

**LIMITED LIABILITY PARTNERSHIP ACT**  
**AMENDMENTS TO**  
**UNIFORM PARTNERSHIP ACT (1994)**

[ARTICLE] 1

GENERAL PROVISIONS

Section 101.	Definitions.
Section 102.	Knowledge and Notice.
Section 103.	Effect of Partnership Agreement; Nonwaivable Provisions.
Section 104.	Supplemental Principles of Law.
Section 105.	Execution, Filing, and Recording of Statements.
Section 106.	Governing Law.
Section 107.	Partnership Subject to Amendment or Repeal of [Act].

**SECTION 101. DEFINITIONS.** In this [Act]:

- (1) "Business" includes every trade, occupation, and profession.
- (2) "Debtor in bankruptcy" means a person who is the subject of:
  - (i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - (ii) a comparable order under federal, state, or foreign law governing insolvency.
- (3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) ~~"Foreign registered limited liability partnership" means an unincorporated entity~~ a partnership formed or a limited partnership created under laws other than the laws of this State which afford limited liability to its owners comparable to the liability under Section 306(c) and is not required to obtain a certificate of authority to transact business under any law of this State other than this [Act] and which is qualified as a limited liability partnership under those laws.

(5) "General partner" means, for purposes of [Article] 9 and [these amendments], a partner in a partnership and a general partner in a limited partnership.

(6) "Limited liability partnership" means a partnership or limited partnership created under the [State Limited Partnership Act] or predecessor law that has filed a statement of qualification under Section 1001 and has not filed a similar statement in any other jurisdiction.

(7) "Limited partner" means, for purposes of [Article] 9 and [these amendments], a limited partner in a limited partnership.

(8) "Limited partnership" means, for purposes of [Article] 9 and [these amendments], a limited partnership created under the [State Limited Partnership Act], predecessor law, or comparable law of another jurisdiction.

(9) "Partner" includes, for purposes of [Article] 9 and [these amendments], both a general partner and a limited partner.

~~(4)-(10)~~ (10) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under Section 202, predecessor law, or comparable law of another jurisdiction ~~and includes a registered limited liability partnership~~ and, for purposes of [these amendments], a limited partnership.

~~(5)~~ (11) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership or, for purposes of [these amendments] a limited partnership, including amendments to the partnership agreement.

~~(6)~~ (12) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

~~(7)~~ (13) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

~~(8)~~ (14) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(9)~~ (15) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

~~(11) "Registered limited liability partnership" means a partnership that has filed a registration statement under this [Act].~~

~~(10)~~ (16) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~(11)~~(17) "Statement" means a statement of partnership authority under Section 303, a statement of denial under Section 304, a statement of dissociation under Section 704, a statement of dissolution under Section 805, a statement of merger under Section ~~907~~ 906, a statement of ~~registration~~ qualification under Section 1001, a statement of foreign ~~registration~~ qualification under Section 1102, or an amendment or cancellation of any of the foregoing.

~~(12)~~(18) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

## Comment

The definition of a “foreign limited liability partnership” includes all general partnerships formed and limited partnerships created under the laws of another jurisdiction provided they are also qualified as a limited liability partnership in the other jurisdiction. Since the scope and nature of the foreign limited liability partnership liability shield may vary in different jurisdictions, the definition avoids reference to similar or comparable laws. Rather, the definition simply incorporates the concept of a limited liability partnership in the foreign jurisdiction, however defined in the foreign jurisdiction.

These amendments permit both general and limited partnerships to file a statement of qualification to obtain a limited liability partnership liability shield for their general and limited partners. See [Article] 10. To enable this result, the Section 101(5), (7), (8), and (9) definitions of general partner, limited partner, limited partnership, and partner have been moved from Section 901 because the limited partnership concept now has broader applicability than merely [Article] 9. Also, the Section 101(10) and (11) definitions of a partnership and a partnership agreement have been expanded to include a limited partnership because of several references to the partnership and partnership agreement terms in these amendments. However, since these expanded “limited partnership” definitions are inapplicable to a general partnership, they only apply where necessary to effectuate a limited partnership’s use of this [Act]. This means that the definitions only apply to Article 9 which deals with mergers and conversions involving a limited partnership and these amendments where necessary to interpret the limited liability partnership liability shield as applying to a limited partnership. For example, Section 306(c) provides that a “partner” is not liable for “partnership” obligations simply because that person is a “partner.” For this purpose, a “partner” includes a general partner of both a general and limited partnership as well as a limited partner of a limited partnership. All limited partnership matters not expressly related to the limited liability partnership liability shield remain governed by the [State Limited Partnership Act].

The definition of “limited liability partnership” makes clear that a general partnership or limited partnership may adopt the special liability shield characteristics of this Act simply by filing a statement of qualification under Section 1001. Although any general partnership may file the statement regardless of where formed, a limited partnership may only file the statement in the state where it has filed its certificate of limited partnership. When coupled with the governing law provisions of Section 106, this requirement simplifies the choice of law issues applicable to general and limited partnerships with multistate activities and contacts.

Once a statement of qualification is filed, a general or limited partnership’s internal affairs and the liability of their general and limited partners are determined

## **SECTION 102. KNOWLEDGE AND NOTICE.**

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

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

(1) knows of it;

(2) has received a notification of it; or

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

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

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

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

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

(e) Except as otherwise provided in subsection (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable

compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

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

**SECTION 103. EFFECT OF PARTNERSHIP AGREEMENT;  
NONWAIVABLE PROVISIONS.**

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

(b) The partnership agreement may not:

(1) vary the rights and duties under Section 105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to books and records under Section 403(b);

(3) eliminate the duty of loyalty under Section 404(b) or 603(b)(3), but:

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

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

(4) unreasonably reduce the duty of care under Section 404(c) or 603(b)(3);

(5) eliminate the obligation of good faith and fair dealing under Section 404(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under Section 602(a), except to require the notice under Section 601(1) to be in writing;

(7) vary the right of a court to expel a partner in the events specified in Section 601(5);

(8) vary the requirement to wind up the partnership business in cases specified in Section 801(4), (5), or (6); ~~or~~

(9) restrict rights of third parties under this [Act]; ~~or~~



(10) vary the law applicable to a ~~registered~~ limited liability partnership under Section 106(b).

**Comment**

Section 103(10) makes clear that a limited liability partnership may not designate the law of a state other than the state where it filed its statement of qualification to govern its internal affairs and the liability of its partners. See Sections 101(6), 106(b), and 202(a).

#### **SECTION 104. SUPPLEMENTAL PRINCIPLES OF LAW.**

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

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

#### **SECTION 105. EXECUTION, FILING, AND RECORDING OF STATEMENTS.**

(a) A statement may be filed in the office of [the Secretary of State]. A certified copy of a statement that is filed in an office in another state may be filed in the office of [the Secretary of State]. Either filing has the effect provided in this [Act] with respect to partnership property located in or transactions that occur in this State.

(b) A certified copy of a statement that has been filed in the office

of the [Secretary of State] and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this [Act]. A recorded statement that is not a certified copy of a statement filed in the office of the [Secretary of State] does not have the effect provided for recorded statements in this [Act].

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this [Act]. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this [Act] to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The [Secretary of State] may collect a fee for filing or providing a certified copy of a statement. The [officer responsible for] recording transfers

of real property may collect a fee for recording a statement.

#### Comment

Section 101(17) makes clear that a statement of qualification filed by a partnership to become a limited liability partnership is defined as a statement. Therefore, the execution, filing, and recording rules of this section must be followed. Also, the Section 101 expanded definitions relating to a limited partnership make clear that a limited partnership statement of qualification is governed by this section. Where a limited partnership has only one general partner, at least one limited partner will be required to execute the statement under subsection (c). However, as with a general partnership, the decision to file the statement must be approved by the vote of the partners necessary to amend the partnership agreement. See Section 1001(b).

#### **SECTION 106. ~~GOVERNING LAW GOVERNING INTERNAL~~ RELATIONS.**

(a) Except as otherwise provided in subsection (b), the ~~The~~ law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this State governs relations among the partners and between the partners and the partnership, and the liability of partners for obligations of a limited liability partnership ~~that has filed a registration statement under Section 1001.~~

**Comment**

The filing of a statement of qualification may change the law applicable to a general partnership. See Section 106(b) cmt. The filing does not have a similar effect for a limited partnership because it may only file a statement in the state where it has filed its certificate of limited partnership. See Section 101(6) cmt. Accordingly, if a statement is revoked or canceled, the law of the state of filing would continue to apply unless the partnership agreement thereafter altered the applicable law rule.

Section 101(6) defines a limited liability partnership to include both a general partnership, regardless of where formed, and a limited partnership, created in this State, that file a statement of qualification under Section 1001. Subsection (b) merely confirms that the law of the state where the statement is filed governs the partnerships. In the case of a limited partnership, subsection (b) is not intended to alter the determination of what law of the state of filing governs a partnership. For example, the [State Limited Partnership Act] continues to govern the internal affairs of such a limited partnership whereas the provisions of this [Act] governs the liability of the general and limited partners.

**SECTION 107. PARTNERSHIP SUBJECT TO AMENDMENT**

**OR REPEAL OF [ACT].** A partnership governed by this [Act] is subject to any amendment to or repeal of this [Act].

## [ARTICLE] 2

### NATURE OF PARTNERSHIP

Section 201.	Partnership As Entity.
Section 202.	Formation of Partnership.
Section 203.	Partnership Property.
Section 204.	When Property Is Partnership Property.

#### **SECTION 201. PARTNERSHIP AS ENTITY.**

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

(b) A limited liability partnership that files a registration under this [Act] and becomes a registered limited liability partnership is the same entity that existed before the filing of a statement of qualification under Section 1001.

#### **Comment**

Section 201(b) makes clear that a general or limited partnership that files a statement of qualification to become a limited liability partnership is the same entity that existed before the filing. Accordingly, the general or limited partnership remain a general or limited partnership for purposes other than partner liability shield issues. For example, the internal affairs of the limited partnership would continue to be governed by the [State Limited Partnership Act] and upon the revocation or cancellation of its statement of qualification, the traditional limited and general partner liability of the [State Limited Partnership Act] would apply. See Sections 101(6) and 106(b) cmts.

## **SECTION 202. FORMATION OF PARTNERSHIP.**

(a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this [Act], a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this [Act].

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages

or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

**SECTION 203. PARTNERSHIP PROPERTY.** Property acquired by a partnership is property of the partnership and not of the partners individually.

**SECTION 204. WHEN PROPERTY IS PARTNERSHIP PROPERTY.**

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.



(b) Property is acquired in the name of the partnership by a transfer to:

- (1) the partnership in its name; or
- (2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

[ARTICLE] 3

RELATIONS OF PARTNERS TO  
PERSONS DEALING WITH PARTNERSHIP

Section 301.	Partner Agent of Partnership.
Section 302.	Transfer of Partnership Property.
Section 303.	Statement of Partnership Authority.
Section 304.	Statement of Denial.
Section 305.	Partnership Liable for Partner's Actionable Conduct.
Section 306.	Partner's Liability.
Section 307.	Actions By and Against Partnership and Partners.
Section 308.	Liability of Purported Partner.

**SECTION 301. PARTNER AGENT OF PARTNERSHIP.** Subject to the effect of a statement of partnership authority under Section 303:

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

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

## **SECTION 302. TRANSFER OF PARTNERSHIP PROPERTY.**

(a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under Section 303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 301 and:

(1) as to a subsequent transferee who gave value for property transferred under subsection (a)(1) or (2), proves that the subsequent transferee knew or had received a notification that the person who executed the

instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under subsection (a)(3), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

### **SECTION 303. STATEMENT OF PARTNERSHIP AUTHORITY.**

(a) A partnership may file a statement of partnership authority, which:

(1) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this State, if there is one;

(iii) the names and mailing addresses of all of the partners

or of an agent appointed and maintained by the partnership for the purpose of subsection (b); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to Section 105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a), the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e).

(d) Except as otherwise provided in subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another

filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subsections (d) and (e) and Sections 704 and 805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the [Secretary of

State].

**SECTION 304. STATEMENT OF DENIAL.** A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 303(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in Section 303(d) and (e).

**SECTION 305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.**

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

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

**SECTION 306. PARTNER'S LIABILITY.**

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

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



(c) ~~Notwithstanding contrary provisions in a partnership agreement existing on the effective date of a registration statement,~~ The obligations of a limited liability partnership incurred while a partnership or a limited partnership is a ~~registered~~ limited liability partnership, whether arising in contract, tort, or otherwise, are solely the obligations of the ~~registered~~ limited liability partnership. A partner is not personally liable directly or indirectly, including by way of contribution or indemnification, for such post-filing ~~an~~ obligations of the ~~registered~~ limited liability partnership solely by reason of being or acting as such a partner. Notwithstanding contrary provisions in a partnership agreement existing prior to the effective date of a statement of qualification, the filing of the statement creates a presumption that the partners have agreed to the applicability of this subsection.

(d) The use of informal procedures or arrangements for managing a ~~registered~~ limited liability partnership or conducting its business is not a ground for piercing its veil.

(e) A partner may not receive a distribution from a limited liability partnership to the extent that, after giving effect to the distribution, all liabilities of the limited liability partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the limited liability partnership assets. When a partner has received the return of any part of that partner's contribution:

(i) without violation of the partnership agreement or this [Act], the partner is liable to the limited liability partnership for a period of one year thereafter for the amount of returned contribution, but only to the extent necessary to discharge the limited liability partnership's liabilities to creditors who extended credit to the limited liability partnership during the period the contribution was held by the partnership, and

(ii) in violation of the partnership agreement or this [Act], the partner is liable to the limited liability partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

For purposes of this subsection, a partner receives a return of contribution to the extent that a distribution reduces the partner's share of the fair value of the net assets of the limited liability partnership below the value of the partner's contribution which has not been distributed to the partner.

#### Comment

Subject to the partnership asset exhaustion rule of Section 307(d), Section 306(a) imposes classic joint and several liability on all partners of a general partnership and all general partners of a limited partnership for all partnership obligations. See Section 403(b) of the Revised Uniform Limited Partnership Act. Also, a limited partner may be personally liable for partnership obligations if the partner participates in the control of the partnership's business. See Section 303(a) of the Revised Uniform Limited Partnership Act. Section 306(c) effaces these hallmark liability features where the general or limited partnership is a limited liability partnership. Like shareholders of a corporation and members of

**SECTION 307. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.**

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

(b) Except as otherwise provided in subsection (f), an action may be brought against the partnership and against any or all of the partners in the same action or in separate actions.

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

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 306 and:

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

(2) the partnership is a debtor in bankruptcy;

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

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership

assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

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

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 308.

(f) A partner is not a proper party to an action against a limited liability partnership where that partner would not be personally liable for the claim under Section 306.

### **SECTION 308. LIABILITY OF PURPORTED PARTNER.**

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If

partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other

persons.

[ARTICLE] 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

Section 401.	Partner's Rights and Duties.
Section 402.	Distributions in Kind.
Section 403.	Partner's Rights and Duties with respect to Information.
Section 404.	General Standards of Partner's Conduct.
Section 405.	Actions by Partnership and Partners.
Section 406.	Continuation of Partnership Beyond Definite Term or Particular Undertaking.

**SECTION 401. PARTNER'S RIGHTS AND DUTIES.**

(a) Each partner is deemed to have an account that is:

(1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and, ~~except as otherwise provided in Section 306,~~ is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

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

property;

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

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

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 301.

#### Comment

The absence of a liability shield amendment to Section 401(b) makes clear that general and limited partnerships remain liable for their obligations incurred while they are a limited liability partnership. However, a partner's obligation to contribute to a general or limited partnership's losses beyond previously agreed contributions is limited to the partner's share of partnership obligations for which that partner is personally liable under Section 306.

In the case of an operating limited liability partnership, the Section 306 liability shield may be partially eroded where the limited liability partnership incurs both shielded and unshielded liabilities. Where the limited liability partnership uses its assets to pay shielded liabilities before paying unshielded claims, each partner's obligation to contribute to the limited liability partnership for that partner's share of the unpaid and unshielded obligations remains intact. The same issue does not occur in the context of the termination of a limited liability partnership since a partner's contribution obligation is only based on that partner's share of unshielded obligations. Accordingly, the order of payment is irrelevant in that context. See Section 807(b) cmt.

Section 401(c) makes clear that a partner's right to indemnification by the entity is not affected by a partnership or limited partnership becoming a limited liability partnership. Accordingly, partners continue to share partnership losses to the extent of partnership assets.



**SECTION 402. DISTRIBUTIONS IN KIND.** A partner has no right to receive, and may not be required to accept, a distribution in kind.

**SECTION 403. PARTNER'S RIGHTS AND DUTIES WITH RESPECT TO INFORMATION.**

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

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

(2) on demand, any other information concerning the

partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

**SECTION 404. GENERAL STANDARDS OF PARTNER'S CONDUCT.**

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

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

(1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to

refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

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

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

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

#### **SECTION 405. ACTIONS BY PARTNERSHIP AND PARTNERS.**

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to

partnership business, to:

- (1) enforce the partner's rights under the partnership agreement;
  - (2) enforce the partner's rights under this [Act], including:
    - (i) the partner's rights under Sections 401, 403, or 404;
    - (ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 701 or enforce any other right under [Article] 6 or 7; or
    - (iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 801 or enforce any other right under [Article] 8; or
  - (3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.
- (c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**SECTION 406. CONTINUATION OF PARTNERSHIP BEYOND  
DEFINITE TERM OR PARTICULAR UNDERTAKING.**

- (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or

completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

[ARTICLE] 5

TRANSFEREES AND CREDITORS OF PARTNER

- Section 501. Partner Not Co-Owner of Partnership Property.
- Section 502. Partner's Transferable Interest in Partnership.
- Section 503. Transfer of Partner's Transferable Interest.
- Section 504. Partner's Transferable Interest Subject to Charging Order.

**SECTION 501. PARTNER NOT CO-OWNER OF**

**PARTNERSHIP PROPERTY.** A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

**SECTION 502. PARTNER'S TRANSFERABLE INTEREST IN**

**PARTNERSHIP.** The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

**SECTION 503. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.**

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

(1) is permissible;

(2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

(1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) to seek under Section 801(6) a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

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

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

(f) A transfer of a partner's transferable interest in the partnership

in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

**SECTION 504. PARTNER'S TRANSFERABLE INTEREST  
SUBJECT TO CHARGING ORDER.**

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

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

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

- (1) by the judgment debtor;
- (2) with property other than partnership property, by one or more of the other partners; or
- (3) with partnership property, by one or more of the other



partners with the consent of all of the partners whose interests are not so charged.

(d) This [Act] does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

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

[ARTICLE] 6

PARTNER'S DISSOCIATION

- Section 601. Events Causing Partner's Dissociation.  
Section 602. Partner's Power to Dissociate; Wrongful Dissociation.  
Section 603. Effect of Partner's Dissociation.

**SECTION 601. EVENTS CAUSING PARTNER'S**

**DISSOCIATION.** A partner is dissociated from a partnership upon the occurrence of any of the following events:

- (1) the partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;
- (2) an event agreed to in the partnership agreement as causing the partner's dissociation;
- (3) the partner's expulsion pursuant to the partnership agreement;
- (4) the partner's expulsion by the unanimous vote of the other partners if:
  - (i) it is unlawful to carry on the partnership business with that partner;
  - (ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
  - (iii) within 90 days after the partnership notifies a corporate

partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) a partnership that is a partner has been dissolved and its business is being wound up;

(5) on application by the partnership or another partner, the partner's expulsion by judicial determination because:

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

(ii) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 404; or

(iii) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) the partner's:

(i) becoming a debtor in bankruptcy;

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

(iii) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of

that partner's property; or

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

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

(i) the partner's death;

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

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

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

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

(10) termination of a partner who is not an individual, partnership,

corporation, trust, or estate.

**SECTION 602. PARTNER'S POWER TO DISSOCIATE;  
WRONGFUL DISSOCIATION.**

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 601(1).

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

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

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination under Section 601(5);

(iii) the partner is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise

dissociated because it willfully dissolved or terminated.

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

### **SECTION 603. EFFECT OF PARTNER'S DISSOCIATION.**

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, [Article] 8 applies; otherwise, [Article] 7 applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 803;

(2) the partner's duty of loyalty under Section 404(b)(3) terminates; and

(3) the partner's duty of loyalty under Section 404(b)(1) and (2) and duty of care under Section 404(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 803.

[ARTICLE] 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

Section 701.	Purchase of Dissociated Partner's Interest.
Section 702.	Dissociated Partner's Power to Bind Partnership.
Section 703.	Dissociated Partner's Liability to Other Persons.
Section 704.	Statement of Dissociation.
Section 705.	Continued Use of Partnership Name.

**SECTION 701. PURCHASE OF DISSOCIATED PARTNER'S INTEREST.**

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 807(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 602(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest

must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 702.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) must be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;



(3) an explanation of how the estimated amount of the payment was calculated; and

(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 405(b)(2)(ii), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under

subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g).

**SECTION 702. DISSOCIATED PARTNER'S POWER TO BIND  
AND LIABILITY TO PARTNERSHIP.**

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under [Article] 9, is bound by an act of the dissociated partner which would have bound the partnership under Section 301 before dissociation only if at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).

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

damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (a).

**SECTION 703. DISSOCIATED PARTNER'S LIABILITY TO OTHER PERSONS.**

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

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under [Article] 9, within two years after the partner's dissociation, only if the partner is liable for the obligation under Section 306 and at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge under Section 303(e) or notice under Section 704(c).

(c) By agreement with the partnership creditor and the partners

continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

#### **SECTION 704. STATEMENT OF DISSOCIATION.**

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 303(d) and (e).

(c) For the purposes of Sections 702(a)(3) and 703(b)(3), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

#### **SECTION 705. CONTINUED USE OF PARTNERSHIP NAME.**

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

[ARTICLE] 8

WINDING UP PARTNERSHIP BUSINESS

Section 801.	Events Causing Dissolution and Winding Up of Partnership Business.
Section 802.	Partnership Continues After Dissolution.
Section 803.	Right to Wind Up Partnership Business.
Section 804.	Partner's Power to Bind Partnership After Dissolution.
Section 805.	Statement of Dissolution.
Section 806.	Partner's Liability to Other Partners After Dissolution.
Section 807.	Settlement of Accounts and Contributions Among Partners.

**SECTION 801. EVENTS CAUSING DISSOLUTION AND**

**WINDING UP OF PARTNERSHIP BUSINESS.** A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 601(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) in a partnership for a definite term or particular undertaking:

(i) the expiration of 90 days after a partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under Section 602(b), unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to Section 602(b)(2)(i), agree to continue the partnership;

(ii) the express will of all of the partners to wind up the

partnership business; or

(iii) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) on application by a partner, a judicial determination that:

(i) the economic purpose of the partnership is likely to be unreasonably frustrated;

(ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the

transfer; or

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

## **SECTION 802. PARTNERSHIP CONTINUES AFTER DISSOLUTION.**

(a) Subject to subsection (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(1) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) the rights of a third party accruing under Section 804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

### **SECTION 803. RIGHT TO WIND UP PARTNERSHIP**

#### **BUSINESS.**

(a) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the [designate the appropriate court], for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 807, settle disputes by mediation or arbitration, and perform other necessary acts.

### **SECTION 804. PARTNER'S POWER TO BIND PARTNERSHIP**

**AFTER DISSOLUTION.** Subject to Section 805, a partnership is bound by a partner's act after dissolution that:

- (1) is appropriate for winding up the partnership business; or
- (2) would have bound the partnership under Section 301 before



dissolution, if the other party to the transaction did not have notice of the dissolution.

#### **SECTION 805. STATEMENT OF DISSOLUTION.**

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d) and is a limitation on authority for the purposes of Section 303(e).

(c) For the purposes of Sections 301 and 804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in Section 303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

#### **SECTION 806. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER DISSOLUTION.**

(a) Except as otherwise provided in subsection (b) and Section 306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 804.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**Comment**

Consistent with other provisions of this Act, Section 806(a) makes clear that a partner does not have a contribution obligation with regard to partnership obligations for which the partner is not liable under Section 306. See Section 401(b) cmt.

**SECTION 807. SETTLEMENT OF ACCOUNTS AND CONTRIBUTIONS AMONG PARTNERS.**

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account ~~attributable to an obligation for which the partner is personally liable under Section 306~~, except that in determining such excess, obligations for which the partner is not personally liable under Section 306 shall not be considered.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 306.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 306.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

#### Comment

Section 807(b) makes clear that the partnership's payment order of unshielded and shielded obligations has no impact on a partner's contribution obligation in dissolution. The obligation only considers the partner's share of unshielded obligations regardless of the payment order by the partnership. The rule is different for operating partnerships. See Section 401(b) cmt.

[ARTICLE] 9

CONVERSIONS AND MERGERS

~~Section 901. Definitions.~~

Section 901. Conversion of Partnership to Limited Partnership.

Section 902. Conversion of Limited Partnership to Partnership.

Section 903. Effect of Conversion; Entity Unchanged.

Section 904. Merger of Partnerships.

Section 905. Effect of Merger.

Section 906. Statement of Merger.

Section 907. Nonexclusive.

**~~SECTION 901. DEFINITIONS.~~** In this [article]:

(1) ~~"General partner" means a partner in a partnership and a general partner in a limited partnership.~~

(2) ~~"Limited partner" means a limited partner in a limited partnership.~~

(3) ~~"Limited partnership" means a limited partnership created under the [State Limited Partnership Act], predecessor law, or comparable law of another jurisdiction.~~

(4) ~~"Partner" includes both a general partner and a limited partner.~~

**SECTION ~~902~~ 901. CONVERSION OF PARTNERSHIP TO LIMITED PARTNERSHIP.**

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a

limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) a statement that the partnership was converted to a limited partnership from a partnership;

(2) its former name; and

(3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect

is that of a limited partner as provided in the [State Limited Partnership Act].

**SECTION ~~903~~902. CONVERSION OF LIMITED PARTNERSHIP  
TO PARTNERSHIP.**

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in Section 306, the ~~The~~ partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

**SECTION ~~904~~903. EFFECT OF CONVERSION; ENTITY  
UNCHANGED.**

(a) A partnership or limited partnership that has been converted

pursuant to this [article] is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

#### **SECTION 905 904. MERGER OF PARTNERSHIPS.**

(a) Pursuant to a plan of merger approved as provided in subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;



(4) the terms and conditions of the merger;

(5) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and

(6) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to the merger, as provided in subsection (c);

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.

## **SECTION ~~906~~ 905. EFFECT OF MERGER.**

(a) When a merger takes effect:

(1) the separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The [Secretary of State] of this State is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the [Secretary of State] of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the [Secretary of State] shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 807 or in the [Limited Partnership Act] of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 701 or another statute specifically applicable to that

partner's interest with respect to a merger. The surviving entity is bound under Section 702 by an act of a general partner dissociated under this subsection, and the partner is liable under Section 703 for transactions entered into by the surviving entity after the merger takes effect.

#### **SECTION ~~907~~ 906. STATEMENT OF MERGER.**

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this State, if any; and

(4) whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d), for the purposes of Section 302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a

statement of merger.

(d) For the purposes of Section 302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 105(c), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b), operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d).

**SECTION 908 907. NONEXCLUSIVE.** This [article] is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

[ARTICLE] 10

LIMITED LIABILITY PARTNERSHIPS

- Section 1001. Statement of Qualification.  
Section 1002. Name.  
Section 1003. Annual Reports.  
~~Section 1004. Designated Office and Agent for Service of Process.~~

**SECTION 1001. STATEMENT OF QUALIFICATION.**

(a) A partnership may become a ~~registered~~ limited liability partnership and a limited partnership may become a ~~registered~~ limited liability ~~limited partnership~~ pursuant to this section.

(b) The terms and conditions of a partnership becoming a ~~registered~~ limited liability partnership must be approved by a ~~majority of all the partners~~ the vote necessary to amend the partnership agreement. ~~The terms and conditions of a limited partnership becoming a registered limited liability limited partnership must be approved by all of the partners.~~

(c) After the approval provided in subsection (b), a partnership may file a statement of ~~registration~~ qualification which must include:

(1) the name of the partnership ~~or the limited partnership~~;  
(2) the street address of a partnership's specified office or chief executive office and, if different, the street address of an office in this State;

~~(3) the address of its initial designated office;~~

(3) if there is no office in this State, the name and street

**~~SECTION 1004. DESIGNATED OFFICE AND AGENT FOR SERVICE OF PROCESS.~~**

~~(a) A registered limited liability partnership and a foreign registered limited liability partnership authorized to do business in this State shall designate and continuously maintain in this State:~~

~~(1) an office, which need not be a place of business in this State; and~~

~~(2) an agent and street address of the agent for service of process on the partnership.~~

~~(b) An agent must be an individual resident of this State, a domestic corporation, a domestic limited liability company, or a foreign corporation or foreign limited liability company authorized to do business in this State.~~

~~(c) A registered limited liability partnership or a foreign registered limited liability partnership may change its designated office or agent for service of process as provided in Section 105 (d). An amendment or cancellation is effective at the time of its filing unless a later date certain effective date is set forth in the certificate of amendment.~~

~~(d) An agent for service of process may resign by signing and filing with the office of the [Secretary of State] a certificate of resignation. The [Secretary of State] shall mail a copy of the filed certificate to the partnership at its designated office. An agency is terminated on the 31st day after the certificate is filed with the office of the [Secretary of State].~~

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





[ARTICLE] 11

FOREIGN LIMITED LIABILITY PARTNERSHIPS

Section 1101.	Law Governing Foreign Limited Liability Partnerships.
Section 1102.	Statement of Foreign Qualification.
Section 1103.	Effect of Failure to Qualify.
Section 1104.	Activities Not Constituting Transacting Business.
Section 1105.	Action By [Attorney General].

**SECTION 1101. LAW GOVERNING FOREIGN LIMITED LIABILITY PARTNERSHIPS.**

(a) The laws of the State or other jurisdiction under which a foreign limited liability partnership is formed or created govern relations among the partners and between the partners and the partnership, and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a ~~foreign registration~~ statement of foreign qualification by reason of any difference between the laws of another jurisdiction under which the partnership is formed or created and the laws of this State.

(c) A ~~foreign registration~~ statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a limited liability partnership may not engage in or exercise in this State as a limited liability partnership.

Comment



[ARTICLE] ~~10~~ 12

MISCELLANEOUS PROVISIONS

- Section ~~1001~~ 1201. Uniformity of Application and Construction.  
Section ~~1002~~ 1202. Short Title.  
Section ~~1003~~ 1203. Severability.  
Section ~~1004~~ 1204. Effective Date.  
Section ~~1005~~ 1205. Repeals.  
Section ~~1006~~ 1206. Applicability.  
Section ~~1007~~ 1207. Savings Clause.

**SECTION ~~1001~~ 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** ~~This [Act]~~ These [amendments] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ~~this [Act]~~ these [amendments] among States enacting ~~it~~ them.

**SECTION ~~1002~~ 1202. SHORT TITLE.** ~~This [Act]~~ These [amendments] may be cited as the Limited Liability Partnership Act Amendments To Uniform Partnership Act (1994).

**SECTION ~~1003~~ 1203. SEVERABILITY CLAUSE.** If any provision of ~~this [Act]~~ these [amendments] or ~~its~~ their application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ~~this [Act]~~ these [amendments] which can be given effect without the invalid provision or application, and to this end the provisions of

