

SB

480

HOUSE COMMITTEE REPORT

(7)

Date Referred: April 30, 1990

FURTHER REFERRALS:

Date of Committee Action: 5-5-90

The JUDICIARY Committee considered:

SB 481

SENATE BILL NO. 480

DERIVATIVE ACTIONS BY LIMITED PARTNERS

"An Act relating to limited partnership derivative actions."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
[] have attached amendment(s) [] a new title
[X] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
[] zero fiscal note _____
[] zero with analysis _____

- [] fiscal note(s) _____
[] zero fiscal note(s) _____
[X] zero fn/analysis LAW - 4/18/90

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass
No Rec
Amend

Al Grunberg Grunberg
Ellis Ellis
Perry Martin Martin

(Check approp. column)	Do Not Pass	No Rec	Amend
<u>Peter Gall</u> Gall			

Peter Gall / Al Grunberg
Chairman's Signature

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

DATE: May 3, 1990

TO: Representative Max Bruenberg, Co-Chair
Representative Peter Goll, Co-Chair

FROM: Senator Pat Rodey *Pat*

SUBJECT: Hearing request for Senate Bill 480

I would like to request the House Judiciary Committee consider scheduling Senate Bill 480 at the earliest possible time.

This bill amends the state's Uniform Limited Partnership Act, AS 32.10, to permit a limited partner to bring action to recover a judgement in the partnership's favor, if general partners with authority to bring the action have refused to bring action, or if an effort to bring the action is not likely to succeed.

This is very a brief explanation of the exemption, but if you have any questions please don't hesitate to call my staff Mark Begich at 3793.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An act relating to limited
 partnership derivative actions."
 Sponsor: Senator Rodey
 Requestor: Senate Judiciary

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues
 Division: Administrative Services
 Approved by Commissioner: Richard I. Pegues / FOR /
Douglas B. Baily, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: April 9, 1990
 Date: April 9, 1990

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

SB 480

For Bill/Resolution No. _____

This bill amends the state's Uniform Limited Partnership Act, AS 32.10, to permit a limited partner to bring an action to recover a judgment in the partnership's favor, if general partners with authority to bring the action have refused to bring the action, or if an effort to bring the action is not likely to succeed. Because the bill deals with private sector actions it will not have a fiscal impact on the Department of Law or on other departments or agencies of government.

LAW OFFICES OF
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October 12, 1989

Senator Pat Rodey
Chair, Senate Committee
on Banking and Finance
3111 C Street, Suite 510
Anchorage, AK 99503

Dear Senator Rodey:

Since at least 1949 Alaska has had in effect the Uniform Limited Partnership Act (ULPA), AS 32.10.010-290. In 1976 the Commissioners on Uniform State Law completely revised the Act and in 1983 and 1985 made further substantial amendments to the 1976 revision. According to Note, The Status of Enforcing Fiduciary Duties in a Limited Partnership After Dupuis v. Becnel Co., 49 La.L.Rev. 1217, 1222 n.32 (1989) as of January 1, 1989 thirty-eight jurisdictions had adopted the revised Uniform Limited Partnership Act (RULPA).

I am not sufficiently familiar with business law to understand the reasons for all of the changes made by the revision or by the amendments to the revision, but I am aware of at least one problem created by the original ULPA which was remedied by the revision. That problem is how may the limited partners in a limited partnership enforce the fiduciary duties owed to them by the general partner. Some courts have held the limited partners have no remedy against mismanagement or other breach of fiduciary duty by the general partner except to sue for dissolution of the partnership or to withdraw from the partnership upon six months notice. This result was reached by a combination of the common law rule barring suits among partners prior to the dissolution of the partnership and the wording of Section 26 of the ULPA, AS 32.10.250, that a contributor, unless the contributor is a general partner, is not a proper party to a proceeding by or against a partnership. In the 1960's some courts began to allow derivative actions by limited partners on behalf of the partnership against the general partner to enforce the general partner's fiduciary duties. These courts held that such actions should be allowed by analogizing the position of the limited partner to a shareholder in a corporation. Shareholders had always had the right to enforce directors' fiduciary duties to the shareholders by means of a derivative action. The Alaska Supreme Court has not yet addressed the issue of whether it will allow a derivative action by a limited partner on behalf of the partnership to enforce the fiduciary obligations of the general partner to the limited partners.

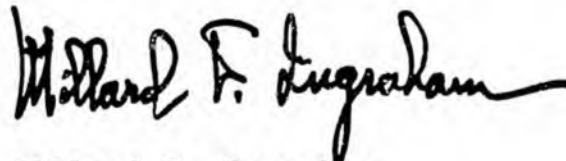
Senator Pat Rodey
October 12, 1989
Page 2

If for no reason other than that the RULPA permits derivative actions by the limited partners, Secs. 1001-1004, the Alaska Legislature should adopt the revision made by the Commissioners on Uniform State Law in 1976 and the amendments to the revision in 1983 and 1985. Since limited partnerships are used so extensively to finance real estate investments, your committee seemed to be the appropriate one to address the revision and its amendments.

I am enclosing a copy of the original Uniform Limited Partnership Act (which is substantially the Alaska Act) the 1976 Uniform Limited Partnership Act, the 1983 amendment and the 1985 amendments. These copies were taken from VIII Martindale-Hubbell Law Directory. I am also enclosing a copy of a portion of Note, The Status of Enforcing Fiduciary Duties in a Limited Partnership After Dupuis v. Becnel Co., 49 La.L.Rev. 1217 (1989), containing an excellent historical overview of the rights of a limited partner against a general partner at common law and under ULPA. If you have any questions or comments I would be happy to address them.

I am sending a copy of this letter to John Abbott, of the Code Revision Commission, for his review and comments.

Yours very truly,



Millard F. Ingraham

MFI/jnr30

xc: John Abbott

Enclosure

The Status of Enforcing Fiduciary Duties in a Limited Partnership After *Dupuis v. Becnel Co.*

Louisiana courts have adhered to the traditional rule barring suits among partners prior to dissolution. Louisiana jurisprudence adopted this rule from the common law states, where the rule still exists in the area of general partnerships. Our courts have applied this rule to both general partnerships and to limited partnerships, without consideration of the clear differences between the two forms of business associations. In a recent decision, however, the Louisiana Supreme Court abrogated this rule and expressly overruled all prior cases which had held that a partner was barred from maintaining an action prior to the dissolution of the partnership.

The case, *Dupuis v. Becnel Co.*,¹ involved a Louisiana limited partnership formed as part of a commercial real estate transaction. Five years after formation, the limited partners brought an action against the general partners, alleging among other claims that the general partners had breached their fiduciary duties. The limited partners sought damages for the general partners' actions or, in the alternative, a dissolution and an accounting of the partnership. The general partners defended the claim for damages by asserting the traditional rule barring actions between partners prior to dissolution.²

The Louisiana Third Circuit Court of Appeal, applying the traditional rule, held that the action by the limited partners was barred prior to dissolution.³ The court recognized that other Louisiana circuits had developed exceptions to the traditional rule,⁴ but chose not to follow those decisions. The proper remedy for the limited partners, said the court, was a proceeding for dissolution and accounting, not an action for damages against the general partners.

On review, the Louisiana Supreme Court unanimously overruled the court of appeal's decision and, in doing so, abolished the traditional rule barring suits between partners. Writing for the court, Justice

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1. 535 So. 2d 375 (La. 1988).

2. The general partners also argued that the limited partners could not withdraw by forcing a dissolution because the partnership had been formed for a thirty-five year term.

3. *Dupuis v. Becnel Co.*, 527 So. 2d 18 (La. App. 3d Cir. 1988).

4. *Beninate v. Bruno*, 497 So. 2d 1022 (La. App. 5th Cir. 1986); *Dohm v. O'Keefe*, 458 So. 2d 964 (La. App. 4th Cir.), writ denied, 460 So. 2d 1046 (1984).

Watson stated that since no statutory authority supported the rule, it "must fall."⁵

While the result reached in *Dupuis* may seem correct and in keeping with a nationwide trend, the reasoning of the court is open to criticism. *Dupuis* presented an opportunity for the court to clear up the confusion regarding the enforcement of fiduciary duties. But instead of formulating a policy for lower courts to follow, the *Dupuis* decision poses more questions than answers.

The purpose of this note is to analyze the abrogation of the traditional rule and its effects on Louisiana partnership law. The analysis begins with the history of the rule in Louisiana and in other states. Next, the *Dupuis* decision is discussed. Finally, a better method of enforcing fiduciary duties with regard to limited partnerships will be suggested.

HISTORICAL OVERVIEW

Rights of a Limited Partner at Common Law

Because limited partnerships can be traced to early French law, it is not surprising that its origin in the United States did not begin in the common law states.⁶ Louisiana was the first state to adopt the limited partnership concept.⁷ The concept was soon embraced by other states, the first being New York in 1822.⁸ The courts, however, strictly interpreted and enforced the enabling legislation. The slightest deviation from the terms of the enabling statute⁹ exposed limited partners to unlimited liability. This state of affairs quite naturally diminished the attractiveness of the limited partnership.

The Uniform Limited Partnership Act (ULPA) was introduced in 1916 to remedy the courts' harsh treatment of limited partners.¹⁰ The ULPA made great strides in protecting the limited partner from un-

5. *Dupuis*, 535 So. 2d at 378.

6. Limited partnerships can be traced to the twelfth century. They developed as a means for capitalists to enjoy a passive investment with limited liability. From this early concept, the modern notion of limited partnership evolved. For a good discussion on the history of limited partnerships, see Comment, Standing of Limited Partners to Sue Derivatively, 65 Colum. L. Rev. 1463 (1965) [hereinafter Comment, Standing of Limited Partners], and Comment, An Examination of Louisiana Limited Partnership—The Partnership in Commendam, 55 Tul. L. Rev. 515 (1981).

7. See Comment, Partnership in Commendam—Louisiana's Limited Partnership, 35 Tul. L. Rev. 815, 817 (1961) [hereinafter Comment, Partnership in Commendam]; Comment, Standing of Limited Partners, supra note 6.

8. Comment, Standing of Limited Partners, supra note 6, at 1464.

9. *Id.*

10. *Id.* at 1465.

limited personal liability in certain partnerships by restraining their partners from taking the permissive action of partners from taking unlimited liability without fear of loss of power created by mismanagement. The court refused any effort to give advantage of the ULPA was interpreted as a party in a suit for limited partnership authority but liable for mismanagement. He could sue for upon six months' protection.

11. Uniform Limited Partnership Act: the right to demand a formal accounting by court order, and allowed the limited partner to sue.

12. ULPA § 7

A limited partner has the right to exercise the control of the partnership.

13. See Comment of the General Partner.

14. ULPA § 26

A contributor, by or against partner's right.

15. ULPA § 1

(1) A limited partner has no property interest in the partnership.

(a) All liability of the limited partner remains proper.

(b) The contribution may be right.

(c) The contribution or reduction.

(2) Subject to demand the right.

(a) On the

limited personal liability by expressly allowing limited partners to take part in certain partnership transactions without violating the provision restraining their management of the partnership.¹¹ However, beyond the permissive activities of the ULPA, section 7 forbade the limited partners from taking part in control of the partnership at the risk of unlimited liability.¹² The general partners could control the business without fear of interference from the limited partners. This division of power created ample opportunities for fraudulent self-dealing and mismanagement.¹³ To make matters worse, the limited partner was refused any effective judicial relief when the general partner took advantage of the opportunities for misconduct, for section 26 of the ULPA was interpreted as barring a limited partner from being a proper party in a suit for damages against the general partner.¹⁴ This left the limited partner unable to protect his investment because of his limited authority but lacking procedural capacity to sue the general partner for mismanagement. The limited partner had only two options: either he could sue for dissolution of the partnership or he could withdraw upon six months notice.¹⁵ Neither remedy offered the limited partner much protection in the interim.

11. Uniform Limited Partnership Act [hereinafter ULPA] § 10 gave limited partners the right to demand information through inspection of the partnership books, to demand a formal accounting under certain circumstances, to seek a dissolution of the partnership by court order, and to share in the profits by way of a salary or income. ULPA § 13 allowed the limited partner to loan money and transact other business with the partnership.

12. ULPA § 7 provides:

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

13. See Comment, Procedures and Remedies in Limited Partners' Suits for Breach of the General Partner's Fiduciary Duty, 90 Harv. L. Rev. 763 (1977).

14. ULPA § 26 provides:

A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

15. ULPA § 16 provides in pertinent part:

(1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution

(a) On the dissolution of a partnership, or

While this was the prevailing policy of the courts, it is unclear whether this was the result intended under the ULPA. More specifically, some doubt exists whether the purpose of section 26 was to bar all actions by limited partners on partnership matters. A few decisions state that the provision was intended to keep the general partners from interfering in the litigation process, which is normally handled by the general partners.¹⁶ This explanation is not particularly persuasive, for section 7 of the ULPA already restricted the limited partner's involvement in the operation of the business. The most plausible explanation for section 26 is that it satisfied a procedural concern by avoiding the necessity of joining the limited partners in suits by or against the partnership.¹⁷ Whatever its intended purpose, section 26 as interpreted relegated limited partners to ineffective remedies for enforcing fiduciary duties owed by the general partners to the partnership.

It was not until the mid-1960's that courts began to analogize the position of the limited partner to that of a corporate shareholder, who enjoyed the remedy of a shareholder derivative suit to enforce the fiduciary duties of corporate directors.¹⁸ The seminal decision came from the United States Court of Appeals for the Second Circuit in

- (b) When the date specified in the certificate for his return has arrived, or
 (c) After he has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

[Subsections 3 and 4 are omitted]

After the 1976 revision, Revised Uniform Limited Partnership Act (hereinafter RULPA) § 603 (1976) states:

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with the partnership agreement. If the certificate does not specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this State.

16. *Klebanow v. New York Produce Exchange*, 344 F.2d 294, 298 (2d Cir. 1965). See also Comment, *Standing of Limited Partners*, supra note 6, at 1475, which states this proposition while citing several authorities.

17. The common law and the ULPA embraced an aggregate view of partnerships. That is, the partnership was not considered a distinct legal entity, but rather an aggregate group of relationships between its members. Therefore, when the partnership was involved in litigation, all of its members must be named as the partnership lacks an individual identity. See Comment, *Standing of Limited Partners*, supra note 6, at 1475.

18. Hecker, *Limited Partners' Derivative Suits Under the Revised Uniform Limited Partnership Act*, 33 Vand. L. Rev. 343, 343-44 (1980), states that limited partnerships grew in number, size and economic importance in 1960's and 1970's with the advent of sophisticated tax shelter planning.

the case of *Klebanow* involved a suit brought to enforce the fiduciary partnership. The general partners themselves because they themselves district court dismissed section 26 of the ULPA courts interpreting partners could not sue as the partnership.

The Second Circuit so narrowly and restrictively writing for the court mean only that litigation or against the partnership purpose of section 26 in management of of a derivative action.

The judge concluded that the best alternative to a corporate shareholder business; both are limited control of internal matters. The court's was that while of the corporate limited partners limited partnership that both investors by those in control holder could seek investors' only remedy is often an expense withdrawing from meant that the interest. The court faced, conclude

19. 344 F.2d :
 of the *Klebanow* case
 20. N.Y. Part
 21. *Klebanow*
 22. *Id.*
 23. *Id.*
 24. See *infra*

the case of *Klebanow v. New York Produce Exchange*.¹⁹ *Klebanow* involved a suit brought by limited partners on behalf of the partnership to enforce the fiduciary duties owed by the general partners to the partnership. The general partners had refused to maintain an action because they themselves would be included as defendants. The federal district court dismissed the action, citing the New York version of section 26 of the ULPA. By strictly construing this law, as had most courts interpreting section 26, the court concluded that the limited partners could not sue the general partners for mismanagement so long as the partnership existed.²⁰

The Second Circuit refused to interpret the New York provision so narrowly and reversed the lower court's decision.²¹ Judge Friendly, writing for the court, read the New York version of section 26 to mean only that limited partners need not be joined in an action by or against the partnership.²² The judge also stated that another intended purpose of section 26 was to restrain limited partners from interfering in management of the business.²³ This reading allowed the possibility of a derivative action by the limited partners.

The judge concluded that a limited partner derivative action was the best alternative. First, Judge Friendly likened a limited partner to a corporate shareholder. Both expect to share in the profits of the business; both are subordinated to outside creditors; and both enjoy limited control of the business through their authority to vote on internal matters. The telling difference between the two types of investors was that while the shareholder could bring an action on behalf of the corporation against those who controlled, the directors, the limited partners had no similar right against those who controlled the limited partnership, the general partners. Judge Friendly next recognized that both investors take the risk of self-dealing and mismanagement by those in control of the entity; however, while the corporate shareholder could seek redress through a derivative action, the limited partners' only remedy was withdrawal or dissolution. Dissolution, however, is often an expensive way to enforce fiduciary duties.²⁴ Further withdrawing from the partnership when there were still existing claims meant that the withdrawing partner would receive too little for his interest. The only sensible solution to the difficulties limited partners faced, concluded Judge Friendly, was a partnership derivative action.

19. 344 F.2d 294 (2d Cir. 1965). See also Comment, *supra* note 13 for a discussion of the *Klebanow* decision.

20. N.Y. Partnership Law § 115 (McKinney 1988).

21. *Klebanow*, 344 F.2d at 298.

22. *Id.*

23. *Id.*

24. See *infra* note 58 and accompanying text.

The limited partners were allowed to pursue claims on behalf of the partnership, with any recovery being paid directly to the partnership.

Initially, the New York courts did not follow *Klebanow*.²⁵ But the issue was ultimately settled in *Riviera Congress Associates v. Yassky*.²⁶ Here, the highest court of New York held that a limited partner may sue derivatively when the general partners wrongfully failed to enforce partnership claims. The *Riviera* court interpreted section 26 as only restraining the limited partners from interfering with the rights of the general partners to manage the business.²⁷ Next, the court followed Judge Friendly's analogy of the limited partner to the corporate shareholder and found that the limited partner required protection from mismanagement just as the shareholder. To reconcile this new right with its interpretation of section 26, the court reasoned that when the general partners wrongfully refuse to pursue proper claims of the partnership, they are not carrying out their duties to manage the business. Therefore, concluded the court, a derivative action did not interfere with the management of the partnership. Although the court's reasoning was rather weak, the *Riviera* decision set the course for subsequent decisions recognizing the right of a limited partner to bring a derivative action.²⁸

After the *Klebanow* and *Riviera* decisions, both New York and Delaware amended their partnership laws to give limited partners the statutory right under certain circumstances to sue on behalf of the partnership.²⁹ The 1976 Revised Uniform Limited Partnership Act (RULPA) incorporated similar provisions.³⁰ In effect, these new provisions allow a limited partner to maintain a derivative action, a procedure that resembles Rule 23.1 of the Federal Rules of Civil Procedure and similar state laws.³¹ Presently, thirty-nine states have adopted a version of these provisions of the RULPA.³²

25. *Millard v. Newmark & Co.*, 24 A.D.2d 333, 266 N.Y.S.2d 254 (1966).

26. 18 N.Y.2d 540, 223 N.E.2d 876 (Ct. App. 1966).

27. *Id.* at 543, 223 N.E.2d at 879.

28. *Phillips v. Kula*, 2 Haw. App. 206, 629 P.2d 119 (1981); *McCully v. Radack*, 27 Md. App. 350, 340 A.2d 374 (1975); *Jaffe v. Harris*, 109 Mich. App. 786, 312 N.W.2d 381 (1981); *Strain v. Seven Hills Assocs.*, 75 A.D.2d 360, 429 N.Y.S.2d 424 (1980).

29. N.Y. Partnership Law § 1.5 (McKinney 1968); Del. Code Ann. tit. 6, § 1732 (1974).

30. RULPA §§ 1001-04 (1976).

31. Fed. R. Civ. P. 23.1. A listing of state provisions can be found in DeMott, *Demand in Derivative Actions: Problems of Interpretation and Function*, 19 U.C.D. L. Rev. 461, 463-64 n.3 (1986).

32. Thirty-eight jurisdictions have adopted the RULPA as of Jan. 1, 1959. New York has not incorporated the Act but allows for a derivative action by a similar statute, N.Y. Partnership Law § 115-a (McKinney 1968). Indiana, a state not adopting the Act, has prospectively repealed their § 26 statute, Ind. Code Ann. § 23-2-26 to be abrogated on July 7, 1993.

Harsh Treatment

Louisiana has adopted the RULPA that derivative actions. The courts applied the rule where partners sue on behalf of the partnership. The rule was adopted in 1821 in Louisiana. The rule was adopted for limited partners was adopted.

Our courts have taken a different view of the limited partner's right to sue on behalf of the partnership. A limited partner's partnership enjoys the same protection as a shareholder under common law. The rule is a departure from the common law theory of personal liability. The partnership is treated as a separate entity. The partnership's individual partners are not liable for the partnership's obligations. The rule should be adopted.

This rule is a departure from the common law theory of personal liability. The partnership is treated as a separate entity. The partnership's individual partners are not liable for the partnership's obligations. The rule should be adopted.

It is also possible to bar suits against the partnership. The courts would not allow a partnership derivative action if the partnership is not a legal entity.

The most common reason for denying a partnership derivative action is the partnership's failure to recover from the partnership.

33. *Dromgool*.

34. *Clay v. G*.

35. Other reasons for denying a partnership derivative action are the partnership's failure to recover from the partnership. The rule should be adopted.

with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

§ 1002. Proper Plaintiff.—In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

§ 1003. Pleading.—In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

§ 1004. Expenses.—If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

ARTICLE 11

Miscellaneous

§ 1101. Construction and Application.—This Act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 1102. Short Title.—This Act may be cited as the Uniform Limited Partnership Act.

§ 1103. Severability.—If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 1104. Effective Date, Extended Effective Date and Repeal.—Except as set forth below, the effective date of this Act is _____ and the following Acts [list prior limited partnership acts] are hereby repealed.

(1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until [specify time required to create central filing system], the extended effective date, and Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended effective date.

(2) Section 402, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date.

(3) Sections 501, 502, and 608 apply only to contributions and distributions made after the effective date of this Act.

(4) Section 704 applies only to assignments made after the effective date of this Act.

(5) Article 9, dealing with registration of foreign limited partnerships, is not effective until the extended effective date.

§ 1105. Rules for Cases Not Provided for in This Act.—In any case not provided for in this Act the provisions of the Uniform Partnership Act govern.

1983 AMENDMENTS TO UNIFORM LIMITED PARTNERSHIP ACT (1976)

The following changes to the Uniform Limited Partnership Act (1976) were approved by the National Conference in 1983:
(Additions Underlined, Deletions Stricken)

§ 304(a)(2):
(2) withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this Section.

§ 403:
(a) Except as provided in this Act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the

restrictions and liabilities of a partner in a partnership without limited partners.

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

UNIFORM LIMITED PARTNERSHIP ACT (1976) WITH 1985 AMENDMENTS

(Additions and Deletions in the Act are indicated by Underscore and Strikeout)

ARTICLE 1 GENERAL PROVISIONS

- Section
101. Definitions.
 102. Name.
 103. Reservation of Name.
 104. Specified Office and Agent.
 105. Records to be Kept.
 106. Nature of Business.
 107. Business Transactions of Partner with Partnership.

ARTICLE 2

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

201. Certificate of Limited Partnership.
202. Amendment to Certificate.
203. Cancellation of Certificate.
204. Execution of Certificates.
205. Execution by Judicial Act.
206. Filing in Office of Secretary of State.
207. Liability for False Statement in Certificate.
208. Scope of Notice.
209. Delivery of Certificates to Limited Partner.

ARTICLE 3

LIMITED PARTNERS

301. Admission of Limited Partners.
302. Voting.
303. Liability to Third Parties.
304. Person Erroneously Believing Himself [or Herself] Limited Partner.
305. Information.

ARTICLE 4 GENERAL PARTNERS

- Section
401. Admission of Additional General Partners.
 402. Events of Withdrawal.
 403. General Powers and Liabilities.
 404. Contributions by General Partner.
 405. Voting.

ARTICLE 5 FINANCE

501. Form of Contribution.
502. Liability for Contributions.
503. Sharing of Profits and Losses.
504. Sharing of Distributions.

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWAL

601. Interim Distributions.
602. Withdrawal of General Partner.
603. Withdrawal of Limited Partner.
604. Distribution Upon Withdrawal.
605. Distribution in Kind.
606. Right to Distribution.
607. Limitations on Distribution.
608. Liability Upon Return of Contribution.

ARTICLE 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

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ARTICLE 1

General Provisions

§ 101. Definitions.—As used in this [Act], unless the context otherwise requires:

- (1) "Certificate of limited partnership" means the certificate referred to in Section 201, and the certificate as amended or restated.
- (2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- (3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 402.
- (4) "Foreign limited partnership" means a partnership formed under the laws of any State ~~state~~ other than this State and having as partners one or more general partners and one or more limited partners.
- (5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
- (6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner.
- (7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.
- (8) "Partner" means a limited or general partner.
- (9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
- (10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
- (11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.
- (12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

§ 102. Name.—The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) shall contain without abbreviation the words "limited partnership";
- (2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;
- ~~(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership.~~
- ~~(4) (3) may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this State or licensed or registered as a foreign corporation or limited partnership in this State; and~~

~~(5) (4) may not contain the following words [here insert prohibited words]~~

§ 103. Reservation of Name.—

- (a) The exclusive right to the use of a name may be reserved by:
 - (1) any person intending to organize a limited partnership under the [Act] and to adopt that name;
 - (2) any domestic limited partnership or any foreign limited partnership registered in this State which, in either case, intends to adopt that name;
 - (3) any foreign limited partnership intending to register in this State and adopt that name; and
 - (4) any person intending to organize a foreign limited partnership and intending to have it register in this State and adopt that name.
- (b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he (or she) shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§ 104. Specified Office and Agent.—Each limited partnership shall continuously maintain in this State:

- (1) an office, which may but need not be a place of its business in this State, at which shall be kept the records required by Section 105 to be maintained; and
- (2) an agent for service of process on the limited partnership, which agent must be an individual resident of this State, a domestic corporation, or a foreign corporation authorized to do business in this State.

§ 105. Records to be Kept.—

(a) Each limited partnership shall keep at the office referred to in Section 104 (1) the following:

- (1) a current list of the full name and last known business address of each partner, ~~set forth separately identifying the general partners (in alphabetical order) and the limited partners (in alphabetical order);~~
- (2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
- (3) copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three most recent years; and
- (4) copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and
- (5) unless contained in a written partnership agreement, a writing setting out:

- (i) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
- (ii) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
- (iii) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and
- (iv) any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) ~~Those records~~ Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

§ 106. Nature of Business.—A limited partnership may carry on any business that a partnership without limited partners may carry on except [here designate prohibited activities].

§ 107. Business Transactions of Partner with Partnership.—Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

ARTICLE 2
Formation; Certificate of Limited Partnership

§ 201. Certificate of Limited Partnership.—

(a) In order to form a limited partnership, ~~two or more persons must execute a certificate of limited partnership—The certificate shall be must be executed and filed in the office of the Secretary of State, and~~ The certificate shall set forth:

- ~~(1) the name of the limited partnership;~~
- ~~(2) the general character of its business;~~
- ~~(3) (2) the address of the office and the name and address of the agent for service of process required to be maintained by Section 104;~~
- ~~(4) (3) the name and the business address of each general partner (specifying separately the general partners and limited partners);~~
- ~~(5) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;~~
- ~~(6) the times at which or events on the happening of which any addi-~~

~~(7) any power of a limited partner to grant the right to become a limited partner to an assignee of any part of his partnership interest, and the terms and conditions of the power;~~

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

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

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

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

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

~~(4) the latest date upon which the limited partnership is to dissolve; and~~

~~(13)(5) any other matters the general partners determine to include therein.~~

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

§ 202. Amendment to Certificate.—

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing the certificate; and
- (3) the amendment to the certificate.

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

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

~~(2)(1) the admission of a new general partner;~~

~~(3)(2) the withdrawal of a general partner; or~~

~~(4)(3) the continuation of the business under Section 801 after an event of withdrawal of a general partner.~~

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

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

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

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

§ 203. Cancellation of Certificate.—A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) any other information the general partners filing the certificate determine.

§ 204. Execution of Certificates.—

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) an original certificate of limited partnership must be signed by all general partners named therein;

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

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

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

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

§ 205. Amendment or Cancellation Execution by Judicial Act.—If a person required by Section 204 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, person who is adversely affected by the failure or refusal, may petition the [designate the appropriate court] to direct the amendment or cancellation execution of the certificate. If the court finds that the amendment or cancellation

is proper it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

§ 206. Filing in Office of Secretary of State.—

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his [or her] authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he [or she] shall:

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

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

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

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

§ 207. Liability for False Statement in Certificate.—If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 205.

§ 208. Scope of Notice.—The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as limited general partners are limited general partners, but it is not notice of any other fact.

§ 209. Delivery of Certificates to Limited Partners.—Upon the return by the Secretary of State pursuant to Section 206 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

ARTICLE 3

Limited Partners

§ 301. Admission of Additional Limited Partners.—

(a) A person becomes a limited partner:

(1) at the time the limited partnership is formed; or

(2) at any later time specified in the records of the limited partnership for becoming a limited partner.

~~(b)~~ After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

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

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

~~(b)~~ In each case under subsection (a), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

§ 302. Voting.—Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

§ 303. Liability to Third Parties.—

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he [or she] is also a general partner or, in addition to the exercise of his [or her] rights and powers as a limited partner, he [or she] takes part participates in the control of the business. However, if the limited partner's participation partner participates in the control of the business is not substantially the same as the exercise of the powers of a general partner, he [or she] is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

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

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

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

(3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) approving or disapproving an amendment to the partnership agreement taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership; or

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

(5) requesting or attending a meeting of partners;

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

(i) the dissolution and winding up of the limited partnership;

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

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

(iv) a change in the nature of the business; or

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

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

(viii) an amendment to the partnership agreement or certificate of limited partnership; or

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

(7) winding up the limited partnership pursuant to Section 803; or

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

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

(d) A limited partner who knowingly permits his [or her] name to be used in the name of the limited partnership, except under circumstances permitted by Section 102(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

§ 304. Person Erroneously Believing Himself [or Herself] Limited Partner.—

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he [or she] has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he [or she]:

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

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

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under Section 202 that he [or she] is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

§ 305. Information.—Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by Section 105; and

(2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

ARTICLE 4

General Partners

§ 401. Admission of Additional General Partners.—After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only as provided in writing in the partnership agreement or if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner all partners

§ 402. Events of Withdrawal.—Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events

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

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

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

(4) unless otherwise provided in writing in the certificate of limited partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself [or herself] any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him [or her] in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties;

(5) unless otherwise provided in writing in the certificate of limited partnership agreement, [120] days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within [90] days after the appointment without his [or her] consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties, the appointment is not vacated or stayed or within [90] days after the expiration of any such stay, the appointment is not vacated;

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

(i) his [or her] death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating him [or her] incompetent to manage his [or her] person or his [or her] estate;

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

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

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

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

§ 403. General Powers and Liabilities.—

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

(b) Except as provided in this [Act], a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

§ 404. Contributions by General Partner.—A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his [or her] participation in the partnership as a limited partner.

§ 405. Voting.—The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

ARTICLE 5

Finance

§ 501. Form of Contribution.—The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

§ 502. Liability for Contribution.—

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the certificate of limited partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he [or she] is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he [or she] is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the stated contribution which has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid

or distributed in violation of this [Act] may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, otherwise acts in reliance on that obligation after the filing of the certificate of limited partnership or an amendment thereto partner signs a writing which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

§ 503. Sharing of Profits and Losses.—The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

§ 504. Sharing of Distributions.—Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

ARTICLE 6

Distributions and Withdrawal

§ 601. Interim Distributions.—Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his [or her] withdrawal from the limited partnership and before the dissolution and winding up thereof:

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

(2) if any distribution constitutes a return of any part of his contribution under Section 602(c), to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.

§ 602. Withdrawal of General Partner.—A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him [or her].

§ 603. Withdrawal of Limited Partner.—A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with in writing in the partnership agreement. If the certificate agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his [or her] address on the books of the limited partnership at its office in this State.

§ 604. Distribution Upon Withdrawal.—Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he [or she] is entitled under the partnership agreement and, if not otherwise provided in the agreement, he [or she] is entitled to receive, within a reasonable time after withdrawal, the fair value of his [or her] interest in the limited partnership as of the date of withdrawal based upon his [or her] right to share in distributions from the limited partnership.

§ 605. Distribution in Kind.—Except as provided in writing in the certificate of limited partnership agreement, a partner, regardless of the nature of his [or her] contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him [or her] exceeds a percentage of that asset which is equal to the percentage in which he [or she] shares in distributions from the limited partnership.

§ 606. Right to Distribution.—At the time a partner becomes entitled to receive a distribution, he [or she] has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

§ 607. Limitations on Distribution.—A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

§ 608. Liability Upon Return of Contribution.—

(a) If a partner has received the return of any part of his [or her] contribution without violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

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

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

ARTICLE 7

Assignment of Partnership Interests

§ 701. Nature of Partnership Interest.—A partnership interest is personal property.

§ 702. Assignment of Partnership Interest.—Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his [or her] partnership interest.

§ 703. Rights of Creditor.—On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.

§ 704. Right of Assignee to Become Limited Partner.—

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership agreement, or (2) (ii) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this [Act]. An assignee who becomes a limited partner also is liable for the obligations of his [or her] assignor to make and return contributions as provided in Article 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he [or she] became a limited partner and which could not be ascertained from the certificate of limited partnership.

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

§ 705. Power of Estate of Deceased or Incompetent Partner.—If a partner who is an individual dies or a court of competent jurisdiction adjudges him [or her] to be incompetent to manage his [or her] person or his [or her] property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his [or her] estate or administering his [or her] property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

ARTICLE 8

DISSOLUTION

§ 801. Nonjudicial Dissolution.—A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

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

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

(3) written consent of all partners;

(4) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership or the partnership agreement permits permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

(5) entry of a decree of judicial dissolution under Section 802.

§ 802. Judicial Dissolution.—On application by or for a partner the [designate the appropriate court] court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

§ 803. Winding Up.—Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership, or, if none, the limited partners, may wind up the limited partnership's affairs, but the [designate the appropriate court] court may wind up the limited partnership's

affairs upon application of any partner, his [or her] legal representative, or assignee.

§ 804. **Distribution of Assets.**—Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 601 or 604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 601 or 604; and

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

ARTICLE 9

Foreign Limited Partnerships

§ 901. **Law Governing.**—Subject to the Constitution of this State, (i) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

§ 902. **Registration.**—Before transacting business in this State, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

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

(2) the state and date of its formation;

~~(3) the general character of the business it proposes to transact in this State.~~

~~(4) (3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this State;~~

~~(5) (4) a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (3) or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;~~

~~(6) (5) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and~~

~~(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.~~

~~(8) the name and business address of each general partner; and~~

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

§ 903. **Issuance of Registration.**—

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

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

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

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

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

§ 904. **Name.**—A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

§ 905. **Changes and Amendments.**—If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

§ 906. **Cancellation of Registration.**—A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to [claims for relief] [causes of action] arising out of the transactions of business in this State.

§ 907. **Transaction of Business Without Registration.**—

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

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

or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

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

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

§ 908. **Action by [Appropriate Official].**—The [designate the appropriate official] may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article.

ARTICLE 10

Derivative Actions

§ 1001. **Right of Action.**—A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

§ 1002. **Proper Plaintiff.**—In a derivative action, the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction of which he [or she] complains or (ii) his [or her] status as a partner must have devolved upon him [or her] by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

§ 1003. **Pleading.**—In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

§ 1004. **Expenses.**—If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited partnership the remainder of those proceeds received by him [or her].

ARTICLE 11

Miscellaneous

§ 1101. **Construction and Application.**—This [Act] shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

§ 1102. **Short Title.**—This [Act] may be cited as the Uniform Limited Partnership Act.

§ 1103. **Severability.**—If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

§ 1104. **Effective Date, Extended Effective Date and Repeal.**—Except as set forth below, the effective date of this [Act] is _____ and the following acts [list prior existing limited partnership acts] are hereby repealed:

(1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until [specify time required to create central filing system], the extended effective date, and Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended effective date.

(2) Section 402, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date.

(3) Sections 501, 502 and 608 apply only to contributions and distributions made after the effective date of this [Act].

(4) Section 704 applies only to assignments made after the effective date of this [Act].

(5) Article 9, dealing with registration of foreign limited partnerships, is not effective until the extended effective date.

(6) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of Section 503), distributions to a withdrawing partner (rather than the provisions of Section 604), and distributions of assets upon the winding up of a limited partnership (rather than the provisions of Section 304) govern limited partnerships formed before the effective date of this [Act].

§ 1105. **Rules for Cases Not Provided for in This [Act].**—In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.

§ 1106. **Savings Clause.**—The repeal of any statutory provision by this [Act] does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this [Act], nor does the repeal of any existing statutory provision by this [Act] impair any contract or affect any right accrued before the effective date of this [Act].

Article 8. General Provisions.

Section	Section
390 What constitutes "knowledge" or "notice"	410 Laws governing cases not covered by chapter
400 Construction of chapter and applicability of other laws	420 Definitions
	430 Short title

Sec. 32.05.390. What constitutes "knowledge" or "notice."

(a) A person has "knowledge" of a fact within the meaning of this chapter not only when the person has actual knowledge of the fact, but also when the person has knowledge of other facts which in the circumstances show bad faith.

(b) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice

- (1) states the fact to such person, or
- (2) delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at the person's place of business or residence. (§ 28-1-3 ACLA 1949)

Sec. 32.05.400. Construction of chapter and applicability of other laws.

(a) The rule that statutes in derogation of the common law are to be strictly construed has no application to this chapter.

(b) The law of estoppel applies under this chapter.

(c) The law of agency applies under this chapter.

(d) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(e) This chapter may not be construed to impair the obligations of any contract existing on May 3, 1917, or to affect any action or proceedings begun or right accrued before that date. (§ 28-1-4 ACLA 1949)

Collateral references. — 68 C.J.S., Partnership, § 1.

Sec. 32.05.410. Laws governing cases not covered by chapter.

In any case not provided for in this chapter the rules of law and equity, including the law merchant, govern. (§ 28-1-5 ACLA 1949)

Sec. 32.05.420. Definitions. In this chapter

- (1) "bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act;
- (2) "business" includes every trade, occupation, or profession;
- (3) "conveyance" includes every assignment, lease, mortgage, or encumbrance;

(4) "court" includes every court and judge having jurisdiction in the case;

(5) "person" includes individuals, partnerships, corporations, and other associations;

(6) "real property" includes land and any interest or estate in land (§ 28-1-2 ACLA 1949)

Collateral references. — 68 C.J.S., Partnership, §§ 1, 2

Sec. 32.05.430. Short title. This chapter may be cited as the Uniform Partnership Act. (§ 28-1-1 ACLA 1949)

Chapter 10. Uniform Limited Partnership Act.

Section	Section
10 Formation	150 Withdrawal or reduction of limited partner's contribution
20 Business which may be carried on	160 Liability of limited partner to partnership
30 Character of limited partner's contribution	170 Limited partner's interest as personal property
40 Use of surname of partner in partnership name	180 Assignment of limited partner's interest
50 Liability for false statement in certificate	190 Dissolution by retirement, death or insanity of general partner
60 Liability of limited partner	200 Death of limited partner
70 Admission of additional limited partners	210 Rights of creditors of limited partner
80 Rights, powers and liabilities of general partner	220 Distribution of assets upon dissolution
90 Rights of limited partner	230 Cancellation or amendment of certificate
100 Status of person erroneously believing to be a limited partner	240 Requirements of writing to amend or cancel certificate
110 Right to be a general and limited partner in same partnership	250 Parties to actions
120 Loans and other transactions with limited partner	260 Rules for construction of chapter
130 Priorities of limited partners inter se	270 Rules for cases not covered by chapter
140 Profits or compensation to limited partner	280 Limited partnership defined
	290 Short title

Sec. 32.10.010. Formation. (a) Two or more persons desiring to form a limited partnership shall

- (1) sign and swear to a certificate, which must state
 - (A) the name of the partnership;
 - (B) the character of the business;
 - (C) the location of the principal place of business;
 - (D) the name and place of residence of each member, general and limited partners being respectively designated;
 - (E) the term for which the partnership is to exist;
 - (F) the amount of cash and a description of and the agreed value of the other property contributed by each limited partner;

(G) the additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made;

(H) the time, if agreed upon, when the contribution of each limited partner is to be returned;

(I) the share of the profits or the other compensation by way of income which each limited partner shall receive by reason of the contribution of the limited partner;

(J) the right, if given, of a limited partner to substitute an assignee as contributor in place of the limited partner, and the terms and conditions of the substitution;

(K) the right, if given, of the partners to admit additional limited partners;

(L) the right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;

(M) the right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner;

(N) the right, if given, of a limited partner to demand and receive property other than cash in return for the contribution of the limited partner;

(2) file the certificate for record in the office of the recorder for the recording district in which the limited partnership is located.

(b) A limited partnership is formed if there is a substantial compliance in good faith with the requirements of (a) of this section. (§ 28-2-2 ACLA 1949)

NOTES TO DECISIONS

The failure to record the certificate does not void the continuation requirements of the limited partnership agreement and the partners must be bound by

the agreement in their relations among one another. *Betz v. Chenu Hot Springs Group*, Sup. Ct. Op. No. 2594 (File No. 6057), 657 P.2d 831 (1982).

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 370-391.
68 C.J.S., Partnership, §§ 449-489.

Application to limited partnerships of statute as to doing business under an assumed or fictitious name or designation not showing the names of the persons interested. 42 ALR2d 544.

Sec. 32.10.020. Business which may be carried on. A limited partnership may carry on any business that a partnership without limited partners may carry on. (§ 28-2-3 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 374-376, 383.

Sec. 32.10.030. Character of limited partner's contribution. The contribution of a limited partner may be cash or other property but not services. (§ 28-2-4 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 376, 382.

Sec. 32.10.040. Use of surname of partner in partnership name. (a) The surname of a limited partner may not appear in the partnership name unless

(1) it is also the surname of a general partner, or
(2) before the time when the limited partner became a limited partner the business had been carried on under a name in which the limited partner's surname appeared.

(b) A limited partner whose name appears in a partnership name contrary to the provisions of (a) of this section is liable as a general partner to a partnership creditor who extends credit to the partnership without actual knowledge that the limited partner is not a general partner. (§ 28-2-5 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, § 377.

Sec. 32.10.050. Liability for false statement in certificate. If the certificate contains a false statement, one who suffers loss by reliance on the statement may hold liable any party to the certificate who knew the statement to be false at the time the party signed the certificate, or subsequently, but within a sufficient time before the statement was relied upon to enable that party to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in AS 32.10.240(c). (§ 28-2-6 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 374-376, 383.

Sec. 32.10.060. Liability of limited partner. A limited partner is not liable as a general partner unless in addition to the exercise of the rights and powers as a limited partner, the limited partner takes part in the control of the business. (§ 28-2-7 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, § 381. Liability of special partner who has withdrawn his capital. 67 ALR 1096

Sec. 32.10.070. Admission of additional limited partners. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of AS 32.10.240. (§ 28-2-8 ACLA 1949)

Sec. 32.10.080. Rights, powers and liabilities of general partner. A general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners may not

- (1) do an act in contravention of the certificate;
- (2) do any act which would make it impossible to carry on the ordinary business of the partnership;
- (3) confess a judgment against the partnership;
- (4) possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose;
- (5) admit a person as a general partner;
- (6) admit a person as a limited partner, unless the right so to do is given in the certificate;
- (7) continue the business with partnership property, on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate. (§ 28-2-9 ACLA 1949)

NOTES TO DECISIONS

Effect of partnership agreement where certificate not filed. — Although the limited partnership certificate was not recorded, where the agreement provided that upon notice by the general partners of their intent to continue the business, and a two-thirds vote of approval by the

limited partners, the business might be continued, the requirements of this section did not have to be followed. *Briz v. Chena Hot Springs Group*, Sup. Ct. Op. No. 2594 (File No. 6057), 657 P.2d 831 (1982).

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 379, 386.

Additional general partner: sufficiency of procedure for designating or admitting additional general partner in limited partnership. 8 ALR4th 1277.

Sec. 32.10.090. Rights of limited partner. (n) A limited partner has the same rights as a general partner to

- (1) have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,
- (2) have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances make it just and reasonable, and

- (3) have dissolution and winding up by decree of court.
- (b) A limited partner has the right to receive a share of the profits or other compensation by way of income, and to the return of the contribution of the limited partner as provided in AS 32.10.140 and 32.10.150. (§ 28-2-10 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 376, 380. Derivative action: right of limited partner to maintain derivative action on behalf of partnership. 26 ALR4th 264.

Sec. 32.10.100. Status of person erroneously believing to be a limited partner. A person who has contributed to the capital of a business conducted by a person or partnership, erroneously believing that the person has become a limited partner in a limited partnership, is not by reason of the person's exercise of the rights of a limited partner a general partner with the person or in the partnership carrying on the business, or bound by the obligations of the person or partnership carrying on the business; provided that on ascertaining the mistake the person promptly renounces the person's interests in the profits of the business or other compensation by way of income. (§ 28-2-11 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, § 384.

Sec. 32.10.110. Right to be a general and limited partner in same partnership. (a) A person may be a general partner and a limited partner in the same partnership at the same time.

(b) A person who is a general and also at the same time a limited partner has all the rights and powers and is subject to all the restrictions of a general partner, except that, in respect to the person's contribution, the person has the rights against the other members that the person would have had if not also a general partner. (§ 28-2-12 ACLA 1949)

Sec. 32.10.120. Loans and other transactions with limited partner. (a) A limited partner may lend money to and transact business with the partnership, and unless the limited partner is also a general partner, may receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. A limited partner may not in respect to a claim

- (1) receive or hold as collateral security partnership property, or
- (2) receive from a general partner or the partnership a payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners.

(b) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of (a) of this section is a fraud on the creditors of the partnership. (§ 28-2-13 ACLA 1949)

Sec. 32.10.130. Priorities of limited partners inter se. Where there are several limited partners the members may agree that one or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, and as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners stand upon equal footing. (§ 28-2-14 ACLA 1949)

Sec. 32.10.140. Profits or compensation to limited partner. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate; provided, that after payment is made, whether from the property of the partnership or from that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners. (§ 28-2-15 ACLA 1949)

Sec. 32.10.150. Withdrawal or reduction of limited partner's contribution. (a) A limited partner may not receive from a general partner or out of partnership property any part of the limited partner's contribution until

(1) all liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them.

(2) the consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of (b) of this section, and

(3) the certificate is cancelled or amended to set out the withdrawal or reduction.

(b) Subject to the provisions of (a) of this section a limited partner may rightfully demand the return of the limited partner's contribution,

(1) on the dissolution of a partnership,

(2) when the date specified in the certificate for its return has arrived, or

(3) after the limited partner has given six months' notice in writing to all other members, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(c) In the absence of a statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of the limited partner's contribution, has only the right to demand and receive cash in return for the contribution.

(d) A limited partner may have the partnership dissolved and its affairs wound up when

(1) the limited partner rightfully but unsuccessfully demands the return of the limited partner's contribution, or

(2) the other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by (a)(1) of this section and the limited partner would otherwise be entitled to the return of the limited partner's contribution. (§ 28-2-16 ACLA 1949)

Collateral references. — 60 Am Jur 2d, Partnership, § 382.

Sec. 32.10.160. Liability of limited partner to partnership.

(a) A limited partner is liable to the partnership

(1) for the difference between the limited partner's contribution as actually made and that stated in the certificate as having been made, and

(2) for any unpaid contribution that the limited partner agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership

(1) specific property stated in the certificate as contributed by the limited partner, but that was not contributed or that has been wrongfully returned, and

(2) money or other property wrongfully paid or conveyed to the limited partner on account of the limited partner's contribution.

(c) The liabilities of a limited partner as set out in this section can be waived or compromised only by the consent of all members; but a waiver or compromise does not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of the person's contribution, the contributor is nevertheless liable to the partnership for a sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before the return. (§ 28-2-17 ACLA 1949)

Collateral references. — 60 Am Jur 2d, Partnership, § 381.

Sec. 32.10.170. Limited partner's interest as personal property. A limited partner's interest in the partnership is personal property. (§ 28-2-18 ACLA 1949)

Sec. 32.10.180. Assignment of limited partner's interest. (a) A limited partner's interest is assignable.

(b) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or assigned the person's interest in a partnership.

(c) An assignee, who does not become a substituted limited partner, does not have the right to require information or account of the partnership transactions or to inspect the partnership books; the assignee is only entitled to receive the share of the profits or other compensation by way of income, or the return of the contribution to which the assignor of the assignee would otherwise be entitled.

(d) An assignee may become a substituted limited partner if all the members, except the assignor, consent or if the assignor being so empowered by the certificate gives the assignee that right.

(e) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with AS 32.10.240.

(f) A substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of the assignor, except those liabilities of which the substituted limited partner was ignorant at the time the person became a limited partner and which could not be ascertained from the certificate.

(g) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under AS 32.10.050 and 32.10.160. (§ 28-2-19 ACLA 1949)

Sec. 32.10.190. Dissolution by retirement, death or insanity of general partner. The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners

(1) unless a right to do so stated in the certificate, or

(2) with the consent of all members. (§ 28-2-20 ACLA 1949)

Collateral references. — 68 C.J.S., Partnership, § 85. Rights of creditors where business continued after retirement or death of partner. 111 ALR 1093.

Sec. 32.10.200. Death of limited partner. (a) On the death of a limited partner the decedent's executor or administrator has all the rights of a limited partner for the purpose of settling the estate, and such power as the decedent had to constitute an assignee a substituted limited partner.

(b) The estate of a deceased limited partner is liable for all the decedent's liabilities as a limited partner. (§ 28-2-21 ACLA 1949)

Sec. 32.10.210. Rights of creditors of limited partner. (a) On due application to a court of competent jurisdiction by a judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt, may appoint a receiver, and may make all orders, directions and inquiries which the circumstances of the case may require.

(b) The interest may be redeemed with the separate property of a general partner, but may not be redeemed with partnership property.

(c) The remedies conferred by (a) of this section are not exclusive of others which may exist.

(d) Nothing in this chapter may be held to deprive a limited partner of the limited partner's statutory exemption. (§ 28-2-22 ACLA 1949)

Sec. 32.10.220. Distribution of assets upon dissolution. (a) In settling accounts after dissolution, the liabilities of the partnership are entitled to payment in the following order:

(1) creditors, in the order of priority as provided by law, except limited partners on account of their contributions, and to general partners;

(2) limited partners in respect to their share of the profits and other compensation by way of income on their contributions;

(3) limited partners in respect to the capital of their contributions;

(4) general partners other than for capital and profits;

(5) general partners in respect to profits;

(6) general partners in respect to capital.

(b) Subject to a statement in the certificate or to subsequent agreement, a limited partner shares in the partnership assets in respect to the limited partner's claim for capital, and in respect to the limited partner's claim for profits or for compensation by way of income on the limited partner's contribution in proportion to the amount of the claims. (§ 28-2-23 ACLA 1949)

Sec. 32.10.230. Cancellation or amendment of certificate.

(a) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be limited partners.

(b) A certificate shall be amended when

(1) there is a change in the name of the partnership or in the amount or character of the contribution of a limited partner;

(2) a person is substituted as a limited partner;

(3) an additional limited partner is admitted;

(4) a person is admitted as a general partner;

(5) a general partner retires, dies, or becomes insane, and the business is continued under AS 32.10.190;

(6) there is a change in the character of the business of the partnership;

(7) there is a false or erroneous statement in the certificate;

(8) there is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

(9) a time is fixed for the dissolution of the partnership or the return of a contribution, no time having been specified in the certificate; or

(10) the members desire to make a change in another statement in the certificate in order to accurately represent the agreement between them. (§ 28-2-24 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, § 375

Sec. 32.10.240. Requirements of writing to amend or cancel certificate. (a) The writing to amend a certificate must

(1) conform to the requirements of AS 32.10.010(a)(1) as far as is necessary to set out clearly the change in the certificate that is desired, and

(2) be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(b) The writing to cancel a certificate shall be signed by all members.

(c) A person desiring the cancellation or amendment of a certificate, if a person designated in (a) and (b) of this section as a person who must execute the writing refuses to do so, may petition the proper court to direct a cancellation or amendment of the certificate.

(d) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so it shall order the recorder for the recording district in the office where the certificate is

recorded to record the cancellation or amendment of the certificate. Where the certificate is to be amended, the court shall also have filed for record in that office a certified copy of its decision setting out the amendment.

(e) A certificate is amended or cancelled when there is filed for record in the office where the certificate is recorded:

(1) a writing in accordance with the provisions of (a) or (b) of this section, or

(2) a certified copy of the order of court in accordance with the provisions of (d) of this section.

(f) After the certificate is amended in accordance with this section, the amended certificate is for all purposes the certificate provided for by this chapter. (§ 28-2-25 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, § 375

Sec. 32.10.250. Parties to actions. A contributor, unless the contributor is a general partner, is not a proper party to a proceeding by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership. (§ 28-2-26 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, § 390

Sec. 32.10.260. Rules for construction of chapter. (a) The rule that statutes in derogation of the common law are to be strictly construed has no application to this chapter.

(b) This chapter shall be interpreted and construed to effect its general purpose to make uniform the law of those states which enact it.

(c) This chapter may not be construed to impair the obligations of a contract existing on May 3, 1917, or to affect any action or proceedings begun or right accrued before that date. (§ 28-2-28 ACLA 1949)

Collateral references. — 60 Am. Jur. 2d, Partnership, §§ 371, 372, 376

Sec. 32.10.270. Rules for cases not covered by chapter. In any case not provided for in this chapter the rules of law and equity, including the law merchant, govern. (§ 28-2-29 ACLA 1949)

Sec. 32.10.280. Limited partnership defined. A limited partnership is a partnership formed by two or more persons under AS 32.10.010 that has as members one or more general partners and one

or more limited partners. A limited partner as such is not bound by the obligations of the partnership. (§ 28-2-1 ACLA 1949)

Collateral references. -- 60 Am Jur.
2d, Partnership, §§ 10, 370.

Sec. 32.10.290. Short title. This chapter may be cited as the Uniform Limited Partnership Act. (§ 28-2-27 ACLA 1949)