

SENATE BILL NO. 193**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY SENATOR RODEY****Introduced: 3/13/91
Referred: Judiciary****A BILL****FOR AN ACT ENTITLED**

**1 "An Act relating to limited partnerships; amending Alaska Rule of Civil Procedure 8; and
2 providing for an effective date."**

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

4 * Section 1. AS 32 is amended by adding a new chapter to read:

5 CHAPTER 11. UNIFORM LIMITED PARTNERSHIP ACT.

6 ARTICLE 1. FORMATION AND CERTIFICATE OF LIMITED PARTNERSHIP.

**7 Sec. 32.11.010. CERTIFICATE OF LIMITED PARTNERSHIP. (a) In order to form
8 a limited partnership, two or more persons shall execute a certificate of limited partnership. The
9 certificate shall be filed with the Department of Commerce and Economic Development and must
10 set out**

- 11 (1) the name of the limited partnership;**
12 (2) the general character of the business of the limited partnership;
**13 (3) the address of the office and the name and address of the agent for service
14 of process required to be maintained by AS 32.11.830;**

1 (4) the name and business address of each partner, specifying separately the
2 general partners and limited partners;

3 (5) the amount of cash and a description and statement of the agreed value of the
4 other property or services

5 (A) contributed by each partner; and

6 (B) that each partner has agreed to contribute in the future;

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

9 (7) any power of a limited partner to grant the right to become a limited partner
10 to an assignee of a part of the limited partner's partnership interest, and the terms and conditions
11 of the power;

12 (8) if agreed upon, the time at which or the events on the happening of which a
13 partner may terminate the partner's membership in the limited partnership, the amount of or the
14 method of determining the distribution to which the partner may be entitled respecting the
15 partner's partnership interest, and the terms and conditions of the termination and distribution;

16 (9) any right of a partner to receive distributions of property, including cash, from
17 the limited partnership;

18 (10) any right of a partner to receive, or of a general partner to make,
19 distributions to a partner that include a return of all or a part of the partner's contribution;

20 (11) any time at which or events upon the happening of which the limited
21 partnership is to be dissolved and its affairs wound up;

22 (12) any right of the remaining general partners to continue the business on the
23 happening of an event of withdrawal of a general partner; and

24 (13) other matters the partners determine to include.

25 (b) A limited partnership is formed at the time of the filing of the certificate of limited
26 partnership with the department or at a later time specified in the certificate of limited partnership
27 if, in either case, there has been substantial compliance with the requirements of this section.

28 Sec. 32.11.020. AMENDMENT TO CERTIFICATE. (a) A certificate of limited
29 partnership is amended by filing a certificate of amendment with the department. The certificate
30 must set out

31 (1) the name of the limited partnership;

1 (2) the date of filing the certificate to be amended; and

2 (3) the amendment to the certificate.

3 (b) Within 30 days after the following events, an amendment to a certificate of limited
4 partnership reflecting the occurrence of the event or events shall be filed:

5 (1) a change in the amount or character of the contribution of a partner, or in a
6 partner's obligation to make a contribution;

7 (2) the admission of a new general partner;

8 (3) the withdrawal of a general partner; or

9 (4) the continuation of the business under AS 32.11.370 after an event of
10 withdrawal of a general partner.

11 (c) A general partner who becomes aware that a statement in a certificate of limited
12 partnership was false when made or that an arrangement or other fact described has changed,
13 making the certificate inaccurate, shall promptly amend the certificate.

14 (d) A certificate of limited partnership may be amended at any time for any other proper
15 purpose the general partners determine.

16 (e) A person may not be held liable because an amendment to a certificate of limited
17 partnership has not been filed to reflect the occurrence of an event referred to in (b) of this
18 section if the amendment is filed within the 30-day period specified in (b) of this section.

19 (f) A restated certificate of limited partnership may be executed and filed in the same
20 manner as a certificate of amendment.

21 Sec. 32.11.030. CANCELLATION OF CERTIFICATE. A certificate of limited
22 partnership shall cancelled upon the dissolution and the commencement of winding up of the
23 partnership or at any other time there are no limited partners. A certificate of cancellation shall
24 be filed with the department and must set out

25 (1) the name of the limited partnership;

26 (2) the date of filing of its certificate of limited partnership;

27 (3) the reason for filing the certificate of cancellation;

28 (4) the effective date, which must be a date certain, of cancellation if it is not to
29 be effective upon the filing of the certificate; and

30 (5) other information the general partners filing the certificate determine.

31 Sec. 32.11.040. EXECUTION OF CERTIFICATES. (a) Each certificate required by

1 AS 32.11.010 - 32.11.090 to be filed with the department shall be executed in the following
2 manner:

3 (1) an original certificate of limited partnership shall be signed by all partners
4 named in the certificate;

5 (2) a certificate of amendment shall be signed by a least one general partner and
6 by each other partner designated in the certificate as a new partner or whose contribution is
7 described as having been increased; and

8 (3) a certificate of cancellation shall be signed by all general partners.

9 (b) A person may sign a certificate by an attorney-in-fact, but a power of attorney to sign
10 a certificate relating to the admission, or increased contribution, of a partner must specifically
11 describe the admission or increase.

12 (c) The execution of a certificate by a general partner constitutes an affirmation under
13 the penalty of false swearing that the facts stated are true.

14 Sec. 32.11.050. EXECUTION BY JUDICIAL ACT. If a person required by
15 AS 32.11.040 to execute a certificate fails or refuses to do so, a person who is adversely affected
16 by the failure or refusal may petition the superior court to direct the execution of the certificate.
17 If the court finds that it is proper for the certificate to be executed and that a person so
18 designated has failed or refused to execute the certificate, it shall order the department to record
19 an appropriate certificate.

20 Sec. 32.11.060. FILING WITH DEPARTMENT. (a) Two signed copies of the
21 certificate of limited partnership and of a certificate of amendment or cancellation, or of a
22 judicial decree of amendment or cancellation, shall be delivered to the department. A person
23 who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's
24 authority as a prerequisite to filing. Unless the department finds that a certificate does not
25 conform to law, upon receipt of all filing fees required by law the department shall

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

28 (2) file one duplicate original in the department's office; and

29 (3) return the other duplicate original to the person who filed it or the person's
30 representative.

31 (b) Upon the filing of a certificate of amendment or judicial decree of amendment with

1 the department, the certificate of limited partnership is amended, and upon the effective date of
2 a certificate of cancellation or a judicial decree of cancellation, the certificate of limited
3 partnership is cancelled.

4 Sec. 32.11.070. LIABILITY FOR FALSE STATEMENT IN CERTIFICATE. If a
5 certificate of limited partnership or certificate of amendment or cancellation contains a false
6 statement, one who suffers loss by reliance on the statement may recover damages for the loss
7 from

8 (1) a person who executes the certificate, or causes another to execute the
9 certificate on the person's behalf, and knew, and a general partner who knew or should have
10 known, the statement to be false at the time the certificate was executed; and

11 (2) a general partner who thereafter knows or should have known that an
12 arrangement or other fact described in the certificate has changed, making the statement
13 inaccurate in any respect within a sufficient time before the statement was relied upon reasonably
14 to have enabled that general partner to cancel or amend the certificate, or to file a petition for
15 its cancellation or amendment under AS 32.11.050.

16 Sec. 32.11.080. SCOPE OF NOTICE. The fact that a certificate of limited partnership
17 is on file with the department is notice that the partnership is a limited partnership and the
18 persons designated in the certificate as limited partners are limited partners, but it is not notice
19 of any other fact.

20 Sec. 32.11.090. DELIVERY OF CERTIFICATES TO LIMITED PARTNERS. Upon the
21 return by the department under AS 32.11.060 of a certificate marked "Filed," the general partners
22 shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate
23 of amendment or cancellation to each limited partner unless the partnership agreement provides
24 otherwise.

25 ARTICLE 2. LIMITED PARTNERS.

26 Sec. 32.11.100. ADMISSION OF LIMITED PARTNERS. (a) After the filing of a
27 limited partnership's original certificate of limited partnership, a person may be admitted as an
28 additional limited partner

29 (1) in the case of a person acquiring a partnership interest directly from the
30 limited partnership, upon compliance with the partnership agreement or, if the partnership
31 agreement does not provide, upon the written consent of all partners; and

1 (2) in the case of an assignee of a partnership interest of a partner who has the
2 power under AS 32.11.350 to grant the assignee the right to become a limited partner, upon the
3 exercise of that power and compliance with conditions limiting the grant or exercise of the
4 power.

5 (b) In each case under (a) of this section, the person acquiring the partnership interest
6 becomes a limited partner only upon amendment of the certificate of limited partnership
7 reflecting that fact.

8 Sec. 32.11.110. VOTING. Subject to AS 32.11.120, the partnership agreement may grant
9 to all or a specified group of the limited partners the right to vote on a per capita or other basis
10 on any matter.

11 Sec. 32.11.120. LIABILITY TO THIRD PARTIES. (a) Except as provided in (d) of this
12 section, a limited partner is not liable for the obligations of a limited partnership unless the
13 limited partner is also a general partner or, in addition to the exercise of the limited partner's
14 rights and powers as a limited partner, the limited partner participates in the control of the
15 business. However, if the limited partner's participation in the control of the business is not
16 substantially the same as the exercise of the powers of a general partner, the limited partner is
17 liable only to persons who transact business with the limited partnership with actual knowledge
18 of the limited partner's participation in control.

19 (b) A limited partner does not participate in the control of the business within the
20 meaning of (a) of this section solely by doing one or more of the following:

21 (1) being a contractor for or an agent or employee of the limited partnership or
22 of a general partner;

23 (2) consulting with and advising a general partner with respect to the business of
24 the limited partnership;

25 (3) acting as surety for the limited partnership;

26 (4) approving or disapproving an amendment to the partnership agreement; or

27 (5) voting on one or more of the following matters:

28 (A) the dissolution and winding up of the limited partnership;

29 (B) the sale, exchange, lease, mortgage, pledge, or other transfer of all or
30 substantially all of the assets of the limited partnership other than in the ordinary course
31 of its business;

1 (C) the incurrence of indebtedness by the limited partnership other than
2 in the ordinary course of its business;

3 (D) a change in the nature of the business; or

4 (E) the removal of a general partner.

5 (c) The enumeration in (b) of this section does not mean that the possession or exercise
6 of any other powers by a limited partner constitutes participation by the limited partner in the
7 business of the limited partnership.

8 (d) A limited partner who knowingly permits the limited partner's name to be used in
9 the name of the limited partnership, except under circumstances permitted by AS 32.11.810(2),
10 is liable to creditors who extend credit to the limited partnership without actual knowledge that
11 the limited partner is not a general partner.

12 Sec. 32.11.130. ERRONEOUS BELIEF IN STATUS AS A LIMITED PARTNER. (a)
13 Except as provided in (b) of this section, a person who makes a contribution to a business
14 enterprise and erroneously but in good faith believes that the person has become a limited partner
15 in the enterprise is not a general partner in the enterprise and is not bound by its obligations by
16 reason of making the contribution, receiving distributions from the enterprise, or exercising the
17 rights of a limited partner, if, on ascertaining the mistake, the person

18 (1) causes an appropriate certificate of limited partnership or a certificate of
19 amendment to be executed and filed; or

20 (2) withdraws from future equity participation in the enterprise by executing and
21 filing in the office of the commissioner a certificate declaring withdrawal under this section.

22 (b) A person who makes a contribution of the kind described in (a) of this section is
23 liable as a general partner to a third party who transacts business with the enterprise before (1)
24 the person withdraws and an appropriate certificate is filed to show withdrawal, or (2) an
25 appropriate certificate is filed to show the person's status as a limited partner and, in the case of
26 an amendment, after expiration of the 30-day period for filing an amendment relating to the
27 person as a limited partner under AS 32.11.020, but in either case under (1) or (2) only if the
28 third party actually believed in good faith that the person was a general partner at the time of the
29 transaction.

30 Sec. 32.11.140. INFORMATION. Each limited partner has the right to

31 (1) inspect and copy the partnership records required to be maintained by

1 AS 32.11.840; and

2 (2) obtain from the general partners from time to time upon reasonable demand

3 (A) true and full information regarding the state of the business and
4 financial condition of the limited partnership;

5 (B) promptly after it becomes available, a copy of the limited partnership's
6 federal, state, and local income tax returns for each year; and

7 (C) other information regarding the affairs of the limited partnership as
8 is just and reasonable.

9 ARTICLE 3. GENERAL PARTNERS.

10 Sec. 32.11.150. ADMISSION OF ADDITIONAL GENERAL PARTNERS. After the
11 filing of a limited partnership's original certificate of limited partnership, additional general
12 partners may be admitted as provided in writing in the partnership agreement or, if the
13 partnership agreement does not provide in writing for the admission of additional general
14 partners, with the written consent of all partners.

15 Sec. 32.11.160. EVENTS OF WITHDRAWAL. Except as approved by the specific
16 written consent of all partners at the time, a person ceases to be a general partner of a limited
17 partnership upon the happening of any of the following events:

18 (1) the general partner withdraws from the limited partnership under
19 AS 32.11.250;

20 (2) the general partner ceases to be a member of the limited partnership under
21 AS 32.11.330;

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

24 (4) unless otherwise provided in writing in the partnership agreement, the general
25 partner

26 (A) makes an assignment for the benefit of creditors;

27 (B) files a voluntary petition in bankruptcy;

28 (C) is adjudicated a bankrupt or insolvent;

29 (D) files a petition or answer seeking for the general partner
30 reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar
31 relief under a statute, law, or regulation;

1 (E) files an answer or other pleading admitting or failing to contest the
2 material allegations of a petition filed against the general partner in a proceeding of the
3 nature of those specified in (A) - (D) of this paragraph; or

4 (F) seeks, consents to, or acquiesces in the appointment of a trustee,
5 receiver, or liquidator of the general partner or of all or a substantial part of the general
6 partner's properties;

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

15 (6) in the case of a general partner who is a natural person,

16 (A) the general partner's death; or

17 (B) the entry of an order by a court of competent jurisdiction adjudicating
18 the general partner incompetent to manage the general partner's person or the general
19 partner's estate;

20 (7) in the case of a general partner who is acting as a general partner by virtue
21 of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new
22 trustee;

23 (8) in the case of a general partner that is a separate partnership, the dissolution
24 and commencement of winding up of the separate partnership;

25 (9) in the case of a general partner that is a corporation, the filing of a certificate
26 of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

27 (10) in the case of an estate, the distribution by the fiduciary of the estate's entire
28 interest in the partnership.

29 Sec. 32.11.170. GENERAL POWERS AND LIABILITIES. (a) Except as provided in
30 this chapter or in the partnership agreement, a general partner of a limited partnership has the
31 rights and powers and is subject to the restrictions of a partner in a partnership without limited

1 partners.

2 (b) Except as provided in this chapter, a general partner of a limited partnership has the
3 liabilities of a partner in a partnership without limited partners to persons other than the
4 partnership and the other partners. Except as provided in this chapter or in the partnership
5 agreement, a general partner of a limited partnership has the liabilities of a partner in a
6 partnership without limited partners to the partnership and to the other partners.

7 Sec. 32.11.180. CONTRIBUTIONS BY GENERAL PARTNER; PERSON BOTH
8 LIMITED AND GENERAL PARTNER. A general partner of a limited partnership may make
9 contributions to the partnership and share in the profits and losses of, and in distributions from,
10 the limited partnership as a general partner. A general partner also may make contributions to
11 and share in profits, losses, and distributions as a limited partner. A person who is both a general
12 partner and a limited partner has the rights and powers, and is subject to the restrictions and
13 liabilities, of a general partner and, except as provided in the partnership agreement, also has the
14 powers, and is subject to the restrictions, of a limited partner to the extent of the person's
15 participation in the partnership as a limited partner.

16 Sec. 32.11.190. VOTING. The partnership agreement may grant to all or certain
17 identified general partners the right to vote, on a per capita or any other basis, separately or with
18 all or any class of the limited partners, on any matter.

19 ARTICLE 4. FINANCE.

20 Sec. 32.11.200. FORM OF CONTRIBUTION. The contribution of a partner may be in
21 cash, property, or services rendered, or a promissory note or other obligation to contribute cash
22 or property or to perform services.

23 Sec. 32.11.210. LIABILITY FOR CONTRIBUTION. (a) Except as provided in the
24 certificate of limited partnership, a partner is obligated to the limited partnership to perform an
25 enforceable promise to contribute cash or property or to perform services, even if the partner is
26 unable to perform because of death, disability, or other reason. If a partner does not make the
27 required contribution of property or services, the partner is obligated at the option of the limited
28 partnership to contribute cash equal to that portion of the value, as stated in the certificate of
29 limited partnership of the stated contribution that has not been made.

30 (b) Unless otherwise provided in the partnership agreement, the obligation of a partner
31 to make a contribution or return money or other property paid or distributed in violation of this

1 chapter may be compromised only by consent of all partners. Notwithstanding the compromise,
2 a creditor of a limited partnership who extends credit or otherwise acts in reliance on that
3 obligation after the partner signs a writing that reflects the obligation, and before the amendment
4 or cancellation to reflect the compromise, may enforce the original obligation.

5 Sec. 32.11.220. SHARING OF PROFITS AND LOSSES. The profits and losses of a
6 limited partnership shall be allocated among the partners, and among classes of partners, in the
7 manner provided in writing in the partnership agreement. If the partnership agreement does not
8 specify in writing, profits and losses shall be allocated on the basis of the value, as stated in the
9 certificate of limited partnership, of the contributions made by each partner to the extent they
10 have been received by the partnership and have not been returned.

11 Sec. 32.11.230. SHARING OF DISTRIBUTIONS. Distributions of cash or other assets
12 of a limited partnership shall be allocated among the partners and among classes of partners in
13 the manner provided in writing in the partnership agreement. If the partnership agreement does
14 not specify in writing, distributions shall be made on the basis of the value, as stated in the
15 certificate of limited partnership of the contributions made by each partner to the extent they have
16 been received by the partnership and have not been returned.

17 ARTICLE 5. DISTRIBUTIONS AND WITHDRAWAL.

18 Sec. 32.11.240. INTERIM DISTRIBUTIONS. Except as provided in AS 32.11.240 -
19 32.11.310, a partner is entitled to receive distributions from a limited partnership before the
20 partner's withdrawal from the limited partnership and before the dissolution and winding up of
21 the partnership

22 (1) to the extent and at the times or upon the happening of the events specified
23 in the partnership agreement; and

24 (2) if a distribution constitutes a return of a part of the partner's contribution
25 under AS 32.11.310(c), to the extent and at the times or upon the happening of the events
26 specified in the certificate of limited partnership.

27 Sec. 32.11.250. WITHDRAWAL OF GENERAL PARTNER. A general partner may
28 withdraw from a limited partnership at any time by giving written notice to the other partners,
29 but if the withdrawal violates the partnership agreement, the limited partnership may recover from
30 the withdrawing general partner damages for breach of the partnership agreement and offset the
31 damages against the amount otherwise distributable to the general partner.

1 **Sec. 32.11.260. WITHDRAWAL OF LIMITED PARTNER.** A limited partner may
2 withdraw from a limited partnership at the time or upon the happening of events specified in the
3 certificate of limited partnership and in accordance with the partnership agreement. If the
4 certificate does not specify the time or the events upon the happening of which a limited partner
5 may withdraw or a definite time for the dissolution and winding up of the limited partnership,
6 a limited partner may withdraw upon not less than six months' prior written notice to each
7 general partner at the general partner's address on the books of the limited partnership at its
8 office in this state.

9 **Sec. 32.11.270. DISTRIBUTION UPON WITHDRAWAL.** Except as provided in
10 AS 32.11.240 - 32.11.310, upon withdrawal a withdrawing partner is entitled to receive a
11 distribution to which the withdrawing partner is entitled under the partnership agreement and, if
12 not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within
13 a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the
14 limited partnership as of the date of withdrawal based upon the withdrawing partner's right to
15 share in distributions from the limited partnership.

16 **Sec. 32.11.280. DISTRIBUTION IN KIND.** Except as provided in the certificate of
17 limited partnership, a partner, regardless of the nature of the partner's contribution, does not have
18 the right to demand and receive a distribution from a limited partnership in a form other than
19 cash. Except as provided in writing in the partnership agreement, a partner may not be
20 compelled to accept a distribution of an asset in kind from a limited partnership to the extent that
21 the percentage of the asset distributed to the partner exceeds a percentage of that asset that is
22 equal to the percentage in which the partner shares in distributions from the limited partnership.

23 **Sec. 32.11.290. RIGHT TO DISTRIBUTION.** At the time a partner becomes entitled
24 to receive a distribution, the partner has the status of, and is entitled to all remedies available to,
25 a creditor of the limited partnership with respect to the distribution.

26 **Sec. 32.11.300. LIMITATIONS ON DISTRIBUTION.** A partner may not receive a
27 distribution from a limited partnership to the extent that, after giving effect to the distribution,
28 all liabilities of the limited partnership, other than liabilities to partners on account of their
29 partnership interest, exceed the fair value of the partnership assets.

30 **Sec. 32.11.310. LIABILITY UPON RETURN OF CONTRIBUTION.** (a) If a partner
31 has received the return of a part of the partner's contribution without violation of the partnership

1 agreement or this chapter, the partner is liable to the limited partnership for a period of one year
2 thereafter for the amount of the returned contribution, but only to the extent necessary to
3 discharge the limited partnership's liabilities to creditors who extended credit to the limited
4 partnership during the period the contribution was held by the partnership.

5 (b) If a partner has received the return of a part of the partner's contribution in violation
6 of the partnership agreement or this chapter, the partner is liable to the limited partnership for
7 a period of six years thereafter for the amount of the contribution wrongfully returned.

8 (c) A partner receives a return of the partner's contribution to the extent that a
9 distribution to the partner reduces the partner's share of the fair value of the net assets of the
10 limited partnership below the value, as set out in the certificate of limited partnership, of the
11 partner's contribution that has not been distributed to the partner.

12 ARTICLE 6. ASSIGNMENT OF PARTNERSHIP INTERESTS.

13 Sec. 32.11.320. NATURE OF PARTNERSHIP INTEREST. A partnership interest is
14 personal property.

15 Sec. 32.11.330. ASSIGNMENT OF PARTNERSHIP INTEREST. Except as provided
16 in the partnership agreement, a partnership interest is assignable in whole or in part. An
17 assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee
18 to become or to exercise the rights of a partner. An assignment entitles the assignee to receive,
19 to the extent assigned, only the distribution to which the assignor would be entitled. Except as
20 provided in the partnership agreement, a partner ceases to be a partner upon assignment of all
21 of the partner's partnership interest.

22 Sec. 32.11.340. RIGHTS OF CREDITOR. On application to a court of competent
23 jurisdiction by a judgment creditor of a partner, the court may charge the partnership interest of
24 the partner with payment of the unsatisfied amount of the judgment with interest. To the extent
25 charged, the judgment creditor has only the rights of an assignee of the partnership interest. This
26 chapter does not deprive a partner of the benefit of an exemption law applicable to the partner's
27 partnership interest.

28 Sec. 32.11.350. RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER. (a) An
29 assignee of a partnership interest, including an assignee of a general partner, may become a
30 limited partner if and to the extent that

31 (1) the assignor gives the assignee that right in accordance with authority

1 described in the certificate of limited partnership; or

2 (2) all other partners consent.

3 (b) An assignee who has become a limited partner has, to the extent assigned, the rights
4 and powers, and is subject to the restrictions and liabilities, of a limited partner under the
5 partnership agreement and this chapter. An assignee who becomes a limited partner also is liable
6 for the obligations of the assignee's assignor to make and return contributions as provided in
7 AS 32.11.200 - 32.11.310. However, the assignee is not obligated for liabilities unknown to the
8 assignee at the time the assignee became a limited partner and that could not be ascertained from
9 the certificate of limited partnership.

10 (c) If an assignee of a partnership interest becomes a limited partner, the assignor is not
11 released from the assignor's liability to the limited partnership under AS 32.11.070 and
12 32.11.210.

13 Sec. 32.11.360. POWER OF ESTATE OF DECEASED OR INCOMPETENT PARTNER.

14 If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner
15 to be incompetent to manage the partner's person or the partner's property, the partner's executor,
16 administrator, guardian, conservator, or other legal representative may exercise all of the partner's
17 rights for the purpose of settling the partner's estate or administering the partner's property,
18 including any power the partner had to give an assignee the right to become a limited partner.
19 If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of
20 that partner may be exercised by its legal representative or successor.

21 ARTICLE 7. DISSOLUTION.

22 Sec. 32.11.370. NONJUDICIAL DISSOLUTION. A limited partnership is dissolved and
23 its affairs shall be wound up upon the happening of the first to occur of the following:

24 (1) at the time specified in the certificate of limited partnership;

25 (2) upon the happening of events specified in the certificate of limited partnership;

26 (3) written consent of all partners;

27 (4) an event of withdrawal of a general partner unless at the time there is at least
28 one other general partner and the certificate of limited partnership permits the business of the
29 limited partnership to be carried on by the remaining general partner and that partner does so,
30 but the limited partnership is not dissolved and is not required to be wound up by reason of an
31 event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to

1 continue the business of the limited partnership and to the appointment of one or more additional
2 general partners if necessary or desired; or

3 (5) entry of a decree of judicial dissolution under AS 32.11.380.

4 Sec. 32.11.380. JUDICIAL DISSOLUTION. On application by or for a partner the
5 superior court may decree dissolution of a limited partnership whenever it is not reasonably
6 practicable to carry on the business in conformity with the partnership agreement.

7 Sec. 32.11.390. WINDING UP. Except as provided in the partnership agreement, the
8 general partners who have not wrongfully dissolved a limited partnership or, if there are no
9 general partners, the limited partners, may wind up the limited partnership's affairs; but the
10 superior court may wind up the limited partnership's affairs upon application of a partner, a
11 partner's legal representative, or assignee.

12 Sec. 32.11.400. DISTRIBUTION OF ASSETS. Upon the winding up of a limited
13 partnership, the assets shall be distributed as follows:

14 (1) to creditors, including partners who are creditors, to the extent permitted by
15 law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions
16 to partners under AS 32.11.240 or 32.11.270;

17 (2) except as provided in the partnership agreement, to partners and former
18 partners in satisfaction of liabilities for distributions under AS 32.11.240 or 32.11.270; and

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

22 ARTICLE 8. FOREIGN LIMITED PARTNERSHIPS.

23 Sec. 32.11.410. LAW GOVERNING. Subject to the Constitution of the State of Alaska,

24 (1) the laws of the state under which a foreign limited partnership is organized
25 govern its organization and internal affairs and the liability of its limited partners; and

26 (2) a foreign limited partnership may not be denied registration by reason of a
27 difference between those laws and the laws of this state.

28 Sec. 32.11.420. REGISTRATION. Before transacting business in this state, a foreign
29 limited partnership shall register with the department. In order to register, a foreign limited
30 partnership shall submit to the department, in duplicate, an application for registration as a
31 foreign limited partnership, signed and sworn to by a general partner and setting out

1 (1) the name of the foreign limited partnership and, if different, the name under
2 which it proposes to register and transact business in this state;

3 (2) the state and date of its formation;

4 (3) the general character of the business it proposes to transact in this state;

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

9 (5) a statement that the commissioner is appointed the agent of the foreign limited
10 partnership for service of process if an agent has not been appointed under (3) of this section or,
11 if appointed, the agent's authority has been revoked or if the agent cannot be found or served
12 with the exercise of reasonable diligence;

13 (6) the address of the office required to be maintained in the state of its
14 organization by the laws of that state or, if not so required, of the principal office of the foreign
15 limited partnership; and

16 (7) if the certificate of limited partnership filed in the foreign limited partnership's
17 state of organization is not required to include it, the following information:

18 (A) the names and business addresses of each partner; and

19 (B) the capital contribution of each limited partner.

20 Sec. 32.11.430. ISSUANCE OF REGISTRATION. (a) If the department finds that an
21 application for registration conforms to law and all requisite fees have been paid, the department
22 shall

23 (1) endorse on the application the word "Filed," and the month, day, and year of
24 the filing;

25 (2) file in the department a duplicate original of the application; and

26 (3) issue a certificate of registration to transact business in this state.

27 (b) The certificate of registration, together with a duplicate original of the application,
28 shall be returned to the person who filed the application or the person's representative.

29 Sec. 32.11.440. NAME. A foreign limited partnership may register with the department
30 under any name, whether or not it is the name under which it is registered in its state of
31 organization, that includes without abbreviation the words "limited partnership" and that could

1 be registered by a domestic limited partnership.

2 Sec. 32.11.450. CHANGES AND AMENDMENTS. If a statement in the application for
3 registration of a foreign limited partnership was false when made or arrangements or other facts
4 described have changed, making the application inaccurate, the foreign limited partnership shall
5 promptly file with the department a certificate, signed and sworn to by a general partner,
6 correcting the statement.

7 Sec. 32.11.460. CANCELLATION OF REGISTRATION. A foreign limited partnership
8 may cancel its registration by filing with the department a certificate of cancellation signed and
9 sworn to by a general partner. A cancellation does not terminate the authority of the
10 commissioner to accept service of process on the foreign limited partnership with respect to
11 causes of action arising out of the transactions of business in this state.

12 Sec. 32.11.470. TRANSACTION OF BUSINESS WITHOUT REGISTRATION. (a) A
13 foreign limited partnership transacting business in this state may not maintain an action, suit, or
14 proceeding in a court of this state until it has registered in this state.

15 (b) The failure of a foreign limited partnership to register in this state does not impair
16 the validity of a contract or act of the foreign limited partnership or prevent the foreign limited
17 partnership from defending an action, suit, or proceeding in a court of this state.

18 (c) A limited partner of a foreign limited partnership is not liable as a general partner of
19 the foreign limited partnership solely by reason of having transacted business in this state without
20 registration.

21 (d) A foreign limited partnership, by transacting business in this state without registration,
22 appoints the commissioner as its agent for service of process with respect to causes of action
23 arising out of the transaction of business in this state.

24 Sec. 32.11.480. ACTION BY DEPARTMENT. The department may bring an action to
25 restrain a foreign limited partnership from transacting business in this state in violation of
26 AS 32.11.410 - 32.11.480.

27 ARTICLE 9. DERIVATIVE ACTIONS.

28 Sec. 32.11.490. RIGHT OF ACTION. A limited partner may bring an action in the right
29 of a limited partnership to recover a judgment in its favor if general partners with authority to
30 do so have refused to bring the action or if an effort to cause those general partners to bring the
31 action is not likely to succeed.

1 **Sec. 32.11.500. PROPER PLAINTIFF.** In a derivative action, the plaintiff must be a
2 partner at the time of bringing the action and

3 (1) must have been a partner at the time of the transaction of which the plaintiff
4 complains; or

5 (2) the plaintiff's status as a partner must have devolved upon the plaintiff by
6 operation of law or under the terms of the partnership agreement from a person who was a
7 partner at the time of the transaction.

8 **Sec. 32.11.510. PLEADING.** In a derivative action, the complaint must set out with
9 particularity the effort of the plaintiff to secure initiation of the action by a general partner or the
10 reasons for not making the effort.

11 **Sec. 32.11.520. EXPENSES.** If a derivative action is successful, in whole or in part, or
12 if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of
13 an action or claim, and if the plaintiff is awarded attorney fees or costs, the court shall direct the
14 plaintiff to remit to the limited partnership the portion of the recovery that remains after
15 deduction of the attorney fees and costs awarded to the plaintiff.

16 **ARTICLE 10. GENERAL PROVISIONS.**

17 **Sec. 32.11.800. CONSTRUCTION AND APPLICATION.** This chapter shall be so
18 applied and construed to effectuate its general purpose to make uniform the law with respect to
19 the subject of this chapter among states enacting it.

20 **Sec. 32.11.810. NAME.** The name of a limited partnership as set out in its certificate
21 of limited partnership

22 (1) must contain without abbreviation the words "limited partnership";

23 (2) may not contain the name of a limited partner unless

24 (A) it is also the name of a general partner or the corporate name of a
25 corporate general partner; or

26 (B) the business of the limited partnership had been carried on under that
27 name before the admission of that limited partner;

28 (3) may not contain a word or phrase indicating or implying that it is organized
29 other than for a purpose stated in its certificate of limited partnership; and

30 (4) may not be the same as, or deceptively similar to, the name of a corporation
31 or limited partnership organized under the laws of this state or licensed or registered as a foreign

1 corporation or limited partnership in this state.

2 Sec. 32.11.820. RESERVATION OF NAME. (a) The exclusive right to the use of a
3 name may be reserved by

4 (1) a person intending to organize a limited partnership under this chapter and to
5 adopt that name;

6 (2) a domestic limited partnership or a foreign limited partnership registered in
7 this state that, in either case, intends to adopt that name;

8 (3) a foreign limited partnership intending to register in this state and adopt that
9 name; or

10 (4) a person intending to organize a foreign limited partnership and intending to
11 have it register in this state and adopt that name.

12 (b) The reservation shall be made by filing with the department an application, executed
13 by the applicant, to reserve a specified name. If the department finds that the name is available
14 for use by a domestic or foreign limited partnership, and not a reserved or registered name under
15 AS 10.35, the department shall reserve the name for the exclusive use of the applicant for a
16 period of 120 days. Once having reserved a name, the same applicant may not again reserve the
17 same name until more than 60 days after the expiration of the last 120-day period for which that
18 applicant reserved that name. The right to the exclusive use of a reserved name may be
19 transferred to another person by filing with the department a notice of the transfer executed by
20 the applicant for whom the name was reserved and specifying the name and address of the
21 transferee.

22 Sec. 32.11.830. SPECIFIED OFFICE AND AGENT. A limited partnership shall
23 continuously maintain in this state

24 (1) an office, which may but need not be a place of its business in this state, at
25 which shall be kept the records required by AS 32.11.840 to be maintained; and

26 (2) an agent for service of process on the limited partnership, which agent must
27 be an individual resident of this state, a domestic corporation, or a foreign corporation authorized
28 to do business in this state.

29 Sec. 32.11.840. RECORDS TO BE KEPT. (a) A limited partnership shall keep at the
30 office referred to in AS 32.11.830(1) the following:

31 (1) a current list of the full name and last known business address of each partner;

1 (2) a copy of the certificate of limited partnership and all certificates of
2 amendment to them, together with executed copies of a power of attorney under which a
3 certificate has been executed;

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

6 (4) copies of a then effective written partnership agreement and of a financial
7 statement of the limited partnership for the three most recent years.

8 (b) Records kept under this section are subject to inspection and copying at the
9 reasonable request and at the expense of a partner during ordinary business hours.

10 Sec. 32.11.850. NATURE OF BUSINESS. A limited partnership may carry on business
11 that a partnership without limited partners may carry on.

12 Sec. 32.11.860. BUSINESS TRANSACTIONS OF PARTNER AND PARTNERSHIP.
13 Except as provided in the partnership agreement, a partner may lend money to and transact other
14 business with the limited partnership and, subject to other applicable law, has the same rights and
15 obligations as a person who is not a partner.

16 Sec. 32.11.890. RULES FOR CASES NOT COVERED BY CHAPTER. In a case not
17 provided for in this chapter, the provisions of AS 32.05 govern.

18 Sec. 32.11.900. DEFINITIONS. In this chapter, unless the context otherwise requires

19 (1) "certificate of limited partnership" means the certificate referred to in
20 AS 32.11.010 and the certificate as amended or restated;

21 (2) "commissioner" means the commissioner of commerce and economic
22 development;

23 (3) "contribution" means cash, property, services rendered, or a promissory note
24 or other binding obligation to contribute cash or property or to perform services, that a partner
25 contributes to a limited partnership as a partner;

26 (4) "department" means the Department of Commerce and Economic
27 Development;

28 (5) "event of withdrawal of a general partner" means an event that causes a person
29 to cease to be a general partner under AS 32.11.160;

30 (6) "foreign limited partnership" means a partnership formed under the laws of
31 a state other than this state and having as partners one or more general partners and one or more

1 limited partners;

2 (7) "general partner" means a person who has been admitted to a limited
3 partnership as a general partner in accordance with the partnership agreement and named in the
4 certificate of limited partnership as a general partner;

5 (8) "limited partner" means a person who has been admitted to a limited
6 partnership as a limited partner in accordance with the partnership agreement and named in the
7 certificate of limited partnership as a limited partner;

8 (9) "limited partnership" and "domestic limited partnership" mean a partnership
9 formed by two or more persons under the laws of this state and having one or more general
10 partners and one or more limited partners;

11 (10) "partner" means a limited or general partner;

12 (11) "partnership agreement" means a valid agreement, written or oral, of the
13 partners as to the affairs of a limited partnership and the conduct of its business;

14 (12) "partnership interest" means a partner's share of the profits and losses of a
15 limited partnership and the right to receive distributions of partnership assets;

16 (13) "state" means a state, territory, or possession of the United States, District
17 of Columbia, or Commonwealth of Puerto Rico.

18 Sec. 32.11.990. SHORT TITLE. This chapter may be cited as the Uniform Limited
19 Partnership Act.

20 * Sec. 2. AS 32.10 is repealed.

21 * Sec. 3. APPLICABILITY PROVISIONS. (a) AS 32.11.200, 32.11.210, and 32.11.310, enacted
22 by sec. 1 of this Act, do not apply to a limited partnership contribution or distribution, unless the
23 contribution or distribution is made after the effective date of this Act.

24 (b) AS 32.11.350, enacted by sec. 1 of this Act, does not apply to a limited partnership
25 assignment unless the assignment is made after the effective date of this Act.

26 (c) Unless otherwise agreed by the partners, the applicable provisions of former AS 32.10,
27 repealed by sec. 2 of this Act, governing the allocation of profits and losses, distributions to a
28 withdrawing partner, and distributions of assets upon the winding up of a limited partnership apply to
29 limited partnerships formed before the effective date of this Act instead of AS 32.11.220, 32.11.270, and
30 32.11.400, enacted by sec. 1 of this Act.

31 * Sec. 4. COURT RULE AMENDED. AS 32.11.510, enacted by sec. 1 of this Act, amends Alaska

- 1 Rule of Civil Procedure 8 by requiring that certain information be set out in the complaint for a limited
- 2 partnership derivative action.
- 3 * **Sec. 5.** This Act takes effect July 1, 1992.