

SPB

193

FISCAL NOTE

No. 5

Bill Version: CS SB 193 (FIN)

(S) Publish Date: 2-5-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: January 30, 1992

Department Affected: Commerce & Econ. Dev.

Title: Uniform Limited Partnership Act

BRU: Banking, Securities & Corporations

Component: Corporations

Sponsor: Sen. Rodey

Requestor: _____

COMPONENT SERIAL NO.

1	2	3	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	3.0	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND RESOURCE:	4.0	4.0	4.0	4.0	4.0	4.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	3.0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS (Attach a separate page if necessary.)

The Department of Commerce and Economic Development (DCED) and the Department of Natural Resources (DNR) have consulted in the preparation of their respective fiscal notes in response to SB 193. This fiscal note reflects only those expenses which DCED expects to incur in implementing this legislation.

(CONTINUED NEXT SHEET)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521

Division: Banking, Securities & Corporations Date: _____

Approved by Commissioner: Glenn A. Olds

Agency: Department of Commerce & Economic Development Date: January 30, 1992

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., and Impacted Agency(ies).

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FISCAL NOTE - SB 193

ANALYSIS - CONTINUED:

DCEID will receive both hardcopy documents (filed) and microfilmed documents (recorded). Hardcopy documents will be converted to microfilm and indexed to conform to the department's filing system.

The database utilized by DNR will be purchased from Motznik Computer Services, Inc. and modified to conform to the department's computer filing system.

The projected expenses will be the cost of the record conversion. The additional expenses are to cover the expenses of postage and promulgating regulations.

Contractual expenditures:

- \$.5 Postage - Projected for mailing notice of agency change and for the promulgation of regulations.
- \$.2 Supplies - Projected for costs incurred in conversion and mailing.
- \$.5 Motznik Conversion - Projected for the cost incurred in purchasing computer records from Motznik Computer Services, Inc. and for the cost of conversion of these records.
- \$.3 Advertising - Projected cost of posting regulations for commentary.
- \$1.5 Conversion - Projected cost for personnel data input of initial hardcopy records.

The projected revenue of \$4.0 will be new program receipts for DCEID. This revenue is based upon the present filing charged by DNR of \$15.00. Approximately 260 limited partnerships are filed each year.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

Revision Date: 30-Jan-92Department Affected: Natural ResourcesTitle: Limited PartnershipsBRU: Management & AdministrationComponents: Recorder's OfficeSponsor: Senator RodeyRequestor: Senate Finance

COMPONENT SERIAL NO.

802

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL	1.0					
CONTRACTUAL	3.5					
SUPPLIES	2.1					
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	6.6	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
Funding Source:	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)

FUNDING: (Thousands of Dollars)

GENERAL FUND	6.6					
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	6.6	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

See Attached

Changes in CSSB 193 (JUD) reflect NO FISCAL CHANGE from the original fiscal note. This fiscal note is appropriate.

2/5/92
date

[Signature]
Comte Aide (initial)

Prepared by: Meg HayesPhone: 762-2437Division: Management & AdministrationDate: 29-Jan-92Approved by Commissioner: Harold C. HeinzeDate: 29-Jan-92Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB,
& Impacted Agency(ies).

CSSB 193 (JUD)
Fiscal Note Analysis
January 30, 1992

The Departments of Natural Resources and Commerce and Economic Development have consulted in the preparation of their respective fiscal notes. This note includes only those expenses for the Department of Natural Resources and to our knowledge does not overlap with that of the Department of Commerce and Economic Development.

The Department of Natural Resources will duplicate those original documents retained or microfilmed in the statewide Recorder's Offices pertaining to limited partnerships. A microfilm copy of all original documents filed and of documents recorded prior to transfer will be transferred to the Department of Commerce and Economic Development along with those original documents filed prior to 1988. (After January 1, 1988 partnership documents became a "recorded" document rather than a "filed" document and originals were returned to the client.) Another microfilm copy of all documents will be kept in the Recorder's Offices in order to maintain the integrity of the public record and because persons who filed prior to that date will expect to be able to return to the office of record for copies.

Funding is requested to bring all documents filed prior to January 1, 1988 to a central location where they will be microfilmed by a contractor. Documents recorded since January 1, 1988 are already on microfilm and will be extracted and duplicate filmed.

100 none requested

200 \$1.0 is requested to travel to the Court System maintained offices in Glennallen, Seward, and Valdez to pack and transport records. In other locations, Recorder's Office employees will do the work.

300 \$3.5 is requested for computer programming charges necessary to identify and extract the records and for contract microfilm services.

400 \$2.1 is requested for postage, packing materials, and miscellaneous supplies.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

NO. 5
Bill Version: CSSB 193 (JUL)
(S) Publish Date: 2-5-92

Revision Date: January 27, 1992 Department Affected: Department of Law
Title: "An Act relating to limited partnerships..." BRU: Legal Services
Sponsor: Senator Rodey Component: Operations
Requestor: Senator Rodey COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

This bill amends the state's Uniform Partnership Act, AS 32, to add a new chapter covering limited partnerships. The bill deals with transactions between private parties and will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: January 27, 1992
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law to: January 27, 1992

Distribution (by preparer): Leg. Fin., Legislative Sp
Rev 10/7/91

Changes in CSSB 193 (FIN) have no fiscal impact. This fiscal note is appropriate.

Page 1 of 1

2/5/92 DATE Richard I. Pegues (INITIAL)

Alaska State Legislature



PATRICK M. RODEY
SENATOR

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

During Session:
State Capitol
Juneau, Alaska 99801-1182
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Senate

M E M O R A N D U M

DATE: May 5, 1992

TO: Members, House Judiciary Committee

FROM: Senator Pat Rodey *Pat*

SUBJ: CSSB 193 (FIN) - Revisions to Uniform Limited Partnership Act, and amending Alaska Rule of Civil Procedure 8.

Attached is a summary of the above-referenced bill which is in committee. Under the time constraints of the end of session, I am circulating this in order to give you more information prior to the committee hearing.

In anticipation of any questions you may have, please call Tim Benintendi of my staff.

PMR/tb/memo013

SPONSOR STATEMENT

CSSB 193 (FIN)

The Uniform Limited Partnership Act seeks to provide for conformity in corporation law, among the states. Alaska is currently governed by the 1916 version of the act.

SB 193 would have Alaska adopt revisions to the Uniform Limited Partnership Act of 1916. The revisions are the 1976 revisions, recommended by the National Conference of Commissioners on Uniform State Laws, with amendments from 1985. SB 193 contains all of the 1976 revisions and all of the 1985 amendments, except Section 201 of the 1985 amendments.

Section 201 deals with the registration of limited partnerships. Currently, we in Alaska use the certificate process, or long form, which requires applicants to submit a variety of information pertaining to the partnership. Adopting the 1985 version of 201 would eliminate too many reporting requirements and soften disclosure obligations. Adopting Section 201 from the 1985 Amendments would reduce the registration requirement to one of a notice only.

I recommend keeping the 1976 version of Section 201 which would insure stricter reporting requirements. This was the recommendation of both the Senate Judiciary and Finance Committees.

CSSB 193 (FIN) also repeals AS 40.17.110 (b), a requirement that limited partnership certificates be filed in the Office of the Recorder. Under this bill, registration and all record keeping would be done completely within DCED.

It was originally hoped that this bill would pass last year. Since it did not, the effective date is now changed from July 1, 1992, to July 1, 1993.

DIVISION OF LEGAL SERVICES

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MEMORANDUM

February 18, 1992

SUBJECT: Sectional summary of CSSB 193 (Fin)

TO: Senator Pat Rodey
Attn: Tim Benintendi

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have requested a sectional summary of CSSB 193 (Fin), an act relating to limited partnerships. Please be aware that this is only a summary of the bill and that the bill remains the best source of its contents.

The bill is taken from 1985 version of the Uniform Limited Partnership Act ("ULPA"), except that sec. 32.11.010 is based on the 1976 version and corresponding changes were made throughout the bill to accommodate sec. 32.11.010. The corresponding ULPA section number is given for each section, so that you can more easily refer to the information provided on each ULPA section by the National Conference of Commissioners on Uniform State Laws.

Section 1. Main provisions of the bill.

Sec. 32.11.010. This is sec. 201 of the ULPA. It requires the filing of a certificate of limited partnership in order to form a limited partnership. It indicates that two or more persons must execute the certificate and that it is to be filed with the Department of Commerce and Economic Development ("department"). It lists the information that the certificate must include. Subsec. (b) indicates when the partnership is considered to be formed.

Sec. 32.11.020. This is sec. 202 of the ULPA. This section establishes how a certificate of limited partnership can be amended. A certificate of amendment must be filed with the department. The section identifies what information the certificate of amendment must include. Subsec. (b) requires that an amendment to a certificate of limited partnership must be filed after certain listed events. Subsec. (c) requires a general partner to amend the certificate if the partner realizes that the certificate is inaccurate. Subsec. (d) allows the certificate to be amended freely. Subsec. (e)

prohibits a person from being held liable for not filing an amendment required under (b) if the person files the amendment within the 30-day period allowed under (b). Subsec. (f) states that a restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Sec. 32.11.030. This is sec. 203 of the ULPA. This section directs that a certificate of limited partnership is to be canceled if the partnership is dissolved and winding up commenced or whenever there aren't any limited partners. Directs that a certificate of cancellation be filed with the department. Identifies what information the certificate of cancellation must include.

Sec. 32.11.040. This is sec. 204 of the ULPA. This section establishes how a certificate required by the chapter is to be executed. Subsec. (b) allows a person to have another person with a power of attorney sign. A power of attorney relating to the admission or increased contribution of a partner must specifically describe the admission or increase. Subsec. (c) states that the execution by a general partner constitutes an affirmation under the penalty of false swearing.

Sec. 32.11.050. This is sec. 205 of the ULPA. This section provides that any person adversely affected by a failure or refusal to sign a certificate has standing to seek judicial intervention.

Sec. 32.11.060. This is sec. 206 of the ULPA. Subsec. (a) addresses some of the mechanics for filing and department handling of certificates of limited partnership, amendment, and cancellation, and of judicial decrees of amendment or cancellation. Declares that amendments become effective when the certificate or judicial decree of amendment is filed. Declares that a certification of limited partnership is canceled when the certificate or judicial decree of cancellation is filed.

Sec. 32.11.070. This is sec. 207 of the ULPA. This section creates a right of recovery for a person who relies on a certificate that contains a false statement, if the person is damaged by the reliance. Lists the persons who are liable.

Sec. 32.11.080. This is sec. 208 of the ULPA. This section establishes what facts the certificate of limited partnership is considered to be considered notice of.

Sec. 32.11.090. This is sec. 209 of the ULPA. This section directs the general partners to deliver or mail a copy of the filed certificate of limited partnership, amendment, or cancellation to each limited partner unless the partnership agreement provides otherwise.

Sec. 32.11.100. This is sec. 301 of the ULPA. This section describes the situations in which a person may be admitted as a limited partner after the original certificate

of limited partnership is filed. States that the persons become limited partners only when the certificate of limited partnership has been amended to reflect that fact.

Sec. 32.11.110. This is sec. 302 of the ULPA. This section gives voting rights to the limited partners to the extent and in the manner granted by the partnership agreement, subject to sec. 32.11.120.

Sec. 32.11.120. This is sec. 303 of the ULPA. This section indicates when and to what extent a limited partner becomes liable for the obligations of a limited partnership. Subsec. (b) itemizes the activities undertaken by a limited partner that do not constitute participating in the control of the partnership business.

Sec. 32.11.130. This is sec. 304 of the ULPA. This section prevents a person who makes a contribution to a business enterprise from being considered a general partner in certain situations if the person erroneously in good faith believes the person to be a limited partner. Subsec. (b) limits the relief provided in (a).

Sec. 32.11.140. This is sec. 305 of the ULPA. Gives each limited partner the right to inspect and copy the partnership records and to obtain certain information from the general partners.

Sec. 32.11.150. This is sec. 401 of the ULPA. This section establishes how additional general partners may be admitted to a limited partnership after the original certificate of limited partnership has been filed.

Sec. 32.11.160. This is sec. 402 of the ULPA. This section lists the situations in which a person ceases to be general partner of a limited partnership.

Sec. 32.11.170. This is sec. 403 of the ULPA. Subsec. (a) establishes that, except as provided in this chapter or in the partnership agreement, a general partner has the same rights, powers, and restrictions of a partner in a partnership without limited partners. Subsec. (b) establishes generally when a general partner is liable to persons other than the partnership and other partners.

Sec. 32.11.180. This is sec. 404 of the ULPA. This section authorizes a general partner to make contributions and share in the profits, losses, and distributions of the partnership as a general partner and as a limited partner. States that a person who is both a general and limited partner has the rights, powers, restrictions, and liabilities of a general partner and, except as provided in the partnership agreement, the powers and restrictions of a limited partner to the extent of the person's participation as a limited partner.

Sec. 32.11.190. This is sec. 405 of the ULPA. This section authorizes the partnership to provide its general partners with voting rights as provided in the partnership agreement.

Sec. 32.11.200. This is sec. 501 of the ULPA. This section explicitly permits a partner's contribution to be in various forms, including services rendered.

Sec. 32.11.210. This is sec. 502 of the ULPA. This section retains the liability of a partner for the partner's promises even if the partner is unable to perform the promises, unless the certificate of limited partnership provides otherwise. Requires a partner to contribute cash if the partner does not make a required contribution of property or services. Allows a partner's contribution or refund obligation to be compromised only if all partners consent. Authorizes certain creditors to enforce the original obligation despite the compromise.

Sec. 32.11.220. This is sec. 503 of the ULPA. This section indicates how the profits and losses are to be allocated. Generally based on the partnership agreement or the value of the individual contributions of the partners.

Sec. 32.11.230. This is sec. 504 of the ULPA. This section indicates how distributions are to be allocated among the partners. Generally based on the partnership agreement or the value of the individual contributions of the partners.

Sec. 32.11.240. This is sec. 601 of the ULPA. This section establishes when and to what extent a partner is entitled to receive interim distributions from the partnership.

Sec. 32.11.250. This is sec. 602 of the ULPA. This section allows a general partner to withdraw from a partnership at any time. Requires written notice. Authorizes the partnership to recover damages from the withdrawing partner if the withdrawal violates the partnership agreement. The damages may be offset against the amount distributable to the partner.

Sec. 32.11.260. This is sec. 603 of the ULPA. This section allows a limited partner to withdraw as allowed in the certificate of limited partnership. If the certificate doesn't specify, the partner must provide at least six months' prior written notice to the general partners.

Sec. 32.11.270. This is sec. 604 of the ULPA. This section establishes that, with certain exceptions, a withdrawing partner, upon withdrawal, is entitled to receive a distribution. The distribution is based on the partnership agreement, or on the fair value of the partner's interest in the partnership based on the partner's right to share in distributions.

Sec. 32.11.280. This is sec. 605 of the ULPA. This section prohibits, unless the partnership allows, a partner from demanding and receiving a distribution in a form other than cash. Prohibits, unless the agreement allows, compelling a partner to accept certain distributions of assets in kind.

Sec. 32.11.290. This is sec. 606 of the ULPA. This section makes a partner who has become entitled to a distribution a creditor of the partnership and entitled to all the remedies available to a creditor.

Sec. 32.11.300. This is sec. 607 of the ULPA. This section prohibits a partner from receiving a distribution to the extent that after the distribution the partnership's liabilities to third parties exceed the partnership's assets.

Sec. 32.11.310. This is sec. 608 of the ULPA. This section makes a partner whose contribution has been returned to the partner, liable for one year to the partnership to the extent necessary to discharge certain creditors. The period of liability is increased to six years if the return violated the partnership agreement or this chapter.

Sec. 32.11.320. This is sec. 701 of the ULPA. This section establishes that a partnership interest is personal property.

Sec. 32.11.330. This is sec. 702 of the ULPA. This section states that a partnership interest is assignable, except as provided by the partnership agreement. Establishes that an assignment does not dissolve the partnership or entitle the assignee to become or to exercise the rights of a partner. States that an assignment entitles the assignee to receive only the distribution to which the assignor would be entitled. States that a partner who assigns all of the partner's interest ceases to be a partner.

Sec. 32.11.340. This is sec. 703 of the ULPA. This section authorizes a court to charge the partnership interest of a debtor partner with payment of a debt of the debtor partner. Makes the judgment creditor an assignee to the extent of the charge. States that this chapter does not deprive a partner of an exemption allowed by law.

Sec. 32.11.350. This is sec. 704 of the ULPA. This section specifies when and to what extent an assignee of a partnership interest may become a limited partner. The section describes the rights, powers, restrictions, and liabilities of an assignee who has become a limited partner. Maintains the assignor's liability under certain statutes to the partnership.

Sec. 32.11.360. This is sec. 705 of the ULPA. This section establishes the right of an incompetent or deceased partner's legal representative to exercise the partner's rights in order to settle the partner's estate or administer the partner's property. For a partner who is not a natural person and who is dissolved or terminated, the section

authorizes the partner's legal representative or successor to exercise the partner's powers.

Sec. 32.11.370. This is sec. 801 of the ULPA. This section identifies the events causing dissolution and winding up of a limited partnership.

Sec. 32.11.380. This is sec. 802 of the ULPA. This section authorizes a partner to obtain a judicial decree of dissolution of the partnership if it is not reasonably practical to carry on the business under the partnership agreement.

Sec. 32.11.390. This is sec. 803 of the ULPA. This section indicates which partners can wind up the partnership's affairs. The section authorizes a court to wind up the partnership's affairs if a partner, a partner's legal representative, or an assignee applies for the relief.

Sec. 32.11.400. This is sec. 804 of the ULPA. This section establishes how the partnership assets are to be distributed upon the winding up of the partnership.

Sec. 32.11.410. This is sec. 901 of the ULPA. This section establishes that a foreign limited partnership is governed by the laws of the state where it was organized. The section also prohibits denying registration to a foreign limited partnership because the laws of its state of origin differ from those of this state.

Sec. 32.11.420. This is sec. 902 of the ULPA. This section requires a foreign limited partnership to register with the department before transacting business in this state. Establishes how the partnership applies for registration and the information that it must provide to the department in the application.

Sec. 32.11.430. This is sec. 903 of the ULPA. This section directs the department to issue a certificate of registration to transact business in this state to a foreign corporation if its application is in order and it has paid the required fees.

Sec. 32.11.440. This is sec. 904 of the ULPA. This section establishes the parameters for the name that a foreign limited partnership may use when it registers with the department.

Sec. 32.11.450. This is sec. 905 of the ULPA. This section directs the foreign limited partnership that has registered with the state to file with the department a certificate correcting the registration application if a statement in its registration application was inaccurate or has become inaccurate.

Sec. 32.11.460. This is sec. 906 of the ULPA. This section allows a foreign limited partnership to cancel its registration and establishes the procedure for doing so. States that a cancellation does not terminate the authority of the commissioner to

accept service of process on the partnership for actions arising out of its business in the state.

Sec. 32.11.470. This is sec. 907 of the ULPA. This section prohibits a foreign limited partnership from bringing an action in this state until it has registered. States that a failure to register doesn't impair the validity of a contract or act of the partnership or prevent the partnership from defending an action in this state. The section states that a limited partner of a foreign limited partnership is not liable as a general partner solely because of transacting business in this state without being registered. The commissioner becomes the agent for the service of process for a foreign limited partnership that transacts business in the state without being registered.

Sec. 32.11.480. This is sec. 908 of the ULPA. This section authorizes the department to bring an action to restrain a foreign limited partnership from transacting business in this state in violation of secs. 32.11.410 - 32.11.480.

Sec. 32.11.490. This is sec. 1001 of the ULPA. This section authorizes a limited partner to bring a derivative action on behalf of the limited partnership under certain circumstances.

Sec. 32.11.500. This is sec. 1002 of the ULPA. This section indicates how a partner qualifies to bring a derivative action.

Sec. 32.11.510. This is sec. 1003 of the ULPA. This section describes what the initial pleading in a derivative action must set out.

Sec. 32.11.520. This is sec. 1004 of the ULPA. This section directs the court to direct the successful plaintiff in a derivative action to remit a specified portion of certain recoveries to the limited partnership.

Sec. 32.11.800. This is sec. 1101 of the ULPA. This section states that this chapter is to be applied and construed to achieve its purpose of making the law uniform in this area.

Sec. 32.11.810. This is sec. 102 of the ULPA. This section establishes certain parameters for the name of a limited partnership.

Sec. 32.11.820. This is sec. 103 of the ULPA. This section authorizes a person or a limited partnership to reserve for a limited partnership the exclusive right to the use of a particular name. Establishes the procedure for and the duration of the reservation. Authorizes the transfer of a right to the exclusive use of a reserved name.

Sec. 32.11.830. This is sec. 104 of the ULPA. This section requires a limited partnership to maintain in this state an office and an agent for the service of process. Requires the partnership to keep certain records at the office. Establishes who can be an agent. Establishes how the registered office and agent can be changed.

Sec. 32.11.840. This is sec. 105 of the ULPA. This section requires the limited partnership to keep certain records at its required office. Makes these records subject to inspection and copying by the partners.

Sec. 32.11.850. This is sec. 106 of the ULPA. This section authorizes a limited partnership to carry on any business that a partnership without limited partners may carry on.

Sec. 32.11.860. This is sec. 107 of the ULPA. This section authorizes a partner to lend money to and to transact other business with the limited partnership, except as provided by the partnership agreement, and, subject to applicable law, with the same rights and obligations as a person who is not a partner.

Sec. 32.11.870. This section is not in the ULPA. Requires limited partnerships to pay filing fees for their applications to the department. The department establishes the fees by regulation.

Sec. 32.11.890. This is sec. 1105 of the ULPA. This section states that the Uniform Partnership Act (AS 32.05) applies to a situation not covered by this chapter.

Sec. 32.11.900. This is sec. 101 of the ULPA. This section defines the terms for the chapter.

Sec. 32.11.990. This is sec. 1102 of the ULPA. Gives the chapter a short name.

Section 2. This section repeals the current chapter on limited partnerships and the provision that allows the recorder to record certificates of limited partnerships and their amendments.

Section 3. This section indicates how certain provisions of the new chapter (sec. 1) will be applied to certain described situations.

Section 4. This section describes how sec. 32.11.510 amends an Alaska court rule.

Section 5. This section gives the Act an effective date.

HELLER, EHRMAN, WHITE & McAULIFFE
ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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April 2, 1992

VIA EXPRESS MAIL & FACSIMILE

Senator Pat Rodey
State Capital, Room 113
Juneau, Alaska 99801-1182

Re: Committee Substitute for Senate Bill No. 193/
Limited Partnerships

Dear Senator Rodey:

The undersigned business and tax law practitioners met in Anchorage on March 11, 1992, to discuss pending legislation. Of particular interest to the group was CSSB 193.

As a group, we strongly and unanimously support your effort to update Alaska's Uniform Limited Partnership Act by adoption of the 1976 version of the Uniform Limited Partnership Act with the 1985 amendments. We are equally committed, however, in our unanimous belief that the 1985 amendments should be adopted in the form proposed by the Uniform Law Commissioners ("ULC"), and not with the deviations found in CSSB 193. Specifically, we believe Section 201 of the 1985 amendments as promulgated by the ULC, which provides for a shorter or "notice" form of certificate of limited partnership, should be adopted, rather than proposed AS 32.11.010, which requires substantially greater and more detailed information and reflects no substantial change from current law.

We believe a notice filing is preferable because the longer form certificate imposes significant costs and burdens on limited partnerships with no resultant benefit to third-party creditors of or investors in limited partnerships.

Financial institutions and others who may extend credit to or otherwise do business with limited partnerships are in a position to acquire such information from the general partners of a limited partnership as they deem necessary as a condition to the extension of credit or commencement of business with the limited partnership.

Senator Pat Rodey
April 2, 1992
Page 2

Investors in limited partnerships are adequately protected by the disclosure requirements of the Alaska Securities Act of 1959. Even in instances where an investor transaction is exempted from the registration requirements of the Act, a prudent investor has the ability and incentive to request additional information of the type provided by the long form certificate prior to investing.

Current practice and the 1985 amendments demonstrate that no benefit is obtained from the longer form certificate after initial investment either. It is common under current law for limited partners to grant powers of attorney to allow a general partner to sign certificates, amendments, and even the writing that cancels a certificate. See Bankston & O'Hara, The Creation, Operation and Dissolution of a Limited Partnership in Alaska, 2 Alaska L. Rev. 271, 303-304 (1985). This practice is expressly sanctioned by proposed AS 32.11.040(b). The longer form limited partnership certificate thus provides no additional protection to existing limited partners.

Finally, no other Alaska statutory business entity is required to provide the level of financial disclosure required by AS 32.11.010: no par value stock and essentially "notice" type articles of incorporation are permitted by our corporate code; general partnerships are not required to make any filings reflecting their existence or respective partner contributions.

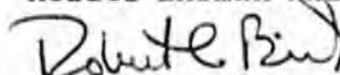
The limited partnership entity fulfills a unique and valuably different role in Alaska's business hierarchy, and should not be hindered or rendered economically unfeasible at a time when all investment vehicles are necessary to facilitate a hopefully recovering economy.

We strongly support your efforts to amend Alaska's Uniform Limited Partnership Act and thank you for your efforts. As business and tax law practitioners, however, we urge you to abandon CSSB's deviation from the ULC's 1985 proposed Section 201 and instead support adoption of the notice form of certificate of limited partnership.

Very truly yours,



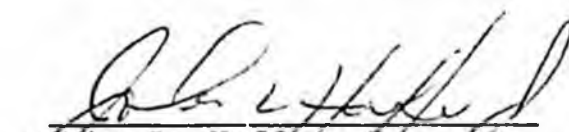
John H. Tindall
Heller Ehrman White & McAuliffe

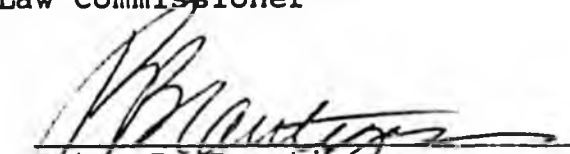


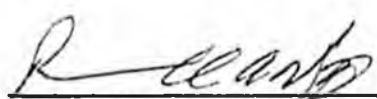
Robert C. Brink
Law Offices of Robert C. Brink

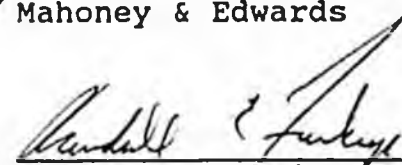
Senator Pat Rodey
April 2, 1992
Page 3

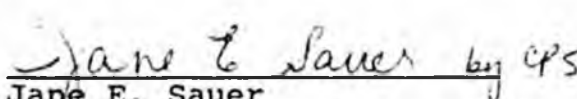
cc: Fred Zharoff, Chairman of the Senate Rules Committee
~~Dave Donlev, House Judiciary Committee~~
Max Gruenberg, House Judiciary Vice-Chairman
Lori Nottingham, Deputy Legislative Liaison
Arthur H. Peterson, Uniform Law Commissioner

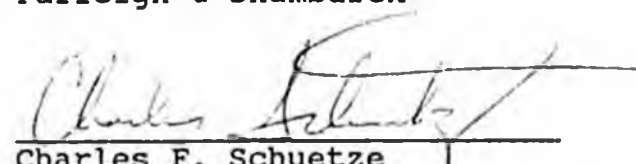

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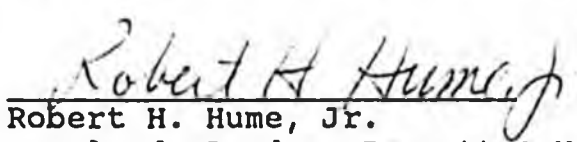

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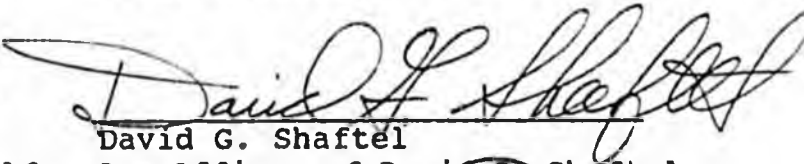

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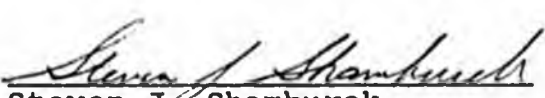

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Farleigh & Shamburek

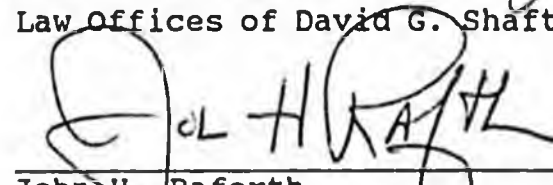

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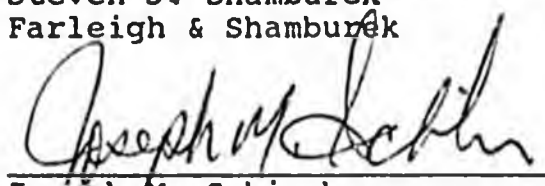

Charles F. Schuetze
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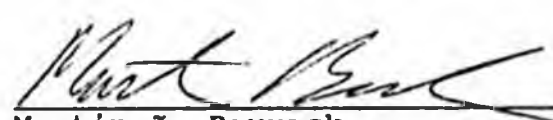

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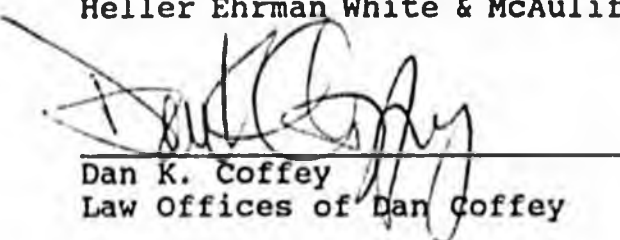

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Joseph M. Schierhorn
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Martin J. Barrack
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JOHN C HUGHES
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Reply to: Anchorage

Direct Dial:
(907) 263-8251

March 23, 1992

Senator Pat Rodey
State Capitol, Room 113
Juneau, AK 99801-1182

Re: Committee Substitute For Senate Bill No. 193 / Limited Partnerships

Dear Senator Rodey:

I am away from the law firm and on sabbatical attending the Boston University Graduate Tax Program. Accordingly, I have not been able to discuss the above bill with members of the Business Law Section of the State Bar Association and other interested persons.

Nevertheless, I do note that the bill seems to deviate from the 1985 version of the Revised Uniform Limited Partnership Act by requiring the inclusion of substantial additional information in the certificate of limited partnership. Specifically, proposed AS 32.11.010 would require that a laundry list of 13 items to be included in the certificate of limited partnership. Those items include "the amount of cash and a description and statement of agreed value of other property or services" contributed or to be contributed by each partner and "the name and business address of each partner." This is in contrast to the 5 items required to be listed in the current (1985) version of the Revised Uniform Limited Partnership Act which do not include the two items specifically listed above.

Senator Pat Rodey
March 23, 1992
Page 2

HUGHES THORSNESS
GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

The longer laundry list seems to be drawn from the original (1976) version of the Revised Uniform Limited Partnership Act. The preface to the current (1985) version of the Revised Uniform Partnership Act notes that "the former requirement [identified above] served no significant practical purpose while it imposed on limited partnerships (particularly those having a large number of partners or doing business in more than one state) inordinate administrative and logistical burdens and expenses connected with filing and amending their certificates of limited partnership." I think that the reasoning of the Uniform Law Commissioners on this point is persuasive.

In addition, public disclosure of this private financial information is not required (at least not to the same extent) for either general partnerships or corporations. If a business creditor of a limited partnership needs to the information, the creditor can simply refuse to provide credit until the information is supplied. Similarly, a limited partner has access to this information under the provisions of law.

Accordingly, I suggest that proposed AS 32.11.010 be modified to include simply the 5 item list from the current (1985) version of the Revised Uniform Limited Partnership Act. Likewise proposed AS 32.11.420 should be modified to track section 902 of the current (1985) version of RULPA.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

By: *Robert L. Manley*
Robert L. Manley *by [Signature]*

RLM/kah/1483:XKAH

cc: Fred Zharoff, Chairman of the Senate Rules Committee
John Tindall, Chairman, Business Law Section, Alaska Bar
Association
Dave Donley, House Judiciary Chairman
Max Gruenberg, House Judiciary Vice-Chairman
Lori Nottingham, Deputy Legislative Liaison
Arthur H. Peterson, Uniform Law Commissioner



ADDRESS ALL COMMUNICATIONS
TO THE COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE: (415) 557

Public Utilities Commission
STATE OF CALIFORNIA

COMMISSIONER

April 4, 1991

The Honorable Pat Rodey
Alaska State Senate
State Capitol, Legislative Pouch
Juneau, Alaska 99811

Dear Pat:

You surely have an instinct for doing what is right and in the public interest! I strongly support passage of Senate Bill 193 as introduced by your office on March 13.

Your decision to omit the 1985 amendments to Sections 201 and 303 is to be applauded. While you will receive representations that no harm is done to the business community by scraping the disclosure requirement of Section 201, a moment's reflection reveals the fallacy of those arguments. One rarely hides irrelevant information!

The value of a public disclosure device: The content of Section 201 as set forth in your bill serves two vital constituencies: the initial investor and the subsequent business creditor.

For the average Alaska investor, the ability to find meaningful disclosure in a document prepared according to mandated content and thereafter filed in compliance with a statutory command, offers substantial protection to one seeking to evaluate risks and assess the management structure. The 1985 amendment, which would leave both the content and structure of this vital information at the mercy of the general partner or partners, is without redeeming public merit in my humble view.

The limited liability nature of a partnership formed under your bill makes its structure and financial basis of vital interest to creditors. You will hear arguments that an interested creditor could demand this information before extending credit and this is surely sound. But under your legislation the information would be a matter of public record and material omissions or misrepresentations an offense to "law" not merely a devious business practice. This is surely better.

The Honorable Pat Rodey
Page two
April 4, 1991

Pat it is also of significance that investors and creditors *currently* have the benefit of legally mandated disclosure in the course of forming limited partnerships under existing law. The 1985 amendment to Section 201 would abruptly withdraw that protection and break with that practice.

The reclassification of a limited partner: Section 303 as introduced in your bill, is a prudent departure from Alaska's 40 years experience with Section 7 of the existing law. The trick is to reform the law in a balanced manner which business people can understand. I believe that existing practice, which exposes a limited partner to reclassification whenever it can be established that he had taken part in "control" of the partnership, is too strict.

Your bill embodies two salutatory changes. First it creates a "safe harbor" in which the limited partner may be active without fear of reclassification. Second, for behavior beyond the bounds of the safe harbor, your bill resolves the major issue of whether reclassification should flow as a consequence of exceeding the bounds of passivity which the statute exacts in exchange for the protection of limited liability, *or* should rise or fall upon the perception of individual creditors.

Existing law makes their perception irrelevant. Reclassification is a consequence of offense to the passivity norm. Section 303 of your bill changes that. It makes reclassification dependent upon creditor impression and belief (that the active limited partner must be a general partner) *unless* the pattern of activity and interference is so pervasive as to mirror the behavior of a general partner. In this extraordinary case, the formal designation of so active a participant as a "limited partner" is recognized as intrinsically at variance with reality and she is exposed to the liability posture of a general partner with respect to all creditors.

The 1985 amendment to Section 303 substitutes the issue of creditor reliance no matter how flagrant the departure from the expectation of limited liability. The only justification which can be offered is that the state no longer has any interest in fidelity to the statutory norm that control and management is to be in the hands of general partners! Ironically, the citizens left without any protection by the 1985 amendment are *other limited partners* in that investment who have neither the time nor the inclination to contest the aggressive intention of one of their fellow limited partners to assume de facto control of the investment. Under your legislation they are protected in the sense that there is a risk to the aggressor that she will be liable to all creditors to the same extent as a general partner.

Pat, a more detailed explanation of my recommendations respecting the contents of a Revised *Unified Limited Partnership Act* was communicated in February to Art

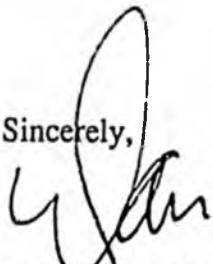
The Honorable Pat Rodey
Page three
April 4, 1991

Peterson. I will ask that Art supply your office with a copy of that letter is sent to your office.

The bottom line; hold fast to Senate Bill 193, it is the work of a legislature that is determined to be far more than a rubber stamp!

Warmest personal regards,

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Fessler", written over the word "Sincerely,".

Daniel Wm. Fessler
COMMISSIONER

CC: Arthur Peterson, Esquire
Honorable John Abbott

UNIFORM LIMITED PARTNERSHIP ACT (1976)
WITH 1985 AMENDMENTS

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FOURTH YEAR
IN MINNEAPOLIS, MINNESOTA
AUGUST 2-9, 1985



WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Baltimore, Maryland, February 11, 1986

UNIFORM LIMITED PARTNERSHIP ACT (1976)
WITH 1985 AMENDMENTS

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Limited Partnership Act (1976) with 1985 Amendments was as follows:

BROCKENBROUGH LAMB, JR., 1200 Mutual Building, Richmond, VA 23219, *Chairman*

ROBERT H. CORNELL, 25th Floor, 50 California Street, San Francisco, CA 94111

ROBINSON O. EVERETT, 450 E Street, N.W., Washington, DC 20442

PATRICK C. GUILLOT, Suite 3300, InterFirst Plaza, Dallas, TX 75202

MORRIS W. MACEY, Suite 900, 133 Carnegie Way, N.W., Atlanta, GA 30303

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MICHAEL P. SULLIVAN, 3400 City Center, Minneapolis, MN 55402

ROBERT M. BERGER, Room 1955, 231 South LaSalle Street, Chicago, IL 60604, *Reporter*

CARLYLE C. RING, JR., Room 322-D, 5390 Cherokee Avenue, Alexandria, VA 22312, *President (Member Ex Officio)*

WILLIAM J. PIERCE, University of Michigan, School of Law, Ann Arbor, MI 48109, *Executive Director*

ROBERT C. ROBINSON, 12 Portland Pier, P.O. Box 568, Portland, ME 04112, *Chairman, Division D (Member Ex Officio)*

Advisors to Special Committee on
Uniform Limited Partnership Act (1976) with 1985 Amendments
from the American Bar Association
Section of Corporation, Banking and Business Law

JOEL S. ADELMAN, 2290 First National Building, Detroit, MI 48226

THURSTON R. MOORE, P.O. Box 1535, Richmond, VA 23212

JOHN H. SMALL, 1310 King Street, Wilmington, DE 19899

HOWARD P. WALTHALL, Cumberland Law School, Samford University,
800 Lakeshore Drive, Birmingham, AL 35229

Final, approved copies of this Act
and copies of all Uniform and Model Acts
and other printed matter issued by the Conference
may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611
(312) 321-9710

UNIFORM LIMITED PARTNERSHIP ACT (1976) WITH 1985 AMENDMENTS

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

PREFATORY NOTE

~~The Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976~~ In 1976, the National Conference of Commissioners on Uniform State Laws adopted the first revision of the Uniform Limited Partnership Act, originally promulgated in 1916. The 1976 Act was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners that is not available in the corporate form. Moreover, the relationship among partners is consensual, and ~~requires a degree of privity that forces the~~ under some circumstances may require a general partner to seek approval of the other partners (sometimes unanimous approval) under circumstances that corporate management would find unthinkable. The limited partnership was not intended to be an alternative in all cases where the corporate form is undesirable for tax or other reasons, and the ~~new~~ 1976 Act was not intended to make it so. The ~~new~~ 1976 Act ~~clarifies~~ clarified many ambiguities and ~~fills~~ filled interstices in the ~~prior uniform law~~ 1916 Act by adding more detailed language and mechanics. In addition, it effected some important substantive changes and additions ~~have been made from the prior uniform law.~~

The Uniform Limited Partnership Act (1976) with the 1985 Amendments (the 1985 Act) follows the 1976 Act very closely in most respects. It makes almost no change in the basic structure of the 1976 Act. It does, however, differ from the 1976 Act in certain significant respects for the purpose of more effectively modernizing, improving and establishing uniformity in the law of limited partnerships. The 1985 Act accomplishes this without impairing the basic philosophy or values underlying the 1976 Act, by incorporating into the structure, framework and text of the 1976 Act the best and most important improvements that have emerged in the limited partnership acts enacted recently by certain states. Most of those improvements were considered by the draftsmen of the 1976 Act but were not included in it because of uncertainties as to the possible consequences of such inclusion under applicable Federal income tax laws. Those uncertainties have since been resolved satisfactorily, and no impediment to incorporating them in the 1985 Act remains at this time.

Article 1 provides a list of all of the definitions used in the Act, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. All of these provisions ~~are now~~ were innovations in the 1976 Act and were carried over from the 1976 Act to the 1985 Act. Article 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. When adopted in 1976, Articles 1 and 2 reflected an important change in the prior statutory scheme: recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership), and merely reflects the most basic matters as to which government officials, creditors, and others dealing or considering dealing with the partnership should be put on notice. This principle is further implemented by the 1985 Act's elimination of the requirement, carried from the original 1916 Act into the 1976 Act, that the certificate of limited partnership set out the name, address and capital contribution of each limited partner and certain other details relating to the operation of the partnership and the respective rights of the partners. The former requirement served no significant practical purpose while it imposed on limited partnerships (particularly those having large numbers of partners or doing business in more than one state) inordinate administrative and logistical burdens and expenses connected with filing and amending their certificates of limited partnership. Many of the other changes made by the 1985 Act merely reflect the elimination of that requirement.

LIMITED PARTNERSHIP ACT

Article 3 deals with the single most difficult issue facing lawyers who use the limited partnership form of organization: the powers and potential liabilities of limited partners. Section 303 lists a number of activities in which a limited partner may engage without being held to have so significantly participated in the control of the business that he ~~assumes~~ acquires the liability of a general partner. Moreover, it goes on to confine the liability of a limited partner who merely ~~steps over the line of participation~~ participates in control to situations in which persons who actually know of that participation in control are misled thereby to their detriment into reasonably believing the limited partner to be a general partner. ~~General liability for partnership debts is imposed only on those limited partners who are, in effect, "silent general partners." With that exception, no provisions of the new Act that impose liability on a limited partner who has somehow permitted third parties to be misled to their detriment as to the limited partner's true status confine that liability to those who have actually been misled.~~ This "detrimental reliance" test, together with an expansion of the "laundry list" of specific activities in which limited partners may participate without incurring liability, are among the principal innovations in the 1985 Act.

The provisions relating to general partners are collected in Article 4. It differs little from the corresponding article in the 1976 Act, except that some of the 1976 Act's references to the certificate of limited partnership have been changed to refer instead to the partnership agreement. This is in recognition of the principle that the limited partnership agreement, not the certificate of limited partnership, is the primary constitutive, organizational and governing document of a limited partnership. Article 5, ~~the dealing with finance, and~~ differs in some important respects from Article 5 of the 1976 Act, which itself made some important changes from the ~~prior uniform law, 1916 Act.~~ The 1976 Act explicitly permitted contributions to the partnership to be made in the form of the contribution of services and promises to contribute cash, property or services, ~~are now explicitly permitted as contributions.~~ And provided that those who failed to perform promised services ~~are~~ were required, in the absence of an agreement to the contrary, to pay the value of the services ~~as~~ stated in the certificate of limited partnership. These important innovations of the 1976 Act are retained in substance in the 1985 Act. However, the 1985 Act substitutes the partnership agreement and the records of the limited partnership for the certificate of limited partnership as the place such agreements are to be set out and such information is to be kept.

Article 6 of the 1976 Act, dealing with distributions and with the withdrawal of partners from the partnership, made a number of changes from the ~~prior uniform law are made in Article 6, 1916 Act, dealing with distributions from and the withdrawal of partners from the partnership.~~ For example, Section 608 created a statute of limitations ~~on~~ applicable to the right of a limited partnership to recover all or part of a contribution that had been returned to a limited partner, whether to satisfy creditors or otherwise. The 1985 Act retains these features of the 1976 Act without substantive change.

In both the 1976 and the 1985 Acts, ~~the~~ assignability of partnership interests is dealt with in considerable detail in Article 7, ~~and~~ the provisions relating to dissolution appear in Article 8, ~~which, among other things, imposes~~ Article 8 of the 1976 Act established a new standard for seeking judicial dissolution of a limited partnership, which standard is carried forward into the 1985 Act.

Article 9 of the 1976 and 1985 Acts deals with ~~one of the thorniest questions for those who operate limited partnerships in more than one state, has been i.e., the status of the partnership in a state other than the state of its organization.~~ Neither ~~existing~~ case law under the 1916 Act nor administrative practice makes it clear ~~which state's law governed the partnership or whether, in that other state, the limited partners continued to possess their limited liability and which law governs the partnership.~~ Article 9 of the 1976 Act dealt with this problem by providing for registration of foreign limited partnerships and specifying choice-of-law rules. Article 9 of the 1985 Act retains all of those basic provisions and innovations of the 1976 Act.

Finally Article 10 of the ~~new~~ 1976 Act represented another significant innovation, by authorizing derivative actions to be brought by limited partners. The 1916 Act failed to address this entire concept. Article 10 of the 1985 Act clarifies certain provisions of the 1976 Act but does not make any substantive changes in the corresponding provisions of the 1976 Act.

Finally, Article 11 sets out a number of miscellaneous provisions, not the least of which are those dealing with the application of the new statute to limited partnerships in existence at the time of its enactment. Those provisions in the 1976 Act were expanded upon by the 1985 Act to give ~~greater~~ deference to the possible expectations, some of which may have constitutionally protected status, of partners in such limited partnerships concerning the continuing applicability to their partnerships of the law in effect when they were organized.

LIMITED PARTNERSHIP ACT

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

- 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.

Section

- 605. Distribution in Kind.
- 606. Right to Distribution.
- 607. Limitations on Distribution.
- 608. Liability Upon Return of Contribution.

Section

ARTICLE 7 ASSIGNMENT OF PARTNERSHIP INTERESTS

- 701. Nature of Partnership Interest.
- 702. Assignment of Partnership Interest.
- 703. Rights of Creditor.
- 704. Right of Assignee to Become Limited Partner.
- 705. Power of Estate of Deceased or Incompetent Partner.

ARTICLE 8 DISSOLUTION

- 801. Nonjudicial Dissolution.
- 802. Judicial Dissolution.
- 803. Winding Up.
- 804. Distribution of Assets.

ARTICLE 9 FOREIGN LIMITED PARTNERSHIPS

- 901. Law Governing.
- 902. Registration.
- 903. Issuance of Registration.
- 904. Name.
- 905. Changes and Amendments.
- 906. Cancellation of Registration.
- 907. Transaction of Business Without Registration.
- 908. Action by [Appropriate Official].

ARTICLE 10 DERIVATIVE ACTIONS

- 1001. Right of Action.
- 1002. Proper Plaintiff.
- 1003. Pleading.
- 1004. Expenses.

ARTICLE 11 MISCELLANEOUS

- 1101. Construction and Application.
- 1102. Short Title.
- 1103. Severability.
- 1104. Effective Date, Extended Effective Date and Repeal.
- 1105. Rules for Cases Not Provided for in This Act.
- 1106. Savings Clause.

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 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.

COMMENT

The definitions in this section clarify a number of uncertainties in the law existing prior to the 1976 Act, and also make certain changes in such prior law. The 1985 Act makes very few additional changes in Section 101.

Contribution: this definition makes it clear that a present contribution of services and a promise to make a future payment of cash, contribution of property or performance of services are permissible forms for a contribution. Section 502 of the 1985 Act provides that a limited partner's promise to make a contribution is enforceable only when set out in a writing signed by the limited partner. (This result is not dissimilar from that under the 1976 Act, which required all promises of future contributions to be described in the certificate of limited partnership, which was to be signed by, among others, the partners making such promises.) Accordingly, the present property or services contributed presently or promised to be contributed in the future must be accorded a value in the partnership agreement or the partnership records required to be kept pursuant to Section 105, certificate of limited partnership (Section 201.5), and, in the case of a promise, that value may

determine the liability of a partner who fails to honor his agreement (Section 502). Section 3 of the ~~prior uniform law~~ 1916 Act did not permit a limited partner's contribution to be in the form of services, although that inhibition did not apply to general partners.

Foreign limited partnership: the Act only deals with foreign limited partnerships formed under the laws of another "State" of the United States (see subdivision 12 of Section 101), and any adopting State that desires to deal by statute with the status of entities formed under the laws of foreign countries must make appropriate changes throughout the Act. The exclusion of such entities from the Act was not intended to suggest that their "limited partners" should not be accorded limited liability by the courts of a State adopting the Act. That question would be resolved by the choice-of-law rules of the forum State.

General partner: this definition recognizes the separate functions of the partnership agreement and the certificate of limited partnership. The partnership agreement establishes the basic grant of management power to the persons named as general partners; but because of the passive role played by the limited partners, the separate, formal step of ~~embodying~~ memorializing that grant of power in the certificate of limited partnership has been preserved to emphasize its importance and to provide notice of the identity of the partnership's general partners to persons dealing with the partnership.

Limited partner: ~~as in~~ unlike the case of definition of general partners, this definition provides for admission of limited partners through the partnership agreement and ~~solemnization in the certificate of limited partnership. In addition, the definition makes it clear that being named in the certificate of limited partnership is a prerequisite to limited partner status. Failure to file does not, however, mean that the participant is a general partner or that he has general liability. See Sections 900(c) and 303 alone and does not require identification of any limited partner in the certificate of limited partnership (Section 201). Under the 1916 and the 1976 Acts, being named as a limited partner in the certificate of limited partnership was a statutory requirement and, in most if not all cases, probably also a prerequisite to limited partner status. By eliminating the requirement that the certificate of limited partnership contain the name, address, and capital contribution of each limited partner, the 1985 Act all but eliminates any risk that a person intended to be a limited partner may be exposed to liability as a general partner as a result of the inadvertent omission of any of that information from the certificate of limited partnership, and also dispenses with the need to amend the certificate of limited partnership upon the admission or withdrawal of, transfer of an interest by, or change in the address or capital contribution of, any limited partner.~~

Partnership agreement: the ~~prior uniform law~~ 1916 Act did not refer to the partnership agreement, assuming that all important matters affecting limited partners would be set forth in the certificate of limited partnership. Under modern practice, however, it has been common for the partners to enter into a comprehensive partnership agreement, only part of which was required to be included or summarized in the certificate of limited partnership. As reflected in Section 201 of the 1985 Act, the certificate of limited partnership is confined principally to matters respecting the partnership itself and the addition and withdrawal identity of general partners, and of capital, and other important issues are left to the partnership agreement. Most of the information formerly provided by, but no longer required to be included in, the certificate of limited partnership is now required to be kept in the partnership records (Section 105).

Partnership interest: this definition is now first appeared in the 1976 Act and is intended to define what it is that is transferred when a partnership interest is assigned.

§ 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].

COMMENT

Subdivision (2) of Section 102 has been carried over from Section 5 of the ~~prior uniform law~~ 1916 Act with certain editorial changes. The remainder of Section 102 ~~is new~~ first appeared in the 1976 Act and primarily reflects the intention to integrate the registration of limited partnership names with that of corporate names. Accordingly, Section 201 provides for central, ~~State-wide~~ state-wide filing of certificates of limited partnership, and subdivisions (3), ~~and (4) and (5)~~ of Section 102 contain standards to be applied by the filing officer in determining whether the certificate should be filed. Subdivision (1) requires that the proper name of a limited partnership contain the words "limited partnership" in full. Subdivision (3) of the 1976 Act has been deleted, to reflect the deletion from Section 201 of any requirement that the certificate of limited partnership describe the partnership's purposes or the character of its business.

§ 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 this [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.

COMMENT

Section 103 ~~is new~~ first appeared in the 1976 Act. The ~~prior uniform law~~ 1916 Act did not provide for registration of names.

§ 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.

COMMENT

Section 104 ~~is now~~ first appeared in the 1976 Act. It requires that a limited partnership have certain minimum contacts with its State of organization, i.e., an office at which the constitutive documents and basic financial information is kept and an agent for service of process.

§ 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.

COMMENT

Section 105 ~~is now~~ first appeared in the 1976 Act. In view of the passive nature of the limited partner's position, it has been widely felt that limited partners are entitled to access to certain basic documents and information, including the certificate of limited partnership and, any partnership agreement and a writing setting out certain important matters which, under the 1916 and 1976 Acts, were required to be set out in the certificate of limited partnership. In view of the great diversity among limited partnerships, it was thought inappropriate to require a standard form of financial report, and Section 105 does no more than require retention of tax returns and any other financial statements that are prepared. The names and addresses of the general partners are made available to the general public in the certificate of limited partnership.

§ 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].

COMMENT

Section 106 is identical to Section 3 of the ~~prior uniform law~~, 1916 Act. Many states require that certain regulated industries, such as banking, may be carried on only by entities organized pursuant to special statutes, and it is contemplated that the prohibited activities would be confined to the matters covered by those statutes.

§ 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.

COMMENT

Section 107 makes a number of important changes in Section 13 of the ~~prior uniform law~~ 1916 Act. Section 13, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. Section 107 leaves that question to a State's general fraudulent conveyance statute. In addition, Section 107 eliminates the prohibition in ~~former~~ Section 13 against a general partner's ~~be~~ ~~opposed to a limited partner~~ sharing pro rata with general creditors in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

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 additional contributions agreed to be made by each partner are to be made;~~
- ~~(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 or 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.

COMMENT

The 1985 Act requires far fewer matters required to be set forth in the certificate of limited partnership ~~are not different in kind from those~~ than did ~~required by~~ Section 2 of the prior uniform law 1916 Act and Section 201 of the 1976 Act, ~~although certain additions and deletions have been made and the description has been revised to conform with the rest of the Act.~~ This is in recognition of the fact that the partnership agreement, not the certificate of limited partnership, has become the authoritative and comprehensive document for most limited partnerships, and that creditors and potential creditors of the partnership do and should refer to the partnership agreement and to other information furnished to them directly by the partnership and by others, not to the certificate of limited partnership. ~~In general, the certificate is intended to serve two functions: first, to place creditors on notice of the facts concerning the capital and finances of the partnership and other matters of concern; the rules regarding additional contributions to and withdrawals from the partnership; second, to clearly delineate the time at which persons become general partners and limited partners.~~ Subparagraph (b), which is based upon the prior uniform law, 1916 Act, has been retained to make it clear that existence of the limited partnership depends only upon compliance with this section. Its continued existence is not dependent upon compliance with other provisions of this Act.

§ 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 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.

COMMENT

Section 202 ~~makes of the 1976 Act made substantial changes in Section 24 of the prior uniform law 1916 Act. Further changes in this section are made by the 1985 Act.~~ Paragraph (b) lists the basic events—the addition or withdrawal of ~~partners or capital or capital obligations~~ a general partner—that are so central to the function of the certificate of limited partnership that they require prompt amendment. With the elimination of the requirement that the certificate of limited partnership include the names of all limited partners and the amount and character of all capital contributions, the requirement of the 1916 and 1976 Acts that the certificate be amended upon the admission or withdrawal of limited partners or on any change in the partnership capital must also be eliminated. This change should greatly reduce the frequency and complexity of amendments to the certificate of limited partnership. Paragraph (c) makes it clear, as it was not clear under ~~subdivision 2(g) of former Section 24 24(2)(g) of the 1916 Act,~~ that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed.

Paragraph (e) provides a "safe harbor" against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in paragraph (b); if the certificate of limited partnership is amended within 30 days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of Section 304. The elimination of the requirement that the certificate of limited partnership identify all limited partners and their respective capital contributions may have rendered paragraph (e) an obsolete and unnecessary vestige. The principal, if not the sole, purpose of paragraph (e) in the 1976 Act was to protect limited partners newly admitted to a partnership from being held liable as general partners when an amendment to the certificate identifying them as limited partners and describing their contributions was not filed contemporaneously with their admission to the partnership. Such liability cannot arise under the 1985 Act because such information is not required to be stated in the certificate. Nevertheless, the 1985 Act retains paragraph (e) because it is protective of partners, shielding them from liability to the extent its provisions apply, and does not create or impose any liability.

Paragraph (f) is added in the 1985 Act to provide explicit statutory recognition of the common practice of restating an amended certificate of limited partnership. While a limited partnership seeking to amend its certificate of limited partnership may do so by recording a restated certificate which incorporates the amendment, that is by no means the only purpose or function of a restated certificate, which may be filed for the sole purpose of restating in a single integrated instrument all the provisions of a limited partnership's certificate of limited partnership which are then in effect.

§ 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.

COMMENT

Section 203 changes Section 24 of the ~~prior uniform law 1916 Act~~ by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. Section 24 provided for cancellation "when the partnership is dissolved".

§ 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.

COMMENT

Section 204 collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the ~~prior uniform law~~ 1916 Act. Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. The 1976 Act, while simplifying the execution requirements, nevertheless required that an original certificate of limited partnership be signed by all partners and a certificate of amendment by all new partners being admitted to the limited partnership. However the certificate of limited partnership is no longer required to include the name or capital contribution of any limited partner. Therefore, while the 1985 Act still requires all general partners to sign the original certificate of limited partnership, no limited partner is required to sign any certificate. Section 204 insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. Certificates of amendment are required to be signed by only one general partner, and all general partners must sign certificates of cancellation. Section 204 prohibits blanket powers of attorney for the execution of certificates in many cases, since those conditions under which a partner is required to sign have been narrowed to circumstances of special importance to that partner. The former requirement in the 1916 Act that all certificates be sworn was deleted in the 1976 and 1985 Acts as potentially an unfair trap for the unwary (see, e.g., *Wisniewski v. Johnson*, 223 Va. 141, 286 S.E.2d 223 (1982)); in its place, paragraph (c) now provides, as a matter of law, that the execution of a certificate by a general partner subjects him to the penalties of perjury for inaccuracies in the certificate, has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one.

§ 205. ~~Amendment or Cancellation~~ Execution by Judicial Act

If a person required by Section 204 to execute a any 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.

COMMENT

Section 205 of the 1976 Act changed subdivisions (3) and (4) of Section 25 of the ~~prior uniform law~~ 1916 Act by confining the persons who have standing to seek judicial intervention to partners and to those assignees who were ~~are~~ adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation. Section 205 of the 1985 Act ~~reverses~~ that

restriction, and provides that any person adversely affected by a failure or refusal to file any certificate (not only a certificate of cancellation or amendment) has standing to seek judicial intervention.

§ 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 thereon), the certificate of limited partnership is cancelled.

COMMENT

Section 206 ~~is new~~, first appeared in the 1976 Act. In addition to providing mechanics for the central filing system, the second sentence of this section does away with the requirement, formerly imposed by some local filing officers, that persons who have executed certificates under a power of attorney exhibit executed copies of the power of attorney itself. Paragraph (b) changes subdivision (5) of Section 25 of the ~~prior uniform law~~ 1916 Act by providing that certificates of cancellation are effective upon their effective date under Section 203.

§ 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.

COMMENT

Section 207 changes Section 6 of the ~~prior uniform law~~ 1916 Act by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by continuing the obligation to amend a certificate of limited partnership in light of future events to general partners.

§ 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.

COMMENT

Section 208 ~~is now~~ first appeared in the 1976 Act, and referred to the certificate's providing constructive notice of the status as limited partners of those so identified therein. The 1985 Act's deletion of any requirement that the certificate name limited partners requires that Section 208 be modified accordingly.

By stating that the filing of a certificate of limited partnership only results in notice of the general limited liability of the general limited partners, ~~it~~ Section 208 obviates the concern that third parties may be held to have notice of special provisions set forth in the certificate. While this section is designed to preserve by implication the limited liability of limited partners, the ~~notion~~ implicit protection provided is not intended to change any liability of a limited partner which may be created by his action or inaction under the law of estoppel, agency, fraud or the like.

§ 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.

COMMENT

This section ~~is now~~ first appeared in the 1976 Act.

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.

~~(a)(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 (2), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.~~

COMMENT

Section 301(a) is new; no counterpart was found in the 1916 or 1976 Acts. This section imposes on the partnership an obligation to maintain in its records the date each limited partner becomes a limited partner. Under the 1976 Act, one could not become a limited partner until an appropriate certificate reflecting his status as such was filed with the Secretary of State. Because the 1985 Act eliminates the need to name limited partners in the certificate of limited partnership, an alternative mechanism had to be established to evidence the fact and date of a limited partner's admission. The partnership records required to be maintained under Section 105 now serve that function, subject to the limitation that no person may become a limited partner before the partnership is formed (Section 201(b)).

Subdivision (1) of Section ~~301(a)~~ 301(b) adds to Section 8 of the ~~prior uniform law~~ 1916 Act an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Subdivision (2) is derived from Section 19 of the ~~prior uniform law~~ 1916 Act but abandons the former terminology of "substituted limited partner."

§ 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.

COMMENT

Section 302 ~~is new~~ first appeared in the 1976 Act, and must be read together with subdivision (b)(5)(6) of Section 303. Although the ~~prior uniform law~~ 1916 Act did not speak specifically of the voting powers of limited partners, it ~~was~~ is not uncommon for partnership agreements to grant such powers to limited partners. Section 302 is designed only to make it clear that the partnership agreement may grant such power to limited partners. If such powers are granted to limited partners beyond the "safe harbor" of subdivision (b) or (c) of Section 303(b)(5), a court may (but of course need not) hold that, under the circumstances, the limited partners have participated in "control of the business" within the meaning of Section 303(a). Section 303(c) ~~simply means~~ makes clear that the exercise of powers beyond the ambit of Section 303(b) is not ipso facto to be taken as taking part in the control of the business.

§ 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~~ 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:
 - (i) requesting or attending a meeting of partners;
 - (ii) 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.

COMMENT

Section 303 makes several important changes in Section 7 of the prior uniform law 1916 Act. The first sentence of Section 303(a) carries over the basic test from former Section 7 — whether the limited partner “takes part in the control of the business” — in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. It differs from the text of Section 7 of the 1916 Act in that it speaks of participating (rather than taking part) in the control of the business; this was done for the sake of consistency with the second sentence of Section 303(a), not to change the meaning of the text. It is intended that judicial decisions interpreting the phrase “takes part in the control of the business” under the prior uniform law will remain applicable to the extent that a different result is not called for by other provisions of Section 303 and other provisions of the Act. The second sentence of Section 303(a) reflects a wholly new concept. Because in the 1976 Act that has been further modified in the 1985 Act, it was adopted partly because of the difficulty of determining when the “control” line has been overstepped, it was thought it unfair to impose general partner’s liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the “is not substantially the same as” test was introduced but also (and more importantly) because of a determination that it is not sound public policy to hold a limited partner who is not also a general partner liable for the obligations of the partnership except to persons who have done business with the limited partnership reasonably believing, based on the limited partner’s conduct, that he is a general partner. Paragraph (b) is intended to provide a “safe harbor” by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. This “safe harbor” list has been expanded beyond that set out in the 1976 Act to reflect case law and statutory developments and more clearly to assure that limited partners are not subjected to general liability where such liability is inappropriate. Paragraph (d) is derived from Section 5 of the prior uniform law 1916 Act, but adds as a condition to the limited partner’s liability the fact requirement that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

§ 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.

COMMENT

Section 304 is derived from Section 11 of the ~~prior uniform law, 1916 Act~~. The "good faith" requirement has been added in the first sentence of Section 304(a). The provisions of subdivision (2) of Section 304(a) are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. Paragraph (b) preserves the liability of the equity participant prior to withdrawal ~~and after the time for appropriate amendment in the case of a limited partnership~~ by such person from the limited partnership or amendment to the certificate demonstrating that such person is not a general partner to any third party who has transacted business with the person believing in good faith that he was a general partner.

Evidence strongly suggests that Section 11 of the 1916 Act and Section 304 of the 1976 Act were rarely used, and one might expect that Section 304 of the 1985 Act may never have to be used. Section 11 of the 1916 Act and Section 304 of the 1976 Act could have been used by a person who invested in a limited partnership believing he would be a limited partner but who was not identified as a limited partner in the certificate of limited partnership. However, because the 1985 Act does not require limited partners to be named in the certificate, the only situation to which Section 304 would now appear to be applicable is one in which a person intending to be a limited partner was erroneously identified as a general partner in the certificate.

§ 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.

COMMENT

Section 305 changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the ~~prior uniform law, 1916 Act~~. Its importance has increased as a result of the 1985 Act's substituting the records of the partnership for the certificate of limited partnership as the place where certain categories of information are to be kept.

Section 305, which should be read together with Section 105(b), provides a mechanism for limited partners to obtain information about the partnership useful to them in making decisions concerning the partnership and their investments in it. Its purpose is not to provide a mechanism for competitors of the partnership or others having interests or agendas adverse to the partnership's to subvert the partnership's business. It is assumed that courts will protect limited partnerships from abuses and attempts to misuse Section 305 for improper purposes.

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.

COMMENT

Section 401 is derived from, but represents a significant departure from, Section 9(1)(e) of the prior uniform law 1916 Act and Section 401 of the 1976 Act, which required, and carries over the unworkable requirements that all limited partners must consent as a condition to the admission of an additional general partner, that all limited partners consent and that such consent must specifically identify the general partner involved. Section 401 of the 1985 Act provides that the written partnership agreement determines the procedure for authorizing the admission of additional general partners, and that the written consent of all partners is required only when the partnership agreement fails to address the question.

§ 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;

(6) 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.

COMMENT

Section 402 expands considerably the provisions of Section 20 of the ~~prior uniform law~~ 1916 Act, which provided for dissolution in the event of the retirement, death or insanity of a general partner. Subdivisions (1), (2) and (3) recognize that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivisions (4) and (5) reflect a judgment that, unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the National Bankruptcy Act Code or a similar provision of law. Subdivisions (6) through (10) simply elaborate on the notion of death in the case of a general partner who is not a natural person. ~~Of course, the addition of the words "and in the partnership agreement" was not intended to suggest that liabilities to third parties could be affected by provisions in the partnership agreement. Subdivisions (4) and (5) differ from their counterparts in the 1976 Act, reflecting the policy underlying the 1985 revision of Section 201, that the partnership agreement, not the certificate of limited partnership, is the appropriate document for setting out most provisions relating to the respective powers, rights and obligations of the partners inter se. Although the partnership agreement need not be written, the 1985 Act provides that, to protect the partners from fraud, these and certain other particularly significant provisions must be set out in a written partnership agreement to be effective for the purposes described in the Act.~~

§ 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.

COMMENT

Section 403 is derived from Section 9(1) of the ~~prior uniform law~~, 1916 Act.

§ 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.

COMMENT

Section 404 is derived from Section 12 of the ~~pre-uniform-law~~ 1916 Act and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of 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.

COMMENT

Section 405 is ~~new~~ first appeared in the 1976 Act and is intended to make it clear that the Act does not require that the limited partners have any right to vote on matters as a separate class.

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.

COMMENT

As noted in the comment to Section 101, the explicit permission to make contributions of services expands Section 4 of the ~~pre-uniform-law~~, 1916 Act.

§ 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. Notwith-

standing 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.

COMMENT

Section 502(a) is new; it has no counterpart in the 1916 or 1976 Act. Because, unlike the prior uniform acts, the 1985 Act does not require that promises to contribute cash, property, or services be described in the limited partnership certificate, to protect against fraud it requires instead that such important promises be in a signed writing.

Although Section 17(1) of the prior uniform law 1916 Act required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the certificate of limited partnership partnership agreement provides otherwise.

Subdivision (b) (c) is derived from, but expands upon, Section 17(3) of the prior uniform law 1916 Act.

§ 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.

COMMENT

Section 503 is now first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share profits and losses in the absence of agreement. The 1985 Act differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of profits and losses be in writing, and by its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201.

§ 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.

COMMENT

Section 504 is now first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share distributions in the absence of agreement. Section 504 also differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of distributions be in writing, and in its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201. This section also recognizes that partners may choose to share in distributions on a different basis than different from that on which they share in profits and losses.

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 608(a), to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.~~

COMMENT

Section 601 ~~is now~~ first appeared in the 1976 Act. The 1976 Act provisions have been modified to reflect the 1985 changes made in Section 201.

§ 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].

COMMENT

Section 602 ~~is now~~ first appeared in the 1976 Act, but is generally derived from Section 38 of the Uniform Partnership Act.

§ 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~~ 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 [other] address on the books of the limited partnership at its office in this State.

COMMENT

Section 603 is derived from Section 16(a) of the ~~prior uniform law~~ 1916 Act. The 1976 Act provision has been modified to reflect the 1985 changes made in Section 201. This section additionally reflects the policy determination, also embodied in certain other sections of the 1985 Act, that to avoid fraud, agreements concerning certain matters of substantial importance to the partners will be enforceable only if in writing. If the partnership agreement does provide in writing whether a limited partner may withdraw and, if he may, when and on what terms and conditions, those provisions will control.

§ 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.

COMMENT

Section 604 ~~is now~~ first appeared in the 1976 Act. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

§ 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.

COMMENT

The first sentence of Section 605 is derived from Section 16(3) of the ~~prior uniform law~~, 1916 Act; it also differs from its counterpart in the 1976 Act, reflecting the 1985 changes made in Section 201. The second sentence ~~is now~~ first appeared in the 1976 Act, ~~is now~~ and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

§ 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.

COMMENT

Section 606 ~~is now~~ first appeared in the 1976 Act, and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16(4)(a) of the ~~prior uniform law~~, 1916 Act, which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

§ 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.

COMMENT

Section 607 is derived from Section 16(1)(a) of the ~~prior uniform law~~, 1916 Act.

§ 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~~ records required to be kept pursuant to Section 105, of his contribution which has not been distributed to him [or her].

COMMENT

Paragraph (a) is derived from Section 17(4) of the ~~prior uniform law~~ 1916 Act, but the one year ~~period~~ period of limitations has been added. Paragraph (b) is derived from Section 17(2)(b) of the ~~prior uniform law~~ 1916 Act but, again, a statute of limitations has been added.

Paragraph (c) ~~is now~~ first appeared in the 1976 Act. The provisions of former Section 17(2) that referred to the partner holding as "trustee" any money or specific property wrongfully returned to him have been eliminated. Paragraph (c) in the 1985 Act also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Sections 105 and 201.

ARTICLE 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

§ 701. Nature of Partnership Interest

A partnership interest is personal property.

COMMENT

This section is derived from Section 18 of the ~~prior uniform law~~ 1916 Act.

§ 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.

COMMENT

Section 19(1) of the ~~prior uniform law~~ 1916 Act provided simply that "a limited partner's interest is assignable", raising a question whether any limitations on the right of assignment were permitted. While the first sentence of Section 702 recognizes that the power to assign may be restricted in the partnership agreement, there was no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of Section 702 are derived from Section 19(3) of the ~~prior uniform law~~ 1916 Act. The last sentence ~~is now~~ first appeared in the 1976 Act.

§ 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.

COMMENT

Section 703 is derived from Section 22 of the ~~prior uniform law~~ 1916 Act but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22(1) to specific remedies have been omitted, as has a prohibition in Section 22(2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

§ 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) (i) 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~~ Articles 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.

COMMENT

Section 704 is derived from Section 19 of the ~~prior uniform law~~, 1916 Act, but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee. Section 704 of the 1985 Act also differs from the 1976 Act to reflect the 1985 changes made in Section 201.

§ 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.

COMMENT

Section 705 is derived from Section 21(1) of the ~~prior uniform law~~, 1916 Act. Former Section 21(2), making a deceased limited partner's estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

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) ~~or~~ upon the happening of events specified in writing in the certificate of limited partnership agreement;
- ~~(2)~~(3) written consent of all partners;
- ~~(3)~~(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~~ written provisions of the partnership agreement 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 the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- ~~(4)~~(5) entry of a decree of judicial dissolution under Section 802.

COMMENT

Section 801 merely collects in one place all of the events causing dissolution. Paragraph (3) is derived from Sections 9(1)(g) and 20 of the ~~prior uniform law, 1916 Act~~, but adds the 90-day grace period. Section 801 also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Section 201.

§ 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

COMMENT

Section 802 ~~is now~~ first appeared in the 1976 Act.

§ 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.

COMMENT

Section 803 ~~is now~~ first appeared in the 1976 Act, and is derived in part from Section 37 of the Uniform General Partnership Act.

§ 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.

COMMENT

Section 804 revises Section 23 of the ~~prior uniform law~~ 1916 Act by providing that (1) to the extent partners are also creditors, other than in respect of their interests in the partnership, they share with other creditors, (2) once the partnership's obligation to make a distribution accrues, it must be paid before any other distributions of an "equity" nature are made, and (3) general and limited partners rank on the same level except as otherwise provided in the partnership agreement.

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.

COMMENT

Section 901 is ~~new~~, first appeared in the 1976 Act.

§ 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~~ 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~~ 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 ~~(4)~~ (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~~ state of its organization by the laws of that ~~State~~ 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.~~

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

(7) 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.

COMMENT

Section 902 ~~is new~~, first appeared in the 1976 Act. It was thought that requiring a full copy of the certificate of limited partnership and all amendments thereto to be filed in each state in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information ~~on file was~~ Section 902 required to be filed would be sufficient to tell interested persons where they could write to obtain copies of those basic documents. Subdivision (3) of the 1976 Act has been omitted, and subdivisions (6) and (7) differ from their counterparts in the 1976 Act, to conform these provisions relating to the registration of foreign limited partnerships to the corresponding changes made by the Act in the provisions relating to domestic limited partnerships. The requirement that an application for registration be sworn to by a general partner is simply intended to produce the same result as is provided for in Section 204(c) with respect to certificates of domestic limited partnerships; the acceptance and endorsement by the Secretary of State (or equivalent authority) of an application which was not sworn to by a general partner should be deemed a mere technical and insubstantial shortcoming, and should not result in the limited partners being subjected to general liability for the obligations of the foreign limited partnership (See Section 907(c)).

§ 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.

COMMENT

Section 903 first appeared in the 1976 Act.

§ 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.

COMMENT

Section 904 ~~is new~~, first appeared in the 1976 Act.

§ 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.

COMMENT

Section 905 ~~is new~~, first appeared in the 1976 Act. It corresponds to the provisions of Section 202(c) relating to domestic limited partnerships.

§ 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.

COMMENT

Section 906 ~~is new~~, first appeared in the 1976 Act.

§ 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.

COMMENT

Section 907 ~~is new~~, first appeared in the 1976 Act.

§ 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.

COMMENT

Section 908 ~~is new~~, first appeared in the 1976 Act.

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.

COMMENT

Section 1001 ~~is now~~ first appeared in the 1976 Act.

§ 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 ~~had~~ 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.

COMMENT

Section 1002 ~~is now~~ first appeared in the 1976 Act.

§ 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.

COMMENT

Section 1003 ~~is now~~ first appeared in the 1976 Act.

§ 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].

COMMENT

Section 1004 ~~is now~~ first appeared in the 1976 Act.

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.

COMMENT

Because the principles set out in Sections 28(1) and 29 of the 1916 Act have become so universally established, it was felt that the 1976 and 1985 Acts need not contain express provisions to the same effect. However, it is intended that the principles enunciated in those provisions of the 1916 Act also apply to this Act.

§ 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 804) govern limited partnerships formed before the effective date of this [Act].

COMMENT

Subdivisions (6) and (7) did not appear in Section 1104 of the 1976 Act. They are included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.

§ 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.

COMMENT

The result provided for in Section 1105 would obtain even in its absence in a jurisdiction which had adopted the Uniform Partnership Act, by operation of Section 6 of that act.

§ 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].

COMMENT

Section 1106 did not appear in the 1976 Act. It is included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.