

HB

296

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February 10, 2000

Representative Pete Kott, Chair
House Judiciary Committee
Alaska House of Representatives
Room 118, State Capitol
Juneau, Alaska 99801-1182

HAND-DELIVERED

Re: Location of statutory definition sections,
and HB 296 (Uniform Partnership Act)

Dear Representative Kott:

I want to repeat my request that the provisions of HB 296 (Uniform Partnership Act) be slightly reorganized to restore the definition section and other general provisions to the beginning of the new AS chapter (AS 32.06), reflecting the nationwide organization of this Uniform Act.

Revisor of Statutes Pam Finley's February 9, 2000 memo to you on this subject is an excellent statement of the reason not to comply with my request. She has done a careful job of finding other Uniform Acts in the Alaska Statutes where Alaska disregarded the national arrangement. As she points out "The primary reason is consistency – users of the Alaska Statutes know to look at the back for the definitions."¹

As the state's second Revisor of Statutes (1967 – 1973), and as the author/editor of two or three (or more?) editions of the Legislative Drafting Manual myself, I am familiar with the organizational requirements for the Alaska Statutes. I was involved in the development and enforcement of many of the Alaska drafting style and format requirements. When Alaska adopted the "definitions-at-the-end" rule, there was the choice of putting them there (as some states do) or putting them at the front (as some states, the federal code compilers, and the Uniform Law Commissioners do) or leaving the point unaddressed (which everyone agreed would be a bad idea). So, for ease of use

¹ She does not give any further reason, but then says "In addition, the drafting manual states that the definitions section should be at the end." This fact is not an additional reason, but merely the written statement of the approach taken in Alaska, based on the reason Pam describes as the "primary" one. Actually, the consistency of location, with its consequent ease of use, is the only reason.

Representative Pete Kott
Location of definitions, & HB 296
2/10/2000

within Alaska, a consistency rule was adopted, and it was the one stating that definitions and other general provisions should be put at the end of a chapter, section, or whatever.

But we simply did not address the interstate use of the Alaska Statutes. In the 1960's, we did not have computers. We certainly knew about the work of the Uniform Laws Conference, Alaska having already enacted many Uniform Acts, but life was slower. Now, in the 2000's, we need to do everything we can to facilitate interstate activities under Alaska law.

So, I would make the following responses to Pam's memo:

1. We enact Uniform Acts to promote and ease the flow of commercial as well as personal activities between Alaska and the rest of the nation. One part of this effort is to assure the consistency of the substance of our law with that of the other states. And, to facilitate the use of that substance, the other part is to assure consistency of the organization of that substance. We need to make that substance easy to find. The best way to do that is to adhere to the national version of Uniform Acts, and not to substitute intransigence for reason, persisting in our own parochial approach to section location.
2. For many areas of the law, such as commercial transactions, partnerships, child custody jurisdiction, etc., the relevant Uniform Act promulgated by the NCCUSL is the law of this country. It's what is studied in law schools, business schools, social work schools, etc., and constitutes the heart of the material in those fields. People entering the workforce from those backgrounds are familiar with the Uniform Acts. So, even within Alaska, and not considering the interstate aspects for a moment, most people will be most familiar with the "official" numbering of each particular Uniform Act. National legal research, whether in court decisions or other sources such as West Publishing's Uniform Laws Annotated, depends upon interstate consistency. Knowing where to look for definitions – Pam's point – will be easier when we adhere to the original.
3. The fact that the several Uniform Acts enacted in Alaska that are cited by Pam in her second paragraph reflect the Alaska approach rather than the NCCUSL approach does not mean that it was a good idea in any of those instances. The fact that it has happened does not make it good. Hurricanes happen; they're not good. Each of Pam's examples could merely result from the legislative drafter's position prevailing over mine. Or it could be that no one noticed, or, if I or someone like me was not around, that no one cared.
4. Several of the Acts cited in Pam's second paragraph are relatively short, making the question of the location of the definition section of little or no significance. They'll be easy to find at either the front or the back. But, for long, complicated Acts, such as the Uniform Commercial Code and Uniform Probate Code (current exceptions), and this Uniform Partnership Act (much longer than the original 1914 version now on our books), interstate consistency of location is essential. We must view the larger picture.

Representative Pete Kott
Location of definitions, & HB 296
2/10/2000

I conclude that Pam's very point – knowing where to look for the definitions – will be furthered, in the Uniform Act context, by maintaining the Uniform Act's location.² I repeat my request that they be restored to the original location in HB 296.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

cc: Pam Finley
Revisor of Statutes
Legislative Affairs Agency

² It would be a good idea for the drafting manual to say so. I wish that I had put such a statement in the manual years ago.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 9, 2000

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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P.O. BOX 110300-DIMOND COURT HOUSE
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The Honorable Pete Kott
Chair
House Judiciary Committee
State Capitol
Juneau, AK 99801 - 1182

Re: CSHB 296(L&C) (relating to partnerships)


Dear Representative Kott:

CSHB 296(L&C) has been referred to the House Judiciary Committee.

Alaska Uniform Law Commissioners request an early hearing on CSHB 296(L&C), relating to partnership. The bill updates our statutes to conform to amendments recommended by the National Conference of Commissioners on Uniform State Laws. Uniform laws are especially important to keep Alaska as an attractive market for interstate commerce.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: All Uniform Law Commissioners
Chrystal Smith, Legislative Contact, Dept. of Law
Pat Pourchot, Legislative Director, Office of the Governor

SPONSOR STATEMENT
for
HB 296, UNIFORM PARTNERSHIP ACT

1/31/2000

Alaska currently has the 1914 version of the Uniform Partnership Act promulgated by the National Conference of Commissioners on Uniform State Laws. HB 296 updates that law.

The bill proposes enactment of the NCCUSL's 1994 comprehensive revision, and picks up its 1996 provisions on limited liability partnerships, along with a 1997 amendment by the NCCUSL. Making minor adjustments to accommodate Alaska drafting style requirements, HB 296 closely tracks the national version.

The changes reflect modern business practices and more than eight decades of court decisions and scholarship.

A fundamental aspect of the revision is the recognition of a partnership as a separate legal entity (the "entity" concept), and not merely as an aggregate of individuals (the "aggregate" concept). (Current law is a confusing blend of the two.) This principle is reflected in many provisions.

HB 296 recognizes the primacy of the partnership agreement over statutory rules, except for certain rules protecting specific partner interests in the partnership. It

addresses the fiduciary obligations of loyalty, due care, and good faith. It allows partners control and flexibility to meet their business needs, but defines "partnership" as a distinct entity. This bill also allows for the continuity of life of the partnership so that the partnership no longer dissolves every time a partner leaves. It also provides new rules for conversion and merger so that partnerships may convert to a limited partnership and vice versa, or may merge with another partnership or limited partnership.

The 1996 amendments on limited liability partnerships provide limited liability for general partners of a registered limited liability partnership. They provide greater protection to partners against personal liability than is the case under most of the existing state limited liability partnership statutes. Limited liability partnerships can be created simply by filing a registration statement. However, individual partners are personally liable for any injury they cause, and their personal assets are available to satisfy a judgment against them.

The bill integrates the nationally uniform version of the limited liability partnership law into the nationally uniform version of the regular partnership law, thus significantly improving upon Alaska's 1996 enactment on limited liability partnerships and facilitating the use of Alaska partnership law. It helps bring Alaska into the modern business world.

* * * * *

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 25, 2000

TONY KNOWLES, GOVERNOR

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P.O. BOX 110300-DIMOND COURT HO
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-6735

The Honorable Norman Rokeburg
Chair
House Labor & Commerce Committee
State Capitol
Juneau, AK 99801 - 1182

Re: HB 296 (relating to partnerships)

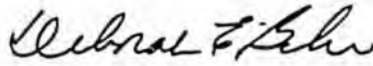
Dear Representative Rokeburg:

HB 296 has just been introduced and referred to the House Labor and Commerce Committee.

Alaska Uniform Law Commissioners request an early hearing on HB 296, relating to partnership. The bill updates our statutes to conform to amendments recommended by the National Conference of Commissioners on Uniform State Laws. Uniform laws are especially important to keep Alaska as an attractive market for interstate commerce.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General

DEB:jf

cc: Hon. Pete Kott, Chair, House Judiciary Committee
All Uniform Law Commissioners
Chrystal Smith, Legislative Contact, Dept. of Law
Pat Pourchot, Legislative Director, Office of the Governor

JAN 25 2000

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB296

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Econ. Dev.
 Title Uniform Partnership Act BRU Banking, Securities, and Corporations
 Component Banking, Securities, and Corporations
 Sponsor Judiciary
 Requester House Labor and Commerce Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Franklin T. Elder, Director
 Division Banking, Securities and Corporations
 Approved by Commissioner Deborah B. Sedwick
 Agency Community and Economic Development

Phone 465-2521
 Date/Time 1/31/00 8:16 AM
 Date 1/31/00

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information, call the Governor's Legislative Office

National Conference of Commissioners on Uniform State Laws
211 East Ontario, Suite 1300, Chicago, Illinois 60611-312/915-0195 • Facsimile 312/915-0187

John M. McCabe
Legislative Director / Legal Counsel
jmmccabe@nccusl.org

Memo to: Arthur H. Peterson

From: John M. McCabe

Date: February 4, 2000

Subject: Comparison of Limited Liability Partnerships Under Current Alaska Law and The Revised Uniform Partnership Act.

As per your request please find attached a chart comparing key provisions of current Alaska Law with regard to limited liability partnerships and how they differ from the Revised Uniform Partnership Act (RUPA).

There are differences, some major and some minor:

- Alaska's current liability shield is limited to tortious actions and does not cover ordinary commercial transactions of the partnership
- Both Alaska's current law and RUPA require registration to become a limited liability partnership. Alaska, however, requires a more detailed filing, requires a distinguishable name, and requires that the name of the partnership be registered.
- Existing Alaska law requires that a limited liability partnership carry a set amount of liability insurance or have qualified assets of a certain amount.
- Both Alaska and RUPA require a periodic filing however Alaska requires reports be filed biennially while RUPA provides for annual filing.



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February 1, 2000

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Re: HB 296, Uniform Partnership Act
(last legislature's SB 198)

Dear Mr. Hume and Ms. Stearns:

HB 296 proposes enactment of the Revised Uniform Partnership Act in Alaska. It was promulgated by the National Conference of Commissioners on Uniform State Laws in 1994, and significantly amended by the NCCUSL (i.e., by adding the limited liability partnership provisions) in 1996. A 1997 amendment was also added by the NCCUSL. Alaska has the 1914 version of the Act!

In 1992, Alaska enacted the revision of the Uniform Limited Partnership Act (repealing the old AS 32.10 and enacting AS 32.11); in 1994, we enacted AS 10.50, on limited-liability companies; and ch. 52, SLA 1996 enacted a set of amendments (primarily, AS 32.05.405 -- 32.05.760) on limited liability partnerships. In one way or another, those enactments are related to, but do not do the job of, HB 296.

The bill consists of two basic parts:

1. the 1994 comprehensive revision of the 1914 UPA, a key feature of which is statutorily establishing the "entity" concept of partnerships; and

2. the 1996 amendments of the 1994 version, presenting the limited liability partnership provisions, integrating them into the official revision of the UPA, itself.

Robert Hume & Krista Stearns
Uniform Partnership Act revision
February 1, 2000

Page 2

I am enclosing for each of you an information packet prepared by the NCCUSL. It includes the official text of the Act and commentary, along with a fact sheet, summaries, and other helpful material. A copy of HB 296 is also in there.

January 3, 1997, I sent such a packet to John Tindall, your predecessor in the section, but I suspect that his copy is so dog-eared by this time that he probably has not passed it along to you.

We need to have an updated, nationally consistent UPA, with the properly integrated limited liability partnership provisions in it. There should be general support for such an Act. I trust that you and your colleagues in the section will endorse it.

Hope to hear from you soon. Thanks.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

Enclosure

cc w/o enc.: Rest of Alaska's ULC Delegation:
Jay A. Rabinowitz
W. Grant Callow
Tamara Brandt Cook
L. S. Kurtz, Jr.
Deborah E. Behr

UNIFORM PARTNERSHIP ACT - QUICK CHRONOLOGY

- 1914 - Original Uniform Partnership Act
 - 1992 - Promulgation of Uniform Partnership Act (1992) by Uniform Law Commissioners
 - 1993 - Amendments to Uniform Partnership Act (1992)
Becomes Uniform Partnership Act (1993)
 - 1994 - Amendments to Uniform Partnership Act (1993)
Becomes Uniform Partnership Act (1994)
-
- 1996 - Amendments to Uniform Partnership Act (1994)
Adds Limited Liability Partnership. Becomes Uniform Partnership Act (1996)
 - 1997 - Amendment to Uniform Partnership Act (1996), Section 801
Becomes Uniform Partnership Act (1997)

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195

A Few Facts About
THE UNIFORM PARTNERSHIP ACT (1994)(1996)(1997)

PURPOSE: This act revises the Uniform Partnership Act of 1914. The 1994 act establishes a partnership as a separate legal entity, and not merely as an aggregate of partners. It recognizes the primacy of the partnership agreement over statutory rules, except for specific rules protecting specific partner interests in the partnership. The 1994 act explicitly addresses the fiduciary responsibilities of partners to each other, providing for express obligations of loyalty, due care, and good faith. The act was amended in 1996 and 1997 to provide limited liability for partners in a limited liability partnership.

ORIGIN: Completed by the Uniform Law Commissioners in 1994, and amended in 1996 and 1997.

APPROVED BY: American Bar Association

**ADOPTIONS OF
UPA (1992)(1994):**

Connecticut
Florida

West Virginia
Wyoming

**ADOPTIONS OF
UPA WITH 1996 and 1997
AMENDMENTS:**

Alaabama
Arizona **
Arkansas *
California **
Colorado
Delaware
District of Columbia
Hawaii
Idaho
Iowa
Kansas
Maryland

Minnesota
Montana
Nebraska
New Mexico
North Dakota
Oklahoma
Oregon
Puerto Rico **
US Virgin Islands
Vermont
Virginia **
Washington

2000
INTRODUCTIONS:

For any further information regarding the Uniform Partnership Act (1994)(1996)(1997), please contact John McCabe or Katie Robinson at 312-915-0195.

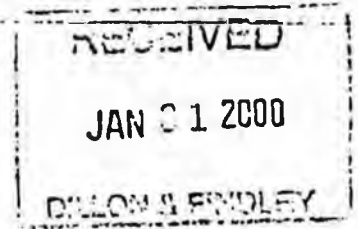
** *Limited Liability Partnership Equivalent*

(1/1/00)

(Please note: This information can also be found on our Web Site at www.nccusl.org)

Uniform Partnership Act (1997)

- A Summary of Summaries -



Because of the complex chronology of the Uniform Partnership Act since its initial revision in 1992, this short summary does two things, 1) it provides a short history of the revision process, and 2) it provides a short summary of the 1997 Amendment. An initial revision of the 1914 Uniform Partnership Act was promulgated in 1992. It was officially amended in both 1993 and 1994. In 1996, the Limited Liability Partnership Amendments to the Uniform Partnership Act were promulgated. In 1997, a short amendment was added to Section 801. **This progression through revision and amendment is now all together in one final act called the Uniform Partnership Act (1997).**

A summary of both the Uniform Partnership Act (1994) and the Limited Liability Partnership Amendments to the Uniform Partnership Act were prepared as separate documents. Both of these summaries are part of the materials explaining the Uniform Partnership Act (1997), and should accompany this document. If you do not find the two summaries accompanying this document, call the ULC national office at 312 915 0195 or FAX it at 312 915 0187 or send an e-mail to ncusl@ncusl.org. Any of these modes of communication will get you the full array of summaries.

The 1997 amendment to Section 801 of the Uniform Partnership Act reflects the changes in tax policy unveiled by the Internal Revenue Service in late 1996. Section 801 is the basic section in the Uniform Partnership Act governing dissolution of the partnership. The Uniform Partnership Act (1994) provided a safe harbor for a term or particular purpose partnership from dissolution when a partner dissociated. A majority in interest of the remaining partners could agree to continue the partnership within 90 days after the dissociation. This agreement saved the partnership from dissolution and winding up. In 1994, this was considered the most that could be done for the continuation of the partnership under the tax rules at that time.

Under the 1997 amendment, a partner's dissociation in a term or particular purpose partnership no longer triggers a dissolution and winding up, unless a majority in interest of partners agree to continue. The partnership continues under the 1997 amendment unless at least half the remaining partners move by express will to dissolve the partnership within 90 days after the initial dissociation. Only then is there a dissolution and winding up. The new rule favors the continuity of the partnership more than the old rule does. The new tax rules have simply eliminated the old concern for continuity of life as a corporate characteristic, making the new rule favoring continuity of a partnership feasible.

For Immediate Release:

**Revised Uniform Partnership Act Reflects Modern Business Practices
28 Jurisdictions Have Now Updated Venerable 80-year-old Partnership Law**

January 2000 -- Partnership law in the United States has been derived from only one source--the Uniform Partnership Act (UPA), originally promulgated in 1914 by the National Conference of Commissioners on Uniform State Laws, and subsequently enacted in 49 states. The more recent Revised Uniform Partnership Act (RUPA), was approved by the Conference in 1994, bringing the law of partnerships in line with modern business practices and trends while retaining many of the valuable provisions in the original act. It was amended in 1997 to provide limited liability for partners in a limited liability partnership.

Adopted with the newest amendments in 21 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, and without the limited liability partnership amendments in four additional states, RUPA is the only revision since the original was promulgated. It governs the relations among general partners and between the partners and the partnerships.

RUPA makes basic revisions to several subjects in the Uniform Partnership Act. For example, it clearly expresses the primacy of the partnership agreement. That agreement is any agreement between the partners, whether written, oral or implied, concerning the partnership. An important concept of RUPA is that it operates, for the most part, as a default statute for matters that are not covered by the partnership agreement.

An important feature of the Revised Uniform Partnership Act is that it moves away from the aggregate approach to partnership law, and instead adopts an entity approach. RUPA states that a partnership is an entity distinct from its partners--thus achieving greater partnership stability under this more modern approach. A partnership may sue and be sued in the partnership name; property may be acquired in the partnership name as well.

The partner's interest is viewed as a separate group of rights and liabilities associated with participation in the partnership. No partner has an interest in specific property of the partnership. Creditors of a partner may attach the interest of a partner, but may not attach specific partnership property.

RUPA also changes the rule on the dissolution of a partnership. Partnership breakups under RUPA do not require a dissolution every time a partner leaves. In most cases, a partnership may buy out the interests of a partner who leaves. A term partnership will not dissolve so long as one-half of the partners choose to remain. RUPA also establishes and defines the scope of the partners' duties of care and loyalty, and the obligation of good faith and fair dealing.

The 1997 amendments to the Uniform Partnership Act provide greater protection to general partners of a registered limited liability partnership than is the case under most of the existing state limited liability partnership statutes.

The National Conference of Commissioners on Uniform State Laws is now in its 109th year. The organization comprises more than 300 lawyers, judges, and law professors, appointed by the states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft proposals for uniform and model laws and work toward their enactment in their legislatures. Since its inception in 1892, the group has promulgated more than 200 acts, among them such bulwarks of state statutory law as the Uniform Commercial Code, the Uniform Probate Code, and the Uniform Partnership Act.

For further information, please contact John McCabe or Katie Robinson at 312-915-0195, or Gabrielle Bamberger at 212-333-5222.

I. Liability of Partners

SECTION 32.05.080. LIABILITY OF PARTNERSHIP FOR WRONGFUL ACTS OR OMISSIONS OF PARTNER.

Where, by a wrongful act or omission of a partner acting in the ordinary course of the business of the partnership, or with the authority of the copartners, loss or injury is caused to a person not a partner in the partnership, or a penalty is incurred, the partnership is liable for the loss or injury to the same extent as the partners so acting or omitting to act.

SECTION 32.05.090. PARTNERSHIP'S LIABILITY FOR PARTNER'S MISAPPLICATION OF MONEY OR PROPERTY.

The partnership shall make good the loss

(1) where one partner acting within the scope of apparent authority receives the money or property of a third person and misapplies it; and

(2) where the partnership in the course of its business receives the money or property of a third person and the money or property is misapplied by a partner while it is in the custody of the partnership.

SECTION 305. PARTNERSHIP LIABLE FOR PARTNER'S ACTIONABLE CONDUCT.

(a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

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

Both the current Alaska law and the Revised Uniform Partnership Act (RUPA) contain provisions for liability of the partnership as an entity separate and apart from the partners personally. Alaska, however, has not adopted a section similar to RUPA Section 200 which defines a partnership as an entity separate and apart from its partners.

SECTION 32.05.100. LIABILITY OF PARTNERS.

(a) Except as provided in (b) of this section, all partners are liable

(1) jointly and severally for everything chargeable to the partnership under AS 32.05.080 and 32.05.090;

(2) jointly for all other debts and obligations of the partnership; but any partner may enter a separate obligation from the partnership contract.

(b) A partner is a registered limited liability partnership that is in substantial compliance with AS 32.0.405 - 32.05.799 is not liable, directly or indirectly, including through indemnification, contribution, assessment, or other manner, for the debts, obligations, and liabilities of, or chargeable to, the partnership, whether in tort, in contract, or under another theory, that arise from negligence, wrongful acts, wrongful omissions, malpractice, or misconduct committed by another partner or by an employee or agent of the partnership

(1) while the partnership is a registered limited liability partnership; and
(2) in the course of the partnership business.

(c) the liability limitation in (b) of this section does not affect the liability of a partner in a registered limited liability partnership for the

(1) partner's own negligence, wrongful acts, wrongful omissions, malpractice, or misconduct;

(2) negligence, wrongful acts, wrongful omissions, malpractice, or misconduct in the course of the partnership business of a person under the partner's direct supervision and

SECTION 306. PARTNER'S LIABILITY.

(a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

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

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 1001(b).

Extent of Liability Shield

RUPA provides a full shield for liability of other partners in a registered limited liability partnership. Under RUPA, partners are never obligated personally for the obligations of the partnership merely because they are partners.

Alaska's current statute provides only a partial shield of liability. Section 32.05.100(b) establishes a limit on liability only for "debts, obligations, and liabilities . . . that arise from negligence, wrongful acts, wrongful omissions, malpractice, or misconduct committed by another partner or by an employee or agent of the partnership. This limitation is expressed positively in Section 32.05.100(c)(1) which states that there is no limited liability in the case of "loans, leases, or other ordinary commercial debts and obligations. . ." incurred by the partnership.

Alaska includes additional language in section 32.05.100(c)(1) and (2) which provide that a partner is still liable personally for the negligence of the partner or a person under the partner's direct supervision and control.

Both statutes limit the liability shield to the period during which the partnership qualifies as a limited liability partnership (see section III of this document for an outline of these provisions). Additionally, both statutes limit the liability to actions taken in the course of partnership business.

control; or

(3) loans, leases, and other ordinary commercial debts and obligations entered into by the partnership or by a partner with apparent authority to bind the partnership, even if the partner lacked actual authority or acted in breach of the partnership agreement or of a duty owed to the partnership or other partners, unless the creditor knew, or in the exercise of reasonable diligence should have known, that the partner was acting without actual authority or in breach of the partnership or of a duty or other partners

(d) The liability limitation in (b) of this section may be waived by a registered limited liability partnership. The waiver may not be made unless made by the agreement of at least a majority in interest of the partners, or in a manner otherwise provided in a written partnership agreement. The waiver is valid and binding upon all partners, and may be relied upon by a person dealing with the partnership under AS 32.05.040(a). The waiver may be modified or revoked by the agreement of at least a majority in interest of the partners, or in a manner otherwise provided in a written partnership agreement, except that the modification or revocation does not affect the liability of a partner for debts, obligations, or liabilities incurred, create, or assumed by the partnership before the modification or revocation.

II. Registration Requirements

SECTION 32.05.415. REGISTRATION REQUIRED.

A partnership that is formed and operates under an agreement authorized by AS 32.05.405 may not conduct affairs in this state unless it registers as a registered limited liability partnership with the department. To register, the partnership must submit a registration document and the identification code statement required by AS 32.05.435 with the department.

SECTION 32.05.425. CONTENTS OF REGISTRATION DOCUMENT.

(a) A registration document under AS 32.05.415 must provide

- (1) the name of the partnership;
- (2) the address of the partnership's principal office, if the partnership's principal office is not located in this state;
- (3) the address of the partnership's registered office in this state;
- (4) the name and address of the partnership's registered agent in the state for the service of process;
- (5) a brief description of the purpose for which the partnership is formed, which may be stated to be or to include the conduct of all lawful affairs for which a limited liability partnership may be formed under this chapter;
- (6) the name and address of each general partner maintaining an office in this state;
- (7) a statement that the general partners executing the registration document acknowledge the responsibility of the partnership under AS 32.05.565;

SECTION 1001. STATEMENT OF QUALIFICATION.

(a) A partnership may become a limited liability partnership pursuant to this section.

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

(c) After the approval required by subsection (b), a partnership may become a limited liability partnership by filing a statement of qualification. The statement must contain:

- (1) the name of the partnership;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office in this State, if any;
- (3) if the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process;
- (4) a statement that the partnership elects to be a limited liability partnership; and
- (5) a deferred effective date, if any.

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

(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 105(d) or revoked pursuant to

Registration Statement

Both current Alaska Law and RUPA require a filing to receive the benefits of a limited liability partnership. Under RUPA this is considered a statement of qualification while current Alaska law refers to it as a Registration Document. While the contents of the document are similar under either statute, Alaska has required that the contents of the statement be more complex than RUPA under section 32.05.425. Section 32.05.435 also includes a requirement that the registration statement be accompanied by a statement of the purpose for which the partnership was organized. Both statutes contain similar provisions regarding amending the registration statement although Alaska has specified certain items which must be contained within an amendment.

Partnership Names

Both statutes contain provisions governing the proper name for a limited liability company although Alaska has also included requirements that the name be distinguishable and provisions for registration of that name.

Registered Agent

Alaska adds a number of specific requirements regarding registered agents of the partnership for service of process purposes.

Liability Insurance

Alaska has also required registered limited liability partnerships to maintain liability insurance or maintain certain qualified assets under section 32.05.565. Additionally a party in an

(8) if an election has been made that the existence of the partnership will continue until a certain date or event, a statement of the election and the date or event;

(9) a statement that the partnership is applying for registration.

(b) A partnership formed under AS 32.05.405 may include other information in the registration document.

SEC. 32.05.435. DISCLOSURE OF PARTNERSHIP PURPOSES.

An application for registration under this chapter must be accompanied by a separate statement of the codes taken from the identification codes established under AS 10.06.870 that most closely describe the activities in which the corporation intends to engage.

SEC. 32.05.440. EFFECTIVE DATE AND DURATION OF REGISTRATION.

Registration under AS 32.05.415 is effective immediately when the registration document is filed under AS 32.05.415 . The registration remains effective until the earlier of the date when

(1) the partnership voluntarily withdraws its registration under AS 32.05.600; or

(2) the partnership's registration is cancelled under AS 32.05.610 - 32.05.620.

SECTION 32.05.450. AMENDMENT OF REGISTRATION DOCUMENT

(a) A registration document filed under AS 32.05.415 is amended by filing an amended registration document with the department. The document must state

(1) the name of the limited liability

Section 1003.

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

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

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

SECTION 1002. NAME. The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".

action against the partnership may request that the partnership furnish a compliance statement. The partners of any limited liability partnership which fails to comply with the section are jointly and severally liable up to the policy limit of an insurance policy which would have satisfied the section.

partnership;

(2) the date of the filing of the original document of registration;

(3) the amendment to the document.

(b) An amendment may be filed at any time for any purpose that the partners determine to be proper.

(c) A restated registration document may be executed and filed in the same manner as an amendment.

SECTION 32.05.460. STATUS UNAFFECTED BY ERRORS OR SUBSEQUENT CHANGES.

The registration status of a registered limited liability partnership is not affected by errors in the information provided in a registration application or by changes that occur in the information provided in the registration application after the application is filed.

SECTION 32.05.470. NAME.

(a) The name of a registered limited liability partnership must contain the words "Limited Liability Partnership," the abbreviation "L.L.P.," or the abbreviation "LLP," as the last words or letters of its name.

(b) The name of a city, borough, or village may be used in a limited liability partnership name; however, the name may not contain the word "city," "borough," or "village," or otherwise imply that the partnership is a municipality.

(c) A person may not adopt a name that contains the words "Limited Liability Partnership," the abbreviation "L.L.P.," or the abbreviation "LLP" unless the person has been issued a certificate of registration under this chapter.

SECTION 32.05.480. DISTINGUISHABLE NAME.

The name of a limited liability partnership must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations to implement this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

SECTION 32.05.490. RIGHT TO RESERVE NAME.

The exclusive right to use a name may be reserved by a

- (1) person intending to register a limited liability partnership and to adopt the name;
- (2) person intending to register a foreign limited liability partnership under this chapter;
- (3) limited liability partnership or a foreign limited liability partnership registered under this chapter that intends to change its name.

SECTION 32.05.500. APPLICATION TO RESERVE NAME.

Reservation of a name under AS 32.05.490 is made by filing an application with the department. If the department finds that the name is available for use by a limited liability partnership, the department shall reserve it for the exclusive use of the applicant for a period of 120 days.

SECTION 32.05.510. REGISTRATION OF NAME.

(a) A foreign limited liability partnership not intending to conduct affairs in this state may register its name if the name is distinguishable on the records of the department under AS 32.05.480 .

(b) Registration of a name by a foreign limited liability partnership under (a) of this section is made by filing with the department

(1) a signed application for registration setting out the name of the partnership, the state or territory under the laws of which it is formed, and the date the partnership was formed; and

(2) proof from the jurisdiction where the partnership is formed indicating that the partnership was formed in that jurisdiction.

(c) The registration of a name under this section is effective until the close of the calendar year in which the application for registration is filed.

(d) The registration of a name under this section may be renewed each year by filing

(1) an application for renewal setting out the facts required in an original application; and

(2) proof of formation as required by (b)(2) of this section.

(e) An application for renewal must be filed between October 1 and December 31 in each year. The renewal extends the registration for the following calendar year.

**SECTION 32.05.520. USE OF
NONDISTINGUISHABLE NAME.**

Registration or reservation under this chapter gives the person who has registered exclusive right to the use of the name. The person may enjoin the use of a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right, and the person has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right.

**SECTION 32.05.530. REGISTERED AGENT
AND OFFICE.**

A registered limited liability partnership and a foreign limited liability partnership shall maintain in the state a registered office and an agent for the service of process.

**SECTION 32.05.540. CHANGE OF
REGISTERED OFFICE OR AGENT.**

(a) A registered limited liability partnership may change its registered office, agent, or both, by filing with the department a signed statement that includes

- (1) the name of the partnership;
- (2) the address of its registered office;
- (3) the address of its new registered office if the registered office is to be changed;
- (4) the name of its registered agent;
- (5) the name of its new registered agent if the registered agent is to be changed; and
- (6) a statement that the change was authorized by one or more of the partners.

(b) If the department finds that the statement filed under (a) of this section complies with this chapter, the department shall file the statement in the department's office. The change becomes effective when the statement is filed.

(c) A registered agent of a limited liability partnership may change the location of the agent's office from one address to another in this state. The agent may change the registered office for each limited liability partnership for which the person is acting as registered agent by filing in the department a statement setting out the name of the agent, the address of the agent's office before change, the address to which the office is changed, and a list of companies for which the person is the registered agent. The statement shall be executed by the registered agent in the individual name of the agent, or, if the agent is a corporation, it shall be executed by its president or a vice-president. The statement shall be delivered to the department and the limited liability partnership, and, if the department finds that the statement complies with this chapter, the department shall file it. The change becomes effective when the statement is filed.

SECTION 32.05.550. RESIGNATION BY REGISTERED AGENT.

A registered agent may resign by filing a written notice and an exact copy of the notice with the department. The written notice of resignation must set out the latest address of the principal office of the partnership and the names and addresses of the general partners known by the agent. The department shall immediately mail a copy of the notice to the partnership at its principal office. The resignation becomes effective 30 days after the filing of the written notice unless the partnership appoints

a successor registered agent before the resignation becomes effective.

SEC. 32.05.560. SERVICE OF PROCESS.

(a) The registered agent of a registered limited liability partnership is an agent upon whom process, notice, or demand required or permitted by law to be served upon the partnership may be served.

(b) If a limited liability partnership fails to appoint or maintain a registered agent in this state or if its registered agent cannot with reasonable diligence be found at the registered office, the commissioner is an agent of the partnership upon whom the process, notice, or demand may be served. A person may serve the commissioner under this subsection by

(1) serving on the commissioner or the designee of the commissioner a copy of the process, notice, or demand, with any papers required by law to be delivered in connection with the service, and a fee established by the department by regulation;

(2) sending to the partnership being served by certified mail a notice that service has been made on the commissioner under this subsection and a copy of the process, notice, or demand and accompanying papers; notice to the partnership shall be sent to the address

(A) of the last registered office of the partnership as shown by the records on file in the department; and

(B) the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has

reason to believe is most likely to result in actual notice; and

(3) filing with the appropriate court or other body, as part of the return of service, the return

receipt of mailing and an affidavit of the person initiating the proceedings that this subsection has been complied with.

(c) The commissioner shall keep a record of processes, notices, and demands served upon the commissioner under this section.

(d) This section does not affect the right to serve process, notice, or demand required or permitted by law to be served upon a limited liability partnership in another permitted manner.

SEC. 32.05.565. FINANCIAL RESPONSIBILITY.

(a) A registered limited liability partnership shall at all times have and maintain liability insurance or qualifying assets in an amount of value not less than \$1,000,000 to satisfy liabilities described in AS 32.05.100(b). To the extent the partnership maintains liability insurance that is subject to a deductible, it shall maintain qualifying assets in the deductible amount, but the sum of the liability insurance and the qualifying assets is not required to exceed \$1,000,000.

(b) A foreign limited liability partnership may conduct business in this state under this chapter if it has and maintains liability insurance or qualifying assets in an amount of value not less than \$1,000,000 to satisfy liabilities that arise from acts or omissions in this state of the type described in AS 32.05.100 (b).

(c) To the extent that a registered limited liability partnership or a foreign limited liability partnership maintains liability insurance or qualifying assets under the laws of another jurisdiction, the liability insurance or qualifying assets maintained under

those laws satisfy (a) - (b) of this section if the amount of the insurance or assets is equal to or greater than the amount required by (a) - (b) of this section.

(d) In a court action against a registered limited liability partnership or foreign limited liability partnership in the courts of this state, upon request of a party to the court action and subject to an order of the court, the partnership shall provide a certification stating that the partnership is in compliance with this section, describing the method by which the partnership has complied with (a) - (c) of this section, and identifying the depository institution holding the qualifying assets or insurance carrier issuing the liability insurance specified in (a) - (c) of this section.

(e) If a registered limited liability partnership or foreign limited liability partnership fails to maintain the insurance or qualifying assets required by (a) - (c) of this section, the partners are jointly and severally liable for the debts, obligations, and liabilities of the partnership, except that the aggregate amount for which the partners are jointly and severally liable is limited to the amount of insurance or qualifying assets that would have been required to satisfy the requirements of (a) - (c) of this section.

(f) In this section, "qualifying assets" means
(1) cash, federally insured deposits of a bank or other financial institution, and obligations of the United States or one of its instrumentalities having a maturity of not more than one year, if the partnership segregates the cash, deposits, or obligations from other partnership property and specifically designates the cash, deposits, or obligations for the exclusive purpose of

<p>satisfying liabilities described in AS 32.05.100 (b); or</p> <p>(2) a letter of credit issued by a federally insured depository institution for the benefit of persons in whose favor a judgment has been entered against the partnership arising from liabilities described in AS 32.05.100 (b).</p>		
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III. Reporting Requirements

SECTION 32.05.570. Biennial report required.

A registered limited liability partnership and a foreign limited liability partnership shall file a biennial report within the time established by AS 32.05.

SEC. 32.05.580. CONTENTS OF BIENNIAL REPORT.

A biennial report required under AS 32.05.570 must state

- (1) the name of the limited liability partnership and the state or country where it was formed;
- (2) the address of the registered office of the partnership in this state, the name of its registered agent in this state at that address, and, in the case of a foreign limited liability partnership, the address of its principal office in the state or country where it was formed; and
- (3) the names and addresses of the partners.

SEC. 32.05.590. FILING OF BIENNIAL REPORT.

(a) A biennial report required by AS 32.05.570 shall be filed with the department and is due before January 2 of the filing year. A domestic limited liability partnership and a foreign limited liability partnership registering during an even-numbered year shall file the biennial report each even-numbered year. A domestic limited liability partnership and a foreign limited liability partnership registering during an odd-numbered year shall file the biennial report each odd-numbered year. The biennial report is delinquent if not filed before February 1 of each odd- or even-numbered year as provided in this subsection.

SECTION 1003. ANNUAL REPORT.

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the [Secretary of State] which contains:

- (1) the name of the limited liability partnership and the State or other jurisdiction under whose laws the foreign limited liability partnership is formed;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and
- (3) if the partnership does not have an office in this State, the name and street address of the partnership's current agent for service of process.

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

(c) The [Secretary of State] may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the [Secretary of State] shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is

Both RUPA and current Alaska law require filing of a report however in Alaska the filing is only required Biennially. Both statutes contain provisions for cancellation of a registration statement or statement of qualification if the filing requirements are not complied with.

(b) Proof to the satisfaction of the department that on or before February 1 the report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, satisfies the deadline of (a) of this section.

(c) The department shall file the report if it conforms to the requirements of this chapter. If the department finds that the report does not conform to the requirements of this chapter, the report shall promptly be returned to the partnership for necessary corrections.

SECTION 32.05.600. VOLUNTARY WITHDRAWAL OF REGISTRATION.

A registered limited liability partnership may withdraw its registration by filing with the department a written withdrawal notice that is signed by a partner authorized to execute the withdrawal notice.

SECTION 32.05.610. CANCELLATION OF REGISTRATION UPON DISSOLUTION.

The registration of a registered limited liability partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership. A notice of cancellation shall be filed with the department and must state

- (1) the name of the registered limited liability partnership;
- (2) the date of filing of its initial registration;
- (3) the reason for cancellation;
- (4) the effective date, which must be a date certain, of cancellation if the cancellation is not to be effective upon the filing of the application; and
- (5) other information the general partners determine to be appropriate.

not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

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

(e) A partnership whose statement of qualification has been revoked may apply to the [Secretary of State] for reinstatement within two years after the effective date of the revocation. The application must state:

- (1) the name of the partnership and the effective date of the revocation; and
- (2) that the ground for revocation either did not exist or has been corrected.

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

SECTION 32.05.620. INVOLUNTARY CANCELLATION.

(a) A registered limited liability partnership's registration may be cancelled involuntarily by the commissioner if

(1) the partnership is delinquent six months in filing its biennial report or in paying a fee or penalty;

(2) the partnership has failed for 30 days to appoint and maintain a registered agent in the state;

(3) the partnership has failed for 30 days after change of its registered office or registered agent to file in the office of the commissioner a statement of the change; or

(4) a misrepresentation of material facts has been made in an application, report, affidavit, or other document submitted under this chapter.

(b) Before a registration may be cancelled under this section, the commissioner shall give the partnership written notice of its delinquency, failure, or misrepresentation by certified mail addressed to its registered agent, registered office, or partners at the last known address as shown by the records of the commissioner. If the partnership fails, within 60 days after the notice is sent by certified mail, to contest the alleged delinquency, failure, or misrepresentation, the partnership may be dissolved under (d) of this section.

(c) If a registered limited liability partnership contests the proposed cancellation, the partnership may request a hearing. If, following a hearing, the commissioner decides there are grounds, under (a) of this section, for involuntary cancellation under this section, the partnership may appeal the decision to the superior court.

(d) If the registration of a registered limited liability partnership is subject to cancellation under

(a) - (c) of this section, the partnership fails to correct the delinquency, failure, or misrepresentation as provided in this section, and there is no controlling order of the superior court, the commissioner shall cancel the partnership by issuing a certificate of involuntary cancellation. The certificate must contain a statement that the partnership's registration has been cancelled, and the date and the reason for the cancellation. The original certificate shall be placed in the department's files and a copy of it mailed to the partnership at its registered office or in care of its registered agent, at the last known address shown on the records of the department. Upon the issuance of the certificate of involuntary cancellation, the existence of the partnership ceases, except as otherwise provided in this chapter, and its name shall be available for use and may be adopted by another limited liability partnership on a date that is six months or more after the cancellation.

(e) If the registration of a registered limited liability partnership is cancelled under this section, the registration may be reinstated within two years from the date of the certificate of cancellation if it is established to the satisfaction of the commissioner that in fact (1) there was no cause for the cancellation, or the delinquency, failure, or misrepresentation resulting in cancellation has been corrected; and (2) the partnership pays two times the amount of any delinquent fee and the amount the partnership would have paid had it not been cancelled during the two-year period. Unless the partnership being reinstated amends its registration to change its name to comply with AS 32.05.470 - 32.05.520, reinstatement may not be authorized if the name of the partnership is not distinguishable on the records of the department under AS 32.05.480 .

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

3.12

LIMITED LIABILITY COMPANIES

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3.12 TABLES

TABLE 3.1 Comparison of Business Entities

	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
PRECONDITIONS						
<u>Nation</u>						
Enabling statute	All states	All states	46 and D.C.	17 and D.C.	All states	All states
Limitations on number of owners	None	None (but see tax preconditions)	Generally 2	Same as General Partnership	At least 2 (RULPA § 101(7))	At least 2 (UPA § 6(1))
Permissible businesses	Any business purpose unless otherwise provided by statute (RMBCA § 3.01)	Same as C Corporation	Same as C Co. exclusion	Same as General Partnership	Any business that a general partnership may conduct (RULPA § 106)	Any business for profit unless otherwise provided by statute (UPA § 6(1))
<u>Tax</u>						
Limited to domestic entities	No	Yes (IRC § 1361(b)(1))	No	No	No	No
Limitations on number of owners	None	No more than 35, with spouses treated as one (IRC §§ 1361(a)(2), 1361(c)(1))	Same as General Partnership	Same as General Partnership	Same as General Partnership	At least 2 but not publicly traded (IRC § 7704(b))
Limitations on who can own	None	Essentially only natural persons who are U.S. citizens or resident aliens (IRC §§ 1361(b)(1)(B), 1361(b)(1)(C))	None	None	None	None

Please fax your reply to Julie Yen at 312.822.0597 or mail it to:
 Tax Assistance Program, 222 Merchandise Mart Plaza, Suite 493, Chicago IL 60654.

	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Limitations on what entity can own	None	Cannot own 80% or more of the stock of another active corporation (IRC §§ 1361(b)(2)(A)-1361(c)(6))	None	None	None	None
Limitations on permissible businesses	None	Cannot be a bank, insurance company, or DISC (IRC §§ 1361(b)(2)(B)-1361(b)(2)(E))	Very few, some states exclude certain activities, e.g., insurance	None	None	None
Limitations on capital structure	None	Single class of stock (SCOS) preferred with risk of non-pro rata distributions and debt recharacterizations as a SCOS; differences in voting rights ignored (IRC §§ 1361(b)(1)(D), 1361(c)(4)-1361(c)(6))	None	None	None	None
Limitations on character of income	None ^b	Status terminates if passive income exceeds 25% of gross receipts for 3 consecutive years and entity has "earnings and profits" ^c	None	None	None	None
CREATION						
Non-tax						
Permit acts necessary	Yes (RMBCA § 1.20)	Same as C Corporation	Yes	Yes	Yes	No
Public filing necessary	Yes (RMBCA § 1.20)	Same as C Corporation	Yes	Yes	Yes	No

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CHOICE OF ENTITY

¶ 3.12

	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Amount of public disclosure^d	Minimal (except for changes to important default rules) (RMBCA § 2.02 (a))	Same as C Corporation	Minimal or none, depending on enabling statute	Same as Limited Liability Company	Less than minimal (general partners must be identified, but inter se arrangements are private) (RULPA § 201(a))	None
Constitutive documents	Articles of incorporation, bylaws, and shareholder voting, control, and transfer restriction agreements (RMBCA §§ 2.02(a), 2.04(b))	Same as C Corporation	Articles of organization and operating agreement	Same as General Partnership plus a registration statement	Certificate of limited partnership and partnership agreement (RULPA § 201(a))	Partnership agreement (UPA § 18)
Tax Election and owner consent	None	All persons who are shareholders on the day the election is made must consent to the election (IRC §§ 1362(a)(1)-1362(a)(2))	None	None	None	None
Effective date of election	None	Generally current year if made in first 2 1/2 months of current year; if first year, election must occur within 2 1/2 months of the earlier of when entity has shareholders, acquires assets, or "begins business" ^e	None	None	None	None

§ 3.12

LIMITED LIABILITY COMPANIES

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	<i>C Corporation</i>	<i>S Corporation</i> ^A	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Status terminated by documents TRANSFERABILITY OF OWNERSHIP INTEREST <u>Notes:</u> Default mode	Liquidation; merger into non-C entity (IRC § 331, 332, 336, 337)	Liquidation; merger into non-S entity; violation of eligibility requirements (e.g., shareholder agreement might inadvertently create second class of stock) (IRC § 1362(d)(2))	Liquidation; merger into nonpartnership entity; violation of two-member requirement (IRC § 701(b))	Same as Limited Liability Company	Same as Limited Liability Company	Same as Limited Liability Company
	Shares freely transferable	Same as C Corporation	Financial rights of all members are freely transferable. transfer of governance rights and complete membership interests requires unanimous consent*	Same as General Partnership	Financial rights of both limited and general partners are freely transferable; transfer of complete interests requires unanimous consent unless otherwise provided in partnership agreement (RULPA §§ 702, 704(a))	Financial rights of all partners are freely transferable. transfer of complete interests requires unanimous consent (UPA §§ 27, 18(g))

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	<i>C Corporation</i>	<i>S Corporation</i> ^a	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Permissibility of further restrictions						
Documentation	Articles of incorporation, by-laws, resolution of shareholders, or shareholder agreement; legend on certificate (otherwise ineffective against persons without knowledge) (RMBCA §§ 6.27(a), 6.27(b))	Same as C Corporation	Articles of organization, operating agreement	Same as General Partnership	Same as General Partnership	Partnership agreement
Judicial attitude	Strictly construed; absolute prohibitions and unanimous consent provisions disfavored	Same as C Corporation	Statutory restrictions and analogy to partnership support acceptance of self-imposed restrictions	Same as General Partnership	Same as General Partnership	Deference to freedom to contract
Assignee liable for assignor contributions and unlawfully received distributions	No liability (RMBCA §§ 6.22(a), 6.22(b))	Same as C Corporation	Assignee is liable	Same as General Partnership	Assignee is liable (RULPA § 704(b))	No provision

2025 RELEASE UNDER E.O. 14176

2025 RELEASE UNDER E.O. 14176

TABLE D

	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
<u>Tax</u>						
Sales of interests by owners	Generally capital gain unless corporation is collapsible (IRC § 341)	Same as C Corporation	Generally capital gain unless entity has specified assets such as accounts receivable or substantially appreciated inventory (IRC §§ 741, 751)	Same as Limited Liability Company	Same as Limited Liability Company	Same as Limited Liability Company

^aFrom a nontax perspective, there is no distinction between a C corporation and a S corporation.

^bC corporations that are also personal holding companies pay additional taxes. See IRC § 541.

^cFor interim years, there is a "steep tax" to the corporation as well. See IRC §§ 1375, 1363(d)(3). An S corporation may have Subchapter C "earnings and profits" as a carryover from prior C status or as a result of a merger with a C corporation.

^dSecurities laws may impose public disclosure requirements.

^eIRC § 1362(b); Prop. Reg. § 1362-1(c)(3).

^fAlternative means may create continuity of life. See Chapters 2 and 9.

^gSerious tax consequences arise upon the termination of a C corporation, but there generally is no current tax impact to the termination of a partnership. The termination of an S corporation merely defers the Subchapter C termination consequences.

^hMost enabling statutes do not expressly bifurcate interest, referring instead to the admission of an assignee with membership.

	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
ORGANIC CHANGES IN ENTITY						
<u>Non-tax</u>						
<u>Entity termination</u>						
Susceptibility	Minimal (only through majority vote or judicial intervention) (RMBCA §§ 14.02(e), 14.20, 14.30)	Same as C Corporation	Dissociation of any member threatens dissolution unless some quantum of remaining members consent to avoid dissolution	Same as General Partnership as to dissolution; failure to renew registration ends LLP status	Moderate (RLLPA §§ 801, 802)	Extreme (any dissociation of partner causes dissolution) (UPA §§ 31, 29)
Ability to avoid dissolution on account of member dissociation	N/A	N/A	Moderate, depending on enabling statute; under all statutes, unanimous consent by remaining members will avoid dissolution; many statutes allow constitutive documents to provide alternative means to avoid dissolution ¹	Same as General Partnership	Good; dissociation of limited partner does not cause dissolution; following dissociation of general partner, dissolution is avoided either by consent of all remaining partners or per agreement (RLLPA § 801(4))	Note, any dissociation causes dissolution

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LIMITED LIABILITY COMPANIES

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	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Owner personal debt after entity termination and liquidation	Up to amount of liquidating distribution for 5 years after articles of dissolution filed if creditor shows good cause for not previously filing claim against entity (RMBCA §14.07(d)(2))	Same as C Corporation	Varies according to enabling statutes; distribution recapture provision continues to apply despite termination	Same as C Corporation, except where statute provides for recapture of unlawful distributions	General partner remains liable subject to general contract and tort statutes of limitations; limited partners' liability for distributions continues despite entity termination (RULPA § 403)	Yes, subject to UPA discharge provisions concerning dissociated partner and to general contract and tort statutes of limitations (UPA §§ 40(d), 36(2))
Impact on debts	Paid or transferred via merger (RMBCA § 11.06(a)(3))	Same as C Corporation	Paid or transferred via merger	Same as General Partnership, except partners not liable	Ordinarily paid from entity assets or by general partner (RULPA §§ 607, 604)	Ordinarily paid from entity assets or by partners unless business continues and debts are assigned to successor entity (UPA §§ 40(d), 41)
Mergers, exchanges, etc. Enabling statutes	Yes (RMBCA § 11.01(a))	Same as C Corporation	Most enabling statutes provide for mergers with limited liability companies and other organizations	None	None	None

	<i>C Corporation</i>	<i>S Corporation^a</i>	<i>Limited Liability Company</i>	<i>Limited Liability Partnership</i>	<i>Limited Partnership</i>	<i>General Partnership</i>
Approval required	Yes, unless otherwise provided in articles of incorporation, by majority of board members present and majority of shareholder voting power (RMBCA § 11.03(b)(2))	Same as C Corporation	Those with management authority and the members; quantum of consent varies but is generally less than unanimous	Same as General Partnership	Unless otherwise agreed, general partner has discretion to make any fundamental change in the business, but is constrained by fiduciary duty to limited partners (RULPA § 403)	Unless otherwise agreed, any fundamental change in the business requires unanimous approval (UPA § 18(h))
Dissenters' exit rights	Yes (RMBCA § 13.02(a)(1))	Same as C Corporation	Only under some enabling statutes	Same as General Partnership	No (but general partner may be liable for damage and organic change may be enjoined) (RULPA § 403)	Yes (unanimous approval rights give each partner the power to demand cash-out) (UPA § 38)
<u>Tax (effect to partner)</u> Reorganizations	Generally tax-free with basis carryover to extent owners continue their equity interest in successor organization; any cash received treated as either dividend or partial sale in exchange of stock (IRC §§ 354, 361)	Same as C Corporation, except merger of S corporation with C corporation where surviving entity is C corporation or where surviving entity cannot make Section election that former S shareholders will no longer be S shareholders	Regardless of whether entity terminates under Section 708(b), generally no tax effect unless liability shares were altered in the surviving entity (IRC §§ 708(b), 752)	Same as General Partnership	Same as Limited Liability Company, except liability shifts are common when shifts are from limited partnerships to limited liability companies	Same as Limited Liability Company, except liability shifts are more common on general partnerships to limited partnerships or to limited liability companies

ADDENDUM
SUMMARY OF 1996 LIMITED LIABILITY PARTNERSHIP ACT AMENDMENTS TO
UNIFORM PARTNERSHIP ACT (1994)

These amendments authorize the creation of a new form of general partnership known as a limited liability partnership (LLP). An LLP formed under these amendments provides limited liability protection to the partners that is the same as they would have if they were shareholders in a corporation. The following chart summarizes the LLP Amendments.

RUPA SECTION	TITLE	SUMMARY OF THE PROVISIONS
§101	Definitions	Adds two new definitions - "foreign limited liability partnership and limited liability partnership" and modifies the definition of "statement" to include a Statement of Qualification filed by a domestic or a foreign LLP.
§103	Effect of Partnership Agreement; Nonwaivable Provisions	Adds a new subsection (b)(9) prohibiting the partnership agreement from varying the state law applicable to an LLP. See §106.
§106	Governing Law	Provides that the law of the state where the Statement of Qualification is filed governs the rights, liabilities, and obligations of the partners in an LLP.
§201	Partnership Entity	Adds a new subsection (b) stating that an LLP is the same entity as existed before the filing of a Statement of Qualification.
§306	Partner's Liability	New subsection (c), which creates the limited liability shield for partners, is the most important section in the Amendments. Unlike most existing LLC Acts, subsection (c) makes it clear that no creditor can break through the liability shield by latching onto a partner's right of contribution from the other partners. Filing the Statement of Qualification automatically amends the partnership agreement to eliminate any

		language in the partnership inconsistent with the LLP liability shield. See also §§ 307, 703, and 807(b).
§307	Actions by and Against Partnerships and Partners	Language is added to subsection (d) stating that a partnership creditor cannot seek to satisfy a partnership claim against a partner in an LLP unless the partner is personally liable for the obligation (e.g., because the partner created the creditor claim through his or her own negligence).
§703	Dissociated Partner's Liability to Other Persons	Language is added to subsection (b) stating that a dissociated partner in an LLP is not liable to partnership creditors for two years following the dissociation, unless the partner is personally liable for the obligation in question.
§807	Settlement of Accounts and Contributions Among Partners	New language is added to subsections (b), (c), and (d) to reinforce the limited liability shield given partners in an LLC in Section 306(c).
§903	Conversion of Limited Partnership to [General] Partnership	Language is added to subsection (e) making it clear that if the resulting entity is an LLP, the partners will have the liability protection given by the Amendments to LLP partners.
§906	Effect of Merger	Language is added to subsection (c)(3) reinforcing the limited liability shield protection if the resulting entity is an LLP.
§1001	Statement of Qualification	Sets forth the requirements for a Statement of Qualification: (1) vote necessary to amend the partnership agreement (or the contribution provisions of the partnership agreement if the agreement contains specific contribution provisions); (2) the name and address of the chief executive office and address of the office, if any, in this state and if not the name and address of the agent for service of process in this state; (3) a

- for a domestic LLC.
- § 1102 **Statement of Foreign Qualification**
- The requirements for this statement are essentially the same as for the Statement of Qualification for a domestic LLP. See § 1001. In addition, subsection (a)(1) requires that the foreign LLP's name end with one of the designations authorized for domestic LLCs. See § 1002.
- § 1103 **Effect of Failure to Qualify**
- Basically, this section states that the failure to qualify has no adverse legal effect (and subsection (c) specifically states that the failure does not waive the partners' liability shield). The only legal effects of failure to file a Statement of Foreign Qualification are: (1) the automatic appointment of the Secretary of State as the agent for service of process on the foreign LLP; and (2) the possibility of an injunctive action by the Secretary of State (see § 1105).
- § 1104 **Activities Not Constituting Doing Business**
- This section contains a nonexclusive laundry list of activities which a foreign LLP can conduct in the enacting state without having to file a Statement of Foreign Qualification. The activities on the list are similar to those found in equivalent provisions in most state corporation codes applicable to foreign corporations.
- § 1105 **Action by [Attorney General]**
- This section gives the Attorney General of the state the authority to maintain an action against a foreign LLP to restrain it from doing business in the enacting state.
- § 1208-1211 **Effective Date, Repealer, and Transition Rules for States That Have Adopted RUPA and Subsequently Enact the LLP Amendments**
- These provisions provide for a phased-in applicability of the LLP Amendments depending on whether the LLP is formed before or after the effective date of the LLP Amendments. If the state adopts RUPA and the LLP Amendments at the same time, the normal RUPA transition rules apply.

Conceptual amendments adopted by the House Labor & Commerce Committee, 2/7/00 HB 239

1. pages 33 and 34, use "biennial" system and conform dates with AS 32.05.590. Moved by Harris and unanimously adopted.
2. Sections 10 & 13, change to reflect a three year time period, 2006 to 2004.