

D R A F T

FOR DISCUSSION ONLY

**HARMONIZED UNIFORM LIMITED PARTNERSHIP
ACT (2001)**
(Amendments to Uniform Limited Partnership Act (2001))

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

For September 24 – 26, 2010 Drafting Committee Meeting

Without Prefatory Note and with Reporters' Notes

Strike and Score Version

- *This draft contains “Category II” revisions and for illustrative purposes a few “Category I” revisions.¹ Further Category I revisions will be made, in ministerial fashion, once the Committee has finalized its views on the proper language for all Category I provisions.*
- *A triple asterisk (***) indicates Category I sections reserved for later ministerial revision.*
- *This draft does not renumber provisions and uses some temporary section numbers, e.g., Section 1203A. Some cross references are temporarily denoted as “TBA”. In those instances, brackets enclose the subject matter of the cross-referenced section, unless the context sufficiently indicates the subject matter. Renumbering will occur after the September, 2010 meeting.*
- *Unless otherwise indicated in the Reporters' Notes, all revisions are to conform to the current version of HULLCA.*

¹ “Category I sections are, in the opinion of the Co-Reporters, noncontroversial and therefore should not generate much discussion at either the subcommittee or drafting committee level. Category II sections may prove to be somewhat more difficult and controversial.” Memo of Harry J. Haynsworth (Chair) to the Drafting Committee, October 22, 2009 (Subcommittee Appointments and Telephone Conference Schedule).

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1 includes:

2 (A) a redemption or other purchase by a limited partnership of a transferable

3 interest; and

4 (B) a transfer to a partner in return for the partner's relinquishment of any right to:

5 (i) participate as a partner in the management or conduct of the limited
6 partnership's activities; or

7 (ii) have access to records or other information concerning the limited
8 partnership's activities.

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

12 (7) "Foreign limited partnership" means a partnership formed under the laws of a
13 jurisdiction other than this State and required by those laws to have one or more general partners
14 and one or more limited partners. The term includes a foreign limited liability limited
15 partnership.

16 (8) "General partner" means:

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

18 (i) becomes a general partner under Section 401 and has not dissociated as
19 a general partner under Section TBA; or

20 (ii) was a general partner in a limited partnership when the limited
21 partnership became subject to this [Act] under Section 1206(a) or (b) and has not dissociated as a
22 general partner under Section TBA; and

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

1 (9) “Limited liability limited partnership”, except in the phrase “foreign limited liability
2 limited partnership”, means a limited partnership whose certificate of limited partnership states
3 that the limited partnership is a limited liability limited partnership.

4 (10) “Limited partner” means:

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

6 (i) becomes a limited partner under Section 301 and has not dissociated as
7 a limited partner under Section TBA; or

8 (ii) was a limited partner in a limited partnership when the limited
9 partnership became subject to this [Act] under Section 1206(a) or (b) and has not dissociated as a
10 limited partner under Section TBA; and

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

13 (11) “Limited partnership”, except in the phrases “foreign limited partnership” and
14 “foreign limited liability limited partnership”, means an entity formed under this [Act], having
15 one or more general partners and one or more limited partners upon formation; ~~which is formed~~
16 ~~under this [Act] by two or more persons~~ or that becomes subject to this [Act] under [Article] 11
17 or Section 1206(a) or (b). The term includes a limited liability limited partnership.

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

19 (13) “Partnership agreement” means the ~~partners’~~ partners’ agreement, whether or not referred to
20 as a partnership agreement and whether oral, in a record, implied, ~~in a record~~, or in any
21 combination thereof, of all the partners of a limited partnership concerning the limited
22 partnership the matters described in Section TBA [first of three sections dealing with the
23 partnership agreement. The term includes the agreement as amended.

24 (14) “Person” ~~means an individual, corporation, business trust, estate, trust, partnership,~~

1 ~~limited liability company, association, joint venture, government, governmental subdivision,~~
2 ~~agency, or instrumentality; public corporation, or any other legal or commercial entity. “Person”~~
3 means an individual, business corporation, nonprofit corporation, partnership, limited
4 partnership, limited liability company, [general cooperative association,] limited cooperative
5 association, unincorporated nonprofit trust association, statutory trust, business trust, common-
6 law business trust, estate, trust, association, joint venture, public corporation, government or
7 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

8 (15) “Person dissociated as a general partner” means a person dissociated as a general
9 partner of a limited partnership.

10 (15A) “Property” means all property, whether real, personal, or mixed, or tangible or
11 intangible, or any right or interest therein.

12 (16) “Principal office” means the office where the principal executive office of a limited
13 partnership or foreign limited partnership is located, whether or not the office is located in this
14 State.

15 (17) “Record”, used as a noun, means information that is inscribed on a tangible medium
16 or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

19 (19) “Sign” means, with the present intent to authenticate a record:

20 (A) to execute or adopt a tangible symbol ~~with the present intent to~~
21 ~~authenticate a record~~; or

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

24 (20) “State” means a State of the United States, the District of Columbia, Puerto Rico,

1 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
2 of the United States.

3 (21) “Transfer” includes an assignment, conveyance, ~~deed, bill of sale, lease, mortgage,~~
4 ~~security interest,~~ encumbrance, including by mortgaging or granting a security interest, a gift,
5 and transfer by operation of law.

6 (22) “Transferable interest” means ~~a partner’s right to receive distributions~~ the right, as
7 initially owned by a person in the person’s capacity as a partner, to receive distributions from a
8 limited partnership in accordance with the partnership agreement, whether or not the person
9 remains a partner or continues to own any part of the right. The term applies to any fraction of
10 the interest, by whomever owned.

11 (23) “Transferee” means a person to which all or part of a transferable interest has been
12 transferred, whether or not the transferor is a partner. The term includes a person that owns a
13 transferable interest under Section TBA.

14 **Reporters' Notes**

15 *Section 102(11)* – Revision to clarify that an entity does not cease to be a limited
16 partnership upon the dissociation of its last general or limit partner.
17

18 **SECTION 103. KNOWLEDGE AND NOTICE.**

19 (a) A person knows a fact if the person:

20 (1) has actual knowledge of it; or

21 (2) is deemed to know it under subsection (d)(1) or law other than this [act].

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

23 (1) knows of it;

24 (2) has received a notification of it;

25 (3) has reason to know it exists from all of the facts known to the person at the

1 time in question; or

2 (4) ~~has~~ is deemed to have notice of it under subsection (c) or (d)(2).

3 (c) A certificate of limited partnership on file in the [office of the Secretary of State] is
4 notice that the partnership is a limited partnership and the persons designated in the certificate as
5 general partners are general partners. Except as otherwise provided in subsection (d), the
6 certificate is not notice of any other fact.

7 (d) A person that is not a partner is deemed to have ~~has~~ notice of:

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

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

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

17 (4) a limited partnership's merger, conversion, or domestication, 90 days after ~~the~~
18 ~~effective date of the~~ articles of merger, conversion, or domestication under [Article] 11 become
19 effective; ~~or~~

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

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

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

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

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

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

16 (h) A general partner's knowledge, notice, or receipt of a notification of a fact relating to
17 the limited partnership is effective immediately as knowledge of, notice to, or receipt of a
18 notification by the limited partnership, except in the case of a fraud on the limited partnership
19 committed by or with the consent of the general partner. A limited partner's knowledge, notice,
20 or receipt of a notification of a fact relating to the limited partnership is not effective as
21 knowledge of, notice to, or receipt of a notification by the limited partnership.

22 **Reporters' Notes**

23 *Subsections (e) and (f)* – Retained here (although not in HULLCA) because they apply to
24 the rules on statutory apparent authority.

25

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

3 *****SECTION 108. NAME.**

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

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

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

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

14 (1) the name of each person other than an individual incorporated, organized, or
15 authorized to transact business in this State; and

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

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

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

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

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

6 (A) has merged into the applicant;

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

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

10 (f) Subject to Section 905, this section applies to any foreign limited partnership
11 transacting business in this State, having a certificate of authority to transact business in this
12 State, or applying for a certificate of authority.

13 *****SECTION 109. RESERVATION OF NAME.**

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

16 (1) a person intending to organize a limited partnership under this [Act] and to
17 adopt the name;

18 (2) a limited partnership or a foreign limited partnership authorized to transact
19 business in this State intending to adopt the name;

20 (3) a foreign limited partnership intending to obtain a certificate of authority to
21 transact business in this State and adopt the name;

22 (4) a person intending to organize a foreign limited partnership and intending to
23 have it obtain a certificate of authority to transact business in this State and adopt the name;

24 (5) a foreign limited partnership formed under the name; or

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

4 (b) A person may apply to reserve a name under subsection (a) by delivering to the
5 [Secretary of State] for filing an application that states the name to be reserved and the paragraph
6 of subsection (a) which applies. If the [Secretary of State] finds that the name is available for
7 use by the applicant, the [Secretary of State] shall file a statement of name reservation and
8 thereby reserve the name for the exclusive use of the applicant for a 120 days.

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

13 (d) A person that has reserved a name under this section may deliver to the [Secretary of
14 State] for filing a notice of transfer that states the reserved name, the name and street and mailing
15 address of some other person to which the reservation is to be transferred, and the paragraph of
16 subsection (a) which applies to the other person. Subject to Section 206(c), the transfer is
17 effective when the [Secretary of State] files the notice of transfer.

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

20 (a) Except as otherwise provided in ~~subsection~~ subsections (b)(c) and (d), the partnership
21 agreement governs ~~relations among the partners and between the partners and the partnership;~~

22 (1) relations among the partners as partners and between the partners and the
23 limited partnership;

24 (2) the rights and duties under this [act] of a person in the capacity of general

1 partner;

2 (3) the activities of the limited partnership and the conduct of those activities; and

3 (4) the means and conditions for amending the partnership agreement.

4 (b) To the extent the partnership agreement does not otherwise provide for a matter
5 described in subsection (a), this [Act] governs ~~relations among the partners and between the~~
6 ~~partners and the partnership~~ the matter.

7 ~~(b)~~(c) A partnership agreement may not:

8 (1) vary a limited partnership's power under Section 105 to sue, be sued, and
9 defend in its own name;

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

11 (3) vary the requirements of Section 204, except to provide for arbitration of
12 claims seeking relief under that section;

13 (4) eliminate all fiduciary duties, but, if not manifestly unreasonable may:

14 (A) restrict or eliminate the aspects of the duty of loyalty stated in Section

15 TBA;

16 (B) identify specific types or categories of activities that do not violate the
17 duty of loyalty;

18 (C) alter the duty of care, except to authorize intentional misconduct or
19 knowing violation of law; and

20 (D) alter any other fiduciary duty, including eliminating particular aspects
21 of that duty;

22 (5) eliminate the contractual obligation of good faith and fair dealing under
23 Section TBA, but if not manifestly unreasonable may prescribe the standards by which to
24 measure the performance of that obligation;

1 ~~(6)~~ vary the information required under Section 111 or unreasonably restrict the
2 right to information under Sections 304 or 407, but ~~the partnership agreement~~ may impose
3 reasonable restrictions on the availability and use of information obtained under those sections
4 and may define appropriate remedies, including liquidated damages, for a breach of any
5 reasonable restriction on use;

6 ~~(5)~~ eliminate the duty of loyalty under Section 408, but the partnership agreement
7 may:

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

10 ~~(B)~~ specify the number or percentage of partners which may authorize or
11 ratify, after full disclosure to all partners of all material facts, a specific act or transaction that
12 otherwise would violate the duty of loyalty;

13 ~~(6)~~ unreasonably reduce the duty of care under Section 408(c);

14 ~~(7)~~ eliminate the obligation of good faith and fair dealing under Sections 305(b)
15 and 408(d), but the partnership agreement may prescribe the standards by which the performance
16 of the obligation is to be measured, if the standards are not manifestly unreasonable;

17 ~~(8)~~(7) vary the power of a person to dissociate as a general partner under Section
18 604(a) except to require that the notice under Section 603(1) be in a record;

19 ~~(9)~~(8) vary the power of a court to decree dissolution in the circumstances
20 specified in Section 802, except to provide for arbitration of claims seeking dissolution under
21 those provisions;

22 ~~(10)~~(9) vary the requirement to wind up the partnership's business as specified in
23 Section 803;

24 ~~(11)~~(10) unreasonably restrict the right to maintain an action under [Article] 10;

1 ~~(12)~~(11) restrict the right of a partner under Section 1110(a) to approve a
2 conversion or merger or the right of a general partner under Section 1110(b) to consent to an
3 amendment to the certificate of limited partnership which deletes a statement that the limited
4 partnership is a limited liability limited partnership vary the rights of a partner under Section
5 TBA [veto rights for any partner who would have personal liability as a result of merger,
6 conversion, or domestication]; or

7 ~~(13)~~(12) except as otherwise provided in Section Sections TBA [second section
8 dealing with partnership agreement] and [section dealing with partnership agreement] restrict
9 rights under this [Act] of a person other than a partner ~~or a transferee~~.

10 (d) The partnership agreement may specify the method by which a specific act or
11 transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one
12 or more disinterested and independent persons after full disclosure of all material facts.

13 (e) The partnership agreement may eliminate or limit a partner's liability to the limited
14 partnership and partners for money damages, whether directly or by providing indemnification
15 therefor, except for:

16 (1) breach of the duty of loyalty;

17 (2) a financial benefit received by the partner to which the partner is not entitled;

18 (3) a breach of a duty under Section 406;

19 (4) intentional infliction of harm on the limited partnership or a partner; or

20 (5) an intentional violation of criminal law.

21 (f) The court shall decide any claim under subsection (c)(4) or (5) that a term of an
22 partnership agreement is manifestly unreasonable. The court:

23 (1) shall make its determination as of the time the challenged term became part of
24 the partnership agreement and by considering only circumstances existing at that time; and

1 (2) may invalidate the term only if, in light of the purposes and activities of the
2 limited partnership, it is readily apparent that:

3 (A) the objective of the term is unreasonable; or

4 (B) the term is an unreasonable means to achieve the provision's
5 objective.

6 **SECTION 110A [111]. PARTNER AGREEMENT; EFFECT ON LIMITED**
7 **PARTNERSHIP AND PERSONS BECOMING PARTNERS; PREFORMATION**
8 **AGREEMENT.**

9 (a) A limited partnership is bound by and may enforce the partnership agreement,
10 whether or not the limited partnership has itself manifested assent to the partnership agreement.

11 (b) A person that becomes a partner of a limited partnership is deemed to assent to the
12 partnership agreement.

13 (c) Two or more persons intending to become the initial partners of a limited partnership
14 may make an agreement providing that upon the formation of the limited partnership the
15 agreement will become the partnership agreement.

16 **SECTION 110B [112]. PARTNERSHIP AGREEMENT; EFFECT ON THIRD**
17 **PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF**
18 **LIMITED PARTNERSHIP.**

19 (a) An partnership agreement may specify that its amendment requires the approval of a
20 person that is not a party to the partnership agreement or the satisfaction of a condition. An
21 amendment is ineffective if its adoption does not include the required approval or satisfy the
22 specified condition.

23 (b) The obligations of a limited partnership and its partners to a person in the person's
24 capacity as a transferee or dissociated partner are governed by the partner agreement. Subject

1 only to any court order issued under Section 503(b)(2) to effectuate a charging order, an
2 amendment to the partnership agreement made after a person becomes a transferee or dissociated
3 partner is effective with regard to any debt, obligation, or other liability of the limited partnership
4 or its partners to the person in the person's capacity as a transferee or dissociated partner.

5 (c) If a record that has been delivered by a limited partnership to the [Secretary of State]
6 for filing and has become effective under this [act] contains a provision that would be ineffective
7 under Section 110(c) if contained in the partnership agreement, the provision is likewise
8 ineffective in the record.

9 (d) Subject to subsection (c), if a record that has been delivered by a limited partnership
10 to the [Secretary of State] for filing and has become effective under this [act] conflicts with a
11 provision of the partnership agreement:

12 (1) the partnership agreement prevails as to partners, dissociated partners,
13 transferees, and managers; and

14 (2) the record prevails as to other persons to the extent they reasonably rely on
15 the record.

16 **SECTION 111. REQUIRED INFORMATION.** A limited partnership shall maintain
17 ~~at its designated office~~ the following information:

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

21 (2) a copy of the initial certificate of limited partnership and all amendments to and
22 restatements of the certificate, together with signed copies of any powers of attorney under
23 which any certificate, amendment, or restatement has been signed;

24 (3) a copy of any filed articles of merger, conversion or ~~merger~~ domestication;

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

3 (5) a copy of any partnership agreement made in a record and any amendment made in a
4 record to any partnership agreement;

5 (6) a copy of any financial statement of the limited partnership for the three most recent
6 years;

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

9 (8) a copy of any record made by the limited partnership during the past three years of
10 any consent given by or vote taken of any partner pursuant to this [Act] or the partnership
11 agreement; and

12 (9) unless contained in a partnership agreement made in a record, a record stating:

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

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

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

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

21 **~~SECTION 112. BUSINESS TRANSACTIONS OF PARTNER WITH~~**

22 **~~PARTNERSHIP.~~** A partner may lend money to and transact other business with the limited
23 partnership and has the same rights and obligations with respect to the loan or other transaction
24 as a person that is not a partner.

1 **Reporters' Notes**

2 The substance of this provision has been relocated to Sections TBA (duties of limited
3 partners) and TBA (duties of general partners).
4

5 **SECTION 113. DUAL CAPACITY.** A person may be both a general partner and a
6 limited partner. A person that is both a general and limited partner has the rights, powers, duties,
7 and obligations provided by this [Act] and the partnership agreement in each of those capacities.
8 When the person acts as a general partner, the person is subject to the obligations, duties and
9 restrictions under this [Act] and the partnership agreement for general partners. When the person
10 acts as a limited partner, the person is subject to the obligations, duties and restrictions under this
11 [Act] and the partnership agreement for limited partners.

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

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

14 (1) an office, which need not be a place of its activity in this State; and

15 (2) an agent for service of process.

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

18 (c) An agent for service of process of a limited partnership or foreign limited partnership
19 must be an individual who is a resident of this State or other person authorized to do business in
20 this State.

21 *****SECTION 115. CHANGE OF DESIGNATED OFFICE OR AGENT FOR**
22 **SERVICE OF PROCESS.**

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

- 1 (1) the name of the limited partnership or foreign limited partnership;
2 (2) the street and mailing address of its current designated office;
3 (3) if the current designated office is to be changed, the street and mailing address
4 of the new designated office;
5 (4) the name and street and mailing address of its current agent for service of
6 process; and
7 (5) if the current agent for service of process or an address of the agent is to be
8 changed, the new information.

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

11 *****SECTION 116. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.**

12 (a) In order to resign as an agent for service of process of a limited partnership or foreign
13 limited partnership, the agent must deliver to the [Secretary of State] for filing a statement of
14 resignation containing the name of the limited partnership or foreign limited partnership.

15 (b) After receiving a statement of resignation, the [Secretary of State] shall file it and
16 mail a copy to the designated office of the limited partnership or foreign limited partnership and
17 another copy to the principal office if the address of the office appears in the records of the
18 [Secretary of State] and is different from the address of the designated office.

19 (c) An agency for service of process is terminated on the 31st day after the [Secretary of
20 State] files the statement of resignation.

21 *****SECTION 117. SERVICE OF PROCESS.**

22 (a) An agent for service of process appointed by a limited partnership or foreign limited
23 partnership is an agent of the limited partnership or foreign limited partnership for service of any
24 process, notice, or demand required or permitted by law to be served upon the limited

1 partnership or foreign limited partnership.

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

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

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

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

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

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

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

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

23 **SECTION 118. CONSENT AND PROXIES OF PARTNERS.** Action requiring the
24 consent of partners under this [Act] may be taken without a meeting, and a partner may appoint a

1 proxy to consent or otherwise act for the partner by signing an appointment record, either
2 personally or by the partner's attorney in fact.

3

1 [ARTICLE] 2

2
3 **FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS**

4
5
6 **SECTION 201. FORMATION OF LIMITED PARTNERSHIP; CERTIFICATE**
7 **OF LIMITED PARTNERSHIP.**

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

10 (1) the name of the limited partnership, which must comply with Section 108;

11 (2) the street and mailing address of the ~~initial designated~~ limited partnership's
12 principal office and the name and street and mailing address within this state of the initial
13 registered agent for service of process;

14 (3) the name and the street and mailing address of each general partner;

15 (4) whether the limited partnership is a limited liability limited partnership; and

16 (5) any additional information required by [Article] 11.

17 (b) Subject to Section TBA(c) [third section dealing with partnership agreement], a A
18 certificate of limited partnership may also contain statements as to any other matters other than
19 those required by subsection (a) but may not vary or otherwise affect the provisions specified in
20 Section 110(b) in a manner inconsistent with that section.

21 ~~(c) If there has been substantial compliance with subsection (a), subject to Section 206(e)~~
22 a A limited partnership is formed when the [Secretary of State] files the certificate of limited
23 partnership, unless the certificate states a delayed effective date pursuant to Section TBA. If the
24 certificate states a delayed effective date, a limited partnership is not formed if, before the
25 certificate takes effect, a statement of cancellation is signed and delivered to the [Secretary of
26 State] for filing and the [Secretary of State] files the certificate.

1 (d) Subject to any delayed effective date and except in a proceeding by this state to
2 dissolve a limited partnership, the filing of the certificate of organization by the [Secretary of
3 State] is conclusive proof that all conditions to the formation of a limited partnership have been
4 satisfied.

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

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

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

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

13 (a) A certificate of organization may be amended or restated at any time.

14 ~~(b) In order to~~ To amend its certificate of limited partnership, a limited partnership must
15 deliver to the [Secretary of State] for filing an amendment ~~or, pursuant to [Article] 11, articles of~~
16 ~~merger~~ stating:

17 (1) the name of the limited partnership;

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

19 (3) the changes the amendment makes to the certificate as most recently amended
20 or restated.

21 ~~(c) To restate its certificate of limited partnership, a limited partnership must deliver to~~
22 the [Secretary of State] for filing a restatement, designated as such in its heading, stating:

23 (1) in the heading or an introductory paragraph, the limited partnership's present
24 name and the date of the filing of the limited partnership's initial certificate of organization;

1 (2) if the limited partnership name has been changed at any time since the limited
2 partnership formation, each of the limited partnership former names; and

3 (3) the changes the restatement makes to the certificate as most recently amended
4 or restated.

5 (d) Subject to Sections 112(c) and TBA [delayed effective date], an amendment to or
6 restatement of a certificate of organization is effective when filed by the [Secretary of State].

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

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

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

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

13 ~~(e)~~(f) A general partner that knows that any information in a filed certificate of limited
14 partnership was ~~false~~ inaccurate when the certificate was filed or has become ~~false~~ inaccurate
15 due to changed circumstances shall promptly:

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

17 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
18 change pursuant to ~~under~~ Section 115 or a statement of correction pursuant to ~~under~~ Section 207.

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

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

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

1 partner; and

2 (C) each person that the amendment indicates has dissociated as a general
3 partner, unless:

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

6 (ii) the person has previously delivered to the [Secretary of State]
7 for filing a statement of dissociation.

8 (6) A restated certificate of limited partnership must be signed by at least one
9 general partner listed in the certificate, and, to the extent the restated certificate effects a change
10 under any other paragraph of this subsection, the certificate must be signed in a manner that
11 satisfies that paragraph.

12 (7) A statement of termination must be signed by all general partners listed in the
13 certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the
14 person appointed pursuant to Section 803(c) or (d) to wind up the dissolved limited partnership's
15 activities.

16 (8) Articles of conversion must be signed by each general partner listed in the
17 certificate of limited partnership.

18 (9) Articles of merger must be signed as provided in Section 1108(a).

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

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

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

1 signed by that person.

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

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

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

9 *****SECTION 205. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

10 (a) If a person required by this [Act] to sign a record or deliver a record to the [Secretary
11 of State] for filing does not do so, any other person that is aggrieved may petition the
12 [appropriate court] to order:

13 (1) the person to sign the record;

14 (2) deliver the record to the [Secretary of State] for filing; or

15 (3) the [Secretary of State] to file the record unsigned.

16 (b) If the person aggrieved under subsection (a) is not the limited partnership or foreign
17 limited partnership to which the record pertains, the aggrieved person shall make the limited
18 partnership or foreign limited partnership a party to the action. A person aggrieved under
19 subsection (a) may seek the remedies provided in subsection (a) in the same action in
20 combination or in the alternative.

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

22 *****SECTION 206. DELIVERY TO AND FILING OF RECORDS BY**
23 **[SECRETARY OF STATE]; EFFECTIVE TIME AND DATE.**

24 (a) A record authorized or required to be delivered to the [Secretary of State] for filing

1 under this [Act] must be captioned to describe the record's purpose, be in a medium permitted by
2 the [Secretary of State], and be delivered to the [Secretary of State]. Unless the [Secretary of
3 State] determines that a record does not comply with the filing requirements of this [Act], and if
4 all filing fees have been paid, the [Secretary of State] shall file the record and:

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

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

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

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

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

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

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

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

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

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

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

3 (3) if the record specifies a delayed effective date but not an effective time, at
4 12:01 a.m. on the earlier of:

5 (A) the specified date; or

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

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

9 (A) the specified date; or

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

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

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

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

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

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

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

23 (c) When filed by the [Secretary of State], a statement of correction is effective
24 retroactively as of the effective date of the record the statement corrects, but the statement is

1 effective when filed:

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

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

5 **SECTION 208. LIABILITY FOR ~~FALSE~~ INACCURATE INFORMATION IN**
6 **FILED RECORD.**

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

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

12 (2) a general partner, if:

13 (A) the record was delivered for filing on behalf of the limited
14 partnership; and

15 (B) the general partner ~~that has had~~ notice of the inaccuracy ~~that~~
16 ~~the information was false when the record was filed or has become false because of changed~~
17 ~~circumstances, if the general partner has notice~~ for a reasonably sufficient time before the
18 information ~~is~~ was relied upon so that, before the reliance, the general partner could have: to
19 ~~enable the general partner to effect~~

20 (i) effected an amendment under Section 202;:

21 (ii) ~~file~~ filed a petition pursuant to Section 205;: or

22 (iii) ~~deliver~~ delivered to the [Secretary of State] for filing a
23 statement of change ~~pursuant to~~ under Section 115 or a statement of correction ~~pursuant to~~ under
24 Section 207.

1 (b) ~~Signing a~~ An individual who signs a record authorized or required to be filed under
2 this [Act] ~~constitutes an affirmation~~ affirms under the penalties of perjury that the ~~facts~~
3 information stated in the record ~~are true~~ is accurate.

4 **Reporters' Notes**

5 *Subsection (a)* – Query whether to include the limited partnership (and other entities) as
6 liable, and without fault.

7
8 *Subsection (b)* – Query whether to revise here (and elsewhere) to state:

9 An individual who signs a record authorized or required to be filed under this [act]
10 affirms under penalty of perjury:
11 (1) that the information stated in the record is accurate; and
12 (2) if the individual is signing on behalf of another person, that the
13 individual has the legal right to sign on behalf of that person.
14
15

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

17 (a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish
18 a certificate of existence for a limited partnership if the records filed in the [office of the
19 Secretary of State] show that the [Secretary of State] has filed a certificate of limited partnership
20 and has not filed a statement of termination. A certificate of existence must state:

- 21 (1) the limited partnership's name;
- 22 (2) that it was duly formed under the laws of this State and the date of formation;
- 23 (3) whether all fees, taxes, and penalties due to the [Secretary of State] under this
24 [Act] or other law have been paid;
- 25 (4) whether the limited partnership's most recent annual report required by
26 Section 210 has been filed by the [Secretary of State];
- 27 (5) whether the [Secretary of State] has administratively dissolved the limited
28 partnership;
- 29 (6) whether the limited partnership's certificate of limited partnership has been

1 amended to state that the limited partnership is dissolved;

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

3 and

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

6 (b) The [Secretary of State], upon request and payment of the requisite fee, shall furnish
7 a certificate of authorization for a foreign limited partnership if the records filed in the [office of
8 the Secretary of State] show that the [Secretary of State] has filed a certificate of authority, has
9 not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of
10 authorization must state:

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

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

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

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

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

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

22 (c) Subject to any qualification stated in the certificate, a certificate of existence or
23 authorization issued by the [Secretary of State] may be relied upon as conclusive evidence that
24 the limited partnership or foreign limited partnership is in existence or is authorized to transact

1 business in this State.

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

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

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

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

8 (3) in the case of a limited partnership, the street and mailing address of its
9 principal office; and

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

13 (b) Information in an annual report must be current as of the date the annual report is
14 delivered to the [Secretary of State] for filing.

15 (c) The first annual report must be delivered to the [Secretary of State] between [January
16 1 and April 1] of the year following the calendar year in which a limited partnership was formed
17 or a foreign limited partnership was authorized to transact business. An annual report must be
18 delivered to the [Secretary of State] between [January 1 and April 1] of each subsequent calendar
19 year.

20 (d) If an annual report does not contain the information required in subsection (a), the
21 [Secretary of State] shall promptly notify the reporting limited partnership or foreign limited
22 partnership and return the report to it for correction. If the report is corrected to contain the
23 information required in subsection (a) and delivered to the [Secretary of State] within 30 days
24 after the effective date of the notice, it is timely delivered.

1 (e) If a filed annual report contains an address of a designated office or the name or
2 address of an agent for service of process which differs from the information shown in the
3 records of the [Secretary of State] immediately before the filing, the differing information in the
4 annual report is considered a statement of change under Section 115.

5
6

1 [ARTICLE] 3

2
3 LIMITED PARTNERS

4
5 SECTION 301. BECOMING LIMITED PARTNER. A person becomes a limited

6 partner:

7 (1) as provided in the partnership agreement;

8 (2) as the result of a ~~conversion or merger~~ transaction effective under [Article] 11; or

9 (3) with the consent of all the partners.

10 Reporters' Notes

11 Query whether we need to consider admitting a limited partner for the rare situations in
12 which the limited partnership simultaneously loses its last limited partner and last general
13 partner. (We do consider the dissociation of sole member of an SMLLC.)
14

15 SECTION 302. NO RIGHT OR POWER AS LIMITED PARTNER TO BIND

16 LIMITED PARTNERSHIP. A limited partner does not have the right or the power as a
17 limited partner to act for or bind the limited partnership.

18 SECTION 303. NO LIABILITY AS LIMITED PARTNER FOR LIMITED

19 PARTNERSHIP OBLIGATIONS. ~~An obligation of a limited partnership, whether arising in~~
20 ~~contract, tort, or otherwise,~~ A debt, obligation, or other liability of a limited partnership is not the

21 debt, obligation, or liability of a limited partner. A limited partner is not personally liable,
22 directly or indirectly, by way of contribution or otherwise, for an debt, obligation, or liability of

23 the limited partnership solely by reason of being a limited partner, even if the limited partner
24 participates in the management and control of the limited partnership.

25 Reporters' Notes

26 This provision does not yet included shield language for agents of the general partner and
27 agents of the limited partnership, in part because: (i) at least one of the co-reporters believes that
28 language should be excised generally, and (ii) in any event, such language probably better

1 belongs (if at all) in the provision on general partners.
2

3 **SECTION 304. RIGHT OF LIMITED PARTNER AND FORMER LIMITED**
4 **PARTNER TO INFORMATION.**

5 (a) On 10 days' demand, made in a record received by the limited partnership, a limited
6 partner may inspect and copy required information during regular business hours in the limited
7 partnership's ~~designated~~ principal office. The limited partner need not have any particular
8 purpose for seeking the information.

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

14 (1) the limited partner seeks the information for a purpose ~~reasonably related~~
15 material to the partner's interest as a limited partner;

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

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

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

22 (1) ~~what~~ of the information the limited partnership will provide in response to the
23 demand;

24 ~~(2)~~ and when and where the limited partnership will provide the information; and

1 ~~(3)~~(2) if the limited partnership declines to provide any demanded information,
2 the limited partnership's reasons for declining.

3 (d) Whenever this [act] or a partnership agreement provides for a limited partner to give
4 or withhold consent to a matter, before the consent is given or withheld, the limited partnership
5 shall, without demand, provide the limited partner with all information that is known to the
6 limited partnership and is material to the limited partner's decision.

7 (e) Subject to subsection (f), on 10 days' demand made in a record received by a limited
8 partnership a person dissociated as a limited partner may inspect and copy required information
9 during regular business hours in the limited partnership's designated office have access to
10 information to which the person was entitled while a limited partner if:

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

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

14 ~~(3)~~ the person ~~meets~~ satisfies the requirements of subsection (b).

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

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

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

20 (h) A limited partner or a person dissociated as a limited partner may exercise rights
21 under this section through an agent or, in the case of an individual under legal disability, a legal
22 representative. Any restriction or condition imposed by the partnership agreement or under
23 subsection (j) applies both to the agent or legal representative and the limited partner or person
24 dissociated as a limited partner.

1 ~~(g)(i)~~ Subject to subsections (e) and (f), the rights under this section do not extend to a
2 person as transferee.

3 ~~(j)~~ The In addition to any restrictions or conditions stated in its limited partnership
4 agreement, a limited partnership, as a matter within the ordinary course of its activities, may
5 impose reasonable restrictions and conditions on the access to and use of information obtained
6 to be furnished under this section. In a dispute concerning the reasonableness of a restriction or a
7 condition under this subsection, the limited partnership has the burden of proving
8 reasonableness.

9 ~~(h)~~ A limited partnership may charge a person that makes a demand under this section
10 reasonable costs of copying, limited to the costs of labor and material.

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

15 ~~(j)~~ A limited partner or person dissociated as a limited partner may exercise the rights
16 under this section through an attorney or other agent. Any restriction imposed under subsection
17 (g) or by the partnership agreement applies both to the attorney or other agent and to the limited
18 partner or person dissociated as a limited partner.

19 ~~(k)~~ The rights stated in this section do not extend to a person as transferee, but may be
20 exercised by the legal representative of an individual under legal disability who is a limited
21 partner or person dissociated as a limited partner.

22 **Reporters' Notes**

23 *Subsection (a)* – Query what, if any, alternative location or means of access should be
24 specified if the principal office is outside the state. Alternatives include: (i) access via electronic
25 copy; (ii) access via certified hard copy at the in-state of the registered agent.

1
2 *Subsection (h)* – Query whether the introductory phrase (“Subject to subsections (e) and
3 (f),”), should be added to HULLCA and elsewhere.

4
5 *Subsection (i)* – the reference to “condition” should be added to HULLCA and elsewhere.
6

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

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

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

13 ~~(c) A limited partner does not violate a duty or obligation under this [Act] or under the~~
14 ~~partnership agreement merely because the limited partner’s conduct furthers the limited partner’s~~
15 ~~own interest.~~ If a limited partner enters into a transaction with a limited partnership, the limited
16 partner’s rights and obligations arising from the transaction are the same as those of a person not
17 a limited partner.

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

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

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

1 [ARTICLE] 4

2
3 GENERAL PARTNERS
4

5 SECTION 401. BECOMING GENERAL PARTNER. A person becomes a general

6 partner:

7 (1) as provided in the partnership agreement:

8 (2) under Section 801(3)(B) following the dissociation of a limited partnership's last
9 general partner;

10 (3) as the result of a ~~conversion or merger~~ transaction effective under [Article] 11; or

11 (4) with the consent of all the partners.

12 SECTION 402. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.

13 (a) Each general partner is an agent of the limited partnership for the purposes of its
14 activities. An act of a general partner, including the signing of a record in the partnership's
15 name, for apparently carrying on in the ordinary course the limited partnership's activities or
16 activities of the kind carried on by the limited partnership binds the limited partnership, unless
17 the general partner did not have authority to act for the limited partnership in the particular
18 matter and the person with which the general partner was dealing knew, had received a
19 notification, or had notice ~~under Section 103(d)~~ that the general partner lacked authority.

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

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

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

7 (a) To the extent not inconsistent with Section 404, a general partner may be joined in an
8 action against the limited partnership or named in a separate action.

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

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

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

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

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

21 (4) a court grants permission to the judgment creditor to levy execution against
22 the assets of a general partner based on a finding that limited partnership assets subject to
23 execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership
24 assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the

1 court's equitable powers; or

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

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

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

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

10 (1) amend the partnership agreement;

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

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

16 (4) approve a transaction under [Article] 11.

17 (c) A limited partnership shall reimburse a general partner ~~for payments made and~~
18 ~~indemnify a general partner for liabilities incurred by the general partner in the ordinary course~~
19 ~~of the activities of the partnership or for the preservation of its activities or property~~ for any
20 payment made in the course of the general partner's activities on behalf of the limited
21 partnership, if the general partners complied with the duties stated in Sections TBA
22 [distributions] and TBA [standards of conduct] in making the payment.

23 (d) A limited partnership shall indemnify and hold harmless a general partner with
24 respect to any claim or demand against the person by reason of the person's former or present

1 capacity as a general partner, if the claim or demand does not arise from the person’s breach of a
2 duty stated in Sections TBA [distributions] and TBA [standards of conduct].

3 (e) As an activity in the ordinary course of its activities, a limited partnership may
4 advance reasonable expenses, including attorney’s fees and costs, incurred by a general partner
5 in connection with a claim or demand against the person by reason of the person’s former or
6 present capacity as general partner, if the person promises to repay the limited partnership if the
7 person ultimately is determined not to be entitled to be indemnified under subsection (d).

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

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

13 ~~(f)~~(h) A general partner is not entitled to remuneration for services performed for the
14 limited partnership.

15 **Reporters' Notes**

16 *Subsection (b)(1)* – HULLCA places this item last in its list. Suggest conforming
17 HULLCA.

18
19 *Subsection (b)(4)* – HULLCA lists the transactions separately in its parallel provision, but
20 elsewhere uses this formulation. Suggest conforming HULLCA to this formation.

21
22 *Subsections (c) and (d)* – Suggest revising HULLCA (and elsewhere) to eliminate
23 reference to liabilities etc. in subsection (c). Otherwise, subsections (c) and (d) overlap.

24
25 *Subsection (d)* – HULLCA extends this protection to members, regardless of whether the
26 LLC is member-managed. A comparable approach would extend this protection to limited
27 partners. However, such protection suggests a more active role for limited partners than is
28 traditionally contemplated (at least in the default mode). Suggest reconsidering the HULLCA
29 provision. Why should the LLC indemnify members from liability for taking action in their
30 capacity as owners (as distinguished from a managerial capacity)?
31

1 **SECTION 407. RIGHT OF GENERAL PARTNER AND FORMER GENERAL**
2 **PARTNER TO INFORMATION.**

3 (a) A general partner, without having any particular purpose for seeking the information,
4 may inspect and copy during regular business hours:

5 (1) in the limited partnership's ~~designated~~ principal office, required information;
6 and

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

10 (b) ~~Each general partner and the~~ The limited partnership shall furnish to a each general
11 partner:

12 (1) without demand, any information concerning the limited partnership's
13 activities, financial condition, and other circumstances which the limited partnership knows and
14 is material to ~~and activities reasonably required for~~ the proper exercise of the general partner's
15 rights and duties under the partnership agreement or this [Act], except to the extent the limited
16 partnership can establish that it reasonably believes the general partner already knows the
17 information; and

18 (2) on demand, any other information concerning the limited partnership's
19 activities, financial condition, and other circumstances, except to the extent the demand or the
20 information demanded is unreasonable or otherwise improper under the circumstances.

21 (c) The duty to furnish information under subsection (b) also applies to each general
22 partner to the extent the general partner knows any of the information described in subsection
23 (b).

24 (d) Subject to subsection (e), on 10 days' demand made in a record received by the

1 limited partnership, a person dissociated as a general partner may have access to the information
2 and records described in subsection (a) at the location specified in subsection (a) if:

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

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

6 (3) the person satisfies the requirements imposed on a limited partner by Section
7 304(b).

8 (4) The limited partnership shall respond to a demand made pursuant to subsection (c) in
9 the same manner as provided in Section 304(c).

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

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

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

17 ~~(h)~~(g) A general partner or person dissociated as a general partner may exercise the rights
18 under this section through an attorney or other agent, or in the case of an individual under legal
19 disability, a legal representative. Any restriction imposed ~~under subsection (f) or~~ by the
20 partnership agreement or under subsection (i) applies both to ~~the attorney or other~~ an agent and
21 legal representative and to ~~the~~ a general partner ~~or~~ a person dissociated as a general partner.

22 ~~(i)~~(h) The Subject to subsections (d) and (e), rights under this section do not extend to a
23 person as transferee, ~~but the rights under subsection (e) of a person dissociated as a general may~~
24 ~~be exercised by the legal representative of an individual who dissociated as a general partner~~

1 ~~under Section 603(7)(B) or (C).~~

2 (i) In addition to any restriction or condition stated in its partnership agreement, a limited
3 partnership, as a matter within the ordinary course of its activities, may impose reasonable
4 restrictions and conditions on access to and use of information to be furnished under this section,
5 including designating information confidential and imposing nondisclosure and safeguarding
6 obligations on the recipient. In a dispute concerning the reasonableness of a restriction under
7 this subsection, the limited partnership has the burden of proving reasonableness.

8 **Reporters' Notes**

9 *Subsection (c)* – Query whether to further revise (and in HULLCA and elsewhere) to read
10 as follows:

11
12 (c) To the extent a general partner knows any of the information described
13 in subsection (b), that general partner owes to each other general partner the same
14 duties as the limited partnership, subject to the same exceptions.

15
16 A comment would note that, if a general partner knows that the limited partnership is providing
17 particular information, an exception applies to discharge the general partner (“reasonably
18 believes the general partner already knows the information”).

19
20 *Subsection (g)* – Query whether to revise here (and in HULLCA and elsewhere) to read
21 as follows:

22
23 A general partner or person dissociated as a general partner may exercise the
24 rights under this section through an attorney or other agent, or in the case of an
25 individual under legal disability, a legal representative. Any restriction imposed
26 by the partnership agreement or under subsection (i) applies not only to a person
27 entitled to information under this section but also to anyone acting for that person.
28

29 **SECTION 408. GENERAL STANDARDS OF GENERAL PARTNER’S**

30 **CONDUCT.**

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

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

1 limited to the following:

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

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

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

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

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

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

21 (e) All of the partners may authorize or ratify, after full disclosure of all material facts, a
22 specific act or transaction that otherwise would violate the duty of loyalty.

23 (f) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity
24 or at common law that the transaction was fair to the limited partnership.

1 [ARTICLE] 5

2
3 CONTRIBUTIONS AND DISTRIBUTIONS

4
5 Reporters' Notes

6 It is not possible to harmonize the sequence of these provisions with HULLCA,
7 because HULPA requires prior separate treatment of limited partners and general partners.
8

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

13 SECTION 502. LIABILITY FOR CONTRIBUTION.

14 (a) A partner's person's obligation to ~~contribute money or other property or other benefit~~
15 ~~to, or to perform services for, a limited partnership~~ to make a contribution is not excused by the
16 ~~partner's~~ partner's death, disability, or other inability to perform personally.

17 (b) If a ~~partner~~ person does not make a ~~promised non-monetary~~ required contribution,
18 the ~~partner~~ the person or the person's estate is obligated ~~at the option of the limited partnership~~ to
19 contribute money equal to that portion of the value, as stated in the required information, of the
20 stated contribution which has not been made, at the option of the limited partnership.

21 (e)(b) The obligation of a partner to make a contribution ~~or return money or other~~
22 ~~property paid or distributed in violation of this [Act]~~ may be compromised only by consent of all
23 partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on
24 an obligation described in subsection (a), without notice of any compromise under this
25 subsection, may enforce the original obligation.

26 Reporters' Notes

27 *Subsection (a)* – In the second sentence, suggest reinstate “promised” in place of
28 “required” and conform HULLCA and elsewhere.

1 **SECTION 503. SHARING OF AND RIGHT TO RECEIVE DISTRIBUTIONS**
2 **BEFORE DISSOLUTION.**

3 ~~(a) A distribution~~ Except to the extent necessary to comply with any transfer effective
4 under Section TBA and any charging order in effect under Section TBA, any distributions by a
5 limited partnership before its dissolution must be shared among the partners and persons
6 dissociated as partners on the basis of in proportion to the value, as stated in the required records
7 ~~when~~ at the time the limited partnership decides to make the distribution, of the contributions the
8 limited partnership has received from each partner and person dissociated as a partner.

9 ~~**SECTION 504. INTERIM DISTRIBUTIONS.**~~ ~~A partner does not have a right to any~~

10 ~~(b) A person has a right to a~~ distribution before the dissolution and winding up of the a
11 limited partnership unless only if the limited partnership decides to make an interim distribution.

12 ~~**SECTION 505. NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION.**~~ ~~A~~

13 ~~person does not have a right to receive a distribution on account of dissociation.~~

14 ~~**SECTION 506. DISTRIBUTION IN KIND.**~~

15 ~~(c) A partner person~~ does not have a right to demand or receive any a distribution from a
16 limited partnership in any form other than cash money. ~~Subject to Section 812(b)~~ Except as
17 otherwise provided in Section TBA [winding up], a limited partnership may distribute an asset in
18 kind to the extent if each part of the asset is fungible with each other part and each partner person
19 receives a percentage of the asset equal to the partner's person's share of distributions.

20 ~~**SECTION 507. RIGHT TO DISTRIBUTION.**~~

21 ~~(d) When~~ If a partner or transferee becomes entitled to receive a distribution, the partner
22 or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited
23 partnership with respect to the distribution. However, the limited partnership's obligation to
24 make a distribution is subject to offset for any amount owed to the limited partnership by the

1 partner or dissociated partner on whose account the distribution is made.

2 **Reporters' Notes**

3 *Subsection (d) – HULLCA. omits this provision.*

4
5 *****SECTION 508. LIMITATIONS ON DISTRIBUTION.**

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

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

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

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

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

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

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

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

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

4 (B) the payment is made, if payment occurs more than 120 days after the
5 distribution is authorized.

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

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

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

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

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

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

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

2 (1) implead in the action any other person that is liable under subsection (a) and

3 compel contribution from the person; and

4 (2) implead in the action any person that received a distribution in violation of

5 subsection (b) and compel contribution from the person in the amount the person received in

6 violation of subsection (b).

7 (d) An action under this section is barred if it is not commenced within two years after

8 the distribution.

9

1 [ARTICLE] 6

2
3 DISSOCIATION

4
5 SECTION 601. DISSOCIATION AS LIMITED PARTNER.

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

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

10 (1) the limited partnership's having notice of the person's express will to
11 withdraw as a limited partner ~~or on a later date specified by the person, but, if the person~~
12 specified a withdrawal date later than the date the limited partnership had notice, on that later
13 date;

14 (2) an event ~~agreed to~~ stated in the partnership agreement as causing the person's
15 dissociation as a limited partner occurs;

16 (3) the ~~person's expulsion~~ person is expelled as a limited partner pursuant to the
17 partnership agreement;

18 (4) the ~~person's expulsion~~ person is expelled as a limited partner by the
19 unanimous consent of the other partners if:

20 (A) it is unlawful to carry on the limited partnership's activities with the
21 person as a limited partner;

22 (B) there has been a transfer of all of the person's transferable interest in
23 the limited partnership, other than:

24 (i) a transfer for security purposes; or

25 (ii) a ~~court charging~~ charging order ~~charging the person's interest in effect~~

1 under Section TBA which has not been foreclosed;

2 (C) the person is a corporation and, within 90 days after the limited
3 partnership notifies the person that it will be expelled as a limited partner because it has filed a
4 certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct
5 business has been suspended by the jurisdiction of its incorporation, ~~there is no revocation of the~~
6 certificate of dissolution has not been revoked or ~~no reinstatement of~~ its charter or its right to
7 conduct business has not been reinstated; or

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

10 (5) on application by the limited partnership, the ~~person's expulsion~~ the person is
11 expelled as a limited partner by judicial order because the person:

12 (A) ~~the person~~ has engaged, or is engaging, in wrongful conduct that has
13 adversely and materially affected, or will adversely and materially affect, the limited
14 partnership's activities;

15 (B) the person has willfully or persistently committed, or is willfully and
16 persistently committing, a material breach of the partnership agreement or of the obligation of
17 good faith and fair dealing under Section 305(b); or

18 (C) the person has engaged in, or is engaging in, conduct relating to the
19 limited partnership's activities which makes it not reasonably practicable to carry on the
20 activities with the person as limited partner;

21 (6) in the case of a person who is an individual, ~~the person's death~~ the person
22 dies;

23 (7) in the case of a person that is a trust or is acting as a limited partner by virtue
24 of being a trustee of a trust, ~~distribution of~~ the trust's entire transferable interest in the limited

1 ~~partnership is distributed, but not merely by reason of the substitution of a successor trustee;~~

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

6 (9) ~~termination of~~ in the case of a limited partner that is not an individual,
7 partnership, limited liability company, corporation, trust, or estate, the termination of the
8 member;

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

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

12 (B) is the ~~converted or~~ surviving entity but, as a result of the conversion or
13 merger, the person ceases to be a limited partner

14 (11) the limited partnership participates in a conversion under [Article] 11;

15 (12) the limited partnership participates in a domestication under [Article] 11, if,
16 as a result of the domestication, the person ceases to be a limited partner; or

17 (13) the limited partnership terminates.

18 **Reporters' Notes**

19 *Subsection (b)(1)* – Consider changing “specified” to “specifies” and “had notice” to “has
20 notice” and conforming HULLCA and elsewhere.

21
22 *Subsection (b)(2)* – This formulation is awkward, as in the parallel formulation in Section
23 603(2) (for general partners).

24
25 *Subsection (b)(4)(B)(ii)* – HULLCA has “is” immediately before “in effect”. Suggest
26 conforming HULLCA.

27
28 *Subsection (b)(4)(C) and (D)* – “Now is the time, now is the best time” to end the
29 disparate treatment of corporations and unincorporated entities. (Disneyworld, the GE ride.) Or

1 at least to consider whether all this complexity is really necessary.

2
3 *Subsection (b)(7) and (8)* – Suggest revisiting the decision to delete the phrase beginning
4 “but not merely”.
5

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

7 (a) Upon a person’s dissociation as a limited partner:

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

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

13 (3) subject to Section 704 and [Article] 11, any transferable interest owned by the
14 person immediately before dissociation in the person’s capacity as a limited partner ~~immediately~~
15 ~~before dissociation~~ is owned by the person solely as a ~~mere~~ transferee.

16 (b) A person’s dissociation as a limited partner does not of itself discharge the person
17 from any debt, obligation, other liability to the limited partnership or the other partners which the
18 person incurred while a limited partner.

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

22 (1) the limited partnership’s having notice of the person’s express will to withdraw as a
23 general partner ~~or on a later date specified by the person, but, if the person specified a~~
24 withdrawal date later than the date the limited partnership had notice, on that later date;

25 (2) an event ~~agreed to~~ stated in the partnership agreement as causing the person’s
26 dissociation as a general partner occurs;

1 (3) the ~~person's expulsion~~ the person is expelled as a general partner pursuant to the
2 partnership agreement;

3 (4) the ~~person's expulsion~~ the person is expelled as a general partner by the unanimous
4 consent of the other partners if:

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

7 (B) there has been a transfer of all or substantially all of the person's transferable
8 interest in the limited partnership, other than:

9 (i) a transfer for security purposes; or

10 (ii) a ~~court charging order charging the person's interest,~~ under Section
11 TBA which has not been foreclosed;

12 (C) the person is a corporation and, within 90 days after the limited partnership
13 notifies the person that it will be expelled as a general partner because it has filed a certificate of
14 dissolution or the equivalent, its charter has been revoked, or its right to conduct business has
15 been suspended by the jurisdiction of its incorporation, ~~there is no revocation of the certificate of~~
16 ~~dissolution~~ has not been revoked or ~~no reinstatement of its charter or its right to conduct~~
17 ~~business~~ has not been reinstated; or

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

20 (5) on application by the limited partnership, ~~person's expulsion~~ the person is expelled as
21 a general partner by judicial determination because:

22 (A) the person has engaged in, or is engaging in, wrongful conduct that has
23 adversely and materially affected, or will adversely and materially affect, the limited partnership
24 activities;

1 (B) the person has willfully or persistently committed, or is willfully and
2 persistently committing, a material breach of the partnership agreement or of a duty owed to the
3 partnership or the other partners under Section 408; or

4 (C) the person has engaged in, or is engaging in, conduct relating to the limited
5 partnership's activities which makes it not reasonably practicable to carry on the activities of the
6 limited partnership with the person as a general partner;

7 (6) the ~~person's~~ person:

8 (A) ~~becoming~~ becomes a debtor in bankruptcy;

9 (B) ~~execution~~ executes of an assignment for the benefit of creditors; or

10 (C) ~~seeking~~ seeks, ~~consenting~~ consents to, or ~~acquiescing~~ acquiesces in the
11 appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the
12 person's property; ~~or~~

13 ~~(D) failure, within 90 days after the appointment, to have vacated or stayed the~~
14 ~~appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all~~
15 ~~of the person's property obtained without the person's consent or acquiescence, or failing within~~
16 ~~90 days after the expiration of a stay to have the appointment vacated;~~

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

18 (A) the ~~person's death~~ person dies;

19 (B) ~~the appointment of~~ a guardian or general conservator for the person is
20 appointed; or

21 (C) ~~a judicial determination~~ there is a judicial order that the person has otherwise
22 become incapable of performing the person's duties as a general partner under this [act] or the
23 partnership agreement;

24 (8) in the case of a person that is a trust or is acting as a general partner by virtue of being

1 a trustee of a trust, ~~distribution of the trust's entire transferable interest in the limited partnership~~
2 ~~is distributed, but not merely by reason of the substitution of a successor trustee;~~

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

7 (10) ~~termination in the case of a general partner that is not an individual, partnership,~~
8 ~~limited liability company, corporation, trust, or estate, the termination of the general partner; or~~

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

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

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

14 (12) the limited partnership participates in a conversion under [Article] 11;

15 (13) the limited partnership participates in a domestication under [Article] 11, if, as a
16 result of the domestication, the person ceases to be a general partner; or

17 (14) the limited partnership terminates.

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

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

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

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

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

- 1 (A) the person withdraws as a general partner by express will;
- 2 (B) the person is expelled as a general partner by judicial ~~determination~~
3 order under Section 603(5);
- 4 (C) the person is dissociated as a general partner under Section TBA by
5 becoming a debtor in bankruptcy; or
- 6 (D) in the case of a person that is not an individual, trust other than a
7 business trust, or estate, the person is expelled or otherwise dissociated as a general partner
8 because it willfully dissolved or terminated.

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

13 **SECTION 605. EFFECT OF DISSOCIATION AS GENERAL PARTNER.**

14 (a) ~~Upon a person's dissociation~~ When a person is dissociated as a general partner:

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

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

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

22 (4)(3) the person may sign and deliver to the [Secretary of State] for filing a
23 statement of dissociation pertaining to the person and, at the request of the limited partnership,
24 shall sign an amendment to the certificate of limited partnership which states that the person has

1 dissociated; and

2 ~~(5)~~(4) subject to Section 704 and [Article] 11, any transferable interest owned by
3 the person immediately before dissociation in the person's capacity as a general partner is owned
4 by the person solely as a ~~mere~~ transferee.

5 (b) A person's dissociation as a general partner does not of itself discharge the person
6 from any debt, obligation, or other liability to the limited partnership or the other partners which
7 the person incurred while a general partner.

8 **SECTION 606. POWER TO BIND AND LIABILITY TO LIMITED**
9 **PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON**
10 **DISSOCIATED AS GENERAL PARTNER.**

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

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

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

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

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

20 (b) If a limited partnership is bound under subsection (a), the person dissociated as a
21 general partner which caused the limited partnership to be bound is liable:

22 (1) to the limited partnership for any damage caused to the limited partnership
23 arising from the obligation incurred under subsection (a); and

24 (2) if a general partner or another person dissociated as a general partner is liable

1 for the obligation, to the general partner or other person for any damage caused to the general
2 partner or other person arising from the liability.

3 **Reporters' Notes**

4 In ULPA (2001), “conversion” encompasses domestications as well as transactions in
5 which the limited partnership morphs into a different form of entity.
6

7 **SECTION 607. LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED**
8 **AS GENERAL PARTNER.**

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

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

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

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

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

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

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

24 (d) By agreement with a creditor of a limited partnership and the limited partnership, a
25 person dissociated as a general partner may be released from liability for an obligation of the

1 limited partnership.

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

6

1 [ARTICLE] 7

2
3 **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

4
5 **SECTION 701. PARTNER’S TRANSFERABLE INTEREST.** The only interest of a
6 partner which is transferable is the partner’s transferable interest. A transferable interest is
7 personal property.

8 **Reporters' Notes**

9 Re-ULLCA (and so far HULLCA) omit this first sentence. Suggest conforming
10 HULLCA. Consider adding here and in HULLCA a comparable limitation on what a transferee
11 can transfer: “The only interest of a partner or transferee which is transferable is the partner’s or
12 transferee’s transferable interest.”
13

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

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

16 (1) is permissible;

17 (2) does not by itself cause ~~the~~ a partner’s dissociation or a dissolution and
18 winding up of the limited partnership’s activities; and

19 (3) subject to Section TBA [power of personal representative] does not, ~~as against~~
20 ~~the other partners or the limited partnership,~~ entitle the transferee to:

21 (A) participate in the management or conduct of the limited partnership’s
22 activities;

23 (B) except as otherwise provided in subsection (c), have to require access
24 to records or other information concerning the limited partnership’s activities ~~transactions except~~
25 ~~as otherwise provided in subsection (c), or to inspect or copy the required information or the~~
26 ~~limited partnership’s other records.~~

27 (b) A transferee has a right to receive, in accordance with the transfer:

1 ~~(1) distributions to which the transferor would otherwise be entitled; and~~
2 ~~(2) upon the dissolution and winding up of the limited partnership's activities the~~
3 ~~net amount otherwise distributable to the transferor.~~

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

6 (d) A transferable interest may be evidenced by a certificate of the interest issued by the
7 limited partnership in a record, and, subject to this section, the interest represented by the
8 certificate may be transferred by a transfer of the certificate.

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

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

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

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

19 **Reporters' Notes**

20 *Subsection (a)(2)* – Suggest deleting here (and in HULLCA and elsewhere) “’s
21 activities”.

22
23 *Subsection (a)(3)(B)* – Suggest deleting here (and in HULLCA and elsewhere) “’s
24 activities”.

25
26 *Subsection (f)* – Query whether to further revise (and in HULLCA and elsewhere) as
27 follows (additional changes indicated by double underlining and double strike through):
28

1 (f) A transfer of a partner's transferable interest ~~in the limited partnership~~
2 in violation of this section is section is ineffective. A restriction on transfer
3 contained in the partnership agreement is ineffective as to a person having notice
4 of the restriction at the time of transfer.
5

6 *****SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFEREE.**

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

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

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

19 (1) by the judgment debtor;

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

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

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

26 (e) This section provides the exclusive remedy by which a judgment creditor of a partner

1 or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

2 **SECTION 704. POWER OF PERSONAL REPRESENTATIVE OF ESTATE OF**

3 **DECEASED PARTNER.** If a partner dies, the deceased partner's personal representative or

4 other legal representative may exercise:

5 (1) the rights of a transferee as provided in Section 702; and,

6 (2) for the purposes of settling the estate, ~~may exercise~~ the rights of a current limited

7 partner under Section 304.

8

1 [ARTICLE] 8

2
3 **DISSOLUTION AND WINDING UP**

4
5 **SECTION 801. NONJUDICIAL DISSOLUTION.** ~~Except as otherwise provided in~~
6 ~~Section 802, a~~ A limited partnership is dissolved, and its activities must be wound up, ~~only~~ upon
7 the occurrence of any of the following:

8 (1) ~~the happening of an event specified in an event or circumstances that the partnership~~
9 ~~agreement states causes dissolution;~~

10 (2) the consent of all general partners and of limited partners owning a majority of the
11 rights to receive distributions as limited partners at the time the consent is to be effective;

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

13 (A) if the limited partnership has at least one remaining general partner, the
14 consent to dissolve the limited partnership given within 90 days after the dissociation by partners
15 owning a majority of the rights to receive distributions as partners at the time the consent is to be
16 effective; or

17 (B) if the limited partnership does not have a remaining general partner, the
18 passage of 90 days after the dissociation, unless before the end of the period:

19 (i) consent to continue the activities of the limited partnership and admit at
20 least one general partner is given by limited partners owning a majority of the rights to receive
21 distributions as limited partners at the time the consent is to be effective; and

22 (ii) at least one person is admitted as a general partner in accordance with
23 the consent;

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

1 partner; or

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

4 **Reporters' Notes**

5 Section 802 is kept separate to avoid having to rephrase that section's venerable and
6 ubiquitous formulation for Judicial Dissolution.
7

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

12 **SECTION 803. WINDING UP.**

13 (a) A dissolved limited partnership shall wind up its activities, and the limited
14 partnership continues after dissolution only for the purpose of winding up its activities.

15 (b) In winding up its activities, the limited partnership:

16 (1) shall discharge the limited partnership's debts, obligations, or other liabilities,
17 settle and close the limited partnership's activities, and marshal and distribute the assets of the
18 limited partnership; and

19 (2) may:

20 (A) amend its certificate of limited partnership to state that the limited
21 partnership is dissolved;

22 (B) preserve the limited partnership ~~business or~~ activities property as a
23 going concern for a reasonable time;

24 (C) prosecute and defend actions and proceedings, whether civil, criminal,
25 or administrative;

- 1 (D) transfer the limited partnership's property;²
- 2 (E) settle disputes by mediation or arbitration;²
- 3 (F) ~~file~~ deliver to the [secretary of state] for filing a statement of
- 4 termination ~~as provided in Section 203,~~ stating:
- 5 (i) the name of the limited partnership and that the limited
- 6 partnership is terminated; and
- 7 (ii) other information the limited partnership determines; and
- 8 (G) perform other ~~necessary~~ acts necessary or appropriate to the winding
- 9 up; and
- 10 (2) ~~shall discharge the limited partnership's liabilities, settle and close the limited~~
- 11 ~~partnership's activities, and marshal and distribute the assets of the partnership.~~

12 (c) If a dissolved limited partnership does not have a general partner, a person to wind up

13 the dissolved limited partnership's activities may be appointed by the consent of limited partners

14 owning a majority of the rights to receive distributions as limited partners at the time the consent

15 is to be effective. ~~A person appointed~~ An appointee under this subsection:

- 16 (1) has the powers of a general partner under Section 804; ~~and~~
- 17 (2) is not personally liable, directly or indirectly, by way of contribution or
- 18 otherwise, for a debt, obligation, or other liability of the limited partnership solely by reason of
- 19 the appointment or acting as the appointee; and

- 20 (3) shall promptly amend the certificate of limited partnership to ~~state:~~
- 21 (A) state that the limited partnership does not have a general partner and
- 22 the appointee has been appointed pursuant to this section to wind up the limited partnership; and
- 23 (B) ~~the name of the person that has been appointed to wind up the limited~~
- 24 ~~partnership; and~~

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

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

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

5 (2) the act:

6 (A) is appropriate for winding up the limited partnership's activities; or

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

10 **SECTION 805. LIABILITY AFTER DISSOLUTION OF GENERAL PARTNER**
11 **AND PERSON DISSOCIATED AS GENERAL PARTNER TO LIMITED**
12 **PARTNERSHIP, OTHER GENERAL PARTNERS, AND PERSONS DISSOCIATED AS**
13 **GENERAL PARTNER.**

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

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

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

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

24 (1) to the limited partnership for any damage caused to the limited partnership

1 arising from the obligation; and

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

5 **SECTION 805A. RESCINDING DISSOLUTION.**

6 (a) A limited partnership may rescind its dissolution under subsection (b), unless a
7 statement of termination pertaining to the limited partnership has been delivered to the [Secretary
8 of State] for filing or the [appropriate court] has entered an order under Section 802 dissolving
9 the limited partnership. If a limited partnership rescinds its dissolution, the limited partnership
10 resumes carrying on its business as if dissolution had never occurred, and any liability incurred
11 by the limited partnership after the dissolution and before the rescission is determined as if
12 dissolution had never occurred. However, the rights of a third party arising out of conduct in
13 reliance on the dissolution before the third party knew or received a notification of the rescission
14 may not be adversely affected.

15 (b) Rescinding dissolution under this section requires:

16 (1) the consent of each partner;

17 (2) if an amendment to the certificate of limited partnership stating that the
18 limited partnership is dissolved has been delivered to the [Secretary of State] for filing but has
19 not become effective, the delivery to the [secretary of state] for filing of a statement of
20 withdrawal under Section TBA pertaining to the amendment; and

21 (3) If the certificate of limited partnership has been amended to state that the
22 limited partnership is dissolved, the delivery to the [secretary of state] for filing of a further
23 amendment or a statement of correction under Section 208, stating that dissolution has been
24 rescinded under this section.

1 **Reporters' Notes**

2 Query the effect of rescinding dissolution on notice to creditors, statutory lingering
3 apparent authority, and statutory lingering personal liability. Only the first of those three issues
4 exists with an LLC (but has not yet been discussed in that context).
5

6 *Subsection (b)* – The HULLCA provision has been revised to reflect the amendment
7 mechanism (rather than a statement of dissolution). Those revisions revealed some questions
8 about the HULLCA formulation, which was adopted verbatim from the Hub. In particular, note
9 “delivered ... for filing” (here) instead of “filing” (there).
10

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

12 **PARTNERSHIP.**

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

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

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

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

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

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

22 (5) unless the limited partnership has been throughout its existence a limited
23 liability limited partnership, state that the barring of a claim against the limited partnership will
24 also bar any corresponding claim against any general partner or person dissociated as a general
25 partner which is based on Section 404.

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

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

1 (2) in the case of a claim that is timely received but rejected by the dissolved
2 limited partnership, the claimant does not commence an action to enforce the claim against the
3 limited partnership within 90 days after the receipt of the notice of the rejection.

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

6 *****SECTION 807. OTHER CLAIMS AGAINST DISSOLVED LIMITED**
7 **PARTNERSHIP.**

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

11 (b) The notice must:

12 (1) be published at least once in a newspaper of general circulation in the [county]
13 in which the dissolved limited partnership's principal office is located or, if it has none in this
14 State, in the [county] in which the limited partnership's designated office is or was last located;

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

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

19 (4) unless the limited partnership has been throughout its existence a limited
20 liability limited partnership, state that the barring of a claim against the limited partnership will
21 also bar any corresponding claim against any general partner or person dissociated as a general
22 partner which is based on Section 404.

23 (c) If a dissolved limited partnership publishes a notice in accordance with subsection
24 (b), the claim of each of the following claimants is barred unless the claimant commences an

1 action to enforce the claim against the dissolved limited partnership within five years after the
2 publication date of the notice:

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

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

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

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

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

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

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

17 *****SECTION 807A. COURT PROCEEDINGS**

18 **Reporters' Notes**

19 To be added once the HULLCA provision is finalized.

20 **SECTION 808. LIABILITY OF GENERAL PARTNER AND PERSON**
21 **DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED**
22 **PARTNERSHIP BARRED.**

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

1 *****SECTION 809. ADMINISTRATIVE DISSOLUTION.**

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

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

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

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

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

16 (d) A limited partnership administratively dissolved continues its existence but may
17 carry on only activities necessary to wind up its activities and liquidate its assets under Sections
18 803 and 812 and to notify claimants under Sections 806 and 807.

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

21 *****SECTION 810. REINSTATEMENT FOLLOWING ADMINISTRATIVE**
22 **DISSOLUTION.**

23 (a) A limited partnership that has been administratively dissolved may apply to the
24 [Secretary of State] for reinstatement within two years after the effective date of dissolution. The

1 application must be delivered to the [Secretary of State] for filing and state:

2 (1) the name of the limited partnership and the effective date of its administrative
3 dissolution;

4 (2) that the grounds for dissolution either did not exist or have been eliminated;
5 and

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

7 (b) If the [Secretary of State] determines that an application contains the information
8 required by subsection (a) and that the information is correct, the [Secretary of State] shall
9 prepare a declaration of reinstatement that states this determination, sign, and file the original of
10 the declaration of reinstatement, and serve the limited partnership with a copy.

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

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

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

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

24 (c) The court may summarily order the [Secretary of State] to reinstate the dissolved

1 limited partnership or may take other action the court considers appropriate.

2 **SECTION 812. DISPOSITION OF ASSETS; WHEN CONTRIBUTIONS**

3 **REQUIRED.**

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

8 (b) ~~Any surplus remaining after the~~ After a limited partnership complies with subsection
9 (a), any surplus remaining must be ~~paid in cash as a distribution~~ distributed in the following
10 order, subject to any charging order in effect under Section 503:

11 (1) to each person owning a transferable interest that reflects contributions made
12 by a partner and not previously returned, an amount equal to the value of the unreturned
13 contributions; and

14 (2) among partners and persons dissociated as partners, in proportion to their
15 respective rights to share in distributions, except to the extent necessary to comply with any
16 transfer effective under Section 502.

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

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

1 incurred.

2 (2) If a person does not contribute the full amount required under paragraph (1)
3 with respect to an unsatisfied obligation of the limited partnership, the other persons required to
4 contribute by paragraph (1) on account of the obligation shall contribute the additional amount
5 necessary to discharge the obligation. The additional contribution due from each of those other
6 persons is in proportion to the right to receive distributions in the capacity of general partner in
7 effect for each of those other persons when the obligation was incurred.

8 (3) If a person does not make the additional contribution required by paragraph
9 (2), further additional contributions are determined and due in the same manner as provided in
10 that paragraph.

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

16 (e) ~~The estate of a deceased individual is liable for the person's obligations under this~~
17 ~~section.~~ If a limited partnership does not have sufficient surplus to comply with subsection
18 (b)(1), any surplus must be distributed among the owners of transferable interests in proportion
19 to the value of their respective unreturned contributions as described in subsection (a)(10).

20 (f) All distributions made under subsections (b) and (e) must be paid in money.

21 **Reporters' Notes**

22 It probably makes better sense to re-sequence the subsections as follows: (a) pay
23 creditors; (b) and (c) additional contributions if necessary to pay creditors; (d) *et seq.*
24 distributions. The current sequence is retained for the moment, because re-sequencing would
25 make the proposed revisions appear more substantial than they are.
26

1 ***[ARTICLE] 9

2
3 **FOREIGN LIMITED PARTNERSHIPS**

4
5 **Reporters' Notes**

6 Only Section 901 shows revisions.

7
8 **SECTION 901. GOVERNING LAW.**

9 (a) The ~~laws~~ law of the State or other jurisdiction under which a foreign limited
10 partnership is organized ~~govern govern~~ relations among the partners of the foreign limited
11 partnership and between the partners and the foreign limited partnership and the liability of
12 partners as partners for an obligation of the foreign limited partnership:

13 (1) the internal affairs of the limited partnership; and

14 (2) the liability of a partner as partner for a debt, obligation, or other liability of
15 the limited partnership.

16 (b) A foreign limited partnership may not be ~~denied a certificate of authority by reason~~
17 precluding from registering to do business in this state because of any difference between the
18 laws law of the foreign limited partnership's jurisdiction ~~under which the foreign limited~~
19 ~~partnership is organized~~ of formation and the ~~laws~~ law of this State.

20 (c) ~~A certificate of authority~~ A foreign limited partnership's registration to do business in
21 this state does not authorize a foreign limited partnership to engage in any business or exercise
22 any power that a limited partnership may not engage in or exercise in this State.

23 **Reporters' Notes**

24 *Subsection (b)* – This subsection might read better if “law of this State” preceded “the
25 laws of the foreign limited partnership’s ...”.

26
27 **SECTION 902. APPLICATION FOR CERTIFICATE OF AUTHORITY.**

28 (a) A foreign limited partnership may apply for a certificate of authority to transact

1 business in this State by delivering an application to the [Secretary of State] for filing. The
2 application must state:

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

5 (2) the name of the State or other jurisdiction under whose law the foreign limited
6 partnership is organized;

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

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

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

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

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

21 **SECTION 903. ACTIVITIES NOT CONSTITUTING TRANSACTING**
22 **BUSINESS.**

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

- 1 (1) maintaining, defending, and settling an action or proceeding;
- 2 (2) holding meetings of its partners or carrying on any other activity concerning
- 3 its internal affairs;
- 4 (3) maintaining accounts in financial institutions;
- 5 (4) maintaining offices or agencies for the transfer, exchange, and registration of
- 6 the foreign limited partnership's own securities or maintaining trustees or depositories with
- 7 respect to those securities;
- 8 (5) selling through independent contractors;
- 9 (6) soliciting or obtaining orders, whether by mail or electronic means or through
- 10 employees or agents or otherwise, if the orders require acceptance outside this State before they
- 11 become contracts;
- 12 (7) creating or acquiring indebtedness, mortgages, or security interests in real or
- 13 personal property;
- 14 (8) securing or collecting debts or enforcing mortgages or other security interests
- 15 in property securing the debts, and holding, protecting, and maintaining property so acquired;
- 16 (9) conducting an isolated transaction that is completed within 30 days and is not
- 17 one in the course of similar transactions of a like manner; and
- 18 (10) transacting business in interstate commerce.

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

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

1 **SECTION 904. FILING OF CERTIFICATE OF AUTHORITY.** Unless the
2 [Secretary of State] determines that an application for a certificate of authority does not comply
3 with the filing requirements of this [Act], the [Secretary of State], upon payment of all filing
4 fees, shall file the application, prepare, sign and file a certificate of authority to transact business
5 in this State, and send a copy of the filed certificate, together with a receipt for the fees, to the
6 foreign limited partnership or its representative.

7 **SECTION 905. NONCOMPLYING NAME OF FOREIGN LIMITED**
8 **PARTNERSHIP.**

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

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

20 **SECTION 906. REVOCATION OF CERTIFICATE OF AUTHORITY.**

21 (a) A certificate of authority of a foreign limited partnership to transact business in this
22 State may be revoked by the [Secretary of State] in the manner provided in subsections (b) and
23 (c) if the foreign limited partnership does not:

24 (1) pay, within 60 days after the due date, any fee, tax or penalty due to the

1 [Secretary of State] under this [Act] or other law;

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

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

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

8 (b) In order to revoke a certificate of authority, the [Secretary of State] must prepare,
9 sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for
10 service of process in this State, or if the foreign limited partnership does not appoint and
11 maintain a proper agent in this State, to the foreign limited partnership's designated office. The
12 notice must state:

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

15 (2) the foreign limited partnership's failures to comply with subsection (a) which
16 are the reason for the revocation.

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

21 **SECTION 907. CANCELLATION OF CERTIFICATE OF AUTHORITY;**
22 **EFFECT OF FAILURE TO HAVE CERTIFICATE.**

23 (a) In order to cancel its certificate of authority to transact business in this State, a
24 foreign limited partnership must deliver to the [Secretary of State] for filing a notice of

1 cancellation. The certificate is canceled when the notice becomes effective under Section 206.

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

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

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

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

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

18

1 [ARTICLE] 10

2
3 ACTIONS BY PARTNERS

4
5 SECTION 1001. DIRECT ACTION BY PARTNER.

6 (a) Subject to subsection (b), a partner may maintain a direct action against another
7 partner or the limited partnership or another partner for legal or equitable relief, with or without
8 an accounting as to the partnership's activities, to enforce the partner's rights and otherwise
9 protect the partner's interests, including rights and interests under the partnership agreement or
10 this [Act] or arising independently of the partnership relationship.

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

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

17 **Reporters' Notes**

18 *Subsection (c) – Re-ULLCA (and HULLCA) omit subsection (c) entirely. Especially*
19 *after FTC v. Olmstead, harmonization is essential on this point.*
20

21 SECTION 1002. DERIVATIVE ACTION. A partner may maintain a derivative
22 action to enforce a right of a limited partnership if:

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

26 (2) a demand under paragraph (1) would be futile.

1 **SECTION 1003. PROPER PLAINTIFF.** A derivative action may be maintained only
2 by a person that is a partner at the time the action is commenced and:

3 (1) that was a partner when the conduct giving rise to the action occurred; or

4 (2) whose status as a partner devolved upon the person by operation of law or pursuant to
5 the terms of the partnership agreement from a person that was a partner at the time of the
6 conduct.

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

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

11 (2) why demand should be excused as futile.

12 **SECTION 1004A. SPECIAL LITIGATION COMMITTEE.**

13 (a) If a limited partnership receives a demand under Section 1002(1), or is named as or
14 made a party in a derivative proceeding, the limited partnership may appoint a special litigation
15 committee to investigate the claims asserted in the demand or proceeding and determine whether
16 pursuing the matter is in the best interests of the limited partnership. If the limited partnership
17 appoints a special litigation committee and a derivative proceeding has been or subsequently is
18 commenced, on motion by the committee made in the name of the limited partnership, except for
19 good cause shown, the court shall stay discovery for the time reasonably necessary to permit the
20 committee to make its investigation. This subsection does not prevent the court from enforcing a
21 person's right to information under Section 410 or, for good cause shown, granting extraordinary
22 relief in the form of a temporary restraining order or preliminary injunction.

23 (b) A special litigation committee may be composed of one or more disinterested and
24 independent individuals, who may be partners.

1 (c) A special litigation committee may be appointed:

2 (1) by the consent of a majority of the general partners not named in any capacity
3 as defendants or plaintiffs in the proceeding; and

4 (2) if all general partners are named as defendants or plaintiffs in the proceeding,
5 by a majority of the general partners named as defendants.

6 (d) After appropriate investigation, a special litigation committee may determine that it is
7 in the best interests of the limited partnership that:

8 (1) if a derivative proceeding has begun, the proceeding:

9 (A) continue under the control of the plaintiff;

10 (B) continue under the control of the committee;

11 (C) be settled on terms approved by the committee; or

12 (D) be dismissed; and

13 (2) if a derivative proceeding has not begun:

14 (A) no derivative proceeding should begin, with or without any settlement
15 with any person alleged in the demand to have engaged in wrongdoing; or

16 (B) no derivative proceeding should begin but the limited partnership
17 under the control of the committee should begin and maintain a proceeding related to the
18 demand; or

19 (C) a derivative proceeding should begin and be maintained under the
20 control of the person who made the demand under Section 1002(1).

21 (e) After making a determination under subsection (d)(1), a special litigation committee
22 shall file with the court a statement of its determination and its report supporting the
23 determination, giving notice to the plaintiff. The court shall determine whether the members of
24 the committee were disinterested and independent and whether the committee conducted its

1 investigation and made its recommendation in good faith, independently, and with reasonable
2 care, with the committee having the burden of proof. If the court finds that the members of the
3 committee were disinterested and independent and that the committee acted in good faith,
4 independently, and with reasonable care, the court shall enforce the determination of the
5 committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a)
6 and allow the action to proceed under the control of the plaintiff.

7 (f) After making a determination under section (d)(2), a special litigation committee shall
8 provide a statement of its determination and its report supporting the determination to the person
9 who made the demand under Section 1002(1). If the committee decides under section
10 (d)(2)(B)(ii) to begin a proceeding on behalf of the limited partnership, the committee shall
11 promptly begin the proceeding, attach a copy of its statement of determination and report to the
12 complaint, and notify the person who made the demand when and in what court the proceeding
13 has begun. If the committee determines under section (d)(2)(B)(i) that no derivative proceeding
14 should begin and the person who made the demand under Section 1002(1) subsequently begins a
15 derivative proceeding, subsection (e) applies.

16 **Reporters' Notes**

17 This section has been expanded from the Re-ULLCA (and HULLCA) provision to
18 contemplate SLC activity in response to a pre-suit demand.
19

20 **SECTION 1005. PROCEEDS AND EXPENSES.**

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

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

24 (2) if the ~~derivative~~ plaintiff receives any proceeds, the ~~derivative~~ plaintiff shall
25 ~~immediately~~ remit them immediately to the limited partnership.

1 (b) If a derivative action under Section 902 is successful in whole or in part, the court
2 may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs,
3 from the recovery of the limited partnership.

4

1 ***[ARTICLE] 11

2
3 **CONVERSION AND MERGER, CONVERSION, AND DOMESTICATION**

4
5 **Reporters' Notes**

6 Once the HULLCA provisions are finalized, this Article will be revised both in style and
7 by separating out “domestication” from “conversion”.

8
9
10 **SECTION 1101. DEFINITIONS.** In this [article]:

11 (1) “Constituent limited partnership” means a constituent organization that is a limited
12 partnership.

13 (2) “Constituent organization” means an organization that is party to a merger.

14 (3) “Converted organization” means the organization into which a converting
15 organization converts pursuant to Sections 1102 through 1105.

16 (4) “Converting limited partnership” means a converting organization that is a limited
17 partnership.

18 (5) “Converting organization” means an organization that converts into another
19 organization pursuant to Section 1102.

20 (6) “General partner” means a general partner of a limited partnership.

21 (7) “Governing statute” of an organization means the statute that governs the
22 organization’s internal affairs.

23 (8) “Organization” means a general partnership, including a limited liability partnership;
24 limited partnership, including a limited liability limited partnership; limited liability company;
25 business trust; corporation; or any other person having a governing statute. The term includes
26 domestic and foreign organizations whether or not organized for profit.

27 (9) “Organizational documents” means:

28 (A) for a domestic or foreign general partnership, its partnership agreement;

1 (B) for a limited partnership or foreign limited partnership, its certificate of
2 limited partnership and partnership agreement;

3 (C) for a domestic or foreign limited liability company, its articles of organization
4 and operating agreement, or comparable records as provided in its governing statute;

5 (D) for a business trust, its agreement of trust and declaration of trust;

6 (E) for a domestic or foreign corporation for profit, its articles of incorporation,
7 bylaws, and other agreements among its shareholders which are authorized by its governing
8 statute, or comparable records as provided in its governing statute; and

9 (F) for any other organization, the basic records that create the organization and
10 determine its internal governance and the relations among the persons that own it, have an
11 interest in it, or are members of it.

12 (10) “Personal liability” means personal liability for a debt, liability, or other obligation
13 of an organization which is imposed on a person that co-owns, has an interest in, or is a member
14 of the organization:

15 (A) by the organization’s governing statute solely by reason of the person co-
16 owning, having an interest in, or being a member of the organization; or

17 (B) by the organization’s organizational documents under a provision of the
18 organization’s governing statute authorizing those documents to make one or more specified
19 persons liable for all or specified debts, liabilities, and other obligations of the organization
20 solely by reason of the person or persons co-owning, having an interest in, or being a member of
21 the organization.

22 (11) “Surviving organization” means an organization into which one or more other
23 organizations are merged. A surviving organization may preexist the merger or be created by the
24 merger.

1 **SECTION 1102. CONVERSION.**

2 (a) An organization other than a limited partnership may convert to a limited partnership,
3 and a limited partnership may convert to another organization pursuant to this section and
4 Sections 1103 through 1105 and a plan of conversion, if:

5 (1) the other organization’s governing statute authorizes the conversion;

6 (2) the conversion is not prohibited by the law of the jurisdiction that enacted the
7 governing statute; and

8 (3) the other organization complies with its governing statute in effecting the
9 conversion.

10 (b) A plan of conversion must be in a record and must include:

11 (1) the name and form of the organization before conversion;

12 (2) the name and form of the organization after conversion; and

13 (3) the terms and conditions of the conversion, including the manner and basis for
14 converting interests in the converting organization into any combination of money, interests in
15 the converted organization, and other consideration; and

16 (4) the organizational documents of the converted organization.

17 **SECTION 1103. ACTION ON PLAN OF CONVERSION BY CONVERTING**
18 **LIMITED PARTNERSHIP.**

19 (a) Subject to Section 1110, a plan of conversion must be consented to by all the partners
20 of a converting limited partnership.

21 (b) Subject to Section 1110 and any contractual rights, after a conversion is approved,
22 and at any time before a filing is made under Section 1104, a converting limited partnership may
23 amend the plan or abandon the planned conversion:

24 (1) as provided in the plan; and

1 (2) except as prohibited by the plan, by the same consent as was required to
2 approve the plan.

3 **SECTION 1104. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE**
4 **DATE.**

5 (a) After a plan of conversion is approved:

6 (1) a converting limited partnership shall deliver to the [Secretary of State] for
7 filing articles of conversion, which must include:

8 (A) a statement that the limited partnership has been converted into
9 another organization;

10 (B) the name and form of the organization and the jurisdiction of its
11 governing statute;

12 (C) the date the conversion is effective under the governing statute of the
13 converted organization;

14 (D) a statement that the conversion was approved as required by this
15 [Act];

16 (E) a statement that the conversion was approved as required by the
17 governing statute of the converted organization; and

18 (F) if the converted organization is a foreign organization not authorized
19 to transact business in this State, the street and mailing address of an office which the [Secretary
20 of State] may use for the purposes of Section 1105(c); and

21 (2) if the converting organization is not a converting limited partnership, the
22 converting organization shall deliver to the [Secretary of State] for filing a certificate of limited
23 partnership, which must include, in addition to the information required by Section 201:

24 (A) a statement that the limited partnership was converted from another

1 organization;

2 (B) the name and form of the organization and the jurisdiction of its

3 governing statute; and

4 (C) a statement that the conversion was approved in a manner that

5 complied with the organization's governing statute.

6 (b) A conversion becomes effective:

7 (1) if the converted organization is a limited partnership, when the certificate of

8 limited partnership takes effect; and

9 (2) if the converted organization is not a limited partnership, as provided by the

10 governing statute of the converted organization.

11 **SECTION 1105. EFFECT OF CONVERSION.**

12 (a) An organization that has been converted pursuant to this [article] is for all purposes

13 the same entity that existed before the conversion.

14 (b) When a conversion takes effect:

15 (1) all property owned by the converting organization remains vested in the

16 converted organization;

17 (2) all debts, liabilities, and other obligations of the converting organization

18 continue as obligations of the converted organization;

19 (3) an action or proceeding pending by or against the converting organization may

20 be continued as if the conversion had not occurred;

21 (4) except as prohibited by other law, all of the rights, privileges, immunities,

22 powers, and purposes of the converting organization remain vested in the converted

23 organization;

24 (5) except as otherwise provided in the plan of conversion, the terms and

1 conditions of the plan of conversion take effect; and

2 (6) except as otherwise agreed, the conversion does not dissolve a converting
3 limited partnership for the purposes of [Article] 8.

4 (c) A converted organization that is a foreign organization consents to the jurisdiction of
5 the courts of this State to enforce any obligation owed by the converting limited partnership, if
6 before the conversion the converting limited partnership was subject to suit in this State on the
7 obligation. A converted organization that is a foreign organization and not authorized to transact
8 business in this State appoints the [Secretary of State] as its agent for service of process for
9 purposes of enforcing an obligation under this subsection. Service on the [Secretary of State]
10 under this subsection is made in the same manner and with the same consequences as in Section
11 117(c) and (d).

12 **SECTION 1106. MERGER.**

13 (a) A limited partnership may merge with one or more other constituent organizations
14 pursuant to this section and Sections 1107 through 1109 and a plan of merger, if:

15 (1) the governing statute of each the other organizations authorizes the merger;

16 (2) the merger is not prohibited by the law of a jurisdiction that enacted any of
17 those governing statutes; and

18 (3) each of the other organizations complies with its governing statute in effecting
19 the merger.

20 (b) A plan of merger must be in a record and must include:

21 (1) the name and form of each constituent organization;

22 (2) the name and form of the surviving organization and, if the surviving
23 organization is to be created by the merger, a statement to that effect;

24 (3) the terms and conditions of the merger, including the manner and basis for

1 converting the interests in each constituent organization into any combination of money, interests
2 in the surviving organization, and other consideration;

3 (4) if the surviving organization is to be created by the merger, the surviving
4 organization's organizational documents; and

5 (5) if the surviving organization is not to be created by the merger, any
6 amendments to be made by the merger to the surviving organization's organizational documents.

7 **SECTION 1107. ACTION ON PLAN OF MERGER BY CONSTITUENT**

8 **LIMITED PARTNERSHIP.**

9 (a) Subject to Section 1110, a plan of merger must be consented to by all the partners of
10 a constituent limited partnership.

11 (b) Subject to Section 1110 and any contractual rights, after a merger is approved, and at
12 any time before a filing is made under Section 1108, a constituent limited partnership may
13 amend the plan or abandon the planned merger:

14 (1) as provided in the plan; and

15 (2) except as prohibited by the plan, with the same consent as was required to
16 approve the plan.

17 **SECTION 1108. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

18 (a) After each constituent organization has approved a merger, articles of merger must be
19 signed on behalf of:

20 (1) each preexisting constituent limited partnership, by each general partner listed
21 in the certificate of limited partnership; and

22 (2) each other preexisting constituent organization, by an authorized
23 representative.

24 (b) The articles of merger must include:

1 (1) the name and form of each constituent organization and the jurisdiction of its
2 governing statute;

3 (2) the name and form of the surviving organization, the jurisdiction of its
4 governing statute, and, if the surviving organization is created by the merger, a statement to that
5 effect;

6 (3) the date the merger is effective under the governing statute of the surviving
7 organization;

8 (4) if the surviving organization is to be created by the merger:

9 (A) if it will be a limited partnership, the limited partnership's certificate
10 of limited partnership; or

11 (B) if it will be an organization other than a limited partnership, the
12 organizational document that creates the organization;

13 (5) if the surviving organization preexists the merger, any amendments provided
14 for in the plan of merger for the organizational document that created the organization;

15 (6) a statement as to each constituent organization that the merger was approved
16 as required by the organization's governing statute;

17 (7) if the surviving organization is a foreign organization not authorized to
18 transact business in this State, the street and mailing address of an office which the [Secretary of
19 State] may use for the purposes of Section 1109(b); and

20 (8) any additional information required by the governing statute of any constituent
21 organization.

22 (c) Each constituent limited partnership shall deliver the articles of merger for filing in
23 the [office of the Secretary of State].

24 (d) A merger becomes effective under this [article]:

1 (1) if the surviving organization is a limited partnership, upon the later of:

2 (i) compliance with subsection (c); or

3 (ii) subject to Section 206(c), as specified in the articles of merger; or

4 (2) if the surviving organization is not a limited partnership, as provided by the
5 governing statute of the surviving organization.

6 **SECTION 1109. EFFECT OF MERGER.**

7 (a) When a merger becomes effective:

8 (1) the surviving organization continues or comes into existence;

9 (2) each constituent organization that merges into the surviving organization
10 ceases to exist as a separate entity;

11 (3) all property owned by each constituent organization that ceases to exist vests
12 in the surviving organization;

13 (4) all debts, liabilities, and other obligations of each constituent organization that
14 ceases to exist continue as obligations of the surviving organization;

15 (5) an action or proceeding pending by or against any constituent organization
16 that ceases to exist may be continued as if the merger had not occurred;

17 (6) except as prohibited by other law, all of the rights, privileges, immunities,
18 powers, and purposes of each constituent organization that ceases to exist vest in the surviving
19 organization;

20 (7) except as otherwise provided in the plan of merger, the terms and conditions
21 of the plan of merger take effect; and

22 (8) except as otherwise agreed, if a constituent limited partnership ceases to exist,
23 the merger does not dissolve the limited partnership for the purposes of [Article] 8;

24 (9) if the surviving organization is created by the merger:

1 (A) if it is a limited partnership, the certificate of limited partnership
2 becomes effective; or

3 (B) if it is an organization other than a limited partnership, the
4 organizational document that creates the organization becomes effective; and

5 (10) if the surviving organization preexists the merger, any amendments provided
6 for in the articles of merger for the organizational document that created the organization become
7 effective.

8 (b) A surviving organization that is a foreign organization consents to the jurisdiction of
9 the courts of this State to enforce any obligation owed by a constituent organization, if before the
10 merger the constituent organization was subject to suit in this State on the obligation. A
11 surviving organization that is a foreign organization and not authorized to transact business in
12 this State appoints the [Secretary of State] as its agent for service of process for the purposes of
13 enforcing an obligation under this subsection. Service on the [Secretary of State] under this
14 subsection is made in the same manner and with the same consequences as in Section 117(c) and
15 (d).

16 **SECTION 1110. RESTRICTIONS ON APPROVAL OF CONVERSIONS AND**
17 **MERGERS AND ON RELINQUISHING LLLP STATUS.**

18 (a) If a partner of a converting or constituent limited partnership will have personal
19 liability with respect to a converted or surviving organization, approval and amendment of a plan
20 of conversion or merger are ineffective without the consent of the partner, unless:

21 (1) the limited partnership's partnership agreement provides for the approval of
22 the conversion or merger with the consent of fewer than all the partners; and

23 (2) the partner has consented to the provision of the partnership agreement.

24 (b) An amendment to a certificate of limited partnership which deletes a statement that

1 the limited partnership is a limited liability limited partnership is ineffective without the consent
2 of each general partner unless:

3 (1) the limited partnership's partnership agreement provides for the amendment
4 with the consent of less than all the general partners; and

5 (2) each general partner that does not consent to the amendment has consented to
6 the provision of the partnership agreement.

7 (c) A partner does not give the consent required by subsection (a) or (b) merely by
8 consenting to a provision of the partnership agreement which permits the partnership agreement
9 to be amended with the consent of fewer than all the partners.

10 **SECTION 1111. LIABILITY OF GENERAL PARTNER AFTER CONVERSION**
11 **OR MERGER.**

12 (a) A conversion or merger under this [article] does not discharge any liability under
13 Sections 404 and 607 of a person that was a general partner in or dissociated as a general partner
14 from a converting or constituent limited partnership, but:

15 (1) the provisions of this [Act] pertaining to the collection or discharge of the
16 liability continue to apply to the liability;

17 (2) for the purposes of applying those provisions, the converted or surviving
18 organization is deemed to be the converting or constituent limited partnership; and

19 (3) if a person is required to pay any amount under this subsection:

20 (A) the person has a right of contribution from each other person that was
21 liable as a general partner under Section 404 when the obligation was incurred and has not been
22 released from the obligation under Section 607; and

23 (B) the contribution due from each of those persons is in proportion to the
24 right to receive distributions in the capacity of general partner in effect for each of those persons

1 when the obligation was incurred.

2 (b) In addition to any other liability provided by law:

3 (1) a person that immediately before a conversion or merger became effective was
4 a general partner in a converting or constituent limited partnership that was not a limited liability
5 limited partnership is personally liable for each obligation of the converted or surviving
6 organization arising from a transaction with a third party after the conversion or merger becomes
7 effective, if, at the time the third party enters into the transaction, the third party:

8 (A) does not have notice of the conversion or merger; and

9 (B) reasonably believes that:

10 (i) the converted or surviving business is the converting or
11 constituent limited partnership;

12 (ii) the converting or constituent limited partnership is not a limited
13 liability limited partnership; and

14 (iii) the person is a general partner in the converting or constituent
15 limited partnership; and

16 (2) a person that was dissociated as a general partner from a converting or
17 constituent limited partnership before the conversion or merger became effective is personally
18 liable for each obligation of the converted or surviving organization arising from a transaction
19 with a third party after the conversion or merger becomes effective, if:

20 (A) immediately before the conversion or merger became effective the
21 converting or surviving limited partnership was a not a limited liability limited partnership; and

22 (B) at the time the third party enters into the transaction less than two
23 years have passed since the person dissociated as a general partner and the third party:

24 (i) does not have notice of the dissociation;

1 (ii) does not have notice of the conversion or merger; and
2 (iii) reasonably believes that the converted or surviving
3 organization is the converting or constituent limited partnership, the converting or constituent
4 limited partnership is not a limited liability limited partnership, and the person is a general
5 partner in the converting or constituent limited partnership.

6 **SECTION 1112. POWER OF GENERAL PARTNERS AND PERSONS**
7 **DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER**
8 **CONVERSION OR MERGER.**

9 (a) An act of a person that immediately before a conversion or merger became effective
10 was a general partner in a converting or constituent limited partnership binds the converted or
11 surviving organization after the conversion or merger becomes effective, if:

12 (1) before the conversion or merger became effective, the act would have bound
13 the converting or constituent limited partnership under Section 402; and

14 (2) at the time the third party enters into the transaction, the third party:

15 (A) does not have notice of the conversion or merger; and

16 (B) reasonably believes that the converted or surviving business is the
17 converting or constituent limited partnership and that the person is a general partner in the
18 converting or constituent limited partnership.

19 (b) An act of a person that before a conversion or merger became effective was
20 dissociated as a general partner from a converting or constituent limited partnership binds the
21 converted or surviving organization after the conversion or merger becomes effective, if:

22 (1) before the conversion or merger became effective, the act would have bound
23 the converting or constituent limited partnership under Section 402 if the person had been a
24 general partner; and

1 (2) at the time the third party enters into the transaction, less than two years have
2 passed since the person dissociated as a general partner and the third party:

3 (A) does not have notice of the dissociation;

4 (B) does not have notice of the conversion or merger; and

5 (C) reasonably believes that the converted or surviving organization is the
6 converting or constituent limited partnership and that the person is a general partner in the
7 converting or constituent limited partnership.

8 (c) If a person having knowledge of the conversion or merger causes a converted or
9 surviving organization to incur an obligation under subsection (a) or (b), the person is liable:

10 (1) to the converted or surviving organization for any damage caused to the
11 organization arising from the obligation; and

12 (2) if another person is liable for the obligation, to that other person for any
13 damage caused to that other person arising from the liability.

14 **SECTION 1113. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an
15 entity from being converted or merged under other law.

16

1 [ARTICLE] 12

2
3 MISCELLANEOUS PROVISIONS

4
5
6 **SECTION 1201. RESERVATION OF POWER TO AMEND OR REPEAL.** The

7 [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all
8 domestic and foreign entities subject to this [act] are governed by the amendment or repeal.

9 **Reporters' Notes**

10
11 It is one thing to eschew the “contract is G-d” language pioneered in Delaware. It is quite
12 another matter to authorize the government to retroactively change the rules of a private deal.
13 However, the Committee made this decision regarding HULLCA.
14

15 **SECTION 1201A. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

16 In applying and construing this Uniform Act, consideration must be given to the need to promote
17 uniformity of the law with respect to its subject matter among ~~States~~ states that enact it.

18 ~~**SECTION 1202. SEVERABILITY CLAUSE.** If any provision of this [Act] or its~~
19 ~~application to any person or circumstance is held invalid, the invalidity does not affect other~~
20 ~~provisions or applications of this [Act] which can be given effect without the invalid provision or~~
21 ~~application, and to this end the provisions of this [Act] are severable.~~

22 **Reporters' Notes**

23 This provision does not appear in HULLCA.

24 **SECTION 1203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
25 **AND NATIONAL COMMERCE ACT.** This [Act] modifies, limits, or supersedes the federal
26 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
27 this [Act] does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section
28 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b), 15
29 U.S.C. Section 7003(b), of that Act.

1 partnership to comply with Section 201(a)(4).

2 (3) Sections 601 and 602 do not apply and a limited partner has the same right and
3 power to dissociate from the limited partnership, with the same consequences, as existed
4 immediately before [the effective date of this [Act]].

5 (4) Section 603(4) does not apply.

6 (5) Section 603(5) does not apply and a court has the same power to expel a
7 general partner as the court had immediately before [the effective date of this [Act]].

8 (6) Section 801(3) does not apply and the connection between a person's
9 dissociation as a general partner and the dissolution of the limited partnership is the same as
10 existed immediately before [the effective date of this [Act]].

11 (d) With respect to a limited partnership that elects pursuant to subsection (a)(2) to be
12 subject to this [Act], after the election takes effect the provisions of this [Act] relating to the
13 liability of the limited partnership's general partners to third parties apply:

14 (1) before [all-inclusive date], to:

15 (A) a third party that had not done business with the limited partnership in
16 the year before the election took effect; and

17 (B) a third party that had done business with the limited partnership in the
18 year before the election took effect only if the third party knows or has received a notification of
19 the election; and

20 (2) on and after [all-inclusive date], to all third parties, but those provisions
21 remain inapplicable to any obligation incurred while those provisions were inapplicable under
22 paragraph (1)(B).

23 **Legislative Note:** *In a State that has previously amended its existing limited partnership statute*
24 *to provide for limited liability limited partnerships (LLLPs), this Act should include transition*
25 *provisions specifically applicable to preexisting limited liability limited partnerships. The*

1 *precise wording of those provisions must depend on the wording of the State’s previously*
2 *enacted LLLP provisions. However, the following principles apply generally:*

3
4 *1. In Sections 806(b)(5) and 807(b)(4) (notice by dissolved limited partnership to claimants),*
5 *the phrase “the limited partnership has been throughout its existence a limited liability*
6 *limited partnership” should be revised to encompass a limited partnership that was a limited*
7 *liability limited partnership under the State’s previously enacted LLLP provisions.*

8
9 *2. Section 1206(d) should provide that, if a preexisting limited liability limited partnership*
10 *elects to be subject to this Act, this Act’s provisions relating to the liability of general*
11 *partners to third parties apply immediately to all third parties, regardless of whether a third*
12 *party has previously done business with the limited liability limited partnership.*

13
14 *3. A preexisting limited liability limited partnership that elects to be subject to this Act*
15 *should have to comply with Sections 201(a)(4) (requiring the certificate of limited*
16 *partnership to state whether the limited partnership is a limited liability limited partnership)*
17 *and 108(c) (establishing name requirements for a limited liability limited partnership).*

18 *4. As for Section 1206(b) (providing that, after a transition period, this Act applies to all*
19 *preexisting limited partnerships):*

20
21 *a. if a State’s previously enacted LLLP provisions have requirements essentially the same as*
22 *Sections 201(a)(4) and 108(c), preexisting limited liability limited partnerships should*
23 *automatically retain LLLP status under this Act.*

24
25 *b. if a State’s previously enacted LLLP provisions have name requirements essentially the*
26 *same as Section 108(c) and provide that a public filing other than the certificate of limited*
27 *partnership establishes a limited partnership’s status as a limited liability limited*
28 *partnership:*

29
30 *i. that filing can be deemed to an amendment to the certificate of limited partnership to*
31 *comply with Section 201(a)(4), and*

32
33 *ii. preexisting limited liability limited partnerships should automatically retain LLLP status*
34 *under this Act.*

35
36 *c. if a State’s previously enacted LLLP provisions do not have name requirements essentially*
37 *the same as Section 108(c), it will be impossible both to enforce Section 108(c) and provide*
38 *for automatic transition to LLLP status under this Act.*
39

40 **SECTION 1207. SAVINGS CLAUSE.** This [Act] does not affect an action
41 commenced, proceeding brought, or right accrued before this [Act] takes effect.