dissolution only for the purpose of winding up its business."

364. This cross reference may change, depending on the Committee decision on an organizational issue. See Section 805.

365. This 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.)

366. This amendment helps curtail the power of a general partner to bind the limited partnership, 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: limit partner filings) or obligate the limited partnership itself (in functional terms, the general partners) to do so.

367. The appointee does not have the liabilities of a general partner to third parties. N.b. - under Version #1 of Section 403D(b)(3), the appointee would have the right to compete with the dissolved limited partnership.

368. Derived from RUPA §§ 804, 805 and 806.

369. Source: RUPA § 804.

370. Derived from the first clause of RUPA § 805(b). Note that Section 201(b) restrictions remain in effect.

371. Derived from the second clause of RUPA § 805(b), although this draft states the rule more directly.

372. Source: RUPA § 805(c).

373. Source: RUPA § 805(d).

374. Source: RUPA § 806(b). RUPA § 806(a) has been omitted as unnecessary. A limited partnership remains a limited partnership during winding up. The rules regarding loss sharing among partners are not limited to a limited partnership's pre-dissolution phase.

375. If 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-LLLP) limited partnership.

Section 803B is derived from ULLCA § 807 and RMBCA § 14.06.

376. This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

377. The phrase "against the limited partnership" is added to make clear that bringing a claim against an allegedly liable present or former general partner does not save a claim against the limited partnership.

378. Section 803C is derived from ULLCA § 808 and RMBCA § 14.07.

379. The phrase "in this State" has been added to the RMBCA/ULLCA formulation.

380. The ULLCA/RMBCA formulation refers to "designated office."

381. This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

382. Arguably the reference should be "former" partner, since the termination of a limited partnership ends partner status, but ULLCA uses "members" and RMBCA uses "shareholders."

383. RMBCA § 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 clause, a person's aggregate liability cannot exceed the total amount the person received as a liquidating distribution.

384. RMBCA and ULLCA refer to "this section," but "section" encompasses all of Section 803C.

385. This draft adds the concluding phrase ("as part of the winding up of the dissolved limited partnership") to emphasize that the "clawback" relates only to liquidating distributions.

386. The referenced provision provides for personal liability of general partners in an ordinary limited partnership.

387. 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(f) (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 former or present general partner remains at risk, the other former 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, the rationale for Section 403C(f)'s exceptions to the exhaustion requirement is essentially one of futility. 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.

388. The referenced provision provides for personal liability of general partners in an ordinary limited partnership.

389. Derived from ULLCA § 809 and included on the assumption that the same reasons of administrative convenience apply here as with LLCs.

390. ULLCA 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).

391. Source: ULLCA § 810, which closely follows RMBCA § 14.21.

392. The same thing is true for non-administrative dissolution, but this draft does not say so. Query: should it?

393. Source: ULLCA § 811, which closely follows RMBCA § 14.22.

394. This 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.

395. This Section has been substantially revised to accord with RUPA § 807.

396. A 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.

397. Source: RUPA § 807(a).

398. This 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.

399. This draft's approach is necessarily more complex than RUPA's, because under this draft discharged general partners may continue to be liable on past obligations.

400. Derived 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.

401. Source: 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.

402. This section duplicates Section 206(b) and is included to show a different approach to organizing the Act.

403. The 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.

404. 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.

405. 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).

406. 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. That change in status will occur when a general partner is discharged but does not dissociate.

407. 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.

408. Changes to this section are either necessary to conform to the proposed revisions to Section 1001 or purely stylistic.

409. The phrase "PROCEEDS AND" is new in the caption, but that subject matter has been part of this section since RULPA was first promulgated.

410. Changes to this section are purely stylistic.

411. 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. To have standing in his, her or its own right, the 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.

412. For Comment -- The term "constituent organization" encompasses both organizations that survive a merger and those that disappear as a result of a merger.

413. This definition will allow limited partnerships to merge with organizations formed under the laws of other nations.

414. This 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.)

415. For Comment -- When a merger takes effect, all the other constituent organizations merge into the surviving organization.

416. Derived from RUPA § 905 and ULLCA § 904.

417. If 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.

418. 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.

419. 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 partnership amendment provision.

420. This provision will be 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.

421. 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.

422. Increased susceptibility 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).

423. Derived from ULLCA § 905.

424. ULLCA § 905(4) merely refers to "the name and address of the surviving limited liability company." RMBCA § 11.03 does not require any address for the surviving corporation.

425. 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 1105(a)(1) requires the articles of merger to include the plan of merger.

426. This 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)

427. The effective date may simply be the date upon which Section 1104(a)(1) is satisfied.

428. Derived from RUPA §§ 905(e) and 906 and ULLCA § 906.

429. Under 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.

430. ULLCA 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.

431. For Comment -- This provision encompasses any obligations created by appraisal rights that may be contained in a constituent organization's governing statute.

432. RMBCA § 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.

433. The reference to "interests" rather than "ownership interests" is purposeful. The merger might involve conversion of bare transferable interests.

434. The contrary agreement could occur in the partnership agreement or in the plan of merger.

435. Since the merger is not an event of dissolution, there is no obligation to marshal

assets, pay off creditors, settle accounts among partners and 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.

436. For 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.