

SENATE BILL NO. 198

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 5/7/97

Referred: L&C, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to partnerships; amending Rules 25(c), 79, and 82, Alaska Rules
2 of Civil Procedure; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 09.40.240 is amended to read:

5 **Sec. 09.40.240. Appointment of receivers.** A receiver may be appointed by
6 the court in any action or proceeding except an action for the recovery of specific
7 personal property

8 (1) provisionally, before judgment, on the application of either party,
9 when the party's right to the property **that** [WHICH] is the subject of the action or
10 proceeding and **that** [WHICH] is in the possession of an adverse party is probable, and
11 where it is shown that the property or its rents or profits are in danger of being lost
12 or materially injured or impaired;

13 (2) after judgment, to carry the judgment into effect;

14 (3) after judgment, to dispose of the property according to the judgment

1 or to preserve it during the pendency of an appeal, or when an execution has been
 2 returned unsatisfied and the debtor refuses to apply the debtor's property in satisfaction
 3 of the judgment;

4 (4) in the cases when a corporation has been dissolved, or is insolvent
 5 or in imminent danger of insolvency, or has forfeited its corporate rights;

6 (5) in the cases when a debtor has been declared insolvent;

7 **(6) under AS 32.06.504(a).**

8 * **Sec. 2.** AS 32 is amended by adding a new chapter to read:

9 **Chapter 6. Partnerships and Limited Liability Partnerships.**

10 **Article 1. Nature of Partnership.**

11 **Sec. 32.06.201. Partnership as entity.** (a) A partnership is an entity distinct
 12 from its partners.

13 (b) A limited liability partnership continues to be the same entity that existed
 14 before the filing of a statement of qualification under AS 32.06.911.

15 **Sec. 32.06.202. Formation of partnership.** (a) Except as otherwise provided
 16 in (b) of this section, the association of two or more persons to carry on as co-owners
 17 a business for profit forms a partnership, whether or not the persons intend to form a
 18 partnership.

19 (b) An association formed under a statute other than this chapter, a predecessor
 20 statute, or a comparable statute of another jurisdiction is not a partnership under this
 21 chapter.

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

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

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

29 (3) a person who receives a share of the profits of a business is
 30 presumed to be a partner in the business, unless the profits are received in payment

31 (A) of a debt by installments or otherwise;

1 (B) for services as an independent contractor, or of wages or
2 other compensation to an employee;

3 (C) of rent;

4 (D) of an annuity or other retirement or health benefit provided
5 to a beneficiary, representative, or designee of a deceased or retired partner;

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

10 (F) for the sale of the good will of a business or other property
11 by installments or otherwise.

12 **Sec. 32.06.203. Partnership property.** Property acquired by a partnership is
13 property of the partnership and not of the partners individually.

14 **Sec. 32.06.204. When property is partnership property.** (a) Property is
15 partnership property if acquired in the name of

16 (1) the partnership; or

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

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

21 (1) the partnership in its name; or

22 (2) one or more partners in their capacity as partners in the partnership
23 if the name of the partnership is indicated in the instrument transferring title to the
24 property.

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

29 (d) Property acquired in the name of one or more of the partners, without an
30 indication in the instrument transferring title to the property of the person's capacity
31 as a partner or of the existence of a partnership and without use of partnership assets,

1 is presumed to be separate property even if used for partnership purposes.

2 **Article 2. Relations of Partners to**
 3 **Persons Dealing with Partnership.**

4 **Sec. 32.06.301. Partner as agent of partnership.** Subject to the effect of a
 5 statement of partnership authority under AS 32.06.303,

6 (1) each partner is an agent of the partnership for the purpose of its
 7 business; an act of a partner, including the execution of an instrument in the
 8 partnership name, for apparently carrying on in the ordinary course the partnership
 9 business or business of the kind carried on by the partnership binds the partnership,
 10 unless the partner does not have authority to act for the partnership in the particular
 11 matter and the person with whom the partner is dealing knows or has received a
 12 notification that the partner lacks authority;

13 (2) an act of a partner that is not apparently for carrying on in the
 14 ordinary course the partnership business or business of the kind carried on by the
 15 partnership does not bind the partnership unless the act was authorized by the other
 16 partners.

17 **Sec. 32.06.302. Transfer of partnership property.** (a) Subject to the effect
 18 of a statement of partnership authority under AS 32.06.303, partnership property held
 19 in the name of the partnership may be transferred by an instrument of transfer executed
 20 by a partner in the partnership name.

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

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

31 (d) A partnership may recover partnership property from a transferee only if

1 the partnership proves that execution of the instrument of initial transfer did not bind
2 the partnership under AS 32.06.301 and

3 (1) as to a subsequent transferee who gave value for property
4 transferred under (a) or (b) of this section, that the subsequent transferee knew or had
5 received a notification that the person who executed the instrument of initial transfer
6 lacked authority to bind the partnership; or

7 (2) as to a transferee who gave value for property transferred under (c)
8 of this section, that the transferee knew or had received a notification that the property
9 was partnership property, and that the person who executed the instrument of initial
10 transfer lacked authority to bind the partnership.

11 (e) A partnership may not recover partnership property from a subsequent
12 transferee if the partnership would not have been entitled to recover the property under
13 (d) of this section from an earlier transferee of the property.

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

18 **Sec. 32.06.303. Statement of partnership authority.** (a) A partnership may
19 file a statement of partnership authority that

20 (1) must include

21 (A) the name of the partnership;

22 (B) the street address of its chief executive office and an office
23 in this state, if there is one;

24 (C) the names and mailing addresses of all of the partners or an
25 agent appointed and maintained by the partnership for the purpose of (b) of this
26 section; and

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

29 (2) may state

30 (A) the authority, or limitations on the authority, of some or all
31 of the partners to enter into other transactions on behalf of the partnership; and

1 (B) any other matter.

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

5 (c) If a filed statement of partnership authority is executed under
6 AS 32.06.970(c) and states the name of the partnership but does not contain all of the
7 other information required by (a) of this section, the statement nevertheless operates
8 with respect to a person who is not a partner as provided in (d) and (e) of this section.

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

12 (1) except for transfers of real property, a grant of authority contained
13 in a filed statement of partnership authority is conclusive in favor of a person who
14 gives value without knowledge to the contrary, so long as and to the extent that a
15 limitation on the grant of authority is not then contained in another filed statement; a
16 filed cancellation of a limitation on authority revives the previous grant of authority;

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

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

30 (f) Except as otherwise provided in (d) and (e) of this section and in
31 AS 32.06.704 and 32.06.805, a person who is not a partner is not considered to know

1 of a limitation on the authority of a partner merely because the limitation is contained
2 in a filed statement.

3 (g) Unless earlier cancelled, a filed statement of partnership authority is
4 cancelled by operation of law five years after the date on which the statement or the
5 most recent amendment is filed with the department.

6 **Sec. 32.06.304. Statement of denial.** A partner or other person named as a
7 partner in a filed statement of partnership authority or in a list maintained by an agent
8 under AS 32.06.303(b) may file a statement of denial stating the name of the
9 partnership and the fact that is being denied, which may include denial of a person's
10 authority or status as a partner. A statement of denial is a limitation on authority
11 under AS 32.06.303(d) and (e).

12 **Sec. 32.06.305. Partnership liable for partner's actionable conduct.** (a)
13 A partnership is liable for loss or injury caused to a person, or for a penalty incurred,
14 as a result of a wrongful act or omission, or other actionable conduct, of a partner
15 acting in the ordinary course of business of the partnership or with authority of the
16 partnership.

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

21 **Sec. 32.06.306. Partner's liability.** (a) Except as otherwise provided in (b)
22 and (c) of this section, all partners are liable jointly and severally for all obligations
23 of the partnership unless otherwise agreed by the claimant or provided by law.

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

27 (c) An obligation of a partnership incurred while the partnership is a limited
28 liability partnership, whether arising in contract, in tort, or otherwise, is solely the
29 obligation of the partnership. A partner is not personally liable, directly or indirectly,
30 by way of contribution or otherwise, for the obligation solely by reason of being or
31 acting as a partner. This subsection applies even if inconsistent with a partnership

1 agreement provision that exists immediately before the vote required to become a
2 limited liability partnership under AS 32.06.911(b).

3 **Sec. 32.06.307. Actions by and against partnership and partners.** (a) A
4 partnership may sue and be sued in the name of the partnership.

5 (b) An action may be brought against a partnership and, to the extent not
6 inconsistent with AS 32.06.306, any or all of the partners in the same action or in
7 separate actions.

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

11 (d) A judgment creditor of a partner may not execute against the assets of the
12 partner to satisfy a judgment based on a claim against the partnership unless the
13 partner is personally liable for the claim under AS 32.06.306 and

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

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

18 (3) the partner has agreed that the creditor is not required to exhaust
19 partnership assets;

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

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

27 (e) This section applies to any partnership liability or obligation resulting from
28 a representation by a partner or purported partner under AS 32.06.308.

29 **Sec. 32.06.308. Liability of purported partner.** (a) If a person, by words
30 or conduct, purports to be a partner, or consents to being represented by another as a
31 partner, in a partnership or with one or more persons who are not partners, the

1 purported partner is liable to a person to whom the representation is made if that
 2 person, relying on the representation, enters into a transaction with the actual or
 3 purported partnership. If the representation, either by the purported partner or by a
 4 person with the purported partner's consent, is made in a public manner, the purported
 5 partner is liable to a person who relies upon the purported partnership even if the
 6 purported partner is not aware of being held out as a partner to the claimant. If
 7 partnership liability results, the purported partner is liable with respect to the liability
 8 as if the purported partner were a partner. If partnership liability does not result, the
 9 purported partner is liable with respect to the liability jointly and severally with any
 10 other person consenting to the representation.

11 (b) If under (a) of this section a person is represented to be a partner in an
 12 existing partnership, or with one or more persons who are not partners, the purported
 13 partner is an agent of the persons consenting to the representation to bind those
 14 persons to the same extent and in the same manner as if the purported partner were
 15 a partner with respect to persons who enter into transactions in reliance upon the
 16 representation. If all of the partners of the existing partnership consent to the
 17 representation, a partnership act or obligation results. If fewer than all of the partners
 18 of the existing partnership consent to the representation, the person acting and the
 19 partners consenting to the representation are jointly and severally liable.

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

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

25 (e) Except as otherwise provided in (a) and (b) of this section, persons who
 26 are not partners as to each other are not liable as partners to other persons.

27 **Article 3. Relations of Partners to Each Other**
 28 **and to Partnership.**

29 **Sec. 32.06.401. Partner's rights and duties.** (a) Each partner is considered
 30 to have an account that is

31 (1) credited with an amount equal to

1 (A) the money and the value of any other property, net of the
2 amount of any liabilities, the partner contributes to the partnership; and

3 (B) the partner's share of the partnership profits; and

4 (2) charged with an amount equal to

5 (A) the money and the value of any other property, net of the
6 amount of any liabilities, distributed by the partnership to the partner; and

7 (B) the partner's share of the partnership losses.

8 (b) Each partner is entitled to an equal share of the partnership profits and is
9 chargeable with a share of the partnership losses in proportion to the partner's share
10 of the profits.

11 (c) A partnership shall reimburse a partner for payments made and indemnify
12 a partner for liabilities incurred by the partner in the ordinary course of the business
13 of the partnership or for the preservation of the partnership's business or property.

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

16 (e) A payment or advance made by a partner that results in a partnership
17 obligation under (c) or (d) of this section constitutes a loan to the partnership that
18 accrues interest from the date of the payment or advance.

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

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

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

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

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

31 (k) This section does not affect the obligations of a partnership to other

1 persons under AS 32.06.301.

2 **Sec. 32.06.402. Distributions in kind.** A partner does not have a right to
3 receive, and may not be required to accept, a distribution in kind.

4 **Sec. 32.06.403. Partner's rights and duties with respect to information.**

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

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

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

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

17 (2) on demand, any other information concerning the partnership's
18 business and affairs, except to the extent the demand or the information demanded is
19 unreasonable or otherwise improper under the circumstances.

20 **Sec. 32.06.404. General standards of partner's conduct.** (a) The only
21 fiduciary duties a partner owes to the partnership and the other partners are the duty
22 of loyalty and the duty of care stated in (b) and (c) of this section.

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

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

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

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

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

7 (d) A partner shall discharge the duties to the partnership and the other
8 partners under this chapter and the duties under the partnership agreement and exercise
9 any rights in accordance with the obligation of good faith and fair dealing.

10 (e) Each partner does not violate a duty or obligation under this chapter or
11 under the partnership agreement merely because the partner's conduct furthers the
12 partner's own interest.

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

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

20 **Sec. 32.06.405. Actions by partnership and partners.** (a) A partnership
21 may maintain an action against a partner for a breach of the partnership agreement, or
22 for the violation of a duty to the partnership, causing harm to the partnership.

23 (b) A partner may maintain an action against the partnership or another partner
24 for legal or equitable relief, with or without an accounting of partnership business, to
25 enforce

26 (1) the partner's rights under the partnership agreement;

27 (2) the partner's rights under this chapter, including the partner's

28 (A) rights under AS 32.06.401, 32.06.403, or 32.06.404;

29 (B) right on dissociation to have the partner's interest in the
30 partnership purchased under AS 32.06.701 or to enforce any other right under
31 AS 32.06.601 - 32.06.603 or 32.06.701 - 32.06.705; or

1 (C) right to compel a dissolution and winding up of the
 2 partnership business under AS 32.06.801 or to enforce another right under
 3 AS 32.06.801 - 32.06.807; or

4 (3) the rights and otherwise protect the interests of the partner,
 5 including rights and interests arising independently of the partnership relationship.

6 (c) The accrual of, and any time limitation on, a right of action for a remedy
 7 under this section are governed by other law. A right to an accounting upon a
 8 dissolution and winding up does not revive a claim barred by law.

9 **Sec. 32.06.406. Continuation of partnership beyond definite term or**
 10 **particular undertaking.** (a) If a partnership for a definite term or particular
 11 undertaking is continued, without an express agreement, after the expiration of the term
 12 or completion of the undertaking, the rights and duties of the partners remain the same
 13 as they were at the expiration or completion to the extent consistent with a partnership
 14 at will.

15 (b) If the partners, or the partners who habitually acted in the business during
 16 the term or undertaking, continue the business without a settlement or liquidation of
 17 the partnership, the partners continuing the business are presumed to have agreed that
 18 the partnership will continue.

19 **Article 4. Transferees and Creditors of Partners.**

20 **Sec. 32.06.501. Partner not co-owner of partnership property.** A partner
 21 is not a co-owner of partnership property and does not have an interest in partnership
 22 property that can be transferred, either voluntarily or involuntarily.

23 **Sec. 32.06.502. Partner's transferable interest in partnership.** The only
 24 transferable interest of a partner in the partnership is the partner's share of the profits
 25 and losses of the partnership and the partner's right to receive distributions. The
 26 interest is personal property.

27 **Sec. 32.06. 503. Transfer of partner's transferable interest.** (a) A transfer,
 28 in whole or in part, of a partner's transferable interest in the partnership

29 (1) is permissible;

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

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

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

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

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

12 (3) seek under AS 32.06.801(6) a judicial determination that it is
13 equitable to wind up the partnership business.

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

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

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

21 (f) A transfer of a partner's transferable interest in the partnership in violation
22 of a restriction on transfer contained in the partnership agreement is ineffective as to
23 a person having notice of the restriction at the time of transfer.

24 **Sec. 32.06.504. Partner's transferable interest subject to charging order.**

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

31 (b) A charging order constitutes a lien on the judgment debtor's transferable

1 interest in the partnership. The court may order a foreclosure of the interest subject
 2 to the charging order at any time. The purchaser at the foreclosure sale has the rights
 3 of a transferee.

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

5 (1) by the judgment debtor;

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

8 (3) with partnership property by one or more of the other partners with
 9 the consent of all of the partners whose interests are not charged.

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

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

15 **Article 5. Partner's Dissociation.**

16 **Sec. 32.06.601. Events causing partner's dissociation.** A partner is
 17 dissociated from a partnership upon the occurrence of any of the following events:

18 (1) when the partnership has notice of the partner's express will to
 19 withdraw as a partner unless a later date is specified by the partner;

20 (2) an event agreed to in the partnership agreement as causing the
 21 partner's dissociation;

22 (3) the partner's expulsion under the partnership agreement;

23 (4) the partner's expulsion by the unanimous vote of the other partners

24 if

25 (A) it is unlawful to carry on the partnership business with that
 26 partner;

27 (B) there has been a transfer of all or substantially all of that
 28 partner's transferable interest in the partnership, other than a transfer for
 29 security purposes, or a court order charging the partner's interest that has not
 30 been foreclosed;

31 (C) within 90 days after the partnership notifies a corporate

1 partner that it will be expelled because the corporate partner has filed a
2 certificate of dissolution or the equivalent, the corporate partner's charter has
3 been revoked, or the corporate partner's right to conduct business has been
4 suspended by the jurisdiction of its incorporation, the certificate of dissolution
5 is not revoked or the charter or right to conduct business is not reinstated; or

6 (D) the partner is a partnership that has been dissolved and its
7 business is being wound up;

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

10 (A) engaged in wrongful conduct that adversely and materially
11 affected the partnership business;

12 (B) wilfully or persistently committed a material breach of the
13 partnership agreement or of a duty owed to the partnership or the other partners
14 under AS 32.06.404; or

15 (C) engaged in conduct relating to the partnership business that
16 makes it not reasonably practicable to carry on the business in partnership with
17 the partner;

18 (6) the partner

19 (A) becomes a debtor in bankruptcy;

20 (B) executes an assignment for the benefit of creditors;

21 (C) seeks, consents to, or acquiesces in the appointment of a
22 trustee, receiver, or liquidator of that partner or of all or substantially all of that
23 partner's property; or

24 (D) fails, within 90 days after the appointment, to have vacated
25 or stayed the appointment of a trustee, receiver, or liquidator of the partner or
26 of all or substantially all of the partner's property, obtained without the
27 partner's consent or acquiescence, or fails within 90 days after the expiration
28 of a stay to have the appointment vacated;

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

30 (A) the partner's death;

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

1 partner; or

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

5 (8) in the case of a partner that is a trust or is acting as a partner by
6 virtue of being a trustee of a trust, distribution of the trust's entire transferable interest
7 in the partnership, but the substitution of a successor trustee does not by itself qualify
8 as a distribution under this paragraph;

9 (9) in the case of a partner that is an estate or is acting as a partner by
10 virtue of being a personal representative of an estate, distribution of the estate's entire
11 transferable interest in the partnership, but the substitution of a successor personal
12 representative does not by itself qualify as a distribution under this paragraph; or

13 (10) termination of a partner who is not an individual, a partnership,
14 a corporation, a trust, or an estate.

15 **Sec. 32.06.602. Partner's power to dissociate; wrongful dissociation.** (a)
16 A partner has the power to dissociate at any time, rightfully or wrongfully, by express
17 will under AS 32.06.601(1).

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

19 (1) the dissociation breaches an express provision of the partnership
20 agreement; or

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

23 (A) the partner withdraws by express will, unless the withdrawal
24 follows within 90 days after another partner's dissociation by death or
25 otherwise under AS 32.06.601(6) - (10) or wrongful dissociation under this
26 subsection;

27 (B) the partner is expelled by judicial determination under
28 AS 32.06.601(5);

29 (C) the partner is dissociated by becoming a debtor in
30 bankruptcy; or

31 (D) in the case of a partner who is not an individual, a trust

1 other than a business trust, or an estate, the partner is expelled or otherwise
2 dissociated because it wilfully dissolved or terminated.

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

6 **Sec. 32.06.603. Effect of partner's dissociation.** (a) If a partner's
7 dissociation results in a dissolution and winding up of the partnership business,
8 AS 32.06.801 - 32.06.807 apply, otherwise AS 32.06.701 - 32.06.705 apply.

9 (b) Upon a partner's dissociation, the partner's

10 (1) right to participate in the management and conduct of the
11 partnership business terminates, except as otherwise provided in AS 32.06.803;

12 (2) duty of loyalty under AS 32.06.404(b)(3) terminates; and

13 (3) duty of loyalty under AS 32.06.404(b)(1) and (2) and duty of care
14 under AS 32.06.404(c) continue only with regard to matters arising and events
15 occurring before the partner's dissociation unless the partner participates in winding
16 up the partnership's business under AS 32.06.803.

17 **Article 6. Partner's Dissociation when Business not Wound Up.**

18 **Sec. 32.06.701. Purchase of dissociated partner's interest.** (a) If a partner
19 is dissociated from a partnership without resulting in a dissolution and winding up of
20 the partnership business under AS 32.06.801, the partnership shall cause the dissociated
21 partner's interest in the partnership to be purchased for a buy-out price determined
22 under (b) of this section.

23 (b) The buy-out price of a dissociated partner's interest is the amount that
24 would have been distributable to the dissociating partner under AS 32.06.807(b) if, on
25 the date of dissociation, the assets of the partnership were sold at a price equal to the
26 greater of the liquidation value or the value based on a sale of the entire business as
27 a going concern without the dissociated partner and if the partnership were wound up
28 as of that date. Interest must be paid from the date of dissociation to the date of
29 payment.

30 (c) Damages for wrongful dissociation under AS 32.06.602(b), and all other
31 amounts owing, whether or not presently due, from the dissociated partner to the

1 partnership must be offset against the buy-out price. Interest must be paid from the
2 date the amount owed becomes due to the date of payment.

3 (d) A partnership shall indemnify against all partnership liabilities a dissociated
4 partner whose interest is being purchased, whether the liabilities are incurred before
5 or after the dissociation, except liabilities incurred by an act of the dissociated partner
6 under AS 32.06.702.

7 (e) If an agreement for the purchase of a dissociated partner's interest is not
8 reached within 120 days after a written demand for payment, the partnership shall pay,
9 or cause to be paid, in cash to the dissociated partner the amount the partnership
10 estimates to be the buy-out price and accrued interest, reduced by any offsets and
11 accrued interest under (c) of this section.

12 (f) If a deferred payment is authorized under (h) of this section, the partnership
13 may tender a written offer to pay the amount it estimates to be the buy-out price and
14 accrued interest, reduced by any offsets under (c) of this section, stating the time of
15 payment, the amount and type of security for payment, and the other terms and
16 conditions of the obligation.

17 (g) The payment or tender required by (e) or (f) of this section must be
18 accompanied by

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

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

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

25 (4) written notice that the payment is in full satisfaction of the
26 obligation to purchase unless, within 120 days after the written notice, the dissociated
27 partner commences an action to determine the buy-out price, any offsets under (c) of
28 this section, or other terms of the obligation to purchase.

29 (h) A partner who wrongfully dissociates before the expiration of a definite
30 term or the completion of a particular undertaking is not entitled to payment of any
31 portion of the buy-out price until the expiration of the term or completion of the

1 undertaking unless the partner establishes to the satisfaction of a court that earlier
2 payment will not cause undue hardship to the business of the partnership. A deferred
3 payment must be adequately secured and bear interest.

4 (i) A dissociated partner may maintain an action against the partnership under
5 AS 32.06.405(b)(2)(B) to determine the buy-out price of that partner's interest, any
6 offsets under (c) of this section, or other terms of the obligation to purchase. The
7 action must be commenced within 120 days after the partnership has tendered payment
8 or an offer to pay or within one year after written demand for payment if a payment
9 or offer to pay is not tendered. The court shall determine the buy-out price of the
10 dissociated partner's interest, any offset due under (c) of this section, and accrued
11 interest and enter judgment for any additional payment or refund. If deferred payment
12 is authorized under (h) of this section, the court shall also determine the security for
13 payment and other terms of the obligation to purchase. The court may assess
14 reasonable attorney fees and the fees and expenses of appraisers or other experts for
15 a party to the action, in amounts the court finds equitable, against a party that the court
16 finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on
17 the partnership's failure to tender payment or an offer to pay or to comply with (g) of
18 this section.

19 **Sec. 32.06.702. Dissociated partner's power to bind and liability to**
20 **partnership.** (a) For two years after a partner dissociates without the dissociation
21 resulting in a dissolution and winding up of the partnership business, the partnership,
22 including a surviving partnership under AS 32.06.902 - 32.06.908, is bound by an act
23 of the dissociated partner that would have bound the partnership under AS 32.06.301
24 before dissociation only if at the time of entering into the transaction the other party

25 (1) reasonably believed that the dissociated partner was then a partner;
26 (2) did not have notice of the partner's dissociation; and
27 (3) is not considered to have had knowledge under AS 32.06.303(e) or
28 notice under AS 32.06.704(c).

29 (b) A dissociated partner is liable to the partnership for damage that is caused
30 to the partnership by an obligation incurred by the dissociated partner after dissociation
31 and for which the partnership is liable under (a) of this section.

1 **Sec. 32.06.703. Dissociated partner's liability to other persons.** (a) A
 2 partner's dissociation does not of itself discharge the partner's liability for a
 3 partnership obligation incurred before dissociation. A dissociated partner is not liable
 4 for a partnership obligation incurred after dissociation, except as otherwise provided
 5 in (b) of this section.

6 (b) A partner who dissociates without the dissociation resulting in a dissolution
 7 and winding up of the partnership business is liable as a partner to the other party in
 8 a transaction entered into by the partnership, or a surviving partnership under
 9 AS 32.06.902 - 32.06.908, within two years after the partner's dissociation only if the
 10 partner is liable for the obligation under AS 32.06.306 and at the time of entering into
 11 the transaction the other party

12 (1) reasonably believed that the dissociated partner was then a partner;

13 (2) did not have notice of the partner's dissociation; and

14 (3) is not considered to have had knowledge under AS 32.06.303(e) or
 15 notice under AS 32.06.704(c).

16 (c) By agreement with the partnership creditor and the partners continuing the
 17 business, a dissociated partner may be released from liability for a partnership
 18 obligation.

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

23 **Sec. 32.06.704. Statement of dissociation.** (a) A dissociated partner or the
 24 partnership may file a statement of dissociation stating the name of the partnership and
 25 that the partner is dissociated from the partnership.

26 (b) A statement of dissociation is a limitation on the authority of a dissociated
 27 partner for the purposes of AS 32.06.303(d) and (e).

28 (c) In AS 32.06.702(a)(3) and 32.06.703(b)(3), a person who is not a partner
 29 is considered to have notice of the dissociation 90 days after the statement of
 30 dissociation is filed.

31 **Sec. 32.06.705. Continued use of partnership name.** Continued use of a

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

4 **Article 7. Winding up Partnership Business.**

5 **Sec. 32.06.801. Events causing dissolution and winding up of partnership**
 6 **business.** A partnership is dissolved, and its business must be wound up, only on the
 7 occurrence of any of the following events:

8 (1) in a partnership at will, when the partnership has notice from a
 9 partner, other than a partner who is dissociated under AS 32.06.601(2) - (10), of that
 10 partner's express will to withdraw as a partner, or on a later date specified by the
 11 partner;

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

13 (A) within 90 days after a partner's dissociation by death or by
 14 other event under AS 32.06.601(6) - (10) or by wrongful dissociation under
 15 AS 32.06.602(b), at least one-half of the remaining partners state their express
 16 will to wind up the partnership business; in this subparagraph, a partner's
 17 rightful dissociation under AS 32.06.602(b)(2)(A) constitutes the expression of
 18 that partner's will to wind up the partnership business;

19 (B) the express will of all of the partners to wind up the
 20 partnership business; or

21 (C) the expiration of the term or the completion of the
 22 undertaking;

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

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

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

30 (A) the economic purpose of the partnership is likely to be
 31 unreasonably frustrated;

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

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

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

8 (A) after the expiration of the term or completion of the
 9 undertaking if the partnership was for a definite term or particular undertaking
 10 at the time of the transfer or entry of the charging order that gave rise to the
 11 transfer; or

12 (B) at any time if the partnership was a partnership at will at
 13 the time of the transfer or entry of the charging order that gave rise to the
 14 transfer.

15 **Sec. 32.06.802. Partnership continuation after dissolution.** (a) Subject to
 16 (b) of this section, a partnership continues after dissolution only for the purpose of
 17 winding up its business. The partnership is terminated when the winding up of its
 18 business is completed.

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

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

27 (2) the rights of a third party accruing under AS 32.06.804(1) or arising
 28 out of conduct in reliance on the dissolution before the third party knew or received
 29 a notification of the waiver may not be adversely affected.

30 **Sec. 32.06.803. Right to wind up partnership business.** (a) After
 31 dissolution, a partner who has not wrongfully dissociated may participate in winding

1 up the partnership's business, but, on application of a partner, partner's legal
 2 representative, or transferee, the superior court, for good cause shown, may order
 3 judicial supervision of the winding up.

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

6 (c) A person winding up a partnership's business may preserve the partnership
 7 business or property as a going concern for a reasonable time, prosecute and defend
 8 actions and proceedings, whether civil, criminal, or administrative, settle and close the
 9 partnership's business, dispose of and transfer the partnership's property, discharge the
 10 partnership's liabilities, distribute the assets of the partnership under AS 32.06.807,
 11 settle disputes by mediation or arbitration, and perform other necessary acts.

12 **Sec. 32.06.804. Partner's power to bind partnership after dissolution.**

13 Subject to AS 32.06.805, a partnership is bound by a partner's act after dissolution that

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

15 (2) would have bound the partnership under AS 32.06.301 before
 16 dissolution if the other party to the transaction did not have notice of the dissolution.

17 **Sec. 32.06.805. Statement of dissolution.** (a) After dissolution, a partner

18 who has not wrongfully dissociated may file a statement of dissolution stating the
 19 name of the partnership and that the partnership has dissolved and is winding up its
 20 business.

21 (b) A statement of dissolution cancels a filed statement of partnership authority
 22 for the purposes of AS 32.06.303(d) and is a limitation on authority under
 23 AS 32.06.303(e).

24 (c) Under AS 32.06.301 and 32.06.804, a person who is not a partner is
 25 considered to have notice of the dissolution and the limitation on the partners'
 26 authority as a result of the statement of dissolution 90 days after it is filed.

27 (d) After filing and, if appropriate, recording a statement of dissolution, a
 28 dissolved partnership may file and, if appropriate, record a statement of partnership
 29 authority that will operate with respect to a person who is not a partner under
 30 AS 32.06.303(d) and (e) in any transaction, whether or not the transaction is
 31 appropriate for winding up the partnership business.

Sec. 32.06.806. Partner's liability to other partners after dissolution. (a)

Except as otherwise provided in (b) of this section, after dissolution, a partner is liable to the other partners for the partner's share of any partnership liability incurred under AS 32.06.804.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under AS 32.06.804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Sec. 32.06.807. Settlement of accounts and contributions among partners.

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

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under AS 32.06.306.

(c) If a partner fails to contribute, all of the other partners shall contribute the full amount required under (b) of this section, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which the partners are personally liable under AS 32.06.306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under AS 32.06.306.

1 (d) After the settlement of accounts, each partner shall contribute, in the
2 proportion in which the partner shares partnership losses, the amount necessary to
3 satisfy partnership obligations that were not known at the time of the settlement and
4 for which the partner is personally liable under AS 32.06.306.

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

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

10 **Article 8. Conversions and Mergers.**

11 **Sec. 32.06.902. Conversion of partnership to limited partnership.** (a) A
12 partnership may be converted to a limited partnership under this section.

13 (b) The terms and conditions of a conversion of a partnership to a limited
14 partnership must be approved by all of the partners or by a number or percentage
15 specified for conversion in the partnership agreement.

16 (c) After the conversion is approved by the partners, the partnership shall file
17 a certificate of limited partnership with the department. The certificate must include

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

20 (2) the partnership's former name; and

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

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

26 (e) A general partner who becomes a limited partner as a result of the
27 conversion remains liable as a general partner for an obligation incurred by the
28 partnership before the conversion takes effect. If the other party to a transaction with
29 the limited partnership reasonably believes when entering the transaction that the
30 limited partner is a general partner, the limited partner is liable for an obligation
31 incurred by the limited partnership within 90 days after the conversion takes effect.

1 The limited partner's liability for all other obligations of the limited partnership
2 incurred after the conversion takes effect is that of a limited partner under AS 32.11.

3 **Sec. 32.06.903. Conversion of limited partnership to partnership.** (a) A
4 limited partnership may be converted to a partnership under this section.

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

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

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

12 (e) A limited partner who becomes a general partner as a result of the
13 conversion remains liable only as a limited partner for an obligation incurred by the
14 limited partnership before the conversion takes effect. The partner is liable as a
15 general partner for an obligation of the partnership incurred after the conversion takes
16 effect.

17 **Sec. 32.06.904. Effect of conversion; entity unchanged.** (a) A partnership
18 or limited partnership that has been converted under AS 32.06.902 - 32.06.908 is for
19 all purposes the same entity that existed before the conversion.

20 (b) When a conversion takes effect,

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

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

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

27 **Sec. 32.06.905. Merger of partnerships.** (a) Under a plan of merger
28 approved under (c) of this section, a partnership may be merged with one or more
29 partnerships or limited partnerships.

30 (b) The plan of merger must state

31 (1) the name of each partnership or limited partnership that is a party

1 to the merger;

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

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

6 (4) the terms and conditions of the merger;

7 (5) the manner and basis of converting all or part of the interests of
8 each party to the merger into interests or obligations of the surviving entity or into
9 money or other property; and

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

11 (c) The plan of merger must be approved

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

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

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

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

23 (1) the approval of the plan of merger by all parties to the merger
24 under (c) of this section;

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

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

28 **Sec. 32.06.906. Effect of merger.** (a) When a merger takes effect,

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

31 (2) all property owned by each of the merged partnerships or limited

1 partnerships vests in the surviving entity;

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

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

8 (b) The commissioner is the agent for service of process in an action or
9 proceeding against a surviving foreign partnership or limited partnership to enforce an
10 obligation of a domestic partnership or limited partnership that is a party to a merger.
11 The surviving entity shall promptly notify the department of the mailing address of its
12 chief executive office and of any change of address. Upon receipt of process, the
13 department shall mail a copy of the process to the surviving foreign partnership or
14 limited partnership.

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

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

18 (2) all obligations of the surviving entity incurred before the merger by
19 a party to the merger and not covered by (1) of this subsection, but the obligations
20 under this paragraph may be satisfied only out of property of the entity; and

21 (3) except as otherwise provided in AS 32.06.306, all obligations of the
22 surviving entity incurred after the merger takes effect, but the obligations under this
23 paragraph may be satisfied only out of property of the entity if the partner is a limited
24 partner.

25 (d) If the obligations incurred before the merger by a party to the merger are
26 not satisfied out of the property of the surviving partnership or limited partnership, the
27 general partners of the party to the merger immediately before the effective date of the
28 merger shall contribute the amount necessary to satisfy the party's obligations to the
29 surviving entity, in the manner provided in AS 32.06.807, in AS 32.11, or in the
30 limited partnership law of the jurisdiction where the party was formed, as the case may
31 be, as if the merged party were dissolved.

1 (e) As of the date the merger takes effect, a partner of a party to a merger who
2 does not become a partner of the surviving partnership or limited partnership is
3 dissociated from the entity of which that partner was a partner. The surviving entity
4 shall cause the partner's interest in the entity to be purchased under AS 32.06.701 or
5 another statute specifically applicable to that partner's interest with respect to a merger.
6 The surviving entity is bound under AS 32.06.702 by an act of a general partner
7 dissociated under this subsection, and the partner is liable under AS 32.06.703 for
8 transactions entered into by the surviving entity after the merger takes effect.

9 **Sec. 32.06.907. Statement of merger.** (a) After a merger, the surviving
10 partnership or limited partnership may file a statement that one or more partnerships
11 or limited partnerships have merged into the surviving entity.

12 (b) A statement of merger must contain

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

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

17 (3) the street address of the surviving entity's chief executive office and
18 of any office in this state; and

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

21 (c) Except as otherwise provided in (d) of this section, in AS 32.06.302
22 property of the surviving partnership or limited partnership that before the merger was
23 held in the name of another party to the merger is property held in the name of the
24 surviving entity upon filing a statement of merger.

25 (d) In AS 32.06.302, real property of the surviving partnership or limited
26 partnership that before the merger was held in the name of another party to the merger
27 is property held in the name of the surviving entity upon recording a certified copy of
28 the statement of merger in the office for recording transfers of the real property.

29 (e) A filed and, if appropriate, recorded statement of merger, executed and
30 declared to be accurate under AS 32.06.970(c), stating the name of a partnership or
31 limited partnership that is a party to the merger in whose name property was held

1 before the merger and the name of the surviving entity, but not containing all of the
2 other information required by (b) of this section, operates with respect to the
3 partnerships or limited partnerships named to the extent provided in (c) and (d) of this
4 section.

5 **Sec. 32.06.908. Nonexclusivity.** AS 32.06.902 - 32.06.908 are not exclusive.
6 Partnerships or limited partnerships may be converted or merged in any other manner
7 provided by law.

8 **Sec. 32.05.909. Definitions for AS 32.06.902 - 32.06.908.** In AS 32.06.902 -
9 32.06.908,

10 (1) "general partner" means a partner in a partnership and a general
11 partner in a limited partnership;

12 (2) "limited partner" means a limited partner in a limited partnership;

13 (3) "limited partnership" means a limited partnership created under
14 AS 32.11, predecessor law, or a comparable law of another jurisdiction;

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

16 **Article 9. Limited Liability Partnerships.**

17 **Sec. 32.06.911. Statement of qualification.** (a) A partnership may become
18 a limited liability partnership under this section.

19 (b) The terms and conditions on which a partnership becomes a limited
20 liability partnership must be approved by the vote necessary to amend the partnership
21 agreement except, in the case of a partnership agreement that expressly considers
22 obligations to contribute to the partnership, by the vote necessary to amend those
23 contribution provisions.

24 (c) After the approval required by (b) of this section, a partnership may
25 become a limited liability partnership by filing a statement of qualification. The
26 statement must contain

27 (1) the name of the partnership;

28 (2) the street address of the partnership's chief executive office and, if
29 different, the street address of an office in this state, if any;

30 (3) if the partnership does not have an office in this state, the name and
31 street address of the partnership's agent for service of process;

1 (4) a statement that the partnership elects to be a limited liability
2 partnership; and

3 (5) a deferred effective date, if any.

4 (d) The agent of a limited liability partnership for service of process must be
5 an individual who is a resident of this state or a person authorized to do business in
6 this state.

7 (e) The status of a partnership as a limited liability partnership is effective on
8 the later of the filing of the statement or a date specified in the statement. The status
9 remains effective, regardless of changes in the partnership, until it is cancelled under
10 AS 32.06.970(d) or revoked under AS 32.06.913.

11 (f) The status of a partnership as a limited liability partnership and the liability
12 of its partners are not affected by errors or later changes in the information required
13 to be contained in the statement of qualification under (c) of this section.

14 (g) The filing of a statement of qualification establishes that a partnership has
15 satisfied all conditions precedent to the qualification of the partnership as a limited
16 liability partnership.

17 (h) An amendment or cancellation of a statement of qualification is effective
18 when it is filed or on a deferred effective date specified in the amendment or
19 cancellation.

20 **Sec. 32.06.912. Name.** The name of a limited liability partnership must end
21 with "Registered Limited Liability Partnership," "Limited Liability Partnership,"
22 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."

23 **Sec. 32.06.913. Annual report; revocation of qualification.** (a) A limited
24 liability partnership, and a foreign limited liability partnership authorized to transact
25 business in this state, shall file with the department an annual report that contains

26 (1) the name of the limited liability partnership and the state or other
27 jurisdiction under whose laws the foreign limited liability partnership is formed;

28 (2) the street address of the partnership's chief executive office and, if
29 different, the street address of an office of the partnership in this state, if any; and

30 (3) if the partnership does not have an office in this state, the name and
31 street address of the partnership's current agent for service of process.

1 (b) An annual report must be filed between January 1 and April 1 of each year
2 following the calendar year when a partnership files a statement of qualification or a
3 foreign partnership becomes authorized to transact business in this state.

4 (c) The department may revoke the statement of qualification of a partnership
5 that fails to file an annual report when due or pay the required filing fee. To revoke,
6 the department shall provide the partnership at least 60 days' written notice of intent
7 to revoke the statement. The notice must be mailed to the partnership at its chief
8 executive office stated in the last filed statement of qualification or annual report. The
9 notice must specify the annual report that has not been filed or the fee that has not
10 been paid, and the effective date of the revocation. The revocation is not effective if
11 the annual report is filed and the fee is paid before the effective date of the revocation.

12 (d) A revocation under (c) of this section only affects a partnership's status as
13 a limited liability partnership and is not an event of dissolution of the partnership.

14 (e) A partnership whose statement of qualification has been revoked may apply
15 to the department for reinstatement within two years after the effective date of the
16 revocation. The application must state

17 (1) the name of the partnership and the effective date of the revocation;
18 and

19 (2) that the ground for revocation either did not exist or has been
20 corrected.

21 (f) A reinstatement under (e) of this section relates back to and takes effect on
22 the effective date of the revocation, and the partnership's status as a limited liability
23 partnership continues as if the revocation had never occurred.

24 **Sec. 32.06.921. Law governing foreign limited liability partnerships.** (a)
25 The law under which a foreign limited liability partnership is formed governs relations
26 between and among the partners and between the partners and the partnership and the
27 liability of partners for obligations of the partnership.

28 (b) A foreign limited liability partnership may not be denied a statement of
29 foreign qualification by reason of any difference between the law under which the
30 partnership was formed and the law of this state.

31 (c) A statement of foreign qualification does not authorize a foreign limited

1 liability partnership to engage in a business or exercise a power that a partnership may
2 not engage in or exercise in this state as a limited liability partnership.

3 **Sec. 32.06.922. Statement of foreign qualification.** (a) Before transacting
4 business in this state, a foreign limited liability partnership must file a statement of
5 foreign qualification. The statement must contain

6 (1) the name of the foreign limited liability partnership that satisfies the
7 requirements of the state or other jurisdiction under whose law it is formed and ends
8 with "Registered Limited Liability Partnership," "Limited Liability Partnership,"
9 "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

10 (2) the street address of the partnership's chief executive office and, if
11 different, the street address of an office of the partnership in this state, if any;

12 (3) if there is not an office of the partnership in this state, the name and
13 street address of the partnership's agent for service of process; and

14 (4) a deferred effective date, if any.

15 (b) The agent of a foreign limited liability company for service of process
16 must be an individual who is a resident of this state or a person authorized to do
17 business in this state.

18 (c) The status of a partnership as a foreign limited liability partnership is
19 effective on the later of the filing of the statement of foreign qualification or a date
20 specified in the statement. The status remains effective, regardless of changes in the
21 partnership, until it is cancelled under AS 32.06.970(d) or revoked under
22 AS 32.06.913.

23 (d) An amendment or cancellation of a statement of foreign qualification is
24 effective when it is filed or on a deferred effective date specified in the amendment
25 or cancellation.

26 **Sec. 32.06.923. Effect of failure to qualify.** (a) A foreign limited liability
27 partnership transacting business in this state may not maintain an action or proceeding
28 in this state unless it has in effect a statement of foreign qualification.

29 (b) The failure of a foreign limited liability partnership to have in effect a
30 statement of foreign qualification does not impair the validity of a contract or act of
31 the foreign limited liability partnership or preclude it from defending an action or

1 proceeding in this state.

2 (c) A limitation on personal liability of a partner is not waived solely by
3 transacting business in this state without a statement of foreign qualification.

4 (d) If a foreign limited liability partnership transacts business in this state
5 without a statement of foreign qualification, the commissioner is its agent for service
6 of process with respect to a right of action arising out of the transaction of business
7 in this state.

8 **Sec. 32.06.924. Activities not constituting transacting business.** (a)
9 Activities of a foreign limited liability partnership that do not constitute transacting
10 business under AS 32.06.921 - 32.06.925 include

- 11 (1) maintaining, defending, or settling an action or proceeding;
12 (2) holding meetings of its partners or carrying on another activity
13 concerning its internal affairs;
14 (3) maintaining bank accounts;
15 (4) maintaining offices or agencies for the transfer, exchange, and
16 registration of the partnership's own securities or maintaining trustees or depositories
17 for those securities;
18 (5) selling through independent contractors;
19 (6) soliciting or obtaining orders, whether by mail or through
20 employees or agents or by another method, if the orders require acceptance outside this
21 state before they become contracts;
22 (7) creating or acquiring indebtedness, with or without a mortgage, or
23 other security interest in property;
24 (8) collecting debts or foreclosing mortgages or other security interests
25 in property securing the debts, and holding, protecting, and maintaining property so
26 acquired;
27 (9) conducting an isolated transaction that is completed within 30 days
28 and is not one transaction in the course of similar transactions; and
29 (10) transacting business in interstate commerce.

30 (b) In AS 32.06.921 - 32.06.925, the ownership in this state of income-
31 producing real property or tangible personal property, other than property excluded

1 under (a) of this section, constitutes transacting business in this state.

2 (c) This section does not apply in determining the contacts or activities that
3 may subject a foreign limited liability partnership to service of process, taxation, or
4 regulation under another law of this state.

5 **Sec. 32.06.925. Action by attorney general.** The attorney general may
6 maintain an action to restrain a foreign limited liability partnership from transacting
7 business in this state in violation of AS 32.06.921 - 32.06.925.

8 **Article 10. Miscellaneous Provisions.**

9 **Sec. 32.06.955. Knowledge and notice.** (a) A person knows a fact if the
10 person has actual knowledge of it.

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

12 (1) knows of it;

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

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

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

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

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

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

23 (e) Except as otherwise provided in (f) of this section, a person other than an
24 individual knows, has notice, or receives a notification of a fact for purposes of a
25 particular transaction when the individual conducting the transaction knows, has notice
26 of, or receives a notification of the fact, or in any event when the fact would have
27 been brought to the individual's attention if the person had exercised reasonable
28 diligence. The person exercises reasonable diligence if the person maintains
29 reasonable routines for communicating significant information to the individual
30 conducting the transaction and there is reasonable compliance with the routines.
31 Reasonable diligence does not require an individual acting for the person to

1 communicate information unless the communication is part of the individual's regular
2 duties or the individual has reason to know of the transaction and that the transaction
3 would be materially affected by the information.

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

8 **Sec. 32.06.960. Effect of partnership agreement; nonwaivable provisions.**

9 (a) Except as otherwise provided in (b) of this section, relations between and among
10 the partners and between the partners and the partnership are governed by the
11 partnership agreement. To the extent the partnership agreement does not otherwise
12 provide, this chapter governs relations between and among the partners and between
13 the partners and the partnership.

14 (b) The partnership agreement may not

15 (1) vary the rights and duties under AS 32.06.970 except to eliminate
16 the duty to provide copies of statements to all of the partners;

17 (2) unreasonably restrict the right of access to records under
18 AS 32.06.403(b);

19 (3) eliminate the duty of loyalty under AS 32.06.404(b) or
20 32.06.603(b)(3), but

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

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

28 (4) unreasonably reduce the duty of care under AS 32.06.404(c) or
29 32.06.603(b)(3);

30 (5) eliminate the obligation of good faith and fair dealing under
31 AS 32.06.404(d), but the partnership agreement may prescribe the standards by which

1 the performance of the obligation is to be measured, if the standards are not manifestly
2 unreasonable;

3 (6) vary the power to dissociate as a partner under AS 32.06.602(a),
4 except to require the notice under AS 32.06.601(1) to be in writing;

5 (7) vary the right of a court to expel a partner in the events specified
6 in AS 32.06.601(5);

7 (8) vary the requirement to wind up the partnership business in cases
8 under AS 32.06.801(4), (5), or (6);

9 (9) vary the law applicable to a limited liability partnership under
10 AS 32.06.975(b); or

11 (10) restrict rights of third parties under this chapter.

12 **Sec. 32.06.965. Supplemental principles of law.** (a) Unless displaced by
13 particular provisions of this chapter, the principles of law and equity supplement this
14 chapter.

15 (b) If an obligation to pay interest arises under this chapter and the rate is not
16 specified, the rate is governed by AS 45.45.010.

17 **Sec. 32.06.970. Execution, filing, and recording of statements.** (a) A
18 statement may be filed with the department. A certified copy of a statement that is
19 filed in an office in another state may be filed with the department. Either filing has
20 the effect provided in this chapter with respect to partnership property located in or
21 transactions that occur in this state.

22 (b) A certified copy of a statement that has been filed with the department and
23 recorded in the office for recording transfers of real property has the effect provided
24 for recorded statements in this chapter. A recorded statement that is not a certified
25 copy of a statement filed with the department does not have the effect provided for
26 recorded statements in this chapter.

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

1 (d) A person authorized by this chapter to file a statement may amend or
 2 cancel the statement by filing an amendment or cancellation that names the
 3 partnership, identifies the statement, and states the substance of the amendment or
 4 cancellation.

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

10 (f) The department may collect a fee for filing or providing a certified copy
 11 of a statement.

12 **Sec. 32.06.975. Governing law.** (a) Except as otherwise provided in (b) of
 13 this section, the law of the jurisdiction where a partnership has its chief executive
 14 office governs the relations between and among the partners and between the partners
 15 and the partnership.

16 (b) The law of this state governs relations between and among the partners and
 17 between the partners and the partnership and the liability of partners for an obligation
 18 of a limited liability partnership.

19 **Sec. 32.06.985. Partnership subject to amendment or repeal of chapter.**
 20 A partnership governed by this chapter is subject to an amendment or repeal of this
 21 chapter.

22 **Article 11. General Provisions.**

23 **Sec. 32.06.990. Uniformity of application and construction.** This chapter
 24 shall be applied and construed to effectuate its general purpose to make uniform the
 25 law with respect to the subject of this chapter among states enacting it.

26 **Sec. 32.06.995. Definitions.** In this chapter, unless the context indicates
 27 otherwise,

- 28 (1) "business" includes a trade, an occupation, or a profession;
 29 (2) "commissioner" means the commissioner of commerce and
 30 economic development;
 31 (3) "debtor in bankruptcy" means a person who is the subject of

1 (A) an order for relief under 11 U.S.C. (Bankruptcy Code) or
2 a comparable order under a successor statute of general application; or

3 (B) a comparable order under federal, state, or foreign law
4 governing insolvency;

5 (4) "department" means the Department of Commerce and Economic
6 Development;

7 (5) "distribution" means a transfer of money or other property from a
8 partnership to a partner in the partner's capacity as a partner or to the partner's
9 transferee;

10 (6) "foreign limited liability partnership" means a partnership that

11 (A) is formed under laws other than the laws of this state; and

12 (B) has the status of a limited liability partnership under those
13 laws;

14 (7) "limited liability partnership" means a partnership that has filed a
15 statement of qualification under AS 32.06.911 and does not have a similar statement
16 in effect in another jurisdiction;

17 (8) "partnership" means an association of two or more persons to carry
18 on as co-owners a business for profit formed under AS 32.06.202, predecessor law, or
19 a comparable law of another jurisdiction;

20 (9) "partnership agreement" means the agreement, whether written, oral,
21 or implied, among the partners concerning the partnership, including amendments to
22 the partnership agreement;

23 (10) "partnership at will" means a partnership in which the partners
24 have not agreed to remain partners until the expiration of a definite term or the
25 completion of a particular undertaking;

26 (11) "partnership interest" or "partner's interest in the partnership"
27 means all of a partner's interests in the partnership, including the partner's transferable
28 interest and all management and other rights;

29 (12) "person" means an individual, corporation, business trust, estate,
30 trust, partnership, association, joint venture, government, governmental subdivision,
31 agency, or instrumentality, or any other legal or commercial entity;

1 (13) "property" means all property, including real, personal, mixed,
2 tangible, or intangible property, or an interest in property;

3 (14) "state" means a state of the United States, the District of
4 Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession
5 subject to the jurisdiction of the United States;

6 (15) "statement" means a statement of partnership authority under
7 AS 32.06.303, a statement of denial under AS 32.06.304, a statement of dissociation
8 under AS 32.06.704, a statement of dissolution under AS 32.06.805, a statement of
9 merger under AS 32.06.907, a statement of qualification under AS 32.06.911, a
10 statement of foreign qualification under AS 32.06.922, or an amendment or
11 cancellation of any of the foregoing;

12 (16) "transfer" includes an assignment, conveyance, lease, mortgage,
13 deed, and encumbrance.

14 **Sec. 32.06.997. Short title.** This chapter may be cited as the "Uniform
15 Partnership Act."

16 * **Sec. 3.** AS 32.11.890 is amended to read:

17 **Sec. 32.11.890. Rules for conversions and other cases not covered by**
18 **chapter.** In a case not provided for in this chapter, **including conversion of a**
19 **partnership to a limited partnership and conversion of a limited partnership to**
20 **a partnership**, the provisions of **AS 32.06** [AS 32.05] govern.

21 * **Sec. 4.** AS 32.05 is repealed.

22 * **Sec. 5. COURT RULES.** (a) AS 32.06.701(i), enacted by sec. 2 of this Act, changes

23 (1) Rule 79, Alaska Rules of Civil Procedure, by allowing a court to award
24 expert fees and expenses against certain parties, rather than awarding the costs allowed by
25 Rule 79;

26 (2) Rule 82, Alaska Rules of Civil Procedure, by allowing for attorney fees
27 that may be awarded against parties, including nonprevailing parties, that are different from
28 the fees allowed by Rule 82.

29 (b) AS 32.06.906(a)(4), enacted by sec. 2 of this Act, changes Rule 25(c), Alaska
30 Rules of Civil Procedure, by allowing certain substitutions of parties as a right without being
31 subject to any court discretion under Rule 25(c).

1 * **Sec. 6. APPLICABILITY.** (a) Before January 1, 2003, secs. 1 - 3 of this Act do not
2 apply to a partnership or limited liability partnership unless the partnership or limited liability
3 partnership is formed

4 (1) on or after January 1, 1998, but this paragraph does not apply to a
5 partnership or limited liability partnership that is continuing the business of a partnership or
6 limited liability partnership dissolved under AS 32.05; or

7 (2) before January 1, 1998, and the partnership or limited liability partnership
8 elects, under (c) of this section, to be governed by secs. 1 - 3 of this Act.

9 (b) On and after January 1, 2003, secs. 1 - 3 of this Act apply to all partnerships and
10 limited liability partnerships.

11 (c) On or after January 1, 1998, and before January 1, 2003, partnerships and limited
12 liability partnerships may voluntarily elect, in the manner provided in its partnership
13 agreement or by law for amending the partnership agreement, to be governed by secs. 1 - 3
14 of this Act. The provisions of secs. 1 - 3 of this Act relating to the liability of those
15 partnership's partners to third parties do not apply to limit the partners' liability to a third
16 party who does business with the partnership within one year preceding the partnership's
17 election to be governed by secs. 1 - 3 of this Act unless the third party knows or has received
18 a notification of the partnership's election to be governed by secs. 1 - 3 of this Act; the one-
19 year period may not extend back to before January 1, 1998.

20 (d) If, under (a) or (b) of this section, secs. 1 - 3 of this Act apply to a partnership
21 or limited partnership, AS 09.40.240, as amended by this Act, AS 32.05, and AS 32.11.890,
22 as amended by this Act, do not apply to the partnership or limited partnership.

23 (e) In this section, "limited liability partnership" and "partnership" have the meanings
24 given in AS 32.06.995, enacted by sec. 2 of this Act.

25 * **Sec. 7. SAVINGS CLAUSE.** Sections 1 - 5 of this Act do not affect an action or
26 proceeding begun or right accrued before January 1, 1998.

27 * **Sec. 8.** AS 32.06.701(i) and 32.06.906(a)(4), enacted by sec. 2 of this Act, take effect
28 only if sec. 5 of this Act receives the two-thirds majority vote of each house required by
29 art. IV, sec. 15, Constitution of the State of Alaska.

30 * **Sec. 9.** Section 4 of this Act takes effect January 1, 2003.

31 * **Sec. 10.** Except for sec. 4 of this Act, this Act takes effect January 1, 1998.