

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7468 SENATE JUDICIARY**

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.



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**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 number "4".

Daniel Wm. Fessler  
*Commissioner*

STATE OF CALIFORNIA

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
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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  
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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

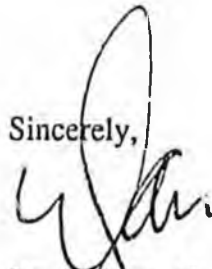
The Honorable Pat Rodey  
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Peterson. I will ask that Art supply your office with a copy of that letter is sent to your office.

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.

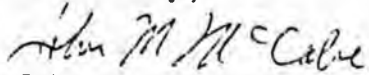
Again, the notion of the silent partner who exists in that status mainly to deprive creditors of their due, simply fails as a model for the modern limited partnership. The issue is obtaining investment and providing sufficient security to investors. We want to allow them some democracy rights within 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

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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.

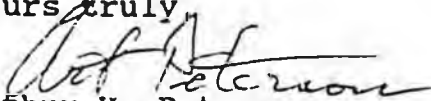
Conclusion, Recommendation, & Invitation.

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

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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. 303 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

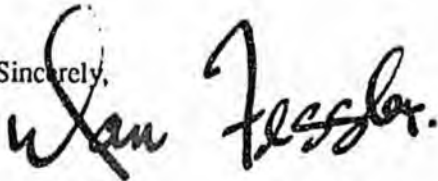
assurance do the limited partners who desire a passive posture (perhaps because of their age, physical location, or the other burdens of their lives) that this basic treaty will oblige other investors?

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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# 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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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.

## § 401. 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 401 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.

SB

207

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

FISCAL NOTE

No. 2

Bill Version: CSSB 207 (CAC)

(S) Publish Date: 4-30-92

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Development  
 Title: An Act relating to multiple-beneficiary BRU: Occupational Licensing  
permitting of charitable gaming... Component: Administration  
 Sponsor: Senator Zharoff  
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO. 

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	155.3	155.3	155.3	155.3	155.3	155.3
TRAVEL	10.0	10.0	10.0	10.0	10.0	10.0
CONTRACTUAL	45.0	45.0	45.0	45.0	45.0	45.0
SUPPLIES	5.0	5.0	5.0	5.0	5.0	5.0
EQUIPMENT	30.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	245.3	215.3	215.3	215.3	215.3	215.3

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	245.3	215.3	215.3	215.3	215.3	215.3
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER - GF/PR	245.3	215.3	215.3	215.3	215.3	215.3
TOTAL	245.3	215.3	215.3	215.3	215.3	215.3

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)  
SEE ATTACHED

Prepared By: John N. Hansen, Jr., Gaming Program Manager Phone: 465-2581  
 Division: Occupational Licensing Date: 04/29/92  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Commerce & Economic Development Date: 4.29.92

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

**FISCAL NOTE ANALYSIS  
CSSB 207(L&C)**

**OPERATING EXPENDITURES**

<u>Position</u>	<u>Range</u>	<u>Cost</u>	<u>Subtotal</u>
<b><u>Personal Services:</u></b>			
Investigator III	18	\$ 57.7	
Revenue Auditor III	18	\$ 57.7	
Occupational Licensing Examiner I	12	\$ 39.9	
			\$ 155.3
<b><u>Travel:</u></b>			
Investigator III		\$ 5.0	
Revenue Auditor III		\$ 5.0	
			\$ 10.0
<b><u>Contractual:</u></b>			
Office Lease Space		\$ 20.0	
Printing and Communications		\$ 25.0	
			\$ 45.0
<b><u>Supplies:</u></b>			
Daily operating supplies		\$ 2.0	
Investigator III		\$ 1.0	
Revenue Auditor III		\$ 1.0	
Occupational Licensing Examiner I		\$ 1.0	
			\$ 5.0
<b><u>Equipment:</u> (One-time costs)</b>			
Investigator III		\$ 10.0	
Revenue Auditor III		\$ 10.0	
Occupational Licensing Examiner I		\$ 10.0	
			<u>\$ 30.0</u>
<b>TOTAL COST</b>			<b><u>\$ 245.3</u></b>

Position Title <b>Investigator III</b>		No. of Positions <b>1</b>	Range / Step <b>18A</b>	Barg. Unit <b>GGU</b>
Time Status <b>PFT</b>	Staff Months <b>12</b>	Location <b>AWA</b>		Election District
<b>TYPE OF EXPENDITURE</b>		<b>Amount</b>	<b>Justification</b>	
Salary		<b>42.0</b>	<p>This position will conduct investigations of permit or license violations and complaints. The position will also conduct inspections of premises, observe gaming activity to ensure compliance with statutes and regulations, issue Notices of Violations when appropriate and necessary, educate the participants with regard to statutes and regulations, and assist the participants by providing the correct forms, and answering inquiries.</p> <p>The position will also, on occasion, assist the auditor(s) in gathering information/documentation.</p> <p>Impact to Division/Program if position is NOT filled:</p> <p>Because of the numerous number of permittees and licensees, the expense of the state, and the limited funding for travel purposes, many complaints and/or allegations could not be investigated.</p>	
Benefits		<b>15.7</b>		
Premium Pay				
Other				
<b>Total Personal Services</b>		<b>57.7</b>		
Travel		<b>5.0</b>		
Contractual				
Commodities		<b>1.0</b>		
Equipment		<b>10.0</b>		
Other				
<b>Total Cost</b>		<b>73.7</b>		
<b>FUNDING SOURCE FOR TOTAL COST</b>				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004				
IA Receipts 1007				
CIP Receipts 1061				
Other - GF/PR 1005		<b>73.7</b>		

**Request For  
New Position**

AGENCY Commerce & Economic Development

BRU Occupational Licensing

COMPONENT Investigations

**FY 93**

Page 3 of 5

Revised Date:





SB

212

SEVENTEENTH LEGISLATURE  
SENATE JUDICIARY COMMITTEE BILL FILE

BILL NUMBER: SB 212  
ABBREVIATED TITLE: MICA Death -

SPONSER: L & C By Request ORIGINAL RECEIVED: April 8, 1991  
WRITTEN REQUEST TO SCHEDULE REC'D: 4-20-91 FROM: Parsons  
SPONSER'S STATEMENT REC'D: \_\_\_\_\_ FROM: \_\_\_\_\_  
SECTIONAL ANALYSIS RQST'D: \_\_\_\_\_ FROM: \_\_\_\_\_  
SECTIONAL ANALYSIS RECEIVED: \_\_\_\_\_

FISCAL NOTE (ORIGINAL)  
RQST'D OF: \_\_\_\_\_ REC'D FROM: Commerce DATE: with file  
RQST'D OF: \_\_\_\_\_ REC'D FROM: \_\_\_\_\_ DATE: \_\_\_\_\_  
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: \_\_\_\_\_ NOTICE OF HEARINGS GIVEN: \_\_\_\_\_  
COMMITTEES OF REFERRAL: FIRST: L & C SECOND: Jud THIRD: \_\_\_\_\_

COMMITTEE ACTION Legislative Draftsman

DATE: 4-5-2-91 Moved on Ind Rec -  
\_\_\_\_\_  
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PERSONS TO BE NOTIFIED OF HEARING

- 1. SPONSOR Div Insurance -
- 2. AGENCY Dove Walsh -
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_
- 7. \_\_\_\_\_
- 8. \_\_\_\_\_
- 9. \_\_\_\_\_
- 10. \_\_\_\_\_

Involved Question: Fed Taxation of State Entities -

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. SB 212

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: An Act relating to the Medical BRU: Insurance  
Indemnity Corporation of Alaska Component: \_\_\_\_\_  
 Sponsor: Senate L & C  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

--	--	--	--

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	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.)

Prepared By: David Walsh, Director Phone: 465-2515  
 Division: Insurance Date: 3/20/91  
 Approved by Commissioner: Glenn A. Olds *Whallon* ASST Commr.  
 Agency: Department of Commerce & Economic Development Date: 3/20/91

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

May 2 - MICA 212

Dave Walsh -

Keith Campbell - Board of MICA -

25% of MDs are uninsured.

There should be 1 1/2 M left. It will go to

Those who paid premiums -

Moved on Red Rec -

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

TO: Senator Rick Halford, Chair  
Senate Judiciary Committee

FROM: Senator Drue Pearce, Chair  
Senate Labor & Commerce

A handwritten signature in cursive script that reads "Drue Pearce".

RE: SB 212 - MICA

DATE: April 19, 1991

Senate Bill 212, relating to the Medical Indemnity Corporation of Alaska, was moved from the Senate Labor & Commerce Committee on April 3rd.

This legislation, sponsored by the Senate Labor & Commerce at the request of the Division of Insurance, removes from statute provisions that pertain to MICA, an entity that the state no longer owns. This legislation also clarifies responsibility for the filing of federal tax reports.

I urge you to schedule this bill for a hearing at your committee's earliest convenience.

Thank you.

DP:rrm

SENATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

DATE: 3/18/91

FURTHER: Judiciary

Date of 5-Day Notice: 3-28-91  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: \_\_\_\_\_

L&C Committee considered SB 212  
Medical Indemnity Corporation of Alaska; efd.

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- attached amendment(s)  new title
- \_\_\_\_\_ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

fiscal note(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Department(s)/Date:

zero fiscal note(s) LABOR/3-20-91

\_\_\_\_\_

\_\_\_\_\_

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER RECOMMENDATIONS:

*Bob Hedin NO REC*

*Rick Halford NO REC*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*John Collier DO NOT PASS*

Chair: Signature and Recommendation

SB 212: "An Act relating to the Medical Indemnity Corporation of Alaska; and providing for an effective date."

The department is in favor of this legislation. Due to the sale of the Medical Indemnity Corporation of Alaska (MICA) on January 1, 1991, the need for an insurance mechanism under state statute for medical providers is nonexistent. The market that has purchased MICA business will be providing coverage to the former insureds of MICA.

*Glenn A. Olds, Asst. Comm.*  
Glenn A. Olds, Commissioner

Date: 3/21/91

ALASKA STATE

# HOSPITAL & NURSING HOME

ASSOCIATION

April 29, 1991

Senator Rick Halford, Chair  
Judiciary Committee  
Alaska State Senate  
Capitol Building  
Juneau, AK 99811

Re: Support SB 212, MICA Dissolution

Dear Senator Halford and Members  
of the Senate Judiciary Committee:

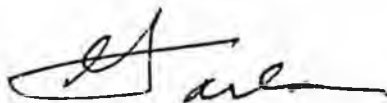
The Alaska State Hospital and Nursing Home Association would like to offer its support of SB 212, allowing for the repeal of statutes creating the Medical Indemnity Corporation of Alaska (MICA).

The Association and its members have followed for the past year the "tax" developments requiring the statutory restructuring of MICA, or its sale to another insurance company.

Hospitals were kept well informed on the tax problem faced by MICA, the options to avoid the tax liability, and the decision to sell MICA to a non-profit physician owned mutual liability insurance company (NORCAL).

Director of Insurance David Walsh, did an excellent job of keeping everyone informed of the sale, and we believe a sound decision has been made. That decision will see Alaska health care providers have access to coverage that will, in the long run, be better coverage at less cost than MICA.

Sincerely,



Harlan R. Knudson  
President/CEO

cc: Members, Senate Judiciary Committee  
Senator Rodey  
Senator Adams  
Senator Collins  
Senator Frank

**MICA** Medical Indemnity  
Corporation of Alaska

ALEUT PLAZA  
4000 OLD SEWARD HWY., SUITE 203  
ANCHORAGE, ALASKA 99503  
(907) 563-3414

DATE: October 22, 1990

TO: All MICA Policyholders

FROM: Ron Keller, M.D.  
Chairman of the Board of Governors  
Medical Indemnity Corporation of Alaska

RE: Announcement of quarterly meeting & notice of potential purchase offer for MICA

On November 2nd, MICA's Board of Governors will hold our regular quarterly meeting in Anchorage at the Clarion Hotel beginning at 9 a.m.

I am sending you this quick memo to let you know some good news: It's likely that we will be receiving a formal offer to purchase MICA, and we'll deal with that issue at the meeting. Policyholders are, naturally, invited to attend. But we also invite you--if you've got questions about these developments--to give MICA Executive Director Mary Pierce a call at 563-3414. She'll be glad to answer any questions and fill you in on the recent events since we last contacted you.

Let me give you a quick run down. As you'll recall, MICA's tax exempt status was challenged by the IRS; and as a result MICA cannot continue to operate the way it has been operating since it was established in 1976. The three choices for MICA are to:

- Merge into the state bureaucracy.
- Spin off to become a totally private mutual insurance company.
- Have its assets & liabilities purchased by a private carrier.

Of these options, the MICA Board has unanimously chosen to pursue a purchase.

We have every indication that a physician owned mutual, very closely aligned philosophically with MICA will be making us an offer. This firm has indicated they are willing to meet the tough conditions that the MICA Board has placed on any sale. Those conditions are:

- A 5-year guarantee that all current policyholders who are otherwise acceptable underwriting risks will receive continued coverage.
- No cancellation of existing policyholders without an Alaska-based appeal process.
- No geographical discrimination in underwriting terms & benefits.
- Continuation of current rating classifications, with a special category for family practice docs doing obstetrics.
- Purchaser will keep an Alaska office with both claims adjusting and risk management staff, plus provide an 800 toll-free phone number.
- Certain policyholder benefits will continue, such as the current DDR (free tail); availability of tail policies for purchase; policyholder inception date with MICA used to determine benefits based on length of coverage; and insureds will still have to give written consent to settle any claim.

As you can see, the MICA Board's top priority is safeguarding your interests. We'll be contacting you again once a formal offer is made, and after our meeting on Nov. 2nd. Meanwhile, please feel free to call Mary at 563-3414 to get questions answered or to find out more about where MICA is going.

Thanks.

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

William G. Brock  
Chairman of the Board  
Medical Indemnity Corporation  
of Alaska  
400 Old Seward Highway  
Anchorage, Alaska 99503

Person to Contact:  
Thomas J. Kelly

Telephone Number:  
(202) 566-3506

Refer Reply to:  
CC:FI&P:2 - TR-31-3927-88

Date:

MAR 19 1990

RECEIVED

MAR 21 1990

Dear Mr. Brock:

The Deputy Chief Counsel of the Internal Revenue Service approved your closing agreement on March 15, 1990.

I have enclosed the signed duplicate of the agreement for your records.

Thank you for your cooperation.

Sincerely yours,  
Assistant Chief Counsel  
Financial Institutions and Products

By:

  
William E. Coppersmith  
Chief, Branch 2

Enclosure:  
Duplicate of closing agreement

Department of the Treasury - Internal Revenue Service

CLOSING AGREEMENT ON FINAL DETERMINATION

COVERING SPECIFIC MATTERS

Under section 7121 of the Internal Revenue Code, the Medical Indemnity Corporation of Alaska (MICA), 4000 Old Seward Highway, Anchorage, Alaska 99503, Employer Identification Number: 92-6017594 and the Commissioner of Internal Revenue make the following closing agreement:

WHEREAS,

(1) An issue has arisen whether MICA's income is not included in gross income under section 115 of the Internal Revenue Code; and

(2) MICA and the Commissioner of Internal Revenue (IRS) desire to settle this issue with respect to all past and present tax years and with respect to future tax years through and including tax year ending December 31, 1992; and

(3) MICA and the IRS desire to identify specific actions that MICA will undertake between the date of execution of this Closing Agreement and December 31, 1992;

IT IS DETERMINED AND AGREED for Federal income tax purposes that:

(1) With respect to all past and present tax years and with respect to future tax years through and including tax year ending December 31, 1991, MICA's income shall not be included in gross income under section 115 of the Internal Revenue Code.

(2) With respect to the tax year ending December 31, 1992, MICA's income shall not be included in gross income under section 115 of the Code only to the extent that MICA establishes that such income is attributable to physicians or other health care providers who, despite a reasonable effort, could not obtain medical malpractice coverage from another insurance company.

**Closing Agreement  
Medical Indemnity Corporation of Alaska**

(3) During the period from the date of execution of this Closing Agreement until December 31, 1992, MICA agrees as follows:

(a) before May 1, 1990, and annually thereafter until December 31, 1992, MICA will send written notice to all insurance companies that now offer medical malpractice coverage in the State of Alaska and also to at least five other companies that write medical malpractice coverage informing them of the existence of the statutory mechanism for the purchase of MICA's business under Alaska Statute 21.88.095 ("Transfer of Corporate Assets and Liabilities"); and

(b) upon receipt of any good faith offer or expression of interest, MICA will make a good faith effort to negotiate an agreement for the transfer of corporate assets and liabilities on the terms authorized by said statute and to obtain the approval of the Director of the Alaska Division of Insurance for such transfer; and

(c) before the end of the current legislative session, which is required by law to end by May 10, 1990, MICA will transmit to the Alaska Legislature a written report that (1) summarizes the provisions of this Closing Agreement, (2) describes the principal statutory changes that may be necessary with respect to MICA's structure and tax status, and (3) alerts the legislature to the need to take legislative action with respect to MICA during the next two-year legislative term, which will begin in January 1991, if the Legislature wishes to preserve MICA's tax-exempt status; and

(d) after the statewide elections in the fall of 1990, MICA will transmit to the newly-elected Governor and to all members of the Alaska Legislature for the 1991-1992 term a written report that (1) summarizes the provisions of this Closing Agreement, (2) describes the principal statutory changes that may be necessary with respect to MICA's structure and tax status, and (3) alerts the legislature to the need to take legislative action with respect to MICA during the 1991-1992 term of the Legislature, if the Legislature wishes to preserve MICA's tax-exempt status; and

**Closing Agreement  
Medical Indemnity Corporation of Alaska**

(e) before the beginning of the next legislative session, which will begin in January 1991, MICA will consult with the newly-elected Governor and will contact key individual legislators for the 1991-1992 legislative term, for the purpose of developing a legislative proposal regarding MICA's future structure and tax status; and

(f) during the 1991-1992 term of the Alaska Legislature, MICA will initiate and maintain regular and ongoing contacts with the Governor's office, with the Director of the Division of Insurance, and with key individual legislators for the purpose of informing them of the need for legislative action with respect to MICA; and

(g) throughout the 1991-1992 term of the Alaska Legislature, as necessary or advisable, MICA will prepare or assist in the preparation of appropriate proposed legislation and will seek to have that proposed legislation introduced as early as possible after the Legislature goes into session in January 1991; and

(h) if appropriate legislation pertaining to MICA is introduced during the 1991-1992 term of the Alaska Legislature, MICA will participate in the legislative hearing process and will otherwise take appropriate action to encourage the passage of the legislation.

(4) Beginning with the tax year ending December 31, 1993, none of MICA's income shall be excluded from gross income under section 115 of the Internal Revenue Code.

(5) However, if MICA's organic statute (Alaska Statute 21.88) is repealed, reenacted or otherwise revised so as to establish MICA as an integral part of the State, MICA's income shall not be subject to federal tax as of the effective date of the statutory change.

(6) If MICA is established as an integral part of the state or MICA's structure is otherwise changed so that MICA no longer claims that its income is excluded from gross income under section 115 of the Code, MICA's obligation under paragraph (3) above shall cease.


**Closing Agreement  
Medical Indemnity Corporation of Alaska**

**This agreement is final and conclusive except:**

- (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material fact;
- (2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions, notwithstanding any other law or rule of law except for Code section 7122; and
- (3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to that tax period.

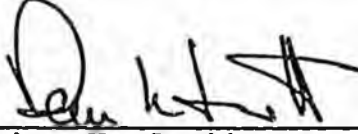
By signing, the above parties certify that they have read and agreed to the terms of this document.

Medical Indemnity Corporation of Alaska

By:   
William G. Brock  
Chairman of the Board

Date signed: Mar. 12, 1990

Commissioner of Internal Revenue

By:   
Peter K. Scott  
Deputy Chief Counsel

Date signed: March 15, 1990

**MICA** Medical Indemnity  
Corporation of Alaska

ALEUT PLAZA  
4000 OLD SEWARD HWY., SUITE 203  
ANCHORAGE, ALASKA 99503  
(907)563-3414

TO: William Brock  
Roger Holmes, Esq.  
Susan Mason, Esq.

FROM: Mary Pierce *MP*

DATE: May 8, 1990

RE: Tax Issue History

The final tax issue history is enclosed for your files. I don't plan on distributing this other than to the three of you at this time. Thanks for you help on this, it may prove to be a good reference in the future.

MP/tmb

# TAX ISSUE HISTORY

## 1988

Sometime in early 1988 as MICA was working with Ernst & Whinney on our reserve issue Tom Koecher advised Mary Pierce, Executive Director, that their office felt there may be a question regarding MICA's tax status due to the change in the 1986 tax law. He said they were looking into it and would get back to us.

March 12 - Executive Committee Meeting. Tom Koecher, Ori Orien of Anchorage and Dave Wilson (Seattle) all of Ernst & Whinney were at the meeting to discuss reserve increases. They told the Executive Committee about the tax status question and that their tax advisor would be attending the next Executive Committee meeting.

March 18 - Executive Committee Meeting. Koecher, Orien and Shelby Stastny explained question of tax status to committee. They explained two prong test to be tax exempt.

1) Income must accrue to the State  
and

2) Must have a public purpose or "essential governmental function."

The Executive Committee asked them to investigate the question and report back. Brock, Pierce and Koecher would meet with Director Roller on March 25th to advise him of tax exempt status question.

April 26 - Stastny reported to Executive Committee that initial informal discussion with IRS suggested we would not receive a favorable ruling. Suggested we file tax returns and pursue formal tax ruling request. Cost to do research and ruling request est. \$10 - 15,000.

May 6 - Engagement letter from Stastny outlining course of action on request for tax ruling and cost.

May 13 - Board votes to submit formal ruling request to IRS. Estimated cost from E & W is \$20,000.

- June 17 - Paul Roller, Director Division of Insurance and Deputy Director, Jim Jordan present at Board meeting. A draft tax ruling request given to Executive Committee. Stastny asked Arliss Sturgulewski to do some legislative research to help answer legislative intent questions. Letter to be finalized soon.
- June 30 - Memo from Maureen Weeks to Sturgulewski stating she had researched the records of the 1976 session and there was not any specific testimony to create for-the-good-of-the-public issue.
- July 15 - Stastny reports to the Executive Committee that ruling request not sent yet. He is waiting for final information from legislative research. MICA has provided all pertinent back-up from 1975 Governor's Medical Malpractice Insurance Commission and all other historical data.
- July 24 - At Quarterly meeting of the Board, Director Paul Roller tells Board he has spoken to several legislators. They are anxious to help us clear up any misunderstandings about legislative intent and would like our proposed changes by September.
- August 4 - Stastny sends some ideas for proposed legislative changes that may help us win our case to Roger Holmes, Brock and Pierce.
- August 5 - Stastny's research has uncovered three companies very similar to MICA who requested rulings. Sent to Holmes and Pierce. All three received unfavorable rulings.
- August 11-30 - Holmes proposes legislative changes. He believes that these changes will make it clear that our earnings belong to the state.
- August 23 - David Bickerstaff gives us estimate that rates will need to increase 15-17% for 1989 to cover taxes.
- August 24 - MICA sends revenue ruling request to IRS.

- Special Executive Committee meeting on tax status with entire Board of Governors. Koecher and Stastny present.  
They explain problem and that Holmes' proposed legislation could resolve it by making it clear MICA's earnings belong to the state.  
The Board votes to forward Holmes' legislation to Governor and legislature.
- September 7 - Roller (Director) agrees to hand carry the letter to the Governor. The letter explains our dilemma to the Governor and asks if he might sponsor legislative changes.
  - Roller also suggest we purchase an insurance company with net losses to offset our taxes.
- September 16 - Brock receives letter from Stastny advising him that MICA can't use net losses of an acquired corporation (insurance company) to offset income.
  - Executive Committee Meeting. E & W tells committee ruling request filed on 8-24-88 and we will have a response within 90 days. Unfortunately a rate filing must be made by November 1 and a 15% increase is needed to just cover 1989 taxes. Executive Committee votes to file 1-1-89 rate based on pure premium and to then retroactively charge an amount needed for taxes later in year if we don't receive legislative fix.
- September 16 thru 30 - Holmes and Pierce meet with Senator Kelly and Representative Cotten to personally advise them of our problem and show them proposed legislation.
- November 4 - Board has Quarterly meeting. Jim Jordan reports to Board that although the Governor has not released his legislative priorities the informal message is that he will sponsor our legislation.
  - A plan of action to get information to legislators while we are waiting for official response from the Governor is proposed. The Legislative Committee will register as lobbyists for this purpose.

November 11 - A letter is sent to the policyholders explaining 1989 rating structure.

November 22 - Tom Kelley the agent at the IRS has several questions regarding MICA that he asks of Stastny. We respond with a letter to Kelley.

November 25 - A draft letter is composed to have board members send to legislators. This is sent to the Board members along with:

- a ) a fact sheet
- b ) a copy of the letter sent to policyholders on the rates
- c ) a spread sheet of our financials for the last 5 years.

Pierce sends letter to Senator Kelly and Representative Cotten.

December 1 - The Legislative Committee meets to devise plan to distribute information to legislators since told Governor would not sponsor legislation because a) he could not investigate all possibilities in a timely manner and b) he did not feel that the state should be in the insurance business.

December 8 - A special Board meeting is called.

Chairman Brock had met with Director Roller and Stan Garlington. Roller said it was reasonable to assume that legislation will pass and the Governor will not oppose or veto bill. Board votes to approve 10.5% increase for hospitals and 12.6% increase for physicians to be taken for taxes if it is determined we were liable.

Chairman Brock reported we have been asked to meet with the IRS in Washington, D.C. Also Stastny reported the tax accountants in Washington advised us we may be relieved retroactively of taxes. We had previously been told this wasn't possible. The IRS's single question was "do our profits inure to the state." The Board discussed if that could mean fewer legislative changes.