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FISCAL NOTE
AMENDED

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date: _____ Department Affected: Commerce & Economic 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 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1.5	0	0	0	0	0
SUPPLIES	1.5					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	4.0	4.0	4.0	4.0	4.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
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 DNR - District Recorder's office presently files limited partnerships. The change of filing to DCED's computer based information management system will accommodate more efficient distribution of information to the business community. This will take administrative preparation to convert the records to the department's current computer filing system and prepare in advance for the effective date. Costs incurred will be travel and data input by personnel.

Prepared By: W.F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: 5/9/91

Approved by Commissioner: Glenn A. Olds
 Agency: Department of Commerce & Economic Development Date: 5/9/91

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

AMENDED
FISCAL NOTE - SB 193

ANALYSIS:

Limited partnerships are currently filed with the Department of Natural Resources, District Recorder's office. SB 193 requires this filing be changed to the Department of Commerce and Economic Development. This conversion, in order to meet the standards of the current corporation computer filing system, will result in the following expenses:

Postage	\$.5
Supplies	.2
Motznik Conversion (Private company who has only names of all limited partnership filings) Department will develop complete database	.5
Regulations - Advertising	.3
Travel for conversion only	.8
Conversion - Personnel Data Input	<u>1.5</u>
	<u>\$3.0</u>

The projected revenue of \$4.0 will be new program receipts for the Department of Commerce and Economic Development and a reduction to the Department of Natural Resources. This revenue is based on the present filing fee charged by DNR of \$15.00. Approximately 260 limited partnerships file per year.

AMENDED FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date: _____ Department Affected: Commerce & Economic 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 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	3.0	3.0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	3.0	3.0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	15.0	15.0	15.0	15.0	15.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	3.0	3.0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	3.0	3.0	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.)

SEE ATTACHED PAGE

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: 4-23-91

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

AMENDED
FISCAL NOTE - SB 193

ANALYSIS:

The \$6.0 operating costs include a conversion of present DNR filings and promulgation of regulations. Approximate costs are:

Postage	\$.5
Supplies	.2
Motznik Conversion (Private company who has only names of all limited partnership filings) Department will develop complete database	.5
Regulations - Advertising	.3
Travel for conversion only	.8
Conversion - Personnel Data Input	<u>3.7</u>
	<u>\$6.0</u>

The \$15.0 projected revenue is based on the present filing fee charged by DNR of \$15.00. Approximately, 1,000 limited partnerships file per year.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 193

Revision Date: _____ Department Affected: Natural Resources
 Title: Limited Partnerships BRU: Management & Administration
 Components: Recorder's Office
 Sponsor: Senator Rodey
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 8.02

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	6.6					
FEDERAL FUNDS						
OTHER						
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

Prepared by: Linda Plumb Phone: 762-2437
 Division: Management and Administration Date: 8-May-91

Approved by Commissioner: Harold Heinze Date: 8-May-91
 Agency: Department of Natural Resources

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

This bill would change the place of record for limited partnerships from the Department of Natural Resources, Division of Management, Recorders/UCC Section to the Department of Commerce and Economic Development, Division of Banking, Securities, and Corporations Corporations Section.

EFFECTS OF ENACTMENT ON RECORDERS/UCC SECTION:

1. **Revenue Reduction:** The ongoing effect of SB 193 would be a minor decrease in revenue from recording fees. Between FY84 and FY88, there were approximately 1130 limited partnership documents accepted into the statewide public records. This is an average of 226 documents annually for the 34 recording districts. If each submitted document was of average length (two pages), the Recorders/UCC Section revenue would be reduced by approximately \$4,068.00 per year or 0.2% based on FY90 revenues.
2. **One Time Expense:** The major impact of this bill would be a one-time cost to duplicate existing limited partnership records that are located in the 14 recording offices.

Many of the existing limited partnerships are active, and the recorders' offices receive amendments and assignments in addition to new limited partnerships. If the change in place of record is to be fully effective, these records would need to be reproduced for the Corporations Section or copies would need to be made for the recording system so that the original files could be transferred. I have outlined two scenarios for consideration.

Because limited partnerships changed from filed documents to recorded documents on January 1, 1989 (AS 40.17), partnerships recorded after that date will be cumbersome and time consuming to extract from the general records. Filed partnerships that existed prior to that time will be relatively easy to access and duplicate because they are maintained separately from the general records.

All limited partnerships accepted after January 1, 1989, were recorded in the same manner as deeds, mortgages, and contracts. To extract these documents, it will be necessary either to manually scan the reception print-outs from January 1, 1989 to the effective date of SB 193, or contract for programming services that would automatically extract the index information. The latter is the most cost-effective and accurate manner of accomplishing the task.

While SB 193 provides for repeal of AS 32.10 it does not address AS 40.17.110. Classes of documents eligible for recording:

(b)(36) "a signed and sworn-to certificate of limited partnership and a signed and sworn-to amendment to a certificate of limited partnership;"

To eliminate public confusion regarding the correct place of record, I suggest that this reference also be repealed.

FISCAL NOTE - SB 193

This scenario assumes that all presently existing limited partnership documents are copied in 16mm roll microfilm form by contract labor. The documents will be shipped to a central location where they will be filmed on a dual head camera. One original and one copy of the film will be forwarded to one Department of Commerce and Economic Development location:

Personal Services (100)	\$.0
Travel (200)	1.0
Contractual (300)	3.5
Commodities (400):	
Postage	\$1.0
Supplies	1.0
Packing materials	<u>.1</u>
	<u>2.1</u>
	TOTAL \$6.6

NOTES: 1. No personal services are included in this scenario for the 11 DNR recording offices. Recording personnel can pack and ship all limited partnerships within normal work days.

2. If DNR personnel are required to travel to the court system maintained offices in Glennallen, Seward, and Valdez to pack and transport partnership records, approximately \$1000.00 is projected as travel expense.

3. Professional service expenses will be incurred to write a computer program to extract recording data for all limited partnerships recorded from January 1, 1988 to implementation of SB 193.

Additional professional service expenses in this scenario are for contracted microfilm services. This expense may change if present state personnel are employed to microfilm these records in their normal work day.

4. Postage expenses include transportation of partnership files to a central location for microfilming. Microfilm records would be returned to the district recorders' offices for their permanent record and original partnerships forwarded to Corporations Section.

Supplies cover duplicate original 16mm microfilm records and two duplicate copies. One original and one copy would be sent to Corporations Section and one would be retained in the recorders' offices.

Packing materials include transportation of original files to the central filming location and distribution of the replacement microfilm record.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 193

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

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 This bill amends the state's Uniform Partnership Act 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: March 20, 1991
 Approved by Commissioner: Richard I. Pegues
Charles E. Cole, Attorney General
 Agency: Department of Law Date: March 20, 1991

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

**SEVENTEENTH LEGISLATURE
SENATE JUDICIARY COMMITTEE BILL FILE**

BILL NUMBER: 193
 ABBREVIATED TITLE: Limited Partnerships

SPONSER: Rodey ORIGINAL RECEIVED: March 13, 1991
 WRITTEN REQUEST TO SCHEDULE REC'D: 3-20-91 FROM: Rodey
 SPONSER'S STATEMENT REC'D: 3-20- FROM: Rodey
 SECTIONAL ANALYSIS RQST'D: _____ FROM: _____
 SECTIONAL ANALYSIS RECEIVED: _____

FISCAL NOTE (ORIGINAL)
 RQST'D OF: _____ REC'D FROM: LAW 0 DATE: 3-20-91
 RQST'D OF: _____ REC'D FROM: Bainbridge 30 DATE: 4-16-91
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FISCAL NOTE (C.S.)
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____
 RQST'D OF: _____ REC'D FROM: _____ DATE: _____

FIVE DAY NOTICE GIVEN: April 11, 1991 NOTICE OF HEARINGS GIVEN: April 11, 1991
 COMMITTEES OF REFERRAL: FIRST: Jud SECOND: _____ THIRD: _____

COMMITTEE ACTION

DATE:	
<u>4-18-91</u>	<u>Heard - Held over -</u>
<u>4-23-91</u>	<u>Heard - all OK except para 201 & 303 -</u>
<u>4-24</u>	<u>Requested Draft CS with Dir. Banking Changes:</u>
	<u>holding 1985 Sec 303</u>
<u>5-9-91</u>	<u>Heard - CS adopted - moved 87 -</u>
	<u>Adams & Collins No Rec. Ducl Rec. Rodey/Hoffard</u>
<u>5-10-91</u>	<u>Delivered to Sen Sec. Do Pass</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PERSONS TO BE NOTIFIED OF HEARING

- | | |
|-----------------------------------|-----------|
| 1. SPONSOR <u>Rodey</u> | 6. _____ |
| 2. AGENCY <u>Dept of Commerce</u> | 7. _____ |
| 3. <u>Art Peterson 463 3212</u> | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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

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

MEMORANDUM

DATE: March 20, 1991

TO: Senator Rick Halford, Chair
Senate Judiciary Committee

FROM: Senator Pat Rodey *Pat*

SUBJ: Request for Hearing - SB 193

I respectfully request a hearing in the Senate Judiciary Committee for SB 193, the bill to have Alaska adopt the 1985 revisions to the Uniform Limited Partnership Act as recommended by the National Conference of Commissioners on Uniform Law.

SB 193 would update several Alaska statutes relating to the organization of limited partnerships, disclosure of information, and actions and liability of partners. Attached is relevant correspondence on some aspects of the bill.

I would appreciate the earliest possible scheduling of SB 193 before the committee. Please contact Tim Benintendi of my staff for further information.

PMR/tb/memo03

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 26, 1991

SUBJECT: Sectional summary of SB 193

TO: Senator Pat Rodey
Attn: Tim Benintendi

FROM: Theresa L. Bannister *TB*
Legislative Counsel

*276 5093
Mary Cochran -*

You have requested a sectional summary of SB 193, 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 secs. 32.11.010 and 32.11.120 are based on the 1976 version and corresponding changes were made throughout the bill to accommodate the changes in these two sections. 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)

Senator Pat Rodey

April 26, 1991

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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 cancelled 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 cancelled 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 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 are 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.

DIVISION OF LEGAL SERVICES

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Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 25, 1991

SUBJECT: Draft CSSB 193(Judiciary) (Work Order No. 7-LS0087)

TO: Senator Rick Halford
Attn: Doug

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft that you requested of CSSB 193(Judiciary) relating to the uniform limited partnership act.

Please note that with regard to the changes relating to the types of copies that need to be filed, it was necessary to modify the requested changes slightly and to make certain corresponding changes at other locations in the bill. The changes are contained in sec. 32.11.060(a), sec. 32.11.420, and sec. 32.11.430. Please examine these carefully to be sure that the changes are what you intended.

The language of the new fees section was changed to apply to all filed certificates and applications, not just to required filings.

In addition,

(1) "be" was added to the first sentence of sec. 32.11.030 where it had been omitted;

(2) the catchline for sec. 32.11.370 was changed to "Dissolution" to make it accurate; and

(3) the catchline of sec. 32.11.520 was changed to "Recoveries" to make it accurate.

If I may be of further assistance, please advise.

TLB:lmb
91-141.lmb

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Mail Stop 3101

MEMORANDUM

March 13, 1991

SUBJECT: New version of bill on limited partnerships (W.O. 7-LS0087/D)

TO: Senator Pat Rodey
Attn: Tim Benintendi

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the revised bill on limited partnerships that you requested. You directed that secs. 32.11.010 (sec. 201 of the Uniform Limited Partnership Act ("ULPA")) and 32.11.120 (sec. 303 of the ULPA) be returned to the 1976 version without the 1985 amendments. To accommodate these sections, it was necessary to make corresponding changes throughout the draft. This memo summarizes those changes. Please disregard the memo of March 12, 1991

Section 1. Main provisions of the bill.

Sec. 32.11.010. This is sec. 201 of the ULPA. In (a) reinserts the requirement that two or more persons execute the certificate. In (a) reinserts several items of information that must be included in the certificate of limited partnership. Makes minor word changes.

Sec. 32.11.020. Reinserts (b)(1), which was deleted from the 1985 version.

Sec. 32.11.030. No changes.

Sec. 32.11.040. In sec. 32.11.040(1), reinserts the requirement that the document be signed by all of the partners named in the certificate of limited partnership, not just the general partners.

In sec. 32.11.040(2) expands the signature requirements to cover limited partners who are new and limited partners whose contributions have been increased.

In sec. 32.11.040(b) reinserts references to increased contributions.

Senator Pat Rodey
March 13, 1991
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Sec. 32.11.050. No changes.

Sec. 32.11.060. No changes.

Sec. 32.11.070. No changes.

Sec. 32.11.080 replaces "general partners" with "limited partners".

Sec. 32.11.090. No changes.

Sec. 32.11.100. Deletes sec. 32.11.100(a) from the previous draft. Sec. 32.11.100(a) in this version was (b) in the previous draft. Sec. 32.11.100(b) is 1976 language that has been reinserted.

Sec. 32.11.110. No changes.

Sec. 32.11.120. This is sec. 303 of the ULPA. The second sentence of sec. 32.11.120(a) contains the 1976 language relating to a limited partner's exposure to liability when participating in the control of the business.

Sec. 32.11.120(b) reflects the 1976 listing of the situations in which a limited partner will not be considered to be participating in the control of the business.

Sec. 32.11.130. In sec. 32.11.130(b)(2) reinserts the language regarding limited partners. Deletes from (2) "that the person is not a general partner". Adds "under (1) or (2)" to clarify (b).

Sec. 32.11.140. No changes.

Sec. 32.11.150. No changes.

Sec. 32.11.160. No changes.

Sec. 32.11.170. No changes.

Sec. 32.11.180. No changes.

Sec. 32.11.190. No changes.

Sec. 32.11.200. No changes.

Sec. 32.11.210. Sec. 32.11.210(a) was (b) in the previous draft. Sec. 32.11.210(a) of the previous draft has been deleted. In Sec. 32.11.210(a), this draft substitutes "certificate of limited partnership" for "partnership agreement" and substitutes

"certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.220 substitutes "certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.230 substitutes "certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.240. Sec. 32.11.240(2) was reinserted from the 1976 ULPA.

Sec. 32.11.250. No changes.

Sec. 32.11.260 substitutes "the certificate of limited partnership and in accordance with" for "writing in" in the first sentence. In the second sentence substitutes "certificate" for "agreement" and deletes "in writing".

Sec. 32.11.270. No changes.

Sec. 32.11.280 substitutes "certificate of limited partnership" for "partnership agreement" in the first sentence. Also deletes "writing in" from the first sentence.

Sec. 32.11.290. No changes.

Sec. 32.11.300. No changes.

Sec. 32.11.310. In sec. 32.11.310(c) substitutes "certificate of limited partnership" for "partnership records required to be kept under AS 32.11.840".

Sec. 32.11.320. No changes.

Sec. 32.11.330. No changes.

Sec. 32.11.340. No changes.

Sec. 32.11.350. In sec. 32.11.350(a)(1) substitutes "certificate of limited partnership" for "partnership agreement". In sec. 32.11.350(b) reinserts at the end "and that could not be ascertained from the certificate of limited partnership".

Sec. 32.11.360. No changes.

Sec. 32.11.370. In sec. 32.11.370(1) substitutes "in the certificate of limited partnership" for "in writing in the partnership agreement". In sec. 32.11.370(4)

substitutes "the certificate of limited partnership permits" for "the written provisions of the partnership agreement permit".

Sec. 32.11.380. No changes.

Sec. 32.11.390. No changes.

Sec. 32.11.400. No changes.

Sec. 32.11.410. No changes.

Sec. 32.11.420. Sec 32.11.420(3) is a paragraph from the 1976 version that had been deleted. Sec. 32.11.420(7) contains a modified version of the 1976 ULPA, and deletes most of the 1985 language, except the requirement to list the capital contribution of each limited partner.

Sec. 32.11.430. No changes.

Sec. 32.11.440. No changes.

Sec. 32.11.450. No changes.

Sec. 32.11.460. No changes.

Sec. 32.11.470. No changes.

Sec. 32.11.480. No changes.

Sec. 32.11.490. No changes.

Sec. 32.11.500. No changes.

Sec. 32.11.510. No changes.

Sec. 32.11.520. No changes.

Sec. 32.11.800. No changes.

Sec. 32.11.810. Sec. 32.11.810(3) is language from the 1976 ULPA that was deleted in the 1985 version.

Sec. 32.11.820. No changes.

Sec. 32.11.830. No changes.

Senator Pat Rodey
March 13, 1991
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Sec. 32.11.840. The phrase, "separately identifying the general partners in alphabetical order and the limited partners in alphabetical order" has been deleted from Sec. 32.11.840(1). Sec. 32.11.840(5) from the previous draft has been deleted.

Sec. 32.11.850. No changes.

Sec. 32.11.860. No changes.

Sec. 32.11.890. No changes.

Sec. 32.11.900 adds to the definition of "limited partner" the phrase "and named in the certificate of limited partnership as a limited partner".

Section 2. No change.

Section 3. No change.

Section 4. No change.

Section 5. No change.

TLB:gc
91-076.lmb

Enclosure

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MEMORANDUM

October 5, 1990

SUBJECT: Uniform Limited Partnership Act (W.O. 17-LS0087A)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister *TLB/LMB*
Legislative Counsel

This memo accompanies the draft that you requested to enact the latest version of the Uniform Limited Partnership Act.

In order to achieve the desired uniformity with other states, the draft is nearly identical to the proposed uniform act. The only significant substantive change occurs in sec. 32.11.520, relating to the expenses of a derivative action. This section was changed to reflect the fact that in Alaska, the court rules already provide that the court will award attorney fees and costs to the plaintiff.

The present Uniform Limited Partnership Act (AS 32.10) was amended in 1990 by ch. 155, SLA 1990, to authorize derivative actions for limited partnerships. Aside from minor differences and the deletion referred to in the previous paragraph, the derivative action provisions in the draft (secs. 32.11.490 - 32.11.520) are the same as AS 32.10.245, which was enacted during the last session.

The uniform act allows the sponsor to select certain provisions. You may wish to consider two provisions for inclusion. These are

(1) whether to prohibit the partnership from any particular activity (sec. 32.11.850); currently AS 32.10 does not impose a limitation; AS 32.10.020 basically states that a limited partnership may carry on any business that a partnership without limited partners may carry on; this is basically the same language that is used in sec. 32.11.850;

(2) whether to limit the names of limited partnerships beyond the standard provision in the draft (sec. 32.11.810); currently AS 32.10.040 contains a name limitation that is similar to that in the draft; the only significant difference appears

Senator Pat Rodey
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to be that AS 32.10.040 generally prohibits the use of a person's "surname", while the draft prohibits the use of a person's "name".

Except for the effective dates, the draft contains the same time periods suggested in the uniform act. These can be adjusted in your draft if you disagree with any of them.

Regarding the effective date, the uniform act uses two effective dates, one general one for the bulk of the bill and a later one for certain provisions in the bill. The second date appears to be used merely to give partnerships additional time to comply with those provisions and to give Department of Commerce and Economic Development additional time to establish its central filing system for limited partnerships. Instead of using two dates, the draft contains one delayed effective date. The approach used in the Uniform Act would be very cumbersome and it would be very difficult to draft it without causing numerous substantive problems. I recommend against using that approach.

If you need further assistance with the draft, please advise.

TLB:gc
90-002.GLC

Enclosure

NOTES FOR SENATOR RODEY

from Tim Benintendi

March 5, 1991

Uniform Limited Partnership Act revisions - Our draft DOES contain the 1985 revisions from the National Conference of Commissioners on Uniform Law. Fessler recommends deleting Sections 201 and 303 of the revisions for the following reasons:

Section 201 - He thinks that the 85 amendments depart from too far from the disclosure obligations. Eliminating many reporting requirements will reduce the certificate to one of notification only, and he thinks this will slight creditors and other third party interests. Cases he cites in his research seem to focus on unusual or atypical situations.

Art Peterson and the national conference believe that since traditionally most pertinent information needed by creditors and others comes from the partnership agreement, for which there is public access, Fessler's concerns are not warranted, and abbreviating the certification process will not restrict access to information about the partnership. The national conference studied this issue and determined no undue restriction, nor loss to partners in terms of excess liability. The thought is that it is not particularly useful to know who the limited partners are since the fiduciary and management duties fall to the general partners. The emphasis should remain on the partnership agreement, not the not the composition of the partners.

Section 303 - Professor Fessler cites cases in which limited partners acted beyond their "safe harbor" of customary limited practices, and engaged in activities usually identified with those of general partners. He says, "The issue is whether a loss of limited liability should turn on an offense to the statutory norm of passivity or only upon specific creditor expectations generated by that activity".

The 1916 Act is silent on the subject of activities of limited partners. The 1976 amendments establish several categories of action that limited partners can take without incurring liability. The 1985 amendments extend that category within the "safe harbor".

Art Peterson and the national conference believe there is no argument on the "blurring point". The trend of law now is for general partners to be the focus of credit worthiness. Further, Section 303-a is fairly strict, and would eliminate the limited partners from being like general partners.

Pat, I have summarized this info. from conversations with Art Peterson, John McCabe of NCCUSL, and Terry Bannister. Our draft contains the revisions for 201 and 303 per the 85 amendments. Prof. Fessler would have us delete these amended sections, Art Peterson supports their retention. Do you want to take any action on these now by revising the draft, or introduce the bill as is, and take up these issues in committee?

Art Peterson - 463-3212 (wk)

John McCabe - (312) 915-0195 (wk)

Terry Bannister - 2450

A:notes

SB193 —

All agree OK for most Part —
201 Disclosure in Cert.

303 - Changing Ltd Partner liability shield.

Willins Kirpatrick Div of Banking —

We have 1917 act some for a few 1990
Amendments.

What kind of offence is inonest certificate.

We will look at Div of Banking's Proposals.

SB193 — 1985 Amendment - Ital PShip —

Why did Rodley want to retain the 1976 Version of
32.11.010 and 32.11.120

PROPOSED AMENDMENTS TO SB 193

Sec. 32.11.060(a)

Pg. 4 line 20-Amend [Two signed copies] to read an original and an exact copy.

Sec. 32.11.060(a)(1)

Pg. 4 line 26-Amend [duplicate original] to read an original and an exact copy.

Sec. 32.11.420

Pg. 15, line 30-Amend [in duplicate] to read an original and an exact copy.

Sec. 32.11.430(b)

Pg. 16, line 27-Amend [duplicate original] to read an original and an exact copy.

Sec. 32.11.830

Pg. 19, line 29, Insert

(3) a limited partnership may change its registered office, agent, or both, by filing with the department a verified statement signed by a general partner including

(A) the name of the limited partnership;

(B) the address of its registered office;

(C) the address of its new registered office if the registered office is to be changed;

(D) the name of its registered agent;

(E) the name of its new registered agent, if the registered agent is to be changed;

(F) a statement that the change has been approved by all general partners.

SEC. 32.11.870

Add a section, FILING FEES. A domestic or foreign limited partnership that is required to file a certificate of limited partnership, amendment, cancellation, or registration or any other application with the department, shall pay to the commissioner a filing fee established by the department by regulation. The filing fee shall be uniform and fixed.

CS FOR SENATE BILL NO. 193 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR RODEY

A BILL

FOR AN ACT ENTITLED

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

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

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

5 CHAPTER 11. UNIFORM LIMITED PARTNERSHIP ACT.

6 ARTICLE 1. FORMATION AND CERTIFICATE OF LIMITED PARTNERSHIP.

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

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

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

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

5 (A) contributed by each partner; and

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

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

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

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

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

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

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

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

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

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

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

31 (1) the name of the limited partnership;

- 1 (2) the date of filing the certificate to be amended; and
2 (3) the amendment to the certificate.

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

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

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

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

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

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

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

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

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

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

25 (1) the name of the limited partnership;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) return the exact copy to the person who filed it or the person's representative.

30 (b) Upon the filing of a certificate of amendment or judicial decree of amendment with
31 the department, the certificate of limited partnership is amended, and upon the effective date of

1 a certificate of cancellation or a judicial decree of cancellation, the certificate of limited
2 partnership is canceled.

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

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

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

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

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

24 ARTICLE 2. LIMITED PARTNERS.

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

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

31 (2) in the case of an assignee of a partnership interest of a partner who has the

1 power under AS 32.11.350 to grant the assignee the right to become a limited partner, upon the
2 exercise of that power and compliance with conditions limiting the grant or exercise of the
3 power.

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

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

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

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

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

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

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

26 (4) taking any action required or permitted by law to bring or pursue a derivative
27 action in the right of the limited partnership;

28 (5) requesting or attending a meeting of partners;

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

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

1 (B) the sale, exchange, lease, mortgage, pledge, or other transfer of all or
2 substantially all of the assets of the limited partnership;

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

5 (D) a change in the nature of the business;

6 (E) the admission or removal of a general partner;

7 (F) the admission or removal of a limited partner;

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

10 (H) an amendment to the partnership agreement or certificate of limited
11 partnership; or

12 (I) matters related to the business of the limited partnership not otherwise
13 enumerated in this paragraph that the partnership agreement states in writing may be
14 subject to the approval or disapproval of limited partners;

15 (7) winding up the limited partnership under AS 32.11.390; or

16 (8) exercising a right or power permitted to limited partners under this chapter
17 and not specifically enumerated in this subsection.

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

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

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

31 (1) causes an appropriate certificate of limited partnership or a certificate of

1 amendment to be executed and filed; or

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

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

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

13 (1) inspect and copy the partnership records required to be maintained by
14 AS 32.11.840; and

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

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

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

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

22 ARTICLE 3. GENERAL PARTNERS.

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

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

31 (1) the general partner withdraws from the limited partnership under

1 AS 32.11.250;

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

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

6 (4) unless otherwise provided in writing in the partnership agreement, the general
7 partner

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

9 (B) files a voluntary petition in bankruptcy;

10 (C) is adjudicated a bankrupt or insolvent;

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

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

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

20 (5) unless otherwise provided in writing in the partnership agreement, 120 days
21 after the commencement of a proceeding against the general partner seeking reorganization,
22 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under a statute,
23 law, or regulation, the proceeding has not been dismissed, or if within 90 days after the
24 appointment without the general partner's consent or acquiescence of a trustee, receiver, or
25 liquidator of the general partner or of all or a substantial part of the general partner's properties,
26 the appointment is not vacated or stayed or within 90 days after the expiration of a stay, the
27 appointment is not vacated;

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

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

30 (B) the entry of an order by a court of competent jurisdiction adjudicating
31 the general partner incompetent to manage the general partner's person or the general

1 partner's estate;

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

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

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

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

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

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

20 Sec. 32.11.180. CONTRIBUTIONS BY GENERAL PARTNER; PERSON BOTH
21 LIMITED AND GENERAL PARTNER. A general partner of a limited partnership may make
22 contributions to the partnership and share in the profits and losses of, and in distributions from,
23 the limited partnership as a general partner. A general partner also may make contributions to
24 and share in profits, losses, and distributions as a limited partner. A person who is both a general
25 partner and a limited partner has the rights and powers, and is subject to the restrictions and
26 liabilities, of a general partner and, except as provided in the partnership agreement, also has the
27 powers, and is subject to the restrictions, of a limited partner to the extent of the person's
28 participation in the partnership as a limited partner.

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

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ARTICLE 4. FINANCE.

Sec. 32.11.200. 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.

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

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

Sec. 32.11.220. 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 specify in writing, profits and losses shall be allocated on the basis of the value, as stated in the certificate of limited partnership, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

Sec. 32.11.230. 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 specify in writing, distributions shall be made on the basis of the value, as stated in the certificate of limited partnership of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

ARTICLE 5. DISTRIBUTIONS AND WITHDRAWAL.

Sec. 32.11.240. INTERIM DISTRIBUTIONS. Except as provided in AS 32.11.240 -

1 32.11.310, a partner is entitled to receive distributions from a limited partnership before the
2 partner's withdrawal from the limited partnership and before the dissolution and winding up of
3 the partnership

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

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

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

14 Sec. 32.11.260. WITHDRAWAL OF LIMITED PARTNER. A limited partner may
15 withdraw from a limited partnership at the time or upon the happening of events specified in the
16 certificate of limited partnership and in accordance with the partnership agreement. If the
17 certificate does not specify the time or the events upon the happening of which a limited partner
18 may withdraw or a definite time for the dissolution and winding up of the limited partnership,
19 a limited partner may withdraw upon not less than six months' prior written notice to each
20 general partner at the general partner's address on the books of the limited partnership at its
21 office in this state.

22 Sec. 32.11.270. DISTRIBUTION UPON WITHDRAWAL. Except as provided in
23 AS 32.11.240 - 32.11.310, upon withdrawal a withdrawing partner is entitled to receive a
24 distribution to which the withdrawing partner is entitled under the partnership agreement and, if
25 not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within
26 a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the
27 limited partnership as of the date of withdrawal based upon the withdrawing partner's right to
28 share in distributions from the limited partnership.

29 Sec. 32.11.280. DISTRIBUTION IN KIND. Except as provided in the certificate of
30 limited partnership, a partner, regardless of the nature of the partner's contribution, does not have
31 the right to demand and receive a distribution from a limited partnership in a form other than

1 cash. Except as provided in writing in the partnership agreement, a partner may not be
2 compelled to accept a distribution of an asset in kind from a limited partnership to the extent that
3 the percentage of the asset distributed to the partner exceeds a percentage of that asset that is
4 equal to the percentage in which the partner shares in distributions from the limited partnership.

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

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

12 Sec. 32.11.310. LIABILITY UPON RETURN OF CONTRIBUTION. (a) If a partner
13 has received the return of a part of the partner's contribution without violation of the partnership
14 agreement or this chapter, the partner is liable to the limited partnership for a period of one year
15 thereafter for the amount of the returned contribution, but only to the extent necessary to
16 discharge the limited partnership's liabilities to creditors who extended credit to the limited
17 partnership during the period the contribution was held by the partnership.

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

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

25 ARTICLE 6. ASSIGNMENT OF PARTNERSHIP INTERESTS.

26 Sec. 32.11.320. NATURE OF PARTNERSHIP INTEREST. A partnership interest is
27 personal property.

28 Sec. 32.11.330. ASSIGNMENT OF PARTNERSHIP INTEREST. Except as provided
29 in the partnership agreement, a partnership interest is assignable in whole or in part. An
30 assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee
31 to become or to exercise the rights of a partner. An assignment entitles the assignee to receive,

1 to the extent assigned, only the distribution to which the assignor would be entitled. Except as
2 provided in the partnership agreement, a partner ceases to be a partner upon assignment of all
3 of the partner's partnership interest.

4 Sec. 32.11.340. RIGHTS OF CREDITOR. On application to a court of competent
5 jurisdiction by a judgment creditor of a partner, the court may charge the partnership interest of
6 the partner with payment of the unsatisfied amount of the judgment with interest. To the extent
7 charged, the judgment creditor has only the rights of an assignee of the partnership interest. This
8 chapter does not deprive a partner of the benefit of an exemption law applicable to the partner's
9 partnership interest.

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

13 (1) the assignor gives the assignee that right in accordance with authority
14 described in the certificate of limited partnership; or

15 (2) all other partners consent.

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

23 (c) If an assignee of a partnership interest becomes a limited partner, the assignor is not
24 released from the assignor's liability to the limited partnership under AS 32.11.070 and
25 32.11.210.

26 Sec. 32.11.360. POWER OF ESTATE OF DECEASED OR INCOMPETENT PARTNER.
27 If a partner who is an individual dies or a court of competent jurisdiction adjudges the partner
28 to be incompetent to manage the partner's person or the partner's property, the partner's executor,
29 administrator, guardian, conservator, or other legal representative may exercise all of the partner's
30 rights for the purpose of settling the partner's estate or administering the partner's property,
31 including any power the partner had to give an assignee the right to become a limited partner.

1 If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of
2 that partner may be exercised by its legal representative or successor.

3 ARTICLE 7. DISSOLUTION.

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

- 6 (1) at the time specified in the certificate of limited partnership;
7 (2) upon the happening of events specified in the certificate of limited partnership;
8 (3) written consent of all partners;
9 (4) an event of withdrawal of a general partner unless at the time there is at least
10 one other general partner and the certificate of limited partnership permits the business of the
11 limited partnership to be carried on by the remaining general partner and that partner does so,
12 but the limited partnership is not dissolved and is not required to be wound up by reason of an
13 event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to
14 continue the business of the limited partnership and to the appointment of one or more additional
15 general partners if necessary or desired; or
16 (5) entry of a decree of judicial dissolution under AS 32.11.380.

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

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

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

- 27 (1) to creditors, including partners who are creditors, to the extent permitted by
28 law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions
29 to partners under AS 32.11.240 or 32.11.270;
30 (2) except as provided in the partnership agreement, to partners and former
31 partners in satisfaction of liabilities for distributions under AS 32.11.240 or 32.11.270; and

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

4 ARTICLE 8. FOREIGN LIMITED PARTNERSHIPS.

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

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

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

10 Sec. 32.11.420. REGISTRATION. Before transacting business in this state, a foreign
11 limited partnership shall register with the department. In order to register, a foreign limited
12 partnership shall submit to the department an original and an exact copy of an application for
13 registration as a foreign limited partnership, signed and sworn to by a general partner and setting
14 out

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

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

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

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

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

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

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

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

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

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

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

8 (2) file in the department the original of the application; and

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

10 (b) The certificate of registration, together with an exact copy of the application, shall
11 be returned to the person who filed the application or the person's representative.

12 Sec. 32.11.440. NAME. A foreign limited partnership may register with the department
13 under any name, whether or not it is the name under which it is registered in its state of
14 organization, that includes without abbreviation the words "limited partnership" and that could
15 be registered by a domestic limited partnership.

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

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

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

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

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

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

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

10 ARTICLE 9. DERIVATIVE ACTIONS.

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

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

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

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

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

25 Sec. 32.11.520. RECOVERIES. If a derivative action is successful, in whole or in part,
26 or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement
27 of an action or claim, and if the plaintiff is awarded attorney fees or costs, the court shall direct
28 the plaintiff to remit to the limited partnership the portion of the recovery that remains after
29 deduction of the attorney fees and costs awarded to the plaintiff.

30 ARTICLE 10. GENERAL PROVISIONS.

31 Sec. 32.11.800. CONSTRUCTION AND APPLICATION. This chapter shall be so

1 applied and construed to effectuate its general purpose to make uniform the law with respect to
2 the subject of this chapter among states enacting it.

3 Sec. 32.11.810. NAME. The name of a limited partnership as set out in its certificate
4 of limited partnership

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

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

7 (A) it is also the name of a general partner or the corporate name of a
8 corporate general partner; or

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

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

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

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

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

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

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

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

26 (b) The reservation shall be made by filing with the department an application, executed
27 by the applicant, to reserve a specified name. If the department finds that the name is available
28 for use by a domestic or foreign limited partnership, and not a reserved or registered name under
29 AS 10.35, the department shall reserve the name for the exclusive use of the applicant for a
30 period of 120 days. Once having reserved a name, the same applicant may not again reserve the
31 same name until more than 60 days after the expiration of the last 120-day period for which that

1 applicant reserved that name. The right to the exclusive use of a reserved name may be
2 transferred to another person by filing with the department a notice of the transfer executed by
3 the applicant for whom the name was reserved and specifying the name and address of the
4 transferee.

5 Sec. 32.11.830. SPECIFIED OFFICE AND AGENT. (a) A limited partnership shall
6 continuously maintain in this state

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

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

12 (b) A limited partnership may change its registered office, registered agent, or both, by
13 filing with the department a verified statement signed by a general partner stating

14 (1) the name of the limited partnership;

15 (2) the address of its registered office;

16 (3) the address of its new registered office if the registered office is being
17 changed;

18 (4) the name of its registered agent;

19 (5) the name of its new registered agent if the registered agent is being changed;

20 and

21 (6) a statement that the change has been approved by all of the general partners.

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

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

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

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

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

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

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

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

9 Sec. 32.11.870. FILING FEES. A domestic or foreign limited partnership that files a
10 certificate of limited partnership, amendment, cancellation, or registration, or other application
11 with the department, shall pay to the commissioner a filing fee established by the department by
12 regulation. The filing fee must be uniform and fixed.

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

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

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

18 (2) "commissioner" means the commissioner of commerce and economic
19 development;

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

23 (4) "department" means the Department of Commerce and Economic
24 Development;

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

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

30 (7) "general partner" means a person who has been admitted to a limited
31 partnership as a general partner in accordance with the partnership agreement and named in the

1 certificate of limited partnership as a general partner;

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

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

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

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

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

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

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

17 * Sec. 2. AS 32.10 is repealed.

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

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

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

28 * Sec. 4. COURT RULE AMENDED. AS 32.11.510, enacted by sec. 1 of this Act, amends Alaska
29 Rule of Civil Procedure 8 by requiring that certain information be set out in the complaint for a limited
30 partnership derivative action.

31 * Sec. 5. This Act takes effect July 1, 1992.



ADDRESS ALL COMMUNICATIONS
TO THE COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO CALIFORNIA 94102
TELEPHONE (415) 887

Public Utilities Commission
STATE OF CALIFORNIA

COMMISSIONER

April 23, 1991

The Honorable Patrick M. Rodey
Alaska State Legislature
Juneau, AK

VIA FAX TRANSMISSION

Dear Senator Rodey:

I have reviewed the amendments submitted to your Committee by Willis Kirkpatrick. In my view, you may adopt these amendments without fear of any compromise of either the text or spirit of the bill you have introduced revising Alaska's limited partnership statute.

Pat, thanks for your effort. I hope you continue to hold the line of sections 201 and 303.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan", is written over a large, stylized loop that forms the letter "D".

Daniel Wm. Fessler
Commissioner

STATE OF CALIFORNIA

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



DATE:

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TO: THE HONORABLE PATRICK M. RODEY

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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
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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,



Daniel Wm. Fessler
COMMISSIONER

CC: Arthur Peterson, Esquire
Honorable John Abbott

National Conference of Commissioners on Uniform State Laws

676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611-(312) 915-0195

March 28, 1991

John M. McCabe
Legislative Director

Daniel Wm. Fessler
Professor of Law
University of California, Davis
School of Law
1103 King Hall
Davis, Ca 95615

RE: Uniform Limited Partnership Act (1976) with the 1985
Amendments

Dear Professor Fessler:

Art Peterson has forwarded your correspondence with him over the Limited Partnership Act. I am Legal Counsel and Legislative Director for the Uniform Law Commissioners and am responsible for the legislative activities of the ULC on such acts as the Limited Partnership Act. Although I did not participate with the Drafting Committee for the 1976 Act, I did negotiate the approval of the act by the Internal Revenue Service, which occurred if my memory serves me correctly in 1981, and I took on the role of Reporter for the amendments to Section 403, which preceded the 1985 Amendments and which were necessary to gain IRS approval. I, also, worked closely with the Drafting Committee for the 1985 Amendments, and so am intimately familiar with those deliberations.

I must confess that your letter to Art came as a bit of a surprise, because I thought that controversy over issues such as the notice certificate and the test for assessing general liability for a limited partner had died about a half a decade ago, finally and irretrievably. The vast majority of states have long since abandoned the long certificate and the less-than-reliance test for general liability, and have done more - following the lead California and Delaware took and continue to take in limited partnership law. Be that as it may be, I will attempt to articulate the policy concerns that led the 1985 Drafting Committee to the positions that it took.

In general, the whole concept of the limited partnership changed in the decades of the 1970's and 1980's. The small business model upon which the limited partnership form was based no longer had much relevance to the real business of limited partnerships in the United States. The small business model was premised in suspicion of "silent" partners who would not be available to satisfy obligations to creditors, and who would be tolerated only in the event that they did not in any way participate in the business. In the real world, limited partnerships became a primary vehicle for capital formation. The principal concern of promoters, therefore, was and is to attract investors. The inevitable result of that change in emphasis was to alter the law of limited partnerships for the purposes of protecting investor interests rather than purely creditor interests.

The notice certificate is a prime example of this change in emphasis in the law. Who gains by having the limited partners and their contributions listed on the certificate? The limited partners themselves gain or lose nothing. The creditworthiness and investor worthiness of a limited partnership is primarily dependent upon the named general partner or partners and upon the track record of the general partner or partners in conducting business of the type that the partnership will enter. To investors the exact identity of other investors or the extent of their contributions is for the most part irrelevant. Further, if any potential limited partner wants that information, depending upon the volume involved, the partnership will provide it if that is what is necessary to obtain the investment.

The next question the Drafting Committee addressed was whether creditors needed the names and contributions of limited partners in the certificate? We could not find anybody who could or would assert that limited partner identity was useful for creditors or that creditors ever used the certificates when deciding to extend credit or not to extend credit. Again, creditors are primarily concerned about the creditworthiness of the general partner or partners. If they want information on limited partners, then they are in an excellent position to obtain that information directly from the partnership. Nobody could think of any situation in which creditors would, or indeed, ever did seek out the certificate to find the names and contributions of limited partners. In fact, nobody could think of any occasion in their experience (and there was some considerable experience among the committee members and advisors) with the formation and management of limited partnerships that a creditor ever inquired about the limited partners at all.

One thing that requiring the limited partner names and contributions did do was to encourage creditors to search the list for mistakes - to see if there might be somebody else who might assume general liability - simply because of the inadvertence of those who file certificates and their amendments. A purely technical error could catch an unwary limited partner, and in the spirit, again, of investor protection, the Drafting Committee could think of no reason to continue the vulnerability of limited partners in this fashion.

Of course, the general partners do not need to see the names of the limited partners in the certificate, since the general partners have the partnership records. After considering the issue from each perspective, the Drafting Committee concluded that listing the limited partners and their contributions was a vestige of an earlier time and a long-past notion of the limited partnership. Everybody, including creditors, now understands that limited partnerships are primarily created to attract investors and that the rules ought to reflect that fact.

There is, also, the very practical problem of amendments in limited partnerships with lots of investors and with partnerships whose shares are freely assigned and traded. In the larger syndications, particularly, and now in master limited partnerships, partnerships are bought and sold on a daily basis. Amendment of certificates to keep up with the sales and purchases became a significant administrative problem for these partnerships.

The same general policy considerations influenced the changes to Section 303. Under the 1916 Act, courts were increasingly required to decide if certain actions on the part of limited partners would be considered participation in the control of the business. Certain voting rights, for example, were subjected to that scrutiny. The problem was complicated by the requirements of securities administrators in states like California, which began to require certain investor rights for limited partners. Thus, the initial "safe-harbors" in Section 303 of the 1976 Act.

But the rule of Section 303 in the 1976 Act did not give complete comfort, and states like California and Delaware began to move to tests that more significantly insulated limited partners from general liability. When the IRS gave its approval to those statutes (California was the first if my memory is correct), there was no way that the 1976 Act could be kept as is. The reliance test of Section 303(a) and the extended "safe-

harbors" of Section 303(b) were made inevitable by those developments.

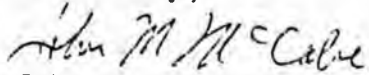
Again, the notion of the silent partner who exists in that status mainly to deprive creditors of their due, simply fails as a model for the modern limited partnership. The issue is obtaining investment and providing sufficient security to investors. We want to allow them some democracy rights within the partnership, and we don't want to limit investors who have other relationships to the partnership. These are the kinds of factors that motivated the Drafting Committee into accepting these changes.

Acceptance of such notions by the IRS, also, plays a considerable role in the development of this area of law. Limited partnerships and the Uniform Limited Partnership Act became popular in the United States only after the 1955 Tax Act. I believe the majority of adoptions of the 1916 Limited Partnership Act occurred after 1955. Tax policy has driven modern partnership law and continues to do so. The notice certificate had little in the way of tax ramifications. But Section 303 is tax sensitive, and IRS acceptance of these concepts had much to do with the development of the 1985 Act. Tax advantages make limited partnerships a favored means for capital formation. The law takes this fact into account.

These are the principal concerns that motivated these changes in limited partnership law. Do they move the limited partnership closer to the corporate form? Of course. If there is a blurring of forms, so what? The issue is a relevant form of business organization that people will use to form capital and engage in economic activity. The issue of blurring a technical, classical difference between two forms is not nearly so relevant.

I hope that this discussion will assist you in your consideration of these issues. Thanks for your kind attention.

Sincerely,


John M. McCabe
Legislative Director

cc: Art Peterson

P. O. Box 20444
Juneau, Alaska 99802-0444
March 29, 1991

Prof. Daniel Wm. Fessler
1103 King Hall
School of Law
University of California -- Davis
Davis, California 95616

Re: Uniform Limited
Partnership Act
-- SB 193

Dear Dan:

Hope that my March 8, 1991 letter, inviting your rebuttal of my response to your earlier comments on the Uniform Limited Partnership Act, reached you. Shortly after I sent that letter, Senator Pat Rodey introduced Senate Bill No. 193, proposing the 1976 revision of that Act without the 1985 amendments of Sections 201 (certificate of limited partnership) and 303 (liability to third parties). A copy is enclosed.

Although I have not yet reviewed this version, I understand that it includes the 1985 amendments of other sections, except for "compatibility amendments" related to Sections 201 and 303. When this bill comes up for hearing, I plan to encourage the re-inclusion of the full set of 1985 amendments. But I invite your further comments, and maybe I won't take that position.

How strongly do you feel about the Sections 201 and 303 points you raised in your January 28, 1991 letter to me? On page 2, fourth paragraph, of that letter, you state that you "have no great problem with [the Section 303 change] other than the fact that it does represent a significant change in the law and one which the Legislature ought to carefully weigh." So I gather that you would not oppose the inclusion of the 1985 amendments of Section 303. What about Section 201?

I understand that the NCCUSL's Legislative Director and Legal Counsel, John McCabe, will be writing to you regarding these issues. As always, I am interested in your response.


Hope to hear from you soon about both this matter and the

Prof. Daniel Wm. Fessler
Re: Unif. Limited Partnership Act

Page 2

Uniform Partnership Act question I wrote to you about yesterday.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Senator Pat Rodey
Alaska State Legislature

Theresa L. Bannister
Legislative Counsel
Alaska Legislative Affairs Agency

John Abbott, Chair
Alaska Code Revision Commission

cc w/SB193: John M. McCabe
Legis. Director & Legal Counsel
NCCUSL

P. O. Box 20444
Juneau, Alaska 99802-0444
March 8, 1991

Prof. Daniel Wm. Fessler
1103 King Hall
School of Law
University of California -- Davis
Davis, California 95616

Re: Uniform Limited
Partnership Act
-- your concerns about
the 1985 amendments

Dear Dan:

Thanks for your January 28, 1991 letter (postmarked January 31, but not received by me until February 13 [which is odd]). Sorry about your health problem, and hope that it's cleared up by this time.

I hear that you were appointed to the California Public Utilities Commission a couple of weeks ago. Congratulations! Does this mean that you won't be able to give Alaska the benefit of your professorial expertise anymore? I hope it doesn't mean that.

In your letter, you raise the following three objections to the 1985 amendments of the 1976 Uniform Limited Partnership Act:

- (1) the timing or tactics of the 1985 amendments coming so close upon the heels of the 1976 revision of the Act;
- (2) the deletion of much of the information (composition and financial structure) formerly required to be put in the certificate of limited partnership; and
- (3) the blurring of the distinction between general partner and limited partner, with regard to control and limited liability.

The official NCCUSL commentary accompanying the 1976 ULPA with 1985 Amendments, along with some other NCCUSL-provided material, suggests answers to your concerns. I'm sure that you have responses to these answers, and I'd very much like to see them. For the moment, here are my observations based on the NCCUSL commentary and material:

(1) Timing. According to the Prefatory Note in the official publication of the 1976 ULPA with 1985 Amendments, many of the 1985 amendments were considered by the drafters of the 1976 Act, but were not included at that time because of uncertainties as to the

possible consequences of that inclusion under applicable federal income tax laws. As further explained in a brief information sheet on the 1985 amendments, a "number of states had adopted variations of ULPA (1976) that were sufficiently compelling to cause the [NCCUSL] to re-evaluate earlier policy decisions." Then, in 1984, "the IRS approved the adoption of ULPA (1976) in a number of states, even though there were significant variations in those states from the official text. . . . IRS approval of these enactments provided the opportunity to reconsider [the] issues."

Thus, to recognize state legislative activity, IRS action, and the continuing need for uniformity, the NCCUSL promulgated the 1985 amendments. That prompt update should not vex a legislator.

(2) Section 201. Again, as explained in the Prefatory Note to the 1976 ULPA with 1985 Amendments, the 1976 Act recognized "that the basic document in any partnership, including a limited partnership, is the partnership agreement." The "certificate of limited partnership" does not constitute the partnership, but merely reflects basic information as to which government officials, creditors, and others should be put on notice. The 1985 amendments further implement that recognition.

The requirement that the name, address, and capital contribution of each limited partner, along with certain other information, be on the certificate is believed "to serve no 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." (Page 4 of Prefatory Note.) The official comment under Section 201 adds 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 . . . , not to the certificate of limited partnership, to obtain facts concerning the capital and finances of the partnership and other matters of concern."

The certificate becomes a notice certificate that establishes the existence of a limited partnership, and identifies the general partners. However, because "the certificate has provided information of importance to limited partners, the amendments require it to be maintained for limited partners in the partnership agreement or the records of the limited partnership under Section 105." (NCCUSL information sheet on the 1985 amendments.)

Under the 1985 amendments, the certificate would still serve a valuable function, and information that used to be on it will be available in other documents. This change would appear to

facilitate the creation and operation of limited partnerships.

Section 303. As you point out in your letter, the 1976 Act shifts from basing determination of limited partner liability on "the statutory norm of passivity" to basing it on "creditor expectation." I.e., instead of liability turning on whether the limited partner took part in the "control" of the business, a limited partner who "participates in the control" will be liable only to persons who transact business with the partnership reasonably believing that the limited partner is a general partner. You say that you "have no great problem with this other than the fact that it does represent a significant change in the law and one which the Legislature ought to carefully weigh."

The 1985 amendments then expand upon the 1976 Act's "safe harbor" of identified activities of a limited partner that do not constitute participating in control of the business -- e.g., bringing a derivative action in the right of the limited partnership, or serving on a corporate general partner's board of directors. I gather that the "control" concept has been difficult to apply -- both for the people involved with these partnerships and for the judiciary. I understand that these changes reflect developing case law and modern statutes in the area, rather than signal a radical departure from current law. The cases you refer to arose under the old law, and it is not apparent to me that the changes proposed in the 1976 ULPA with 1985 Amendments would inspire a proliferation of the kinds of problems illustrated by those cases.

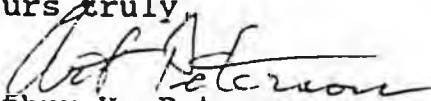
Conclusion, Recommendation, & Invitation.

So, Dan, your material is excellent, and your issues certainly are ones that the legislature should consider. However, at this point, I feel that I must recommend that the Alaska Legislature enact the full 1976 ULPA with 1985 Amendments.

But I invite your rebuttal, and I invite the participation in this debate of persons more knowledgeable of this subject than I. Members of the NCCUSL drafting committee for this Act, as well as NCCUSL Legislative Director and Legal Counsel John McCabe, would have something helpful to offer.

Hope to hear from you soon. Best wishes.

Yours truly,


Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Senator Pat Rodey
Alaska State Legislature

Theresa L. Bannister
Legislative Counsel
Alaska Legislative Affairs Agency

John M. McCabe
Legis. Director & Legal Counsel
NCCUSL

John Abbott, Chair
Alaska Code Revision Commission

University of California, Davis



Daniel Wm. Fenler
Professor of Law
1103 King Hall
School of Law
Davis, California 95616

TPL: 916-752-2896
FAX: 916-752-4704

January 28, 1991

Postmarked 1/31/91.
Recd. by AHP ~ 2/13/91.

Arthur H. Peterson, Esquire
Post Office Box 20444
Juneau, Alaska 99802-044

Dear Art:

Many thanks for your recent letters. I received the one mailed in December but have had a bit of trouble with my health and find that the demands of the new term are keeping me quite busy. Notwithstanding, your original letter made a most reasonable request which your most recent communication reinforced.

I am enclosing a copy of a chapter dealing with limited partnerships which West will publish in March as the third edition to my casebook on business organizations. There you will find a brief sketch of the limited partnership in American law and the social contract which sponsored its classical structure. As a general proposition, I believe that the 1916 statute should be changed. From my perspective its major flaw is that it provides no answers to many important questions which arise in the business world and upon which clients deserve informed guidance. In this respect the coverage of the 1976 Revised Act is markedly superior. As a general proposition, I have little difficulty with the proposition that the 1976 Revised Act is a significant improvement and that the Alaska Legislature would do well to replace the existing statute.

My problem comes with the "1985 Amendments" which were originally styled as a third replacement act. Frankly, I am curious—and as a Commissioner you can be of great assistance—as to why the Commissioners were moved to revise the statutory base for limited partnerships twice in the span of only nine years? Were I a member of the legislature of a state which had adopted the 1976 Act in 1984 (and there were several such legislatures) I would feel rather vexed.

But my problem goes beyond timing and tactics. I am distressed that the "1985 Amendments" mark a radical departure from the limited partnership as it has related to the state, to the business and investment communities, and to the bar. The departure is not only from the 1916 Act (the current Alaska law) but also from the value judgments explicitly retained in the 1976 Revision. Let me give you two prominent examples.

Formation: Until the advent of the 1985 Amendment to Section 201 of the Revised Act, persons interested in the formation of a limited partnership were required to complete a vital disclosure document concerning the composition and financial structure of what was to be a state enabled limited liability business vehicle. This document had to be filed with a designated state official as a precondition to formation. There were statutory sanctions in the event of false statements. Once filed, the certificate was public document, open to inspection by potential investors or creditors of the firm. It was also a vital

Arthur E. Peterson, Esquire

Page two

January 28, 1991

charter for any person seeking to represent a limited partner or the estate of such an individual. If one compares the provisions of Section 201 of the 1976 Revised Act with ~~Art. 6 of the 1976 Act~~ Section 2 of the 1916 Act the continued fidelity to this policy is quite striking.

I ask that you take a good look at what would remain of the disclosure obligation were the Alaska legislature to adopt the 1985 Amended version of Section 201. Can you come up with any good reason why there should be such a departure from established practice? The chapter which I am enclosing contains *Klein v. Weiss*, a 1978 opinion of the Court of Appeals of Maryland. The fact pattern presents a chilling demonstration of the practical impact of adopting the 1985 Amendments. Whether you consider Fulton and Rinaldi "innovative enterprisers" or desperate rogues, it is a simple fact that thier scheme to defraud the lenders and the initial limited partners would have gone undetected for they would never have been put to the trouble of altering the content of the certificate!

Limited liability: The essence of a limited partnership is the distinction between the general partner or partners and the limited participants. To the former belong the right of control and management disciplined by fiduciary duties and the terms of a partnership agreement. The price which the general partners pay for access to what Brandeis called "other peoples' money" is one of joint and several liability for the debts and obligations of the partnership. By contrast, limited partners have no obligation to contract creditors or even tort victims beyond the sum which they have agreed to contribute to the capitalization of the firm. But they, too, pay a price. Under Section 7 of Alaska's current law, they are required to abide a posture of passivity at peril of loss of their state conferred shield of limited liability.

If you will take a few minutes to examine the cases collected under the heading "Liability to Third Party Creditors" you will see graphic examples of business fact patterns in which persons who sought the protection of limited partner status also desired to participate in control and management of the firm. *Holzman v. DeEscamilla*, sets forth the classical fate of such a partner. *Delaney v. Fidelity Lease and Frigidaire Sales Corp. v. Union Properties, Inc.*, reveal rival interpretations of the 1916 Statute. The issue is whether a loss of limited liability should turn on an offense to the statutory norm of passivity or only upon specific creditor expectations generated by that activity.

It is evident that the Commissioners desired to move in the direction of the "creditor expectation" position when they adopted the content of Section 303 of the 1976 Revised Act. I have no great problem with this other than the fact that it does represent a significant change in the law and one which the Legislature ought to carefully weigh. Under the original content of Section 303 a distinction was made between the fate of a limited partner who participates in control and management from time to time and one who makes such a pervasive interference as to "substantially. . . exercise the powers of a general partner." Only the later partner suffers a total loss of limited liability protection. The partner guilty of occasional interference in control and management is liable only to creditors who had actual knowledge of this participation in control.

Now look at the "1985 Amendment" to Section 303. I suspect that you will agree with me that it is a far more radical change from the passivity norm than was ever envisioned in the 1976 text. Art, why is such a radical change being suggested? Has any thought been given to the impact of this license to participate among the ranks of limited partners? Today in Alaska a limited partner can be secure in the knowledge that only the general partner or partners have the right of control. The deterrent to an ambitious limited partner bent on interference is the loss of limited liability. But under the revised Section 303 what

Arthur E. Peterson, Esquire
Page three
January 21, 1991

assurance do the limited partners who desire a passive posture (perhaps because of their age, physical location, or the other burdens of their lives) that this basic treaty will oblige other investors?

Art, I share these questions and thoughts with you because I know that you have the interest of the average Alaskan very much at heart. If you can come up with justifications for the changes wrought by the 1985 Amendments to Section 201 and 303 I would be delighted to learn from them. I wish you well in your endeavors and hope that you will consider the introduction of a bill which features the 1976 Revised Uniform Limited Partnership Act as modified by the 1985 Amendments but *without* the amendments to Sections ~~202~~ and 303. I am sending a copy of this letter to John Abbott with the request that he share it with other members of the Code Revision Commission.

201 →

Best personal regards.

Sincerely,



Daniel Wm. Fessler
Professor of Law

cc: John Abbott, Esquire
Chairman
Alaska Code Revision Commission

A Few Facts About

THE UNIFORM LIMITED PARTNERSHIP ACT

PURPOSE: To provide a more flexible and stable basis for the organization of limited partnerships, and help states stimulate new limited partnership business ventures.

ORIGIN: The Uniform Limited Partnership Act was originally promulgated in 1916 and was adopted in 49 states and the District of Columbia. A major revision occurred in 1976, and is officially entitled the Uniform Limited Partnership Act (1976). This replaces the 1916 Act entirely. In 1985, limited amendments were made to the 1976 Act, and the Act is now entitled the Uniform Limited Partnership Act (1976) with 1985 Amendments.

**STATE
ADOPTIONS OF
ULPA (1976):**

Alabama	Idaho	Nebraska
Arizona	Iowa	New Jersey
Arkansas	Maryland	Ohio
California	Michigan	South Carolina
Colorado	Montana	Washington
Connecticut	Missouri	Wyoming

**STATE
ADOPTIONS OF
ULPA (1976)
WITH 1985
AMENDMENTS:**

Delaware	Massachusetts	Oregon
District of Columbia	Minnesota	Pennsylvania
Florida	Mississippi	Rhode Island
Georgia	Nevada	South Dakota
Hawaii	New Hampshire	Tennessee
Illinois	New Mexico	Texas
Indiana	New York *	Utah *
Kansas	North Carolina	Virginia
Kentucky	North Dakota	West Virginia
	Oklahoma	Wisconsin *

**INTRODUCTIONS
OF ULPA (1976)
WITH 1985
AMENDMENTS:**

**INTRODUCTIONS
OF 1985
AMENDMENTS
ONLY:**

Idaho
Missouri

* 1990 Adoption

NEED A
SPEAKER?

These persons are available to provide testimony
or give presentations on the Uniform Limited
Partnership Act:

Joel Adelman
Detroit, Michigan
Advisor

Robert Berger
Chicago, Illinois
Reporter

Howard Walthall
Birmingham, Alabama
ABA Advisor

For information on arranging a speaker, contact John McCabe
or Katie Robinson at 312-915-0195.

THE UNIFORM LIMITED PARTNERSHIP ACT (1976)
WITH THE 1985 AMENDMENTS

SECTION BY SECTION ANALYSIS

Article 1: General Provisions

Section 101 contains definitions.

Section 102 provides what may and may not be included in the name of each limited partnership as set forth in its certificate. The name may not be similar to the name of any corporation or limited partnership both foreign and/or local; may not contain certain words; may not abbreviate "limited partnership"; and may not contain the name of a limited partner with exceptions.

Section 103 provides the procedure for reserving a partnership name.

Section 104 requires that a limited partnership maintain an office for keeping records and an agent for service of process.

Section 105 specifies the records that a limited partnership must keep. This includes names and addresses of each partner, and, a copy of the certificate, tax returns, and agreements. Such records are subject to inspection by partners during ordinary business hours.

Article 2: Formation

Section 201 establishes the requirements and procedure for forming a limited partnership. To form a limited partnership, a certificate containing the name of the limited partnership, the name and address of both the general partner(s) and the agent for service of process, date of dissolution, and other matters as desired, must be filed with the Secretary of State (or equivalent). A limited partnership is actually formed at the time the certificate is filed, or at any later time, if specified in the certificate.

Section 202 details the circumstances under which a certificate of limited partnership shall be amended as well as the requirements for amending it. In particular, a certificate of amendment must be filed with the Secretary of State upon the admission and/or withdrawal of a general partner.

Section 203 requires a certificate of cancellation to be filed with the Secretary of State when a limited partnership is dissolved. The certificate must contain the reasons for cancellation, the name of the limited partnership and the date the limited partnership was originally formed.

Section 204 requires original certificates and certificates of cancellation to be signed by all general partners. A certificate of

amendment must be signed by one general partner and any new general partner designated in the certificate of amendment.

Section 205 authorizes a court to order the execution of a certificate for any person adversely affected by the failure of execution, upon petition.

Section 206 establishes the procedure for filing a certificate of limited partnership (and any other of the certificates) in the Office of the Secretary of State (or equivalent).

Section 207 provides for damages when a person suffers loss based upon reliance on a false statement in a certificate.

Section 208 provides that a certificate of limited partnership filed with the Secretary of State (or equivalent) is notice that the listed general partners are general partners, and that the partnership is a limited partnership, and no other fact.

Section 209 requires the general partners to mail a copy of any certificate to each limited partner, after it is filed.

Article 3: Limited Partners

Section 301 establishes that a person becomes an original limited partner when the partnership is formed or at any later time specified in the partnership records. If the agreement does not specify when later joining limited partners become so, becoming one by acquiring a partnership interest (including assignment) requires written consent of all partners.

Section 304 provides a means for a person who believes in good faith that he or she is a limited partner to avoid liability as a general partner when that good faith belief is erroneous.

Section 305 gives limited partners the right to inspect the records that must be kept according to Section 105, and to have full information on the financial status of the partnership, copies of tax returns, and other information as is reasonable and just, upon reasonable demand.

Article 4: General Partners

Section 401 permits the agreement to control admission of additional general partners. If the agreement is silent, admission of additional general partners requires unanimous, written consent of all partners.

Section 402 indicates the types of events that constitute involuntary general partner withdrawal from a limited partnership. Such events include bankruptcy of the general partner, death of the general partner, and adjudicated incompetency of the general partner.

Section 403 establishes the general powers and general liability of a general partner - as if a partner in a partnership without limited partners.

Section 404 allows general partners to contribute to the partnership and to share in profits and losses both as general partners and limited partners.

Section 405 provides that general partner voting rights arise, if at all, in the partnership agreement.

Article 5: Finance

Section 501 provides that partner contributions may be in the form of cash, property, services rendered, promissory note, or an obligation to provide any of the same.

Section 502 permits the written agreement to control a partner's liability to the limited partnership for contributions. Unless the written agreement provides otherwise, a partner is liable to perform any promise to contribute. A limited partner's promise must be in writing to be enforceable. If promised contributions of property or services are not made, the partner can be obligated to contribute the cash equivalent at the partnership's option.

Section 503 permits the written agreement to control sharing in profits and losses. If the agreement is silent, allocations must be proportional to the value of contributions made.

Section 504 permits the written agreement to control allocation of distributions. If the agreement is silent, allocations must be proportional to the value of contributions made.

Article 6: Distributions and Withdrawal

Section 601 makes distributions to partners, except distributions at withdrawal from the partnership, or, the dissolution or winding up of the partnership, subject to and contingent upon the terms of the partnership agreement.

Section 602 governs the withdrawal of a general partner. A general partner can withdraw at any time, but may be liable for breach of the partnership agreement if the withdrawal violates it.

Section 603 subjects voluntary withdrawal of a limited partner from the partnership to the partnership agreement. If the agreement is silent, withdrawal can occur only upon 6 months notice to each general partner.

Section 604 permits the partnership agreement to determine a partner's distribution upon withdrawal from the partnership. If the agreement is silent, the basis for a distribution is the fair value of the partner's current interest in the partnership.

Section 605 provides that a distribution must be in cash, unless the written partnership agreement states otherwise. Unless the written agreement provides, no partner can demand a distribution in kind, nor be forced to accept such a distribution.

Section 606 grants a partner the status of a creditor of the limited partnership for any distribution to which he or she is entitled.

Section 607 prohibits any distribution to a partner that would make the liabilities of the limited partnership exceed the fair value of its assets.

Section 608 provides a statute of limitations for liability when a partner receives a return of contribution in part or in whole. If the return is rightful, there is limited liability to partnership creditors for one year after the return. A wrongful return extends liability for six years.

Article 7: Assignment of Partnership Interests

Section 701 establishes that a partnership interest is personal property.

Section 702 provides that assignment of a partnership interest includes any distribution rights to which an assignor would be entitled. Once an interest is assigned, the assignor ceases to be a partner.

Section 703 grants a judgment creditor the rights of an assignee.

Section 704 permits the partnership agreement to determine the terms and conditions for an assignee to become a limited partner. If the agreement is silent, an assignee becomes a limited partner only upon the consent of all partners. The assignor, however, remains liable to the limited partnership for any false statement under Section 207 and for contributions under Section 502, even after the assignee becomes a limited partner.

Section 705 allows a partner's representative to exercise a partner's rights in the event of the partner's death or incompetency, for the purposes of settling the estate or managing the property of the partner.

Article 8: Dissolution

Section 801 calls for the dissolution of the partnership when the agreement provides for termination of the partnership, when all partners consent, upon the withdrawal of the only general partner, or upon a decree of dissolution. Dissolution upon withdrawal of the only general partner is held in abeyance for 90 days, during which time the partners may unanimously consent to the continuation of the business and the appointment of a new general partner. If they do, the partnership is not dissolved.

Section 802 permits a partner to apply for judicial dissolution whenever a limited partnership cannot with reasonable practicability carry on business in conformity with the partnership agreement.

Section 803 gives general partners the priority for winding up partnership business upon dissolution. If there are no general partners able to conduct the winding up, limited partners can do it. A court can wind up the partnership upon application of any partner.

Section 804 governs the distribution of assets upon winding up the partnership affairs, and establishes priorities for taking distributions. Creditors are satisfied before the interest of any partner.

Article 9: Foreign Limited Partnerships

Section 901 states that the law of a foreign state governs the organization, internal affairs, and limited partner liabilities for limited partnerships formed in that state.

Section 902 requires registration of foreign limited partnerships before they can transact business, and sets out the contents of a petition for registration.

Section 903 requires the Secretary of State (or equivalent) to register any foreign limited partnership that lawfully applies for registration.

Section 904 states that a foreign limited partnership may register under any name the could be registered by a domestic limited partnership.

Section 905 provides that a foreign limited partnership must correct any inaccuracies in its application for registration with an immediate filing of a certificate of amendment.

Section 906 provides the procedure for cancelling a registration of a foreign limited partnership.

Section 907 denies a foreign limited partnership access to the courts if the foreign limited partnership fails to register.

Section 908 allows an appropriate official to bring action to restrain a foreign limited partnership from transacting business if it fails to comply with Article 9.

Article 10: Derivative Actions

Section 1001 allows limited partners to bring action on behalf of the partnership if the general partners refuse to do so or it appears that they are unlikely to do so.

Section 1002 requires the plaintiff in a derivative action to be a partner when the litigated transaction was entered on behalf of the

partnership, or to be a person with authority from a partner at that time.

Section 1003 requires the plaintiff in a derivative action to set forth with particularity the efforts to get a general partner to initiate the action.

Section 1004 provides the court the discretion to award a successful plaintiff expenses and attorney's fees.

Article 11: Miscellaneous

Section 1101 establishes the scope of the Act.

Section 1102 is the title for citation purposes.

Section 1103 provides for severance of any provisions of the Act that are found unconstitutional.

Section 1104 provides for the effective date for this Act, and for the repeal of prior legislation. It specifically provides that limited partnerships formed under prior law shall remain subject to the prior law for specific aspects of partnership activity, and shall not be impaired by its repeal.

Section 1105 states that the Uniform Partnership Act governs any case not provided for in this Act.

Section 1106 is a savings clause.

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

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and other printed matter issued by the Conference
may be obtained from:

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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 draftsmen 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 forecloses 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 new—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 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, the 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, section, differs in some important respects from Article 5 of the 1976 Act, which itself made makes 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.

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103.	Reservation of Name.
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105.	Records to be Kept.
106.	Nature of Business.
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203.	Cancellation of Certificate.
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ARTICLE 1
GENERAL PROVISIONS

§ 101. Definitions

As used in this [Act], unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 402.

(4) "Foreign limited partnership" means a partnership formed under the laws of any State 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 law 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 20445), 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 202(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 new 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 now 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 (as 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, to obtain 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 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(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 (c) 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 (c) an obsolete and unnecessary vestige. The principal, if not the sole, purpose of paragraph (c) 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 (c) 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 1916 Act prior uniform law by confining the persons who have standing to seek judicial intervention to partners and to those assignees who were ~~not~~ 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 thereof), 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 confining 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 notice 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 702, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

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

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 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 (6) or (8) 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 partner participates in the control of the business is not substantially the same as the exercise of the powers of a general partner, he [or she] is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

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

- (1) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;
- (2) consulting with and advising a general partner with respect to the business of the limited partnership;
- (3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;
- (4) approving or disapproving an amendment to the partnership agreement taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership; or
- (5) voting on one or more of the following matters:
 - (5) requesting or attending a meeting of partners;
 - (6) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:
 - (i) the dissolution and winding up of the limited partnership;
 - (ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

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

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

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

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

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

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

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

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

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

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

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

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 to subvert the partnership's business. It is assumed that courts will protect limited partnerships from abuse 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 unwaivable 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 prior 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 now 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 prior 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.

(a)(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.

(b)(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(c), 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 35 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 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(e) 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 first appeared in the 1976 Act, is new, 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 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 statute 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 new, 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 new, 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 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 written provisions of the partnership agreement permits permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after 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 count part 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 new 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 new 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 contributions 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 now 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 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 now first appeared in the 1976 Act. It corresponds to the provisions of Section 202(e) 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 now 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 new, 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 new, 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 new, 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 new, 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.