

UNIFORM LIMITED PARTNERSHIP ACT (2001)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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MEETING IN ITS ONE-HUNDRED-AND-TENTH YEAR
WHITE SULPHUR SPRINGS, WEST VIRGINIA
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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM LIMITED PARTNERSHIP ACT

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UNIFORM LIMITED PARTNERSHIP ACT (2001)

PREFATORY NOTE

The Act's Overall Approach

The new Limited Partnership Act is a “stand alone” act, “de-linked” from both the original general partnership act (“UPA”) and the Revised Uniform Partnership Act (“RUPA”). To be able to stand alone, the Limited Partnership incorporates many provisions from RUPA and some from the Uniform Limited Liability Company Act (“ULLCA”). As a result, the new Act is far longer and more complex than its immediate predecessor, the Revised Uniform Limited Partnership Act (“RULPA”).

The new Act has been drafted for a world in which limited liability partnerships and limited liability companies can meet many of the needs formerly met by limited partnerships. This Act therefore targets two types of enterprises that seem largely beyond the scope of LLPs and LLCs: (i) sophisticated, manager-entrenched commercial deals whose participants commit for the long term, and (ii) estate planning arrangements (family limited partnerships). This Act accordingly assumes that, more often than not, people utilizing it will want:

- strong centralized management, strongly entrenched, and
- passive investors with little control over or right to exit the entity

The Act's rules, and particularly its default rules, have been designed to reflect these assumptions.

The Decision to “De-Link” and Create a Stand Alone Act

Unlike this Act, RULPA is not a stand alone statute. RULPA was drafted to rest on and link to the UPA. RULPA Section 1105 states that “In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.” UPA Section 6(2) in turn provides that “this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.” More particularly, RULPA Section 403 defines the rights, powers, restrictions and liabilities of a “general partner of a limited partnership” by equating them to the rights, powers, restrictions and liabilities of “a partner in a partnership without limited partners.”

This arrangement has not been completely satisfactory, because the consequences of linkage are not always clear. *See, e.g., Frye v. Manacare Ltd.*, 431 So.2d 181, 183-84 (Fla. Dist.

Ct. App. 1983) (applying UPA Section 42 in favor of a limited partner), *Porter v. Barnhouse*, 354 N.W.2d 227, 232-33 (Iowa 1984) (declining to apply UPA Section 42 in favor of a limited partner) and *Baltzell-Wolfe Agencies, Inc. v. Car Wash Investments No. 1, Ltd.*, 389 N.E.2d 517, 518-20 (Ohio App. 1978) (holding that neither the specific provisions of the general partnership statute nor those of the limited partnership statute determined the liability of a person who had withdrawn as general partner of a limited partnership). Moreover, in some instances the “not inconsistent” rules of the UPA can be inappropriate for the fundamentally different relations involved in a limited partnership.

In any event, the promulgation of RUPA unsettled matters. RUPA differs substantially from the UPA, and the drafters of RUPA expressly declined to decide whether RUPA provides a suitable base and link for the limited partnership statute. According to RUPA’s Prefatory Note:

Partnership law no longer governs limited partnerships pursuant to the provisions of RUPA itself. First, limited partnerships are not “partnerships” within the RUPA definition. Second, UPA Section 6(2), which provides that the UPA governs limited partnerships in cases not provided for in the Uniform Limited Partnership Act (1976) (1985) (“RULPA”) has been deleted. No substantive change in result is intended, however. Section 1105 of RULPA already provides that the UPA governs in any case not provided for in RULPA, and thus the express linkage in RUPA is unnecessary. Structurally, it is more appropriately left to RULPA to determine the applicability of RUPA to limited partnerships. It is contemplated that the Conference will review the linkage question carefully, although no changes in RULPA may be necessary despite the many changes in RUPA.

The linkage question was the first major issue considered and decided by this Act’s Drafting Committee. Since the Conference has recommended the repeal of the UPA, it made no sense to recommend retaining the UPA as the base and link for a revised or new limited partnership act. The Drafting Committee therefore had to choose between recommending linkage to the new general partnership act (i.e., RUPA) or recommending de-linking and a stand alone act.

The Committee saw several substantial advantages to de-linking. A stand alone statute would:

- be more convenient, providing a single, self-contained source of statutory authority for issues pertaining to limited partnerships;
- eliminate confusion as to which issues were solely subject to the limited partnership act and which required reference (i.e., linkage) to the general partnership act; and
- rationalize future case law, by ending the automatic link between the cases concerning partners in a general partnership and issues pertaining to general partners in a limited partnership.

Thus, a stand alone act seemed likely to promote efficiency, clarity, and coherence in the law of limited partnerships.

In contrast, recommending linkage would have required the Drafting Committee to (1) consider each provision of RUPA and determine whether the provision addressed a matter provided for in RULPA; (2) for each RUPA provision which addressed a matter not provided for in RULPA, determine whether the provision stated an appropriate rule for limited partnerships; and (3) for each matter addressed both by RUPA and RULPA, determine whether RUPA or RULPA stated the better rule for limited partnerships.

That approach was unsatisfactory for at least two reasons. No matter how exhaustive the Drafting Committee's analysis might be, the Committee could not guarantee that courts and practitioners would reach the same conclusions. Therefore, in at least some situations linkage would have produced ambiguity. In addition, the Drafting Committee could not guarantee that all currently appropriate links would remain appropriate as courts begin to apply and interpret RUPA. Even if the Committee recommended linkage, RUPA was destined to be interpreted primarily in the context of general partnerships. Those interpretations might not make sense for limited partnership law, because the modern limited partnership involves fundamentally different relations than those involved in "the small, often informal, partnership" that is "[t]he primary focus of RUPA." RUPA, Prefatory Note.

The Drafting Committee therefore decided to draft and recommend a stand alone act.

Availability of LLLP Status

Following the example of a growing number of States, this Act provides for limited liability limited partnerships. In a limited liability limited partnership ("LLLP"), no partner – whether general or limited – is liable on account of partner status for the limited partnership's obligations. Both general and limited partners benefit from a full, status-based liability shield that is equivalent to the shield enjoyed by corporate shareholders, LLC members, and partners in an LLP.

This Act is designed to serve preexisting limited partnerships as well as limited partnerships formed after the Act's enactment. Most of those preexisting limited partnership will not be LLLPs, and accordingly the Act does not prefer or presume LLLP status. Instead, the Act makes LLLP status available through a simple statement in the certificate of limited partnership. See Sections 102(9), 201(a)(4) and 404(c).

Liability Shield for Limited Partners

RULPA provides only a restricted liability shield for limited partners. The shield is at risk for any limited partner who “participates in the control of the business.” RULPA Section 303(a). Although this “control rule” is subject to a lengthy list of safe harbors, RULPA Section 303(b), in a world with LLPs, LLCs and, most importantly, LLLPs, the rule is an anachronism. This Act therefore eliminates the control rule and provides a full, status-based shield against limited partner liability for entity obligations. The shield applies whether or not the limited partnership is an LLLP. See Section 303.

Transition Issues

Following RUPA’s example, this Act provides (i) an effective date, after which all newly formed limited partnerships are subject to this Act; (ii) an optional period, during which limited partnerships formed under a predecessor statute may elect to become subject to this Act; and (iii) a mandatory date, on which all preexisting limited partnerships become subject to this Act by operation of law.

A few provisions of this Act differ so substantially from prior law that they should not apply automatically to a preexisting limited partnership. Section 1206(c) lists these provisions and states that each remains inapplicable to a preexisting limited partnership, unless the limited partnership elects for the provision to apply.

Comparison of RULPA and this Act

The following table compares some of the major characteristics of RULPA and this Act. In most instances, the rules involved are “default” rules – i.e., subject to change by the partnership agreement.

Characteristic	RULPA	this Act
relationship to general partnership act	linked, Sections 1105, 403; UPA Section 6(2)	de-linked (but many RUPA provisions incorporated)
permitted purposes	subject to any specified exceptions, “any business that a partnership without limited partners may carry on,” Section 106	any lawful purpose, Section 104(b)
constructive notice via publicly filed documents	only that limited partnership exists and that designated general partners are general partners, Section 208	RULPA constructive notice provisions carried forward, Section 103(c), plus constructive notice, 90 days after appropriate filing, of: general partner dissociation and of limited partnership dissolution, termination, merger and conversion, Section 103(d)
duration	specified in certificate of limited partnership, Section 201(a)(4)	perpetual, Section 104(c); subject to change in partnership agreement
use of limited partner name in entity name	prohibited, except in unusual circumstances, Section 102(2)	permitted, Section 108(a)
annual report	none	required, Section 210
limited partner liability for entity debts	none unless limited partner “participates in the control of the business” and person “transact[s] business with the limited partnership reasonably believing . . . that the limited partner is a general partner,” Section 303(a); safe harbor lists many activities that do not constitute participating in the control of the business, Section 303(b)	none, regardless of whether the limited partnership is an LLLP, “even if the limited partner participates in the management and control of the limited partnership,” Section 303

limited partner duties	none specified	no fiduciary duties “solely by reason of being a limited partner,” Section 305(a); each limited partner is obliged to “discharge duties . . . and exercise rights consistently with the obligation of good faith and fair dealing,” Section 305(b)
partner access to information – required records/information	all partners have right of access; no requirement of good cause; Act does not state whether partnership agreement may limit access; Sections 105(b) and 305(1)	list of required information expanded slightly; Act expressly states that partner does not have to show good cause; Sections 304(a), 407(a); however, the partnership agreement may set reasonable restrictions on access to and use of required information, Section 110(b)(4), and limited partnership may impose reasonable restrictions on the use of information, Sections 304(g) and 407(f)

<p>partner access to information – other information</p>	<p>limited partners have the right to obtain other relevant information “upon reasonable demand,” Section 305(2); general partner rights linked to general partnership act, Section 403</p>	<p>for limited partners, RULPA approach essentially carried forward, with procedures and standards for making a reasonable demand stated in greater detail, plus requirement that limited partnership supply known material information when limited partner consent sought, Section 304; general partner access rights made explicit, following ULLCA and RUPA, including obligation of limited partnership and general partners to volunteer certain information, Section 407; access rights provided for former partners, Sections 304 and 407</p>
<p>general partner liability for entity debts</p>	<p>complete, automatic and formally inescapable, Section 403(b) (n.b. – in practice, most modern limited partnerships have used a general partner that has its own liability shield; <i>e.g.</i>, a corporation or limited liability company)</p>	<p>LLLP status available via a simple statement in the certificate of limited partnership, Sections 102(9), 201(a)(4); LLLP status provides a full liability shield to all general partners, Section 404(c); if the limited partnership is not an LLLP, general partners are liable just as under RULPA, Section 404(a)</p>
<p>general partner duties</p>	<p>linked to duties of partners in a general partnership, Section 403</p>	<p>RUPA general partner duties imported, Section 408; general partner’s non-compete duty continues during winding up, Section 408(b)(3)</p>

allocation of profits, losses and distributions	provides separately for sharing of profits and losses, Section 503, and for sharing of distributions, Section 504; allocates each according to contributions made and not returned	eliminates as unnecessary the allocation rule for profits and losses; allocates distributions according to contributions made, Section 503 (n.b. – in the default mode, the Act’s formulation produces the same result as RULPA formulation)
partner liability for distributions	recapture liability if distribution involved “the return of . . . contribution”; one year recapture liability if distribution rightful, Section 608(a); six year recapture liability if wrongful, Section 608(b)	following ULLCA Sections 406 and 407, the Act adopts the RMBCA approach to improper distributions, Sections 508 and 509
limited partner voluntary dissociation	theoretically, limited partner may withdraw on six months notice unless partnership agreement specifies a term for the limited partnership or withdrawal events for limited partner, Section 603; practically, virtually every partnership agreement specifies a term, thereby eliminating the right to withdraw (n.b. – due to estate planning concerns, several States have amended RULPA to prohibit limited partner withdrawal unless otherwise provided in the partnership agreement)	no “right to dissociate as a limited partner before the termination of the limited partnership,” Section 601(a); power to dissociate expressly recognized, Section 601(b)(1), but can be eliminated by the partnership agreement
limited partner involuntary dissociation	not addressed	lengthy list of causes, Section 601(b), taken with some modification from RUPA
limited partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” Section 604	no payout; person becomes transferee of its own transferable interest, Section 602(3)

general partner voluntary dissociation	right exists unless otherwise provided in partnership agreement, Section 602; power exists regardless of partnership agreement, Section 602	RULPA rule carried forward, although phrased differently, Section 604(a); dissociation before termination of the limited partnership is defined as wrongful, Section 604(b)(2)
general partner involuntary dissociation	Section 402 lists causes	following RUPA, Section 603 expands the list of causes, including expulsion by court order, Section 603(5)
general partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” Section 604, subject to offset for damages caused by wrongful withdrawal, Section 602	no payout; person becomes transferee of its own transferable interest, Section 605(5)
transfer of partner interest – nomenclature	“Assignment of Partnership Interest,” Section 702	“Transfer of Partner’s Transferable Interest,” Section 702
transfer of partner interest – substance	economic rights fully transferable, but management rights and partner status are not transferable, Section 702	same rule, but Sections 701 and 702 follow RUPA’s more detailed and less oblique formulation
rights of creditor of partner	limited to charging order, Section 703	essentially the same rule, but, following RUPA and ULLCA, the Act has a more elaborate provision that expressly extends to creditors of transferees, Section 703

dissolution by partner consent	requires unanimous written consent, Section 801(3)	requires consent of “all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective,” Section 801(2)
dissolution following dissociation of a general partner	occurs automatically unless all partners agree to continue the business and, if there is no remaining general partner, to appoint a replacement general partner, Section 801(4)	if at least one general partner remains, no dissolution unless “within 90 days after the dissociation . . . partners owning a majority of the rights to receive distributions as partners” consent to dissolve the limited partnership; Section 801(3)(A); if no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless before that deadline limited partners owning a majority of the rights to receive distributions owned by limited partners consent to continue the business and admit at least one new general partner and a new general partner is admitted, Section 801(3)(B)
filings related to entity termination	certificate of limited partnership to be cancelled when limited partnership dissolves and begins winding up, Section 203	limited partnership may amend certificate to indicate dissolution, Section 803(b)(1), and may file statement of termination indicating that winding up has been completed and the limited partnership is terminated, Section 203

procedures for barring claims against dissolved limited partnership	none	following ULLCA Sections 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, Sections 806 and 807
conversions and mergers	no provision	Article 11 permits conversions to and from and mergers with any “organization,” defined as “a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute . . . [including] domestic and foreign entities regardless of whether organized for profit.” Section 1101(8)

writing requirements	some provisions pertain only to written understandings; <i>see, e.g.</i> , Sections 401 (partnership agreement may “provide in writing for the admission of additional general partners”; such admission also permitted “with the written consent of all partners”), 502(a) (limited partner’s promise to contribute “is not enforceable unless set out in a writing signed by the limited partner”), 801(2) and (3) (dissolution occurs “upon the happening of events specified in writing in the partnership agreement” and upon “written consent of all partners”), 801(4) (dissolution avoided following withdrawal of a general partner if “all partners agree in writing”)	removes virtually all writing requirements; but does require that certain information be maintained in record form, Section 111
Characteristic	RULPA	this Act
relationship to general partnership act	linked, Sections 1105, 403; UPA Section 6(2)	de-linked (but many RUPA provisions incorporated)
permitted purposes	subject to any specified exceptions, “any business that a partnership without limited partners may carry on,” Section 106	any lawful purpose, Section 104(b)
constructive notice via publicly filed documents	only that limited partnership exists and that designated general partners are general partners, Section 208	RULPA constructive notice provisions carried forward, Section 103(c), plus constructive notice, 90 days after appropriate filing, of: general partner dissociation and of limited partnership dissolution, termination, merger and conversion, Section 103(d)

duration	specified in certificate of limited partnership, Section 201(a)(4)	perpetual, Section 104(c); subject to change in partnership agreement
use of limited partner name in entity name	prohibited, except in unusual circumstances, Section 102(2)	permitted, Section 108(a)
annual report	none	required, Section 210
limited partner liability for entity debts	none unless limited partner “participates in the control of the business” and person “transact[s] business with the limited partnership reasonably believing . . . that the limited partner is a general partner,” Section 303(a); safe harbor lists many activities that do not constitute participating in the control of the business, Section 303(b)	none, regardless of whether the limited partnership is an LLLP, “even if the limited partner participates in the management and control of the limited partnership,” Section 303
limited partner duties	none specified	no fiduciary duties “solely by reason of being a limited partner,” Section 305(a); each limited partner is obliged to “discharge duties . . . and exercise rights consistently with the obligation of good faith and fair dealing,” Section 305(b)

<p>partner access to information – required records/ information</p>	<p>all partners have right of access; no requirement of good cause; Act does not state whether partnership agreement may limit access; Sections 105(b) and 305(1)</p>	<p>list of required information expanded slightly; Act expressly states that partner does not have to show good cause; Sections 304(a), 407(a); however, the partnership agreement may set reasonable restrictions on access to and use of required information, Section 110(b)(4), and limited partnership may impose reasonable restrictions on the use of information, Sections 304(g) and 407(f)</p>
<p>partner access to information – other information</p>	<p>limited partners have the right to obtain other relevant information “upon reasonable demand,” Section 305(2); general partner rights linked to general partnership act, Section 403</p>	<p>for limited partners, RULPA approach essentially carried forward, with procedures and standards for making a reasonable demand stated in greater detail, plus requirement that limited partnership supply known material information when limited partner consent sought, Section 304; general partner access rights made explicit, following ULLCA and RUPA, including obligation of limited partnership and general partners to volunteer certain information, Section 407; access rights provided for former partners, Sections 304 and 407</p>

general partner liability for entity debts	complete, automatic and formally inescapable, Section 403(b) (n.b. – in practice, most modern limited partnerships have used a general partner that has its own liability shield; <i>e.g.</i> , a corporation or limited liability company)	LLLP status available via a simple statement in the certificate of limited partnership, Sections 102(9), 201(a)(4); LLLP status provides a full liability shield to all general partners, Section 404(c); if the limited partnership is not an LLLP, general partners are liable just as under RULPA, Section 404(a)
general partner duties	linked to duties of partners in a general partnership, Section 403	RUPA general partner duties imported, Section 408; general partner’s non-compete duty continues during winding up, Section 408(b)(3)
allocation of profits, losses and distributions	provides separately for sharing of profits and losses, Section 503, and for sharing of distributions, Section 504; allocates each according to contributions made and not returned	eliminates as unnecessary the allocation rule for profits and losses; allocates distributions according to contributions made, Section 503 (n.b. – in the default mode, the Act’s formulation produces the same result as RULPA formulation)
partner liability for distributions	recapture liability if distribution involved “the return of . . . contribution”; one year recapture liability if distribution rightful, Section 608(a); six year recapture liability if wrongful, Section 608(b)	following ULLCA Sections 406 and 407, the Act adopts the RMBCA approach to improper distributions, Sections 508 and 509

limited partner voluntary dissociation	theoretically, limited partner may withdraw on six months notice unless partnership agreement specifies a term for the limited partnership or withdrawal events for limited partner, Section 603; practically, virtually every partnership agreement specifies a term, thereby eliminating the right to withdraw (n.b. – due to estate planning concerns, several States have amended RULPA to prohibit limited partner withdrawal unless otherwise provided in the partnership agreement)	no “right to dissociate as a limited partner before the termination of the limited partnership,” Section 601(a); power to dissociate expressly recognized, Section 601(b)(1), but can be eliminated by the partnership agreement
limited partner involuntary dissociation	not addressed	lengthy list of causes, Section 601(b), taken with some modification from RUPA
limited partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” Section 604	no payout; person becomes transferee of its own transferable interest, Section 602(3)
general partner voluntary dissociation	right exists unless otherwise provided in partnership agreement, Section 602; power exists regardless of partnership agreement, Section 602	RULPA rule carried forward, although phrased differently, Section 604(a); dissociation before termination of the limited partnership is defined as wrongful, Section 604(b)(2)
general partner involuntary dissociation	Section 402 lists causes	following RUPA, Section 603 expands the list of causes, including expulsion by court order, Section 603(5)
general partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” Section 604, subject to offset for damages caused by wrongful withdrawal, Section 602	no payout; person becomes transferee of its own transferable interest, Section 605(5)

transfer of partner interest – nomenclature	“Assignment of Partnership Interest,” Section 702	“Transfer of Partner’s Transferable Interest,” Section 702
transfer of partner interest – substance	economic rights fully transferable, but management rights and partner status are not transferable, Section 702	same rule, but Sections 701 and 702 follow RUPA’s more detailed and less oblique formulation
rights of creditor of partner	limited to charging order, Section 703	essentially the same rule, but, following RUPA and ULLCA, the Act has a more elaborate provision that expressly extends to creditors of transferees, Section 703
dissolution by partner consent	requires unanimous written consent, Section 801(3)	requires consent of “all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective,” Section 801(2)

dissolution following dissociation of a general partner	occurs automatically unless all partners agree to continue the business and, if there is no remaining general partner, to appoint a replacement general partner, Section 801(4)	if at least one general partner remains, no dissolution unless “within 90 days after the dissociation . . . partners owning a majority of the rights to receive distributions as partners” consent to dissolve the limited partnership; Section 801(3)(A); if no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless before that deadline limited partners owning a majority of the rights to receive distributions owned by limited partners consent to continue the business and admit at least one new general partner and a new general partner is admitted, Section 801(3)(B)
filings related to entity termination	certificate of limited partnership to be cancelled when limited partnership dissolves and begins winding up, Section 203	limited partnership may amend certificate to indicate dissolution, Section 803(b)(1), and may file statement of termination indicating that winding up has been completed and the limited partnership is terminated, Section 203
procedures for barring claims against dissolved limited partnership	none	following ULLCA Sections 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, Sections 806 and 807

conversions and mergers	no provision	Article 11 permits conversions to and from and mergers with any “organization,” defined as “a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute . . . [including] domestic and foreign entities regardless of whether organized for profit.” Section 1101(8)
writing requirements	some provisions pertain only to written understandings; <i>see, e.g.</i> , Sections 401 (partnership agreement may “provide in writing for the admission of additional general partners”; such admission also permitted “with the written consent of all partners”), 502(a) (limited partner’s promise to contribute “is not enforceable unless set out in a writing signed by the limited partner”), 801(2) and (3) (dissolution occurs “upon the happening of events specified in writing in the partnership agreement” and upon “written consent of all partners”), 801(4) (dissolution avoided following withdrawal of a general partner if “all partners agree in writing”)	removes virtually all writing requirements; but does require that certain information be maintained in record form, Section 111
Characteristic	RULPA	this Act
relationship to general partnership act	linked, Sections 1105, 403; UPA Section 6(2)	de-linked (but many RUPA provisions incorporated)

permitted purposes	subject to any specified exceptions, “any business that a partnership without limited partners may carry on, ” Section 106	any lawful purpose, Section 104(b)
constructive notice via publicly filed documents	only that limited partnership exists and that designated general partners are general partners, Section 208	RULPA constructive notice provisions carried forward, Section 103(c), plus constructive notice, 90 days after appropriate filing, of: general partner dissociation and of limited partnership dissolution, termination, merger and conversion, Section 103(d)
duration	specified in certificate of limited partnership, Section 201(a)(4)	perpetual, Section 104(c); subject to change in partnership agreement
use of limited partner name in entity name	prohibited, except in unusual circumstances, Section 102(2)	permitted, Section 108(a)
annual report	none	required, Section 210
limited partner liability for entity debts	none unless limited partner “participates in the control of the business” and person “transact[s] business with the limited partnership reasonably believing . . . that the limited partner is a general partner,” Section 303(a); safe harbor lists many activities that do not constitute participating in the control of the business, Section 303(b)	none, regardless of whether the limited partnership is an LLLP, “even if the limited partner participates in the management and control of the limited partnership,” Section 303

limited partner duties	none specified	no fiduciary duties “solely by reason of being a limited partner,” Section 305(a); each limited partner is obliged to “discharge duties . . . and exercise rights consistently with the obligation of good faith and fair dealing,” Section 305(b)
partner access to information – required records/information	all partners have right of access; no requirement of good cause; Act does not state whether partnership agreement may limit access; Sections 105(b) and 305(1)	list of required information expanded slightly; Act expressly states that partner does not have to show good cause; Sections 304(a), 407(a); however, the partnership agreement may set reasonable restrictions on access to and use of required information, Section 110(b)(4), and limited partnership may impose reasonable restrictions on the use of information, Sections 304(g) and 407(f)

<p>partner access to information – other information</p>	<p>limited partners have the right to obtain other relevant information “upon reasonable demand,” Section 305(2); general partner rights linked to general partnership act, Section 403</p>	<p>for limited partners, RULPA approach essentially carried forward, with procedures and standards for making a reasonable demand stated in greater detail, plus requirement that limited partnership supply known material information when limited partner consent sought, Section 304; general partner access rights made explicit, following ULLCA and RUPA, including obligation of limited partnership and general partners to volunteer certain information, Section 407; access rights provided for former partners, Sections 304 and 407</p>
<p>general partner liability for entity debts</p>	<p>complete, automatic and formally inescapable, Section 403(b) (n.b. – in practice, most modern limited partnerships have used a general partner that has its own liability shield; <i>e.g.</i>, a corporation or limited liability company)</p>	<p>LLLP status available via a simple statement in the certificate of limited partnership, Sections 102(9), 201(a)(4); LLLP status provides a full liability shield to all general partners, Section 404(c); if the limited partnership is not an LLLP, general partners are liable just as under RULPA, Section 404(a)</p>
<p>general partner duties</p>	<p>linked to duties of partners in a general partnership, Section 403</p>	<p>RUPA general partner duties imported, Section 408; general partner’s non-compete duty continues during winding up, Section 408(b)(3)</p>

allocation of profits, losses and distributions	provides separately for sharing of profits and losses, Section 503, and for sharing of distributions, Section 504; allocates each according to contributions made and not returned	eliminates as unnecessary the allocation rule for profits and losses; allocates distributions according to contributions made, Section 503 (n.b. – in the default mode, the Act’s formulation produces the same result as RULPA formulation)
partner liability for distributions	recapture liability if distribution involved “the return of . . . contribution”; one year recapture liability if distribution rightful, Section 608(a); six year recapture liability if wrongful, Section 608(b)	following ULLCA Sections 406 and 407, the Act adopts the RMBCA approach to improper distributions, Sections 508 and 509
limited partner voluntary dissociation	theoretically, limited partner may withdraw on six months notice unless partnership agreement specifies a term for the limited partnership or withdrawal events for limited partner, Section 603; practically, virtually every partnership agreement specifies a term, thereby eliminating the right to withdraw (n.b. – due to estate planning concerns, several States have amended RULPA to prohibit limited partner withdrawal unless otherwise provided in the partnership agreement)	no “right to dissociate as a limited partner before the termination of the limited partnership,” Section 601(a); power to dissociate expressly recognized, Section 601(b)(1), but can be eliminated by the partnership agreement
limited partner involuntary dissociation	not addressed	lengthy list of causes, Section 601(b), taken with some modification from RUPA
limited partner dissociation – payout	“fair value . . . based upon [the partner’s] right to share in distributions,” Section 604	no payout; person becomes transferee of its own transferable interest, Section 602(3)

general partner voluntary dissociation	right exists unless otherwise provided in partnership agreement, Section 602; power exists regardless of partnership agreement, Section 602	RULPA rule carried forward, although phrased differently, Section 604(a); dissociation before termination of the limited partnership is defined as wrongful, Section 604(b)(2)
general partner involuntary dissociation	Section 402 lists causes	following RUPA, Section 603 expands the list of causes, including expulsion by court order, Section 603(5)
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transfer of partner interest – nomenclature	“Assignment of Partnership Interest,” Section 702	“Transfer of Partner’s Transferable Interest,” Section 702
transfer of partner interest – substance	economic rights fully transferable, but management rights and partner status are not transferable, Section 702	same rule, but Sections 701 and 702 follow RUPA’s more detailed and less oblique formulation
rights of creditor of partner	limited to charging order, Section 703	essentially the same rule, but, following RUPA and ULLCA, the Act has a more elaborate provision that expressly extends to creditors of transferees, Section 703

dissolution by partner consent	requires unanimous written consent, Section 801(3)	requires consent of “all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective,” Section 801(2)
dissolution following dissociation of a general partner	occurs automatically unless all partners agree to continue the business and, if there is no remaining general partner, to appoint a replacement general partner, Section 801(4)	if at least one general partner remains, no dissolution unless “within 90 days after the dissociation . . . partners owning a majority of the rights to receive distributions as partners” consent to dissolve the limited partnership; Section 801(3)(A); if no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless before that deadline limited partners owning a majority of the rights to receive distributions owned by limited partners consent to continue the business and admit at least one new general partner and a new general partner is admitted, Section 801(3)(B)
filings related to entity termination	certificate of limited partnership to be cancelled when limited partnership dissolves and begins winding up, Section 203	limited partnership may amend certificate to indicate dissolution, Section 803(b)(1), and may file statement of termination indicating that winding up has been completed and the limited partnership is terminated, Section 203

procedures for barring claims against dissolved limited partnership	none	following ULLCA Sections 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, Sections 806 and 807
conversions and mergers	no provision	Article 11 permits conversions to and from and mergers with any “organization,” defined as “a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute . . . [including] domestic and foreign entities regardless of whether organized for profit.” Section 1101(8)

writing requirements	some provisions pertain only to written understandings; <i>see, e.g.</i> , Sections 401 (partnership agreement may “provide in writing for the admission of additional general partners”; such admission also permitted “with the written consent of all partners”), 502(a) (limited partner’s promise to contribute “is not enforceable unless set out in a writing signed by the limited partner”), 801(2) and (3) (dissolution occurs “upon the happening of events specified in writing in the partnership agreement” and upon “written consent of all partners”), 801(4) (dissolution avoided following withdrawal of a general partner if “all partners agree in writing”)	removes virtually all writing requirements; but does require that certain information be maintained in record form, Section 111
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UNIFORM LIMITED PARTNERSHIP ACT (2001)

[ARTICLE] 1 GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Limited Partnership Act [year of enactment].

SECTION 102. DEFINITIONS. In this [Act]:

(1) “Certificate of limited partnership” means the certificate required by Section 201. The term includes the certificate as amended or restated.

(2) “Contribution”, except in the phrase “right of contribution,” means any benefit provided by a person to a limited partnership in order to become a partner or in the person’s capacity as a partner.

(3) “Debtor in bankruptcy” means a person that is the subject of:
(A) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

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

(4) “Designated office” means:
(A) with respect to a limited partnership, the office that the limited partnership is required to designate and maintain under Section 114; and

(B) with respect to a foreign limited partnership, its principal office.

(5) “Distribution” means a transfer of money or other property from a limited partnership to a partner in the partner’s capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

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

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

(8) “General partner” means:

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

(i) becomes a general partner under Section 401; or

(ii) was a general partner in a limited partnership when the limited partnership

became subject to this [Act] under Section 1206(a) or (b); and

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

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

(10) “Limited partner” means:

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

(i) becomes a limited partner under Section 301; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this [Act] under Section 1206(a) or (b); and

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

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

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

(13) “Partnership agreement” means the partners’ agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

(14) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

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

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

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

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

(19) “Sign” means:

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

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

(20) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) “Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) “Transferable interest” means a partner’s right to receive distributions.

(23) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

Comment

This section contains definitions applicable throughout the Act. Section 1101 provides additional definitions applicable within Article 11.

Paragraph 8(A)(i) [General partner] – A partnership agreement may vary Section 401 and provide a process or mechanism for becoming a general partner which is different from or additional to the rules stated in that section. For the purposes of this definition, a person who

becomes a general partner pursuant to a provision of the partnership agreement “becomes a general partner under Section 401.”

Paragraph 10(A)(i) [Limited partner] – The Comment to Paragraph 8(A)(i) applies here as well. For the purposes of this definition, a person who becomes a limited partner pursuant to a provision of the partnership agreement “becomes a limited partner under Section 301.”

Paragraph (11) [Limited partnership] – This definition pertains to what is commonly termed a “domestic” limited partnership. The definition encompasses: (i) limited partnerships originally formed under this Act, including limited partnerships formed under Section 1101(11) to be the surviving organization in a merger; (ii) any entity that becomes subject to this Act by converting into a limited partnership under Article 11; (iii) any preexisting domestic limited partnership that elects pursuant to Section 1206(a) to become subject to this Act; and (iv) all other preexisting domestic limited partnerships when they become subject to this Act under Section 1206(b).

Following the approach of predecessor law, RULPA Section 101(7), this definition contains two substantive requirements. First, it is of the essence of a limited partnership to have two classes of partners. Accordingly, under Section 101(11) a limited partnership must have at least one general and one limited partner. Section 801(3)(B) and (4) provide that a limited partnership dissolves if its sole general partner or sole limited partner dissociates and the limited partnership fails to admit a replacement within 90 days of the dissociation. The 90 day limitation is a default rule, but, in light of Section 101(11), a limited partnership may not indefinitely delay “having one or more general partners and one or more limited partners.”

It is also of the essence of a limited partnership to have at least two partners. Section 101(11) codifies this requirement by referring to a limited partnership as “an entity . . . which is formed under this [Act] by two or more persons.” Thus, while the same person may be both a general and limited partner, Section 113 (Dual Capacity), one person alone cannot be the “two persons” contemplated by this definition. However, nothing in this definition prevents two closely affiliated persons from satisfying the two person requirement.

Paragraph (13) [Partnership agreement] – Section 110 is essential to understanding the significance of the partnership agreement. See also Section 201(d) (resolving inconsistencies between the certificate of limited partnership and the partnership agreement).

Paragraph (21) [Transfer] – Following RUPA, this Act uses the words “transfer” and “transferee” rather than the words “assignment” and “assignee.” See RUPA Section 503.

The reference to “transfer by operation of law” is significant in connection with Section 702 (Transfer of Partner's Transferable Interest). That section severely restricts a transferee's rights (absent the consent of the partners), and this definition makes those restrictions applicable,

for example, to transfers ordered by a family court as part of a divorce proceeding and transfers resulting from the death of a partner.

Paragraph (23) [Transferee] – See comment to Paragraph 21 for an explanation of why this Act refers to “transferee” rather than “assignee.”

SECTION 103. KNOWLEDGE AND NOTICE.

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

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

(1) knows of it;

(2) has received a notification of it;

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

(4) has notice of it under subsection (c) or (d).

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

(d) A person has notice of:

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

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

(3) a limited partnership's termination, 90 days after the effective date of a statement of termination;

(4) a limited partnership's conversion under [Article] 11, 90 days after the effective date of the articles of conversion; or

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

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

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

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

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

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

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

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

Comment

Source – RUPA Section 102; RULPA Section 208.

Notice and the relationship among subsections (b), (c) and (d) – These subsections provide separate and independent avenues through which a person can have notice of a fact. A person has notice of a fact as soon as any of the avenues applies.

Example: A limited partnership dissolves and amends its certificate of limited partnership to indicate dissolution. The amendment is effective on March 1. On March 15, Person #1 has reason to know of the dissolution and therefore has “notice” of the dissolution under Section 103(b)(3) even though Section 103(d)(2) does not yet apply. Person #2 does not have actual knowledge of the dissolution until June 15. Nonetheless, under Section 103(d)(2) Person #2 has “notice” of the dissolution on May 30.

Subsection (c) – This subsection provides what is commonly called constructive notice and comes essentially verbatim from RULPA Section 208. As for the significance of constructive notice “that the partnership is a limited partnership,” see *Water, Waste & Land, Inc. v. Lanham*, 955 P.2d 997, 1001-1003 (Colo. 1998) (interpreting a comparable provision of the Colorado LLC statute and holding the provision ineffective to change common law agency

principles, including the rules relating to the liability of an agent that transacts business for an undisclosed principal).

As for constructive notice that “the persons designated in the certificate as general partners are general partners,” Section 201(a)(3) requires the initial certificate of limited partnership to name each general partner, and Section 202(b) requires a limited partnership to promptly amend its certificate of limited partnership to reflect any change in the identity of its general partners. Nonetheless, it will be possible, albeit improper, for a person to be designated in the certificate of limited partnership as a general partner without having become a general partner as contemplated by Section 401. Likewise, it will be possible for a person to have become a general partner under Section 401 without being designated as a general partner in the certificate of limited partnership. According to the last clause of this subsection, the fact that a person is **not** listed as in the certificate as a general partner is **not** notice that the person is **not** a general partner. For further discussion of this point, see the Comment to Section 401.

If the partnership agreement and the public record are inconsistent, Section 201(d) applies (partnership agreement controls *inter se*; public record controls as to third parties who have relied). See also Section 202(b) (requiring the limited partnership to amend its certificate of limited partnership to keep accurate the listing of general partners), 202(c) (requiring a general partner to take corrective action when the general partner knows that the certificate of limited partnership contains false information), and 208 (imposing liability for false information in *inter alia* the certificate of limited partnership).

Subsection (d) – This subsection also provides what is commonly called constructive notice and works in conjunction with other sections of this Act to curtail the power to bind and personal liability of general partners and persons dissociated as general partners. See Sections 402, 606, 607, 804, 805, 1111, and 1112. Following RUPA (in substance, although not in form), the constructive notice begins 90 days after the effective date of the filed record. For the Act’s rules on delayed effective dates, see Section 206(c).

The 90-day delay applies only to the constructive notice and not to the event described in the filed record.

Example: On March 15 X dissociates as a general partner from XYZ Limited Partnership by giving notice to XYZ. See Section 603(1). On March 20, XYZ amends its certificate of limited partnership to remove X’s name from the list of general partners. See Section 202(b)(2).

X’s **dissociation** is effective March 15. If on March 16 X purports to be a general partner of XYZ and under Section 606(a) binds XYZ to some obligation, X will be liable under Section 606(b) as a “person dissociated as a general partner.”

On June 13 (90 days after March 15), the world has constructive notice of X’s dissociation as a general partner. Beginning on that date, X will lack the power to bind XYZ. See Section 606(a)(2)(B) (person dissociated as a general partner can bind the limited partnership only if, *inter alia*, “at the time the other party enters into the transaction . . . the other party does not have notice of the dissociation”).

Constructive notice under this subsection applies to partners and transferees as well as other persons.

Subsection (e) – The phrase “person learns of it” in this subsection is equivalent to the phrase “knows of it” in subsection (b)(1).

Subsection (h) – Under this subsection and Section 302, information possessed by a person that is only a limited partner is not attributable to the limited partnership. However, information possessed by a person that is both a general partner and a limited partner is attributable to the limited partnership. See Section 113 (Dual Capacity)

SECTION 104. NATURE, PURPOSE, AND DURATION OF ENTITY.

(a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may be organized under this [Act] for any lawful purpose.

(c) A limited partnership has a perpetual duration.

Comment

Subsection (a) – Acquiring or relinquishing an LLLP shield changes only the rules governing a general partner’s liability for subsequently incurred obligations of the limited partnership. The underlying entity is unaffected.

Subsection (b) – In contrast with RULPA Section 106, this Act does not require a limited partnership to have a business purpose. However, many of the Act’s default rules presuppose at least a profit-making purpose. See, e.g., Section 503 (providing for the sharing of distributions in proportion to the value of contributions), 701 (defining a transferable interest in terms of the right to receive distributions), 801 (allocating the right to consent to cause or avoid dissolution in proportion to partners’ rights to receive distributions), and 812 (providing that, after a dissolved

limited partnership has paid its creditors, “[a]ny surplus remaining . . . must be paid in cash as a distribution” to partners and transferees). If a limited partnership is organized for an essentially non-pecuniary purpose, the organizers should carefully review the Act’s default rules and override them as necessary via the partnership agreement.

Subsection (c) – The partnership agreement has the power to vary this subsection, either by stating a definite term or by specifying an event or events which cause dissolution. Sections 110(a) and 801(1). Section 801 also recognizes several other occurrences that cause dissolution. Thus, the public record pertaining to a limited partnership will not necessarily reveal whether the limited partnership actually has a perpetual duration.

The public record might also fail to reveal whether the limited partnership has in fact dissolved. A dissolved limited partnership may amend its certificate of limited partnership to indicate dissolution but is not required to do so. Section 803(b)(1).

Predecessor law took a somewhat different approach. RULPA Section 201(4) required the certificate of limited partnership to state “the latest date upon which the limited partnership is to dissolve.” Although RULPA Section 801(2) provided for a limited partnership to dissolve “upon the happening of events specified in writing in the partnership agreement,” RULPA Section 203 required the limited partnership to file a certificate of cancellation to indicate that dissolution had occurred.

SECTION 105. POWERS. A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Comment

This Act omits as unnecessary any detailed list of specific powers. The power to sue and be sued is mentioned specifically so that Section 110(b)(1) can prohibit the partnership agreement from varying that power. The power to maintain an action against a partner is mentioned specifically to establish that the limited partnership itself has standing to enforce the partnership agreement.

SECTION 106. GOVERNING LAW. The law of this State governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

Comment

To partially define its scope, this section uses the phrase “relations among the partners of a limited partnership and between the partners and the limited partnership.” Section 110(a) uses essentially identical language in defining the proper realm of the partnership agreement: “relations among the partners and between the partners and the partnership.”

Despite the similarity of language, this section has no bearing on the power of a partnership agreement to vary other provisions of this Act. It is quite possible for a provision of this Act to involve “relations among the partners of a limited partnership and between the partners and the limited partnership” and thus come within this section, and yet not be subject to variation by the partnership agreement. Although Section 110(a) grants plenary authority to the partnership agreement to regulate “relations among the partners and between the partners and the partnership,” that authority is subject to Section 110(b).

For example, Section 408 (General Standards of General Partners’ Conduct) certainly involves “relations among the partners of a limited partnership and between the partners and the limited partnership.” Therefore, according to this section, Section 408 applies to a limited partnership formed or otherwise subject to this Act. Just as certainly, Section 408 pertains to “relations among the partners and between the partners and the partnership” for the purposes of Section 110(a), and therefore the partnership agreement may properly address matters covered by Section 408. However, Section 110(b)(5), (6), and (7) limit the power of the partnership agreement to vary the rules stated in Section 408. See also, e.g., Section 502(c) (stating creditor’s rights, which are protected under Section 110(b)(13) from being restricted by the partnership agreement) and Comment to Section 509.

This section also applies to “the liability of partners as partners for an obligation of a limited partnership.” The phrase “as partners” contemplates the liability shield for limited partners under Section 303 and the rules for general partner liability stated in Section 404. Other grounds for liability can be supplied by other law, including the law of some other jurisdiction. For example, a partner’s contractual guaranty of a limited partnership obligation might well be governed by the law of some other jurisdiction.

Transferees derive their rights and status under this Act from partners and accordingly this section applies to the relations of a transferee to the limited partnership.

The partnership agreement may not vary the rule stated in this section. See Section 110(b)(2).

SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW; RATE OF INTEREST.

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

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

Comment

Subsection (a) – This language comes from RUPA Section 104 and does not address an important question raised by the de-linking of this Act from the UPA and RUPA – namely, to what extent is the case law of general partnerships relevant to limited partnerships governed by this Act?

Predecessor law, RULPA Section 403, expressly equated the rights, powers, restrictions, and liabilities of a general partner in a limited partnership with the rights, powers, restrictions, and liabilities of a partner in a general partnership. This Act has no comparable provision. See Prefatory Note. Therefore, a court should not assume that a case concerning a general partnership is automatically relevant to a limited partnership governed by this Act. A general partnership case may be relevant by analogy, especially if (1) the issue in dispute involves a provision of this Act for which a comparable provision exists under the law of general partnerships; and (2) the fundamental differences between a general partnership and limited partnership are immaterial to the disputed issue.

SECTION 108. NAME.

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

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

contain the phrase “limited liability limited partnership” or the abbreviation “LLLP” or “L.L.L.P.”.

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

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

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

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

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

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

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

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

(A) has merged into the applicant;

(B) has been converted into the applicant; or

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

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

Comment

Subsection (a) – Predecessor law, RULPA Section 102, prohibited the use of a limited partner’s name in the name of a limited partnership except in unusual circumstances. That approach derived from the 1916 Uniform Limited Partnership Act and has become antiquated. In 1916, most business organizations were either unshielded (*e.g.*, general partnerships) or partially shielded (*e.g.*, limited partnerships), and it was reasonable for third parties to believe that an individual whose own name appeared in the name of a business would “stand behind” the business. Today most businesses have a full shield (*e.g.*, corporations, limited liability companies, most limited liability partnerships), and corporate, LLC and LLP statutes generally pose no barrier to the use of an owner’s name in the name of the entity. This Act eliminates RULPA’s restriction and puts limited partnerships on equal footing with these other “shielded” entities.

Subsection (d)(1) – If a sole proprietor registers or reserves a business name under a fictitious name statute, that name comes within this provision. For the purposes of this provision, a sole proprietor doing business under a registered or reserved name is a “person other than an individual.”

Subsection (f) – Section 905 permits a foreign limited partnership to obtain a certificate of authority under an alternate name if the foreign limited partnership’s actual name does not comply with this section.

SECTION 109. RESERVATION OF NAME.

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

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

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

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

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

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

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

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

(c) An applicant that has reserved a name pursuant to subsection (b) may reserve the same name for additional 120-day periods. A person having a current reservation for a name

may not apply for another 120-day period for the same name until 90 days have elapsed in the current reservation.

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

SECTION 110. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS.

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

(b) A partnership agreement may not:

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

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

(3) vary the requirements of Section 204;

(4) vary the information required under Section 111 or unreasonably restrict the right to information under Sections 304 or 407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may

define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

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

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

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

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

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

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

(9) vary the power of a court to decree dissolution in the circumstances specified in Section 802;

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

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

(12) restrict the right of a partner under Section 1110(a) to approve a conversion or merger or the right of a general partner under Section 1110(b) to consent to an amendment to the

certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or

(13) restrict rights under this [Act] of a person other than a partner or a transferee.

Comment

Source – RUPA Section 103.

Subject only to subsection (b), the partnership agreement has plenary power to structure and regulate the relations of the partners *inter se*. Although the certificate of limited partnership is a limited partnership’s foundational document, among the partners the partnership agreement controls. See Section 201(d).

The partnership agreement has the power to control the manner of its own amendment. In particular, a provision of the agreement prohibiting oral modifications is enforceable, despite any common law antagonism to “no oral modification” provisions. Likewise, a partnership agreement can impose “made in a record” requirements on other aspects of the partners’ relationship, such as requiring consents to be made in a record and signed, or rendering unenforceable oral promises to make contributions or oral understandings as to “events upon the happening of which the limited partnership is to be dissolved,” Section 111(9)(D). See also Section 801(1).

Subsection (b)(3) – The referenced section states who must sign various documents.

Subsection (b)(4) – In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored. Restricting access to or use of the names and addresses of limited partners is not per se unreasonable.

Under this Act, general and limited partners have sharply different roles. A restriction that is reasonable as to a limited partner is not necessarily reasonable as to a general partner.

Sections 304(g) and 407(f) authorize the limited partnership (as distinguished from the partnership agreement) to impose restrictions on the use of information. For a comparison of restrictions contained in the partnership agreement and restrictions imposed unilaterally by the limited partnership, see the Comment to Section 304(g).

Subsection (b)(5)(A) – It is not per se manifestly unreasonable for the partnership agreement to permit a general partner to compete with the limited partnership.

Subsection (b)(5)(B) – The Act does not require that the authorization or ratification be by **disinterested** partners, although the partnership agreement may so provide. The Act does require that the disclosure be made to all partners, even if the partnership agreement excludes some partners from the authorization or ratification process. An interested partner that participates in the authorization or ratification process is subject to the obligation of good faith and fair dealing. Sections 305(b) and 408(d).

Subsection (b)(8) – This restriction applies only to the power of a person to dissociate as a general partner. The partnership agreement may eliminate the power of a person to dissociate as a limited partner.

Subsection (b)(9) – This provision should not be read to limit a partnership agreement’s power to provide for arbitration. For example, an agreement to arbitrate all disputes – including dissolution disputes – is enforceable. Any other interpretation would put this Act at odds with federal law. *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). This provision does prohibit any narrowing of the substantive grounds for judicial dissolution as stated in Section 802.

Example: A provision of a partnership agreement states that no partner may obtain judicial dissolution without showing that a general partner is in material breach of the partnership agreement. The provision is ineffective to prevent a court from ordering dissolution under Section 802.

Subsection (b)(11) – Section 1001 codifies a partner’s right to bring a direct action, and the rest of Article 10 provides for derivative actions. The partnership agreement may not restrict a partner’s right to bring either type of action if the effect is to undercut or frustrate the duties and rights protected by Section 110(b).

The reasonableness of a restriction on derivative actions should be judged in light of the history and purpose of derivative actions. They originated as an equitable remedy, intended to protect passive owners against management abuses. A partnership agreement may not provide that all derivative claims will be subject to final determination by a special litigation committee appointed by the limited partnership, because that provision would eliminate, not merely restrict, a partner’s right to bring a derivative *action*.

Subsection (b)(12) – Section 1110 imposes special consent requirements with regard to transactions that might make a partner personally liable for entity debts.

Subsection (b)(13) – The partnership agreement is a contract, and this provision reflects a basic notion of contract law – namely, that a contract can **directly** restrict rights only of parties to the contract and of persons who derive their rights from the contract. A provision of a partnership agreement can be determined to be unenforceable against third parties under

paragraph (b)(13) without therefore and automatically being unenforceable *inter se* the partners and any transferees. How the former determination affects the latter question is a matter of other law.

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

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

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

(3) a copy of any filed articles of conversion or merger;

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

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

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

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

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

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

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

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

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

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

Comment

Source – RULPA Section 105.

Sections 304 and 407 govern access to the information required by this section, as well as to other information pertaining to a limited partnership.

Paragraph (5) – This requirement applies to superseded as well as current agreements and amendments. An agreement or amendment is “made in a record” to the extent the agreement is “integrated” into a record and consented to in that memorialized form. It is possible for a partnership agreement to be made in part in a record and in part otherwise. See Comment to Section 110. An oral agreement that is subsequently inscribed in a record (but not consented to as such) was not “made in a record” and is not covered by paragraph (5). However, if the limited partnership happens to have such a record, Section 304(b) might and Section 407(a)(2) will provide a right of access.

Paragraph (8) – This paragraph does not require a limited partnership to make a record of consents given and votes taken. However, if the limited partnership has made such a record, this paragraph requires that the limited partnership maintain the record for three years. The

requirement applies to any record made by the limited partnership, not just to records made contemporaneously with the giving of consent or voting. The three year period runs from when the record was made and not from when the consent was given or vote taken.

Paragraph (9) – Information is “contained in a partnership agreement made in a record” only to the extent that the information is “integrated” into a record and, in that memorialized form, has been consented to as part of the partnership agreement.

This paragraph is not a statute of frauds provision. For example, failure to comply with paragraph (9)(A) or (B) does not render unenforceable an oral promise to make a contribution. Likewise, failure to comply with paragraph (9)(D) does not invalidate an oral term of the partnership specifying “events upon the happening of which the limited partnership is to be dissolved and its activities wound up.” See also Section 801(1).

Obversely, the mere fact that a limited partnership maintains a record in purported compliance with paragraph (9)(A) or (B) does not prove that a person has actually promised to make a contribution. Likewise, the mere fact that a limited partnership maintains a record in purported compliance with paragraph (9)(D) does not prove that the partnership agreement actually includes the specified events as causes of dissolution.

Consistent with the partnership agreement’s plenary power to structure and regulate the relations of the partners *inter se*, a partnership agreement can impose “made in a record” requirements which render unenforceable oral promises to make contributions or oral understandings as to “events upon the happening of which the limited partnership is to be dissolved.” See Comment to Section 110.

Paragraph (9)(A) and (B) – Often the partnership agreement will state in record form the value of contributions made and promised to be made. If not, these provisions require that the value be stated in a record maintained as part of the limited partnership’s required information. The Act does not authorize the limited partnership or the general partners to set the value of a contribution without the concurrence of the person who has made or promised the contribution, although the partnership agreement itself can grant that authority.

Paragraph (9)(C) – The information required by this provision is essential for determining what happens to the transferable interests of a person that is both a general partner and a limited partner and that dissociates in one of those capacities but not the other. See Sections 602(3) and 605(5).

SECTION 112. BUSINESS TRANSACTIONS OF PARTNER WITH

PARTNERSHIP. A partner may lend money to and transact other business with the limited

partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

Comment

Source – RULPA Section 107. See also RUPA Section 404(f) and ULLCA Section 409(f).

This section has no impact on a general partner's duty under Section 408(b)(2) (duty of loyalty includes refraining from acting as or for an adverse party) and means rather that this Act does not discriminate against a creditor of a limited partnership that happens also to be a partner. *See, e.g., BT-I v. Equitable Life Assurance Society of the United States*, 75 Cal.App.4th 1406, 1415, 89 Cal.Rptr.2d 811, 814 (Cal.App. 4 Dist.1999). and *SEC v. DuPont, Homsey & Co.*, 204 F. Supp. 944, 946 (D. Mass. 1962), vacated and remanded on other grounds, 334 F2d 704 (1st Cir. 1964). This section does not, however, override other law, such as fraudulent transfer or conveyance acts.

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

Comment

Source – RULPA Section 404, redrafted for reasons of style.

SECTION 114. OFFICE AND AGENT FOR SERVICE OF PROCESS.

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

- (1) an office, which need not be a place of its activity in this State; and
- (2) an agent for service of process.

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

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

Comment

Subsection (a) – The initial designation occurs in the original certificate of limited partnership. Section 201(a)(2). A limited partnership may change the designation in any of three ways: a statement of change, Section 115, an amendment to the certificate, Section 202, and the annual report, Section 210(e). If a limited partnership fails to maintain an agent for service of process, substituted service may be made on the Secretary of State. Section 117(b). Although a limited partnership’s failure to maintain an agent for service of process is not immediate grounds for administrative dissolution, Section 809(a), the failure will prevent the limited partnership from delivering to the Secretary of State for filing an annual report that complies with Section 210(a)(2). Failure to deliver a proper annual report is grounds for administrative dissolution. Section 809(a)(2).

Subsection (b) – The initial designation occurs in the application for a certificate of authority. See Section 902(a)(4). A foreign limited partnership may change the designation in either of two ways: a statement of change, Section 115, and the annual report, Section 210(e). If a foreign limited partnership fails to maintain an agent for service of process, substituted service may be made on the Secretary of State. Section 117(b). A foreign limited partnership’s failure to maintain an agent for service of process is grounds for administrative revocation of the certificate of authority. Section 906(a)(3).

A foreign limited partnership need not maintain an office in this State.

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

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

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

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

Comment

Source – ULLCA Section 109.

Subsection (a) – The Act uses “may” rather than “shall” here because other avenues exist. A limited partnership may also change the information by an amendment to its certificate of limited partnership, Section 202, or through its annual report. Section 210(e). A foreign limited partnership may use its annual report. Section 210(e). However, neither a limited partnership nor a foreign limited partnership may wait for the annual report if the information described in the public record becomes inaccurate. See Sections 208 (imposing liability for false information in record) and 117(b) (providing for substitute service).

SECTION 116. RESIGNATION OF AGENT FOR SERVICE OF PROCESS.

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

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

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

Comment

Source – ULLCA Section 110.

This section provides the only way an agent can resign without cooperation from the limited partnership or foreign limited partnership and the only way the agent, rather than the limited partnership or foreign limited partnership, can effect a change in the public record. See Sections 115(a) (Statement of Change), 202 (Amendment or Restatement of Certificate), and 210(e) (Annual Report), all of which involve the limited partnership or foreign limited partnership designating a replacement agent for service of process.

Subsection (c) – In contrast to most records authorized or required to be delivered to the filing officer for filing under this Act, a statement of resignation may not provide for a delayed effective date. This subsection mandates the effective date, and an effective date included in a statement of resignation is disregarded. See also Section 206(c).

SECTION 117. SERVICE OF PROCESS.

(a) An agent for service of process appointed by a limited partnership or foreign limited partnership is an agent of the limited partnership or foreign limited partnership for service of any

process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.

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

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

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

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

(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 the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

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

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

Comment

Source – ULLCA Section 111.

Requiring a foreign limited partnership to name an agent for service of process is a change from RULPA. See RULPA Section 902(3).

SECTION 118. CONSENT AND PROXIES OF PARTNERS. Action requiring the consent of partners under this [Act] may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

Comment

Source – ULLCA Section 404(d) and (e).

This Act imposes no meeting requirement and does not distinguish among oral, record, express and tacit consent. The partnership agreement may establish such requirements and make such distinctions.

[ARTICLE] 2
FORMATION; CERTIFICATE OF
LIMITED PARTNERSHIP AND OTHER FILINGS

SECTION 201. FORMATION OF LIMITED PARTNERSHIP; CERTIFICATE OF LIMITED PARTNERSHIP.

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

- (1) the name of the limited partnership, which must comply with Section 108;
- (2) the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;
- (3) the name and the street and mailing address of each general partner;
- (4) whether the limited partnership is a limited liability limited partnership; and
- (5) any additional information required by [Article] 11.

(b) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in Section 110(b) in a manner inconsistent with that section.

(c) If there has been substantial compliance with subsection (a), subject to Section 206(c) a limited partnership is formed when the [Secretary of State] files the certificate of limited partnership.

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

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

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

Comment

Source – RULPA Section 201.

A limited partnership is a creature of statute, and this section governs how a limited partnership comes into existence. A limited partnership is formed only if (i) a certificate of limited partnership is prepared and delivered to the specified public official for filing, (ii) the public official files the certificate, and (iii) the certificate, delivery and filing are in “substantial compliance” with the requirements of subsection (a). Section 206(c) governs when a limited partnership comes into existence.

Despite its foundational importance, a certificate of limited partnership is far less powerful than a corporation’s articles of incorporation. Among partners and transferees, for example, the partnership agreement is paramount. See Section 201(d).

Subsection (a)(1) –Section 108 contains name requirements. To be acceptable for filing, a certificate of limited partnership must state a name for the limited partnership which complies with Section 108.

Subsection (a)(3) – This provision should be read in conjunction with Section 103(c) and Section 401. See the Comment to those sections.

Subsection (a)(4) – This Act permits a limited partnership to be a limited liability limited partnership (“LLLP”), and this provision requires the certificate of limited partnership to state whether the limited partnership is an LLLP. The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP.

Subject to Sections 406(b)(2) and 1110, a limited partnership may amend its certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability

limited partnership. An amendment deleting such a statement must be accompanied by an amendment stating that the limited partnership is **not** a limited liability limited partnership. Section 201(a)(4) does not permit a certificate of limited partnership to be silent on this point, except for pre-existing partnerships that become subject to this Act under Section 1206. See Section 1206(c)(2).

Subsection (d) – Source: ULLCA Section 203(c).

A limited partnership is a creature of contract as well as a creature of statute. It will be possible, albeit improper, for the partnership agreement to be inconsistent with the certificate of limited partnership or other specified public filings relating to the limited partnership. For those circumstances, this subsection provides the rule for determining which source of information prevails.

For partners and transferees, the partnership agreement is paramount. For third parties seeking to invoke the public record, actual knowledge of that record is necessary and notice under Section 103(c) or (d) is irrelevant. A third party wishing to enforce the public record over the partnership agreement must show reasonable reliance on the public record, and reliance presupposes knowledge.

This subsection does not expressly cover a situation in which (i) one of the specified filed records contains information in addition to, but not inconsistent with, the partnership agreement, and (ii) a person, other than a partner or transferee, detrimentally relies on the additional information. However, the policy reflected in this subsection seems equally applicable to that situation.

Responsibility for maintaining a limited partnership's public record rests with the general partner or partners. Section 202(c). A general partner's failure to meet that responsibility can expose the general partner to liability to third parties under Section 208(a)(2) and might constitute a breach of the general partner's duties under Section 408. In addition, an aggrieved person may seek a remedy under Section 205 (Signing and Filing Pursuant to Judicial Order).

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE.

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

- (1) the name of the limited partnership;

(2) the date of filing of its initial certificate; and

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

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

(1) the admission of a new general partner;

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

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

(c) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(1) cause the certificate to be amended; or

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

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

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

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

Comment

Source – RULPA Section 202.

Subsection (b) – This subsection lists changes in circumstances which require an amendment to the certificate. Neither a statement of change, Section 115, nor the annual report, Section 210(e), suffice to report the addition or deletion of a general partner or the appointment of a person to wind up a limited partnership that has no general partner.

This subsection states an obligation of the limited partnership. However, so long as the limited partnership has at least one general partner, the general partner or partners are responsible for managing the limited partnership's activities. Section 406(a). That management responsibility includes maintaining accuracy in the limited partnership's public record. Moreover, subsection (c) imposes direct responsibility on any general partner that knows that the filed certificate of limited partnership contains false information.

Acquiring or relinquishing LLLP status also requires an amendment to the certificate. See Sections 201(a)(4), 406(b)(2), and 1110(b)(2).

Subsection (c) – This provision imposes an obligation directly on the general partners rather than on the limited partnership. A general partner's failure to meet that responsibility can expose the general partner to liability to third parties under Section 208(a)(2) and might constitute a breach of the general partner's duties under Section 408. In addition, an aggrieved person may seek a remedy under Section 205 (Signing and Filing Pursuant to Judicial Order).

Subsection (d) – A limited partnership that desires to change its name will have to amend its certificate of limited partnership. The new name will have to comply with Section 108. See Section 201(a)(1).

SECTION 203. STATEMENT OF TERMINATION. A dissolved limited partnership that has completed winding up may deliver to the [Secretary of State] for filing a statement of termination that states:

- (1) the name of the limited partnership;
- (2) the date of filing of its initial certificate of limited partnership; and
- (3) any other information as determined by the general partners filing the statement or by a person appointed pursuant to Section 803(c) or (d).

Comment

Under Section 103(d)(3), a filed statement of termination provides constructive notice, 90 days after the statement's effective date, that the limited partnership is terminated. That notice effectively terminates any apparent authority to bind the limited partnership.

However, this section is permissive. Therefore, it is not possible to use Section 205 (Signing and Filing Pursuant to Judicial Order) to cause a statement of termination to be filed.

This section differs from predecessor law, RULPA Section 203, which required the filing of a certificate of cancellation when a limited partnership dissolved.

SECTION 204. SIGNING OF RECORDS.

(a) Each record delivered to the [Secretary of State] for filing pursuant to this [Act] must be signed in the following manner:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(2) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

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

(4) An amendment required by Section 803(c) following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(5) Any other amendment must be signed by:

(A) at least one general partner listed in the certificate;

(B) each other person designated in the amendment as a new general partner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

Comment

Source – ULLCA Section 205.

This section pertains only to signing requirements and implies nothing about approval requirements. For example, Section 204(a)(2) requires that an amendment changing a limited partnership's LLLP status be signed by all **general** partners listed in the certificate, but under Section 406(b)(2) **all** partners must consent to that change unless otherwise provided in the partnership agreement.

A person who signs a record without ascertaining that the record has been properly authorized risks liability under Section 208.

Subsection (a) – The recurring reference to general partners “listed in the certificate” recognizes that a person might be admitted as a general partner under Section 401 without immediately being listed in the certificate of limited partnership. Such persons may have rights, powers and obligations despite their unlisted status, but they cannot act as general partners for the purpose of affecting the limited partnership's public record. See the Comment to Section 103(c) and the Comment to Section 401.

SECTION 205. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

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

- (1) the person to sign the record;
- (2) the person to deliver the record to the [Secretary of State] for filing; or
- (3) the [Secretary of State] to file the record unsigned.

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

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

Comment

Source – RULPA Section 205.

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

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

(1) for a statement of dissociation, send:

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

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

(2) for a statement of withdrawal, send:

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

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

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

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

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

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

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

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

(A) the specified date; or

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

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

(A) the specified date; or

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

Comment

Source – ULLCA Section 206.

In order for a record prepared by a private person to become part of the public record under this Act, (i) someone must put a properly prepared version of the record into the possession of the public official specified in the Act as the appropriate filing officer, and (ii) that filing officer must determine that the record complies with the filing requirements of this Act and then officially make the record part of the public record. This Act refers to the first step as *delivery to the [Secretary of State] for filing* and refers to the second step as *filing*. Thus, under this Act “filing” is an official act.

Subsection (a) – The caption need only indicate the title of the record; *e.g.*, Certificate of Limited Partnership, Statement of Change for Limited Partnership.

Filing officers typically note on a filed record the fact, date and time of filing. The copies provided by the filing officer under this subsection should contain that notation.

This Act does not provide a remedy if the filing officer wrongfully fails or refuses to file a record.

Subsection (c) – This subsection allows most records to have a delayed effective date, up to 90 days after the date the record is filed by the filing officer. A record specifying a longer delay will **not** be rejected. Instead, under paragraph (c)(3) and (4), the delayed effective date is adjusted by operation of law to the “90th day after the record is filed.” The Act does not require the filing officer to notify anyone of the adjustment.

SECTION 207. CORRECTING FILED RECORD.

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

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

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

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

(3) correct the incorrect information or defective signature.

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

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

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

Comment

Source – ULLCA Section 207.

A statement of correction is appropriate only to correct inaccuracies that existed or signatures that were defective “at the time of filing.” A statement of correction may not be used to correct a record that was accurate when filed but has become inaccurate due to subsequent events.

Subsection (c) –Generally, a statement of correction “relates back.” However, there is no retroactive effect: (1) for the purposes of constructive notice under Section 103(c) and (d); and (2) against persons who have relied on the uncorrected record and would be adversely affected if the correction related back.

SECTION 208. LIABILITY FOR FALSE INFORMATION IN FILED RECORD.

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

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

(2) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 202, file a petition pursuant to Section 205, or deliver to the [Secretary of State] for filing a statement of change pursuant to Section 115 or a statement of correction pursuant to Section 207.

(b) Signing a record authorized or required to be filed under this [Act] constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

Comment

This section pertains to both limited partnerships and foreign limited partnerships.

LLLP status is irrelevant to this section. The LLLP shield protects only to the extent that (i) the obligation involved is an obligation of the limited partnership or foreign limited partnership, and (ii) a partner is claimed to be liable for that obligation by reason of being a partner. This section does not address the obligations of a limited partnership or foreign limited partnership and instead imposes direct liability on signers and general partners.

Subsection (a) – This subsection’s liability rules apply only to records (i) created by private persons (“delivered to the [Secretary of State] for filing”), (ii) which actually become part of the public record (“filed by the [Secretary of State]”). This subsection does not preempt other law, which might provide remedies for misleading information contained, for example, in a record that is delivered to the filing officer for filing but withdrawn before the filing officer takes the official action of filing the record.

Records filed under this Act are signed subject to the penalties for perjury. See subsection (b). This subsection therefore does not require a party who relies on a record to demonstrate that the reliance was reasonable. Contrast Section 201(d)(2), which provides that, if the partnership agreement is inconsistent with the public record, the public record prevails in favor of a person that is neither a partner nor a transferee and that reasonably relied on the record.

SECTION 209. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.

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

- (1) the limited partnership’s name;
- (2) that it was duly formed under the laws of this State and the date of formation;
- (3) whether all fees, taxes, and penalties due to the [Secretary of State] under this [Act] or other law have been paid;
- (4) whether the limited partnership’s most recent annual report required by Section 210 has been filed by the [Secretary of State];

(5) whether the [Secretary of State] has administratively dissolved the limited partnership;

(6) whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved;

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

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

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

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

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

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

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

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

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

(c) 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 limited partnership or foreign limited partnership is in existence or is authorized to transact business in this State.

Comment

Source – ULLCA Section 208.

A certificate of existence can reveal only information present in the public record, and under this Act significant information bearing on the status of a limited partnership may be outside the public record. For example, while this Act provides for a limited partnership to have a perpetual duration, Section 104(c), the partnership agreement may set a definite term or designate particular events whose occurrence will cause dissolution. Section 801(1). Dissolution is also possible by consent, Section 801(2), and, absent a contrary provision in the partnership agreement, will at least be at issue whenever a general partner dissociates. Section 801(3). Nothing in this Act requires a limited partnership to deliver to the filing officer for filing a record indicating that the limited partnership has dissolved.

A certificate of authorization furnished under this section is different than a certificate of authority filed under Section 904.

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

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

- (1) the name of the limited partnership or foreign limited partnership;
- (2) the street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this State;

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

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

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

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

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

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

Comment

Source – ULLCA Section 211.

Subsection (d) – This subsection’s rule affects only Section 809(a)(2) (late filing of annual report grounds for administrative dissolution) and any late fees that the filing officer might have the right to impose. For the purposes of subsection (e), the annual report functions as a statement of change only when “filed” by the filing officer. Likewise, a person cannot rely on subsection (d) to escape liability arising under Section 208.

[ARTICLE] 3
LIMITED PARTNERS

SECTION 301. BECOMING LIMITED PARTNER. A person becomes a limited partner:

- (1) as provided in the partnership agreement;
- (2) as the result of a conversion or merger under [Article] 11; or
- (3) with the consent of all the partners.

Comment

Source – RULPA Section 301.

Although Section 801(4) contemplates the admission of a limited partner to avoid dissolution, that provision does not itself authorize the admission. Instead, this section controls. Contrast Section 801(3)(B), which itself authorizes the admission of a general partner in order to avoid dissolution.

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

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

Comment

In this respect a limited partner is analogous to a shareholder in a corporation; status as owner provides neither the right to manage nor a reasonable appearance of that right.

The phrase “as a limited partner” is intended to recognize that: (i) this section does not disable a general partner that also owns a limited partner interest, (ii) the partnership agreement may as a matter of contract allocate managerial rights to one or more limited partners; and (iii) a separate agreement can empower and entitle a person that is a limited partner to act for the limited partnership in another capacity; *e.g.*, as an agent. See Comment to Section 305

The fact that a limited partner *qua* limited partner has no power to bind the limited partnership means that, subject to Section 113 (Dual Capacity), information possessed by a limited partner is not attributed to the limited partnership. See Section 103(h).

This Act specifies various circumstances in which limited partners have consent rights, including:

- admission of a limited partner, Section 301(3)
- admission of a general partner, Section 401(4)
- amendment of the partnership agreement, Section 406(b)(1)
- the decision to amend the certificate of limited partnership so as to obtain or relinquish LLLP status, Section 406(b)(2)
- the disposition of all or substantially all of the limited partnership's property, outside the ordinary course, Section 406(b)(3)
- the compromise of a partner's obligation to make a contribution or return an improper distribution, Section 502(c)
- expulsion of a limited partner by consent of the other partners, Section 601(b)(4)
- expulsion of a general partner by consent of the other partners, Section 603(4)
- redemption of a transferable interest subject to charging order, using limited partnership property, Section 703(c)(3)
- causing dissolution by consent, Section 801(2)
- causing dissolution by consent following the dissociation of a general partner, when at least one general partner remains, Section 801(3)(A)
- avoiding dissolution and appointing a successor general partner, following the dissociation of the sole general partner, Section 801(3)(B)
- appointing a person to wind up the limited partnership when there is no general partner, Section 803(C)
- approving, amending or abandoning a plan of conversion, Section 1103(a) and (b)(2)
- approving, amending or abandoning a plan of merger, Section 1107(a) and (b)(2).

SECTION 303. NO LIABILITY AS LIMITED PARTNER FOR LIMITED

PARTNERSHIP OBLIGATIONS. An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

Comment

This section provides a full, status-based liability shield for each limited partner, “even if the limited partner participates in the management and control of the limited partnership.” The section thus eliminates the so-called “control rule” with respect to personal liability for entity obligations and brings limited partners into parity with LLC members, LLP partners and corporate shareholders.

The “control rule” first appeared in a uniform act in 1916, although the concept is much older. Section 7 of the original Uniform Limited Partnership Act provided that “A limited partner shall not become liable as a general partner [i.e., for the obligations of the limited partnership] unless . . . he takes part in the control of the business.” The 1976 Uniform Limited Partnership Act (ULPA - 1976) “carrie[d] over the basic test from former Section 7,” but recognized “the difficulty of determining when the ‘control’ line has been overstepped.” Comment to ULPA-1976, Section 303. Accordingly, ULPA-1976 tried to buttress the limited partner’s shield by (i) providing a safe harbor for a lengthy list of activities deemed not to constitute participating in control, ULPA-1976, Section 303(b), and (ii) limiting a limited partner’s “control rule” liability “only to persons who transact business with the limited partnership with actual knowledge of [the limited partner’s] participation in control.” ULPA-1976, Section 303(a). However, these protections were complicated by a countervailing rule which made a limited partner generally liable for the limited partnership’s obligations “if the limited partner’s participation in the control of the business is . . . substantially the same as the exercise of the powers of a general partner.” ULPA-1976, Section 303(a).

The 1985 amendments to ULPA-1976 (i.e., RULPA) further buttressed the limited partner’s shield, removing the “substantially the same” rule, expanding the list of safe harbor activities and limiting “control rule” liability “only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner’s conduct, that the limited partner is a general partner.”

In a world with LLPs, LLCs and, most importantly, LLLPs, the control rule has become an anachronism. This Act therefore takes the next logical step in the evolution of the limited partner’s liability shield and renders the control rule extinct.

The shield established by this section protects only against liability for the limited partnership’s obligations and only to the extent that the limited partner is claimed to be liable on account of being a limited partner. Thus, a person that is both a general and limited partner will be liable as a general partner for the limited partnership’s obligations. Moreover, this section does not prevent a limited partner from being liable as a result of the limited partner’s own conduct and is therefore inapplicable when a third party asserts that a limited partner’s own wrongful conduct has injured the third party. This section is likewise inapplicable to claims by the limited partnership or another partner that a limited partner has breached a duty under this Act or the partnership agreement.

This section does not eliminate a limited partner's liability for promised contributions, Section 502 or improper distributions. Section 509. That liability pertains to a person's status as a limited partner but is **not** liability for an obligation of the limited partnership.

The shield provided by this section applies whether or not a limited partnership is a limited liability limited partnership.

SECTION 304. RIGHT OF LIMITED PARTNER AND FORMER LIMITED PARTNER TO INFORMATION.

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

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

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

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

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

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

- (1) what information the limited partnership will provide in response to the demand;
- (2) when and where the limited partnership will provide the information; and
- (3) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

- (1) the information pertains to the period during which the person was a limited partner;
- (2) the person seeks the information in good faith; and
- (3) the person meets the requirements of subsection (b).

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

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

(g) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

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

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

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

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

Comment

This section balances two countervailing concerns relating to information: the need of limited partners and former limited partners for access versus the limited partnership's need to protect confidential business data and other intellectual property. The balance must be understood in the context of fiduciary duties. The general partners are obliged through their duties of care and loyalty to protect information whose confidentiality is important to the limited partnership or otherwise inappropriate for dissemination. See Section 408 (general standards of general partner conduct). A limited partner, in contrast, "does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner." Section 305(a). (Both general partners and limited partners are subject to a duty of good faith and fair dealing. Section 305(b) and 408(d).)

Like predecessor law, this Act divides limited partner access rights into two categories – required information and other information. However, this Act builds on predecessor law by:

- expanding slightly the category of required information and stating explicitly that a limited partner may have access to that information without having to show cause
- specifying a procedure for limited partners to follow when demanding access to other information
- specifying how a limited partnership must respond to such a demand and setting a time limit for the response

- retaining predecessor law’s “just and reasonable” standard for determining a limited partner’s right to other information, while recognizing that, to be “just and reasonable,” a limited partner’s demand for other information must meet at minimum standards of relatedness and particularity
- expressly requiring the limited partnership to volunteer known, material information when seeking or obtaining consent from limited partners
- codifying (while limiting) the power of the partnership agreement to vary limited partner access rights
- permitting the limited partnership to establish other reasonable limits on access
- providing access rights for former limited partners.

The access rights stated in this section are personal to each limited partner and are enforceable through a direct action under Section 1001(a). These access rights are in addition to whatever discovery rights a party has in a civil suit.

Subsection (a) – The phrase “required information” is a defined term. See Sections 102(18) and 111. This subsection’s broad right of access is subject not only to reasonable limitations in the partnership agreement, Section 110(b)(4), but also to the power of the limited partnership to impose reasonable limitations on use. Unless the partnership agreement provides otherwise, it will be the general partner or partners that have the authority to use that power. See Section 406(a).

Subsection (b) – The language describing the information to be provided comes essentially verbatim from RULPA Section 305(a)(2)(i) and (iii). The procedural requirements derive from RMBCA Section 16.02(c). This subsection does not impose a requirement of good faith, because Section 305(b) contains a generally applicable obligation of good faith and fair dealing for limited partners.

Subsection (d) – The notion that former owners should have information rights comes from RUPA Section 403(b) and ULLCA Section 408(a). The access is limited to the required information and is subject to certain conditions.

Example: A person dissociated as a limited partner seeks data which the limited partnership has compiled, which relates to the period when the person was a limited partner, but which is beyond the scope of the information required by Section 111. No matter how reasonable the person’s purpose and how well drafted the person’s demand, the limited partnership is not obliged to provide the data.

Example: A person dissociated as a limited partner seeks access to required information pertaining to the period during which the person was a limited partner. The person makes a bald demand, merely stating a desire to review the required information at the limited partnership’s designated office. In particular, the demand does not describe “with reasonable particularity the information sought and the purpose for seeking the information.” See

subsection (b)(2). The limited partnership is not obliged to allow access. The person must first comply with subsection (d), which incorporates by reference the requirements of subsection (b).

Subsection (f) and Section 704 provide greater access rights for the estate of a deceased limited partner.

Subsection (d)(2) – A duty of good faith is needed here, because a person claiming access under this subsection is no longer a limited partner and is no longer subject to Section 305(b). See Section 602(a)(2) (dissociation as a limited partner terminates duty of good faith as to subsequent events).

Subsection (g) – This subsection permits the limited partnership – as distinguished from the partnership agreement – to impose use limitations. Contrast Section 110(b)(4). Under Section 406(a), it will be the general partner or partners that decide whether the limited partnership will impose use restrictions.

The limited partnership bears the burden of proving the reasonableness of any restriction imposed under this subsection. In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored. Restricting use of the names and addresses of limited partners is not per se unreasonable.

The following table compares the limitations available through the partnership agreement with those available under this subsection.

	partnership agreement	Section 304(g)
how restrictions adopted	by the consent of partners when they adopt or amend the partnership agreement, unless the partnership agreement provides another method of amendment	by the general partners, acting under Section 406(a)
what restrictions may be imposed	“reasonable restrictions on the availability and use of information obtained,” Section 110(b)(4)	“reasonable restrictions on the use of information obtained”

burden of proof	the person challenging the restriction must prove that the restriction will “unreasonably restrict the right of information,” Section 110(b)(4)	“the limited partnership has the burden of proving reasonableness”
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Subsection (h) – Source: RUPA Section 403(b) and ULLCA Section 408(a).

Subsection (i) – Source: ULLCA Section 408(b).

The duty stated in this subsection is at the core of the duties owed the limited partners by a limited partnership and its general partners. This subsection imposes an affirmative duty to volunteer information, but that obligation is limited to information which is both material and known by the limited partnership. The duty applies to known, material information, even if the limited partnership does not know that the information is material.

A limited partnership will “know” what its general partners know. Section 103(h). A limited partnership may also know information known by the “individual conducting the transaction for the [limited partnership].” Section 103(g).

A limited partner’s right to information under this subsection is enforceable through the full panoply of “legal or equitable relief” provided by Section 1001(a), including in appropriate circumstances the withdrawal or invalidation of improperly obtained consent and the invalidation or rescission of action taken pursuant to that consent.

Subsection (k) – Section 304 provides no information rights to a transferee as transferee. Transferee status brings only the very limited information rights stated in Section 702(c).

It is nonetheless possible for a person that happens to be a transferee to have rights under this section. For example, under Section 602(a)(3) a person dissociated as a limited partner becomes a “mere transferee” of its own transferable interest. While that status provides the person no rights under this section, the status of person dissociated as a limited partner triggers rights under subsection (d).

SECTION 305. LIMITED DUTIES OF LIMITED PARTNERS.

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

(b) 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.

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

Comment

Subsection (a) – Fiduciary duty typically attaches to a person whose status or role creates significant power for that person over the interests of another person. Under this Act, limited partners have very limited power of any sort in the regular activities of the limited partnership and no power whatsoever justifying the imposition of fiduciary duties either to the limited partnership or fellow partners. It is possible for a partnership agreement to allocate significant managerial authority and power to a limited partner, but in that case the power exists not as a matter of status or role but rather as a matter of contract. The proper limit on such contract-based power is the obligation of good faith and fair dealing, not fiduciary duty, unless the partnership agreement itself expressly imposes a fiduciary duty or creates a role for a limited partner which, as a matter of other law, gives rise to a fiduciary duty. For example, if the partnership agreement makes a limited partner an agent for the limited partnership as to particular matters, the law of agency will impose fiduciary duties on the limited partner with respect to the limited partner's role as agent.

Subsection (b) – Source: RUPA Section 404 (d). The same language appears in Section 408(d), pertaining to general partners.

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, in light of the nature of a limited partnership, 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 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 of the obligation of good faith and fair dealing only when the party claiming breach shows that the conduct has no honestly-held purpose that legitimately comports with the parties' agreed-upon arrangements. 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 honestly-held purpose that legitimately comports with the parties' agreed-upon arrangements.

In sum, the purpose of the obligation of good faith and fair dealing is to protect the arrangement the partners have chosen for themselves, not to restructure that arrangement under the guise of safeguarding it.

SECTION 306. PERSON ERRONEOUSLY BELIEVING SELF TO BE LIMITED

PARTNER.

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

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

(2) withdraws from future participation as an owner in the enterprise by signing and delivering to the [Secretary of State] for filing a statement of withdrawal under this section.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise,

believing in good faith that the person is a general partner, before the [Secretary of State] files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subsection (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the [Secretary of State] for filing, the person has the right to withdraw from the enterprise pursuant to subsection (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

Comment

Source – RULPA Section 304, substantially redrafted for reasons of style.

Subsection (a)(2) – The requirement that a person “withdraw[] from future participation as an owner in the enterprise” means, in part, that the person refrain from taking any further profit from the enterprise. The requirement does not mean, however, that the person is required to return previously obtained profits or forfeit any investment.

[ARTICLE] 4
GENERAL PARTNERS

SECTION 401. BECOMING GENERAL PARTNER. A person becomes a general partner:

- (1) as provided in the partnership agreement;
- (2) under Section 801(3)(B) following the dissociation of a limited partnership's last general partner;
- (3) as the result of a conversion or merger under [Article] 11; or
- (4) with the consent of all the partners.

Comment

This section does not make a person's status as a general partner dependent on the person being so designated in the certificate of limited partnership. If a person does become a general partner under this section without being so designated:

- the limited partnership is obligated to promptly and appropriately amend the certificate of limited partnership, Section 202(b)(1);
- each general partner that knows of the anomaly is personally obligated to cause the certificate to be promptly and appropriately amended, Section 202(c)(1), and is subject to liability for failing to do so, Section 208(a)(2);
- the "non-designated" general partner has:
 - ~ all the rights and duties of a general partner to the limited partnership and the other partners, and
 - ~ the powers of a general partner to bind the limited partnership under Sections 402 and 403, but
 - ~ no power to sign records which are to be filed on behalf of the limited partnership under this Act

Example: By consent of the partners of XYZ Limited Partnership, G is admitted as a general partner. However, XYZ’s certificate of limited partnership is not amended accordingly. Later, G – acting without actual authority – purports to bind XYZ to a transaction with Third Party. Third Party does not review the filed certificate of limited partnership before entering into the transaction. XYZ might be bound under Section 402.

Section 402 attributes to a limited partnership “[a]n act of a general partner . . . for apparently carrying on in the ordinary course the limited partnership’s activities or activities of the kind carried on by the limited partnership.” The limited partnership’s liability under Section 402 does not depend on the “act of a general partner” being the act of a general partner designated in the certificate of limited partnership. Moreover, the notice provided by Section 103(c) does not undercut G’s appearance of authority. Section 402 refers only to notice under Section 103(d) and, in any event, according to the second sentence of Section 103(c), the fact that a person is **not** listed as in the certificate as a general partner is **not** notice that the person is **not** a general partner. See Comment to Section 103(c).

Example: Same facts, except that Third Party does review the certificate of limited partnership before entering into the transaction. The result might still be the same.

The omission of a person’s name from the certificate’s list of general partners is **not** notice that the person is **not** a general partner. Therefore, Third Party’s review of the certificate does not mean that Third Party knew, had received a notification or had notice that G lacked authority. At most, XYZ could argue that, because Third Party knew that G was not listed in the certificate, a transaction entered into by G could not appear to Third Party to be for apparently carrying on the limited partnership’s activities in the ordinary course.

SECTION 402. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP.

(a) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership’s name, for apparently carrying on in the ordinary course the limited partnership’s activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular

matter and the person with which the general partner was dealing knew, had received a notification, or had notice under Section 103(d) that the general partner lacked authority.

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

Comment

Source – RUPA Section 301. For the meaning of “authority” in subsection (a) and “authorized” in subsection (b), see RUPA Section 301, Comment 3 (stating that “Subsection (2) [of RUPA Section 301] makes it clear that the partnership is bound by a partner's *actual* authority, even if the partner has no apparent authority”; emphasis added).

The fact that a person is not listed in the certificate of limited partnership as a general partner is **not** notice that the person is **not** a partner and is **not** notice that the person lacks authority to act for the limited partnership. See Comment to Section 103(c) and Comment to Section 401.

Section 103(f) defines receipt of notification. Section 103(d) lists various public filings, each of which provides notice 90 days after its effective date.

Example: For the past ten years, X has been a general partner of XYZ Limited Partnership and has regularly conducted the limited partnership's business with Third Party. However, 100 days ago the limited partnership expelled X as a general partner and the next day delivered for filing an amendment to XYZ's certificate of limited partnership which stated that X was no longer a general partner. On that same day, the filing officer filed the amendment.

Today X approaches Third Party, purports still be to a general partner of XYZ and purports to enter into a transaction with Third Party on XYZ's behalf. Third Party is unaware that X has been expelled and has no reason to doubt that X's bona fides. Nonetheless, XYZ is not liable on the transaction. Under Section 103(d), Third Party has notice that X is dissociated and perforce has notice that X is not a general partner authorized to bind XYZ.

SECTION 403. LIMITED PARTNERSHIP LIABLE FOR GENERAL PARTNER'S ACTIONABLE CONDUCT.

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

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

Comment

Source – RUPA Section 305. For the meaning of “authority” in subsections (a) and (b), see RUPA Section 305, Comment. The third-to-last paragraph of that Comment states:

The partnership is liable for the actionable conduct or omission of a partner acting in the ordinary course of its business or “with the authority of the partnership.” This is intended to include a partner's apparent, as well as actual, authority, thereby bringing within Section 305(a) the situation covered in UPA Section 14(a).

The last paragraph of that Comment states:

Section 305(b) is drawn from UPA Section 14(b), but has been edited to improve clarity. It imposes strict liability on the partnership for the misapplication of money or property received by a partner in the course of the partnership's business or otherwise within the scope of the partner's actual authority.

Section 403(a) of this Act is taken essentially verbatim from RUPA Section 305(a), and Section 403(b) of this Act is taken essentially verbatim from RUPA Section 305(b).

This section makes the limited partnership vicariously liable for a partner's misconduct. That vicariously liability in no way discharges or diminishes the partner's direct liability for the partner's own misconduct.

A general partner can cause a limited partnership to be liable under this section, even if the general partner is not designated as a general partner in the certificate of limited partnership. See Comment to Section 401.

SECTION 404. GENERAL PARTNER'S LIABILITY.

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

(b) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under Section 406(b)(2).

Comment

Source – RUPA Section 306.

Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

Subsection (c) – For an explanation of the decision to provide for limited liability limited partnerships, see the Prefatory Note.

SECTION 405. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS.

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

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

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

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

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

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

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

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

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

Comment

Source – RUPA Section 307.

If a limited partnership is a limited liability limited partnership throughout its existence, this section will bar a creditor of a limited partnership from impleading, suing or reaching the assets of a general partner unless the creditor can satisfy subsection (c)(5).

SECTION 406. MANAGEMENT RIGHTS OF GENERAL PARTNER.

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

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

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

(3) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(c) 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 activities of the partnership or for the preservation of its activities or property.

(d) 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.

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

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

Comment

Source – RUPA Section 401 and ULLCA Section 404.

Subsection (a) – As explained in the Prefatory Note, this Act assumes that, more often than not, people utilizing the Act will want (i) strong centralized management, strongly entrenched, and (ii) passive investors with little control over the entity. Section 302 essentially excludes limited partners from the ordinary management of a limited partnership's activities. This subsection states affirmatively the general partners' commanding role. Only the partnership agreement and the express provisions of this Act can limit that role.

The authority granted by this subsection includes the authority to delegate. Delegation does not relieve the delegating general partner or partners of their duties under Section 408. However, the fact of delegation is a fact relevant to any breach of duty analysis.

Example: A sole general partner personally handles all “important paperwork” for a limited partnership. The general partner neglects to renew the fire insurance coverage on the a building owned by the limited partnership, despite having received and read a warning notice from the insurance company. The building subsequently burns to the ground and is a total loss. The general partner might be liable for breach of the duty of care under Section 408(c) (gross negligence).

Example: A sole general partner delegates responsibility for insurance renewals to the limited partnership’s office manager, and that manager neglects to renew the fire insurance coverage on the building. Even assuming that the office manager has been grossly negligent, the general partner is not necessarily liable under Section 408(c). The office manager’s gross negligence is not automatically attributed to the general partner. Under Section 408(c), the question is whether the general partner was grossly negligent (or worse) in selecting the general manager, delegating insurance renewal matters to the general manager and supervising the general manager after the delegation.

For the consequences of delegating authority to a person that is a limited partner, see the Comment to Section 305.

The partnership agreement may also provide for delegation and, subject to Section 110(b)(5) – (7), may modify a general partner’s Section 408 duties.

Subsection (b) – This subsection limits the managerial rights of the general partners, requiring the consent of each general and limited partner for the specified actions. The subsection is subject to change by the partnership agreement, except as provided in Section 110(b)(12) (pertaining to consent rights established by Section 1110).

Subsection (c) – This Act does not include any parallel provision for limited partners, because they are assumed to be passive. To the extent that by contract or other arrangement a limited partner has authority to act on behalf of the limited partnership, agency law principles will create an indemnity obligation. In other situations, principles of restitution might apply.

Subsection (f) – Unlike RUPA Section 401(h), this subsection provides no compensation for winding up efforts. In a limited partnership, winding up is one of the tasks for which the limited partners depend on the general partner. There is no reason for the Act to single out this particular task as giving rise to compensation.

SECTION 407. RIGHT OF GENERAL PARTNER AND FORMER GENERAL PARTNER TO INFORMATION.

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

- (1) in the limited partnership's designated office, required information; and
- (2) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

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

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

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

(c) Subject to subsection (e), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (a) at the location specified in subsection (a) if:

- (1) the information or record pertains to the period during which the person was a general partner;
- (2) the person seeks the information or record in good faith; and

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

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

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

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

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

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (f) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but the rights under subsection (c) of a person dissociated as a general may be exercised by the legal representative of an individual who dissociated as a general partner under Section 603(7)(B) or (C).

Comment

This section's structure parallels the structure of Section 304 and the Comment to that section may be helpful in understanding this section.

Subsection (b) – Source: RUPA Section 403(c).

Subsection (b)(1) – If a particular item of material information is apparent in the limited partnership’s records, whether a general partner is obliged to disseminate that information to fellow general partners depends on the circumstances.

Example: A limited partnership has two general partners: each of which is regularly engaged in conducting the limited partnership’s activities; both of which are aware of and have regular access to all significant limited partnership records; and neither of which has special responsibility for or knowledge about any particular aspect of those activities or the partnership records pertaining to any particular aspect of those activities. Most likely, neither general partner is obliged to draw the other general partner’s attention to information apparent in the limited partnership’s records.

Example: Although a limited partnership has three general partners, one is the managing partner with day-to-day responsibility for running the limited partnership’s activities. The other two meet periodically with the managing general partner, and together with that partner function in a manner analogous to a corporate board of directors. Most likely, the managing general partner has a duty to draw the attention of the other general partners to important information, even if that information would be apparent from a review of the limited partnership’s records.

In all events under subsection (b)(1), the question is whether the disclosure by one general partner is “reasonably required for the proper exercise” of the other general partner’s rights and duties.

Subsection (f) – This provision is identical to Section 304(g) and the Comment to Section 304(g) is applicable here. Under this Act, general and limited partners have sharply different roles. A restriction that is reasonable as to a limited partner is not necessarily reasonable as to a general partner.

Subsection (g) – No charge is allowed for current general partners, because in almost all cases they would be entitled to reimbursement under Section 406(c). Contrast Section 304(h), which authorizes charges to current limited partners.

Subsection (i) – The Comment to Section 304(k) is applicable here.

SECTION 408. GENERAL STANDARDS OF GENERAL PARTNER’S CONDUCT.

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

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

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

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

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

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

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

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

Comment

Source – RUPA Section 404.

This section does not prevent a general partner from delegating one or more duties, but delegation does not discharge the duty. For further discussion, see the Comment to Section 406(a).

If the partnership agreement removes a particular responsibility from a general partner, that general partner's fiduciary duty must be judged according to the rights and powers the general partner retains. For example, if the partnership agreement denies a general partner the right to act in a particular matter, the general partner's compliance with the partnership agreement cannot be a breach of fiduciary duty. However, the general partner may still have a duty to provide advice with regard to the matter. That duty could arise from the fiduciary duty of care under Section 408(c) and the duty to provide information under Sections 304(i) and 407(b).

For the partnership agreement's power directly to circumscribe a general partner's fiduciary duty, see Section 110(b)(5) and (6).

Subsection (a) – The reference to “the other partners” does not affect the distinction between direct and derivative claims. See Section 1001(b) (prerequisites for a partner bringing a direct claim).

Subsection (b) – A general partner's duty under this subsection continues through winding up, since the limited partners' dependence on the general partner does not end at dissolution. See Comment to Section 406(f) (explaining why this Act provides no remuneration for a general partner's winding up efforts).

Subsection (d) – This provision is identical to Section 305(b) and the Comment to Section 305(b) is applicable here.

[ARTICLE] 5
CONTRIBUTIONS AND DISTRIBUTIONS

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

Comment

Source – ULLCA Section 401.

SECTION 502. LIABILITY FOR CONTRIBUTION.

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

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

(c) 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. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (a), without notice of any compromise under this subsection, may enforce the original obligation.

Comment

In contrast with predecessor law, RULPA Section 502(a), this Act does not include a statute of frauds provision covering promised contributions. Section 111(9)(A) does require that the value of a promised contribution be memorialized, but that requirement does not affect enforceability. See Comment to Section 111(9).

Subsection (a) – Source: RULPA Section 502(b).

Under common law principles of impracticability, an individual's death or incapacity will sometimes discharge a duty to render performance. Restatement (Second) of Contracts, Sections 261 and 262. This subsection overrides those principles.

Subsection (b) – RULPA Section 502(b).

This subsection is a statutory liquidated damage provision, exercisable at the option of the limited partnership, with the damage amount set according to the value of the promised, non-monetary contribution as stated in the required information.

Example: In order to become a limited partner, a person promises to contribute to the limited partnership various assets which the partnership agreement values at \$150,000. In return for the person's promise, and in light of the agreed value, the limited partnership admits the person as a limited partner with a right to receive 25% of the limited partnership's distributions.

The promised assets are subject to a security agreement, but the limited partner promises to contribute them "free and clear." Before the limited partner can contribute the assets, the secured party forecloses on the security interest and sells the assets at a public sale for \$75,000. Even if the \$75,000 reflects the actual fair market value of the assets, under this subsection the limited partnership has a claim against the limited partner for "the value, as stated in the required information, of the stated contribution which has not been made" – i.e., \$150,000.

This section applies "at the option of the limited partnership" and does not affect other remedies which the limited partnership may have under other law.

Example: Same facts as the previous example, except that the public sale brings \$225,000. The limited partnership is not obliged to invoke this subsection and may instead sue for breach of the promise to make the contribution, asserting the \$225,000 figure as evidence of the actual loss suffered as a result of the breach.

Subsection (c) – Source: ULLCA Section 402(b); RULPA Section 502(c). The first sentence of this subsection applies not only to promised contributions but also to improper distributions. See Sections 508 and 509. The second sentence, pertaining to creditor’s rights, applies only to promised contributions.

SECTION 503. SHARING OF DISTRIBUTIONS. A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

Comment

This Act has no provision allocating profits and losses among the partners. Instead, the Act directly apportions the right to receive distributions.

Nearly all limited partnerships will choose to allocate profits and losses in order to comply with applicable tax, accounting and other regulatory requirements. Those requirements, rather than this Act, are the proper source of guidance for that profit and loss allocation.

Unlike predecessor law, this section apportions distributions in relation to the value of contributions received from each partner without regard to whether the limited partnership has returned any of those contributions. Compare RULPA Sections 503 and 504. This Act’s approach produces the same result as predecessor law, so long as the limited partnership does not vary this section’s approach to apportioning distributions.

This section’s rule for sharing distributions is subject to change under Section 110. A limited partnership that does vary the rule should be careful to consider not only the tax and accounting consequences but also the “ripple” effect on other provisions of this Act. See, e.g., Sections 801 and 803(c) (apportioning consent power in relation to the right to receive distributions).

SECTION 504. INTERIM DISTRIBUTIONS. A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

Comment

Under Section 406(a), the general partner or partners make this decision for the limited partnership.

SECTION 505. NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION. A person does not have a right to receive a distribution on account of dissociation.

Comment

This section varies substantially from predecessor law. RULPA Sections 603 and 604 permitted a limited partner to withdraw on six months notice and receive the fair value of the limited partnership interest, unless the partnership agreement provided the limited partner with some exit right or stated a definite duration for the limited partnership.

Under this Act, a partner that dissociates becomes a transferee of its own transferable interest. See Sections 602(a)(3) (person dissociated as a limited partner) and 605(a)(5) (person dissociated as a general partner).

SECTION 506. DISTRIBUTION IN KIND. A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to Section 812(b), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

Comment

Source – RULPA Section 605.

SECTION 507. RIGHT TO DISTRIBUTION. When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

Comment

Source – RULPA Section 606.

This section's first sentence refers to distributions generally. Contrast Section 508(e), which refers to indebtedness issued as a distribution.

The reference in the second sentence to "dissociated partner" encompasses circumstances in which the partner is gone and the dissociated partner's transferable interest is all that remains.

SECTION 508. LIMITATIONS ON DISTRIBUTION.

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

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

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

(2) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon

dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

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

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

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

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

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

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

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

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (b) if the

terms of the indebtedness provide that payment of principal and interest is made only to the extent that a distribution could then be made to partners under this section.

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

Comment

Source – ULLCA Section 406. See also RMBCA Section 6.40.

Subsection (c) – This subsection appears to impose a standard of ordinary care, in contrast with the general duty of care stated in Section 408(c). For a reconciliation of these two provisions, see Comment to Section 509(a).

SECTION 509. LIABILITY FOR IMPROPER DISTRIBUTIONS.

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

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

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

(1) implead in the action any other person that is liable under subsection (a) and compel contribution from the person; and

(2) implead in the action any person that received a distribution in violation of subsection (b) and compel contribution from the person in the amount the person received in violation of subsection (b).

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

Comment

Source – ULLCA Section 407. See also RMBCA Section 8.33.

In substance and effect this section protects the interests of creditors of the limited partnership. Therefore, according to Section 110(b)(13), the partnership agreement may not change this section in a way that restricts the rights of those creditors. As for a limited partnership's power to compromise a claim under this section, see Section 502(c).

Subsection (a) – This subsection refers both to Section 508, which includes in its subsection (c) a standard of ordinary care (“reasonable in the circumstances”), and to Section 408, which includes in its subsection (c) a general duty of care that is limited to “refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.”

A limited partnership's failure to meet the standard of Section 508(c) cannot by itself cause a general partner to be liable under Section 509(a). *Both* of the following would have to occur before a failure to satisfy Section 508(c) could occasion personal liability for a general partner under Section 509(a):

- the limited partnership “base[s] a determination that a distribution is not prohibited . . . on financial statements prepared on the basis of accounting practices and principles that are [not] reasonable in the circumstances or on a [not] fair valuation or other method that is [not] reasonable in the circumstances” [Section 508(c)]

AND

- the general partner's decision to rely on the improper methodology in consenting to the

distribution constitutes “grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law” [Section 408(c)] or breaches some other duty under Section 408.

To serve the protective purpose of Sections 508 and 509, in this subsection “consent” must be understood as encompassing any form of approval, assent or acquiescence, whether formal or informal, express or tacit.

Subsection (d) – The subsection’s limitation applies to the commencement of an action under subsection (a) or (b) and not to subsection (c), under which a general partner may implead other persons.

**[ARTICLE] 6
DISSOCIATION**

SECTION 601. DISSOCIATION AS LIMITED PARTNER.

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

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

(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 consent of the other partners if:

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

(B) 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;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited 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 no reinstatement of its charter or its right to conduct business; or

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

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

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(B) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under Section 305(b); or

(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

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

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

(8) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest

in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(9) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

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

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

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

Comment

Source – RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim, except for provisions inappropriate to limited partners. For example, this section does not provide for the dissociation of a person as a limited partner on account of bankruptcy, insolvency or incompetency.

This Act refers to *a person's dissociation as a limited partner* rather than to the *dissociation of a limited partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Subsection (a) – This section varies substantially from predecessor law. See Comment to Section 505.

Subsection (b)(1) – This provision gives a person the power to dissociate as a limited partner even though the dissociation is wrongful under subsection (a). See, however, Section 110(b)(8) (prohibiting the partnership agreement from eliminating the power of a person to dissociate as a *general* partner but imposing no comparable restriction with regard to a person's dissociation as a *limited* partner).

Subsection (b)(5) – In contrast to RUPA, this provision may be varied or even

eliminated by the partnership agreement.

SECTION 602. EFFECT OF DISSOCIATION AS LIMITED PARTNER.

(a) Upon a person's dissociation as a limited partner:

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

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

and

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

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

Comment

Source – RUPA Section 603(b).

Subsection (a)(1) – In general, when a person dissociates as a limited partner, the person's rights as a limited partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. However, Section 704 provides some special rights when dissociation is caused by an individual's death.

Subsection (a)(3) – For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Article 11 provides for conversions and mergers. A plan of conversion or merger may

provide for the dissociation of a person as a limited partner and may override the rule stated in this paragraph.

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

(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;

(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 consent of the other partners if:

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

(B) 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;

(C) 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 no reinstatement of its charter or its right to conduct business; or

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

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

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(B) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 408; or

(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(A) becoming a debtor in bankruptcy;

(B) execution of an assignment for the benefit of creditors;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(D) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all

of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

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

(A) the person's death;

(B) the appointment of a guardian or general conservator for the person; or

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

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

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

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

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

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

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

Comment

Source – RUPA Section 601.

This section adopts RUPA’s dissociation provision essentially verbatim. This Act refers to *a person’s dissociation as a general partner* rather than to the *dissociation of a general partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Paragraph (1) – The partnership agreement may not eliminate this power to dissociate. See Section 110(b)(8).

Paragraph (5) – In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

SECTION 604. PERSON’S POWER TO DISSOCIATE AS GENERAL PARTNER; WRONGFUL DISSOCIATION.

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

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

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

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

(A) the person withdraws as a general partner by express will;

(B) the person is expelled as a general partner by judicial determination under Section 603(5);

(C) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

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

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

Comment

Source – RUPA Section 602.

Subsection (a) – The partnership agreement may not eliminate this power. See Section 110(b)(8).

Subsection (b)(1) – The reference to “an express provision of the partnership agreement” means that a person’s dissociation as a general partner in breach of the obligation of good faith and fair dealing is not wrongful dissociation for the purposes of this section. The breach might be actionable on other grounds.

Subsection (b)(2) – The reference to “before the termination of the limited partnership” reflects the expectation that each general partner will shepherd the limited partnership through winding up. See Comment to Section 406(f). 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(3)(A).

Subsection (c) – The language “subject to Section 1001” is intended to preserve the distinction between direct and derivative claims.

SECTION 605. EFFECT OF DISSOCIATION AS GENERAL PARTNER.

(a) Upon a person’s dissociation as a general partner:

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

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

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

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

(5) subject to Section 704 and [Article] 11, 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.

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

Comment

Source – RUPA Section 603(b).

Subsection (a)(1) – Once a person dissociates as a general partner, the person loses all management rights as a general partner regardless of what happens to the limited partnership. This rule contrasts with RUPA Section 603(b)(1), which permits a dissociated general partner to participate in winding up in some circumstances.

Subsection (a)(4) – Both records covered by this paragraph have the same effect under Section 103(d) – namely, to give constructive notice that the person has dissociated as a general partner. The notice benefits the person by curtailing any further personal liability under Sections 607, 805, and 1111. The notice benefits the limited partnership by curtailing any lingering power to bind under Sections 606, 804, and 1112.

The limited partnership is in any event obligated to amend its certificate of limited partnership to reflect the dissociation of a person as general partner. See Section 202(b)(2). In most circumstances, the amendment requires the signature of the person that has dissociated. Section 204(a)(5)(C). If that signature is required and the person refuses or fails to sign, the limited partnership may invoke Section 205 (Signing and Filing Pursuant to Judicial Order).

Subsection (a)(5) – In general, when a person dissociates as a general partner, the person’s rights as a general partner disappear and, subject to Section 113 (Dual Status), the person’s status degrades to that of a mere transferee. For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Section 704 provides some special rights when an individual dissociates by dying. Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a general partner and may override the rule stated in this paragraph.

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

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

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

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

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

(B) the other party does not have notice of the dissociation and reasonably

believes that the person is a general partner.

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

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

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

Comment

Source – RUPA Section 702.

This Act contains three sections pertaining to the lingering power to bind of a person dissociated as a general partner:

- this section, which applies until the limited partnership dissolves, converts to another form of organization under Article 11, or is merged out of existence under Article 11;
- Section 804(b), which applies after a limited partnership dissolves; and
- Section 1112(b), which applies after a conversion or merger.

Subsection (a)(2)(B) – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b) – The liability provided by this subsection is not exhaustive. For example, if a person dissociated as a general partner causes a limited partnership to be bound under subsection (a) and, due to a guaranty, some other person is liable on the resulting

obligation, that other person may have a claim under other law against the person dissociated as a general partner.

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

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

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

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

- (1) a general partner would be liable on the transaction; and
- (2) at the time the other party enters into the transaction:
 - (A) less than two years has passed since the dissociation; and
 - (B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

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

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

Comment

Source – RUPA Section 703.

A person's dissociation as a general partner does not categorically prevent the person from being liable as a general partner for subsequently incurred obligations of the limited partnership. If the dissociation results in dissolution, subsection (b) applies and the person will be liable as a general partner on any partnership obligation incurred under Section 804. In these circumstances, neither filing a statement of dissociation nor amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering exposure to liability.

If the dissociation does not result in dissolution, subsection (c) applies. In this context, filing a statement of dissociation or amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering liability. See subsection (c)(2)(B).

If the limited partnership subsequently dissolves as the result of some other occurrence (i.e., not a result of the person's dissociation as a general partner), subsection (c) continues to apply. In that situation, Section 804 will determine whether, for the purposes of subsection (c), the limited partnership has entered into a transaction after dissolution.

If the limited partnership is a limited liability limited partnership, these liability rules are moot.

Subsection (a) – The phrase “liability as a general partner for an obligation of the limited partnership” refers to liability under Section 404. Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

Subsection (c)(2)(B) – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

[ARTICLE] 7
TRANSFERABLE INTERESTS AND RIGHTS
OF TRANSFEREES AND CREDITORS

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

Comment

Source – RUPA Section 502.

Like all other partnership statutes, this Act dichotomizes each partner’s rights into economic rights and other rights. The former are freely transferable, as provided in Section 702. The latter are not transferable at all, unless the partnership agreement so provides.

Although a partner or transferee owns a transferable interest as a present right, that right only entitles the owner to distributions if and when made. See Sections 504 (subject to any contrary provision in the partnership agreement, no right to interim distribution unless the limited partnership decides to make an interim distribution) and the Comment to Section 812 (subject to any contrary provision in the partnership agreement, no partner obligated to contribute for the purpose of equalizing or otherwise allocating capital losses).

SECTION 702. TRANSFER OF PARTNER’S TRANSFERABLE INTEREST.

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

(1) is permissible;

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

(3) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership’s activities, to

require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c), or to inspect or copy the required information or the limited partnership's other records.

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

(1) distributions to which the transferor would otherwise be entitled; and

(2) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

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

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

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership 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 that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 502 and 509. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

Comment

Source – RUPA Section 503, except for subsection (g), which derives from RULPA Section 704(b). Following RUPA, this Act uses the words “transfer” and “transferee” rather than the words “assignment” and “assignee.” See RUPA Section 503.

Subsection (a)(2) – The phrase “by itself” is significant. A transfer of all of a person’s transferable interest could lead to dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

Subsection (a)(3) – Mere transferees have no right to intrude as the partners carry on their activities as partners. Moreover, a partner’s obligation of good faith and fair dealing under Sections 305(b) and 408(d) is framed in reference to “the limited partnership and the other partners.” See also Comment to Section 1102(b)(3) and Comment to Section 1106(b)(3).

SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFEREE.

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

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

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

(1) by the judgment debtor;

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

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

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

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

Comment

Source – RUPA Section 504 and ULLCA Section 504.

This section balances the needs of a judgment creditor of a partner or transferee with the needs of the limited partnership and non-debtor partners and transferees. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited partnership.

Under this section, the judgment creditor of a partner or transferee is entitled to a charging order against the relevant transferable interest. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the partner or transferee whose interest is subject to the order. The creditor has no say in the timing or amount of those distributions. The charging order does not entitle the creditor to accelerate any distributions or to otherwise interfere with the management and activities of the limited partnership.

Foreclosure of a charging order effects a permanent transfer of the charged transferable interest to the purchaser. The foreclosure does not, however, create any rights to participate in the management and conduct of the limited partnership's activities. The purchaser obtains nothing more than the status of a transferee.

Subsection (a) – The court's power to appoint a receiver and “make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require” must be understood in the context of the balance described above. In particular, the court's power to make orders “which the circumstances may require” is limited to “giv[ing] effect to the charging order.”

Example: A judgment creditor with a charging order believes that the limited partnership should invest less of its surplus in operations, leaving more funds for distributions. The creditor moves the court for an order directing the general partners to restrict re-investment. This section does not authorize the court to grant the motion.

Example: A judgment creditor with a judgment for \$10,000 against a partner obtains a charging order against the partner's transferable interest. The limited partnership is duly served with the order. However, the limited partnership subsequently fails to comply with the order and makes a \$3000 distribution to the partner. The court has the power to order the limited partnership to turn over \$3000 to the judgment creditor to "give effect to the charging order."

The court also has the power to decide whether a particular payment is a distribution, because this decision determines whether the payment is part of a transferable interest subject to a charging order. (To the extent a payment is not a distribution, it is not part of the transferable interest and is not subject to subsection (e). The payment is therefore subject to whatever other creditor remedies may apply.)

Subsection (c)(3) – This provision requires the consent of all the limited as well as general partners.

SECTION 704. POWER OF ESTATE OF DECEASED PARTNER. If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in Section 702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 304.

Comment

Section 702 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 702(c).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate. For those purposes, the legal representative may exercise the informational rights of a current limited partner under Section 304. Those rights are of course subject to the limitations and obligations stated in that section – *e.g.*, Section

304 (g) (restrictions on use) and (h) (charges for copies) – as well as any generally applicable limitations stated in the partnership agreement.

**[ARTICLE] 8
DISSOLUTION**

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

(1) the happening of an event specified in the partnership agreement;

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

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

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

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

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

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

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

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

Comment

This Act does not require that any of the consents referred to in this section be given in the form of a signed record. The partnership agreement has the power to impose that requirement. See Comment to Section 110.

In several provisions, this section provides for consent in terms of rights to receive distributions. Distribution rights of non-partner transferees are not relevant. Mere transferees have no consent rights, and their distribution rights are not counted in determining whether majority consent has been obtained.

Paragraph (1) – There is no requirement that the relevant provision of the partnership agreement be made in a record, unless the partnership agreement creates that requirement. However, if the relevant provision is not “contained in a partnership agreement made in a record,” Section 111(9)(D) includes among the limited partnership's required information “a record stating . . . any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.”

Paragraph (2) – Rights to receive distributions owned by a person that is both a general and a limited partner figure into the limited partner determination only to the extent those rights are owned in the person's capacity as a limited partner. See Section 111(9)(C).

Example: XYZ is a limited partnership with three general partners, each of whom is also a limited partner, and 5 other limited partners. Rights to receive distributions are allocated as follows:

Partner #1 as general partner – 3%
Partner #2 as general partner – 2%
Partner #3 as general partner – 1%
Partner #1 as limited partner – 7%
Partner #2 as limited partner – 3%
Partner #3 as limited partner – 4%
Partner #4 as limited partner – 5%

Partner #5 as limited partner – 5%
Partner #6 as limited partner – 5%
Partner #7 as limited partner – 5%
Partner #8 as limited partner – 5%
Several non-partner transferees, in the aggregate – 55%

Distribution rights owned by persons as limited partners amount to 39% of total distribution rights. A majority is therefore anything greater than 19.5%. If only Partners 1,2, 3 and 4 consent to dissolve, the limited partnership is not dissolved. Together these partners own as limited partners 19% of the distribution rights owned by persons as limited partners – just short of the necessary majority. For purposes of this calculation, distribution rights owned by non-partner transferees are irrelevant. So, too, are distribution rights owned by persons as general partners. (However, dissolution under this provision requires “the consent of all general partners.”)

Paragraph (3)(A) – Unlike paragraph (2), this paragraph makes no distinction between distribution rights owned by persons as general partners and distribution rights owned by persons as limited partners. Distribution rights owned by non-partner transferees are irrelevant.

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

Comment

Source – RULPA Section 802.

Section 110(b)(9) limits the power of the partnership agreement with regard to this section.

SECTION 803. WINDING UP.

(a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

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

(1) may amend its certificate of limited partnership to state that the limited partnership is dissolved, 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, file a statement of termination as provided in Section 203, and perform other necessary acts; and

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a general partner under Section 804; and

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

(A) that the limited partnership does not have a general partner;

(B) the name of the person that has been appointed to wind up the limited partnership; and

(C) the street and mailing address of the person.

(d) On the application of any partner, the [appropriate court] may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(1) a limited partnership does not have a general partner and within a reasonable time

following the dissolution no person has been appointed pursuant to subsection (c); or

(2) the applicant establishes other good cause.

Comment

Source – RUPA Sections 802 and 803.

Subsection (b)(2) – A limited partnership may satisfy its duty to “discharge” a liability either by paying or by making an alternative arrangement satisfactory to the creditor.

Subsection (c) – The method for determining majority consent is analogous to the method applicable under Section 801(2). See the Comment to that paragraph.

A person appointed under this subsection is **not** a general partner and therefore is not subject to Section 408.

SECTION 804. POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION.

(a) A limited partnership is bound by a general partner’s act after dissolution which:

(1) is appropriate for winding up the limited partnership’s activities; or

(2) would have bound the limited partnership under Section 402 before dissolution, if,

at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

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

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

(B) the other party does not have notice of the dissociation and reasonably

believes that the person is a general partner; and

(2) the act:

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

(B) would have bound the limited partnership under Section 402 before

dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Comment

Subsection (a) – Source: RUPA Section 804.

Subsection (a)(2) – A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

Subsection (b) – This subsection deals with the post-dissolution power to bind of a person dissociated as a general partner. Paragraph (1) replicates the provisions of Section 606, pertaining to the pre-dissolution power to bind of a person dissociated as a general partner. Paragraph (2) replicates the provisions of subsection (a), which state the post-dissolution power to bind of a general partner. For a person dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraph (1) and paragraph (2).

Subsection (b)(1)(B) – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B) – A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

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

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Section 804(a) by an act that is not appropriate for winding up the

partnership's activities, the general partner is liable:

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

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

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

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

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

Comment

Source – RUPA Section 806.

It is possible for more than one person to be liable under this section on account of the same limited partnership obligation. This Act does not provide any rule for apportioning liability in that circumstance.

Subsection (a)(2) – If the limited partnership is not a limited liability limited partnership, the liability created by this paragraph includes liability under Sections 404(a), 607(b), and 607(c). The paragraph also applies when a partner or person dissociated as a general partner suffers damage due to a contract of guaranty.

SECTION 806. KNOWN CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.

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

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

- (1) specify the information required to be included in a claim;
- (2) provide a mailing address to which the claim is to be sent;
- (3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;
- (4) state that the claim will be barred if not received by the deadline; and
- (5) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 404.

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

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

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

Comment

Source – ULLCA Section 807. See also RMBCA Section 14.06.

Paragraph (b)(5) – If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

SECTION 807. OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.

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

(b) The notice must:

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

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

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

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

(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 an

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

- (1) a claimant that did not receive notice in a record under Section 806;
 - (2) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
 - (3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim not barred under this section may be enforced:
- (1) against the dissolved limited partnership, to the extent of its undistributed assets;
 - (2) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or
 - (3) against any person liable on the claim under Section 404.

Comment

Source – ULLCA Section 808. See also RMBCA Section 14.07.

Paragraph (b)(4) – If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

SECTION 808. LIABILITY OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED

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

Comment

The liability under Section 404 of a general partner or person dissociated as a general partner is merely liability for the obligations of the limited partnership.

SECTION 809. ADMINISTRATIVE DISSOLUTION.

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

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

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

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

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

(d) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under Sections

803 and 812 and to notify claimants under Sections 806 and 807.

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

Comment

Source – ULLCA Sections 809 and 810. See also RMBCA Sections 14.20 and 14.21.

Subsection (a)(1) – This provision refers solely to money due the specified filing officer and does not apply to other money due to the State.

Subsection (c) – The filing of a declaration of dissolution does not provide notice under Section 103(d).

SECTION 810. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

(a) A limited partnership that has been administratively dissolved may apply to the [Secretary of State] for reinstatement within two years after the effective date of dissolution. The application must be delivered to the [Secretary of State] for filing and state:

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

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

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

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

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

Comment

Source – ULLCA Section 811. See also RMBCA Section 14.22.

SECTION 811. APPEAL FROM DENIAL OF REINSTATEMENT.

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

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

(c) The court may summarily order the [Secretary of State] to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

Comment

Source – ULLCA Section 812.

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

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

(b) Any surplus remaining after the limited partnership complies with subsection (a) must be paid in cash as a distribution.

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

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

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

(3) If a person does not make the additional contribution required by paragraph (2),

further additional contributions are determined and due in the same manner as provided in that paragraph.

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

(e) The estate of a deceased individual is liable for the person's obligations under this section.

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

Comment

In some circumstances, this Act requires a partner to make payments to the limited partnership. See, e.g., Sections 502(b), 509(a), 509(b), and 812(c). In other circumstances, this Act requires a partner to make payments to other partners. See, e.g., Sections 509(c) and 812(d). In no circumstances does this Act require a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

Example: XYZ Limited Partnership ("XYZ") has one general partner and four limited partners. According to XYZ's required information, the value of each partner's contributions to XYZ are:

General partner – \$5,000

Limited partner #1 – \$10,000

Limited partner #2 – \$15,000

Limited partner #3 – \$20,000

Limited partner #4 – \$25,000

XYZ is unsuccessful and eventually dissolves without ever having made a distribution to its partners. XYZ lacks any assets with which to return to the partners the value of their respective contributions. No partner is obliged to make any payment either to the limited

partnership or to fellow partners to adjust these capital losses. These losses are not part of “the limited partnership’s obligations to creditors.” Section 812(a).

Example: Same facts, except that Limited Partner #4 loaned \$25,000 to XYZ when XYZ was not a limited liability limited partnership, and XYZ lacks the assets to repay the loan. The general partner must contribute to the limited partnership whatever funds are necessary to enable XYZ to satisfy the obligation owed to Limited Partner #4 on account of the loan. Section 812(a) and (c).

Subsection (c) – Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

[ARTICLE] 9
FOREIGN LIMITED PARTNERSHIPS

SECTION 901. GOVERNING LAW.

(a) The laws of the State or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(b) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this State.

(c) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this State.

Comment

Source – ULLCA Section 1001 for subsections (b) and (c).

Subsection (a) – This subsection parallels and is analogous in scope and effect to Section 106 (choice of law for domestic limited partnerships).

SECTION 902. APPLICATION FOR CERTIFICATE OF AUTHORITY.

(a) A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must state:

(1) the name of the foreign limited partnership and, if the name does not comply with

Section 108, an alternate name adopted pursuant to Section 905(a);

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

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

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

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

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

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

Comment

Source – ULLCA Section 1002.

A certificate of authority applied for under this section is different than a certificate of authorization furnished under Section 209.

SECTION 903. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS.

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

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

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

constitutes transacting business in this State.

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

Comment

Source – ULLCA Section 1003.

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

Comment

Source – ULLCA Section 1004 and RULPA Section 903.

A certificate of authority filed under this section is different than a certificate of authorization furnished under Section 209.

SECTION 905. NONCOMPLYING NAME OF FOREIGN LIMITED PARTNERSHIP.

(a) A foreign limited partnership whose name does not comply with Section 108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with Section 108. A foreign limited partnership that

adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with [fictitious name statute]. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under the name unless the foreign limited partnership is authorized under [fictitious name statute] to transact business in this State under another name.

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

Comment

Source – ULLCA Section 1005.

SECTION 906. REVOCATION OF CERTIFICATE OF AUTHORITY.

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

(1) pay, within 60 days after the due date, any fee, tax or penalty due to the [Secretary of State] under this [Act] or other law;

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

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

(4) deliver for filing a statement of a change under Section 115 within 30 days after a

change has occurred in the name or address of the agent.

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

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

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

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

Comment

Source – ULLCA Section 1006.

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

(a) In order to cancel its certificate of authority to transact business in this State, a foreign limited partnership must deliver to the [Secretary of State] for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under Section 206.

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

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

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

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

Comment

Source – RULPA Section 907(d); ULLCA Section 1008.

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

Comment

Source – RULPA Section 908; ULLCA Section 1009.

[ARTICLE] 10
ACTIONS BY PARTNERS

SECTION 1001. DIRECT ACTION BY PARTNER.

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

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

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

Comment

Subsection (a) – Source: RUPA Section 405(b).

Subsection (b) – 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. 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.

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

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

(2) a demand would be futile.

Comment

Source – RULPA Section 1001.

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

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

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

Comment

Source – RULPA Section 1002.

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

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

(2) why demand should be excused as futile.

Comment

Source – RULPA Section 1003.

SECTION 1005. PROCEEDS AND EXPENSES.

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

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

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

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

Comment

Source – RULPA Section 1004.

[ARTICLE] 11
CONVERSION AND MERGER

SECTION 1101. DEFINITIONS. In this [article]:

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

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

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

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

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

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

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

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

(9) “Organizational documents” means:

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

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

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

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

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

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

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

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

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

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

Comment

This section contains definitions specific to this Article.

SECTION 1102. CONVERSION.

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

- (1) the other organization’s governing statute authorizes the conversion;
- (2) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
- (3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

- (1) the name and form of the organization before conversion;
- (2) the name and form of the organization after conversion;
- (3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
- (4) the organizational documents of the converted organization.

Comment

In a statutory conversion an existing entity changes its form, the jurisdiction of its governing statute or both. For example, a limited partnership organized under the laws of one jurisdiction might convert to:

- a limited liability company (or other form of entity) organized under the laws of the same jurisdiction,
- a limited liability company (or other form of entity) organized under the laws of another jurisdiction, or
- a limited partnership organized under the laws of another jurisdiction (referred to in some statutes as “domestication”).

In contrast to a merger, which involves at least two entities, a conversion involves only one. The converting and converted organization are the same entity. See Section 1105(a). For this Act to apply to a conversion, either the converting or converted organization must be a limited partnership subject to this Act. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner’s obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

Subsection (a)(2) – Given the very broad definition of “organization,” Section 1101(8), this Act authorizes conversions involving non-profit organizations. This provision is intended as an additional safeguard for that context.

Subsection (b)(3) – A plan of conversion may provide that some persons with interests in the converting organization will receive interests in the converted organization while other persons with interests in the converting organization will receive some other form of consideration. Thus, a “squeeze out” conversion is possible. As noted above, if the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which a squeeze out conversion occurs.

If the converting organization is a limited partnership, the plan of conversion will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a converting limited partnership or its partners to mere transferees. That issue is a matter for other law.

SECTION 1103. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP.

(a) Subject to Section 1110, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(b) Subject to Section 1110 and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 1104, a converting limited partnership may amend the plan or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same consent as was required to approve the plan.

Comment

Section 1110 imposes special consent requirements for transactions which might cause a partner to have “personal liability,” as defined in Section 1101(10) for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

Subsection (a) – Like many of the rules stated in this Act, this subsection’s requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection’s rule means that a partner might be subject to a conversion (including a “squeeze out” conversion) without consent and with no appraisal remedy. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which the conversion occurs. However, if the partnership agreement allows for a conversion with less than unanimous consent, the mere fact a partner objects to a conversion does not mean that the partners favoring, arranging, consenting to or effecting the conversation have breached a duty under this Act.

SECTION 1104. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE.

(a) After a plan of conversion is approved:

(1) a converting limited partnership shall deliver to the [Secretary of State] for filing articles of conversion, which must include:

(A) a statement that the limited partnership has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by this [Act];

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(F) if the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1105(c); and

(2) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the [Secretary of State] for filing a certificate of limited partnership, which must include, in addition to the information required by Section 201:

(A) a statement that the limited partnership was converted from another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(2) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

Comment

Subsection (b) – The effective date of a conversion is determined under the governing statute of the converted organization.

SECTION 1105. EFFECT OF CONVERSION.

(a) An organization that has been converted pursuant to this [article] is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of [Article] 8.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this State on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this State appoints the [Secretary of State] as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the [Secretary of State] under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d).

Comment

Subsection (a) – A conversion changes an entity’s legal type, but does not create a new entity.

Subsection (b) – Unlike a merger, a conversion involves a single entity, and the conversion therefore does not transfer any of the entity’s rights or obligations.

SECTION 1106. MERGER.

(a) A limited partnership may merge with one or more other constituent organizations pursuant to this section and Sections 1107 through 1109 and a plan of merger, if:

- (1) the governing statute of each of the other organizations authorizes the merger;
- (2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
- (3) each of the other organizations complies with its governing statute in effecting the merger.

- (b) A plan of merger must be in a record and must include:
- (1) the name and form of each constituent organization;
 - (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
 - (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
 - (4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and
 - (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

Comment

For this Act to apply to a merger, at least one of the constituent organizations must be a limited partnership subject to this Act. The partners of any such limited partnership are subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner's obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

Subsection (a)(2) – Given the very broad definition of “organization,” Section 1101(8), this Act authorizes mergers involving non-profit organizations. This provision is intended as an additional safeguard for that context.

Subsection (b)(3) – A plan of merger may provide that some persons with interests in a constituent organization will receive interests in the surviving organization, while other persons with interests in the same constituent organization will receive some other form of consideration. Thus, a “squeeze out” merger is possible. As noted above, the duties and obligations stated in this Act apply to the partners of a constituent organization that is a limited partnership subject to this Act. Those duties would apply to the process and terms under which a squeeze out merger occurs.

If a constituent organization is a limited partnership, the plan of merger will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation

owed by a constituent limited partnership or its partners to mere transferees. That issue is a matter for other law.

SECTION 1107. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED PARTNERSHIP.

(a) Subject to Section 1110, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(b) Subject to Section 1110 and any contractual rights, after a merger is approved, and at any time before a filing is made under Section 1108, a constituent limited partnership may amend the plan or abandon the planned merger:

- (1) as provided in the plan; and
- (2) except as prohibited by the plan, with the same consent as was required to approve the plan.

Comment

Section 1110 imposes special consent requirements for transactions which might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

Subsection (a) – Like many of the rules stated in this Act, this subsection’s requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection’s rule means that a partner might be subject to a merger (including a “squeeze out” merger) without consent and with no appraisal remedy. The partners of a constituent limited partnership are subject to the duties and obligations stated in this Act, and those duties would apply to the process and terms under which the merger occurs. However, if the partnership agreement allows for a merger with less than unanimous consent, the mere fact a partner objects to a merger does not mean that the partners favoring, arranging, consenting to or effecting the merger have breached a duty under this Act.

SECTION 1108. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(2) each other preexisting constituent organization, by an authorized representative.

(b) The articles of merger must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(B) if it will be an organization other than a limited partnership, the organizational document that creates the organization;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1109(b); and

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited partnership shall deliver the articles of merger for filing in the [office of the Secretary of State].

(d) A merger becomes effective under this [article]:

(1) if the surviving organization is a limited partnership, upon the later of:

(A) compliance with subsection (c); or

(B) subject to Section 206(c), as specified in the articles of merger; or

(2) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

Comment

Subsection (b) – The effective date of a merger is determined under the governing statute of the surviving organization.

SECTION 1109. EFFECT OF MERGER.

(a) When a merger becomes effective:

(1) the surviving organization continues or comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(4) all debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of [Article] 8;

(9) if the surviving organization is created by the merger:

(A) if it is a limited partnership, the certificate of limited partnership becomes effective; or

(B) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the [Secretary of State] as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the [Secretary of State] under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d).

SECTION 1110. RESTRICTIONS ON APPROVAL OF CONVERSIONS AND MERGERS AND ON RELINQUISHING LLLP STATUS.

(a) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

(1) the limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(2) the partner has consented to the provision of the partnership agreement.

(b) An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(1) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(2) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(c) A partner does not give the consent required by subsection (a) or (b) merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

Comment

This section imposes special consent requirements for transactions that might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by this section. See Section 110(b)(12).

Subsection (c) – This subsection prevents circumvention of the consent requirements of subsections (a) and (b).

Example: As initially a consented to, the partnership agreement of a limited partnership leaves in place the Act’s rule requiring unanimous consent for a conversion or merger. The partnership agreement does provide, however, that the agreement may be amended with the affirmative vote of general partners owning 2/3 of the rights to receive distributions as general partners and of limited partners owning 2/3 of the rights to receive distributions as limited partners. The required vote is obtained for an amendment that permits approval of a conversion or merger by the same vote necessary to amend the partnership agreement. Partner X votes for the amendment. Partner Y votes against. Partner Z does not vote.

Subsequently the limited partnership proposes to convert to a limited partnership (not an LLLP) organized under the laws of another state, with Partners X, Y and Z each receiving interests as general partners. Under the amended partnership agreement, approval of the conversion does not require unanimous consent. However, since after the conversion, Partners X, Y and Z will each have “personal liability with respect to [the] converted . . . organization,” Section 110(a) applies.

As a result, the approval of the plan of conversion will require the consent of Partner Y and Partner Z. They did not consent to the amendment that provided for non-unanimous approval of a conversion or merger. Their initial consent to the partnership agreement, with its provision permitting non-unanimous consent for amendments, does not satisfy the consent requirement of Subsection 110(a)(2).

In contrast, Partner X’s consent is not required. Partner X lost its Section 110(a) veto right by consenting directly to the amendment to the partnership agreement which permitted non-unanimous consent to a conversion or merger.

SECTION 1111. LIABILITY OF GENERAL PARTNER AFTER CONVERSION OR MERGER.

(a) A conversion or merger under this [article] does not discharge any liability under Sections 404 and 607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

(1) the provisions of this [Act] pertaining to the collection or discharge of the liability continue to apply to the liability;

(2) for the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(3) if a person is required to pay any amount under this subsection:

(A) the person has a right of contribution from each other person that was liable as a general partner under Section 404 when the obligation was incurred and has not been released from the obligation under Section 607; and

(B) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) In addition to any other liability provided by law:

(1) a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving

organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that:

(i) the converted or surviving business is the converting or constituent limited partnership;

(ii) the converting or constituent limited partnership is not a limited liability limited partnership; and

(iii) the person is a general partner in the converting or constituent limited partnership; and

(2) a person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(A) immediately before the conversion or merger became effective the converting or surviving limited partnership was a not a limited liability limited partnership; and

(B) at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is

not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

Comment

This section extrapolates the approach of Section 607 into the context of a conversion or merger involving a limited partnership.

Subsection (a) – This subsection pertains to general partner liability for obligations which a limited partnership incurred before a conversion or merger. Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

If the converting or constituent limited partnership was a limited liability limited partnership at all times before the conversion or merger, this subsection will not apply because no person will have any liability under Section 404 or 607.

Subsection (b) – This subsection pertains to entity obligations incurred after a conversion or merger and creates lingering exposure to personal liability for general partners and persons previously dissociated as general partners. In contrast to subsection (a)(3), this subsection does not provide for contribution among persons personally liable under this section for the same entity obligation. That issue is left for other law.

Subsection (b)(1) – If the converting or constituent limited partnership was a limited liability limited partnership immediately before the conversion or merger, there is no lingering exposure to personal liability under this subsection.

Subsection (b)(1)(A) – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

Subsection (b)(2)(B)(i) – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B)(ii) – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

SECTION 1112. POWER OF GENERAL PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER CONVERSION OR MERGER.

(a) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 402; and

(2) at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 402 if the person had been a general partner; and

(2) at the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(c) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (a) or (b), the person is liable:

(1) to the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(2) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Comment

This section extrapolates the approach of Section 606 into the context of a conversion or merger involving a limited partnership.

Subsection (a)(2)(A) – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

Subsection (b)(2)(A) – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B) – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

SECTION 1113. [ARTICLE] NOT EXCLUSIVE. This [article] does not preclude an entity from being converted or merged under other law.

[ARTICLE] 12
MISCELLANEOUS PROVISIONS

SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 1202. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 1203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this [Act] does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

SECTION 1204. EFFECTIVE DATE. This [Act] takes effect [effective date].

Comment

Section 1206 specifies how this Act affects domestic limited partnerships, with special provisions pertaining to domestic limited partnerships formed before the Act's effective date. Section 1206 contains no comparable provisions for foreign limited partnerships. Therefore,

once this Act is effective, it applies immediately to all foreign limited partnerships, whether formed before or after the Act's effective date.

SECTION 1205. REPEALS. Effective [all-inclusive date] , the following acts and parts of acts are repealed: [the State Limited Partnership Act as amended and in effect immediately before the effective date of this [Act]].

SECTION 1206. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Before [all-inclusive date], this [Act] governs only:

(1) a limited partnership formed on or after [the effective date of this [Act]]; and
(2) except as otherwise provided in subsections (c) and (d), a limited partnership formed before [the effective date of this [Act]] which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this [Act].

(b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this [Act] governs all limited partnerships.

(c) With respect to a limited partnership formed before [the effective date of this [Act]], the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Section 104(c) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before [the effective date of this [Act]].

(2) the limited partnership is not required to amend its certificate of limited partnership to comply with Section 201(a)(4).

(3) Sections 601 and 602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before [the effective date of this [Act]].

(4) Section 603(4) does not apply.

(5) Section 603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before [the effective date of this [Act]].

(6) Section 801(3) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before [the effective date of this [Act]].

(d) With respect to a limited partnership that elects pursuant to subsection (a)(2) to be subject to this [Act], after the election takes effect the provisions of this [Act] relating to the liability of the limited partnership's general partners to third parties apply:

(1) before [all-inclusive date], to:

(A) a third party that had not done business with the limited partnership in the year before the election took effect; and

(B) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(2) on and after [all-inclusive date], to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(B).

Legislative Note: In a State that has previously amended its existing limited partnership statute to provide for limited liability limited partnerships (LLLPs), this Act should include transition

provisions specifically applicable to preexisting limited liability limited partnerships. The precise wording of those provisions must depend on the wording of the State's previously enacted LLLP provisions. However, the following principles apply generally:

1. In Sections 806(b)(5) and 807(b)(4) (notice by dissolved limited partnership to claimants), the phrase "the limited partnership has been throughout its existence a limited liability limited partnership" should be revised to encompass a limited partnership that was a limited liability limited partnership under the State's previously enacted LLLP provisions.

2. Section 1206(d) should provide that, if a preexisting limited liability limited partnership elects to be subject to this Act, this Act's provisions relating to the liability of general partners to third parties apply immediately to all third parties, regardless of whether a third party has previously done business with the limited liability limited partnership.

3. A preexisting limited liability limited partnership that elects to be subject to this Act should have to comply with Sections 201(a)(4) (requiring the certificate of limited partnership to state whether the limited partnership is a limited liability limited partnership) and 108(c) (establishing name requirements for a limited liability limited partnership).

4. As for Section 1206(b) (providing that, after a transition period, this Act applies to all preexisting limited partnerships):

a. if a State's previously enacted LLLP provisions have requirements essentially the same as Sections 201(a)(4) and 108(c), preexisting limited liability limited partnerships should automatically retain LLLP status under this Act.

b. if a State's previously enacted LLLP provisions have name requirements essentially the same as Section 108(c) and provide that a public filing other than the certificate of limited partnership establishes a limited partnership's status as a limited liability limited partnership:

i. that filing can be deemed to an amendment to the certificate of limited partnership to comply with Section 201(a)(4), and

ii. preexisting limited liability limited partnerships should automatically retain LLLP status under this Act.

c. if a State's previously enacted LLLP provisions do not have name requirements essentially the same as Section 108(c), it will be impossible both to enforce Section 108(c) and provide for automatic transition to LLLP status under this Act.

Comment

Source: RUPA Section 1206.

This section pertains exclusively to domestic limited partnerships – i.e., to limited partnerships formed under this Act or a predecessor statute enacted by the same jurisdiction. For foreign limited partnerships, see the Comment to Section 1204.

This Act governs all limited partnerships formed on or after the Act’s effective date. As for pre-existing limited partnerships, this section establishes an optional “elect in” period and a mandatory, all-inclusive date. The “elect in” period runs from the effective date, stated in Section 1204, until the all-inclusive date, stated in both subsection(a) and (b).

During the “elect in” period, a pre-existing limited partnership may elect to become subject to this Act. Subsection (d) states certain important consequences for a limited partnership that elects in. Beginning on the all-inclusive date, each pre-existing limited partnership that has not previously elected in becomes subject to this Act by operation of law.

Subsection (c) – This subsection specifies six provisions of this Act which never automatically apply to any pre-existing limited partnership. Except for subsection (c)(2), the list refers to provisions governing the relationship of the partners *inter se* and considered too different than predecessor law to be fairly applied to a preexisting limited partnership without the consent of its partners. Each of these *inter se* provisions is subject to change in the partnership agreement. However, many pre-existing limited partnerships may have taken for granted the analogous provisions of predecessor law and may therefore not have addressed the issues in their partnership agreements.

Subsection (c)(1) – Section 104(c) provides that a limited partnership has a perpetual duration.

Subsection (c)(2) – Section 201(a)(4) requires the certificate of limited partnership to state “whether the limited partnership is a limited liability limited partnership.” The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP and therefore is inapposite to pre-existing limited partnerships. Moreover, applying the requirement to pre-existing limited partnerships would create a significant administrative burden both for limited partnerships and the filing officer and probably would result in many pre-existing limited partnerships being in violation of the requirement.

Subsection (c)(3) – Section 601 and 602 concern a person’s dissociation as a limited partner.

Subsection (c)(4) – Section 603(4) provides for the expulsion of a general partner by the unanimous consent of the other partners in specified circumstances.

Subsection (c)(5) – Section 603(5) provides for the expulsion of a general partner by a court in specified circumstances.

Subsection (c)(6) – Section 801(3) concerns the continuance or dissolution of a limited partnership following a person’s dissociation as a general partner.

Subsection (d) – Following RUPA Section 1206(c), this subsection limits the efficacy of the Act’s liability protections for partners of an “electing in” limited partnership. The limitation:

- applies only to the benefit of “a third party that had done business with the limited partnership in the year before the election took effect,” and
- ceases to apply when “the third party knows or has received a notification of the election” or on the “all-inclusive” date, whichever occurs first.

If the limitation causes a provision of this Act to be inapplicable with regard to a third party, the comparable provision of predecessor law applies.

Example: A pre-existing limited partnership elects to be governed by this Act before the “all-inclusive” date. Two months before the election, Third Party provided services to the limited partnership. Third Party neither knows nor has received a notification of the election. Until the “all inclusive” date, with regard to Third Party, Section 303's full liability shield does not apply to each limited partner. Instead, each limited partner has the liability shield applicable under predecessor law.

Subsection (d)(2) – To the extent subsection (d) causes a provision of this Act to be inapplicable when an obligation is incurred, the inapplicability continues as to that obligation even after the “all inclusive” date.

SECTION 1207. SAVINGS CLAUSE. This [Act] does not affect an action commenced, proceeding brought, or right accrued before this [Act] takes effect.