

DRAFT
FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

OCTOBER 1998

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

With Prefatory Note and Comments

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ON UNIFORM STATE LAWS

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

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

EX OFFICIO

GENE N. LEBRUN, P.O. Box 8250, 9th Floor, 909 St. Joseph Street, Rapid City, SD 57709,
President
HENRY M. KITTLESON, P.O. Box 32092, 92 Lake Wire Drive, Lakeland, FL 33802-2092,
Division Chair

AMERICAN BAR ASSOCIATION ADVISORS

GEORGE W. COLEMAN, 1445 Ross Avenue, Suite 3200, Dallas, TX 75202-2770, Business
Law Section Advisor
THOMAS EARL GEU, University of South Dakota, School of Law, 414 Bulow Street,
Vermillion, SD 57069, Probate Division/ Real Property Section Advisor
SANFORD J. LIEBSCHUTZ, 1600 Crossroads Building, Rochester, NY 14614, Real Property
Division/ Real Property Section Advisor
MARTIN I. LUBAROFF, One Rodney Square, P.O. Box 551, Wilmington, DE 19899, Advisor
BARRY NEKRITZ, Suite 4000, 10 S. Wacker Drive, Chicago, IL 60606-7407, Real Property,
Probate and Trust Section Advisor

EXECUTIVE DIRECTOR

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

Copies of this Act may be obtained from:

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

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Prefatory Note to the Drafting Committee and its Advisors
and Observers

Role of Endnotes

Like the first two drafts, this draft is accompanied by extensive endnotes. It is not necessary to read the endnotes, but you may find them helpful as background. For example, because underlining and strikeouts refer to the text of RULPA, those techniques are not available to indicate changes between Draft #2 and Draft #3 of Re-RULPA. Endnotes perform that function as to significant changes between the drafts. Also, many of the endnotes trace language in Draft #3 to the Revised Uniform Partnership Act ("RUPA"), the Uniform Limited Liability Company Act ("ULLCA"), or the Revised Model Business Corporations Act ("RMBCA"). In that connection, the word "Source" indicates that this draft has borrowed language without significant change. The phrase "Derived from" indicates that this draft began with borrowed language but changed that language in some substantive way. Some endnotes use the underline/strikeout format to show variance from the RUPA or ULLCA language.

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

Temporary Section Numbers

Consistent with the Drafting Committee's instructions, Draft #3 continues to de-link RULPA from the general partnership act while seeking to preserve as much as possible RULPA's basic organization, language and "look and feel." De-linking requires the inclusion of many new sections, but it seems important for temporary reference purposes to preserve RULPA's current section numbers. As a result most of the new sections carry temporary numbers, inappropriate to any final version (e.g., Section 101C, Section 802A). In addition, Draft #2 relocated several sections from Article 4 to Article 8, and Draft #3 continues that relocation. To preserve as much continuity in section numbers as possible among Draft #1, Draft #2 and Draft #3, these relocated sections have even more unusual section numbers (e.g., Section 803A-2).

Noteworthy Differences Between Draft #3 and Draft #2

1. The differences between Draft #3 and Draft #2 are not nearly as substantial as the differences between Draft #2 and Draft #1.

At its March, 1998 meeting, the Drafting Committee made a number of tentative decisions, which are reflected in the text of Draft #3 and discussed in endnotes. However, none of the resulting changes compare in drafting significance to, for example, Draft #2's abandonment of the concept of the "discharged" general partner.

2. Draft #3 permits a limited partnership to have a perpetual term and, moreover, makes a perpetual term the default rule.

See Section 201(a) (4) (Certificate of limited partnership).

3. Draft #3 takes a specific position on the relationship between the dissociation of a person as general partner and the dissolution of the limited partnership.

Previous drafts included alternative versions. Reflecting the discussion at the Committee's March, 1998 meeting, Draft #3 provides that, following the dissociation of a person as general partner:

- if at least one general partner remains, within 90 days after the dissociation

- ~any remaining general partner may dissolve the limited partnership by "express will," and

- ~limited partners owning a majority of the profits interests owned by limited partners may dissolve the limited partnership by consent;

- if no general partner remains, dissolution occurs automatically 90 days after the dissociation, unless before that time limited partners owning a majority of the profits interests owned by limited partners consent to avoid dissolution and appoint at least one new

general partner.

Section 801(4). Draft #3 also provides, as a default rule, that each general partner is obliged to remain in that position not only through the expiration of the limited partnership's term but also through winding up. See Section 602A(b) (2).

4. Draft #3 newly incorporates several provisions from ULLCA.

Both Draft #1 and Draft #2 incorporated ULLCA provisions; e.g., Sections 803B (Known claims against dissolved limited partnership; sourced from ULLCA § 807) and 803E (Grounds for administrative dissolution; sourced from ULLCA § 809). Most of the newly-incorporated provisions appear in Article 2 and refer to publicly-filed records; e.g., Section 206A (Correcting filed record; sourced from ULLCA § 207); Section 211 (Annual report for [Secretary of State]; sourced from ULLCA § 211).

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

4 ⁵

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

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

11
12 ~~(3) "Event of withdrawal of a general partner"~~
13 ~~means an event that causes a person to cease to be a general~~
14 ~~partner as provided in Section 402.~~⁸

15
16 (~~4~~8) "Foreign limited partnership" means a
17 partnership formed under the laws of any state other than
18 this State and having required by those laws to have⁹ as
19 partners one or more general partners and one or more
20 limited partners.

(~~5~~21) "General partner" means a person who has been admitted to a limited
22 partnership as a general partner in accordance with the
23 partnership agreement and named in the certificate of
24 limited partnership as a general partner as provided in
25 Section 401.¹⁰

(~~10~~6) "Good faith and fair dealing" requires a person to act honestly and

1 with the honest belief that the act serves a legitimate
2 purpose.¹¹

(13) "Limited liability limited partnership" means a limited partnership
4 whose certificate of limited partnership states that the
5 limited partnership is a limited liability limited
6 partnership.¹²

7 (~~6~~12) "Limited partner" means a person who has been admitted to a
8 limited partnership as a limited partner ~~in accordance with~~
9 ~~the partnership agreement~~ as provided in Section 301.¹³

10 (~~7~~13) ~~"Limited partnership" and "domestic limited partnership" mean a~~
11 ~~partnership formed by two or more persons under the laws of~~
12 ~~this State and having one or more general partners and one~~
13 ~~or more limited partners~~ an entity formed under this [Act]
14 and include both ordinary limited partnerships and limited
15 liability limited partnerships.¹⁴

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

18
19 (~~8~~15) "Partner" means a limited or general
20 partner.

21
22 (~~9~~16) "Partnership agreement" means any valid
23 agreement, ~~written, or oral, or implied from conduct,~~¹⁵ of
24 the partners as to the affairs of a limited partnership and
25 the conduct of its business.

26

1 ~~(10) "Partnership interest" means a partner's~~
2 ~~share of the profits and losses of a limited partnership and~~
3 ~~the right to receive distributions of partnership assets.~~¹⁶
4

5 ~~(1117) "Person" means a natural person,~~
6 ~~partnership, limited partnership (domestic or foreign),~~
7 ~~trust, estate, association, or corporation. an individual,~~
8 ~~corporation, business trust, estate, trust, partnership,~~
9 ~~limited liability company, association, joint venture,~~
10 ~~government, governmental subdivision, agency, or~~
11 ~~instrumentality, or any other legal or commercial entity.~~¹⁷

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

15(19) "Required records" means the records that Section 105 requires a
16 limited partnership to maintain.

17 (20) "Sign".means to identify a record, whether in writing,
18 electronically or otherwise, by means of a signature, mark,
19 or other symbol, with intent to authenticate the record.¹⁹
20

21 ~~(1221) "State" means a state, territory, or~~
22 ~~possession of the United States, the District of Columbia,~~
23 ~~or the Commonwealth of Puerto Rico a State of the United~~
24 ~~States, the~~
25 ~~District of Columbia, the Commonwealth of Puerto Rico, or~~
26 ~~any territory or insular possession subject to the~~

1 jurisdiction of the United States.²⁰

2 (22) "Transfer" includes an assignment, conveyance, lease, mortgage,
3 deed, and encumbrance as well as a transfer by operation of
4 law.²¹

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

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

10 **SECTION 101A.**²³ **KNOWLEDGE AND NOTICE.**²⁴

11 _____

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

14 _____

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

17 _____

18 _____

19 _____ (1) knows of it;

20 _____

21 _____

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

23 _____

24 _____

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

(c) 3 A person notifies or gives a notification to another by taking steps
4 reasonably required to inform the other person in ordinary
5 course, whether or not the other person learns of it.
6

7 (d) A person receives a notification when the
8 notification:
9
10

11 (1) comes to the person's attention; or
12
13

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

18 (e) Except as otherwise provided in subsection
19 (f), an entity²⁵ knows, has notice, or receives a
20 notification of a fact for purposes of a particular
21 transaction when the individual conducting the transaction
22 for the entity²⁶ knows, has notice, or receives a
23 notification of the fact, or in any event when the fact
24 would have been brought to the individual's attention if the
25 entity had exercised reasonable diligence. An entity
26 exercises reasonable diligence if it maintains reasonable

1 routines for communicating significant information to the
2 individual conducting the transaction for the entity²⁷ and
3 there is reasonable compliance with the routines.

4 Reasonable diligence does not require an individual acting
5 for the entity to communicate information unless the
6 communication is part of the individual's regular duties or
7 the individual has reason to know of the transaction and
8 that the transaction would be materially affected by the
9 information.

10 _____
11 _____ (f) A general²⁸ partner's knowledge, notice, or
12 receipt of a notification of a fact relating to the limited
13 partnership is effective immediately as knowledge by, notice
14 to, or receipt of a notification by the limited partnership,
15 except in the case of a fraud on the limited partnership
16 committed by or with the consent of that general partner.

17 **SECTION 101B. EFFECT OF PARTNERSHIP AGREEMENT;**
18 **NONWAIVABLE PROVISIONS.**²⁹

19 _____
20 _____ (a) Except as otherwise provided in subsection
21 (c),³⁰ relations among the partners and between the
22 partners and the partnership are governed by the partnership
23 agreement.³¹ To the extent the partnership agreement does
24 not otherwise provide, this [Act] governs relations among

1 the partners and between the partners and the partnership.³²

2 ³³(b) The partnership agreement may be oral, written, implied from the
3 conduct of the partners and the partnership, or any
4 combination. A written partnership agreement may exclude
5 [alternate language: preclude] oral agreements and may
6 specify the extent, if any, that the conduct of the partners
7 and the partnership are to be considered in determining and
8 interpreting the partnership agreement. Unless otherwise
9 stated in a³⁴ partnership agreement, amending the
10 partnership agreement requires the consent of all partners.
11 A partnership agreement may be made before the formation of
12 a limited partnership to take effect upon formation, if the
13 agreement provides that it is effective on the formation of
14 the limited partnership and is signed, before formation, by
15 all persons who will be partners at the moment of formation.

16 _____
17 _____ (c) The partnership agreement may not:

18 _____
19 _____
20 _____ (1) [reserved]³⁵

21 _____
22 _____
23 _____ (2) unreasonably restrict the right of access to
24 information under Sections 305 and 403E;³⁶

25 _____
26 _____

_____ ³⁷(3) eliminate the duty of loyalty under
Section 403D(b), but:

_____

(i) 4a provision of the partnership agreement may, if not unconscionable,³⁸
identify specific types or categories of activities that do
not violate the duty of loyalty, limit the issues to be
considered in determining whether a breach of the duty of
loyalty has occurred³⁹ and prescribe the applicable burden
of proof;⁴⁰ and⁴¹

_____

(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;⁴²

_____ (4) unreasonably reduce the duty of care under
Section 403D(c);⁴³

_____ ⁴⁴(5) eliminate the obligation of good faith and
fair dealing under Sections 302A(c) and 403D(d), but the
partnership agreement may prescribe the standards by which
the performance of the obligation is to be measured,
including limiting the issues to be considered and

1 prescribing the burden of proof,⁴⁵ if the standards are not
2 unconscionable;⁴⁶

3 _____
4 _____
5 _____ (6) vary the power of a partner to dissociate,
6 except to require the notice under Section 602(1) or
7 603(b) (1) to be in writing;⁴⁷

8 _____
9 _____ (7) vary the right of a court to expel a partner
10 in the events specified in Sections 602(5) and 603(b) (5);⁴⁸

11 _____
12 _____ (8) vary the requirement to wind up the
13 partnership business as stated in Section 803;⁴⁹

14 _____
15 _____ (9) vary the rights of partners to consent to a
16 merger pursuant to Section 1102(e);⁵⁰

17 _____
18 _____
19 _____ (10) restrict rights of a third party under this
20 [Act].⁵¹

21 **SECTION 101C. SUPPLEMENTAL PRINCIPLES OF LAW.**⁵²

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

1 this [Act], but⁵³ those principles may not be used to evade
2 the plain meaning of a partnership agreement or to allow a
3 partner to escape the reasonably foreseeable consequences of
4 a partnership agreement.

5⁴ (b) The law governing general partnerships must not be assumed to be

6 relevant in interpreting this [Act], but a court may use
7 that law by way of analogy if:

8 _____

9 _____ (1) the matter before the court involves a
10 provision of this [Act] for which a comparable provision
11 exists under the law of general partnerships; and

12 _____

13 _____ (2) the fundamental differences between a
14 general and limited partnership are immaterial to the
15 matter.

16
17 (c) If an obligation to pay interest arises
18 under this [Act] and the rate is not specified, the rate is
19 that specified in [applicable statute].

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

21 The law of this State governs relations among the partners and between
22 the partners and the partnership.⁵⁵

23

1 **SECTION 102. NAME.**⁵⁶

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

4
5 ~~(1) shall contain without abbreviation the words~~
6 ~~"limited partnership";~~
7 must contain "limited partnership" or the abbreviation
8 "L.P." or "LP". The name of a limited liability limited
9 partnership must end with "limited liability limited
10 partnership" or "LLLP" or "L.L.L.P.". "Limited" may be
11 abbreviated as "Ltd." "Partnership" may be abbreviated as
12 "Pshp.". "Liability" may be abbreviated as "Liab.".⁵⁷

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

15 _____

16 (1) the limited liability limited partnership
17 previously carried on business as an ordinary limited
18 partnership;

19 _____

20 (2) the name of that ordinary limited
21 partnership included the partner's name; and

22 _____

23 (3) the inclusion did not violate this
24 Section.⁵⁸

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

1 a general partner or the corporate name of a corporate
2 general partner, or (ii) the business of the limited
3 partnership had been carried on under that name before the
4 admission of that limited partner without violating this
5 Section.7

~~63) may not be the same as, or deceptively similar to, the name of any~~
7 ~~corporation or limited partnership organized under the laws~~
8 ~~of this State or licensed or registered as a foreign~~
9 ~~corporation or limited partnership in this State; and~~

~~10) may not contain the following words [here insert prohibited words].~~

11 ⁵⁹(d) Except as authorized by subsections (e) and (f), the name of a
12 limited partnership must be distinguishable upon the records
13 of the [Secretary of State] from:

14

15 (1) the name of any corporation, limited
16 liability company, or limited partnership incorporated,
17 organized or authorized to transact business in this
18 State;⁶⁰ and

19 _____

20 (2) any name reserved or registered under
21 Section 103, Section [reserved for section in Article 9 re:
22 foreign limited partnerships], or [insert citations to other
23 State laws allowing the reservation or registration of
24 business names].⁶¹

25 (e) A limited partnership may apply to the [Secretary of State] for
26 authorization to use⁶² a name that is not distinguishable

1 upon the records of the [Secretary of State] from one or
2 more of the names described in subsection (d). The
3 [Secretary of State] shall authorize use of the name applied
4 for if, as to each conflicting name:

5 _____

6 _____ (1) the present user, registrant, or owner of
7 the conflicting⁶³ name consents to the use in a signed⁶⁴
8 record and submits an undertaking in form satisfactory to
9 the [Secretary of State] to change the conflicting name to a
10 name that is distinguishable upon the records of the
11 [Secretary of State] from the name applied for and from all
12 of the names described in subsection (d);⁶⁵ or

13 _____

14 _____ (2) the applicant delivers to the [Secretary of
15 State] a certified copy of the final judgment of a court of
16 competent jurisdiction establishing the applicant's right to
17 use in this State the name applied for.⁶⁶

⁶⁷ ~~18~~ (18) A limited partnership may use a name, including a fictitious name,
19 shown upon the records of the [Secretary of State] as being
20 used by another entity⁶⁸ if the limited partnership
21 proposing to use the name has:⁶⁹

22 _____

23 _____ (1) merged with the other entity;

24 _____

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

1
2 (3) been converted from the other entity;⁷⁰ or
3
4 (4) acquired substantially all of the assets,
5 including the name, of the other entity.

6
7 **SECTION 103. RESERVATION OF NAME.**⁷¹
8

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

11
12
13 (1) any person intending to organize a limited
14 partnership under this [Act] and to adopt that name;

15
16
17 (2) any domestic limited partnership or any
18 foreign limited partnership registered in this State which,
19 in either case, intends to adopt that name;

20
21
22 (3) any foreign limited partnership intending to
23 register in this State and adopt that name; and

24
25
26 (4) any person intending to organize a foreign

1 limited partnership and intending to have it register in
2 this State and adopt that name.

3
4 (b) The reservation shall be made by filing
5 with the [Secretary of State] an application, executed by
6 the applicant, to reserve a specified name. If the
7 [Secretary of State] finds that the name is available for
8 use by a domestic or foreign limited partnership, ~~he~~ ~~for~~
9 ~~she~~ the [Secretary of State] shall reserve the name for the
10 exclusive use of the applicant for a period of 120 days.
11 Once having so reserved a name, the same applicant may not
12 again reserve the same name until more than 60 days after
13 the expiration of the last 120-day period for which that
14 applicant reserved that name. The right to the exclusive
15 use of a reserved name may be transferred to any other
16 person by filing in the office of the Secretary of State a
17 notice of the transfer, executed by the applicant for whom
18 the name was reserved and specifying the name and address of
19 the ~~transferee~~ person to whom the transfer was made.⁷²

20 **SECTION 103A. REGISTERED NAME.**⁷³

21 2a) A foreign limited partnership may register its name subject to the
22 requirements of Section [TBD],⁷⁴ if the name is
23 distinguishable upon the records of the [Secretary of State]
24 from names that are not available under Section 102(d).

(b) A foreign limited liability company registers its name, or its name
with any addition required by Section [TBD],⁷⁵ by delivering
to the [Secretary of State] for filing an application:
.
(1) setting forth its name, or its name with any
addition required by Section [TBD],⁷⁶ the State or country
and date of its organization, and a brief description of the
nature of the business in which it is engaged; and
.
(2) accompanied by a certificate of existence,
or a record of similar import, from the State or country of
organization.

(c) A foreign limited partnership whose registration is effective may
renew it for successive years by delivering for filing in
the office of the [Secretary of State] a renewal application
complying with subsection (b) between October 1 and December
31 of the preceding year. The renewal application renews
the registration for the following calendar year.

(d) A foreign limited partnership whose registration is effective may
qualify as a foreign limited partnership under its name or
consent in writing to the use of its name by a limited
partnership later organized under this [Act] or by another
foreign limited partnership later authorized to transact
business in this State. The registered name terminates when
the limited partnership is organized or the foreign limited
partnership qualifies or consents to the qualification of

1 another foreign limited partnership under the registered
2 name.

3 **SECTION 104. ~~SPECIFIED~~ DESIGNATED OFFICE AND**
4 **AGENT FOR SERVICE OF PROCESS.**⁷⁷

5 ~~Each~~ (a) A limited partnership and a foreign limited partnership
6 authorized to do business in this State⁷⁸ shall designate
7 and continuously maintain in this State:

8
9 (1) an office,⁷⁹ which may but need not be a
10 place of its business in this State, at which shall be kept
11 the required records described in ~~required by~~ Section
12 105~~(TBD)~~ to ~~(TBD)~~⁸⁰ ~~to be maintained;~~ and

13
14 (2) an agent and a street address of the agent
15 for service of process on the limited partnership.⁸¹ ~~which~~

16 (b) An agent must be an individual resident of
17 this State, a domestic corporation or limited liability
18 company, or a foreign corporation or limited liability
19 company authorized to do business in this State.⁸²

20
21 **SECTION 104A. CHANGE OF DESIGNATED OFFICE OR**

22 **AGENT FOR SERVICE OF PROCESS.** A limited partnership⁸³ may
23 change its designated office or agent for service of process
24 by delivering to the [Secretary of State] for filing a

1 statement of change which sets forth:⁸⁴
2 . . . (1) the name of the limited partnership;
3 (2) the street address of its current designated office;
(3) 4 if the current designated office is to be changed, the street address
5 of the new designated office;
(4) 6 the name and address of its current agent for service of process; and
(5) 7 if the current agent for service of process or street address of that
8 agent is to be changed, the new address or the name and
9 street address of the new agent for service of process.

10 **SECTION 104B. RESIGNATION OF AGENT FOR SERVICE**
11 **OF PROCESS.**⁸⁵

(a) 12 An agent for service of process of a limited partnership⁸⁶ may resign
13 by delivering to the [Secretary of State] for filing a
14 record of the statement of resignation.
15 b) After filing a statement of resignation, the [Secretary of State]
16 shall mail a copy to the designated office and another copy
17 to the limited partnership at its principal office.⁸⁷
(c) 18 An agency is terminated on the 31st day after the statement is filed
19 in the office of the [Secretary of State].⁸⁸

20 **SECTION 104C. SERVICE OF PROCESS.**⁸⁹

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

1 to be served upon the limited partnership or foreign limited
2 partnership.

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

10 (c) Service of any process, notice, or demand on the [Secretary of
11 State] may be made by delivering to and leaving with the
12 [Secretary of State], the [Assistant Secretary of State], or
13 clerk having charge of the limited partnership department of
14 the [Secretary of State's] office duplicate copies of the
15 process, notice, or demand.⁹⁰ If the process, notice, or
16 demand is served on the [Secretary of State], the [Secretary
17 of State] shall forward one of the copies by registered or
18 certified mail, return receipt requested, to the limited
19 partnership or foreign limited partnership at its designated
20 office. Service is effected under this subsection at the
21 earliest of:

22 _____

23 _____ (1) the date the limited partnership or foreign
24 limited partnership receives the process, notice, or demand;

25 _____

26 _____ (2) the date shown on the return receipt, if

signed on behalf of the limited partnership or foreign
limited partnership; or

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

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

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

SECTION 105. REQUIRED RECORDS TO BE KEPT.⁹¹

(a) Each A limited partnership shall ~~keep at~~
~~the office referred to in Section 104(1)~~ maintain and keep
current⁹² the following required records:

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

(2) a copy of the certificate of limited

1 partnership and all ~~certificates of amendments thereto~~ to
2 the certificate,⁹³ together with executed copies of any
3 powers of attorney pursuant to which any certificate or
4 amendment has been executed;

5
6
7 (3) copies of the limited partnership's federal,
8 state, and local income tax returns and reports, if any, for
9 the three most recent years;

10
11
12 (4) copies of any written partnership agreements
13 and any amendments to any of those agreements⁹⁴ and of any
14 financial statements of the limited partnership for the
15 three most recent years;

16

17 ⁹⁵

18

19 (5) copies of the limited partnership's three
20 most recent annual reports;

21

22 (6) a listing of each transaction between the
23 limited partnership and a general partner or affiliate,⁹⁶
24 stating the date or dates of the transaction and a brief
25 description of the consideration provided by and to the
26 general partner or affiliate;⁹⁷

1
2 (7) a copy of all written and electronic
3 communications made within the past three years to the
4 limited partners generally by the limited partnership or a
5 general partner;⁹⁸

6
7 (8) a copy of all written consents given within
8 the past three years pursuant to any of the following
9 sections: [TBD]⁹⁹ and

10
11
12 (59) unless contained in a written partnership
13 agreement, a writing setting out:

14
15
16
17 (i) the amount of cash and a description and
18 statement of the agreed value of the other property or
19 services contributed by each partner and which each partner
20 has agreed to contribute;

21
22
23
24 (ii) the times at which or events on the
25 happening of which any additional contributions agreed to be
26 made by each partner are to be made;

1
2
3
4 (iii) any right of a partner to receive, or of a
5 general partner to make, distributions to a partner which
6 include a return of all or any part of the partner's
7 contribution; and
8
9

10
11 (iv) any events upon the happening of which the
12 limited partnership is to be dissolved and its affairs wound
13 up.
14

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

20 **SECTION 106. NATURE OF BUSINESS AND POWERS.**¹⁰⁰

21 (a) A limited partnership may be formed for and carry on any business

22 **[alternative language: lawful enterprise? lawful purpose?**

23 **lawful activity?]**¹⁰¹ ~~that a partnership without limited~~

24 ~~partners may carry on~~¹⁰²

25 Version #1 -- except [here designate prohibited

1 activities].

2 Version #2: subject to any law of this State governing or

3 regulating business.¹⁰³

4 (b) ¹⁰⁴Version #1 --. Except as stated in subsection (c),¹⁰⁵ a limited

5 partnership has all the powers of a corporation incorporated

6 under the laws of this State.

7 Version #2 --. Except as stated in subsection (c),¹⁰⁶ a limited

8 partnership has the same powers as an individual to do all

9 things necessary or convenient to carry on its business or

10 affairs, including power to:

11

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

13 name;

14

15 (2) purchase, receive, lease, or otherwise

16 acquire, and own, hold, improve, use, and otherwise deal

17 with real or personal property, or any legal or equitable

18 interest in property, wherever located;

19

20 (3) sell, convey, mortgage, grant a security

21 interest in, lease, exchange, and otherwise encumber or

22 dispose of all or any part of its property;

23

24 (4) purchase, receive, subscribe for, or

25 otherwise acquire, own, hold, vote, use, sell, mortgage,

26 lend, grant a security interest in, or otherwise dispose of

1 and deal in and with, ownership interests in¹⁰⁷ or
2 obligations of any other entity;
3 _____
4 _____ (5) make contracts and guarantees, incur
5 liabilities, borrow money, issue its notes, bonds, and other
6 obligations, which may be convertible into or include the
7 option to purchase other securities of the limited
8 partnership, and secure any of its obligations by a mortgage
9 on or a security interest in any of its property,
10 franchises, or income;
11 _____
12 _____ (6) lend money, invest and reinvest its funds,
13 and receive and hold real and personal property as security
14 for repayment;
15 _____
16 _____ (7) be a promoter, partner, member, associate,
17 or manager of any partnership, joint venture, trust, or
18 other entity;¹⁰⁸
19 _____
20 _____ (8) conduct its business, locate offices, and
21 exercise the powers granted by this [Act] within or without
22 this State;
23 _____
24 _____ (9) appoint general partners,¹⁰⁹ officers,
25 employees, and agents of the limited partnership, define
26 their duties, fix their compensation, and lend them money

1 and credit;

2 _____

3 _____ (10) pay pensions and establish pension plans,
4 pension trusts, profit sharing plans, bonus plans, option
5 plans, and benefit or incentive plans for any or all of its
6 current or former general¹¹⁰ partners, officers, employees,
7 and agents;

8 _____

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

11 _____

12 _____ (12) make payments or donations, or do any other
13 act, not inconsistent with law, that furthers the business
14 [if "business" restriction eliminated; substitute "affairs"
15 or "activities"] of the limited partnership.

16 ¹¹¹

17(c) The certificate of limited partnership may limit the powers of a
18 limited partnership but may not affect the power of a
19 limited partnership to sue, be sued, and defend in its own
20 name.¹¹² A limitation of a limited partnership's powers is
21 not for the purposes of Section 208(c) a statement limiting
22 the authority of a general partner to execute an instrument
23 transferring real property held in the name of the
24 partnership.¹¹³

26 **SECTION 107. BUSINESS TRANSACTIONS OF PARTNER**

1 **WITH PARTNERSHIP.**¹¹⁴ Except as provided in the partnership
2 agreement, a partner may lend money to and transact other
3 business with the limited partnership and, subject to other
4 applicable law, has the same rights and obligations with
5 respect thereto as a person who is not a partner.

6 **ARTICLE 2**

7 **FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP**

8 **SECTION 200.**¹¹⁵ **LIMITED PARTNERSHIP AS ENTITY;** 9 **PERPETUAL TERM.**

10 (a) A limited partnership is an entity distinct from its partners.¹¹⁶
11 (b) Unless otherwise provided in the certificate of limited partnership,
12 a limited partnership has a perpetual term.¹¹⁷

14 **SECTION 201. CERTIFICATE OF LIMITED** 15 **PARTNERSHIP.**

17 (a) In order to form a limited partnership, a
18 certificate of limited partnership must be executed and
19 filed in the office of the Secretary of State. The
20 certificate shall ~~set forth~~ state:

23 (1) the name of the limited partnership;

1
2
3
4
5 (2) the address of the initial designated
6 office¹¹⁸ and the name and address of the initial agent for
7 service of process ~~required to be maintained by~~
8 ~~Section 104;~~¹¹⁹
9

10
11 (3) the name and the business address of each
12 general partner;
13
14
15
16
17

18 (4) the term of the limited partnership, if not
19 perpetual ~~latest date upon which the limited partnership is~~
20 ~~to dissolve;~~¹²⁰ and
21

22 (5) whether the limited partnership is a limited
23 liability limited partnership.

24 (b) A certificate of limited partnership may state the authority, or
25 limitations on the authority, of some or all of the general
26 partners to execute an instrument transferring real property

1 held in the name of the partnership.¹²¹

(c) A certificate of limited partnership may also contain (5) any other
3 matters the general partners determine to include therein,
4 except that a certificate may not vary the nonwaivable
5 provisions of [this Act] listed in Section 101B.¹²² As to
6 all other matters, if any provision of a partnership
7 agreement is inconsistent with the certificate of limited
8 partnership:

9 _____

10 _____ (1) the partnership agreement controls as to
11 partners and transferees; and

12 _____

13 _____ (2) the certificate of limited partnership
14 controls as to persons, other than partners and
15 transferees, who reasonably rely on the certificate to their
16 detriment.¹²³

17 (d) A limited partnership is formed at the time of the filing of the
18 certificate of limited partnership in the office of the
19 Secretary of State or, subject to Section 206(d),¹²⁴ at any
20 later time specified in the certificate of limited
21 partnership if, in either case, there has been substantial
22 compliance with the requirements of this section.

23
24
25
26 **SECTION 202. AMENDMENT OR RESTATEMENT OF TO**
27 **CERTIFICATE.**¹²⁵

1
2 (a) A certificate of limited partnership is
3 amended by filing an ~~certificate of~~¹²⁶ amendment thereto in
4 the office of the [Secretary of State]. The ~~certificate~~
5 amendment shall set forth:

6
7
8 (1) the name of the limited partnership;

9
10
11 (2) the date of filing the certificate; and

12
13
14 (3) the changes the amendment makes to the
15 certificate.¹²⁷

16
17 ¹²⁸(b) Within 30 days after the happening of any
18 of the following events, a limited partnership shall file an
19 amendment to a certificate of limited partnership reflecting
20 the occurrence of the event or events ~~shall be filed~~.¹²⁹

21
22
23 (1) the admission of a new general partner;

24
25
26 (2) the ~~withdrawal~~ dissociation¹³⁰ of a person

1 as a general partner; or

2
3
4 (3) ~~the continuation of the business under~~
5 ~~Section 801 after an event of withdrawal of a general~~
6 ~~partner~~ the dissolution of the limited partnership;¹³¹

7

8 (4) the appointment of a person to wind up the
9 limited partnership's business under Section 803(b) or (c).

10
11 (c) A general partner¹³² who becomes aware that
12 any statement in a certificate of limited partnership was
13 false when made or that any arrangements or other facts
14 described have changed, making the certificate inaccurate in
15 any respect, shall promptly ~~amend~~ cause the certificate to
16 be amended.¹³³

17
18 (d) A certificate of limited partnership may be
19 amended at any time for any other proper purpose the general
20 partners determine.¹³⁴

21
22 (e) No person has any liability because an
23 amendment to a certificate of limited partnership has not
24 been filed to reflect the occurrence of any event referred
25 to in subsection (b) of this section if the amendment is
26 filed within the 30-day period specified in subsection (b).

1
2 (f) A restated certificate of limited
3 partnership may be ~~executed and~~¹³⁵ filed in the same manner
4 as an certificate of amendment.
5

6 ¹³⁶**SECTION 203. ~~CANCELLATION OF CERTIFICATE~~**
7 **DECLARATION OF TERMINATION.** ~~A certificate of limited~~
8 ~~partnership shall be cancelled upon the dissolution and the~~
9 ~~commencement of winding up of the partnership or at any~~
10 ~~other time there are no limited partners. A certificate of~~
11 ~~cancellation shall be filed~~ Within 30 days after winding
12 up its affairs under Section 803,¹³⁷ a dissolved limited
13 partnership shall file in the [office of the Secretary of
14 State] a declaration of termination that ~~and~~ sets forth:
15

16 (1) the name of the limited partnership;
17

18 (2) the date of filing of its original¹³⁸
19 certificate of limited partnership;
20

21 (3) the ~~reason for filing the certificate of~~
22 ~~cancellation~~ date the limited partnership dissolved and the
23 event that caused the dissolution;

24 4) a statement that the limited partnership's business has been fully
25 wound up; and
26

1 (4 ~~5~~) the effective date (which shall be a date
2 certain and shall be subject to Section 206(d)) of
3 ~~cancellation~~ termination if it the declaration is not to be
4 effective upon the filing ~~of the certificate~~,¹³⁹ and
5 _____
6 _____
7 (5) any other information the general partners
8 filing the certificate determine.

9 **SECTION 204. EXECUTION OF CERTIFICATES RECORDS.**

10
11 (a) Each ~~certificate~~, record pertaining to a
12 limited partnership and filed pursuant to this Act¹⁴⁰
13 ~~required by this Article to be filed in the office of the~~
14 [Secretary of State] ~~must shall~~¹⁴¹ be executed in the
15 following manner:

16
17
18 (1) an original certificate of limited
19 partnership must be signed by all general partners listed in
20 the certificate;¹⁴²

21

22 (2) an amendment causing a limited partnership
23 to become or cease to be a limited liability limited
24 partnership must be signed by all general partners listed in
25 the certificate;¹⁴³

1

2 (3) an amendment designating as general partner
3 a person admitted under Section 801(4) following the
4 dissociation of a limited partnership's last general partner
5 must be signed by that person;

6

7 (4) an amendment required by Section 803(b) or
8 803(d) following the appointment of a person to wind up the
9 dissolved limited partnership's business must be signed by
10 that person;

11
12
13 ~~(25)~~ a certificate of any other amendment must
14 be signed by at least one existing general partner and by
15 each other ~~general partner~~ person designated in the
16 ~~certificate~~ amendment as a new general partner; and

17

18 (6) a restated certificate of limited
19 partnership must be signed by at least one general partner,
20 and to the extent the restated certificate effects a change
21 encompassed by any other paragraph of this subsection the
22 certificate must be signed in a manner that satisfies that
23 paragraph;

24
25
26 ~~(37)~~ a certificate of cancellation declaration

of termination must be signed by all general partners and if
the dissolved limited partnership has no general partners
then by the person appointed under section 803(b) or 803(c)
to wind up the dissolved limited partnership's business;

.

(8) any other record signed by or on behalf of a limited partnership must be signed by at least one general partner;¹⁴⁴

• • • • •

(9) a statement by a person pursuant to Section [TBD] declaring that the person has dissociated as a general partner must be signed by that person; and¹⁴⁵

.....

(10) a statement by a person pursuant to Section
[TBD] declaring that the person is not and has not been a
general partner must be signed by that person.¹⁴⁶

(b) Any person may sign a certificate record by an attorney-in-fact, ~~but~~ If a person gives a power of attorney to sign a certificate or amendment relating to the admission of that causes the person to be newly designated as a general partner, the power of attorney must specifically describe the admission state that the attorney-in-fact is authorized to sign a certificate or amendment designating the person as a general partner.¹⁴⁷

1 (c) The execution of a certificate, amendment,
2 or declaration by a ~~general partner~~ person pursuant to this
3 section constitutes an affirmation under the penalties of
4 perjury that the facts stated therein are true.¹⁴⁸
5

6 **SECTION 205. EXECUTION SIGNING AND FILING¹⁴⁹ BY**
7 **JUDICIAL ACT.** If a person required by ~~Section 204~~ [this
8 Act]¹⁵⁰ to execute any ~~certificate~~ record fails or refuses to
9 do so, any other person who is adversely affected by the
10 failure or refusal may petition the [designate the
11 appropriate court] to direct the ~~execution~~ signing of the
12 ~~certificate~~ record. If the court finds that it is proper
13 for the ~~certificate~~ record to be executed and that any
14 person so designated has failed or refused to ~~execute~~ sign
15 the ~~certificate~~ record, it shall order the Secretary of
16 State to ~~record~~ sign and file an appropriate ~~certificate~~
17 record.¹⁵¹
18

19 **SECTION 206. FILING IN OFFICE OF [SECRETARY OF**
20 **STATE]**.¹⁵²

21 ~~(a) Two signed copies of the certificate of~~
22 ~~limited partnership and of any certificates of amendment or~~
23 ~~cancellation (or of any judicial decree of amendment or~~
24 ~~cancellation) shall be delivered to the Secretary of State.~~

~~A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his [or her] authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he [or she] shall:~~

~~_____~~

~~_____~~

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

~~_____~~

~~_____~~

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

~~_____~~

~~_____~~

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

~~_____~~

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

(a) A record authorized to be filed under this [Act] must be in a medium

1 permitted by the [Secretary of State] and must be delivered
2 to the office of the [Secretary of State]. Unless the
3 [Secretary of State] determines that a record fails to
4 comply as to form with the filing requirements of this
5 [Act], and if all filing fees have been paid, the [Secretary
6 of State] shall file the record and send a receipt for the
7 record and the fees to the limited partnership or its
8 representative.

9b) Upon request and payment of a fee, the [Secretary of State] shall
10 send to the requester a certified copy of the requested
11 record.

12c) Except as otherwise provided in subsection (d), a record accepted
13 for filing¹⁵³ by the [Secretary of State] is effective:

14 _____

15 _____ (1) at the time of filing on the date it is
16 filed, as evidenced by the [Secretary of State's] date and
17 time endorsement on the original record; or

18 _____

19 _____ (2) at the time specified in the record as its
20 effective time on the date it is filed.

21d) A record may specify a delayed effective time and date, and if it
22 does so the record becomes effective at the time and date
23 specified. If a delayed effective date but no time is
24 specified, the record is effective at the close of business
25 on that date. If a delayed effective date is later than the
26 90th day after the record is filed, the record is effective

on the 90th day.

¹⁵⁴**SECTION 206A. CORRECTING FILED RECORD.**

(a) A limited partnership or foreign limited partnership may correct a record filed by the [Secretary of State] if the record contains a false or erroneous statement or was defectively signed.

_____ (b) A record is corrected:

(1) by preparing articles of correction that:

(i) describe the record, including its filing date, or attach a copy of it to the articles of correction;

(ii) specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and

(iii) correct the incorrect statement or defective signing; and

(2) by delivering the corrected record to the

[Secretary of State] for filing.

(2) Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are

1 effective when filed.

2 ¹⁵⁵**SECTION 207. LIABILITY FOR FALSE STATEMENT IN**
3 **CERTIFICATE RECORD.** ~~If any certificate of limited~~
4 ~~partnership or certificate of amendment or cancellation~~
5 Subject to Section 202(e),¹⁵⁶ if a record authorized or
6 required to be filed under this [Act] contains a false
7 statement, one who suffers loss by reliance on the statement
8 may recover damages for the loss from:

9
10 (1) any person who ~~executes~~ signs the
11 ~~certificate record~~, or causes another to execute it on his
12 behalf, and knew, and any general partner who knew or should
13 have known, the statement to be false at the time the
14 ~~certificate record~~ was ~~executed~~ signed; and

15
16 ¹⁵⁷(2) any general partner who thereafter knows
17 or should have known that any arrangement or other fact
18 described in the ~~certificate record~~¹⁵⁸ has changed, making
19 the ~~statement description~~¹⁵⁹ inaccurate in any respect within
20 a sufficient time before the ~~statement description~~ was
21 relied upon reasonably to have enabled that general partner
22 to ~~cancel or amend the certificate~~ rectify the inaccuracy by
23 effecting an amendment under Section 202, effecting a
24 declaration of termination under Section 203, or to file

1 filing a petition for its cancellation or amendment under
2 Section 205, or making a correction under Section 206A.

3
4 **SECTION 208. ~~SCOPE OF NOTICE~~ EFFECT OF**
5 **INFORMATION CONTAINED IN CERTIFICATE OF LIMITED**
6 **PARTNERSHIP.**¹⁶⁰

(a) The fact that a certificate of limited partnership is on file in the
8 office of the Secretary of State is notice¹⁶¹ that the
9 partnership is a limited partnership and the persons
10 designated ~~therein~~ in the certificate as general partners
11 are general partners, but, except as provided in subsections
12 (b), (c) and (d), it is not notice of any other fact.¹⁶²

13 (b) Subject to Section 803A(b) regarding an amendment indicating
14 dissolution, if the certificate of limited partnership
15 contains a statement granting authority to a general partner
16 to execute an instrument transferring real property held in
17 the name of the limited partnership, that statement is
18 conclusive in favor of a person¹⁶³ who gives value without
19 knowledge to the contrary.¹⁶⁴

20 (c) If the certificate of limited partnership contains a statement
21 limiting the authority of a general partner to execute an
22 instrument transferring real property held in the name of
23 the partnership, a person not a partner is deemed to know of
24 the limitation.¹⁶⁵

25 (d) If the certificate of limited partnership has been amended to

1 indicate that a general partner is dissociated, for the
2 purposes of Sections 602C and 602D a person not a partner is
3 deemed to have notice of the dissociation 90 days after the
4 amendment is filed.¹⁶⁶

5

6 **SECTION 209. DELIVERY OF CERTIFICATES DOCUMENTS**
7 **TO LIMITED PARTNERS.**¹⁶⁷ ~~Upon the return by the Secretary of~~
8 ~~State pursuant to Section 206 of a certificate marked~~
9 ~~"Filed", the general partners~~ Promptly after the [Secretary
10 of State] files a certificate of limited partnership,
11 amendment to certificate, or a declaration of termination,
12 the limited partnership¹⁶⁸ ~~shall promptly deliver or mail a~~
13 ~~copy of the certificate of limited partnership and each~~
14 ~~certificate of amendment or cancellation document to each~~
15 ~~limited partner unless the partnership agreement provides~~
16 ~~otherwise.~~

17 ¹⁶⁹**SECTION 210. CERTIFICATE**¹⁷⁰ **OF EXISTENCE OR**
18 **AUTHORIZATION.**

19 (a) A person may request the [Secretary of State] to furnish a
20 certificate of existence for a limited partnership or a
21 certificate of authorization for a foreign limited
22 partnership.

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

24 _____

1 (1) the limited partnership's name;
2 _____.
3 (2) that it is duly formed under the laws of
4 this State, the date of formation, and the limited
5 partnership's specified term;
6 _____.
7 (3) if payment is reflected in the records of
8 the [Secretary of State] and if nonpayment affects the
9 existence of the limited partnership, that all fees, taxes,
10 and penalties owed to this State have been paid;
11 _____.
12 (4) whether its most recent annual report
13 required by Section 211 has been filed with the [Secretary
14 of State];
15 _____.
16 (5) that a declaration of termination has not
17 been filed;¹⁷¹ and
18 _____.
19 (6) other facts of record in the office of the
20 [Secretary of State] which may be requested by the
21 applicant.

22(c) A certificate of authorization for a foreign limited partnership
23 must set forth:

24 _____.
25 (1) the foreign limited partnership's name used
26 in this State;

_____.

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

_____.

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

_____.

(4) whether its most recent annual report required by Section 211 has been filed with the [Secretary of State];

_____.

(5) that a certificate of cancellation has not been filed; and

_____.

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

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

1 ¹⁷²SECTION 211. ANNUAL REPORT FOR [SECRETARY OF
2 STATE].

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

7 _____

8 (1) the name of the limited partnership or
9 foreign limited partnership and the State or country under
10 whose law it is formed;

11 _____

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

15 _____

16 (3) the address of its principal office; and

17 _____

18 (4) the names and business addresses of its
19 general partners.

20) Information in an annual report must be current as of the date the
21 annual report is signed on behalf of the limited
22 partnership.

23 (c) The first annual report must be delivered to the [Secretary of
24 State] between [January 1 and April 1] of the year following
25 the calendar year in which a limited partnership was formed
26 or a foreign limited partnership was authorized to transact

1 business. Subsequent annual reports must be delivered to
2 the [Secretary of State] between [January 1 and April 1] of
3 the ensuing calendar years.

4 (d) If an annual report does not contain the information required in
5 subsection (a), the [Secretary of State] shall promptly
6 notify the reporting limited partnership or foreign limited
7 partnership and return the report to it for correction. If
8 the report is corrected to contain the information required
9 in subsection (a) and delivered to the [Secretary of State]
10 within 30 days after the effective date of the notice, it is
11 timely filed.

12 **ARTICLE 3**

13 **LIMITED PARTNERS**

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

15
16 (a) A person becomes a limited partner:

17 _____

18 _____

19 _____ ~~(1)~~ at the time the limited partnership is
20 formed if the person has entered into¹⁷³ a partnership
21 agreement in accordance with¹⁷⁴ Section 101B(b), or
22 _____

1 _____
2 _____ (2) at any later time specified in the records
3 of the limited partnership for becoming a limited partner.¹⁷⁵
4

5 (b) After the filing of a limited partnership's
6 original certificate of limited partnership, a person may be
7 admitted as an additional limited partner:
8 _____
9 _____

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

17 _____ (2) in the case of an assignee of a partnership
18 interest of a partner who has the power, as provided in
19 Section 704, to grant the assignee the right to become a
20 limited partner, upon the exercise of that power and
21 compliance with any conditions limiting the grant or
22 ~~exercise of the power.~~¹⁷⁶ After formation of the limited
23 partnership, a person becomes a limited partner as provided
24 in the partnership agreement, with the consent of all the
25 partners, as the result of a merger under [Article] 11, or
26 as the result of a conversion under [Article] TBD.¹⁷⁷

Alternative Version (in lieu of subsections (a) and (b))¹⁷⁸ -- A person becomes a limited partner as provided in the partnership agreement, with the consent of all the partners, as the result of a merger under [Article] 11, or as the result of a conversion under [Article] TBD.

¹⁷⁹

.

SECTION 302. VOTING MANAGEMENT RIGHTS AND POWERS OF LIMITED PARTNERS. ~~Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.~~¹⁸⁰

~~(a)~~ A limited partner has no right to participate in the management of the limited partnership, except for:¹⁸¹

_____

_____ ¹⁸²(1) the amendment to the partnership agreement under Section 101B(b);

.

(2) the authorization or ratification under Section 101B(c) (3) (ii) of acts or transactions that would otherwise violate the duty of loyalty;

_____

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

.
 (4) access to the required records under Section
305;¹⁸³

 (5) the admission of a new partner under
Sections 301(b), 401 or 801(4)(ii);¹⁸⁴

 (6) a decision under Section 502(d) to
compromise a claim against a partner;
 _____
 (7) the expulsion of a general partner under
Section 602(4) or a limited partner under Section 603(4);

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

 (9) a decision under Section 801(3) whether to
dissolve the limited partnership;
 _____
 (10) a decision under Section 801(4)(i) whether
to dissolve the limited partnership following the
dissociation of a general partner;
 _____
 (11) a decision under Section 801(4)(ii)
whether to continue the limited partnership and appoint a

new general partner following the dissociation of the
limited partnership's last general partner;

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

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

.
(14) the bringing of a derivative action under
Article 10;¹⁸⁵

.
(15) a decision under Section 1102 to have the
limited partnership participate in a merger; and

.
(16) a decision under Section [TBD] to have the
limited partnership participate in a conversion.

(b) The consent of each partner is necessary for:

.
(1) an ordinary limited partnership to become a
limited liability limited partnership; and

.
(2) a limited liability partnership to become an
ordinary limited partnership.

(c) Action requiring the consent or vote of limited partners under this
2 [Act]¹⁸⁶ may be taken without a meeting.¹⁸⁷

(d) A limited partner may appoint a proxy to vote or otherwise act for
4 the limited partner by signing an appointment instrument,
5 either personally or by the limited partner's attorney-in-
6 fact.¹⁸⁸

(e) A limited partner has no right and no power as a limited partner to
8 act for or bind the limited partnership.¹⁸⁹
9 _____¹⁹⁰

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

(a) Except as stated in subsection (b), a limited partner does not¹⁹¹ owe
12 any fiduciary duty to the limited partnership or to any
13 other partner.

14 **[two alternative versions of subsection (b) follow]**

Version #1 (pro tanto; from ULLCA) -- (b) A limited partner who pursuant
16 to the limited partnership agreement¹⁹² exercises some or all
17 of the rights of a general partner in the management and
18 conduct of the limited partnership's business is held to the
19 standards of conduct for a general partner to the extent
20 that the limited partner exercises the managerial authority
21 vested in a general partner by this [Act].¹⁹³

22 Version #2 (pro tanto) (inspired by RMBCA) -- (b) To the extent the
23 partnership agreement vests the discretion or powers of a

general partner in a limited partner, that limited partner
has the duties of a general partner with respect to the
vested discretion or powers.¹⁹⁴

~~A~~Alternative to Subsections (a) and (b)¹⁹⁵ -- (a) A limited partner does
not owe any fiduciary duty to the limited partnership or to
any other partner, even if in accordance with the
partnership agreement or other agreement the limited partner
possesses and exercises some or all of the rights of a
general partner in the management and conduct of the limited
partnership's business.

~~(c)~~ A limited 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.¹⁹⁶ The obligation
stated in this subsection displaces any common law or other
obligation of good faith and fair dealing.¹⁹⁷

~~(d)~~ A limited partner does not violate a duty or obligation under this
[Act] merely because the limited partner's conduct furthers
the limited partner's own interest.¹⁹⁸

.¹⁹⁹

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

2

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

14 _____

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

18 _____

19 _____

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

24 _____

25 _____

26 ~~(2) consulting with and advising a general~~

1 ~~partner with respect to the business of the limited~~
2 ~~partnership;~~

3 _____

4 _____

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

8 _____

9 _____

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

13 _____

14 _____

15 _____

16 _____

17 _____

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

20 _____

21 _____

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

24 _____

25 _____

26 _____

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

3 _____

4 _____

5 _____

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

9 _____

10 _____

11 _____

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

15 _____

16 _____

17 _____

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

19 _____

20 _____

21 _____

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

24 _____

25 _____

26 _____

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

3 ~~_____~~

4 ~~_____~~

5 ~~_____~~

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

9 ~~_____~~

10 ~~_____~~

11 ~~_____~~

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

14 ~~_____~~

15 ~~_____~~

16 ~~_____~~

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

22 ~~_____~~

23 ~~_____~~

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

26 ~~_____~~

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

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

10 (a) A limited partner is not liable for a debt, obligation, or other
11 liability of the limited partnership solely by reason of
12 being a limited partner, even if the limited partner
13 participates in the management and control of the limited
14 partnership.²⁰⁰

(d15) A limited partner who knowingly permits his [or her] the partner's
16 name to be used in the name of the limited partnership,
17 except under circumstances permitted by Section 102(2)(b) or
18 (c) or while the limited partnership is a limited liability
19 limited partnership,²⁰¹ is liable to creditors who extend
20 credit to the limited partnership without actual knowledge
21 that the limited partner is not a general partner.

22 **SECTION 304. PERSON ERRONEOUSLY BELIEVING**
23 **HIMSELF [OR HERSELF] LIMITED PARTNER.**²⁰²
24

1 (a) Except as provided in subsection (b), a
2 person who makes ~~a contribution to~~ an investment in²⁰³ a
3 business²⁰⁴ enterprise and erroneously but in good faith
4 believes that he [or she] has become a limited partner in
5 the enterprise ~~is not a general partner in the enterprise~~
6 ~~and~~²⁰⁵ is not bound by its obligations by reason of making
7 the ~~contribution~~ investment, receiving distributions from
8 the enterprise, or exercising any rights of or appropriate
9 to²⁰⁶ a limited partner, if, on ascertaining the mistake, ~~he~~
10 ~~[or she]~~ the person:

11
12
13 (1) causes an appropriate certificate of limited
14 partnership or ~~a certificate of~~ amendment to be executed and
15 filed; or

16
17
18 (2) withdraws from future equity participation
19 in the enterprise by executing and filing in the office of
20 the Secretary of State a ~~certificate declaring~~ declaration
21 of²⁰⁷ withdrawal under this section.²⁰⁸

22
23 (b) A person who makes ~~a contribution~~ an
24 investment of the kind described in subsection (a) is liable
25 to the same extent²⁰⁹ as a general partner to any third party
26 who transacts business with the enterprise (i) before the

1 person withdraws and an appropriate ~~certificate~~ declaration
2 is filed to show withdrawal, or (ii) before an appropriate
3 certificate or amendment is filed to show that ~~he [or she]~~
4 the person is not a general partner, but in either case only
5 if the third party actually believed in good faith that the
6 person was a general partner at the time of the
7 transaction.²¹⁰

8 (c) If a person makes a good faith and diligent
9 effort to comply with subsection (a) (1) and is unable to
10 cause the appropriate certificate of limited partnership or
11 amendment to be executed and filed, the person has the right
12 to withdraw from the enterprise pursuant to subsection
13 (a) (2) even if otherwise the withdrawal would breach an
14 agreement with others who are or have agreed to become co-
15 owners of the enterprise.²¹¹

16 **SECTION 305.²¹² LIMITED²¹³ PARTNER'S AND FORMER**
17 **LIMITED PARTNER'S RIGHT TO INFORMATION ~~INFORMATION.~~ Each**

18 ~~limited partner has the right to:~~

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

22 _____
23 ~~(2) obtain from the general partners from time~~
24 ~~to time upon reasonable demand (i) true and full information~~

1 ~~regarding the state of the business and financial condition~~
2 ~~of the limited partnership, (ii) promptly after becoming~~
3 ~~available, a copy of the limited partnership's federal,~~
4 ~~state and local income tax returns for each year, and (iii)~~
5 ~~other information regarding the affairs of the limited~~
6 ~~partnership as is just and reasonable.~~

7 (a) On 10 days written demand to the limited partnership, a limited
8 partner may inspect and copy during regular business hours
9 in the office designated office pursuant to Section
10 104(a) (1) the required records described in Section
11 105(TBD).²¹⁴ A partner making demand pursuant to this
12 subsection need not demonstrate, state, or have any
13 particular purpose for seeking the information.²¹⁵

(b) A limited partner may inspect and copy during regular business hours
15 at a reasonable location specified by the limited
16 partnership²¹⁶ the required records described in Section
17 105(TBD)²¹⁷ if:

18 _____

19 _____ (1) the limited partner seeks the other
20 information for a purpose reasonably related to the
21 partner's interest as a limited partner;²¹⁸

22 _____

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

(3) the information sought is directly connected to the limited partner's purpose.²¹⁹

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

.....

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

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

.....

(3) if the limited partnership declines to
provides a demanded record, the limited partnership's
reasons for declining.²²⁰

10 A person dissociated as a limited partner²²² may have access to the
20 records as described in subsection (a) to the extent that:

.....

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

.....

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

1
2 (3) the person meets the requirements stated in
3 subsection (b).

(4) The limited partnership shall respond to a demand made pursuant to
5 subsection (d) in the same manner as provided in subsection
6 (c).²²³

7
8 (f) A partnership agreement or the limited partnership²²⁴ may impose
9 reasonable limitations on the use²²⁵ of information obtained
10 under this Section. A partnership agreement may define
11 appropriate remedies for a breach of any use limitation, and
12 those remedies may include liquidated damages.^{226 227} In any
13 dispute concerning the reasonableness of a restriction under
14 this subsection, the limited partnership has the burden of
15 proving reasonableness.²²⁸

16 (g) A limited partnership may charge a limited partner or person
17 dissociated as a limited partner who makes a demand under
18 this section reasonable costs of copying.

19(h) A limited partner or person dissociated as a limited partner may
20 exercise the rights stated in this section through an
21 attorney or other agent. In that event, any use limitations
22 under subsection (f) apply both to the limited partner or
23 person and to the attorney or other agent. The rights stated
24 in this section extend to the legal representative of a
25 deceased limited partner and to the legal representative of
26 a person under legal disability who is limited partner or

1 person dissociated as a limited partner.²²⁹ The rights
2 stated in this section do not apply to a transferee, except
3 that subsection (d) creates rights for a person dissociated
4 as a limited partner.²³⁰

5 ARTICLE 4

6 GENERAL PARTNERS

7 **SECTION 401. ADMISSION OF ADDITIONAL GENERAL**
8 **PARTNERS.**²³¹

9 ~~_____ After the filing of a limited partnership's~~
10 ~~original certificate of limited partnership, additional~~
11 ~~general partners may be admitted as provided in writing in~~
12 ~~the partnership agreement or, if the partnership agreement~~
13 ~~does not provide in writing for the admission of additional~~
14 ~~general partners, with the written consent of all partners.~~

15 A person becomes a general partner as provided
16 in the partnership agreement, with the consent of all the
17 partners, under Section 801(4)(ii) following the
18 dissociation of a limited partnership's last general
19 partner, as the result of a merger under [Article] 11, or as
20 the result of a conversion under [Article] TBD.²³²

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

²³³ ~~SECTION 402. EVENTS OF WITHDRAWAL. Except as~~

~~approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:~~

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

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

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

~~(4) unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself [or herself] any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting~~

1 ~~or failing to contest the material allegations of a petition~~
2 ~~filed against him [or her] in any proceeding of this nature;~~
3 ~~or (vi) seeks, consents to, or acquiesces in the appointment~~
4 ~~of a trustee, receiver, or liquidator of the general partner~~
5 ~~or of all or any substantial part of his [or her]~~
6 ~~properties;~~

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

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

24 _____
25 _____
26 ~~_____ (i) his [or her] death; or~~

1 _____
2 _____
3 ~~_____ (ii) the entry of an order by a court of~~
4 ~~competent jurisdiction adjudicating him [or her] incompetent~~
5 ~~to manage his [or her] person or his [or her] estate;~~
6 _____

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

12 ~~_____ (8) in the case of a general partner that is a~~
13 ~~separate partnership, the dissolution and commencement of~~
14 ~~winding up of the separate partnership;~~
15 _____

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

21 ~~_____ (10) in the case of an estate, the distribution~~
22 ~~by the fiduciary of the estate's entire interest in the~~
23 ~~partnership.~~
24

1 **SECTION 403. GENERAL POWERS AND LIABILITIES**

2 **MANAGEMENT RIGHTS OF GENERAL PARTNERS.**²³⁴

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

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

18) Each general partner has equal rights in the management and conduct
19 of the limited partnership's business. Except for matters
20 listed in Section 302(a) (rights of limited partners), any
21 matter relating to the business of the limited partnership
22 may be exclusively decided by the general partner, or, if
23 there is more than one general partner, by a majority of the
24 general partners.²³⁵

25) Action requiring the consent or vote of general partners under this
26 [Act]²³⁶ may be taken without a meeting.²³⁷

(d) A general partner may appoint a proxy to vote or otherwise act for
the general partner by signing an appointment instrument,
either personally or by the general partner's attorney-in-
fact.²³⁸

(d) A limited partnership shall reimburse a
general partner for payments made and indemnify a general
partner for liabilities incurred by the general partner in
the ordinary course of the business of the partnership or
for the preservation of its business or property.²³⁹

(e) A limited partnership shall reimburse a general partner for an
advance to the limited partnership beyond the amount of
capital the general partner agreed to contribute.²⁴⁰

(f) A payment or advance made by a general partner which gives rise to a
limited partnership obligation under subsection (d) or (e)
constitutes a loan to the limited partnership which accrues
interest from the date of the payment or advance.²⁴¹

(g) A general partner is not entitled to remuneration for services
performed for the partnership.²⁴²

_____²⁴³

**SECTION 403A. GENERAL PARTNER AGENT OF LIMITED
PARTNERSHIP.**²⁴⁴

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

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

12 _____

13 _____ (2) An act of a general partner which is not
14 apparently for carrying on in the ordinary course the
15 limited partnership's business or business of the kind
16 carried on by the limited partnership binds the limited
17 partnership only if the act was authorized by the other
18 partners.²⁴⁵

19²⁴⁶

20 **SECTION 403B. LIMITED PARTNERSHIP LIABLE FOR**
21 **GENERAL PARTNER'S ACTIONABLE CONDUCT.**²⁴⁷

22 (a) A limited partnership is liable for loss or injury caused to a
23 person, or for a penalty incurred, as a result of a wrongful
24 act or omission, or other actionable conduct, of a general
25 partner acting in the ordinary course of business of the

1 limited partnership or with authority²⁴⁸ of the limited
2 partnership.

3 (b) If, in the course of the limited partnership's business or while
4 acting with authority²⁴⁹ of the limited partnership, a
5 general partner receives or causes the limited partnership
6 to receive money or property of a person not a partner, and
7 the money or property is misapplied by a general partner,
8 the limited partnership is liable for the loss.²⁵⁰

9 **SECTION 403C. GENERAL PARTNER'S LIABILITY.**²⁵¹

10 (a) Except as otherwise provided in subsections (b) and (c),²⁵² all
11 general partners are liable jointly and severally for all
12 obligations of the limited partnership unless otherwise
13 agreed by the claimant or provided by law.

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

18 (c) An obligation of a limited partnership incurred while the limited
19 partnership is a limited liability limited partnership,
20 whether arising in contract, tort, or otherwise, is solely
21 the obligation of the limited partnership. A general
22 partner is not personally liable, directly or indirectly, by
23 way of contribution or otherwise, for such an obligation
24 solely by reason of being or acting as a general partner.²⁵³

This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability limited partnership under Sections 302(b).

SECTION 403C-2. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.²⁵⁴

(a) A limited partnership may²⁵⁵ sue and be sued in the name of the limited partnership.

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

.

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

.

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

.

(3) the partner is a limited partner²⁵⁶ and is bringing a derivative action pursuant to Article 10.

(c) Subject to subsection (b), an action may be brought against the limited partnership and, to the extent

1 not inconsistent with Section 403C, any or all of the
2 general partners in the same action or in separate actions.

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

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

13 _____

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

18 _____

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

21 _____

22 _____ (3) the general partner has agreed that the
23 creditor need not exhaust limited partnership assets;

24 _____

25 _____ (4) a court grants permission to the judgment
26 creditor to levy execution against the assets of a general

1 partner based on a finding that limited partnership assets
2 subject to execution are clearly insufficient to satisfy the
3 judgment, that exhaustion of limited partnership assets is
4 excessively burdensome, or that the grant of permission is
5 an appropriate exercise of the court's equitable powers; or

6 _____

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

10 _____

11 (f) This section applies to any limited
12 partnership liability or obligation resulting from a
13 representation by a general partner or purported general
14 partner under Section 403C-3.

15 ²⁵⁷**SECTION 403C-3. LIABILITY OF PURPORTED**
16 **PARTNER.**

(a) 17 If a person, by words or conduct, purports to be a general partner,
18 or consents to being represented by another as a general
19 partner, in an actual or purported limited partnership,²⁵⁸
20 the purported partner is liable to a person to whom the
21 representation is made, if that person, relying on the
22 representation, enters into a transaction with the actual or
23 purported limited partnership. If the representation,
24 either by the purported general partner or by a person with
25 the purported general partner's consent, is made in a public

1 manner, the purported general partner is liable to a person
2 who relies upon the purported²⁵⁹ limited partnership even if
3 the purported partner is not aware of being held out as a
4 general partner to the claimant. If limited partnership
5 liability results, the purported partner is liable with
6 respect to that liability as if the purported general
7 partner were a general partner. If no limited partnership
8 liability results, the purported general partner is liable
9 with respect to that liability jointly and severally with
10 any other person consenting to the representation.

11 (b) If a person is thus represented to be a general partner in an
12 existing²⁶⁰ or purported limited partnership,²⁶¹ the purported
13 general partner is an agent of persons consenting to the
14 representation to bind them to the same extent and in the
15 same manner as if the purported partner were a general
16 partner, with respect to persons who enter into transactions
17 in reliance upon the representation.²⁶² If all of the
18 general partners of the existing limited partnership consent
19 to the representation, a limited partnership act or
20 obligation results. If fewer than all of the general
21 partners of the existing partnership consent to the
22 representation, the person acting and the general partners
23 consenting to the representation are jointly and severally
24 liable.²⁶³

25 (c) A person is not liable as a general partner merely because the
26 certificate of limited partnership names that person as a

1 general partner.²⁶⁴
(d) 2 Except as otherwise provided in subsections (a) and (b), persons who
3 are not general partners of a limited partnership²⁶⁵ are not
4 liable as general partners to other persons.

5 **SECTION 403D. GENERAL STANDARDS OF GENERAL**
6 **PARTNER'S CONDUCT.**²⁶⁶

7 _____
8 _____ (a) The only fiduciary duties a general partner
9 owes to the limited partnership and the other partners²⁶⁷ are
10 the duty of loyalty and the duty of care stated in
11 subsections (b) and (c).

12) A general partner's duty of loyalty to the limited partnership and
13 the other partners is limited to the following:

14 _____

15 _____ (1) to account to the limited partnership and
16 hold as trustee for it any property, profit, or benefit
17 derived by the general partner in the conduct and winding up
18 of the limited partnership business or derived from a use by
19 the general partner of limited partnership property,
20 including the appropriation of a limited partnership
21 opportunity;

22 _____

23 _____ (2) to refrain from dealing with the limited
24 partnership in the conduct or winding up of the limited

1 partnership business as or on behalf of a party having an
2 interest adverse to the limited partnership; and

3 _____

4 _____ (3) to refrain from competing with the limited
5 partnership in the conduct of the limited partnership
6 business before the dissolution of the limited partnership.

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

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

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

(f) A general partner is relieved of liability imposed by law for
21 violation of the standards prescribed by subsections (b)
22 through (e) to the extent of the managerial authority
23 delegated to the limited partners by the partnership
24 agreement.²⁶⁸

25 ²⁶⁹

1 **SECTION 403E. GENERAL PARTNER'S AND FORMER**

2 **GENERAL PARTNER'S RIGHT TO INFORMATION.**²⁷⁰

(a) 3 A general partner may inspect and copy during regular business hours
4 in the office designated office pursuant to Section
5 104(a) (1) the required records described 105(TBD).²⁷¹ A
6 general partner may inspect and copy during regular business
7 hours at a reasonable location specified by the limited
8 partnership any other records maintained by the limited
9 partnership regarding the limited partnership's business,
10 affairs, and financial condition.²⁷²

²⁷³~~1~~(b) Each general partner and the limited partnership shall furnish to
12 a general partner:
13 _____
14 _____ (1) without demand, any information concerning
15 the limited partnership's business and affairs reasonably
16 required for the proper exercise of the general partner's
17 rights and duties under the partnership agreement or this
18 [Act].²⁷⁴ and
19 _____
20 _____ (2) on demand, any other information concerning
21 the limited partnership's business and affairs, except to
22 the extent the demand or the information demanded is
23 unreasonable or otherwise improper under the
24 circumstances.²⁷⁵

²⁷⁶~~5~~(c) On ten days written demand to the limited partnership, a person
26 dissociated as a general partner may have access to the

1 records described in subsection (a)²⁷⁷ to the extent that:
2 _____.
3 _____ (1) the record pertains to the period during
4 which the person was a general partner;
5 _____.
6 _____ (2) the person seeks the information in good
7 faith; and
8 _____.
9 _____ (3) the person meets the requirements stated in
10 Section 305(b).

11(d) The limited partnership shall respond to a demand made pursuant to
12 subsection (c) in the same manner as provided in Section
13 305(c).

14 (e) A partnership agreement or the limited partnership²⁷⁸ may impose
15 reasonable limitations on the use²⁷⁹ of information obtained
16 under this Section. A partnership agreement may define
17 appropriate remedies for a breach of any use limitation, and
18 those remedies may include liquidated damages.²⁸⁰ In any
19 dispute concerning the reasonableness of a restriction under
20 this subsection, the limited partnership has the burden of
21 proving reasonableness.²⁸¹

~~22~~ 22) A limited partnership may charge a person dissociated as a general
23 partner who makes a demand under this section reasonable
24 costs of copying.²⁸²

25(g) A general partner or person dissociated as a general partner may
26 exercise the rights stated in this section through an

1 attorney or other agent. In that event, any use limitations
2 under subsection (e) apply to the attorney or other agent as
3 well as to the general partner or person dissociated as a
4 general partner. The rights stated in this section extend
5 to the legal representative of a person who has dissociated
6 as a general partner due to death or legal disability.²⁸³ The
7 rights stated in this section do not apply to a transferee,
8 except that subsection (c) creates rights for a dissociated
9 general partner.²⁸⁴

10 **SECTION 404. ~~CONTRIBUTIONS BY GENERAL PARTNER~~**
11 **DUAL CAPACITY.** ~~A general partner of a limited partnership~~
12 ~~may make contributions to the partnership and share in the~~
13 ~~profits and losses of, and in distributions from, the~~
14 ~~limited partnership as a general partner. A general partner~~
15 ~~also may make contributions to and share in profits, losses,~~
16 ~~and distributions as a limited partner. A person who is~~
17 ~~both a general partner and a limited partner has the rights~~
18 ~~and powers, and is subject to the restrictions and~~
19 ~~liabilities, of a general partner and, except as provided in~~
20 ~~the partnership agreement, also has the powers, and is~~
21 ~~subject to the restrictions, of a limited partner to the~~
22 ~~extent of his [or her] participation in the partnership as a~~
23 ~~limited partner. A person may be both a general partner~~
24 ~~and a limited partner. A person who is both a general and~~

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

10 ~~**SECTION 405. VOTING.** The partnership agreement~~
11 ~~may grant to all or certain identified general partners the~~
12 ~~right to vote (on a per capita or any other basis),~~
13 ~~separately or with all or any class of the limited partners,~~
14 ~~on any matter.~~²⁸⁵

16 **ARTICLE 5**

17 **FINANCE**

18 **SECTION 501. FORM OF CONTRIBUTION.**

19 ~~The contribution of a partner may be in cash, property, or services~~
20 ~~rendered, or a promissory note or other obligation to~~
21 ~~contribute cash or property or to perform services. A~~
22 ~~contribution of a member of a limited liability company may~~
23 ~~consist of tangible or intangible property or other benefit~~

1 to the company, including money, promissory notes, services
2 performed, or other agreements to contribute cash or
3 property, or contracts for services to be performed.²⁸⁶

4

5 **SECTION 502. LIABILITY FOR CONTRIBUTION.**

6
7 (a) ~~A promise by a limited partner to~~
8 ~~contribute to the limited partnership is not enforceable~~
9 ~~unless set out in a writing signed by the limited~~
10 ~~partner.~~²⁸⁷

11
12 ²⁸⁸ (b) ~~Except as provided in the partnership~~
13 ~~agreement, a partner is obligated to the limited partnership~~
14 ~~to perform any enforceable promise to contribute cash or~~
15 ~~property or to perform services, even if he [or she] is~~
16 ~~unable to perform because of death, disability, or any other~~
17 ~~reason. A partner's obligation to contribute money,~~
18 ~~property, or other benefit to, or to perform services for, a~~
19 ~~limited liability company is not excused by the member's~~
20 ~~death, disability, or other inability to perform personally.~~

²⁸⁹ ~~(c)~~ 11) If a partner does not make ~~the~~ a required contribution of property
22 or services, ~~he [or she]~~ the partner is obligated at the
23 option of the limited partnership to contribute ~~cash~~ money
24 equal to that portion of the value, as stated in the
25 partnership required records ~~required to be kept pursuant to~~

~~Section 105,~~ of the stated contribution which has not been made.²⁹⁰

less otherwise provided in the partnership agreement, the The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this [Act] may be compromised only by consent of all partners.²⁹¹ ~~Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the original obligation~~ A creditor of a limited partnership who extends credit or otherwise acts in reliance on an obligation described in subsection (a), and without notice of any compromise under this subsection, may enforce the original obligation.²⁹²

SECTION 503. ~~SHARING~~ ALLOCATION OF PROFITS AND

LOSSES. The profits and losses of a limited partnership shall be allocated among the partners ²⁹³~~and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated~~²⁹⁴ on the basis of the value,²⁹⁵ as stated in the partnership required records ~~required to be kept pursuant to Section 105,~~ of the contributions made by each partner to

1 the extent ~~they~~ those contributions have been received by
2 the limited partnership and have not been returned. A
3 partner receives a return of contribution to the extent
4 that a distribution to the partner reduces the partner's
5 share of the fair value of the net assets of the limited
6 partnership below the value, as set forth in the required
7 records required , of the partner's contribution which has
8 not been distributed to the partner.²⁹⁶

9 **SECTION 504. SHARING OF DISTRIBUTIONS.**

10 ~~Distributions of cash or other assets of a limited~~
11 ~~partnership shall be allocated among the partners and among~~
12 ~~classes of partners in the manner provided in writing in the~~
13 ~~partnership agreement. If the partnership agreement does~~
14 ~~not so provide in writing, distributions shall be made on~~
15 ~~the basis of the value, as stated in the partnership~~
16 ~~records required to be kept pursuant to Section 105, of the~~
17 ~~contributions made by each partner to the extent they have~~
18 ~~been received by the partnership and have not been~~
19 ~~returned.~~²⁹⁷ Except as provided in Section 804(b) for winding
20 up distributions, any distributions made shall be in
21 proportion to the partners' allocation of profit and losses
22 in effect at the time the limited partnership declares the
23 distribution.²⁹⁸

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SECTION 601. INTERIM DISTRIBUTIONS. ~~Except as~~

SECTION 602. WITHDRAWAL DISSOCIATION OF AS A

GENERAL PARTNER.³⁰¹ ~~A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him [or her].~~ A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:³⁰²

(1) the limited partnership's having notice of the person's express will
to withdraw as a general partner or on a later date
specified by the person;³⁰³

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

(3) the person's expulsion as a general partner pursuant to the
partnership agreement;

(4) the person's expulsion as a general partner by the unanimous vote of
the other partners if:³⁰⁴

_____

(i) it is unlawful to carry on the limited
partnership business with that person as a general partner;

_____

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

_____

(iii) the person is a corporation and, within 90
days after the limited partnership notifies the person that
it will be expelled as a general partner 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

1 no reinstatement of its charter or its right to conduct
2 business;³⁰⁵ or
3 _____.
4 _____(iv) the person is a limited liability company
5 or partnership that has been dissolved and whose business is
6 being wound up;
(7) on application by the limited partnership,³⁰⁶ the person's expulsion
8 as a general partner by judicial determination because:
9 _____.
10 _____(i) the person engaged in wrongful conduct that
11 adversely and materially affected the partnership business;
12 _____.
13 _____(ii) the person willfully or persistently
14 committed a material breach of the partnership agreement or
15 of a duty owed to the partnership or the other partners
16 under Section 403D; or
17 _____
18 _____
19 _____(iii) the person engaged in conduct relating to
20 the limited partnership business which makes it not
21 reasonably practicable to carry on the business with the
22 person as a general partner;³⁰⁷
23 _____. (6) the person's:
24 _____
25 _____
26 _____(i) becoming a debtor in bankruptcy;

1 _____
2 _____
3 _____ (ii) executing an assignment for the benefit of
4 creditors;
5 _____
6 _____
7 _____ (iii) seeking, consenting to, or acquiescing in
8 the appointment of a trustee, receiver, or liquidator of
9 that partner or of all or substantially all of that general
10 partner's property; or
11 _____
12 _____
13 _____ (iv) failing, within 90 days after the
14 appointment, to have vacated or stayed the appointment of a
15 trustee, receiver, or liquidator of the general partner or
16 of all or substantially all of the person's property
17 obtained without the person's consent or acquiescence, or
18 failing within 90 days after the expiration of a stay to
19 have the appointment vacated;
20 _____ (7) in the case of a person who is an individual:
21 _____
22 _____ (i) the person's death;
23 _____
24 _____ (ii) the appointment of a guardian or general
25 conservator for the person;³⁰⁸ or
26 _____

1 (iii) a judicial determination that the person
 2 has otherwise become incapable of performing the person's
 3 duties as a general partner under the partnership agreement;
 4 (8) in the case of a person that is a trust or is acting as a general
 5 partner by virtue of being a trustee of a trust,
 6 distribution of the trust's entire transferable interest in
 7 the limited partnership, but not merely by reason of the
 8 substitution of a successor trustee;³⁰⁹
 (9) in the case of a person that is an estate or is acting as a general
 10 partner by virtue of being a personal representative of an
 11 estate, distribution of the estate's entire transferable
 12 interest in the limited partnership, but not merely by
 13 reason of the substitution of a successor personal
 14 representative;
 15 (10) termination of a general partner who is not an individual,
 16 partnership, limited liability company, corporation, trust,
 17 or estate;
 (11) the limited partnership participates in a merger under [Article] 11
 19 and:
 20 _____
 21 _____ . (i) is not the surviving organization;³¹⁰ or
 22 _____ (ii) is the surviving organization but as a
 23 result of the merger the person ceases to be a
 24 general partner.³¹¹

25 **SECTION 602A. PERSON'S POWER TO DISSOCIATE AS A**

1 **GENERAL PARTNER; WRONGFUL DISSOCIATION**³¹²

2 (a) A person has the power to dissociate as a general partner at any
3 time, rightfully or wrongfully, by express will pursuant to
4 Section 602(1).

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

6 _____

7 _____ (1) it is in breach of an express provision of
8 the partnership agreement;³¹³ or

9 _____

10 _____ (2) it occurs before the termination of the
11 limited partnership,³¹⁴ and:

12 _____

13 _____

14 _____ (i) the person withdraws³¹⁵ as a general partner
15 by express will;³¹⁶

16 _____

17 _____

18 _____ (ii) the person is expelled as a general partner
19 by judicial determination under Section 602(5);

20 _____

21 _____

22 _____ (iii) the person is dissociated as a general
23 partner by becoming a debtor in bankruptcy;³¹⁷ or

24 _____

25 in the case of a person who is not an individual, trust other than a
26 business trust, or estate, the person is is expelled or

otherwise dissociated as a general partner because it
willfully dissolved or terminated.

³¹⁸(3) A person who wrongfully dissociates as a general partner is liable
to the limited partnership and, subject to Section 1005, to
the other partners for damages caused by the dissociation.³¹⁹
The liability is in addition to any other obligation of the
general partner to the limited partnership or to the other
partners.

**SECTION 602B. EFFECTS OF DISSOCIATION AS A
GENERAL PARTNER**³²⁰

Upon a person's dissociation as a general partner:³²¹
.....

(1) the person's right to participate as a
general partner in the management and conduct of the
partnership business terminates;³²²

.....
(2) the person's duty of loyalty as a general
partner under Section 403D(b) (3) terminates;

.....
(3) the person's duty of loyalty as a general
partner under Section 403D(b) (1) and (2) and duty of care
under Section 403D(c) continue only with regard to matters
arising and events occurring before the person's
dissociation as a general partner;³²³

.....

_____ (4) subject to Article 11,³²⁴ any transferable
interest owned by the person immediately before dissociation
in the person's capacity as a general partner is owned by
the person as a mere transferee; and³²⁵

.

_____ (5) the dissociation does not of itself
discharge the person from any obligation to the limited
partnership or the other partners which pertains to the time
during which the person was a general partner.³²⁶

.

³²⁷

.

SECTION 602C. DISSOCIATED GENERAL PARTNER'S
POWER TO BIND AND LIABILITY TO PARTNERSHIP.³²⁸

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

_____

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

.

_____ (2) at the time the other party enters into the

transaction:

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

_____

(ii) fewer than 90 days have passed since the certificate of limited
partnership was amended to state that person is dissociated
as a general partner; and³²⁹

_____

(iii) the other party does not have notice of the dissociation,
reasonably believes that the person is still a general
partner, and is not deemed to have had knowledge under
Section 208(c) of any relevant limitation.³³⁰

.

. (iv)

(b) A person who is dissociated as a general
partner is liable to the limited partnership for any damage
caused to the limited partnership arising from an obligation
incurred by the limited partnership under subsection (a).³³¹

. (c) This section is subject to Section 803A.³³²

**SECTION 602D. DISSOCIATED GENERAL PARTNER'S
LIABILITY TO OTHER PERSONS.**³³³

1 (a) A person's dissociation as a general
2 partner does not of itself discharge the person's liability
3 as a general partner for a limited partnership obligation
4 incurred before dissociation. The person is not liable for
5 a limited partnership obligation incurred after
6 dissociation, except as otherwise provided in subsection
7 (b).

(B) A person who has dissociated as a general partner without resulting
9 in a dissolution and winding up of the limited partnership
10 business³³⁴ is liable as a general partner on a transaction
11 entered into after the dissociation by the limited
12 partnership, or a surviving partnership under [Article] 11,
13 only if:

14 _____

15 _____ (1) a general partner would be liable on the
16 transaction³³⁵; and

17 _____

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

20 _____

21 _____

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

23 _____

24 (ii) fewer than 90 days have passed since the certificate of limited
25 partnership was amended to state that person is dissociated
26 as a general partner;³³⁶ and

1
2 (iii) the other party does not have notice of the dissociation and
3 reasonably believes that the person is still a general
4 partner.³³⁷

5
6 (c) By agreement with the limited partnership
7 creditor and the limited partnership,³³⁸ a person dissociated
8 as a general partner may be released from liability for a
9 limited partnership obligation.

10
11 (d) A person dissociated as a general partner
12 is released from liability for a limited partnership
13 obligation if a limited partnership creditor, with notice of
14 the person's dissociation as a general partner³³⁹ but without
15 the person's consent, agrees to a material alteration in the
16 nature or time of payment of a limited partnership
17 obligation.

18 **SECTION 603. WITHDRAWAL DISSOCIATION OF AS A**
19 **LIMITED PARTNER.**³⁴⁰

20 ~~(a) A limited partner has no right to dissociate before the termination~~
21 ~~of the limited partnership. may withdraw from a limited~~
22 ~~partnership at the time or upon the happening of events~~
23 ~~specified in writing in the partnership agreement. If the~~
24 ~~agreement does not specify in writing the time or the events~~
25 ~~upon the happening of which a limited partner may withdraw~~

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

(b) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:³⁴¹

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

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

(3) the person's expulsion as a limited partner pursuant to the partnership agreement;

~~(4) the person's expulsion as a limited partner by the unanimous vote of the other partners if:~~

~~_____~~

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

~~_____~~

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

1

2 (iii) the person is a corporation and, within 90

3 days after the limited partnership notifies the person that

4 it will be expelled as a limited partner because it has

5 filed a certificate of dissolution or the equivalent, its

6 charter has been revoked, or its right to conduct business

7 has been suspended by the jurisdiction of its incorporation,

8 there is no revocation of the certificate of dissolution or

9 no reinstatement of its charter or its right to conduct

10 business;³⁴² or

11

12 (iv) the person is a limited liability company

13 or partnership that has been dissolved and whose business is

14 being wound up;

15) on application by the limited partnership,³⁴³ the person's expulsion

16 as a limited partner by judicial determination because:

17

18 (i) the person engaged in wrongful conduct that

19 adversely and materially affected the partnership business;

20

21 (ii) the person willfully or persistently

22 committed a material breach of the partnership agreement or

23 of the obligation of good faith and fair dealing under

24 Section 302A(c); or

25 _____

26 _____

1 (iii) the person engaged in conduct relating to
 2 the limited partnership business which makes it not
 3 reasonably practicable to carry on the business with the
 4 person as limited partner;³⁴⁴
 5 ³⁴⁵
 6) in the case of a person who is an individual, the person's death;³⁴⁶
 7) in the case of a person that is a trust or is acting as a limited
 8 partner by virtue of being a trustee of a trust,
 9 distribution of the trust's entire transferable interest in
 10 the limited partnership, but not merely by reason of the
 11 substitution of a successor trustee;
 12) in the case of a person that is an estate or is acting as a limited
 13 partner by virtue of being a personal representative of an
 14 estate, distribution of the estate's entire transferable
 15 interest in the limited partnership, but not merely by
 16 reason of the substitution of a successor personal
 17 representative;
 18 (9) termination of a limited partner who is not an individual,
 19 partnership, limited liability company, corporation, trust,
 20 or estate;
³⁴⁷11) the limited partnership participates in a merger under [Article]
 22 11 and:
 23
 24 . . . (i) is not the surviving organization; or
 25 (ii) is the surviving organization but as a
 26 result of the merger the person ceases to be a

limited partner.

SECTION 603A. EFFECT OF DISSOCIATION AS A LIMITED PARTNER.

Upon a person's dissociation as a limited partner,

.

(1) the person has no further rights as a limited partner;³⁴⁸

.

(2) the person's obligation of good faith and fair dealing as a limited partner under Section 302A(c) continues only as to matters arising and events occurring before the dissociation;³⁴⁹

.

(3) subject to [Article] 11, any transferable interest owned by the the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee; and³⁵⁰

.

(4) the dissociation does not of itself discharge the person from any obligation to the limited partnership or the other partners which pertains to the time during which the person was a general partner.³⁵¹

.³⁵²

1 **SECTION 604. NO DISTRIBUTION UPON WITHDRAWAL ON**
2 **ACCOUNT OF DISSOCIATION.** ~~Except as provided in this~~
3 ~~Article, upon withdrawal any withdrawing partner is entitled~~
4 ~~to receive any distribution to which he [or she] is entitled~~
5 ~~under the partnership agreement and, if not otherwise~~
6 ~~provided in the agreement, he [or she] is entitled to~~
7 ~~receive, within a reasonable time after withdrawal, the fair~~
8 ~~value of his [or her] interest in the limited partnership as~~
9 ~~of the date of withdrawal based upon his [or her] right to~~
10 ~~share in distributions from the limited partnership. A~~
11 ~~person has no right to receive any distribution on account~~
12 ~~of dissociation.~~³⁵³

13
14 **SECTION 605. DISTRIBUTION IN KIND.** ~~Except as~~
15 ~~provided in writing in the partnership agreement, a A~~
16 ~~partner, regardless of the nature of his [or her]~~
17 ~~contribution, has no right to demand and receive any~~
18 ~~distribution from a limited partnership in any form other~~
19 ~~than cash. Except as provided in writing in the partnership~~
20 ~~agreement, a A partner may not be compelled to accept a~~
21 ~~distribution of any asset in kind from a limited partnership~~
22 ~~to the extent that the percentage of the asset distributed~~
23 ~~to him [or her] the partner exceeds a percentage of that~~
24 ~~asset which is equal to the percentage in which he [or she]~~
25 ~~the partner shares in distributions from the limited~~
26 ~~partnership.~~³⁵⁴

1 **SECTION 606. RIGHT TO DISTRIBUTION.**³⁵⁵ At the
2 time a partner becomes entitled to receive a distribution,
3 ~~he [or she]~~ the partner has the status of, and is entitled
4 to all remedies available to, a creditor of the limited
5 partnership with respect to the distribution, except that
6 the limited partnership's obligation to make a distribution
7 is subject to offset for any amount owed to the limited
8 partnership by the partner or dissociated partner on whose
9 account the distribution is made.³⁵⁶

11 **SECTION 607. LIMITATIONS ON DISTRIBUTION.**³⁵⁷ ~~A~~
12 ~~partner may not receive a distribution from a limited~~
13 ~~partnership to the extent that, after giving effect to the~~
14 ~~distribution, all liabilities of the limited partnership,~~
15 ~~other than liabilities to partners on account of their~~
16 ~~partnership interests, exceed the fair value of the~~
17 ~~partnership assets.~~

18 ~~(a) A limited partnership may not make a distribution in violation of~~
19 ~~the partnership agreement.~~³⁵⁸

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

22 _____
23 (1) the limited partnership would not be able to
24 pay its debts as they become due in the ordinary course of

1 business;³⁵⁹ or
2 _____
3 _____ (2) the limited partnership's total assets would
4 be less than the sum of its total liabilities plus the
5 amount that would be needed, if the limited partnership were
6 to be dissolved, wound up, and terminated at the time of the
7 distribution, to satisfy the preferential rights upon
8 dissolution, winding up, and termination of partners whose
9 preferential rights are superior to those receiving the
10 distribution.³⁶⁰

11 (c) A limited partnership may base a determination that a distribution
12 is not prohibited under subsection (b) on financial
13 statements prepared on the basis of accounting practices and
14 principles that are reasonable in the circumstances or on a
15 fair valuation or other method that is reasonable in the
16 circumstances.³⁶¹

17 ³⁶²(d) Except as otherwise provided in subsection (f), the effect of a
18 distribution under subsection (b) is measured:
19 _____
20 _____ (1) in the case of distribution by purchase,
21 redemption, or other acquisition of a transferable interest
22 in the limited partnership, as of the date money or other
23 property is transferred or debt incurred by the limited
24 partnership;³⁶³ and
25 _____
26 _____ (2) in all other cases,³⁶⁴ as of the date:

1

(i) 2 the distribution is authorized, if the payment occurs within 120 days
3 after that date; or
4

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

(d) 6 A limited partnership's indebtedness to a partner incurred by reason
7 of a distribution made in accordance with this section is at
8 parity with the limited partnership's indebtedness to its
9 general, unsecured creditors.³⁶⁵

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

17 (f) If indebtedness is issued as a distribution, each payment of
18 principal or interest on the indebtedness is treated as a
19 distribution, the effect of which is measured on the date
20 the payment is made.³⁶⁶

21

22 ³⁶⁷**SECTION 608. LIABILITY UPON RETURN OF**
23 **CONTRIBUTION FOR UNLAWFUL**³⁶⁸ **DISTRIBUTIONS.**

24

25 ~~(a) If a partner has received the return of any~~

1 ~~part of his [or her] contribution without violation of the~~
2 ~~partnership agreement or this [Act], he [or she] is liable~~
3 ~~to the limited partnership for a period of one year~~
4 ~~thereafter for the amount of the returned contribution, but~~
5 ~~only to the extent necessary to discharge the limited~~
6 ~~partnership's liabilities to creditors who extended credit~~
7 ~~to the limited partnership during the period the~~
8 ~~contribution was held by the partnership.~~

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

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

(a) 24 A general partner who votes for or assents to a distribution made in
25 violation of Section 607³⁶⁹ is personally liable to the
26 limited partnership for the amount of the distribution which

1 exceeds the amount that could have been distributed without
2 the violation if it is established that in voting for or
3 assenting to the distribution the general partner failed to
4 comply with Section 607(c) or Section 403D.³⁷⁰

(5) A partner who knew a distribution was made in violation of Section
6 607 is personally liable to the limited partnership, but
7 only to the extent that the distribution received by the
8 partner exceeded the amount that could have been properly
9 paid under Section 607.³⁷¹

(c) A general partner³⁷² against whom an action is brought under
11 subsection (a)³⁷³ may implead in the action all:
12 _____
13 _____ (1) other general partners and persons
14 dissociated as general partners who voted for or assented to
15 the distribution in violation of subsection (a) and may
16 compel contribution from them; and
17 _____
18 _____ ³⁷⁴(2) partners and dissociated partners who
19 received a distribution in violation of subsection (b) and
20 may compel contribution from the partner or dissociated
21 partner in the amount received in violation of subsection
22 (b).³⁷⁵

(d) A proceeding under this section is barred unless it is commenced
24 within two years after the distribution.³⁷⁶

1 ARTICLE 7

2 ~~ASSIGNMENT OF PARTNERSHIP TRANSFERABLE INTERESTS AND RIGHTS~~
3 ~~OF TRANSFEREES AND CREDITORS~~³⁷⁷

4 SECTION 701. ~~NATURE OF PARTNERSHIP PARTNER'S~~
5 ~~TRANSFERABLE INTEREST.~~ The only transferable interest of a
6 partner is the partner's allocation³⁷⁸ of the profits and
7 losses of the partnership and the partner's right to receive
8 distributions.³⁷⁹ ~~The A partnership interest is personal~~
9 property.

10
11 SECTION 702.³⁸⁰ ~~ASSIGNMENT OF PARTNERSHIP~~
12 ~~INTEREST~~ TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.
13 ~~Except as provided in the partnership agreement, a~~
14 ~~partnership interest is assignable in whole or in part. An~~
15 ~~assignment of a partnership interest does not dissolve a~~
16 ~~limited partnership or entitle the assignee to become or to~~
17 ~~exercise any rights of a partner. An assignment entitles~~
18 ~~the assignee to receive, to the extent assigned, only the~~
19 ~~distribution to which the assignor would be entitled.~~
20 ~~Except as provided in the partnership agreement, a partner~~
21 ~~ceases to be a partner upon assignment of all his [or her]~~
22 ~~partnership interest.~~

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

1 interest in the limited partnership:

2 _____

3 _____ (1) is permissible;

4 _____

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

8 _____

9 _____ (3) does not, as against the other partners or
10 the limited partnership, entitle the transferee, during the
11 continuance of the limited partnership, to participate in
12 the management or conduct of the limited partnership
13 business, to require access to information concerning
14 limited partnership transactions, or to inspect or copy the
15 limited partnership books or records.

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

18 _____

19 _____ (1) to receive, in accordance with the transfer,
20 distributions to which the transferor would otherwise be
21 entitled, and if the interest held by the transferee is a
22 bare transferable interest, a written explanation of the
23 basis on which the limited partnership calculated any amount
24 distributed;³⁸¹

25

26 _____ (2) to receive upon the dissolution and winding

up of the limited partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

.
(3) to seek under Section 802(b) a judicial determination that it is equitable to wind up the limited partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of limited partnership transactions only from the date of dissolution.³⁸²

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred, including the transferor's liability to the limited partnership under Sections 207 and 502.³⁸³

(e) A limited 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 limited 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.

(g) A transferee who becomes a partner is liable for the transferor's obligations to make and return contributions as provided in Articles 5 and 6.³⁸⁴ However, the transferee is not

1 obligated for liabilities unknown to the transferee at the
2 time the transferee became a partner.³⁸⁵

3 **SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR**
4 **TRANSFeree.**³⁸⁶

5 (a) On application to a court of competent jurisdiction by any judgment
6 creditor of a partner or transferee,³⁸⁷ the court may charge
7 the partnership transferable interest of the partner
8 judgment debtor with payment of the unsatisfied amount of
9 the judgment with interest. To the extent so charged, the
10 judgment creditor has only the rights of ~~an assignee of the~~
11 ~~partnership interest~~ a transferee. The court may appoint a
12 receiver of the share of the distributions due or to become
13 due to the judgment debtor in respect of the partnership and
14 make all other orders, directions, accounts, and inquiries
15 the judgment debtor might have made or which the
16 circumstances of the case may require to give effect to the
17 charging order.³⁸⁸

18 (b) A charging order constitutes a lien on the judgment debtor's
19 transferable interest. The court may order a foreclosure of
20 the interest subject to the charging order at any time. The
21 purchaser at the foreclosure sale has the rights of a
22 transferee.³⁸⁹

23 ³⁹⁰(c) At any time before foreclosure, an interest charged may be
24 redeemed:

1 _____
2 _____
3 _____ (1) by the judgment debtor;
4 _____
5 _____ (2) with property other than limited partnership
6 property, by one or more of the other partners; or
7
8 _____ (3) with limited partnership property, by the
9 limited partnership with the consent of all partners whose
10 interests are not so charged.³⁹¹

~~(d)~~ This [Act] does not deprive any partner or transferee of the benefit
12 of any exemption laws applicable to his ~~[or her]~~ partnership
13 the partner's or transferee's transferable interest.
14 (e) This section provides the exclusive remedy by which a judgment
15 creditor of a partner or transferee may satisfy a judgment
16 out of the judgment debtor's transferable interest.³⁹²

17 **~~SECTION 704. RIGHT OF ASSIGNEE TO BECOME~~**
18 **~~LIMITED PARTNER.~~**³⁹³
19

20 ~~(a) An assignee of a partnership interest,~~
21 ~~including an assignee of a general partner, may become a~~
22 ~~limited partner if and to the extent that (i) the assignor~~

1 gives the assignee that right in accordance with authority
2 ~~described in the partnership agreement,~~³⁹⁴ ~~or (ii) all~~
3 ~~other partners consent.~~

4 _____
5 (b) ~~An assignee who has become a limited~~
6 ~~partner has, to the extent assigned, the rights and powers,~~
7 ~~and is subject to the restrictions and liabilities, of a~~
8 ~~limited partner under the partnership agreement and this~~
9 ~~[Act]. An assignee who becomes a limited partner also is~~
10 ~~liable for the obligations of his [or her] assignor to make~~
11 ~~and return contributions as provided in Articles 5 and 6.~~
12 ~~However, the assignee is not obligated for liabilities~~
13 ~~unknown to the assignee at the time he [or she] became a~~
14 ~~limited partner.~~³⁹⁵

15 _____
16 (c) ~~If an assignee of a partnership interest~~
17 ~~becomes a limited partner, the assignor is not released from~~
18 ~~his [or her] liability to the limited partnership under~~
19 ~~Sections 207 and 502.~~³⁹⁶

20 **SECTION 705. POWER OF ESTATE OF DECEASED OR**
21 **INCOMPETENT PARTNER.**³⁹⁷

22 (a) If a partner who is an individual dies,³⁹⁸the deceased partner's
23 executor, administrator, or other legal representative may
24 exercise the rights of a transferee as provided in Section

702;³⁹⁹

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

.....

(1) if the individual is a limited partner, the partner's ~~executor, administrator,~~ guardian, conservator, or other legal representative may exercise all the individual's ~~limited partner's~~ rights as a limited partner for the purpose of ~~settling his [or her] estate or administering his [or her]~~ the individual's property, including any power ~~the partner had to give an assignee the right to become a limited partner;~~⁴⁰⁰ and

.....

(2) if before the adjudication the individual was a general partner, the guardian, conservator, or other legal representative may not exercise any right or power of a general partner but for the purpose of administering the individual's property may exercise the rights that belong to the individual as a person who has dissociated as a general partner.⁴⁰¹

~~ner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.~~⁴⁰²

1 **ARTICLE 8**

2 **DISSOLUTION**

3 {Sections 800 and 800A have been relocated to Article 6}

4 _____

5 **SECTION 801. NONJUDICIAL DISSOLUTION.** A

6 limited partnership is dissolved ~~and its affairs shall be~~
7 ~~wound up~~⁴⁰³ upon the happening of the first to occur of the
8 following:

9

10 (1) ~~at the time as specified in~~ if the
11 certificate of limited partnership specifies a term, the
12 expiration of that term;⁴⁰⁴

13

14 (2) ~~upon~~ the happening of events specified in
15 writing in the partnership agreement;

16

17 (3) written consent of all general partners and
18 of limited partners owning a majority of the profit
19 interests owned by persons as limited partners;⁴⁰⁵

20

21 ⁴⁰⁶ (4) ~~an event of withdrawal of a general~~
22 ~~partner unless at the time there is at least one other~~
23 ~~general partner and the written provisions of the~~
24 ~~partnership agreement permit the business of the limited~~
25 ~~partnership to be carried on by the remaining general~~
26 ~~partner and that partner does so, but the limited~~

partnership is not dissolved and is not required to be wound
up by reason of any event of withdrawal if, within 90 days
after the withdrawal, all partners agree in writing to
continue the business of the limited partnership and to the
appointment of one or more additional general partners if
necessary or desired after the dissociation of a person as a
general partner,

_____

(i) if the limited partnership has at least one
remaining general partner,

_____

(A) the limited partnership's having notice within 90 days after the
dissociation of the express will of any remaining general
partner to dissolve the limited partnership,⁴⁰⁷ or

_____

(B) written consent to dissolve the limited partnership given within that
90 days by limited partners owning a majority of the profit
interests owned by persons as limited partners immediately
following the dissociation;⁴⁰⁸ or

.

(ii) if the limited partnership has no remaining
general partner, the passage of 90 days after the
dissociation unless within that 90 days partners owning a
majority of the profit interests owned by limited partners
immediately following the dissociation consent to continue
the business and to admit at least one general partner and

1 at least one person is admitted as a general partner in
2 accordance with that consent;⁴⁰⁹

3

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

8

9 (6) the signing of a statement of dissolution by
10 the [Secretary of State] under Section 803F(b);.. . . .

11 ⁴¹⁰

12 or

13

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

16
17 **SECTION 802. JUDICIAL DISSOLUTION.**⁴¹¹

18 (a) On application by or for a partner the [designate the appropriate
19 court] court may decree dissolution of a limited partnership
20 whenever;⁴¹²

21 _____

22 (1) the economic purpose of the limited
23 partnership is likely to be unreasonably frustrated;

24 _____

25 (2) another partner has engaged in conduct

1 relating to the limited partnership business which makes it
2 not reasonably practicable to carry on the business in
3 partnership with that partner; or⁴¹³

4

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

7 (b) On application by or for a transferee the [designate the
8 appropriate court] court may decree dissolution of a limited
9 partnership if:⁴¹⁴

10 _____

11 (1) the limited partnership amended its
12 certificate of limited partnership to extend the limited
13 partnership's term after having notice of the transfer or
14 entry of the charging order that gave rise to the
15 transferee's interest;⁴¹⁵

16 _____

17 (2) the limited partnership's term would have
18 expired but for that amendment; and

19 _____

20 (3) it is equitable to dissolve the limited
21 partnership and wind up its business.

22 **SECTION 802A. LIMITED PARTNERSHIP CONTINUES**
23 **AFTER DISSOLUTION.**⁴¹⁶ A limited partnership continues after
24 dissolution only for the purpose of winding up its

1 business.⁴¹⁷ A limited partnership terminates under Section
2 805. Dissolution does not relieve the limited partnership,
3 any general partner or any person dissociated as a general
4 partner of liability for the debts and other obligations of
5 the limited partnership.

6 **SECTION 803. WINDING UP.**⁴¹⁸ ~~Except as provided~~
7 ~~in the partnership agreement, the general partners who have~~
8 ~~not wrongfully dissolved a limited partnership or, if none,~~
9 ~~the limited partners, may wind up the limited partnership's~~
10 ~~affairs; but the [designate the appropriate court] court may~~
11 ~~wind up the limited partnership's affairs upon application~~
12 ~~of any partner, his [or her] legal representative, or~~
13 ~~assignee.~~

~~(a)~~14 A dissolved limited partnership shall promptly amend its certificate
15 of limited partnership to state that the limited partnership
16 is dissolved and is winding up its business⁴¹⁹ and shall
17 promptly wind up its business. In winding up its business
18 the limited partnership may preserve the limited partnership
19 business or property as a going concern for a reasonable
20 time, prosecute and defend actions and proceedings, whether
21 civil, criminal, or administrative, settle and close the
22 limited partnership's business, dispose of and transfer the
23 limited partnership's property, discharge the limited
24 partnership's liabilities, distribute the assets of the

1 limited partnership under Section 804, settle disputes by
2 mediation or arbitration, and perform other necessary
3 acts.⁴²⁰ Promptly after winding up is completed, the limited
4 partnership shall file a declaration of termination as
5 provided in Section 805.

(b) If a dissolved limited partnership has no general partners, limited
6 partners owning a majority of the profit interests owned by
7 partners immediately following the dissolution may appoint⁴²¹
8 a person to wind up the dissolved limited partnership's
9 business. A person appointed under this subsection:

10 _____

11 _____ (1) has the powers of a general partner under
12 Section 803A and the duties of a general partner under
13 Section 403D; and⁴²²

14

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

17 _____

18 (i) state that the limited partnership is dissolved and has no general
19 partner;

20 _____

21 (ii) state that the person has been appointed to wind up the limited
22 partnership; and

23 _____

24 _____ . (iii) give the business address of the person.

⁴²³
25 (c) On the application of any partner or transferee, a court may order

1 judicial supervision of the winding up, including the
2 appointment of a person to wind up the dissolved limited
3 partnership's business, if:

4 _____

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

8 _____

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

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

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

14 **PARTNERSHIP AFTER DISSOLUTION.**⁴²⁴

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

17 _____

18 _____ (1) is appropriate for winding up the limited
19 partnership business; or

20 _____

21 _____ (2) would have bound the partnership under
22 Section 403A before dissolution, if the other party to the
23 transaction did not have notice of the dissolution.⁴²⁵

24 ~~(b)~~ If the certificate of limited partnership has been amended to state

1 that the limited partnership is dissolved, the amendment:

2

3 (1) nullifies any statement granting authority
4 pursuant to Section 201(b);⁴²⁶ and

5

6 (2) operates as a statement limiting authority
7 pursuant to Section 201(b).⁴²⁷

~~(c)~~ For the purposes of subsection (a) (2) and Section 403A, a person not
9 a partner is deemed to have notice of a limited
10 partnership's dissolution and the limitation on the general
11 partners' authority 90 days after the certificate of limited
12 partnership is amended to state that the limited partnership
13 is dissolved.⁴²⁸

~~(d)~~ After amending its certificate of limited partnership to state that
15 the limited partnership is dissolved, a dissolved limited
16 partnership may amend its certificate to include new
17 statements regarding authority pursuant to Section 201(b)
18 which will operate as provided in Section 208 for subsequent
19 transactions, whether or not a transaction is appropriate
20 for winding up the limited partnership business.⁴²⁹

21 (e) This Section's limitations on a general partner's power to bind a
22 dissolved limited partnership also apply under Section 602C
23 to the power to bind of a person dissociated as a general
24 partner.

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

1 **OTHER GENERAL PARTNERS AFTER DISSOLUTION.**⁴³⁰

2 (a) Except as otherwise provided in subsection (b) and Section 403C,
3 after dissolution a general partner is liable to the other
4 general partners for the general partner's share of any
5 partnership liability incurred under Section 803A.

6 (b) A general partner who, with knowledge of the dissolution, incurs a
7 limited partnership liability under Section 803A(a)⁴³¹ by an
8 act that is not appropriate for winding up the partnership
9 business is liable to the limited partnership for any damage
10 caused to the limited partnership arising from the
11 liability.⁴³²

12 **SECTION 803B. KNOWN CLAIMS AGAINST DISSOLVED**
13 **LIMITED PARTNERSHIP.**⁴³³

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

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

19 _____

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

22 _____

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

1
2 (3) state the deadline for receipt of the claim,
3 which may not be less than 120 days after the date the
4 written notice is received by the claimant;
5
6 (4) state that the claim will be barred if not
7 received by the deadline; and
8
9 (5) unless the limited partnership has been a
10 limited liability limited partnership throughout its
11 existence, state that the barring of a claim against the
12 limited partnership will also bar any corresponding claim
13 against any present or dissociated general partner which is
14 based on Section 403C.⁴³⁴
15(c) A claim against a dissolved limited partnership is barred if the
16 requirements of subsection (b) are met, and:
17
18 (1) the claim is not received by the specified
19 deadline; or
20
21 (2) in the case of a claim that is timely
22 received but rejected by the dissolved limited partnership,
23 the claimant does not commence a proceeding to enforce the
24 claim against the limited partnership⁴³⁵ within 90 days after
25 the receipt of the notice of the rejection.
(25) For purposes of this section, "claim" does not include a contingent

1 liability or a claim based on an event occurring after the
2 effective date of dissolution.

3 **SECTION 803C. OTHER CLAIMS AGAINST DISSOLVED**
4 **LIMITED PARTNERSHIP.** ⁴³⁶

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

9 _____ (b) The notice must:

10 _____

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

16 _____

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

20 _____

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

_____
_____ (4) unless the limited partnership has been a
limited liability limited partnership throughout its
existence, state that the barring of a claim against the
limited partnership will also bar any corresponding claim
against any present or dissociated general partner which is
based on Section 403C.⁴³⁷

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

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

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

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

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

_____
_____ (1) against the dissolved limited partnership,

1 to the extent of its undistributed assets;
2 _____.
3 (2) if the assets have been distributed in
4 liquidation, against a partner⁴³⁸ or transferee⁴³⁹ to the
5 extent of that person's proportionate⁴⁴⁰ share of the claim
6 or the limited partnership's assets distributed to the
7 partner or transferee in liquidation, whichever is less, but
8 a person's total liability for all claims under this
9 paragraph⁴⁴¹ may not exceed the total amount of assets
10 distributed to the person as part of the winding up of the
11 dissolved limited partnership.⁴⁴²
12
13 (3) against any person liable on the claim under
14 Section 403C.⁴⁴³

15 **SECTION 803D. EFFECT OF CLAIMS BAR ON PERSONAL**
16 **LIABILITY OF PARTNERS AND DISSOCIATED PARTNERS.**⁴⁴⁴

17 Version #1 -- If Section 803B or 803C bars a claim against
18 a dissolved limited partnership, any corresponding claim
19 under Section 403C⁴⁴⁵ is also barred.

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

1 **SECTION 803E. GROUND FOR ADMINISTRATIVE**

2 **DISSOLUTION.**⁴⁴⁶ The [Secretary of State] may commence a
3 proceeding to dissolve a limited partnership
4 administratively if the limited partnership does not:

- (1) 5 pay any fees, taxes, or penalties imposed by this [Act] or other law
6 within 60 days after they are due; or
(2) 7 deliver its annual report to the [Secretary of State] within 60 days
8 after it is due.⁴⁴⁷

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

10 **ADMINISTRATIVE DISSOLUTION.**⁴⁴⁸

- 11 (a) If the [Secretary of State] determines that a ground exists for
12 administratively dissolving a limited partnership, the
13 [Secretary of State] shall enter a record of the
14 determination and serve the limited partnership with a copy
15 of the record.
16 (b) If within 60 days⁴⁴⁹after service of the copy⁴⁵⁰the limited
17 partnership does not correct each ground for dissolution or
18 demonstrate to the reasonable satisfaction of the [Secretary
19 of State] that each ground determined by the [Secretary of
20 State] does not exist, the [Secretary of State] shall
21 administratively dissolve the limited partnership by signing
22 a statement of dissolution⁴⁵¹that recites the grounds for
23 dissolution and its effective date. The [Secretary of

State] shall file the original of the statement and serve the limited partnership with a copy of the statement.

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

(d) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.⁴⁵²

SECTION 803G. REINSTATEMENT FOLLOWING

ADMINISTRATIVE DISSOLUTION.⁴⁵³

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

_____

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

_____

(2) state that the ground or grounds⁴⁵⁴ for dissolution either did not exist or have been eliminated;

_____

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

1
2 (4) contain a certified statement from the
3 [taxing authority] reciting that all taxes owed by the
4 limited partnership have been paid.

(b) 5 If the [Secretary of State] determines that the application contains
6 the information required by subsection (a) and that the
7 information is correct, the [Secretary of State] shall
8 cancel the statement⁴⁵⁵ of dissolution and prepare a
9 statement⁴⁵⁶ of reinstatement that recites this determination
10 and the effective date of reinstatement, file the original
11 of the statement of reinstatement, and serve the limited
12 partnership with a copy.

(c) 13 When reinstatement is effective, it relates back to and takes effect
14 as of the effective date of the administrative dissolution
15 and the limited partnership may resume its business as if
16 the administrative dissolution had never occurred.

17 **SECTION 803H. APPEAL FROM DENIAL OF REINSTATEMENT.**⁴⁵⁷

18 (a) If the [Secretary of State] denies a limited partnership's
19 application for reinstatement following administrative
20 dissolution, the [Secretary of State] shall serve the
21 limited partnership with a record that explains the reason
22 or reasons for denial.

23 b) The limited partnership may appeal the denial of reinstatement to
24 the [name appropriate] court within 30 days after service of

1 the notice of denial is perfected. The limited partnership
2 appeals by petitioning the court to set aside the
3 dissolution and attaching to the petition copies of the
4 [Secretary of State's] statement of dissolution, the
5 company's application for reinstatement, and the [Secretary
6 of State's] notice of denial.

- (c) The court may summarily order the [Secretary of State] to reinstate
8 the dissolved limited partnership or may take other action
9 the court considers appropriate.
- (d) The court's final decision may be appealed as in other civil
11 proceedings.

12 **SECTION 804. SETTLING OF ACCOUNTS AND**
13 **DISTRIBUTION OF ASSETS.** ⁴⁵⁸ ~~Upon the winding up of a limited~~
14 ~~partnership, the assets shall be distributed as follows:~~
15 _____
16 _____ (1) ~~to creditors, including partners who are~~
17 ~~creditors, to the extent permitted by law, in satisfaction~~
18 ~~of liabilities of the limited partnership other than~~
19 ~~liabilities for distributions to partners under Section 601~~
20 ~~or 604;~~
21 _____
22 _____ (2) ~~except as provided in the partnership~~
23 ~~agreement, to partners and former partners in satisfaction~~
24 ~~of liabilities for distributions under Section 601 or 604;~~
25 ~~and~~

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

⁴⁵⁹ (a) In winding up a limited partnership's business, the assets of the limited partnership, including the contributions required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors.⁴⁶⁰ Any surplus must be applied to pay in cash the net amount distributable to partners and transferees⁴⁶¹ in accordance with subsection (b).

.⁴⁶²

(b) Any surplus existing under subsection (a) shall be distributed first as a return of all contributions that have not previously been returned and second as a distribution of profits allocated under Section 504. If the surplus does not suffice to return all contributions, the surplus shall be allocated in proportion to the unreturned contributions.⁴⁶³

~~(c)~~ If the limited partnership's assets are insufficient to discharge all its obligations under section (a), then with respect to

1 each undischarged obligation incurred when the limited
2 partnership was an ordinary limited partnership:⁴⁶⁴

3

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

13 _____

14 (2) if a person fails to contribute the full
15 amount required under paragraph (1), the other persons
16 required to contribute by that paragraph shall contribute
17 the additional amount necessary to discharge the limited
18 partnership obligation and the additional contribution due
19 from each of those other persons shall be in proportion to
20 the share of limited partnership losses in effect for each
21 of those other persons when the obligation was incurred; and

22 _____

23 (3) if any person fails to make the additional
24 contribution required by paragraph (2), further additional
25 contributions shall be due and determined in the same manner
26 as provided in that paragraph.

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

10 (e) The estate of a deceased person is liable for the person's
11 obligations under this Section.⁴⁶⁵
12

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

18 **SECTION 805. TERMINATION.** The existence of a
19 limited partnership is terminated upon the filing, pursuant
20 to Section 203, of a declaration of termination, or, subject
21 to Section 206(d),⁴⁶⁶ at a later date specified in that
22 declaration. Termination of a limited partnership does not
23 affect the application of Sections 803B, 803C and 803D
24 (barring of claims).

1
2 **[revisions to Article 9 are reserved pending the Committee's**
3 **decision on the RULPA "look and feel" issue]**

4 ARTICLE 9

5 FOREIGN LIMITED PARTNERSHIPS

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

13
14 SECTION 902. REGISTRATION. Before transacting
15 business in this State, a foreign limited partnership shall
16 register with the Secretary of State. In order to register,
17 a foreign limited partnership shall submit to the Secretary
18 of State, in duplicate, an application for registration as a
19 foreign limited partnership, signed and sworn to by a
20 general partner and setting forth:

21
22 (1) the name of the foreign limited partnership

1 and, if different, the name under which it proposes to
2 register and transact business in this State;

3
4 (2) the State and date of its formation;

5
6
7
8 (3) the name and address of any agent for
9 service of process on the foreign limited partnership whom
10 the foreign limited partnership elects to appoint; the agent
11 must be an individual resident of this State, a domestic
12 corporation, or a foreign corporation having a place of
13 business in, and authorized to do business in, this State;

14
15 (4) a statement that the Secretary of State is
16 appointed the agent of the foreign limited partnership for
17 service of process if no agent has been appointed under
18 paragraph (3) or, if appointed, the agent's authority has
19 been revoked or if the agent cannot be found or served with
20 the exercise of reasonable diligence;

21
22 (5) the address of the office required to be
23 maintained in the state of its organization by the laws of
24 that state or, if not so required, of the principal office
25 of the foreign limited partnership;

1
2
3 (6) the name and business address of each
4 general partner; and
5

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

13 SECTION 903. ISSUANCE OF REGISTRATION.
14

15 (a) If the Secretary of State finds that an
16 application for registration conforms to law and all
17 requisite fees have been paid, he [or she] shall:
18
19

20 (1) endorse on the application the word "Filed,"
21 and the month, day and year of the filing thereof;
22
23

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

1
2
3 (3) issue a certificate of registration to
4 transact business in this State.
5

6 (b) The certificate of registration, together
7 with a duplicate original of the application, shall be
8 returned to the person who filed the application or his [or
9 her] representative.
10

11 SECTION 904. NAME. A foreign limited
12 partnership may register with the Secretary of State under
13 any name, whether or not it is the name under which it is
14 registered in its state of organization, that includes
15 without abbreviation the words "limited partnership" and
16 that could be registered by a domestic limited partnership.
17

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

1 general partner, correcting such statement.

2

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

12

13 SECTION 907. TRANSACTION OF BUSINESS WITHOUT
14 REGISTRATION.

15

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

20

21 (b) The failure of a foreign limited
22 partnership to register in this State does not impair the
23 validity of any contract or act of the foreign limited
24 partnership or prevent the foreign limited partnership from

1 defending any action, suit, or proceeding in any court of
2 this State.

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

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

15
16 SECTION 908. ACTION BY [APPROPRIATE OFFICIAL].
17 The [designate the appropriate official] may bring an action
18 to restrain a foreign limited partnership from transacting
19 business in this State in violation of this Article.

20
21 **ARTICLE 10**⁴⁶⁷
22 **DERIVATIVE ACTIONS**⁴⁶⁸

1 **SECTION 1001. RIGHT OF ACTION.** A limited

2 partner may bring ~~an~~ a derivative action ~~in the~~ to enforce a
3 right of a limited partnership ~~to recover a judgment in its~~
4 favor ~~if general partners with authority to do so have~~
5 refused ~~to bring the action or if an effort to cause those~~
6 general partners ~~to bring the action is not likely to~~
7 succeed if:

8 (1) the limited partner first makes a demand on the general partners,
9 requesting that they cause the limited partnership to bring
10 an action to enforce the right, and the general partners do
11 not bring the action within a reasonable time, or
12 _____ (2) a demand will be futile.⁴⁶⁹

14 **SECTION 1002. PROPER PLAINTIFF.**⁴⁷⁰ In a

15 derivative action, the plaintiff must be a limited⁴⁷¹ partner
16 at the time of bringing the action and:

- 17 (1) the plaintiff ~~(i)~~ must have been a partner⁴⁷² ~~at the time of the~~
18 ~~transaction of which he [or she] complains~~ when the conduct
19 giving rise to action occurred;⁴⁷³ or
20 (2) (ii) his [or her] the plaintiff's status as a partner must have
21 devolved upon ~~him [or her]~~ the plaintiff by operation of law
22 or pursuant to the terms of the partnership agreement from a
23 person who was a partner at the time of the ~~transaction~~
24 conduct.

1 **SECTION 1003. PLEADING.** In a derivative

2 action, the complaint shall ~~set forth~~ state with
3 particularity ~~the effort of the plaintiff to secure~~
4 ~~initiation of the action by a general partner or the reasons~~
5 ~~for not making the effort:~~

~~(1) the date and content of plaintiff's demand and the general partners'~~

7 response to the demand, or

8 _____ (2) why demand is excused as futile.⁴⁷⁴

10 **SECTION 1004. PROCEEDS AND**⁴⁷⁵ **EXPENSES.**⁴⁷⁶ ~~If a~~

11 ~~derivative action is successful, in whole or in part, or if~~
12 ~~anything is received by the plaintiff as a result of a~~
13 ~~judgment, compromise or settlement of an action or claim,~~
14 ~~the court may award the plaintiff reasonable expenses,~~
15 ~~including reasonable attorney's fees, and shall direct him~~
16 ~~[or her] to remit to the limited partnership the remainder~~
17 ~~of those proceeds received by him [or her].~~

18 (a) Subject to subsection (b):

19 _____

20 (1) any proceeds or other benefits of a
21 derivative action, whether by judgment, compromise, or
22 settlement,⁴⁷⁷ belong to the limited partnership and not to
23 the derivative plaintiff;

24 _____

25 (2) if the derivative plaintiff receives any of

1 those proceeds, the derivative plaintiff shall immediately
2 remit them to the limited partnership.
(B) If a derivative action is successful in whole or in part, the court
4 may award the plaintiff reasonable expenses, including
5 reasonable attorney's fees.

6
7 **SECTION 1005. DIRECT ACTIONS BY PARTNERS..** . 478

8 ⁴⁷⁹(a) Subject to subsection (b), a partner may maintain a direct 480
9 action against the partnership or another partner for legal
10 or equitable relief, with or without an accounting as to
11 partnership business, to:

12 _____

13 _____ (1) enforce the partner's rights under the
14 partnership agreement;

15 _____

16 _____ (2) enforce the partner's rights under this
17 [Act]; ⁴⁸¹ or

18 _____

19 _____ (3) enforce the rights and otherwise protect the
20 interests of the partner, including rights and interests
21 arising independently of the partnership relationship.

(D) A partner bringing a direct claim under this section must plead and
23 prove an injury caused or threatened by the breach which is
24 not solely the result of an injury suffered or threatened to
25 be suffered by the limited partnership. ⁴⁸²

1
2 (c) The accrual of, and any time limitation on,
3 a right of action for a remedy under this section is
4 governed by other law. A right to an accounting upon a
5 dissolution and winding up does not revive a claim barred by
6 law.⁴⁸³

CONVERSIONS

The question of conversions presents some unusual drafting and policy questions that relate particularly to existing uniform laws (i.e., RUPA and ULLCA) and to the potential overlap and redundancy among those laws. Existing uniform laws already provide for the conversion of:

- limited partnerships into general partnerships (RUPA, § 903),
- general partnerships into limited partnerships (RUPA, § 902), and
- general and limited partnerships into limited liability companies (ULLCA § 902).

Neither RUPA nor ULLCA provide for the conversion of:

- limited liability companies into any form of partnership, or
- any form of partnership or limited liability company into a corporation.

Assuming that the reasons for those omissions remain in force, the Drafting Committee has at least the following options regarding conversion provisions:

- 1.include none, relying on the coverage provided by RUPA and ULLCA;
- 2.replicate the RUPA and ULLCA provisions as optional provisions in case a state has not adopted those provisions as parts of its general partnership and limited liability company acts;
- 3.propose a paradigm for determining which statute should contain which conversion provision (e.g., each statute to control conversion into the entity covered by the statute, but not conversion out of that organizational form) and, consistent with that paradigm, draft not only language for this Act but also appropriate amendments for RUPA and ULLCA;
4.
move toward the "hub and spoke" notion by developing a conversion provision that applies generally to conversions of all the entity types it encompasses.

Even if the Drafting Committee decides to provide for additional types of conversions (e.g., from a limited liability company into a limited partnership, or from a corporation into a limited partnership), the options listed above remain relevant for the types of conversions already permitted.

This draft follows the first option, because:

- a.if the Committee chooses the second option, RUPA and ULLCA provide the necessary language and that language can be easily incorporated into the next draft;
- b.if the Committee chooses the third option, it is necessary to decide on the paradigm before undertaking detailed drafting; and
- c.if the Committee chooses the fourth option, this draft's Article 11 (providing a generic approach to mergers) can be adapted to encompass conversions as well.

MERGERS

Mergers involve some of the same overlap issues involved in

conversions. The overlap is not quite as extensive, however. In particular, no current uniform law provides for the merger of limited partnerships with corporations. Following is a merger provision that broadly allows a limited partnership to merge with any other form of organization. The only limitation is that a participating organization must have a group of interest holders recognized as owners by the law under which the organization is formed.

1
2 ARTICLE 11

3 MERGERS

4 SECTION 1101. DEFINITIONS. In this [Article]:

(5) "Constituent organization" means an organization that is party to a
6 merger.

(2) "Former owner" includes a partner who is dissociated from a limited
8 partnership formed under this [Act].

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

(4) "Limited partnership" includes not only a limited partnership formed
15 under this [Act] but also any limited partnership formed
16 under a predecessor statute of this State or under a
17 comparable statute of any other State.

(8) "Organization" includes a domestic or foreign general partnership,
19 limited liability partnership, limited partnership, limited
20 liability limited partnership, limited liability company,
21 corporation, and any other entity considered by its

governing statute to have owners and ownership interests.⁴⁸⁴

. (6) "Owner" means with respect to:

.

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

.

(ii) a limited liability company, a member;

.

(iii) a corporation, a shareholder; and

.

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

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

(8) "Owner vicarious liability" means vicarious personal liability for an organization's debts and other obligations which is imposed by the organization's governing statute on an owner through a provision making owner status an essential element for establishing personal liability.⁴⁸⁵

(9) "Surviving organization" means a constituent organization that exists after the merger takes effect.

SECTION 1102. MERGER OF ENTITIES.⁴⁸⁶

(a) A limited partnership may participate in a merger with one or more
2 other organizations pursuant to this [Article], except for
3 an organization whose governing statute prohibits it from
4 participating in the merger.⁴⁸⁷ To participate in a merger a
5 constituent organization must approve a plan of merger
6 pursuant to subsections (d) and (e).
7 _____ (b) A plan of merger must state:
8 _____
9 _____ (1) the name of each constituent organization;
10 _____
11 _____ (2) the name, type of organization, and street
12 address of the principal place of business of the surviving
13 organization;
14 _____
15 _____ (3) the terms and conditions of the merger;
16 _____
17 _____ (4) the manner and basis for converting the
18 ownership interests of each constituent organization that is
19 not the surviving organization into any combination of
20 money, ownership interests in the surviving organization,
21 and other consideration; and
22 _____
23 _____ (5) if the merger involves a limited partnership
24 formed under this [Act], that limited partnership will not
25 be the surviving organization, and immediately before the
26 merger takes effect that limited partnership will have

1 outstanding bare transferable interests, the manner and
2 basis for converting those bare transferable interests into
3 any combination of money, ownership interests in the
4 surviving organization, and other consideration.⁴⁸⁸

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

9 (d) A plan of merger must be approved, subject to subsection (e):

10 _____

11 _____ (1) in the case of a constituent organization
12 that is a limited partnership organized under [this Act], by
13 the consent all of the partners;⁴⁸⁹

14 and

15 _____

16 _____ (2) in the case of any other constituent
17 organization, in the manner provided by the organization's
18 governing statute, including any appraisal rights given by
19 that statute, and if that statute does not provide for
20 approving a merger, then by the consent of all the
21 organization's owners.

~~(e)~~ 22 The merger must be approved by each partner of a limited partnership
23 formed under this [Act] who will be an owner of the
24 surviving organization and will as a result of the merger
25 face increased susceptibility to owner vicarious liability
26 for any of the following reasons:⁴⁹⁰

1
2 (1) The person will have owner vicarious
3 liability for a debt or obligation of the surviving
4 organization which was incurred before the merger but for
5 which the person did not have owner vicarious liability
6 before the merger.

7 _____
8 _____ (2) The surviving organization's governing
9 statute provides less protection against owner vicarious
10 liability than does this [Act].⁴⁹¹

11
12 (3) The merger causes the person to have an
13 ownership interest that, under the surviving organization's
14 governing statute, has less protection from owner vicarious
15 liability than the person had under [this Act] as a
16 partner.⁴⁹²

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

21 **SECTION 1103. ARTICLES OF MERGER.**⁴⁹³

22 (a) After approval of the plan of merger under Section 1102, the
23 organization that will be the surviving organization shall
24 deliver articles of merger to the [Secretary of State] and

1 to any other public official or office to whom delivery is
2 required by a constituent entity's governing statute. The
3 surviving organization must provide a copy of the articles
4 of merger to each owner of each constituent organization.

5 _____ . . . (b) The articles of merger must contain:

6 _____

7 (1) the name of each constituent organization,
8 together with the name of the jurisdiction of the
9 organization's governing statute;

10 _____

11 (2) the name and address of the surviving
12 organization;⁴⁹⁴

13

14 (3) the plan of merger;⁴⁹⁵

15

16 (4) a statement that each constituent
17 organization has approved the plan of merger and a
18 description for each constituent organization of:

19 _____

(i) the approval process mandated by the organization's governing statute
21 or [this Act];⁴⁹⁶ and

22 _____

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

26 _____

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

_____

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

_____

_____ (7) the effective date of the merger.⁴⁹⁷

SECTION 1104. EFFECTIVE DATE AND EFFECT OF

MERGER.⁴⁹⁸

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

_____

_____ (1) compliance with Section 1103 and the performance of any acts required to effectuate the merger under the governing statute of any constituent organization;⁴⁹⁹ or

_____

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

_____ (b) When a merger takes effect:

_____

_____ (1) each constituent organization other than the

1 surviving organization ceases its separate existence and
2 merges into the surviving organization;

3 _____

4 _____ (2) except as prohibited by other law,⁵⁰⁰ all
5 property and rights owned by each constituent organization
6 vest in the surviving organization without reversion or
7 impairment;

8 _____

9 _____ (3) all obligations of each constituent
10 organization become the obligations of the surviving
11 organization;⁵⁰¹

12

13 _____ (4) a proceeding pending by or against a
14 constituent organization may be continued as if the merger
15 had not occurred or the surviving organization may be
16 substituted as a party in the proceeding in place of an
17 organization whose existence has ceased;⁵⁰² and

18 _____

19 _____ (5) the conversion of interests⁵⁰³ stated in the
20 articles of merger occurs.

21 ~~21~~) Subject to subsection (d), an owner who is personally liable for an
22 obligation of a constituent organization which is incurred
23 before the merger takes effect remains liable on that
24 obligation regardless of the merger.

25 (d) If a constituent organization's governing statute provides that a
26 person's owner vicarious liability is affected by the person

1 ceasing to be an owner,

2 _____

3 _____ (1) the provision applies:

4 _____

5 (i) despite the merger to any former owner of the constituent
6 organization who ceased to be an owner before the merger;

7 and

8 _____

9 (ii) as a result of the merger to any person who was an owner of the
10 surviving organization immediately before the merger but is
11 not an owner of the surviving organization immediately after
12 the merger and to each owner of each other constituent
13 organization; and

14 _____

15 _____ (2) if the constituent organization is not the
16 surviving organization, the surviving organization will be
17 considered to be the constituent organization for the
18 purposes of applying the provision.

19 (e) If a constituent organization's governing statute provides that a
20 former owner has the power to bind the organization and the
21 constituent organization is not the surviving organization,
22 that power terminates when the merger takes effect.⁵⁰⁴

(f) Unless otherwise agreed,⁵⁰⁵ the participation in a merger pursuant to
24 this [Article] of a limited partnership formed under this
25 [Act] does not cause a dissolution for the purposes of
26 [Article] 8.⁵⁰⁶

(f)1The surviving organization consents to the jurisdiction of the courts

2 of this State and to service of process in this State to
3 enforce any obligation owed:

4 _____.

5 _____ (1) by any constituent organization, if before
6 the merger the constituent organization was subject to suit
7 in this State on that obligation; and

8 _____.

9 _____ (2) by the surviving organization to any person
10 who immediately before the merger was a partner of a limited
11 partnership formed under this Act or who owned a bare
12 transferable interest of a limited partnership formed under
13 this [Act].

14g) The surviving organization shall appoint and maintain an agent for
15 service of process which meets the requirements stated in
16 Section 104A. If the surviving organization fails to do so,
17 or the agent for service of process cannot with reasonable
18 diligence be found, the [Secretary of State] is an agent of
19 the surviving organization upon whom process may be served.
20 Service on the [Secretary of State] is made in the same
21 manner and with the same consequences as stated in Section
22 104C.⁵⁰⁷

~~(D)~~ A foreign surviving organization is not authorized to do business in
24 this State unless it complies with the laws of this State
25 granting that authority.⁵⁰⁸

1
2 **SECTION 1105. [ARTICLE] MANDATORY.** A limited
3 partnership formed under this [Act] which participates in a
4 merger must comply with this [article]. If this [article]
5 and another applicable governing statute require delivery of
6 the same document, a copy may be delivered to comply with
7 this [Article].

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

10 ARTICLE 11

11 MISCELLANEOUS

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

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

18 SECTION 1103. SEVERABILITY. If any provision
19 of this [Act] or its application to any person or
20 circumstance is held invalid, the invalidity does not affect

1 other provisions or applications of the [Act] which can be
2 given effect without the invalid provision or application,
3 and to this end the provisions of this [Act] are severable.

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

9
10 (1) The existing provisions for execution and
11 filing of certificates of limited partnerships and
12 amendments thereunder and cancellations thereof continue in
13 effect until [specify time required to create central filing
14 system], the extended effective date, and Sections 102, 103,
15 104, 105, 201, 202, 203, 204 and 206 are not effective until
16 the extended effective date.

17
18 (2) Section 402, specifying the conditions
19 under which a general partner ceases to be a member of a
20 limited partnership, is not effective until the extended
21 effective date, and the applicable provisions of existing
22 law continue to govern until the extended effective date.

23
24 (3) Sections 501, 502 and 608 apply only to
25 contributions and distributions made after the effective

1 date of this [Act].

2
3 (4) Section 704 applies only to assignments
4 made after the effective date of this [Act].

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

9
10 (6) Unless otherwise agreed by the partners,
11 the applicable provisions of existing law governing
12 allocation of profits and losses (rather than the provisions
13 of Section 503), distributions to a withdrawing partner
14 (rather than the provisions of Section 604), and
15 distribution of assets upon the winding up of a limited
16 partnership (rather than the provisions of Section 804)
17 govern limited partnerships formed before the effective date
18 of this [Act].

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

22 SECTION 1106. SAVINGS CLAUSE. The repeal of

1 any statutory provision by this [Act] does not impair, or
2 otherwise affect, the organization or the continued
3 existence of a limited partnership existing at the effective
4 date of this [Act], nor does the repeal of any existing
5 statutory provision by this [Act] impair any contract or
6 affect any right accrued before the effective date of this
7 [Act].

ENDNOTES

1. Unlike RUPA and ULLCA, this draft contemplates a partner dissociating without being bought out. It is therefore possible that transferees will exist even though the partner who originally owned the transferable interest is no longer a partner. This term refers to that situation.

This draft gives owners of bare transferable interests very limited rights to information about the limited partnership. See Section 702. So long as the transferor partner remains a partner, the transferee has the right to only the most limited of information from the limited partnership. Sections 305(h), 403E(g) and 702. The transferor partner does have information access rights, Sections 305 and 403E, and a transferee for value might well insist via contract that the transferor partner exercise those access rights to the benefit of the transferee. If the transferor partner dissociates, however, the information stream from the transferor to the transferee will dry up. A dissociated partner's access rights are limited to information relevant to the pre-dissociation period. Sections 305(d)(1) and 403E(c)(1).

2. Source: RUPA § 101(1). This draft eschews the broader definition stated in ULLCA § 101(3), which defines "business" to include "every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit." As a matter of style, the phrase "other lawful purpose" seems not to

fit with the other items on the list. As a matter of substance, the term "business" connotes economic activity and a defined term should not contradict common usage. The more significant question is whether a limited partnership may be formed for a nonprofit or non-entrepreneurial purpose. That question should be resolved in the Section 106(a), which deals directly with the issue.

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

4. Source: RUPA § 101(2).

5. At its July, 1997 meeting, the Committee directed the Reporter to consider providing a definition of "dissociation." After reviewing UPA, RUPA, and ULLCA, the Reporter decided that Re-RULPA should not define "dissociation." Accordingly, Draft #2 did not define the term. The March, 1998 meeting did not reach this issue, and Draft #3 preserves Draft#2's approach.

The Reporter's rationale is fealty to RUPA and ULLCA. UPA § 29 defines dissolution in a way that gave rise to the RUPA/ULLCA concept of dissociation: "Dissolution . . . is the change in the relation of the partners caused by any partner

ceasing to be associated in the carrying on as distinguished from the winding up of the business." However, neither RUPA nor ULLCA define "dissociation." Instead, those statutes list events causing "dissociation" and explain the meaning of the term through a Comment. Each Comment essentially mirrors UPA § 29. See RUPA § 601, Comment 1, first paragraph; ULLCA § 601, Comment, first sentence. In this instance, the Reporter sees no reason for Re-RULPA to deviate from the pattern established by RUPA and ULLCA.

6. Derived from RUPA § 101(3). Changes from RUPA are as follows:

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

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

§101(3) considers the third person to be "the partner's transferee."

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

7. Source: ULLCA § 101(7). "Entity" is somewhat of a misnomer, because the term encompasses legal persons that might still be thought of as aggregates, or part aggregate/part entity (i.e., UPA general partnerships).

New Article 11 (mergers) contains a special definition of the term "organization." That term refers to a subset of entities -- those with owners.

8. This definition is no longer needed because this draft uses the term "dissociation." As for why this Draft does not define "dissociation," see note 5, above.

9. The change is to correct an inaccuracy. A limited partnership does not cease being a limited partnership merely because it ceases to have at least one general and one limited partner. A dissolved limited partnership continues in existence through winding up and until termination.

10. There are two reasons for this change. First, Re-RULPA changes the rules on how a person becomes a general partner. Second, putting those rules in the definition section would make for a very cumbersome definition.

11. At its July, 1997 meeting, the Committee directed

the Reporter to propose a definition of "good faith." Although courts and commentators agree that the concept is incapable of precise definition, fools rush in where angels fear to tread and Reporters have a duty of obedience to the Committee they serve. The proposed definition defines "good faith and fair dealing" narrowly, eschewing any objective element (e.g., observance of reasonable commercial standards). In Draft #2 this definition referred to "legitimate business purpose." Draft #3 omits "business," because that word would make the definition too narrow.

Following is a proposed Comment on the obligation of good faith and fair dealing. In Draft #1 this Comment appeared following Section 302A. Underlining and strikeouts indicate changes to the proposed Comment made in Draft #3.

Draft Comment on Good Faith and Dealing: The obligation of good faith and fair dealing is not a fiduciary duty, does not command altruism or self-abnegation, and does not prevent a partner from acting in the partner's own self-interest. Courts should not use the obligation to change ex post facto the parties' or this [Act's] allocation of risk and power. To the contrary, the obligation should be used only to protect agreed-upon arrangements from conduct that is manifestly beyond what a reasonable person could have contemplated when the arrangements were made. The more open-ended is a grant of power or discretion, the less plausible

is a claim of breach of the obligation of good faith and fair dealing.

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

12. The mechanism for creating an LLLP is a far simpler than the mechanism for creating an LLP. For the latter, RUPA had to create an elaborate structure for public filing. That structure already exists for limited partnerships.

13. See note 10, above, explaining the change in the definition of "General partner."

14. The old definition was inaccurate. A limited partnership does not cease being a limited partnership merely because it ceases to have at least one general and one limited

partner. A dissolved limited partnership continues in existence through winding up and until termination.

15. The addition is to correspond with a Section 101B(b), which explicitly provides that "[t]he partnership agreement may be oral, written, implied from the conduct of the partners and the partnership, or any combination." The language is new both contexts, but the notion of implied terms is not. See BROMBERG & RIBSTEIN ON PARTNERSHIP, ¶¶ 6.01(c) (pros and cons of implying agreements among partners) and 6.02(g) (implied agreement to compensate more active partner). Arguably, the law on limited partnerships should be more restrictive toward implied agreements than the law on general partnerships, given the passive role of many limited partners and the resulting difficulty in determining whether limited partners have through their conduct acquiesced to an implied term. If the Committee finds that perspective persuasive, perhaps the next Draft should explicitly bar implied agreements.

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

17. Source: ULLCA § 101(14). ULLCA § 101(14) adds "limited liability company" to the list contained in RUPA § 110(10).

18. Source: ULLCA § 101(16). ULLCA moved into, or at least into contemplation of, the brave new world in which documents need no longer exist in paper. Beginning with Draft #2, Re-RULPA has followed suit. See Section 206(a). ULLCA

§ 101(16) portends more than it commands. ULLCA § 206(a) requires the Secretary of State to determine what media are permissible for filing, and in general "[o]ther law must be consulted to determine admissibility in evidence, the applicability of statute of frauds, and other questions regarding the use of records." ULLCA § 101, Comment.

19. Derived from ULLCA § 101(17). The phrase "whether in writing, electronically or otherwise" has been added to make clear that signing may occur electronically.

20. Source: RUPA § 101(12). (Replicated in ULLCA § 101(18).)

21. Derived from RUPA § 101(14). The reference to "operation of law" does not appear in RUPA. The difference from RUPA is as follows:

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance as well as a transfer by operation of law.

ULLCA § 101(20) has more examples than the RUPA provision but omits the reference to "transfer by operation of law":

"'Transfer' includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift."

The Reporter, emboldened by his experience at attempting to define "good faith and fair dealing," see note 11, above, would prefer the following definition: "'Transfer' means a shift from one person to another of the ownership of a right and includes a shift by operation of law."

22. Source: RUPA § 502. This definition appears

here, rather than later in the statute (as in RUPA), because the term is used throughout the statute.

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

24. Source: RUPA § 102.

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

26. RUPA lacks the phrase "for the entity."

27. Unlike ULLCA, RUPA lacks the phrase "for the entity."

28. RUPA merely refers to a "partner's knowledge," etc., and the Comment to RUPA § 102 states in part: "It is anticipated that RULPA will address the issue of whether notice to a limited partner is imputed a limited partnership." Under this draft, limited partner status does not cause information possessed by a limited partner to be attributed to the limited partnership. Attribution is an aspect of agency power, and in the default mode limited partners have neither the right to manage the limited partnership nor the power to bind it. Section 302(a) and (e). Of course, a limited partner who acts in a different capacity viz a viz the limited partnership might have agency power in that capacity. See notes to Section 302(e).

29. Source: RUPA § 103. There are some substantive differences, as indicated by the notes that accompany this

section. (ULLCA § 103 follows RUPA § 103 with only a couple of changes.)

30. What happens if the partnership agreement and the required records conflict? Section 101B(a) contains no reference to the required records, and by that omission Re-RULPA prefers the partnership agreement over the required records. That is, Section 101B(a) states that the partnership agreement -- and not the required records -- governs among the partners. Arguably, however, information in the record records might be evidence of an oral or implied agreement among the partners.

31. The Reporter would prefer to restyle this clause to use the active rather than the passive voice and to match the syntax of the subsection's second sentence; i.e. -- "the partnership agreement governs relations among the partners and between the partners and the partnership."

32. Query: is it sufficiently clear which statutory provisions are outside the domain of "relations among the partners" (and therefore not susceptible to change by the partnership agreement)? For example, may the partnership agreement change Section 104's requirement that the limited partnership maintain an in-state office?

As discussed at the Committee's July, 1997 meeting, the Reporter believes that the Committee should eventually review each section of the Act in light of subsection (a). The Committee will be far more familiar with the Act than the typical attorney or judge. If the Committee has difficulty determining

which provisions of the Act are subject to change by the partnership agreement, a fortiori attorneys and judges will be confused.

33. This subsection does not exist in RUPA and ULLCA.

34. Draft #1 included the word "written" here. At its July, 1997 meeting, the Committee did not address this provision but did remove several other writing requirements. Query whether providing for nonunanimous amendment of a partnership agreement is sufficiently extraordinary as to warrant a writing requirement.

35. This paragraph is reserved as a reminder that, as the Committee makes decisions on various provisions governing relations among partners, those decisions may add to the list of nonwaivable provisions.

36. This provision is derived from RUPA § 103(b) (2), which imposes this standard viz a viz "access to books and records." The first section refers to a limited partner's right of access and the second to a general partner's right.

37. Derived from RUPA § 103(b) (3). Notes 38 to 42, below, indicate differences from RUPA.

38. The standard in both RUPA and ULLCA is "if not manifestly unreasonable." This draft's standard is laxer toward the partnership agreement. That is, someone challenging the agreement would have a more difficult time in winning. Showing unconscionability involves showing more than substantive unreasonableness. There must also have been some substantial

defect in the process of contract bargaining or formation. Moreover, unconscionability is judged as of the time of formation, while the "manifestly unreasonable" standard probably takes into account the circumstances that exist when the objectionable provision comes into play.

39. Neither RUPA nor ULLCA contain this language. If the partnership agreement can exclude certain matters from breach of loyalty claims, a fortiori the agreement should be able to make a smaller intrusion into the arena of loyalty.

40. Neither RUPA nor ULLCA contain this language. Generally, a party accused of breaching the duty of loyalty has the burden of proving either fairness or compliance with statutory standards. If the partnership agreement can exclude certain matters from breach of loyalty claims, a fortiori the agreement should be able to make a smaller intrusion of switching the burden of proof.

41. RUPA uses "or" here, but ULLCA uses "and."

42. This provision is derived verbatim from RUPA § 103(b)(3)(ii), and nothing in the language requires that the partnership agreement limit the ratification process to disinterested partners. Suppose, for example, that, given the ratification mechanism stated in the partnership agreement and the interests owned by the general partner, the general partner has enough votes to ratify its own self-dealing. Would the duty of good faith impose some limitation?

ULLCA § 103(b)(2)(ii) differs from RUPA by requiring that

any ratification mechanism involving managers be limited to "disinterested" managers. ULLCA does not, however, impose any comparable requirement on member ratification or define the term "disinterested."

RMBCA, chapter 8, subchapter F contains an extraordinarily complex set of provisions for dealing with corporate directors' conflicts of interest. Both the provisions dealing with director approval and shareholder approval require ratification by disinterested persons and define in detail the concept of disinterestedness. RMBCA §§ 8.62 (directors) and 8.63 (shareholders).

The RUPA approach has the virtue of allowing a more succinct statutory provision and the defect of "punting" to the courts the task of determining the extent to which disinterestedness is important. The ULLCA approach signals that, at least in one context, disinterestedness is essential, but leaves to the court the task of defining the concept. Moreover, ULLCA leaves unexplained why manager disinterest is essential but member disinterest is not. Suppose, for example, that a person serves as the sole manager of an LLC, while owning a majority of the membership interests. The operating agreement could not provide for that person qua manager to ratify its own loyalty conflicts but could permit ratification qua member.

The RMBCA approach is of daunting complexity. The Reporter recommends either (i) following the RUPA approach (as in this draft), or (ii) imposing a disinterestedness requirement and

providing a succinct definition of disinterestedness.

43. Source: RUPA § 103(b)(4).

44. Derived from RUPA § 103(b)(5). Notes 45 and 46, below, indicate differences from RUPA.

45. Neither RUPA nor ULLCA contain this language. See notes 39 and 40 above for the rationale for the added language.

46. In RUPA: manifestly unreasonable. See note 38, above, for a discussion of the difference.

47. Source: RUPA § 103(b)(6). This provision means that even limited partners will always have the power to dissociate, even though in the default mode they lack the right to do so. See Section 603. Note, however, that in the default mode a limited partner's dissociation merely means that the limited partner becomes a transferee of its own transferable interest; i.e. dissociation means the abandonment of all nonfinancial rights. Even if the dissociating limited partner is the only limited partner, the general partners can avoid dissolution by admitting a new limited partner. See Section 801(5).

48. This provision seems to limit a partnership agreement's power to provide for arbitration. An agreement to arbitrate all disputes -- including expulsion disputes -- would be invalid as an attempt to "vary the right of a court expel a partner." But see *Southland Corp. v. Keating*, 465 U.S. 1 (1984) (holding that the Federal Arbitration Act preempts state statutes that seek to invalidate agreements to arbitrate) and *Allied-Bruce*

Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995) (same).

49. This provision derives from RUPA § 103(b)(8) but may be superfluous given that the obligation to wind up affects rights of third parties and therefore is not in the first instance subject to change by the partnership agreement.

50. The referenced provision requires written approval from each partner "who will be an owner of the surviving organization and will as a result of the merger face increased susceptibility to owner vicarious liability."

51. Source: RUPA § 103(b)(10). A partnership agreement may of course affect the rights of transferees, who merely stand in the shoes of the partner who originally owned the transferred interest. But query: what about owners of bare transferable interests? May an amendment to the partnership agreement affect the rights of an owner of a bare transferable interest if the owner acquired its interest before the amendment? The same issue exists with regard to mergers. See note 488, below.

52. Derived from RUPA § 104, but with significant changes as noted below in notes 53 and 54. (ULLCA § 104 replicates RUPA § 104 verbatim.)

Note that RULPA addresses this topic at § 1105 but that both RUPA and ULLCA will condition readers to look for this provision in this location.

53. Neither RUPA nor ULLCA includes the language in this "but" clause. The proposed additional language seeks to

deter courts from remaking the partners' deal. Why deviate from the RUPA/ULLCA approach? The "typical" RUPA general partnership and "typical" ULLCA member-managed LLC are each assumed to be informal organizations. The typical Re-RULPA limited partnership is assumed to be a more formally structured organization, with the partnership agreement often the product of careful negotiations or at least detailed (if sometimes one-sided) drafting.

54. This subsection appears in neither RUPA nor ULLCA.

55. Derived from RUPA § 106, which refers to "[t]he law of the jurisdiction in which a partnership has its chief executive office." According to the Comment to RUPA § 106: "The choice-of-law rule provided by Section 106 is only a default rule, and the partners may by agreement select the law of another State to govern their internal affairs, subject to generally applicable conflict of laws requirements."

56. This section has been substantially rewritten, reflecting more modern attitudes toward permissible names and abbreviations. The advent of LLLPs requires that a choice be made as to the use of a partner's name in the name of the limited partnership. Either general partners' names must be prohibited from the name of a LLLP or limited partners' names should be includable in the name of both ordinary limited partnerships and LLLPs.

This draft takes the former approach, but the latter is certainly plausible. The name limitation derives from the 1916

Uniform Limited Partnership Act. In 1916, most business organizations were either unshielded (i.e., general partnerships) or partially shielded (i.e., limited partnerships), and it was reasonable for third parties to believe that an individual whose own name appeared in the name a business would "stand behind" the business. Today most businesses have a full shield (e.g., corporations or limited liability companies), and neither corporate nor LLC statutes preclude the use of an owner's name in the name of the business. Consider, for instance, the names of law firms organized as professional corporations, LLCs or LLPs. Why should the rule be different for limited partnerships?

57. Source: ULLCA § 105(a).

58. This subsection is new but is analogous to both RULPA's and Re-RULPA's treatment of limited partner names. See subsection (c).

59. Derived from ULLCA § 105(b).

60. This formulation comes essentially verbatim from ULLCA § 105(b)(1). ULLCA's list of entities seems underinclusive. What about, for example, business trusts or non-profit corporations? What about a partnership that has filed an assumed name certificate? The first type of problem is easily fixed, should the Committee so desire, by replacing the list of entities with the defined term "entity." The assumed name problem can be fixed with a reference to that type of filing. Query: are there any other contexts in which the name of an entity would be recognized in the records of the Secretary of

State?

61. ULLCA § 105(b) does not have this provision. If Re-RULPA allows foreign limited partnerships to register fictitious names, see ULLCA § 1005, those names will be included on this list.

62. Bert Black, the representative of the International Association of Corporation Administrators, has expressed concerns about the word "use." He notes that "use" encompasses or at least connotes intellectual property issues outside the purview of a Secretary of State. However, ULLCA § 105(c) refers to "use," and, in a limited sense, the Secretary of State does grant authority to use a name. When a name conflict exists under subsection (d), a limited partnership may not use the name in its certificate of limited partnership without the Secretary of State's permission.

63. ULLCA § 105(c)(1) refers only to "reserved name," but that reference appears underinclusive. Subsection (d) [in ULLCA, subsection (b)] also encompasses other names, i.e. names in use. So long as the owner of the conflicting name agrees to change it, why shouldn't the applicant have a right to the formerly conflicting name?

64. ULLCA § 105(c)(1) does not required the record to be signed.

65. Derived from ULLCA § 105(c)(1). The ULLCA version does not include the phrase "and from the all of the names described in subsection (d)." The phrase "an undertaking in form

satisfactory the [Secretary of State]" is arguably inadequate to express the substantive requirement that the new name "be distinguishable" from other names "upon the records of the [Secretary of State]."

66. Derived from ULLCA § 105(c)(2). The ULLCA version places the phrase "in this State" at the end of the provision. That placement makes the provision arguably ambiguous, since the name has been applied for "in this State."

67. This provision is derived from ULLCA § 105(d). The differences are as follow:

_____ (d~~f~~) A limited ~~liability company partnership~~ may use the name, including a fictitious name, shown upon the records of the [Secretary of State] as being used by ~~of another domestic or foreign company entity which is used in this State if the other company is organized or authorized to transact business in this State and the company~~ if the limited partnership proposing to use the name has:

- (1) merged with the other ~~company~~ entity;
- (2) been formed by reorganization with the other ~~company~~ entity;
- (3) has been converted from the other entity; or
- ~~(3)~~ (4) acquired substantially all of the assets, including the name, of the other company.

Subsequent endnotes explain each difference.

68. Although this provision is derived from ULLCA § 105(d), the reference to the records of the Secretary of State is new. This provision is part of a set of rules that enable the Secretary of State to determine whether a limited partnership's name is acceptable. As to possible conflicts with other names, the Secretary of State's exclusive reference is to the Secretary of State's records. The added language makes that situation explicit.

This language also differs from ULLCA § 105(d) by: (i) broadening the referred-to entities that might be using a conflicting name, see note 63, above; and (ii) deleting ULLCA's reference to entities "organized or authorized to transact business in this State."

69. This version omits ULLCA's precondition that "the other company [i.e., the name owner/registrant/user] is organized or authorized to transact business in this State." The earlier reference to the records of the [Secretary of State] make the precondition unnecessary. In any event, the word "company" is problematic in this context.

70. Not present in ULLCA.

71. ULLCA § 106 essentially derives from the RULPA language in this section. Consistent with the Drafting Committee's instructions to preserve current RULPA language absent good cause to do otherwise, this draft follows RULPA rather than ULLCA. The Reporter wonders, however, whether those

instructions still make sense. It now appears that Re-RULPA will incorporate substantial amounts of ULLCA's language while preserving little of RULPA's language. It might make better sense, therefore, for Re-RULPA to follow ULLCA rather than RULPA, absent a policy reason to the contrary.

In any event, there is a substantive difference between RULPA and ULLCA worth noting. Under RULPA § 103 (as preserved in this draft), when a reservation expires the registrant must wait 61 days before re-applying for the same name. ULLCA § 106(a) states merely that a reservation is for "a nonrenewable 120-day period." It is unclear whether that language means that: (i) once the first reservation expires the same applicant can never apply for the same name, or (ii) once a 120-day period actually expires the same applicant can apply for the same name immediately, with the application being considered a new application rather than as a renewal.

72. The word "transferee" has been changed because that word is a defined term in this draft.

73. Source: ULLCA § 107. As the comment to ULLCA § 106 notes, registration is more advantageous than reservation (longer term; renewable without limitation). Registration is, however, available only to existing, foreign limited partnerships.

Prior drafts of Re-RULPA did not include this provision, because the Reporter preferred to locate all provisions dealing with foreign limited partnerships in the Article dealing with

foreign limited partnerships. Draft #3 locates the provision here, consistent with the instructions to follow RUPA/ULLCA.

74. In ULLCA the cross reference is to § 1005, Name of foreign limited liability company.

75. Same cross-reference as in subsection (a).

76. Same cross-reference as in subsection (a).

77. This section is revised to conform to ULLCA § 108. That conformity is necessary, because this draft incorporates ULLCA §§ 109 --111 and those sections depend on the revised language. See note 71, above, for a discussion of whether Re-RULPA should generally follow ULLCA rather than RULPA.

This section differs from the version included in Drafts ## 1 and 2. Those drafts included the following new language: "A limited partnership may be formed and exist without doing business in this State." An endnote explained the proposed addition as follows:

This provision goes further, or at least less obliquely, than RULPA § 104(1). The RULPA provision states that the in-state office "may but need not be a place of its business in this State." That language leaves open whether a limited partnership must have "a place of its business in this state." There is no reason to require that type of nexus, and Re-RULPA's language makes clear that no such requirement exists.

Because ULLCA § 108 is based on RULPA, the additional language would cause Re-RULPA to deviate from ULLCA. Therefore, Draft #3 removes the additional language.

78. It might make better organizational sense to collect all provisions on foreign limited partnerships in Article 9, which deals with those partnerships. If the Committee

prefers that approach, the next draft will delete from this section all references to foreign limited partnerships and include appropriate provisions in Article 9.

79. The certificate of limited partnership must state the address of the in-state office. Section 201(a)(2).

80. ULLCA has no comparable language, because ULLCA does not have a required records provisions. Compare ULLCA § 408(a) ("A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement.")

Like Draft #2 of Re-RULPA, Draft #3 contemplates two tiers of required records. The first tier, to be listed first in Section 105, will comprise records to which limited partners have "no cause" access, see Section 305(a), and will be kept in the designated, in-state office. The second tier, to be listed second in Section 105, will comprise records to which limited partners may have access only for good cause shown, see Section 305(b), and will be kept where the limited partnership chooses.

81. This formulation, taken from ULLCA, is a bit unartful. What does it mean to "continuously maintain . . . [a] street address"? However, the formulation is unlikely to confuse anyone.

82. The Reporter sees no reason to so limit the eligible organizations, but ULLCA does so. See ULLCA § 108(b). (The ULLCA language is a bit different, because ULLCA refers to

"another limited liability company." That reference does not fit in this context.)

83. Following ULLCA, this provision applies only to domestic limited partnerships.

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

85. Source: ULLCA § 110.

86. Perhaps this provision should also apply to agents for foreign limited partnerships.

87. Bert Black, the representative of the International Association of Corporation Administrators, suggests that the copy should be sent to the resigning agent rather than to the address of the limited partnership. This approach is consistent with the 30-day time lag but adds to the problem discussed in the next note.

The reference to a limited liability company's principal office is from ULLCA. ULLCA § 110(b). A foreign limited

liability company's application for a certificate of authority must designate the principal office. As to a domestic limited liability company, the [Secretary of State] must glean the information from the annual report. See ULLCA § 211(a)(3). Because the annual report is not due upon formation, ULLCA § 211(c), for some months after an LLC's organization the [Secretary of State] does not know the LLC's principal office and therefore cannot strictly comply with ULLCA § 110(b). The same anomaly exists under this Draft.

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

89. Source: ULLCA § 111.

90. Bert Black, the representative of the International Association of Corporation Administrators, suggested, with regard to an earlier draft, that RE-RULPA accommodate electronic filings. Section 206 has been revised accordingly, following ULLCA § 206. Section 206 now permits the Secretary of State to determine "the medium permitted" for filing. It is not clear, however, that "the process, notice, or demand" is to "filed." Moreover, other law may require "the

process, notice, or demand" to be in hard copy. Bert Black also suggests that the Secretary of State be authorized to deliver via an electronic method if the method provides a receipt (e.g. fax, or delivery-confirmed email). The suggestion is quite intriguing, but do faxes and email have the same "weight" as certified mail in the eyes of a recipient?

91. This change is in keeping with the use of "required records" as a defined term. Like Draft #2, Draft #3 contemplates two tiers of required records. The first tier, to be listed first in Section 105, will comprise records to which limited partners have "no cause" access, see Section 305(a), and will be kept in the in-state office. The second tier, to be listed second in Section 105, will comprise records to which limited partners may have access only for good cause shown, see Section 305(b), and will be kept where the limited partnership chooses. **The present list does NOT reflect the two tier approach. The Reporter anticipates that the Committee will divide the list into two tiers at its October, 1998 meeting.**

92. Draft #2 used "updated" instead of "current."

93. It can be confusing to have the same word -- certificate -- refer both to an original document and to the documents that amend that original document. This draft therefore refers to "amendments" rather than "certificates of amendments." The changes in this paragraph reflect that change.

94. Earlier drafts had additional language requiring that this information be kept "in chronological order." If it

makes sense to require alphabetical order for the listing of partners, it seems ever more sensible to require the partnership to maintain chronological order with regard to partnership agreements and amendments. Upon reflection, however, the Reporter discovered an ambiguity in the concept of "chronological order" as applied -- namely, whether the order refers to date of adoption (however determined) or to effective date (however determined). Removing that ambiguity is possible but would probably involve more complexity than the additional language is worth.

95. Earlier drafts proposed an additional provision, as follows:

(6) a history of all distributions made by the partnership, stating for each distribution the aggregate amount distributed, the date on which the limited partnership decided to make the distribution, and the date on which the distribution was made, and in the case of an in-kind distribution permitted by section 605 the nature of the fungible property to be distributed

The additional provision has been removed as inconsistent with ULLCA.

96. If the Committee decides to retain this provision, the next draft will include a definition of "affiliate."

97. This additional language is proposed on the theory that, even if the partnership agreement authorizes self-dealing, a nonwaivable aspect of the duty of loyalty requires disclosure of any self-dealing transaction. Neither RUPA nor ULLCA require this type of recordkeeping, but neither of those Acts has a required records provision.

98. Derived from RMBCA § 16.01(e) (5). Neither RUPA nor ULLCA require this type of recordkeeping, but neither of those Acts has a required records provision. Moreover, both of those Acts assume decentralized management in the default mode.

99. This provision is moot if Re-RULPA never requires written consent. Even if Re-RULPA requires some consents to be in writing, at least these questions remain:

- Should those consents even be part of the required records?
- Will making those consents part of the required records keep limited partners adequately informed, or should the Act require that notice of those consents be given directly to all limited partners?

100. De-linking makes it necessary to expand this section to specify a limited partnership's powers.

101. This subsection raises two issues: (1) whether a limited partnership must have some business purpose, and, if so, (2) how broadly the term "business" applies. The first issue has at least two components: (a) should the law allow limited partnerships to undertake endeavors that have traditionally belonged to the province of non-profit ventures; and (b) is this Drafting Committee the appropriate place to make that policy determination. Recognizing that ULLCA authorizes LLCs to "be organized . . . for any lawful purpose," ULLCA § 112(a), a nonprofit limited partnership nonetheless seems oxymoronic. The very nature of a limited partnership presupposes profit-making,

at least eventually. A limited partnership has owners, and sooner or later those owners are due a distribution of any "surplus." See Section 804(b) (providing for liquidating distributions).

As to the second issue, it is important that limited partnerships be able to engage in the widest range of activity intended to produce economic gain for the limited partnership's owners. Hence, the draft eschews the phrase "a business for profit," UPA § 6; RUPA § 101(6), because the phrase could be read to exclude activities other than operating businesses.

102. This changes merely de-links the current RULPA provision from the law of general partnerships.

103. Source: ULLCA § 112(a). Query: if a limited partnership need not have a business purpose, should the "subject to" clause be expanded?

104. This version would not promote formal uniformity among states but would aid intra-state uniformity.

105. ULLCA § 112(b) expresses the exception right here. Note 112, below explains why this draft locates the exception in a separate subsection.

106. Derived from ULLCA § 112, which in turn appears to have relied heavily on RMBCA § 3.02

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

108. ULLCA did not mention limited liability companies, but perhaps Re-RULPA should.

109. ULLCA § 112(9) begins "elect managers." The ULLCA provision is taken essentially verbatim from RMBCA § 3.02(11), which begins with the phrase "elect directors." Re-RULPA eschews the word "elect" to avoid implying that general partners are normally subject to election.

110. RMBCA § 3.02(12) and ULLCA § 112(10) differ as to whether the entity has the power to provide pensions for a mere passive owner. The RMBCA provision does not mention shareholders, while the ULLCA provision refers to members. The ULLCA provision therefore appears to allow pensions for members in manager-managed LLC. Perhaps ULLCA's approach reflects the statutory default mode of member management. In any event, this draft follows the RMBCA. Of course, a limited partnership has the power to provide pensions for a limited partner who serves the limited partnership as an officer, employee or agent.

111. Earlier drafts included the following additional provision: "(13) transact any lawful business that will aid governmental policy." That provision appears at RMBCA § 3.02(14) but not in ULLCA.

112. This exception derives from ULLCA § 112(b)(1), but is separately stated to preserve the power of a limited partnership to sue and be sued in its own name. This power is of the essence of a limited partnership's nature as a legal entity. Moreover, any change in this power would significantly affect the

rights of nonpartners.

That issue aside, the notion of limitation is problematic for ULLCA and doubly problematic for Re-RULPA. If a statute authorizes restrictions on an entity's normal powers, the statute should also contemplate what will happen if restrictions exist and the entity transgresses them. See, e.g., RMBCA §§ 3.02 (allowing the articles of incorporation to restrict a corporation's powers) and 3.04 (dealing with ultra vires acts). ULLCA contemplates restrictions but not transgressions.

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

In light of the "weak" role of a certificate of limited partnership, it seems anomalous to empower the certificate to restrict a limited partnership's powers. The Reporter therefore favors deleting the language allowing the certificate to restrict a limited partnership's powers. If a limited partnership wishes to restrict its operations, it should indicate so in its partnership agreement. Whether those restrictions will bind

third parties will depend on Sections 403A (general partner agent of limited partnership) and 403B (limited partnership liable for general partner's actionable conduct).

113. The Reporter believes that a purpose restriction may be too vague to function well as a limitation of authority, but the opposite approach is certainly plausible. For example, Section 803A(b) takes that opposite approach regarding the certificate's reference to dissolution. Section 803A(b) provides that:

If the certificate of limited partnership has been amended to state that the limited partnership is dissolved, the amendment:

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

(2) operates as a statement limiting authority pursuant to Section 201(b).

114. To the uninitiated, this section appears to conflict with Section 403D(b)(2) (general partner's loyalty duty includes refraining from acting as or for an adverse party). The Comment will make clear that: (i) this section has no connection with the duty of loyalty and is intended only to deal with claims by creditors of the limited partnership; and (ii) the unartful formulation is retained for historical reasons and because including language that differs substantially from RUPA and ULLCA

would exacerbate rather than ameliorate the confusion.

N.b. -- both RUPA and ULLCA locate this provision elsewhere, within the section dealing with fiduciary duty. See RUPA § 404(f) and ULLCA § 409(f).

115. Like the Section numbers containing a capital letter (e.g. 403A), this number is temporary.

116. Source: RUPA § 201. ULLCA § 201 contains essentially the same provision. Draft #1 contained a subsection (b), stating when a partner is a proper party in a proceeding involving a limited partnership. That provision has been relocated to Section 403C-2 and revised.

117. This subsection is new in Draft #3 and implements a decision made at the Committee's March, 1998 meeting. See also Section 201(4). The Reporter confesses some uncertainty about this provision, as follows:

- Is the provision properly located?
 - ~ A location decision will be more easily made once the Committee decides the overall "look and feel" issue.
- Is the provision properly phrased?
 - ~ The phrase "perpetual term" may be an oxymoron. The phrase has appeal, however, because people are accustomed to thinking about the "term" of a limited partnership.
- Is the provision correct in specifying the certificate of limited partnership as the document for overriding the default rule?

~ If the limited partnership is destined to dissolve at a date certain, why not include that fact in the public record? Moreover, allowing the partnership agreement to override the default rule would put Re-RULPA at odds with ULLCA. See ULLCA § 203(a)(5) (requiring a limited liability company's articles of organization to state "whether the company is to be a term company and, if so, the term specified").

118. Change made to correspond to ULLCA and to allow updating of this information without amendment to the certificate. See ULLCA § 203(a)(2) and note 84, above.

119. Change made to correspond to ULLCA and to allow updating of this information without amendment to the certificate. See ULLCA § 203(a)(3) and note 84, above.

120. At its March, 1998 meeting, the Committee decided that, as a default rule, a limited partnership will have a perpetual term. The change made here reflects that decision. See also note 116, above.

121. This provision is a much slimmed-down version of RUPA's statement of authority. Compare RUPA § 303. RUPA's more elaborate and extensive approach seems unnecessary given the sharp division of authority between general and limited partners.

122. Derived from ULLCA § 203(c), which refers a bit inaccurately (albeit more succinctly) to "the nonwaivable provisions of Section"

123. Source: ULLCA § 203(c).

124. Section 206(d) limits the delay period to 90 days.

125. The 1986 amendments to RULPA added subsection (f), providing for restated certificates. This change merely expands the caption to reflect that addition.

126. It is confusing to use the same term to refer both to an initial document (i.e., the certificate of limited partnership) and subsequent documents that amend the initial document.

127. These changes are necessary because the term "amendment" now refers to the entire document.

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

129. The change is to switch from the passive to active voice.

130. "Withdrawal" is no longer the term of art. "Dissociation" is.

131. What concerns third parties is whether the limited partnership has dissolved, because that event affects the power of general partners to bind the entity. See Section 803A. It seems more sensible, therefore, to have the certificate directly address the question of dissolution.

132. What if the partnership agreement places all responsibility and power to amend the certificate on one general

partner and another partner becomes aware of an inaccuracy? Does the agreement relieve the second partner of responsibility under this provision? Presumably not -- the certificate is not squarely within the domain of the partnership agreement, because inaccuracies in the certificate have an effect on third parties. Moreover, Section 207 imposes personal liability on general partners for failure to correct the public record. If there is doubt on this point, however, perhaps this provision should be included in the list of nonwaivable provisions.

133. In some circumstances, an amendment requires more than one general partner's signature. See Section 204. This change is to accommodate those circumstances. Section 205 (Signing and Filing by Judicial Act) is available to a general partner who cannot convince fellow general partners to sign.

134. It would generally not be a "proper purpose" to amend the certificate to undercut or conflict with the partnership agreement. However, if the partnership agreement gets out of synch with reality -- e.g., if a general partner is dissociated but the partnership agreement has not been amended to reflect that change -- this provision would oblige the general partners to amend the certificate despite the resulting nonconformity with the partnership agreement.

135. As a matter of organization, the reference to execution belongs in Section 204, which deals with execution requirements. Also, moving the reference will make it easier to correct the current rule's simplistic approach. Who must sign a

restated certificate depends on the nature of the changes reflected in the restated certificate. Some changes might require a single general partner's signature, while others might require two or more.

136. This Section is modified for several reasons. First, cancelling the certificate upon dissolution is misleading because a dissolved limited partnership is not terminated. Second, amending the certificate to indicate dissolution (as required by this draft) provides the public the appropriate information. Third, given past usage it would be confusing to apply the word "cancellation" to a document filed to indicate the termination of a limited partnership's existence. This draft uses "declaration of termination" for that purpose. It is a close organizational question whether treatment of that declaration belongs here (in fealty to the current statute's organizational structure) or in the article dealing with dissolution, winding up and termination. Consistent with the Committee's instructions, this draft opts for the former.

137. In prior drafts this phrase read "Promptly after". The change is to correspond with the 30-day deadline for amendments stated in Section 202(b). In this draft, the protections of Section 202(e) do not extend to the 30-day time period established in Section 203. The Reporter believes that both 30-day periods merit the same protections but has deferred proposing language until the Committee decides whether to follow RULPA or ULLCA on the question of liability. See note 155,

below. If the Committee chooses to follow ULLCA, this issue becomes moot.

138. The adjective is to distinguish any restated certificates.

139. ULLCA § 805(b) accords with RULPA in allowing this final document to have a delayed effective date. Query: why should an entity whose business has been fully wound up continue to exist after the entity has publicly stated that its business is wound up? In any event, Section 206(d) limits the delay period to 90 days.

140. ULLCA § 205 (Signing of records) refers to "a record to be filed by or on behalf of a limited liability company." This draft omits that language because paragraphs (a)(9) and (10) contemplate a dissociated general partner filing a record on his, her or its own behalf. The phrase "pertaining to a limited partnership" makes clear that these signing requirements apply on to domestic limited partnerships. Following ULLCA, Re-RULPA does not state signing requirements for records filed by or on behalf of foreign limited partnerships (e.g., annual reports, applications for a certificate of authority).

141. NCCUSL Procedural and Drafting Manual (1997 ed.), Rule 8(a)(2).

142. At its July, 1997 meeting, the Committee decided that a person can be a general partner even though not listed in the certificate. This change reflects that decision.

143. As proposed below, Section 302(b), in the default mode as among the partners this change requires the consent of all partners. However, execution of the necessary publicly-filed document remains the province of the general partners.

144. This paragraph applies, e.g., to annual reports, Section 211, and articles of correction, Section 206A.

145. It was suggested during the Committee's March, 1998 meeting that such statements be authorized but there was no discussion on the legal effect of such statements. Following RUPA, such statements would at least act as a limitation of authority to execute transfers of real property. But what effect on Section 208(a), which provides in part:

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated ~~therein~~ in the certificate as general partners are general partners . . .

(Emphasis added.) Pending the Committee's deliberations on this issue, Draft #3 omits any provision for the legal effect of statements referred to in this provision and for the filing of such statements. (Determining where to place such provisions will be considerably easier after the Committee decides the overall "look and feel" issue.)

146. The March, 1998 meeting did not discuss this statement, but its inclusion seems to follow a fortiori from the decision to allow statements by dissociated partner. Compare

RUPA § 304 (authorizing a person "named as a partner in a filed statement of partnership authority" to file "a statement of denial"). Query: would a statement of denial mean that the person is merely a limited partner, or would it be tantamount to declaration of withdrawal under § 304(a)(2)?

147. The changes to subsection (b) address three issues: First, as a merely technical matter, the reference to "records" encompasses the new categories of documents, such as amendments, declarations and annual reports.

Second, the current language of subsection (b) suggests that the special requirements viz a viz new general partners do not apply to the original certificate. See RULPA § 401 (captioned "Admission of Additional General Partners"[emphasis added], referring only to events "after the filing of a limited partnership's original certificate" [emphasis added], and suggesting thereby that "admission" does not refer to the original general partners). If subsection (b)'s protections make sense for additional general partners, they make sense for the original general partners as well. The changes therefore apply subsection (b) to the original certificate.

Third, subsection (b) could be read to apply even when the attorney-in-fact is not signing on behalf of the new partner. Consider, for example, an amendment that both converts an ordinary limited partnership into an LLLP and adds a new partner.

Section 204(a)(2) [new] requires that all the old partners sign the amendment. If one of these old partners wishes to sign

through an attorney-in-fact, is there any reason to require the authorization to specifically refer to that part of the amendment that designates some other person as a new partner? The changes make clear that subsection (b) applies only to an authorization from a person who is about to be newly designated as a partner.

Neither RULPA nor this draft state whether the [Secretary of State] should file each power of attorney along with the record to which the power pertains, although RULPA § 105(a)(2) does require the limited partnership to keep in its required records "executed copies of any powers of attorney." The Reporter is unaware of any problems in this regard but notes that ULLCA § 205(c) provides that "[p]owers of attorney relating to the signing of records to be filed [by or on behalf of a limited liability company] by an attorney-in-fact need not be filed in the office of the [Secretary of State] as evidence of authority by the person filing but must be retained by the company." Parallel language can be inserted in Re-RULPA if the Committee wishes, but the Committee should then decide the rule applicable to filings not by or on behalf of a limited partnership -- e.g., filings by a dissociated general partner.

148. This subsection raises two questions: (1) Given that ULLCA has no comparable provision, should Re-RULPA omit this provision? (2) If Re-RULPA retains this provision, should the provision extend only to the certificate, amendments and declarations, or also to other filings, such as annual reports and applications by foreign limited partnerships for certificates

of authority? Any rationale for deviating from ULLCA would relate to general partner personal liability. That is, it could be argued that the existence of general partner liability makes misstatements in limited partnership filings more serious than misstatements in LLC filings. The Reporter considers that argument unpersuasive and recommends deleting the subsection.

In case the Committee disagrees, the provision should be reinstated and revised as follows:

Narrower scope -- The execution of a certificate, amendment, or declaration by a ~~general partner~~ person pursuant to this section constitutes an affirmation under the penalties of perjury that the facts stated ~~therein~~ in that record are true.

Broader scope -- The execution of a ~~certificate~~ record by a ~~general partner~~ person pursuant to this section constitutes an affirmation under the penalties of perjury that the facts stated ~~therein~~ in that record are true.

149. Following ULLCA, Re-RULPA uses "sign" as a defined term of art. ULLCA § 210, that Act's comparable provision, is captioned "Filing by judicial act."

150. Strictly speaking, Section 204 does not require a person to execute a document; the section merely specifies whose signatures are required for a document to be properly executed.

151. RUPA contains another approach, allowing various persons to file documents to correct the public record. See RUPA §§ 304 (authorizing a person "named as a partner in a filed statement of partnership authority" to file "a statement of denial"); 704 (authorizing a dissociated partner to file a statement of dissociation); and 805(a) (authorizing a partner who has not wrongfully dissociated to file a statement of dissolution). Draft #3 of Re-RULPA partially reflects this approach. See note 145, above. Draft #3 does not contemplate dissociated a general partner filing a statement of dissolution. (Any non-dissociated general partner may do so.)

Whether Re-RULPA should follow RUPA in this respect is a different matter. RUPA assumes decentralized management, so decentralizing the power to affect the entity's public record is consistent with RUPA's overall paradigm. Re-RULPA, however, assumes centralized management. The general partners run the business and, it can be argued, should have exclusive authority and responsibility to maintain the limited partnership's public record.

152. This Section has been completely revised, following ULLCA § 206 essentially verbatim.

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

154. Source: ULLCA § 207.

155. This section reaches much further than the

comparable ULLCA provision. ULLCA § 209 provides:

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

ULLCA omits personal liability for those who learn of a misstatement, have the authority to correct it but fail to do so.

156. The addition is to make clear that the exculpatory provision contained in Section 202(e) modifies this Section's general statement of liability. Both Section 202(e) and this Section are RULPA provisions.

157. Further revision of this awkwardly phrased provision awaits the Committee's decision on the scope of liability. See note 155, above. If this provision is retained in substance, its enumeration of corrective measures will expand to include statement of denials and dissociation.

158. The provision states no obligations with regard to declarations of termination, because the filing of that declaration terminates the limited partnership and perforce the status of general partner.

159. "Statement" is a term of art under RUPA and will probably become so under Re-RULPA.

160. This Section attempts to centralize most of the provisions that deal directly with this subject. There are other relevant provisions, however; e.g., Sections 602C(a)(2)(ii) (cutting off a dissociated general partner's power to bind the limited partnership when "90 days have passed since the certificate of limited partnership was amended to state that the person is dissociated as a general partner"); 602D(b)(2)(ii) (functional equivalent as to general partner's liability for post-dissociation debts of the limited partnership); 803A(b) (stating that an amendment to the certificate which states that the limited partnership is dissolved has consequences with regard to a general partner's authority to transfer real property); 803A(c) (imputing notice to non-partners of the dissolution of the limited partnership "90 days after the certificate of limited partnership has been amended to state that the limited partnership is dissolved"). See also Section 201(c) (stating rules for reconciling conflicts between the certificate of limited partnership and the partnership agreement).

Further work on centralizing these provisions awaits the Committee's discussion and decision on two related issues: (i) to what extent will persons be allowed to file statements, denials, etc. regarding their respective relationships to the limited partnership (e.g., claiming dissociation as a general partner, denying ever having been a general partner); and (ii) what effect will such statement and denials have?

161. Notice to whom and to what effect?

162. Draft #1 significantly changed this provision, but at its July, 1997 meeting the Committee rejected the approach underlying those revisions. Accordingly, Draft #2 returned most of RULPA's original language. In addition, Draft #2 deleted what was subsection (c). That subsection provided:

(c) A certificate of limited partnership's designation of a person as a general partner **[alternative language: If a certificate of limited partnership designates a person as a general partner, that designation]** is conclusive in favor of a person who gives value without knowledge to the contrary. A person not a partner is deemed to know that the persons designated as general partners in the certificate of limited partnership are a limited partnership's only general partners.

Draft #3 continues Draft #2's approach in this matter.

163. Following RUPA, this provision applies even in favor of a partner.

164. Source: RUPA § 302(b)(1) and (2). N.b. -- this draft does not require duplicate filings.

165. Source: RUPA § 303(e). N.b. -- this draft does not require duplicate filings. Note also that, following RUPA, this provision operates even if the partnership agreement differs from the statement and a third party knows of the differing provision of the partnership agreement. In that event, this provision operates to impute knowledge "of the limitation" to the third party. What result if the third party relies on the partnership agreement and ignores the filed limitation?

Comment 2 to RUPA § 303 suggests that the third party acts at its peril, because the publicly-filed limitation means the partner lacks the power to bind the entity: "Of course, a transferee

with actual knowledge of a limitation on a partner's authority is bound under Section 301, whether or not there is a recorded statement of limitation." However, the Comment does not seem to contemplate a third party "knowing" two conflicting things.

166. Derived from RUPA §§ 303(e) and 704(c).

167. The complete revision of Section 206 made it necessary to completely revise this Section.

168. The obligation runs from the entity to its owners, although the managers (i.e., the general partners) are obliged to carry out this as well as other obligations of the entity.

169. Source: ULLCA § 208.

170. The Reporter would prefer a different name for this document, so that as much as possible the word "certificate" refers to the certificate of limited partnership. Consistent with instructions to follow RUPA/ULLCA, however, this Draft uses the same name as used by ULLCA.

171. The Committee should consider adding two new paragraphs:

- "whether the certificate of limited partnership has been amended to indicate that the limited partnership has been dissolved"
- "whether the limited partnership is a limited liability partnership"

These additions are not included in Draft #3, because ULLCA § 208 seems designed to provide information not available on the face of the organizational document (i.e., the articles of organization for an LLC; the certificate for a limited partnership). But see ULLCA §§ 208(b)(2) (requiring the certificate of existence to set forth "whether [the limited liability company's] duration is at-will or for a specified term, and, if the latter, the period specified") and 203(5) (requiring the articles of organization to set forth "whether the limited liability company is to be a term company and, if so the term specified").

172. Source: ULLCA § 211.

173. Draft #1 read "has before that time signed".

174. Draft #1 read "valid under".

175. Paragraph (2) is deleted because it is unclear how a limited partner admitted under that clause differs from a limited partner admitted under subsection (b). In particular, it is unclear why paragraph (2) allows the required records to provide for admission, while subsection (b) requires compliance with the partnership agreement.

176. At its last meeting, the Committee decided to eliminate this language in favor of a simpler approach.

177. This version boils down the current subsection (b) to its essence. Since the partnership agreement governs this area, why have the statute address separately the two pathways by which a person can become a limited partner after

formation? On both pathways the rule is the same: no default right to become a member. It is likewise unnecessary to expressly refer to unanimous partner consent as a fallback mode of admission, since that consent will always suffice to amend the partnership agreement. However, because that point is not obvious, the draft specifically refers to "the consent of all the partners." Draft #1 required that consent to be written. At its July, 1997 meeting, the Committee decided to delete that requirement. At that meeting the Committee also noted the possibility of a person becoming a limited partner via a merger. Draft #2 therefore accommodated that possibility as well as the possibility of conversion. Draft #3 continues Draft #2's language.

178. This version furthers the process of simplification and removes the formal distinction between obtaining membership pre- and post-formation. Section 101B(b) permits a partnership agreement to be signed prior to formation, to be effective upon formation.

179. Draft #1 included a subsection (c), requiring the limited partnership to update its required records when a person becomes a limited partner. The Committee directed that that requirement appear in the required records section.

180. Including this particularized statement conflicts with the paradigm established in Section 101B -- namely, that the partnership agreement has power generally to govern the internal relations of a limited partnership.

181. Draft #1 first listed various nonfinancial rights of a limited partner and then stated that a limited partner had no other management rights. At the Committee's direction, Draft #2 begins with the restrictive language.

ULLCA contains a comparable list. See ULLCA § 404(c) (management of limited liability company). For Re-RULPA there are two possible locations for the list: here, in the section dealing with limited partners, or Section 403, dealing with the management rights of general partners. Draft #2 continues the approach of Draft #1 and locates the list here. Accordingly, Section 403 refers to this section. If the Committee wishes, the list can be relocated to Section 403 and this section will then refer to the list in Section 403.

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

That approach is continued in Draft #3 and is consistent with a decision the Committee made in its July, 1997 meeting. Draft #1, Section 403(c) prohibited general partners from taking "any action outside the ordinary course or the proper winding up

of the limited partnership's business" and an endnote suggested that, except during winding up, disposition of substantially all of a limited partnership's assets would typically be outside the ordinary course. The Committee deleted Section 403(c).

183. Draft #1 included the phrase "and other information regarding the limited partnership's business, affairs and financial condition". The Committee deleted provisions requiring the limited partnership to compile that additional information -- hence the deletion made here in Draft #2 and continued in Draft #3.

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

184. The first cross reference is to the generally applicable provision on admitting limited partners. The second cross reference is to the generally applicable provision on admitting general partners. The third cross reference is to the provision allowing the admission of a new general partner following the dissociation of the limited partnership's last general partner. In the default mode, the first two of the cross referenced provisions require unanimous partner consent. The third requires consent from limited partners owning a majority of profits interests.

185. There has been some discussion as to whether bringing a derivative action properly fits with the caption of "management rights" and concept of "participat[ing] in . . .

management." The Reporter notes, however, that courts addressing the demand futility question routinely state that the bringing of litigation is ordinarily a matter of business judgment, to be decided by the company's management.

186. Perhaps this provision should be expanded to include action under the partnership agreement.

187. Source: ULLCA § 404(d). The same provision appears in Section 403. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

188. Source: ULLCA § 404(e). The same provision appears in Section 403. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

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

Also for the Comment: The fact that a limited partner has no power to bind the limited partnership means that information possessed by a limited partner is not attributed to the limited partnership. Attribution of information is an aspect of the power to bind.

190. Draft #1 contained a paragraph (d), that stated: "This section does not prevent a limited partner from bringing a direct action to enforce rights personal to that limited partner.

A limited partner may bring a direct action with or without an accounting." The Committee directed that those issues be addressed elsewhere. See Section 1005(a).

191. Deleted from Draft #1 -- the phrase "on account of that status". The Comment will state that a limited partner can assume fiduciary obligations on account of some other relationship to the limited partnership. For example, a limited partner who acts as a broker or attorney for the limited partnership will owe the limited partnership fiduciary duties in that role. See also Section 404 (Dual Capacity).

192. Note that by its terms this rule does not apply if the limited partner exercises powers under a separate agreement. A limited partner who acts under a separate agreement will have at least whatever contractual duties that agreement provides. If the agreement reflects or defines a fiduciary relationship (e.g., an agent), that relationship will impose fiduciary duties as well.

193. Derived from ULLCA § 409(h)(3). Like the ULLCA provision, this provision could be read to omit nonfeasance; i.e. to not apply to a limited partner who is given rights but fails to exercise them.

194. Derived (loosely) from RMBCA § 7.32(e).

195. The Reporter's notes indicate that at the July, 1997 meeting there was some support for this Alternative. If the Committee adopts this Alternative, the Reporter will propose a Comment indicating that this language does not immunize a person

from liability for usurping a general partner's functions.

196. Source: RUPA § 404 (d).

197. This sentence follows the Committee's instructions. The rule stated here adds significance to the proposed Comment.

198. Source: RUPA § 404(e). Draft #1 used slightly different language and inserted this statement into the paragraph on good faith and fair dealing. Consistent with the Committee's instructions, subsequent drafts have more faithfully followed the RUPA approach.

199. Draft #1 contained the following statement, which the Committee deleted as more appropriate for a Comment: "This section does not prevent a limited partner from assuming fiduciary or other duties in some capacity other than limited partner."

200. The Comment will indicate that in this respect limited partners are analogous to shareholders. (That statement could serve as fodder for a "piercing" claim. See note 253, below.) Draft #1 included a paragraph stating: "This section does not prevent a limited partner from being liable as a result of the limited partner's own conduct, to the extent that the same conduct would result in liability for a person who is not a limited partner." The Committee deleted that paragraph as inappropriate for the statutory text. A Comment will address the issue, noting that nothing in the limited partner's shield affects claims for which owner status is not an element.

201. Under the current draft, in most circumstances a limited partner's name does not belong in the name of an LLLP. However, violation of that rule should not subject the limited partner to personal liability. No third party has the right to expect any general partner to be vicariously responsible for an LLLP's debts. This entire paragraph could be eliminated if the Committee adopts a more modern approach to using the names of owners in the name of the entity. See notes to Section 102.

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

N.b. -- neither this provision nor any other in this draft deal with a general partner who starts an enterprise erroneously believing the enterprise to be an LLLP. This issue can be labelled "defective formation" and only arises with regard to full shield entities. With an ordinary limited partnership, the general partner is always liable for the business' debts and so the niceties of formation have little impact.

Corporate law has dealt with this issue in various ways, including: MBCA § 146 (persons assuming to act when de jure corporation not yet formed); RMBCA § 2.04 (liability for preincorporation transactions); the doctrines of de facto

incorporation and corporation by estoppel. ULLCA does not address the subject.

If the Committee wishes, the next draft can include a provision immunizing general partners who in good faith but erroneously believe themselves to be general partners of an LLLP. It can be argued that such people are indistinguishable from "persons purporting to act as or on behalf of a corporation [not] knowing there was no incorporation." RMBCA § 2.04.

In deciding this point, it is well to consider that a LLLP resembles an LLC at least as much as a corporation and that ULLCA is a very recent Uniform Act. Absent a good reason to the contrary, why not follow ULLCA rather than the RMBCA?

203. In this draft "contribution" is a defined term and relates to an investment in a de jure limited partnership. This provision is not limited to that situation.

204. Even if the Committee decides that a limited partnership need not have a "business" purpose, the word "business" should probably remain here. This provision addresses the vicarious liability that arises from co-ownership of a would-be profit-making enterprise.

205. The phrase "is not a general partner" is redundant to the extent the phrase is intended to protect the would-be limited partner from vicarious liability to third parties. Moreover, the phrase may be confusing in relation to Section 403A (General partner agent of limited partnership). If

this section is intended to override Section 403A, this section should say so explicitly. If not (which the Reporter thinks is and should be the case) the phrase "is not a general partner" does not belong here.

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

207. This change is intended to aid clarity by reserving the term "certificate" for the certificate of limited partnership. Note that a "person erroneously, etc." cannot make use of Section 206A(correcting filed record), because (i) that provision would apply only if a certificate of limited partnership has been filed, and (ii) even a certificate has been filed, the statement of correction must be signed by a general partner. See Section 204(a)(8).

208. The Comment will indicate that: (i) this provision permits a withdrawing person to receive as an ordinary creditor payment equal to the amount by which the value of the person's investment (determined as of the time made) exceeds any distributions received prior to withdrawal, but no greater amount; (ii) this provision does not require the return of any greater amount received prior to withdrawal; and (iii) whether the withdrawing person has a right viz a viz the enterprise or others connected with it to receive any return at all is a matter

for other law.

209. Under the added language, if at the relevant moment the limited partnership is a LLLP, no personal liability results.

210. When a limited partnership exists de jure -- i.e., when a certificate of limited partnership has been filed -- the recourse provided by this section would partially overlap the recourse provided by a statement denying general partner status. See note 146, above.

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

212. This Section has been substantially rewritten, essentially to provide greater guidance to partners and courts.

213. Limited and general partners have different roles in the management of the business and therefore have different needs for information. Section 403E discusses the information rights of general partners.

214. At the July, 1997 meeting, the Committee deleted "other than a statement of another partner's account as partner." This deletion reflected a decision to exclude such accounts from the scope of required records. For an explanation of the

reference to Section 105, see note 217, below.

215. Given the passive nature of limited partners and the presumed entrenchment of general partners, this draft provides limited partners broad access to some of the required records. Case law involving objections to limited partner access is scant, and mostly concerns limited partners seeking the names of fellow limited partners or information on alleged general partner misconduct. The information has been sought either to find support for litigation or preparatory to making a bid to take over the partnership business. Barring access in those circumstances would prefer or entrench the general partners. If a limited partnership wishes to maintain its financial information as confidential, Section 305(f) allows the partnership agreement and the general partners to impose use limitations. Even if the partnership fails to do so, the limited partner's obligation of good faith and fair dealing should provide some constraints.

216. Draft #1 referred to "the limited partnership's in-state office." The Committee deleted that reference in favor of the current language, which is taken from RMBCA § 16.02.

217. Draft #1 required the limited partnership to create or compile information. The Committee rejected that requirement and directed that this paragraph refer only to information already in existence as a "record." That change would indeed narrow limited partner access rights, but probably not as much as the Committee intended. The term "record" is much

broader than the notion of "required records," and the language as contemplated by the Committee at its July, 1997 meeting would give limited partners potential access to any information the limited partnership happens to maintain as a record. Compare the RMBCA, which limits access to specified records. RMBCA § 16.02.

Consistent with what he hoped was the spirit of the Committee's decision, in Draft #2 the Reporter went beyond the express language discussed at the July, 1997 meeting and:

- bifurcated the required records into two categories:
 - ~ records to which limited partners have "no cause" access, and
 - ~ records to which limited partners may have access only for cause
- restructured the access provisions of this section accordingly.

The Committee's March, 1998 meeting did not reach this matter, so Draft #3 continues the approach first included in Draft #2.

218. Derived from RMBCA, § 16.02(c). That provision refers to "proper purpose." This draft substitutes for that phrase the explanation given in the RMBCA Comment. Draft #1 followed RMBCA § 16.02(c)(1) in imposing a "good faith" requirement. This Draft deletes that specific requirement as redundant, given a limited partner's generally-applicable duty of good faith.

219. Derived from RMBCA § 16.03(c). Draft #1 included another requirement, -- i.e., that the information sought could

"be compiled, created, or otherwise obtained by the limited partnership without undue hardship." The Committee's decision to limit access to existing records renders superfluous the undue hardship provision.

Note, however, that in unusual circumstances a limited partner might be able to compel the creation or compilation of information. If the limited partnership has failed to maintain required records, a limited partner might bring a mandamus action seeking to compel the creation of those records, coupled with an action pursuant to this section seeking access to those records once created.

220. In a dispute concerning demanded records, general principles of civil procedure will impose the burden of proof on the party seeking relief; i.e. the person making demand. If the Committee wishes to emphasize that point, the Comment could state: "In any dispute under this section, under general principles of civil procedure the limited partner making the demand has the burden of proving a right to the demanded record."

221. Deleted from Draft #1 -- paragraph (d):

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

Paragraph (d) derived from ULLCA § 408(b), which provides comparable rights to LLC members even in a manager-managed LLC. Discussion at the Committee's July, 1997 meeting suggested that

the applicability of ULLCA § 408(b) to manager-managed LLCs was an "oversight."

222. For the notion that former owners should have access rights, see ULLCA 408(a).

223. This paragraph was added in Draft #2.

224. At the July, 1997 meeting, the Committee decided that the general partners should have the right to impose use limitations, even if the partnership agreement is silent. Consistent with Re-RULPA's entity approach, the new language refers to the limited partnership, rather than the general partners.

225. A Comment will indicate that "limitations on use" include confidentiality restrictions.

226. This language allows only the partnership agreement to define remedies. At its July, 1997 meeting, the Committee specifically decided to mention remedies, but the discussion did not -- to the best of the Reporter's recollection -- contemplate the radical step of allowing one party (i.e., the limited partnership) to unilaterally define remedies. The Committee did specifically contemplate liquidated damages, so that concept appears in this Draft. The Reporter wonders, however, whether a specific reference is necessary. Liquidated damages are an ordinary phenomenon in agreements. If the partnership agreement may define remedies, then perforce the agreement can specify liquidated damages. If the Committee wishes to do more than reaffirm ordinary contract law principles

(e.g., by relaxing the standards for enforcing liquidated damages), the statute must do more than merely mention liquidated damages.

227. Under this language the limited partnership may itself impose use restrictions. That authority renders superfluous the language in Draft #1 which had authorized the limited partnership to apply to court to impose such restrictions.

228. To protect a limited partner's right of access this draft imposes a special requirement on partnership agreement provisions purporting to limit the information's use -- namely, the restrictions must be reasonable. This language is partially redundant of Section 101B(c)(2) (prohibiting the partnership agreement from unduly restricting access to information under this Section and Section 403E). Although Section 101B's language derives from RUPA, it may be necessary to change that language to fit with this subsection. This subsection creates both (i) additional authority to restrict access (i.e., not only via the partnership agreement but also via the limited partnership's unilateral action), and (ii) additional limitations on those restrictions (i.e., the limited partnership has the burden of proving reasonableness, regardless of how the restrictions are imposed).

Per the Committee's instructions, Draft #2 deleted the following language from Draft #1: "A restriction relating to the use of the names and addresses of the partners is not

reasonable."

229. At the Committee's March, 1998 meeting the Reporter was directed to refer to ULLCA § 408(b) and provide comparable protections for the estate of a deceased partner. The legal representative of a deceased limited partner would have the rights only of a person dissociated as a limited partner, because death causes dissociation. See Section 603(b)(6).

230. Under Section 603A(3), a person dissociated as a limited partner becomes a transferee of the person's own transferable interest.

231. At its July, 1997 meeting, the Committee decided that a person could be a general partner without being so designated in the certificate of limited partnership. Therefore, if a person is a general partner according to the partnership agreement but not according to the certificate, that person has:

- all the rights and duties of a general partner as to the limited partnership and the other partners; and
- the powers of a general partner to bind the limited partnership under Section 403A and 403B.

The certificate of limited partnership is consequently a far less powerful document that envisioned in Draft #1. With regard to the status of general partners, the certificate merely serves as notice that those persons so listed are general partners. The absence of a name is not affirmatively significant. Suppose, for example, that a third party believes X to be a general partner, but the certificate of limited partnership does not list X as a

general partner. That omission does not undercut X's bona fides in the eyes of the third party -- even if the third party has reviewed the certificate.

With regard to authority to transfer real property, the certificate can go further. It can specifically limit that authority to a particular general partner or to persons named in the certificate as general partners. See Section 208(c).

232. This language follows the simplified approach proposed as alternative language for the admission of limited partners. See Section 301.

233. This section was deleted in Draft #1, because under that draft's "discharge" paradigm it was not necessary to deal separately with the dissociation of general and limited partners. In Draft #1 treatment of dissociation was therefore relocated to Article 8.

Draft #2 dispensed with the notion of general partner discharge, so it was once again necessary to treat the dissociation of general and limited partners at least somewhat differently. Many of the causes of dissociation overlap, and the Reporter favors dealing with general and limited partner dissociation in one section. Nonetheless, consistent with the Committee's instructions to maintain as much as possible of RULPA's structure and "look and feel," Draft #2 included separate sections on general and limited partner dissociation. Draft #3 continues that approach. See, for example, Sections 602 and 603.

234. Derived from ULLCA § 404 and RUPA § 401.

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

236. Perhaps this provision should be expanded to include action under the partnership agreement.

237. Source: ULLCA § 404(d). The same provision appears in Section 302. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

238. Source: ULLCA § 404(e). The same provision appears in Section 302. The repetition follows from Re-RULPA's bifurcated approach to limited and general partners.

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

240. Source: RUPA § 401(d).

241. Source: RUPA § 401(e).

242. Derived from RUPA § 401(h), but this draft omits

RUPA's exception "for reasonable compensation for services rendered in winding up the business of the partnership." In a limited partnership, winding up is a foreseeable consequence of being a general partner. See Section 403(a).

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

244. Source: RUPA § 301.

245. Draft #1 substituted the phrase "the general partner had actual authority for the act or the limited partnership ratified the act" for RUPA § 301(2)'s phrase "authorized by the other partners." An endnote to Draft #1 explained the substitution as follows:

The Comment to RUPA § 301 explains what RUPA means by "authority" in this context. This draft merely takes RUPA's explanation and puts that explanation into the statute.

Draft #2 returned to the RUPA language, in accordance with the Committee's instructions at the July, 1997 meeting, and of course Draft #3 continues that approach. The Reporter continues to urge the Committee to return to Draft #1's approach in this instance and notes that RUPA comments ascribe various meanings to the word "authority." See RUPA §§ 301, Comment 3 (interpreting RUPA §

301(2), which contemplates an act "not apparently for carrying on in the ordinary course" as being "authorized by the other partners; stating that the subsection "makes clear that the partnership is bound by a partner's actual authority, even if the partner has no apparent authority"); 305, Comment, third paragraph (explaining that the phrase "with the authority of the partnership" in § 305(a) "is intended to include a partner's apparent, as well as actual, authority"); 305, Comment, fifth paragraph (interpreting, without quoting, the phrase "with authority of the partnership" in § 305(b) and indicating that the phrase refers to "the scope of the partner's actual authority").

246. This draft follows ULLCA in omitting any parallel to RUPA § 302, Transfer of Partnership Property. RUPA § 302 derives from UPA § 10, and both those sections address issues arising from the former aggregate aspect of general partnerships.

247. Source: RUPA § 305.

248. For the sake of clarity, Draft #1 included at this point the phrase "actual or apparent." RUPA § 305(a) is the source of this provision, and the Comment to RUPA § 305(a) states "[t]his is intended to include a partner's apparent, as well as actual, authority." Remarkably, the Comment to RUPA § 305(b) interprets the phrase "acting with the authority of the partnership" to refer only to "the scope of the partner's actual authority." To avoid confusion, Draft #1 inserted the applicable adjective into the text of the statute.

In accordance with the Committee's instructions at the July,

1997 meeting, Draft #2 returned to the RUPA language, and of course Draft #3 continues that approach. The Reporter continues to urge the Committee to return to the Draft #1 language.

249. According to the Comment to RUPA § 305(b), that subsection's phrase "acting with authority of the partnership" refers only to "the scope of the partner's actual authority." As to various meanings RUPA Comments ascribe to the word authority, see notes 245 and 248, above.

250. ULLCA omits this provision. Subsection (a) would suffice to cover subsection (b), except that -- according to the RUPA comments -- subsection (a) includes apparent authority while subsection (b) does not.

251. Source: RUPA § 306.

252. Draft #1 included within the exception "Section 401F (discharged [now 'dissociated'] partner's liability to other persons)". Draft #2 omitted that reference because, strictly speaking, Section 401F [now Section 602D] does not refer to a general partner's liability. The Comment will note that Section 602D governs the personal liability of a dissociated partner.

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

regard to the shareholders of a corporate general partner.)

Piercing is, however, an important issue with regard to LLLPs, because an LLP has a full, corporate-like liability shield. Following ULLCA, this draft does not directly mention piercing. However, following ULLCA, RUPA and UPA, Section 101C(a) of this draft provides that "[u]nless displaced by particular provisions of this [Act], the principles of law and equity supplement this [Act]." Piercing is an equitable doctrine. Unless the Committee directs otherwise, the Reporter will prepare a Comment that refers to piercing as an available equitable doctrine.

254. Draft #1 included most of this material in the preceding section, Section 403C. Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2 followed RUPA more closely. This Section, unchanged since Draft #2, follows RUPA § 307 essentially verbatim, except for the insertion of subparagraph (b).

255. Shouldn't this be "must"?

256. This draft follows RULPA and limits derivative claims to limited partners. See Section 1001.

257. Draft #1 omitted this section as unnecessary, given the powerful role of the certificate of limited partnership. At its July, 1997 meeting, the Committee deflated that role considerably, and Draft #2 accordingly included a provision sourced from RUPA § 308. No changes were made in this provision at the March, 1998 meeting.

258. At this point RUPA § 308(a) reads: "or with one or more persons not partners." That phrase does not fit a purported limited partnership.

259. This formulation, taken from RUPA § 308(a), seems underinclusive. The passage should perhaps read "a person who relies upon the purported general partner being a general partner in an actual or purported limited partnership." (Italics indicate additional language.)

260. RUPA § 308 uses "actual" in subsection (a) and "existing" in subsection (b). The Reporter sees no reason for the different usage and urges the Committee to choose one word or the other for both subsections.

261. RUPA § 308(b) reads "existing partnership, or with one or more persons not partners". Note 258, above, explains why Re-RULPA substitutes "purported limited partnership" for "one or more persons not partners."

262. Applying this formulation can be quite complicated. Some of the complexity exists within the RUPA provision. Some of the complexity results from the possible involvement of actual and purported limited partners. The following chart illustrates the complexity.

characteristics of "person[] consenting"	extent to which "person[] consenting" is bound
general partner in an actual limited partnership	personally liable

limited partner in an actual limited partnership and <u>not</u> represented as a general partner	not personally liable under this provision, but other law may create liability
not a general partner in an actual limited partnership, but purports to be	questionable whether personally liable under this provision, but most likely liable under subsection (a)
not a general partner and purports to be only a limited partner in a purported limited partnership	not personally liable under this provision, but other law may create liability
does not purport to be a general or limited partner in a purported limited partnership	not personally liable under this provision, but other law may create liability

It is possible, perhaps, to reduce the complexity, but not without significantly restating this RUPA-based provision.

263. Like RUPA § 308(b), this sentence does not address the liability of "persons consenting" who are not general partners. Liability for that category of persons is governed by the first sentence of the subsection.

264. If the certificate designates a person as a general partner, that designation suffices by itself to satisfy the representation and public manner elements of subsection (a). Other elements remain, however; e.g., consent.

A Comment will cross-reference Sections 207 (Liability for false statement in certificate) and 304 (Person erroneously believing himself [or herself] limited partner).

265. RUPA § 308(e) reads: "as to each other" rather

than "of a limited partnership".

266. Source: RUPA § 404.

267. This formulation invites confusion as to the direct/derivative distinction. A Comment will make clear that this provision does not eradicate that distinction.

268. Source: ULLCA § 409(h)(4).

Earlier drafts omitted this provision, on the theory that general partners have a nondelegable duty towards the limited partnership. On that theory, the requirements of the duty may change to the extent management power is shared or delegated, but no change can eliminate the duty entirely. Draft #3 abandons that theory, in accord with instructions to follow ULLCA.

This provision can be read to apply only when the delegation is to limited partners collectively. Is that the intended meaning? Should it be? Suppose, for example, the partnership agreement takes a decision out of the hands of the general partners and gives the decision to one class of limited partners. Shouldn't this provision apply? If it should, perhaps the language should be revised to refer to "authority delegated to any ~~the~~ limited partners".

Query: if delegation to limited partners relieves a general partner of liability, shouldn't the same result follow when the limited partnership has more than one general partner and the partnership agreement reserves certain responsibilities to one of general partners?

269. RUPA § 404(f) has been omitted, because RULPA § 107 covers the topic. RUPA § 404(f) provides:

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

RUPA § 404(g) has also been omitted. That subsection provides:

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

In this draft, Section 803(b)(2) covers the issue addressed by RUPA § 404(g).

270. This Section and Section 305 have substantial overlap, which could be reduced by combining the sections. The combined section might be captioned "Access to Required Records" and follow the section listing required records, i.e.

Section 105. In that event, current subsection (b), obligating a general partner to volunteer information to other general partner, could be relocated to Section 403D, General Standards of General Partner Conduct

271. See note 217, above, explaining the proposed bifurcation of required records.

272. This formulation follows Section 305(b), which derives from the RMBCA. See notes 218 and 219 above. This sentence refers to a category of records which includes the required records. N.b. -- there is no requirement of proper purpose. General partners are the top managers of the limited partnership business.

273. Source: RUPA § 403(c). The RUPA provision also requires disclosure "to the legal representative of a deceased partner or partner under legal disability." Draft #2 omitted that language, because a deceased or incompetent general partner is dissociated as a general partner and becomes a mere transferee of its own transferable interest. See Section 602B(4).

274. Like RUPA, Re-RULPA leaves unclear the relation between information available from the limited partnership's records and a general partner's obligation under this subsection. The question boils down to this: does a general partner who knows of material information in the limited partnership's records have an affirmative obligation to disseminate that information to fellow general partners, or does each general partner have an individual obligation to keep up to date on the information in those records?

275. Source: RUPA § 403(c). The exception seems very vaguely stated, but it appears both in both in RUPA § 403(c) and ULLCA § 408(b) (2).

Subsection (b) states a very broad disclosure obligation. If the partnership agreement authorizes a general partner to compete with the limited partnership, it would be wise to explicitly protect from mandated disclosure confidential information generated in that competing enterprise.

276. This provision mirrors Section 305's approach to former limited partners.

277. For the notion that former owners should have

access rights, see RUPA § 403(b) and ULLCA 408(a). The 10-day period corresponds to the 10-day period provided for limited partner access under Section 305(a).

Arguably, a dissociated general partner's access should be restricted to required records, or even the "first tier" of required records to be listed in Section 105. If a dissociated general partner needs further records to assert or defend a claim in litigation, the rules of discovery will apply. However, neither RUPA § 403(b) nor ULLCA § 408(a) take such a restrictive approach.

278. At the July, 1997 meeting, the Committee decided that the general partners should have the right to impose use limitations, even if the partnership agreement is silent. Consistent with Re-RULPA's entity approach, the new language refers to the limited partnership, rather than the general partners.

279. A Comment will indicate that "limitations on use" include confidentiality restrictions.

280. This language allows only the partnership agreement to define remedies. At its July, 1997 meeting, the Committee specifically decided to mention remedies, but the discussion did not -- to the best of the Reporter's recollection -- contemplate the radical step of allowing one party (i.e., the limited partnership) to unilaterally define remedies. The Committee did specifically contemplate liquidated damages, so that concept appears in this Draft. The Reporter wonders,

however, whether a specific reference is necessary. Liquidated damages are an ordinary phenomenon in agreements. If the partnership agreement may define remedies, then perforce the agreement can specify liquidated damages. If the Committee wishes to do more than reaffirm ordinary contract law principles (e.g., by relaxing the standards for enforcing liquidated damages), the statute must do more than merely mention liquidated damages.

Under this provision, the limited partnership may itself impose use restrictions. That authority renders superfluous the language in Draft #1 which had authorized the limited partnership to apply to court to impose such restrictions.

281. To protect a general partner's right of access this draft imposes a special requirement on partnership agreement provisions purporting to limit the information's use -- namely, the restrictions must be reasonable. This language is partially redundant of Section 101B(c)(2) (prohibiting the partnership agreement from unduly restricting access to information under this Section and Section 305). This language is partially redundant of Section 101B(c)(2) (prohibiting the partnership agreement from unduly restricting access to information under this Section and Section 403E). Although Section 101B's language derives from RUPA, it may be necessary to change that language to fit with this subsection. This subsection creates both (i) additional authority to restrict access (i.e., not only via the partnership agreement but also via the limited partnership's

unilateral action), and (ii) additional limitations on those restrictions (i.e., the limited partnership has the burden of proving reasonableness, regardless of how the restrictions are imposed).

Per the Committee's instructions, Draft #2 deleted the following language from Draft #1: "A restriction relating to the use of the names and addresses of the partners is not reasonable."

282. No charge is allowed for current general partners, because in almost all cases they would be entitled to reimbursement under Section 403(d).

283. At the Committee's March, 1998 meeting the Reporter was directed to refer to ULLCA § 408(b) and provide comparable protections for the estate of a deceased partner. Absent a contrary agreement, the legal representative of a deceased or incompetent general partner will have only the rights of a person dissociated as a general partner, because death and incompetency both cause dissociation. See Section 602(7). This Draft does not provide any "fall back" rule in case the partnership agreement changes the "death/incompetency => dissociation" rule but fails to consider the rights of the legal representative of the decedent/incompetent.

284. The "except" clause is necessary because a dissociated general partner is treated as a transferee of his, her or its own transferable interest. See Section 602B(4).

285. Sections 101B(a) (providing broad powers to the

partnership agreement) and 403 (describing the management authority of general partners) make this provision unnecessary.

286. Per the Committee's instructions at its March, 1998 meeting, the new language is taken, essentially verbatim, from ULLCA § 401. Both the old, stricken language and the new language partially overlap Section 101(4)'s definition of "contribution." That overlap is present in RULPA as well.

287. At its March, 1998 meeting, the Committee decided to delete this provision, which was added to RULPA in 1985. ULLCA omits any comparable provision. See ULLCA § 402.

288. Per the Committee's instructions, given at the March, 1998 meeting, this subsection has been revised to follow ULLCA, which in turns derives from the RULPA language being modified here.

289. At its March, 1998 meeting, the Committee decided to use separate subsections here. The separation makes clear that the obligation to pay money applies whenever, and for whatever reason, the partner fails to make a required in-kind contribution.

290. The phrase "as stated in the partnership records required to be kept pursuant to Section 105" does not appear in ULLCA, because ULLCA has no comparable required records provision. Following ULLCA § 402(a), this subsection does not by its terms apply to a person who has promised to make a contribution, whose admission as a partner is contingent on making that contribution and who fails to make the contribution.

291. At its March, 1998 meeting the Committee decided to use the approach taken by ULLCA §§ 402(b) and 404(c)(4). These revisions implement that decision.

292. The revised language is taken essentially verbatim from ULLCA § 402(b).

293. Deleted from Draft #2, per the Committee's decision at its March, 1998 meeting: "annually and without distinction between general and limited partners,".

294. The stricken language is inconsistent with this draft's treatment of the partnership agreement.

295. At its March, 1998 meeting, the Committee discussed substituting the phrase "in proportion to" for the phrase "on the basis of" in order to handle situations in which all contributions have been returned. The Reporter does not recall a decision having been reached on this point.

296. The added language comes essentially verbatim from RULPA § 608(c). Section 608 has a new rule, taken from ULLCA, on liability for unlawful distributions, so this language is no longer appropriate there. Draft #2 sought to eliminate the recondite and byzantine language of RULPA § 608(c) and substitute a reference to generally accepted accounting principles. That effort met a underwhelming response; i.e., no one liked it. Therefore, Draft #3 returns to the language of RULPA § 608(c). (It appears that ULLCA, which uses the concept of un-retained contributions, has no rule for determining the extent to which a contribution has been returned. See ULLCA § 806(b).)

297. The changes are mostly for stylistic reasons, although this draft does state a different default rule on sharing -- namely that distribution allocation follows profit and loss allocation. Thus, any change in the default rule on profit and loss allocation will automatically change the distribution sharing rule.

298. Draft #2 included language establishing a formal mechanism by which a limited partnership would announce distributions. At its March, 1998 meeting, the Committee rejected that language. Draft #3 refers merely to the declaration of a distribution. See BLACK'S LAW DICTIONARY ("To make known, manifest, or clear. To signify, to show in any manner either by words or acts. To publish; to utter; to announce clearly some opinion or resolution. To solemnly assert a fact before witnesses, e.g., where a testator declares a paper signed by him to be his last will and testament.").

299. The major change is the elimination of any reference to a partner's "put" right, since in the default mode that right no longer exists. Others changes are stylistic or to conform with this draft's approach to the powers of a partnership agreement.

300. Draft #2's language has been revised per the Committee's instructions. Although it will be the limited partnership that actually makes any interim distributions, it will be the general partners who decide whether interim distributions will be made. See Section 403(a). As for the use

of "declare," see note 298, above.

301. At its July, 1997 meeting, the Committee decided that, in the default mode, a general partner who ceases to be a general partner becomes a mere transferee of the transferable interest formerly associated with its status as a general partner. That decision made it possible to greatly simplify Re-RULPA's approach to general partners. It is no longer necessary to treat separately the termination of a general partner's management and ownership roles.

The change in the caption is to reflect Re-RULPA's use of "dissociation" rather than "withdrawal" and to recognize that, strictly speaking, general partner dissociation involves the dissociation of a person as a general partner rather than the dissociation of a general partner. This distinction, adopted at the Committee's March, 1998 meeting, is important because a person may be simultaneously a general and limited partner. See Section 404 (Dual capacity). Dissociation therefore applies to the capacity rather than to the person.

302. As decided by the Committee at its July, 1997 meeting, this Draft adopts the RUPA provision essentially verbatim, see RUPA § 601, subject to the Committee's decision at its March, 1998 meeting to apply dissociation to a person's capacity as a general partner. See note 301, above.

303. This provision could be problematic when a sole general partner gives notice of dissociation, especially if the limited partnership has no employees or other agents of its own.

The same problem might exist under ULLCA § 601(1) in the case of a manager-managed limited liability company with only one manager

304. At its March, 1998 meeting, the Committee discussed but did not decide whether affiliates of the would-be expelled person should be excluded from the vote.

305. Suppose the corporate general is dissolved and terminated, but the other partners cannot muster a unanimous vote to expel. Does the limited partnership continue with a non-existent general partner? Are the remaining partners forced to seek dissolution under Section 802?

306. Following RUPA, this provision originally included the phrase "or another partner." The Reporter recommended deleting the phrase, out of concern that the phrase would invite confusion as to the distinction between direct and derivative claims and undermine the general partner's authority to manage the business. At its March, 1998 meeting, the Committee accepted the Reporter's recommendation.

307. RUPA states "in partnership with the partner." Given the possible dual status of a general partner in a limited partnership, the RUPA phrasing would be overbroad.

308. In this respect, in the default mode a general partner has fewer rights than a limited partner. If a guardian or general conservator is appointed for a limited partner, that guardian or conservator may exercise the limited partner's rights ad infinitum. See Section 705. For a general partner, in contrast, the appointment causes dissociation, which in turns

relegates the dissociated general partner to a mere transferee of the transferable interest associated with the general partnership interest.

309. RUPA's approach, replicated here, might seem anomalous when compared with the status of a general partner who transfers "all or substantially of that partner's transferable interest in the partnership." RUPA § 601(4)(ii), incorporated in Draft #3 as section 602(4)(ii). In that latter event, dissociation occurs only upon "the unanimous vote of the other partners." Why should a harsher rule apply to a trust, especially if the distribution of the trust's transferable interest was foreseeable (e.g., ordained by the terms of the trust) at the time the trust became a general partner? At the March, 1998 meeting, Committee members explained this approach as beneficial to the trust, since the trustee will not wish to remain a general partner once that trust has no further economic interest in the limited partnership.

310. The main impact of this subparagraph is to trigger the personal liability discharge provisions of Section 602D. Section 1104(c) states that such provisions continue to apply to former owners, even if the organization has disappeared through a merger. This subparagraph also triggers Section 602B(2) and (3), ending a dissociated general partner's fiduciary duties. The subparagraph is not necessary to "start the clock" on the dissociated general partner's lingering power to bind, Section 602C, because Section 1104(d) cuts off that power

immediately when a constituent organization is merged out of existence.

311. This subparagraph triggers all the standard dissociation consequences, including: Section 602B(2) and (3), (dissociated general partner's fiduciary duties), Section 602C (dissociated general partner's lingering power to bind), and Section 602D (personal liability discharge provisions).

312. As decided by the Committee at its July, 1997 meeting, this section follows RUPA § 602 more closely than did Draft #1. Draft #3 has changed the caption slightly to reflect the notion that dissociation applies to capacity. See note 301, above.

313. This language limits the remedies available if a general partner's dissociation breaches the partner's fiduciary duty or obligation of good faith.

314. The roughly analogous passage of RUPA, § 602(2), states: "in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking." Draft #3's different language reflects a different assumption about the partners' deal -- namely, that in a limited partnership, absent a contrary agreement, the general partner is expected to shepherd the limited partnership through winding up. See note 242, above (explaining that, contrary to RUPA, Re-RULPA provides no remuneration to a general partner for winding up the partnership's business).

Under this Draft, a person's obligation to remain as general partner through winding up continues even if another general partner dissociates and even if that dissociation leads to the limited partnership's premature dissolution under Section 801(4)(i). The obligation also continues if for some other reason dissolution occurs before the expiration of the limited partnership's term. Other default rules are certainly plausible, but would require more complicated language. See, e.g., RUPA § 602(b)(2). This Draft's approach seems at least equally plausible and has the virtue of greater simplicity.

Following the dissociation of a person as general partner, each remaining general partner has the power to dissolve the limited partnership by "express will." Section 801(4)(i). A remaining general partner can exercise that power without thereby dissociating as a general partner. The "express will" to dissolve is different from the "express will" to dissociate.

315. RUPA uses "withdrawal." For the sake of internal consistency, the Reporter would prefer "dissociates."

316. The analogous RUPA passage continues: "unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under this subsection." RUPA § 601(6) through (10) provide for automatic dissociation in the event of, e.g., bankruptcy, death, distribution of a trust's entire transferable interest in the partnership. It is unclear whether that default rule is appropriate for a limited

partnership. Where a limited partnership has more than one general partner, absent a contrary agreement the limited partners might expect each general partner to "stay the course," regardless of whether the other general partners do. In any event, this provision should correspond to whatever approach the Committee adopts for Section 801(4) (avoiding dissolution following the dissociation of a general partner). At its March, 1998 meeting, the Committee discussed this issue in the context of then Section 801(5) but did not resolve it.

317. Why not also include the events that Section 602(5), following RUPA 601(5), considers comparable or tantamount to becoming a debtor in bankruptcy?

318. Source: RUPA § 602(c).

319. The language "subject to Section 1005" is new in Draft #3 and has been added in accord with discussions at the March, 1998 meeting. The language is intended to preserve the distinction between direct and derivative claims and to make clear that a partner seeking to claim damages under Section 602A(c) has to prove some harm independent of harm suffered by the limited partnership.

320. As decided by the Committee at its July, 1997, most of Draft #1's language for this Section was deleted as more appropriate for a Comment. Draft #3 has changed the caption slightly to reflect the notion that dissociation applies to capacity. See note 301, above.

321. Source: RUPA § 603(b), except for paragraphs (4)

and (5), which are new.

322. This clause differs from its RUPA analog in two respects. First, this clause adds the phrase "as a general partner" to cover circumstances in which a person dissociates as a general partner but remains as a limited partner. Second, this clause omits RUPA's exception for winding up. Unlike a dissociated RUPA general partner, a dissociated Re-RULPA general partner has no rights to participate in winding up.

323. The RUPA provision continues certain duties if the dissociated person participates in winding up. RUPA § 603(b)(3). For the reasons stated in note 322, above, this Draft eschews that approach.

Following RUPA, this section does not refer to the duty of good faith and fair dealing. Compare section 603A(a)(2) (stating how limited partner dissociation affects that duty).

324. The "subject to" language refers to a merger in which, for example, the general partner dissociates because the limited partnership ceases to exist. In that event, no transferable interest of the old limited partnership will survive the merger.

325. As decided at the March, 1998 meeting, paragraph (4) has been changed to refer only to transferable interests owned by the dissociated person in the capacity of a general partner. Comparable language appears in Section 603A(3), in reference to a person's dissociation as a limited partner.

In Draft #2, the paragraph was a default rule that swept all

of the dissociated general partner's transferable interest into "mere transferee" status. Under Draft #3, the paragraph remains a default rule but the "sweeping" occurs only to the extent the transferable interest is associated with the person's status as a general partner.

326. Discussion at the Committee's March, 1998 meeting suggested the need for this type of provision with regard to limited partners. The language is included here, as well, to preclude any misunderstanding that might result from a lack of parallel treatment. The word "discharge" is derived from RUPA § 703(a).

327. Draft #2 included a paragraph (5) -- " the limited partnership shall promptly amend the certificate of limited partnership to indicate the general partner is dissociated." That language has been deleted as redundant. See Section 202(b)(2) (requiring an appropriate amendment to the certificate of limited partnership).

328. As instructed by the Committee at its July, 1997 meeting, the Reporter prepared two versions of this Section for Draft #2. The first version followed RUPA § 702 as closely as possible. The second version reorganized and restated the RUPA provision for the sake of readability. To the best of the Reporter's recollection, at its March, 1998 meeting the Committee decided to use the second version. In this Draft, former Version #2 has been slightly revised so that that concept of dissociation refers to a person's capacity as general partner.

329. This clause is intended to function in a manner equivalent to RUPA § 702(a)(3).

330. The phrase "does not have notice" seems redundant. A party that has notice of a general partner's dissociation cannot reasonably believe that the dissociated general partner is still a general partner. The clause "is not deemed to have had knowledge under Section 208(c) of any relevant limitation" was added to Draft #3 pursuant to a decision made at the March, 1998 meeting. Nonetheless, that clause seems redundant of paragraph (a)(1). If the person "is . . . deemed to have had knowledge under Section 208(c) of any relevant limitation," then "the act would [not] have bound the limited partnership under Section 403A."

331. RUPA's phrase "after dissociation" has been deleted as redundant. Subsection (a) refers exclusively to post-dissociation events. RUPA's phrase "an obligation incurred by the dissociated partner" has been deleted as ambiguous or at least unartful. Under subsection (a) a dissociated partner can cause the limited partnership to incur an obligation. On casual reading the RUPA language seems to refer to the dissociated partner incurring an obligation him, her or itself.

332. Upon dissolution, Section 803A takes over. RUPA may intend the same result, but its language refers only to dissolution caused by the partner's dissociation. Indeed, at the March, 1998 meeting some Commissioners interpreted RUPA to provide that: (i) if a partner's dissociation does not cause

dissolution, and (ii) the partnership subsequently dissolves for some other reason, then (iii) the dissociated partner's management right "spring back" into existence. Version #2 rejects that approach for limited partnerships and defers to the dissolution provision even if the dissolution occurs for some reason other than the person's dissociation as a general partner.

333. In Draft #2 this section was written to follow RUPA § 703 essentially verbatim. When the Committee chose Version #2 of Section 602C (the reorganized and restated version), it directed the Reporter to make comparable changes in this section. The changes apply to subsection (b). However, given the strong preference to follow RUPA language, Draft #3 presents both a RUPA version and a restated version of subsection (b).

334. This language is taken from RUPA. It will be necessary to specify the applicable rule if dissolution does occur.

335. To the extent the limited partnership is an LLLP, this paragraph will bar any personal liability for the dissociated general partner.

336. This clause is intended to function in a manner equivalent to RUPA § 703(b)(3).

337. The phrase "does not have notice" seems redundant. A party that has notice of a general partner's dissociation cannot reasonably believe that the dissociated general partner is still a general partner.

338. RUPA § 703(c) reads: "the partners continuing the business." Re-RULPA's differing language reflects the Draft's entity view of limited partnerships.

339. If the creditor is not a partner, this notice will occur by operation of law 90 days after an appropriate amendment to the certificate of limited partnership. See Section 208(d).

340. For an explanation of the caption changes, see note 301, above. The causes of limited partner dissociation substantially overlap the causes of general partner dissociation. That overlap could be avoided (or, rather, exploited) by sacrificing some of RULPA's look and feel and having one section captioned "Partner Dissociation." That section would list separately events that cause dissociation of any partner and events that cause dissociation only for general partners.

341. As decided by the Committee at its March, 1998 meeting, this Draft adopts the RUPA provision essentially verbatim, except for the omission of provisions inappropriate to limited partners.

342. Suppose the corporate limited is dissolved and terminated, but the other partners cannot muster a unanimous vote to expel. Does the limited partnership continue with a non-existent limited partner? Are the remaining partners forced to seek dissolution under Section 802?

343. Following RUPA, this provision originally included the phrase "or another partner." The Reporter

recommended deleting the phrase, out of concern that the phrase would invite confusion as to the distinction between direct and derivative claims and undermine the limited partner's authority to manage the business. At its March, 1998 meeting, the Committee accepted the Reporter's recommendation.

344. RUPA states "in partnership with the partner." Given the possible dual status of a limited partner in a limited partnership, the RUPA phrasing would be overbroad.

345. In contrast to the provision on dissociation as a general partner, this provision does not provide for dissociation on account of bankruptcy or insolvency.

346. In contrast to the provision on dissociation as a general partner, this provision does not provide for dissociation on account of an individual's incompetency.

347. This subparagraph is not as necessary here as in the provision on dissociation as a general partner. See note 310, above, explaining the subparagraph's function in that context. The subparagraph appears here nonetheless to avoid confusion likely to result from an absence of parallelism.

348. Derived from RUPA § 603(b)(1).

349. Section 602B (Effect of dissociation as a general partner) has no parallel provision, because RUPA § 603(b)(3) does not refer to the duty of good faith and fair dealing.

350. This paragraph will create a "bare transferable interest." The same language appears in Section 602B(4), relating to general partners. See note 324, above for a

discussion of the "subject to" language.

351. Discussion at the Committee's March, 1998 meeting suggested the need for this type of provision with regard to limited partners. The language is included in Section 602B, as well, to preclude any misunderstanding that might result from a lack of parallel treatment. The word "discharge" is derived from RUPA § 703(a).

352. At its March, 1998 meeting, the Committee voted to delete subsection (b), which had provided:

(b) A limited partner who dissociates before the termination of the limited partnership is liable to the limited partnership and to other partners for any damages caused by the dissociation.

Compare Section 602A(c) (stating the rule for persons who dissociate as general partners).

353. Under sections 602B(4) (dissociation as a general partner) and 603A(a)(3) (dissociation as a limited partner), the person's status "degrades" to that of a transferee. (In Draft #2 this provision read: "A partner 's dissociation does not entitle that partner to any distribution." The change reflects a style suggestion made by a Committee member at the March, 1998 meeting.)

354. At its March, 1998 meeting, the Committee rejected Draft #2's stylistic changes to this provision. The Reporter considered using ULLCA § 404(b), which states succinctly a simple rule: "A member has not right ot recive, and may not be required to accept, a distirbution in kind." However, that rule constrains the entity more than Re-RULPA's current approach. The

Reporter does not know (at least so far) any reason to restrict Re-RULPA's default rule, so Draft #3 uses Re-RULPA's language.

355. At its March, 1998 meeting, the Committee deleted the following proposed new language:

A partner is entitled to receive a distribution when the limited partnership notes in its required records the date on which the limited partnership made its decision to distribute, the date the distribution is to be made, the aggregate amount to be distributed, and, in the case of an in-kind distribution permitted by Section 605, a description of the fungible property to be distributed.

The Reporter had suggested the language might be necessary on account of Re-RULPA's new, more corporate-like approach to recapturing distributions.

356. The reference to "dissociated partner" is to encompass circumstances where the partner is gone and all that remains are the bare transferable interests.

357. The new language is derived mostly from ULLCA § 406, which appears to have derived, almost verbatim, from RMBCA § 6.40.

358. ULLCA § 406 does not include this provision, but ULLCA § 407 (Liability for unlawful distributions) establishes personal liability for anyone "who votes for or assents to a distribution made in violation of . . . the articles of organization, or the operating agreement." Similarly, RULPA § 608(b) imposes consequences for receiving a return of contribution "in violation of the partnership agreement." It makes for cleaner drafting to directly prohibit distributions that violate the partnership agreement.

359. Source: ULLCA § 406(a)(1).

360. Source: ULLCA § 406(a)(2).

361. Source: ULLCA § 406(b). N.b. -- this subsection imposes a more rigorous standard of care than the "gross negligence" standard applicable under Section 403D(c).

362. Source: ULLCA § 406(c).

363. The RMBCA has an alternate date, if earlier -- when the owner being redeemed ceases to be an owner. The Comment to ULLCA § 406 does not explain why ULLCA omits the alternate date.

364. The RMBCA has another category -- distributions of indebtedness not involved in a redemption. The Comment to ULLCA § 406 does not explain why ULLCA omits this additional category.

365. This subsection is redundant of Section 606. One or the other should be deleted. Assuming the Committee decides that the next draft will, like this draft, maintain as much of the basic structure of RULPA as possible, the Reporter recommends deleting this provision and retaining Section 606. If, instead, the Committee opts for a RUPA/ULLCA "look and feel," perhaps this subsection should remain.

366. This provision is stated as a separate subsection, to make clear that "indebtedness" is not limited to the types of indebtedness referred to in the immediately preceding sentence -- i.e., "indebtedness [whose terms] provide that payment of principal and interest are made only to the

extent that a distribution could then be made to partners under this section."

367. Consistent with the Drafting Committee's tentative decision, this draft replaces RULPA's antiquated "clawback" provisions with a more modern approach derived from RMBCA § 8.33(a) and ULLCA § 407(a). (The ULLCA provision closely follows the RMBCA provision.)

368. RMBCA § 8.33 and ULLCA § 407 both use "Unlawful," but that term fits poorly with liability imposed for distributions that merely breach the partnership agreement or some comparable document (e.g., a corporation's articles of incorporation, an LLC's articles of organization, or operating agreement). Earlier drafts therefore used "Improper" instead of "Unlawful." Draft #3 uses "Unlawful" in light of instructions to follow ULLCA.

369. Note that a distribution that violates the partnership agreement violates Section 607(a).

370. Section 403D contains the general duties of general partners. Section 607(c) imposes a separate duty with regard to reliance on financial statements, accounting principles, etc.

N.b. -- section 607(c) imposes a higher standard of care than does Section 403D. This anomaly does not exist under the RMBCA (from which both this draft and ULLCA derive their respective provisions on liability for improper distributions). The RMBCA's general standard of care is ordinary care, RMBCA

§ 8.30(a)(2), not the mere avoidance of gross negligence. ULLCA does not expressly contain this anomaly. The ULLCA provision on "Limitations on distributions" states a reasonableness standard with regard to reliance on financial statements, accounting principles, etc., ULLCA § 406(b), but the ULLCA provision on "Liability for unlawful distributions" makes no reference to that standard. ULLCA § 407. The Reporter views that approach as anomalous, and therefore Draft #3 (like previous drafts) deviates from ULLCA in this regard.

371. This subsection comes essentially verbatim from ULLCA § 407(b). The Committee may wish to consider the following alternative language:

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

372. This section does not allow a limited partner to implead anyone else, because a limited partner's liability is limited to the amount by which the limited partner's distribution exceeded the permissible amount.

373. Following ULLCA, Draft #2 referred to "this

section." At its March, 1998 meeting, the Committee approved the language shown here.

374. Source: ULLCA § 407(c). The ULLCA language is a bit imprecise. In particular, § 407(c)(2) refers first to "members" and then to "the member." It is important to make clear that the limitation applies to each member severally, not to all members jointly. The following alternative language makes that point and also makes clear that any funds paid by a recipient in a separate action (i.e., under subsection (b)) count against the recipient's contribution limit:

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

(1) any other general partner or person dissociated as a general partner who could be held liable under subsection (a) for the improper distribution; and

(2) any partner or dissociated partner who could be held liable under subsection (b), but a person's total liability under this paragraph and subsection (b) with respect to any distribution is limited to the total amount for which the person could be liable under subsection (b) for that distribution.

375. Strictly speaking, subsection (b) does not

establish a prohibition that can be violated; it states a remedy. The implied prohibition is against receiving an improper distribution while knowing that the distribution is improper.

376. This subsection follows ULLCA § 407(d), which differs from the RMBCA. Under RMBCA § 8.33(c) the clock runs from "the date on which the effect of the distribution [is] measured" under the provision limiting distributions. The Comments to ULLCA do not explain ULLCA's departure from the RMBCA.

377. In RUPA and ULLCA roughly analogous provisions appear in Article 5, captioned "TRANSFEREES AND CREDITORS OF PARTNER [MEMBER]."

378. Draft #1 used "share" instead of "allocation." The change to "allocation" was made in Draft #2 and conforms with a change in the caption of Section 503. RULPA § 503 is captioned "Sharing of Profits and Losses," but the section's text refers to "allocation." Draft #1 changed Section 503's caption to follow the text but did not conform Section 701. Draft #2 maintained the change to Section 503's caption and revised Section 701 accordingly. Draft #3 continues the language used in Draft #2.

379. Source: RUPA § 502. The Comment will cross reference Section 606, which provides that a partner's right to distributions is subject to offset.

380. Source: RUPA § 503. Although for the most part RULPA's language "works," the formulation is oblique. In this instance, the benefits (especially for the uninitiated) of a more

direct formulation outweigh the preference for retaining familiar language. Re-RULPA thereforer takes RUPA language in place of RULPA language. (Draft #1 rearranged the provisions of RUPA § 503 so that the affirmative aspects were stated first and the limitations or negative aspects were stated second. Consistent with the Committee's instructions at the July, 1997 meeting, Draft #2 provided the RUPA provisions without significant change, while preserving Draft #1's language as an alternative version. At its March, 1998 meeting, the Committee rejected the alternative version, and that version has therefore been omitted from Draft #3.)

381. The language relating to a bare transferable interest is not in RUPA. The Committee incorporated this language at the Committee's March, 1998 meeting. (The language originated in Draft #2, Version #2 of Section 702.)

382. RUPA § 503(c) reads: " the latest account agreed to by all of the partners." At its March, 1998 meeting, the Committee decided to deviate from RUPA.

383. The phrase beginning "including" does not appear in RUPA. See RUPA § 503(d). At its March, 1998 meeting, the Committee decided to append the language of RULPA § 704(c), which provides:

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

That language appears redundant, given the broad statement carried over from RUPA. Moreover, specifying this subset of

continuing obligations might raise questions as to the status of other subsets; e.g., a transferor general partner's liability for breach of the duty of loyalty or care.

384. When Section numbers are revised, this reference will be changed to indicate specific sections.

385. This subsection is taken from RULPA § 704(b). Changes from that subsection are as follows:

~~An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this [Act]. An assignee~~ A transferee ~~who becomes a limited partner also is liable for the~~ transferor's ~~obligations of his [or her] assignor to make and return contributions as provided in Articles 5 and 6.~~

However, the ~~assignee~~ transferee is not obligated for liabilities unknown to the ~~assignee~~ transferee at the time ~~he [or she]~~ the transferee became a ~~limited~~ partner.

At its March, 1998 meeting, the Committee instructed the Reporter to preserve the substance of RULPA § 704(b)'s second sentence.

386. RUPA captions its comparable section "PARTNER'S INTEREST SUBJECT TO CHARGING ORDER." RUPA § 504. ULLCA captions its comparable section "Rights of creditor." ULLCA § 504.

387. This expansion comports with both RUPA § 504(a) and ULLCA § 504(a).

388. This sentence originated in RUPA § 504(a). ULLCA § 504(a) incorporated the RUPA language but added the last phrase ("to give effect"), apparently in an effort to limit the extent to which the "or which" clause empowers a court to intervene in the entity's affairs. The Committee should consider why a receiver should have greater rights of inquiry than the judgment debtor.

389. Source: RUPA § 504(b).

390. Source: RUPA § 504(c) and ULLCA § 504(c).

391. Source: RUPA § 504(c)(3). According to the RUPA provision, the redemption is by "one or more of the other partners." At its March, 1998 meeting, the Committee substituted the phrase "the limited partnership," making clear that the entity does the redemption. The Committee rejected language that would have allowed disinterested general partners to make the redemption decision.

392. Source: RUPA § 504(e).

393. This Section dealt with matters now encompassed by Section 702. Portions of this Section have relocated there, as indicated in subsequent notes.

394. It is not necessary to provide that a transferee may become a partner if the partnership agreement gives the transferor the power to so provide, because the provisions on becoming a partner expressly refer to the partnership agreement. That agreement can create whatever mechanism may be desired.

395. This subsection has been relocated to Section

702(g) and slightly restyled.

396. As decided by the Committee at its March, 1998 meeting, this provision now appears in Section 702(d).

397. Neither RUPA nor ULLCA contains a comparable provision.

398. At its March, 1998 meeting, the Committee deleted the proposed phrase "for the purpose of settling the decedent's estate."

399. Under Sections 602B(4) (consequences of dissociation as a general partner) and 603A(3) (consequences of dissociation as a limited partner) the decedent partner's interest will convert to a bare transferable interest.

400. Incompetency does not cause a limited partner to dissociate. See Section 603. This power can therefore continue indefinitely.

401. The adjudication will cause the person's dissociation as a general partner. See Section 602(7)(ii) and (iii).

402. Dovetailing this section's approach to entity demise with the RUPA-based interrelationship of entity demise and partner dissociation will be quite complicated. At its March, 1998 meeting, the Committee discussed but did not decide whether to follow RUPA and ULLCA and omit this section entirely. The Reporter has therefore decided to leave to another day the complicated task of dovetailing. (If the provision does remain, this subsection will be expanded to encompass the dissolution of

partnerships and limited liability companies.)

403. Section 803(a) makes this phrase redundant.

404. This revision accords with new Section 200(b) (providing for a perpetual term, absent a contrary provision in the certificate of limited partnership) and revised Section 201(4) (requiring the certificate of limited partnership to state the limited partnership's term "if not perpetual"). If the certificate states no term, the term is perpetual and this provision is inapposite. If for some reason the certificate expressly states a perpetual term, this provision still does not apply. A perpetual term does not expire.

405. Draft #2 followed RULPA. Draft #3 shows the revision tentatively adopted at the end of the Committee's March, 1998 meeting. The reference to "profit interests owned by persons as limited partners" excludes profit interests that are "bare transferable interests" -- i.e., owned by transferees who are not also partners -- as well as profit interests owned by general partners in their capacity as general partners.

406. At its March, 1998 meeting, the Committee deleted the following proposed new language, which had been derived from RUPA § 801(4) and ULLCA § 801(3):

the passage of 90 days after the limited partnership has notice of an event that makes it unlawful for all or substantially all of the business of the limited partnership to be continued, unless the illegality is cured before the end of the 90 day period;

407. A remaining general partner can exercise this power to cause dissolution without thereby dissociating as a

general partner. The "express will" to dissolve is different from the "express will" to dissociate.

408. Profit interests owned by transferees do not figure in this calculation. This exclusion encompasses profit interests formerly owned by a former general partner in his, her or its capacity of general partner. See Section 602B(4).

Query: should the majority be calculated against the profits interest owned by persons as limited partners immediately after dissolution (as in this Draft) or against the profits interests owned at the time the consent is obtained? The latter calculation would produce a different result if, prior to the consent, a second dissociation occurs and that dissociation causes a person to own a bare transferable interest.

409. This language requires that all of the following occur within the 90 days: consent to avoid dissolution, consent to appoint a new general partner and admission of a new general partner in accordance with that consent. This language is arguably too narrow. For example, suppose that the requisite consent is obtained within the 90 days, in contemplation of a particular person becoming a general partner. Shortly before the end of the 90 days, the person refuses to be admitted as a general partner. To avoid dissolution the limited partners would have to find a substitute general partner and obtain new consents before the 90 day period expires. The rule is, however, merely a default rule.

The query posed in the previous note applies here as well.

The Act should take the same approach to both these provisions.

410. Although both earlier drafts included the concept of administrative dissolution, this reference to the concept is new in Draft #3.

411. Both RUPA § 801 and ULLCA § 801 include nonjudicial and judicial dissolution in the same section. This draft preserves RUPA's approach, dividing the two types of dissolution into two sections.

412. The additions come from RUPA § 801(5), which is also the source of most of ULLCA § 801(4).

N.b. -- ULLCA § 801(4)(v) states as a basis for judicial dissolution a concept developed in the law of closely held corporations: "the managers or member in control of the company have acted in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner." This draft does not include any analogous provision.

413. For Comment -- Courts considering dissolution pursuant to this clause should also consider the less drastic remedy of dissociating the offending partner. Moreover, it would be unusual to invoke this clause in connection with the conduct of a limited partner, unless the partnership agreement gives that limited partner a substantial role in the limited partnership's affairs.

414. This provision is derived from RUPA § 801(6)(i), which was also the source for ULLCA § 801(5)(i). This provision does not protect transferees from the consequences of a merger in

which the limited partnership is not the surviving organization.

415. RUPA § 801(6)(i) refers more simply to the expiration of the partnership's term. However, RUPA § 406(a) contemplates a term general partnership continuing its business after its term expires and "be[ing] treated as a partnership at will." RUPA § 801, Comment 5. No comparable provision exists in RULPA or Re-RULPA. The expiration of a limited partnership's term causes dissolution. Section 801(1). Therefore, Section 802(b)(1) refers to the roughly analogous situation of a limited partnership amending its certificate to extend its term. If a limited partnership declines to recognize its own dissolution, a transferee will have a remedy under Section 803(c)(2) (judicial supervision of winding up upon a partner's or transferee's showing of "other good cause").

416. Derived from RUPA § 802, which is also the source of ULLCA § 802. Both RUPA § 802(b) and ULLCA § 802(b) allow the unanimous consent of partners/members to "un-do" a dissolution. For two reasons this draft does not include that provision. First, both RUPA and ULLCA provide for the buy-out of a dissociated owner in the event that dissociation does not cause dissolution. This draft, in contrast, freezes in a dissociated owner (as a transferee of its own transferable interest) until dissolution. It seems inequitable, therefore, to allow a waiver of dissolution without some consent of those transferees who are former partners. Second, providing for transferee consent would require at best an intricate statutory provision, and -- given

the limited partnership's durability in the default mode -- the intricacy hardly seems warranted.

417. Both RUPA § 802(a) and ULLCA § 802(a) use this language. Based on years of explaining the dissolution and termination to the uninitiated, the Reporter prefers: "A dissolved limited partnership is not terminated but continues its existence only for the purpose of winding up its business."

418. This Section has been changed to: (i) provide, as a default matter, that so long as a dissolved limited partnership has at least one general partner, the limited partnership management structure remains in place during winding up; and (ii) incorporate many of the mechanical refinements of RUPA § 803. (RUPA § 803 is also the source for ULLCA § 803.)

419. This amendment helps curtail the power of a general partner to bind the limited partnership during winding up, see Section 803A(b) and (c), and the statute must either allow any partner to file it (which would be at odds with the governance structure and require additional provisions re: limited partner filings) or obligate the limited partnership itself (in functional terms, the general partners) to do so.

420. This sentence comes essentially verbatim from RUPA 803(c). For two reasons the Reporter prefers the reformulation set out below. First, the RUPA language is exclusively permissive, and some of the listed items should be mandatory. Second, the reformulation gives more guidance to the uninitiated by creating two functionally distinct categories.

The first category concerns the general processes of winding up. The second category concerns specific tasks necessary to close down the business. The reformulation would read as follows:

In winding up its business the limited partnership:

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

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's business, under Section 804 marshal and distribute the assets of the partnership, and, promptly after winding up is completed, file a declaration of termination as provided in Section 805.

421. At its July, 1997 meeting, the Committee eliminated writing requirements pertaining to most consents. Consistent with that action, Draft #2 eliminates Draft #1's requirement that the partners consent in writing to this appointment. However, given the special circumstances involved here, the Committee might wish to reinsert the writing requirement.

422. The appointee does not have the liabilities of a

general partner to third parties. Under Section 403D(b)(3), the appointee will have the right to compete with the dissolved limited partnership.

423. Derived from RUPA § 803(a), which is replicated in ULLCA § 803(a).

424. Derived from RUPA §§ 804, 805 and 806.

425. Source: RUPA § 804. The only change is to make the attribution rules expressly subject to subsections (b) and (c) (which are in turn sourced from RUPA § 805).

426. Derived from the first clause of RUPA § 805(b). The only substantive change is that, unlike RUPA § 805(a), this provision does not allow any "partner who has not wrongfully dissociated" to affect the relevant document. Under RUPA, the relevant act is the filing of a statement of dissolution. Under Re-RULPA [so far, in any event] the relevant act is amending the certificate of limited partnership. Under Section 204(5), any general partner may execute that amendment.

Note that under both RUPA and Re-RULPA previously documented restrictions on authority remain in effect.

427. Source: the second clause of RUPA § 805(b). For two reasons the Reporter prefers the reformulation provided below. First, the full import of RUPA's language comes clear only with reference to Comment 2 to RUPA § 805 (see especially the second paragraph, third sentence [beginning "In effect"]]). The reformulation puts the sense of that Comment into the statutory text. Second, the reformulation more closely

dovetails Re-RULPA's use of the certificate of limited partnership as the repository of statements expressing and limiting general partner authority. The reformulation would read as follows:

operates as a statement, made pursuant to Section 201(b), limiting to circumstances appropriate for winding up the limited partnership business the authority of each general partner to execute an instrument transferring real property held in the name of the limited partnership.

428. Source: RUPA § 805(c).

429. Source: RUPA § 805(d).

430. Source: RUPA § 806(a). This section was new in Draft #2. Draft #1 included RUPA § 806(b) as part of Section 802 and omitted RUPA § 806(a) as unnecessary. (A limited partnership remains a limited partnership during winding up. The rules regarding loss sharing among general partners are not limited to a limited partnership's pre-dissolution phase.)

At its July, 1997 meeting, the Committee expressed a presumption in favor of RUPA provisions. Accordingly, Draft #2 incorporated RUPA § 806(a) and created a new section to parallel RUPA § 806. In order to maintain the temporary numbering system used in Draft #1, the new section was given an especially unusual, temporary section number.

431. Strictly speaking, the general partner does not "incur a limited partnership liability." The Reporter would therefore prefer: "causes the limited partnership to incur a liability under"

432. Source: RUPA § 806(b).

433. If this draft did not allow for LLLPs, Sections 803B and 803C would probably be unnecessary. The sections seem warranted, however, because many (and perhaps most) limited partnerships will be fully-shielded.

ULLCA lifted its provisions on this topic virtually verbatim from the RMBCA. This draft takes the same approach, making a few stylistic changes plus a few substantive additions necessitated by the personal liability of general partners in an ordinary (i.e., non-LLP) limited partnership.

Section 803B is derived from ULLCA § 807 and RMBCA § 14.06.

434. This provision is needed due to the personal liability of general partners in an ordinary limited partnership and does not appear in the RMBCA/ULLCA formulation.

435. The phrase "against the limited partnership" is added to make clear that bringing a claim against an allegedly liable present or dissociated general partner does not save a claim against the limited partnership.

436. Section 803C is derived from ULLCA § 808 and RMBCA § 14.07.

437. This provision is needed due to the personal liability of general partners in an ordinary limited partnership

and does not appear in the RMBCA/ULLCA formulation.

438. Arguably the reference should be "dissociated" partner, since the termination of a limited partnership ends partner status, but ULLCA uses "members" and RMBCA uses "shareholders."

439. ULLCA § 808(d)(2) does not include transferees.

440. RMBCA § 14.07(d)(2) uses "pro rata." ULLCA § 808(d)(2) uses "proportionate." The claim limitation has several elements.

- As to any one claim under this clause, a person's liability can exceed neither:
 - ~ the total amount the person received as a liquidating distribution, nor
 - ~ the portion of the total claim equal to the portion of the limited partnership's assets the person received in the liquidating distribution.
- As to all claims under this paragraph, a person's aggregate liability cannot exceed the total amount the person received as a liquidating distribution.

441. RMBCA and ULLCA refer to "this section." In light of paragraph (3), that reference is overbroad for Re-RULPA.

442. This draft adds the concluding phrase ("as part of the winding up of the dissolved limited partnership") to emphasize that the "clawback" relates only to liquidating distributions.

443. The referenced provision provides for personal

liability of general partners in an ordinary limited partnership.

444. This Section essentially requires a person to preserve its claim against the limited partnership in order to preserve a vicarious liability claim against the general partners. This requirement is arguably inconsistent with Section 403C-2(e) (requiring claimants generally to exhaust limited partnership resources before pursuing a general partner but allowing some exceptions, most notably when the limited partnership is bankrupt). It might seem more consistent to specify circumstances in which a claimant could preserve its claim against a current or former general partner by proceeding against that partner without having to proceed against the limited partnership. For the following three reasons, however, this draft eschews that approach. First, that approach would add complexity to an already complex series of sections. Second, if one dissociated or present general partner remains at risk, the other dissociated or current partners should have some means of learning of that risk. (They could be at risk by way of a claim for contribution or indemnification.) A proceeding against the limited partnership is a good (albeit imperfect) way of bringing the ongoing risk to the attention of all current and former general partners. Third, futility is the essential rationale for the exceptions provided by Section 403C-2(e) to the exhaustion requirement. That is, there is no reason to require exhaustion when even extensive efforts to collect from the limited partnership are destined to be futile. That rationale does not

apply here, because a simple, discrete act (i.e., the commencement of the proceeding against the limited partnership) accomplishes the desired result -- i.e., preventing the bar.

445. The referenced provision provides for personal liability of general partners in an ordinary limited partnership.

446. Source: ULLCA § 809.

447. RMBCA includes three other grounds, omitted from ULLCA. See RMBCA § 14.20(3)-(5) (being without a registered agent or in-state office for 60 days or more; failing for 60 days or more to notify Secretary of State of certain changes in registered agent or in-state office; expiration of period of duration specified in articles of incorporation). Bert Black, the representative of the International Association of Corporation Administrators, suggests that "there needs to be some 'stick' to get the limited partnership to appoint a new agent" when the old agent resigns. He suggests administrative dissolution as that stick.

448. Source: ULLCA § 810, which closely follows RMBCA § 14.21.

449. ULLCA § 810(b) locates the "within" phrase in the middle of the sentence. The change from ULLCA is for ease in reading.

450. ULLCA § 801(b) refers to "service of the notice" -- an apparent residue from the RMBCA formulation.

451. ULLCA § 810(b) refers to a "certificate of dissolution." As much as possible, Re-RULPA reserves the term

"certificate" for the certificate of limited partnership.

452. The same thing is true for non-administrative dissolution, but this draft does not say so. Query: should it?

453. Source: ULLCA § 811, which closely follows RMBCA § 14.22.

454. ULLCA § 811(a)(3) refers only to "ground." RMBCA § 14.22(a)(2) refers to "ground or grounds." The ULLCA version may reflect an oversight, since that version uses "have" -- i.e., "the ground for dissolution either did not exist or have [sic] been eliminated."

455. ULLCA § 811(b) refers to "certificate of reinstatement." As for why Re-RULPA uses "statement" instead of "certificate," see note 451, above.

456. ULLCA § 811(b) refers to "certificate of reinstatement." As for why Re-RULPA uses "statement" instead of "certificate," see note 451, above.

457. Source: ULLCA § 812. Earlier drafts omitted any parallel provision to ULLCA § 812 on the theory that, absent good reason to the contrary, a State's generally applicable provisions for appealing the actions of an administrative agency should apply to the Secretary of State's denial of reinstatement. Consistent with instructions to follow RUPA/ULLCA, Draft #3 includes an analog to ULLCA § 812.

458. This Section has been substantially revised to accord with RUPA § 807.

459. Source: RUPA § 807(a).

460. A partner entitled to receive a distribution is a creditor. See Section 606. However, a partner is not a creditor with respect to any unreturned contribution.

N.b. -- this section does not require general partners to contribute so as to equalize losses among partners or to bring actual losses into accord with loss shares. Capital losses lay where they fall, just as with a corporation or an LLC.

461. The word "transferees" is new in Draft #3. The language in subsection (b) has been slightly revised in accordance with this change.

462. RUPA § 807(b) is omitted, because that provision rests on RUPA's concept of a partner's account. RUPA § 401(a). Re-RULPA does not adopt the "partner's account" approach.

463. This subsection differs substantially in form from RUPA § 807(b), because this draft does not specify the structure of each partner's "account." Compare RUPA § 401(a). RUPA § 807(b) depends on RUPA § 401(a)'s concept of a partner's account.

464. This draft's approach is more complex than RUPA's, because this draft expressly contemplates contributions from dissociated general partners. Compare RUPA § 807.

465. Derived from RUPA § 807(e), but query: why is this provision necessary? Is there something in other law that would excuse or release the estate? In any event, RUPA's formulation has been changed to include all obligations under this Section; i.e., not only a person's obligation to contribute

to the limited partnership but also the liability of under-contributors to over-contributors.

466. Section 206(d) limits the delay period to 90 days.

467. In this Draft, Article 10 includes a Section unrelated to derivative actions -- i.e., Section 1005, dealing with direct actions by partners. It is unclear whether Section 1005 should remain in Article 10. The Committee should decide that question after (or as part of) deciding the RULPA "look and feel" issue.

468. RUPA has no provisions on derivative actions, and ULLCA follows closely the current language of RULPA. The Committee has at least three approaches from which to choose: maintain RULPA's language; adopt ULLCA's relatively minor revisions to RULPA's language, or make the more substantial (but essentially stylistic) changes indicated in this Draft (and previously indicated in Drafts ## 1 and 2).

469. The proposed revisions make three changes. First, the revised language uses the concept of demand futility, rather than the older, more oblique formulation that "an effort to cause those general partners [to act] is not likely to succeed." Second, the revised language refers to the general partners causing the limited partnership to bring suit, rather than the general partners themselves bringing suit. This change reflects this draft's pure entity approach. The third difference concerns the addressees of the demand. The current provision

refers to those "general partners with authority" to bring suit on behalf of the partnership, and ULLCA has a comparable formulation. See ULLCA § 1101. As in other instances, the word "authority" is confusing. Does it mean the right, the power, either, or both? In any event, in the context of a limited partnership the phrase "with authority" seems superfluous. A limited partner makes demand on the general partners collectively. If the partnership agreement allocates the decision on the demand to fewer than all of the general partners, that allocation affects the way in which the general partners process a demand, not the way in which the limited partner addresses the demand.

470. Changes to this section are either necessary to conform to the proposed revisions to Section 1001 or purely stylistic. Neither RULPA nor this draft (nor ULLCA) expressly require a derivative plaintiff to be a proper representative of other owners.

471. This change merely makes explicit a qualification that follows from the previous section. Both currently in RULPA and in this draft, Section 1001 refers only to derivative actions by limited partners. Note that a person who is both a limited partner and a general partner will satisfy this requirement. See Section 404 (stating that a person who is both a general and a limited partner has the rights pertaining to each status).

472. Here the more expansive category of "partner" is appropriate, because a derivative suit may be brought by a person

who was a general partner when the underlying events occurred and a limited partner when the suit is brought. The change in status could occur under a provision of the partnership agreement. For example, the partnership agreement might provide that, in specified circumstances, a a person dissociated as a general partner becomes a limited partner rather than a mere transferee.

473. There are two reasons for this change: to eliminate the "his [or her]" formulation and to exclude the narrowing connotation associated with "transaction." As to the latter, for example, inaction can give rise to a derivative claim.

474. Changes to this section are either necessary to conform to the proposed revisions to Section 1001 or purely stylistic.

475. The phrase "PROCEEDS AND" is new in the caption, but that subject matter has been part of this section since RULPA was first promulgated.

476. This Section is restated to improve style and to make explicit propositions that are implied in the current language.

477. "Compromise" and "settlement" seem to refer to the same category of events. If so, the next draft will delete one or the other.

478. This Section is derived from RUPA § 405 but omits RUPA § 405(a). That subsection provides: "A partnership may maintain an action against a partner for a breach of the

partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership." The provision makes sense but clearly does not belong in Article 10. Once the Committee has decided the RULPA "look and feel" question, the next draft will insert RUPA § 405(a) in an appropriate location.

479. Derived from RUPA § 405(b).

480. RUPA 405(b) does not include the word "direct."

481. RUPA § 405(b) (2) includes a non-exhaustive list of those rights. The Comment does not explain why some rights warrant special mention.

482. For Comment -- In ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract. Within a limited partnership, however, different circumstances may exist. For instance, if the partnership agreement recites or establishes the general partners' duties as managers of the enterprise, breach of those duties will create a classic derivative claim. The fact that the partnership agreement incorporates those duties does not transmute the claim into a direct one. Thus, a partner does not have a direct claim against another partner merely because the other partner has breached the partnership agreement. Likewise a partner's violation of this Act does not automatically create a direct claim for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the limited partnership.

The reference to "threatened" harm is intended to encompass claims for injunctive relief and does not relax standards for proving injury.

483. Source: RUPA § 405(c).

484. This definition will allow limited partnerships to merge with organizations formed under the laws of other nations.

485. This definition does not encompass an owner's personal liability for approving or receiving improper distributions from the organization because that liability is not liability for an organization's debts and other obligations." (Emphasis added.)

486. Derived from RUPA § 905 and ULLCA § 904.

487. If another entity's governing law is silent on mergers with limited partnerships, this sentence purports to authorize the other entity's participation in the merger. This approach is certainly effective if the limited partnership acting under this Act and the other entity are both creatures of the same state. The approach is arguably problematic, however, if the other entity is a creature of another state. Even if that other state's law does not prohibit the merger, by what power does one state authorize another state's entity to participate in a merger? Nonetheless, a number of LLC statutes have taken this approach.

488. What protection exists for holders of such "bare" interests? They have no right to vote and no right to

seek appraisal. Contrast the situation for partners who lack enough votes to block a merger. Suppose, for example, that: (i) a limited partnership has two classes of limited partner interests, (ii) the partnership agreement allows a merger to occur if a majority of all interests, voting in the aggregate, concur, and (iii) a merger is proposed and approved with provisions that significantly prejudice one of the classes. At least the owners of interests of the disadvantaged class can claim breach of the duty of good faith and fair dealing. Transferees do not even have that recourse. One possible solution -- extend the obligation of good faith and fair dealing to transferees, but only in the context of a merger.

489. The partnership agreement can vary this default rule. Query: should the Act provide that the vote or consent necessary to approve a merger must be no less than the vote necessary to amend the partnership agreement? Otherwise, a craftily or clumsily drafted agreement might allow circumvention of the agreement's amendment provision.

490. This provision is nonwaivable, giving a partner veto rights over any merger that would increase the partner's exposure to owner vicarious liability. The provision does not protect a limited partner who desires to have the general partners remain personally liable for the debts of the entity. That desire is not nearly so fundamental as a person's own exposure to owner vicarious liability and can be adequately addressed by the limited partner insisting on appropriate

protections in the partnership agreement.

491. N.b. -- this general principle triggers the nonwaivable veto right for each particular partner only to the extent the weaker shield affects that particular partner. For example, if a Re-RULPA limited partnership merges into a RULPA limited partnership, this clause will not trigger a veto right for the Re-RULPA limited partnership's general partners. Their shield is not degraded, although the shield for the Re-RULPA limited partners would be.

492. The increased susceptibility described in this paragraph could happen in two ways: (1) The surviving organization could have a lesser shield than the limited partnership (e.g., a limited partnership merging into a general partnership, an LLLP merging into an ordinary limited partnership, a Re-RULPA limited partnership merging into a RULPA limited partnership [the Re-RULPA shield is more protective for limited partners]). (2) The merger might cause a partner to change to an ownership capacity with a lesser shield (e.g., a limited partner becoming a general partner).

493. Derived from ULLCA § 905.

494. ULLCA § 905(4) refers to "the name and address of the surviving limited liability company." RMBCA § 11.03 does not require any address for the surviving corporation.

495. Neither RUPA nor ULLCA requires the articles of merger to include the plan of merger. See RUPA §§ 905(e)(2) (providing merely that a merger does not take effect until "the

filing of all documents required by law to be filed as a condition to the effectiveness of the merger" but not requiring the filing of the plan) and 907 (providing for the optional filing of a statement of merger and not requiring that statement to contain the plan of merger) and ULLCA § 905(a) (listing the required contents of the articles of merger and omitting any reference to the contents of the plan of merger). In contrast, RMBCA § 11.05(a) (1) does require the articles of merger to include the of plan of merger.

496. This Act would mandate the approval process either if the constituent organization is a limited partnership formed under this Act or if the organization's own governing statute provides no approval process. See Section 1102(d) (2) (providing in the latter circumstances for approval by unanimous consent of the owners)

497. The effective date may simply be the date upon which Section 1104(a) (1) is satisfied.

498. Derived from RUPA §§ 905(e) and 906 and ULLCA § 906.

499. Under this provision the merger is not effective as to a Re-RULPA limited partnership until the merger is effective as to each constituent organization. The provision aims principally at filing requirements imposed by other governing statutes.

500. ULLCA has this exception, but applies it only to transfer of rights. ULLCA § 906(a) (5). If the exception makes

sense, it should apply equally to property. Indeed, property ownership is often viewed as comprising a bundle of rights. In contrast, RMBCA § 11.06 makes no reference to the transfer of non-property rights and states no exception for the property transfer.

501. For Comment -- This provision encompasses any obligations created by appraisal rights that may be contained in a constituent organization's governing statute.

502. RMBCA § 11.06(a)(4), RUPA § 906(a)(4), and ULLCA 906(a)(4) all have this disjunctive provision, but none explain who makes the choice between the two options.

503. The reference to "interests" rather than "ownership interests" is purposeful. The merger might involve conversion of bare transferable interests.

504. This subsection may seem unnecessary, because no one can have the power to bind a nonexistent organization. However, a contrary argument is possible under Section 1104(b)(3). That section, derived from ULLCA § 906(a)(3), provides that "all obligations of each constituent organization become the obligations of the surviving organization." It could be argued that:

- where a constituent organization's governing statute provides for a former owner's lingering power to bind, and
- where the merger statute makes the surviving organization liable for the debts of the non-surviving

organization, then

- the lingering power to bind should bind the surviving organization.

This subsection negates and precludes that argument.

505. The contrary agreement could occur in the partnership agreement or in the plan of merger.

506. Since the merger is not an event of dissolution, there is no obligation to marshall assets, pay off creditors, settle accounts among partners, or deliver to the Secretary of State a declaration of termination. Presumably the Secretary of State's records will connect the articles of merger with the limited partnership's certificate of limited partnership.

507. This subsection will be re-worked in conjunction with the revisions to Article 9.

508. For Comment -- A foreign surviving organization will be the successor in interest to a domestic limited partnership (which of course is authorized to do business in the State) and perhaps to other organizations authorized to do business in the State. The foreign surviving organization does not succeed to that authorization but must instead comply with the applicable state statute granting authority to transact business.