

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1847

H.P. 1276

House of Representatives, May 13, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

Cosponsored by Senator BALDACCI of Penobscot, Senator CLARK of Cumberland and Representative MARSANO of Belfast.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Establish the Maine Revised Uniform Limited Partnership Act.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 31 MRSA c. 7, as amended, is repealed.

6 Sec. 2. 31 MRSA c. 11 is enacted to read:

8 CHAPTER 11

10 MAINE REVISED UNIFORM LIMITED PARTNERSHIP ACT

12 SUBCHAPTER I

14 GENERAL PROVISIONS

16 §401. Short title

18 This chapter may be known and cited as the "Maine Revised Uniform Limited Partnership Act."

20 §402. Definitions

22 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

24 1. Certificate of limited partnership. "Certificate of limited partnership" means the certificate referred to in section 421, and the certificate as amended.

28 2. Contribution. "Contribution" means any cash, tangible or intangible property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services that a partner contributes to a limited partnership in the capacity as a partner.

32 3. Distribution. "Distribution" means the transfer of property by a limited partnership to one or more of its partners in the capacity as a partner.

36 4. Event of withdrawal of a general partner. "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 442.

40 5. Foreign limited partnership. "Foreign limited partnership" means a partnership formed under the laws of any state or jurisdiction, including the District of Columbia, the Commonwealth of Puerto Rico, any other state, territory, possession or other jurisdiction of the United States or any foreign country, other than the laws of this State and having as partners one or more general partners and one or more limited partners.

2 6. General partner. "General partner" means a person who
4 has been admitted to a limited partnership as a general partner
6 in accordance with the partnership agreement and named in the
8 certificate of limited partnership as a general partner or, in
 the case of a foreign limited partnership, named as a general
 partner in the certificate of limited partnership or similar
 instrument required by the laws of the jurisdiction under which
 the limited partnership is organized.

10 7. Limited partner. "Limited partner" means a person who
12 has been admitted to a limited partnership as a limited partner
14 as provided in section 431 or, in the case of a foreign limited
16 partnership, in accordance with the laws of the state or foreign
 country or other foreign jurisdiction under which the limited
 partnership is organized.

18 8. Limited partnership; domestic limited partnership.
20 "Limited partnership" and "domestic limited partnership" mean a
22 partnership formed by 2 or more persons under the laws of this
 State and having one or more general partners and one or more
 limited partners.

24 9. Liquidating trustee. "Liquidating trustee" means a
26 person, other than a general partner, but including a limited
 partner, carrying out the winding up of a limited partnership.

28 10. Majority in interest of the limited partners.
30 "Majority in interest of the limited partners" means, unless
32 otherwise defined in the partnership agreement, limited partners
 whose unreturned contributions constitute more than 1/2 of the
 aggregate unreturned contributions of all limited partners.

34 11. Partner. "Partner" means a limited or general partner.

36 12. Partnership agreement. "Partnership agreement" means
38 any written or oral agreement of the partners as to the affairs
 of a limited partnership and the conduct of its business.

40 13. Partnership interest. "Partnership interest" means a
42 partner's share of the profits and losses of a limited
 partnership and the right to receive distributions of partnership
 assets.

44 14. Person. "Person" means a natural person; partnership,
46 whether general or limited and whether domestic or foreign;
48 trust; estate; association; corporation; custodian; nominee; or
 any other individual or entity in its own or any representative
 capacity.

50 15. Profits and losses. "Profits and losses" includes,
52 without limitation, all items of deduction, income, credit, gain
 and loss, except as otherwise defined in a partnership agreement.

2 §403. Limited partnership name

4 1. Requirements. The limited partnership name:

6 A. Must contain the words "Limited Partnership" or the
7 abbreviation "L.P.";

8 B. May contain the name of a partner;

10 C. May not be the same as, or deceptively similar to:

12 (1) The name of any domestic corporation or limited
14 partnership organized under the laws of this State or
15 any foreign corporation or limited partnership
16 authorized to transact business or to carry on
17 activities in this State;

18 (2) A name the exclusive right to which is, at the
20 time, reserved under section 404; Title 13-A, section
21 302; or Title 13-B, section 302;

22 (3) A name that is registered under section 406; Title
24 13-A, section 303; or Title 13-B, section 303;

26 (4) The assumed name of a corporation or limited
27 partnership as provided in section 405; Title 13-A,
28 section 307; or Title 13-B, section 308; or

30 (5) A mark registered under Title 10, chapter 301-A.

32 2. Exceptions. Notwithstanding subsection 1, paragraph C,
33 the name may be the same or deceptively similar:

34 A. If the registered owner or holder of the name or mark
36 executes and files with the Secretary of State proof of
37 authorization of the use of the same or a deceptively
38 similar name by the limited partnership seeking to use the
39 name;

40 B. If the limited partnership seeking to file under the
42 same or deceptively similar name executes and files with
43 the Secretary of State proof that it will not do business
44 under that same or deceptively similar name but instead will
45 do business under an assumed name that is not the same or
46 similar to any corporate name, reserved name, registered
47 name or assumed name under this chapter or Title 13-A or
48 13-B or any mark under Title 10; or

50 C. If the limited partnership was organized under the laws
51 of this State prior to January 1, 1992 or the foreign
52 limited partnership was authorized to do business in this

2 State prior to January 1, 1992 and had the right to use the
3 name as its legal name prior to January 1, 1992.

4 **§404. Reservation of name**

6 1. Right to reserve a name. The exclusive right to the use
7 of a name may be reserved by:

8 A. Any person intending to organize a limited partnership
9 under this chapter and to adopt that name;

10 B. Any domestic limited partnership, or any foreign limited
11 partnership authorized to do business in this State,
12 intending to change its name;

13 C. Any foreign limited partnership intending to apply for a
14 certificate of authority to transact business in this State
15 and to adopt that name;

16 D. Any domestic limited partnership or any foreign limited
17 partnership authorized to do business in this State
18 intending to utilize the name as an assumed name; or

19 E. Any person intending to organize a foreign limited
20 partnership and intending to have that partnership apply for
21 a certificate of authority to transact business in this
22 State and adopt that name.

23 2. Reservation procedure. The reservation of a name is made
24 by filing with the Secretary of State an application, executed by
25 the applicant, specifying the name to be reserved and the name
26 and address of the applicant.

27 A. If the Secretary of State finds that the name is
28 available for use by a domestic or foreign limited
29 partnership, the Secretary of State shall reserve the name
30 for the exclusive use of the applicant for a period of 120
31 days.

32 B. Once having reserved a name, the same applicant may
33 again reserve the same name for successive 120-day periods.

34 C. The right to the exclusive use of a reserved name may be
35 transferred to any other person by filing with the Secretary
36 of State a notice of the transfer, executed by the applicant
37 for whom the name was reserved, specifying the name to be
38 transferred and the name and address of the transferee.

39 D. The reservation of a specified name may be canceled by
40 filing with the Secretary of State a notice of cancellation,
41 executed by the applicant or transferee, specifying the name
42 and address of the transferee.

2 reservation to be canceled and the name and address of the
3 applicant or transferee.

4 §405. Assumed name of limited partnership

6 1. Definition. As used in this section, "assumed name"
7 includes a trade name and any name other than the true name of a
8 limited partnership.

10 2. Right to transact business under assumed name. Upon
11 complying with this section, any domestic limited partnership or
12 foreign limited partnership authorized to do business in this
13 State may transact its business in this State under one or more
14 assumed names.

16 3. Procedure to use assumed name. Before transacting any
17 business in this State under an assumed name, the domestic or
18 foreign limited partnership shall execute and deliver for filing
19 a statement setting forth:

20 A. The name of the limited partnership and the address of
21 its registered office;

24 B. That it intends to transact business under an assumed
25 name;

26 C. The assumed name that it proposes to use; and

28 D. If the assumed name will be used at less than all of the
29 limited partnership's places of business in this State, the
30 locations where it will be used.

32 A separate statement must be executed and delivered for filing
33 with respect to each assumed name that the limited partnership
34 proposes to use.

36 4. Requirements for name. Each assumed name must comply
37 with the requirements of section 403, except for similarity with
38 the true name of the limited partnership proposing to use the
39 assumed name.

42 5. Termination of name. A domestic or foreign limited
43 partnership may terminate an assumed name by executing and
44 delivering for filing a statement setting forth:

46 A. The name of the limited partnership and the address of
47 its registered office;

48 B. That it no longer intends to transact business under the
49 assumed name; and

52 C. The assumed name that it intends to terminate.

2 6. Noncompliance; injunction. If a domestic or foreign
4 limited partnership uses an assumed name without complying with
6 the requirements of this section, the continued use of the name
 may be enjoined upon suit by the Attorney General or by any
 person adversely affected by the use.

8 7. Deceptively similar names; injunction. Notwithstanding
10 its compliance with the requirements of this section, the use of
12 an assumed name may be enjoined upon suit by the Attorney General
 or by any person adversely affected by such use, if:

14 A. The assumed name did not, at the time the statement
16 required by subsection 3 was filed, comply with the
 requirements of section 403, subsection 1, paragraph C; or

18 B. The assumed name is deceptively similar to a name in
20 which a person has prior rights by virtue of the common law
 or statutory law of unfair competition, unfair trade
 practices, common law copyright or similar law.

22 The mere filing of a statement pursuant to subsection 3 does not
24 constitute actual use of the assumed name set out in the
 statement, for purposes of determining priority of rights.

26 §406. Registered name and renewal

28 1. Name registered. Any limited partnership organized and
30 existing under the laws of any state or territory of the United
32 States may register its name under this chapter provided that the
 name meets the requirements of section 403, subsection 1.

34 2. Application. The registration must be made by
36 delivering for filing an application for registration setting
 forth:

38 A. The name of the limited partnership;

40 B. The state or territory under the laws of which it is
 organized;

42 C. The date of its organization;

44 D. A statement that it is actually engaged in business
46 activities;

48 E. A brief statement of the activities in which it is
 engaged; and

50 F. A certificate of good standing or its equivalent from
52 the proper officer of its jurisdiction of organization. The
 certificate of good standing must have been made not more

2 than 90 days prior to the delivery of the application for
3 filing.

4 3. Registration effective. The registration is effective
5 until the close of the calendar year in which the application is
6 filed.

7 4. Renewal of registration. A limited partnership that has
8 registered its name under this section may renew the registration
9 from year to year by annually filing an application for renewal.
10 The application for renewal must set forth the information
11 required in subsection 2. The renewal application for the next
12 calendar year may be filed between the first day of October and
13 the 31st day of December in each year.

14 §407. Registered office; registered agent

15 1. Requirements of registered office and registered agent.
16 Each limited partnership shall have and maintain:

17 A. A registered office in this State, which may, but need
18 not, be the same as its place of business; and

19 B. A registered agent for service of process on the limited
20 partnership. The agent may be either:

21 (1) An individual resident of this State whose
22 business office or residential address is identical
23 with the limited partnership's registered office; or

24 (2) A domestic or foreign corporation, whether
25 business or nonprofit, authorized to do business or
26 carry on activities in this State and having a business
27 or registered office identical with the limited
28 partnership's registered office.

29 2. Change in registered office or registered agent. The
30 registered office and registered agent may be changed by:

31 A. Filing a certificate of amendment under section 422; or

32 B. Executing and filing a certificate by the registered
33 agent. The certificate must include:

34 (1) For the change of address of the registered office
35 of one or more limited partnerships for which the agent
36 is the registered agent to another address in this
37 State:

38 (a) The names of all limited partnerships;

- 2 (b) The address at which the registered agent has
maintained the registered office for each of those
4 limited partnerships; and
- 6 (c) The new address to which the registered
office will be changed; or
- 8 (2) For a change in the name of any person acting as
the registered agent:
- 10 (a) The new name of the registered agent;
- 12 (b) The name of the registered agent before it
14 was changed;
- 16 (c) The names of all the limited partnerships; and
- 18 (d) The address at which the registered agent has
20 maintained the registered office for each of these
limited partnerships.

22 Any registered agent filing a certificate under this
24 paragraph shall upon filing promptly mail or otherwise
26 deliver a copy of the certificate to a general partner of
each limited partnership affected by the change.

28 3. Resignation of registered agent. A registered agent may
resign by filing a certificate with the Secretary of State. The
30 certificate must include:

- 32 A. When the registered agent appoints a successor:
- 34 (1) A statement of resignation;
- 36 (2) The names of the limited partnerships;
- 38 (3) The name and address of the successor registered
agent; and
- 40 (4) An attached statement executed by each affected
42 limited partnership, signed by a general partner,
ratifying and approving the change of registered agent;
44 or
- 46 B. When the registered agent does not appoint a successor:
- 48 (1) A statement of resignation;
- 50 (2) The names of all the limited partnerships; and
- 52 (3) An attached affidavit stating that at least 30
days prior to and again on or about the date of the

2 filing of certificate of resignation, notices were sent
4 by certified or registered mail to each limited
6 partnership from which the registered agent is
8 resigning as registered agent. The notices must be sent
to the principal office of each partnership within or
outside this State, if known to the registered agent
or, if not, to the last known address of the individual
at whose request the registered agent was appointed.

10 The resignation takes effect under this paragraph 30 days
12 after the certificate is filed.

14 4. Secretary of State. The Secretary of State shall
16 furnish to the current registered agent an attested copy of any
18 certificate filed under this section.

20 5. Resignation of agent; appointment by partnership;
22 service of process. After receipt of the notice of the
24 resignation of its registered agent under subsection 3, paragraph
B, a limited partnership shall file a certificate of amendment
designating a new registered agent. Until the partnership duly
files a certificate appointing a new registered agent, legal
process against the limited partnership may be served upon the
Secretary of State in accordance with section 409.

26 **§408. Suspension by Secretary of State**

28 1. Secretary of State's authority to suspend. The
30 Secretary of State:

32 A. Shall suspend a domestic limited partnership when:

34 (1) The limited partnership has failed to pay any fees
36 or penalties as prescribed by this chapter when they
38 become due and payable;

40 (2) The limited partnership fails to appoint or name a
42 registered agent in this State;

44 (3) The limited partnership, after change of its
46 registered office or registered agent, fails to file
48 with the Secretary of State a notification of such a
50 change;

(4) A misrepresentation has been made of a material
fact in any application, report, affidavit or other
document required by this chapter; or

(5) The limited partnership fails to provide a list of
the names of the limited partners under section 437; or

2 B. May suspend a domestic limited partnership when the
3 partnership fails to provide a list of the names of the
4 limited partners under section 437.

6 2. Procedures. The Secretary of State shall use the
7 procedures set forth in section 498, subsection 2 relative to the
8 revoking of the right of a foreign limited partnership to do
9 business in this State for suspending domestic limited
10 partnerships.

12 3. Reinstatement. A domestic limited partnership that has
13 been suspended under this section may be reinstated by filing
14 proper notification of change of registered agent or registered
15 office, or both, with the Secretary of State, and paying the
16 penalty as set forth in section 526, subsection 13.

18 4. Liability of limited partners. A limited partner of a
19 domestic limited partnership is not liable as a general partner
20 of the limited partnership solely by reason of the limited
21 partnership having been suspended under this section.

22 **§409. Service of process upon domestic limited partnerships**

24 1. Serving process; general provisions. Legal process on a
25 domestic limited partnership may be served upon:

28 A. Any general partner of the limited partnership in this
29 State;

30 B. The registered agent of the limited partnership; or

32 C. Any liquidating trustee of the limited partnership.

34 2. Service on Secretary of State. If a domestic or foreign
35 limited partnership fails to appoint or maintain a registered
36 agent in this State, or its registered agent can not with
37 reasonable diligence be found at the registered office, then the
38 Secretary of State is an agent of that limited partnership upon
39 whom any process, notice or demand may be served. Service on the
40 Secretary of State of any such process, notice or demand must be
41 made as provided by the Maine Rules of Civil Procedure, Rule
42 4(d)(8) as amended.

44 3. Other means of service. Nothing in this section limits
45 or impairs the right to serve any process, notice or demand
46 required or permitted by law to be served upon a domestic limited
47 partnership in any other manner permitted by law or rule of court.

50 **§410. Service of nonresident general partners of domestic**
51 **limited partnerships**

2 1. Secretary of State; agent to receive service. Each
4 general partner of a domestic limited partnership who is a
6 nonresident of this State at the time of appointment or who
8 becomes a nonresident during the period of appointment, by
10 acceptance of appointment or by continuing to serve in the
12 capacity of general partner, is deemed to have appointed the
14 Secretary of State as an agent to receive service of process upon
16 that general partner in any action or proceeding relating to
18 actions of such limited partnership and arising while that
20 general partner was serving in the capacity of general partner.

22 2. Method of serving process. Service of any such process
24 upon the Secretary of State must be made in the same manner as is
26 provided by the Maine Rules of Civil Procedure, Rule 4(d)(8) as
28 amended, in the case of service upon the Secretary of State as an
30 agent of a foreign limited partnership.

32 A. A copy of the process must be mailed to the nonresident
34 general partner at the business, residence or mailing
36 address of the general partner shown on the certificate of
38 limited partnership.

40 3. Service on nonresident general partner. Service under
42 this section may also be made by delivery of a copy of the
44 process to the nonresident general partner at that general
46 partner's address outside the State. Proof of such delivery must
48 be made by affidavit of the person making delivery and the
50 affidavit must be filed with the clerk of the court in which the
52 action or proceeding is pending.

32 §411. Nature of business permitted

34 A limited partnership may carry on any business that a
36 partnership without limited partners may carry on, except as
38 otherwise prohibited by law.

40 §412. Business transactions of partner with partnership

42 Unless otherwise provided in the partnership agreement, a
44 partner may lend money to, borrow money from, act as a surety,
46 guarantor or endorser for, guarantee or assume one or more
48 specific obligations of, provide collateral for, and transact
50 other business with the limited partnership and, subject to other
52 applicable law, has the same rights and obligations with respect
thereto as a person who is not a partner.

44 §413. Indemnification

46 Subject to such standards and restrictions, if any, as are
48 set forth in its partnership agreement, a limited partnership has
50 the power to indemnify and hold harmless any partner or other
52 person from and against any and all claims and demands whatsoever.

2 **§414. Rules**

4 The Secretary of State may adopt rules not inconsistent with
6 this chapter pertaining to the filing of documents with the
8 Secretary of State. These may include, but are not limited to,
10 rules to:

12 1. Forms. Prescribe forms for any or all documents
14 required or permitted to be delivered for filing under this
16 chapter, and to refuse to file documents not utilizing these
18 prescribed forms;

20 2. Approve filing. Refuse to file any document that is not
22 clearly legible, or that may not be clearly reproducible
24 photographically;

26 3. Appoint designee. Appoint a designee or other agent to
28 receive documents for filing and to file documents on behalf of
30 the Secretary of State;

32 4. Electronic filings; facsimile signatures. Permit the
34 filing of documents by electronic transmission and permit
36 facsimile signatures on documents to be filed;

38 5. Deceptively similar. Set forth criteria to define the
40 term "deceptively similar"; and

42 6. Effective dates of filings. Unless specifically stated
44 in this chapter, set forth the effective dates of filings
46 required by this chapter.

48 **§415. Expedited service**

50 The Secretary of State may provide an expedited service for
52 the processing of documents in accordance with this chapter. If
54 the service is provided, the Secretary of State shall establish
56 by rule a fee schedule and governing procedures in accordance
58 with the Maine Administrative Procedure Act. All fees collected
60 for expedited service must be deposited into a fund for the use
62 by the Secretary of State in providing an improved filing service.

64 **SUBCHAPTER II**

66 **FORMATION AND CERTIFICATE OF LIMITED PARTNERSHIP**

68 **§421. Certificate of limited partnership**

70 1. Certificate of limited partnership. In order to form a
72 limited partnership, a certificate of limited partnership must be
74 filed with the Secretary of State. The certificate must set
76 forth:

- 2 A. The name of the limited partnership;
4 B. The address of the registered office and the name and
6 address of the registered agent for service of process
 required to be maintained by section 407;
8 C. The name and the business, residence or mailing address
 of each general partner; and
10 D. Any other matters the partners determine to include
12 therein.

14 2. Date of formation. A limited partnership is formed at
16 the time of the filing of the initial certificate of limited
18 partnership with the Secretary of State if there has been
20 substantial compliance with the requirements of this section. A
 limited partnership formed under this chapter is a separate legal
 entity, the existence of which as a separate legal entity
 continues until cancellation of the limited partnership's
 certificate of limited partnership.

22 §422. Amendment to certificate

24 1. Certificate of amendment. A certificate of limited
26 partnership is amended by filing a certificate of amendment
28 thereto with the Secretary of State. The certificate of
 amendment must set forth:

- 30 A. The name of the limited partnership; and
32 B. The amendment to the certificate.

34 2. Inaccuracies. A general partner who becomes aware that
36 any statement in a certificate of limited partnership, or any
38 certificate filed under this section, was inaccurate when made,
 or, as a result of subsequent events, has become inaccurate in
 any material respect, shall promptly amend the certificate.

40 3. Amendment required. No later than 90 days after the
42 happening of any of the following events an amendment to a
44 certificate of limited partnership reflecting the occurrence of
 the event or events must be filed by a general partner:

- 46 A. The admission of a new general partner;
48 B. The withdrawal of a general partner; or
50 C. A change in the name of the limited partnership, or,
 except as provided in section 407, subsections 2 and 3, a
 change in the address of the registered office or a change

2 in the name or address of the registered agent of the
3 limited partnership.

4 4. Right to amend at any time. A certificate of limited
5 partnership may be amended at any time for any other proper
6 purpose the general partners may determine.

8 5. Between dissolution and cancellation. If after the
9 dissolution of a limited partnership but prior to the filing of a
10 certificate of cancellation as provided in section 423 a
11 certificate of limited partnership has been amended to reflect
12 the withdrawal of all general partners of a limited partnership,
13 or a person other than an individual shown on a certificate of
14 limited partnership as a general partner is winding up the
15 limited partnership's affairs, then the certificate of limited
16 partnership must be amended to set forth the name and the
17 business, residence or mailing address of each person winding up
18 the limited partnership's affairs. Each person winding up the
19 affairs shall execute and file a certificate of amendment. Such
20 a person is not subject to liability as a general partner by
21 reason of such amendment. A general partner who is not winding
22 up a limited partnership's affairs need not execute a certificate
23 of amendment under this subsection.

24 6. Restated certificate of limited partnership. A limited
25 partnership may at any time file a restatement of its certificate
26 of limited partnership that integrates into a single document all
27 of the provisions of its certificate of limited partnership,
28 giving effect to all amendments previously adopted and, if
29 authorized, any further amendments. A restated certificate of
30 limited partnership, either in its heading or in an introductory
31 paragraph, must set forth:

34 A. That it is a restatement;

36 B. The limited partnership's present name;

38 C. If the name has been changed, the name under which it
39 was originally filed; and

40 D. The date of filing of the initial certificate of limited
41 partnership.

44 A restated certificate of limited partnership must be executed
45 and filed in the manner provided for any other amendment to a
46 certificate of limited partnership. Upon filing of the restated
47 certificate by the Secretary of State, the restatement, including
48 any further amendments made as a result of the restatement,
49 constitutes the certificate of limited partnership of the limited
50 partnership pursuant to section 421.

52 §423. Cancellation of certificate

2 1. Cancellation upon dissolution. A certificate of limited
3 partnership is canceled upon the dissolution and the completion
4 of winding up of the partnership, or at any other time there are
5 no limited partners. A certificate of cancellation must be filed
6 with the Secretary of State and set forth:

8 A. The name of the limited partnership;

10 B. The date of filing of its certificate of limited
11 partnership;

12 C. The reason for filing the certificate of cancellation;

14 D. The future effective date or time, which must be a date
15 or time certain, of cancellation if it is not to be
16 effective upon the filing of the certificate; and

18 E. Any other information the person filing the certificate
19 of cancellation determines.

22 §424. Execution

24 Each certificate delivered to the Secretary of State for
25 filing pursuant to this chapter must be executed in the following
26 manner.

28 1. Signatures. The documents must be signed as follows:

30 A. In the case of an initial certificate of limited
31 partnership, by all general partners;

32 B. In the case of a certificate of amendment or restatement
33 or certificate of correction:

34 (1) By at least one general partner; and

36 (2) By each other general partner designated in the
37 certificate of amendment as a new general partner.

38 If the certificate of amendment reflects the withdrawal of a
39 general partner as a general partner, it need not be signed
40 by that former general partner;

41 C. In the case of a certificate of cancellation or other
42 certificate filed after the dissolution of a limited
43 partnership:

44 (1) By all general partners;

2 (2) If neither the general nor the limited partners
4 are winding up the limited partnership's affairs, then
 by all liquidating trustees; or

6 (3) If the limited partners are winding up the limited
8 partnership's affairs, then by a majority in interest
 of the limited partners; or

10 D. In the case of a certificate of merger or consolidation,
12 by at least one general partner of each domestic limited
 partnership participating in the merger or consolidation.

14 2. Signature by agent. Unless otherwise provided in the
16 partnership agreement, any person may sign any certificate or
18 amendment to a certificate or enter in a partnership agreement or
20 amendment thereof by an agent, including an attorney-in-fact. An
22 authorization, including a power of attorney, to sign any
 certificate or amendment to a certificate or to enter into a
 partnership agreement or amendment to an agreement need not be in
 writing, need not be sworn to, verified or acknowledged, and need
 not be filed with the Secretary of State, but if in writing, must
 be retained by a general partner.

24 3. Oath; false swearing. The execution of a certificate
26 constitutes an oath or affirmation, under the penalties of false
28 swearing under Title 17-A, section 452, that, to the best of the
 signer's knowledge and belief, the facts stated in the
 certificate are true.

30 §425. Execution, amendment or cancellation by judicial order

32 If a person required to execute a partnership agreement or
34 amendment to the agreement or required by section 424 to execute
36 any certificate fails or refuses to do so, then any other person
38 who is adversely affected by the failure or refusal may petition
 the Superior Court to direct the execution of the agreement,
 amendment or certificate as follows.

40 1. Agreement or amendment. If the court finds that the
42 partnership agreement or amendment to the agreement should be
44 executed and that the person designated to execute the agreement
 or amendment has failed or refused to do so, it shall enter an
 order granting appropriate relief.

46 2. Certificate. If the court finds that the certificate
48 should be executed and that the person or persons designated to
 execute the certificate have failed or refused to do so, it shall
 order the Secretary of State to record an appropriate certificate.

50 3. Venue. Venue for any action under this section lies in
52 the county in this State in which the registered office of the
 limited partnership is located or, if there is no registered

2 office in this State, then in the Superior Court of Kennebec
County.

4 **§426. Filing**

6 1. Original filing. An original signed copy of any
7 certificate or other document authorized to be filed under any
8 provision of this chapter must be delivered to the Secretary of
9 State.

10 A. A person who executes a document as an agent or
11 fiduciary need not exhibit evidence of authority as a
12 prerequisite to filing.

13 B. Unless the Secretary of State finds that the certificate
14 or other document on its face does not conform to law, upon
15 receipt of all filing fees required by law, the Secretary of
16 State shall attest that the document has been filed with the
17 Secretary of State by endorsing thereon the word "filed" and
18 the day, month and year of the filing, and by signing or
19 initialing such endorsement in person or by agent. If the
20 person delivering the document for filing so requests, the
21 endorsement must further include the hour and minute of the
22 filing of the document.

23 C. The endorsement is known as the "filing date" of the
24 document, and is conclusive of the date, and the time if
25 included in the endorsement, of filing in the absence of
26 actual fraud.

27 D. The Secretary of State may use an identifying mark in
28 lieu of signing or initialing.

29 E. The filing date is the date first received unless
30 otherwise specified by statute or rule.

31 F. The Secretary of State shall file and index the original.

32 2. Attested copy. The Secretary of State shall promptly
33 make a copy of the original, and shall attest the copy by marking
34 upon it the same endorsement that is required to appear upon the
35 original, together with a further endorsement that the copy is a
36 true copy of the original document. The attested copy must be
37 returned to the person submitting the document for filing, or
38 that person's representative.

39 **§427. Materially inaccurate statement**

40 1. Liability. If any certificate of limited partnership or
41 certificate of amendment or cancellation contains a materially
42 inaccurate statement, one who suffers loss by reasonable reliance
43 on the statement may recover damages for the loss from:
44

2 A. Any general partner who executes the certificate and
4 knew or should have known the statement to be inaccurate in
 any material respect at the time the certificate was
 executed; and

6
8 B. Any general partner who thereafter knows that any
 arrangement or other fact described in the certificate is
10 inaccurate in any material respect or has changed, making
 the statement inaccurate in any material respect, if that
12 general partner had sufficient time to amend or cancel the
 certificate, or to file a petition for its amendment or
14 cancellation, before the statement was reasonably relied
 upon.

16 2. Exception. Notwithstanding subsection 1, no general
 partner has any liability for failing to cause the amendment or
18 cancellation of a certificate to be filed or failing to file a
 petition for its amendment or cancellation pursuant to subsection
20 1 if the certificate of amendment, certificate of cancellation or
 petition is filed within 90 days of when that general partner
22 knew or should have known the certificate was inaccurate in any
 material respect.

24

§428. Notice

26

28 The fact that a certificate of limited partnership is on
 file with the Secretary of State is notice that the partnership
30 is a limited partnership and is notice of all other facts set
 forth in the certificate that are required to be set forth in a
32 certificate of limited partnership by section 421, subsection 1,
 paragraphs A to B and by section 422, subsection 6.

34

SUBCHAPTER III

36

LIMITED PARTNERS

38

§431. Admission of limited partners

40

42 1. Date of admission. A person acquiring a partnership
 interest as a limited partner is admitted as a limited partner of
 the limited partnership:

44

46 A. In connection with the formation of a limited
 partnership, upon the later to occur of:

48

(1) The formation of the limited partnership; or

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(2) The time provided in and upon compliance with the
 partnership agreement; or

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B. After the formation of a limited partnership:

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(1) In the case of a person acquiring a partnership interest directly from the limited partnership:

(a) At the time provided in and upon compliance with the partnership agreement; or

(b) If the partnership agreement does not so provide, upon the consent of all partners and when the person's admission is reflected in the records of the limited partnership; or

(2) In the case of an assignee of a partnership interest, as provided in section 474:

(a) At the time provided in and upon compliance with the partnership agreement; or

(b) If the partnership agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited partnership.

2. Contribution not required. A person may be admitted to a limited partnership as a limited partner of the limited partnership and may receive a partnership interest in the limited partnership without making a contribution or being obligated to make a contribution to the limited partnership.

3. Written agreement. A written partnership agreement or other written agreement or writing:

A. May provide that a person is admitted as a limited partner of a limited partnership, or becomes an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned, and becomes bound by the partnership agreement if that person, or a representative authorized by that person orally, in writing or by other action such as payment for a partnership interest:

(1) Executes the partnership agreement or any other writing evidencing the intent of that person to become a limited partner or assignee; or

(2) Does not execute the agreement or writing but complies with the conditions for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests, orally, in writing or by other action such as payment for a partnership interest, that the records of the limited partnership reflect the admission or assignment; and

2 B. May not be unenforceable by reason of its not having been
4 signed by a person being admitted as a limited partner or
6 becoming an assignee as provided in paragraph A,
 subparagraph (1), or by reason of its having been signed by
 a representative as provided in this chapter.

8 §432. Classes and voting

10 1. Provision to establish classes or groups of limited
12 partners. A partnership agreement may:

14 A. Provide for classes or groups of limited partners having
16 such relative rights, powers and duties as the partnership
18 agreement may provide;

20 B. Make provision for the future creation in the manner
22 provided in the partnership agreement of additional classes
24 or groups of limited partners having those relative rights,
26 powers and duties as may from time to time be established,
28 including rights, powers and duties senior to existing
30 classes and groups of limited partners; or

32 C. Provide for the taking of an action by all or a class or
34 group of general partners, without other general or limited
36 partners having the right to participate, including the
38 amendment of the partnership agreement to create under the
40 provisions of the partnership agreement a class or group of
42 partnership interests that was not previously outstanding.

44 2. Voting. The partnership agreement may grant to all or
46 certain identified limited partners or a specified class or group
48 of the limited partners the right to vote separately or with all
50 or any class or group of the limited partners or the general
52 partners, on any matter. Voting by limited partners may be on a
 per capita, number, financial interest, class, group or any other
 basis.

3. Notice of meetings. A partnership agreement that grants
 a right to vote may set forth provisions relating to:

A. Notice of the time, place or purpose of any meeting at
 which any matter is to be voted on by any limited partners;

B. Waiver of any such notice;

C. Action by consent without a meeting;

D. The establishment of a record date;

E. Quorum requirements;

2 F. Voting in person or by proxy; or

4 G. Any other matter with respect to the exercise of any such
right to vote.

6 §433. Powers and liabilities

8 1. Participation in management. Except as provided in the
partnership agreement or applicable law, a limited partner may
10 not participate in the management of the partnership's business.

12 2. Limited liability. A limited partner is not liable for
the obligations of a limited partnership unless the limited
14 partner is also a general partner or, in addition to the exercise
of rights and powers as a limited partner, the limited partner
16 participates in the control of the business. If the limited
partner does participate in the control of the business, the
18 limited partner is liable only to persons who transact business
with the limited partnership reasonably believing, based upon the
20 limited partner's conduct, that the limited partner is a general
partner.

22 3. Participation in control of business, defined. A
limited partner does not participate in the control of the
24 business within the meaning of subsection 2 by virtue of the
limited partner possessing, or regardless of whether or not the
26 limited partner has the rights or powers, exercising or
attempting to exercise one or more of the following rights or
28 powers; or regardless of whether or not the limited partner has
the rights or powers, having acted or attempting to act in one or
30 more of the following capacities:

32 A. To be an independent contractor for or to transact
business with, including being a contractor for, or to be an
34 agent or employee of, the limited partnership or a general
agent or employee of, the limited partnership or a general
36 partner, or to be an officer, director or stockholder of a
corporate general partner, or to be a limited partner of a
38 partnership that is a general partner of the limited
partnership, or to be a trustee, administrator, executor,
40 custodian or other fiduciary or beneficiary of an estate or
trust that is a general partner, or to be a trustee,
42 officer, advisor, stockholder or beneficiary of a business
trust that is a general partner;

44 B. To consult with or advise a general partner with respect
to any matter, including the business of the limited
46 partnership;

48 C. To act as surety, guarantor or endorser for the limited
partnership or a general partner, to guaranty or assume one
50 or more obligations of the limited partnership or a general
partner, to borrow money from the limited partnership or a
52 partner;

2 general partner, to lend money to the limited partnership or
3 a general partner or to provide collateral for the limited
4 partnership or a general partner;

5
6 D. To call, request, attend or participate at a meeting of
7 the partners or the limited partnership;

8 E. To wind up a limited partnership pursuant to section 483;

9
10 F. To take any action required or permitted by law to
11 bring, pursue or settle or otherwise terminate a derivative
12 action in the right of the limited partnership;

13
14 G. To serve on a committee of the limited partnership or the
15 limited partners;

16
17 H. To act or cause the taking or refraining from the taking
18 of any action, including by proposing, approving, consenting
19 or disapproving, by voting or otherwise, with respect to one
20 or more of the following matters:

21 (1) The dissolution and winding up of the limited
22 partnership or an election to continue the limited
23 partnership or an election to continue the business of
24 the limited partnership;

25
26 (2) The sale, exchange, lease, mortgage, assignment,
27 pledge or other transfer of, or granting of a security
28 interest in, any asset or assets of the limited
29 partnership;

30
31 (3) The incurrence, renewal, refinancing or payment or
32 other discharge of indebtedness by the limited
33 partnership;

34
35 (4) A change in the nature of the business;

36
37 (5) The admission, removal or retention of a general
38 partner;

39
40 (6) The admission, removal or retention of a limited
41 partner;

42
43 (7) A transaction or other matter involving an actual
44 or potential conflict of interest;

45
46 (8) An amendment to the partnership agreement or
47 certificate of limited partnership;

48
49 (9) The merger or consolidation of a limited
50 partnership;

51
52

2 (10) In respect of a limited partnership that is
4 registered as an investment company under the
6 Investment Company Act of 1940, 15 United States Code,
8 Section 81a-1 et seq., as amended, any matter required
10 by the Investment Company Act of 1940, as amended, or
12 the rules and regulations of the Securities and
 Exchange Commission thereunder, to be approved by the
 holders of beneficial interests in an investment
 company, including the electing of directors or
 trustees of the investment company, the approving or
 terminating of investment advisory or underwriting
 contracts and the approving of auditors;

14 (11) The indemnification of any partner or other
16 person; or

18 (12) Such other matters as are stated in the
20 partnership agreement or in any other agreement or in
 writing;

22 I. To serve on the board of directors or a committee of, to
24 consult with or advise, to be an officer, director,
26 stockholder, partner, agent or employee of, or to be a
 fiduciary for, any person in which the limited partnership
 has an interest; or

28 J. To exercise any right or power granted or permitted to
30 limited partners under this chapter and not specifically
 enumerated in this subsection.

32 4. Other powers. The enumeration in subsection 3 does not
34 mean that the possession or exercise of any other powers or
36 having or acting in other capacities by a limited partner
 constitutes participation by the limited partner in the control
 of the business of the partnership.

38 5. Use of name in name of limited partnership. A limited
40 partner does not participate in the control of the business
42 within the meaning of subsection 2 by virtue of the fact that all
 or any part of the name of such limited partner is included in
 the name of the limited partnership.

44 6. Rights or powers not created. This section does not
46 create rights or powers of limited partners. Such rights and
48 powers may be created only by a certificate of limited
 partnership, a partnership agreement or any other agreement or in
 writing, or other sections of this chapter.

50 7. Frequency. A limited partner does not participate in
52 the control of the business within the meaning of subsection 2
 regardless of the nature, extent, scope, number or frequency of
 the limited partner's possessing or, regardless of whether or not

2 the limited partner has the rights or powers, exercising or
4 attempting to exercise one or more of the rights or powers or
6 having acted or, regardless of whether or not the limited partner
8 has the rights or powers, acting or attempting to act in one or
10 more of the capacities permitted under this section.

12 §434. Person erroneously believing self to be a limited partner

14 1. Not a general partner. Except as provided in subsection
16 2, a person who erroneously but in good faith believes that the
18 person has become a limited partner in the limited partnership is
20 not a general partner in the partnership and is not bound by the
22 obligations of a general partner by reason of making a
24 contribution to a partnership, receiving distributions from the
26 partnership or exercising any rights of a limited partner, if,
28 within a reasonable time after ascertaining the mistake, the
30 person causes an appropriate certificate of limited partnership
32 or a certificate of amendment to be executed and filed, or files
34 or causes to be filed with the Secretary of State a writing
36 entitled "Filing Pursuant to Title 31, section 304" that sets
38 forth:

40 A. In the case of a person who wishes to be a limited
42 partner:

44 (1) The name of the limited partnership;

46 (2) The name and mailing address of the person signing
48 the writing;

50 (3) That the person signing the writing acquired a
52 limited partnership interest in the partnership;

(4) That the person signing the writing has done one or
both of the following:

(a) Requested a general partner of the limited
partnership to file an accurate certificate of
limited partnership required by this chapter; and

(b) Instituted a proceeding pursuant to section
425 to cause the general partner to file an
amended certificate, which proceeding has not been
concluded; and

(5) That the writing is being filed pursuant to
paragraph A, and that the person signing the writing is
claiming not to be a general partner of the limited
partnership named in the writing; or

B. In the case of a person who wishes to withdraw from the
partnership:

- 2 (1) The information described in paragraph A,
3 subparagraphs (1) to (3);
- 4
- 5 (2) That the person signing the writing has renounced
6 future equity participation in the enterprise; and
- 7
- 8 (3) That the writing is being filed pursuant to this
9 paragraph and that the person signing the writing is
10 claiming status as a limited partner of the enterprise
11 for the period including and prior to the filing of the
12 certificate pursuant to this subsection.

14 2. Liable to 3rd party. A person who makes a contribution
15 of the kind described in subsection 1 is liable as a general
16 partner to any 3rd party who transacts business with the
17 partnership only if the 3rd party actually believes in good faith
18 that the person was a general partner at the time of the
19 transaction and acted in reasonable reliance on that belief in
20 entering the transaction:

- 21 A. Before the person withdraws and an appropriate
22 certificate is filed to show withdrawal; or
- 23
- 24 B. Before an appropriate certificate is filed to show that
25 the person is not a general partner.

26

27 §435. Access to information

28

29 1. Right to information. Each limited partner has the
30 right, subject to such reasonable standards, including standards
31 governing what information and documents are to be furnished, at
32 what time and location and at whose expense, as may be set forth
33 in the partnership agreement or otherwise established by the
34 general partners, to obtain from the general partners from time
35 to time upon reasonable demand for any purpose reasonably related
36 to the limited partner's interest as a limited partner:

- 37 A. True and full information regarding the status of the
38 business and financial condition of the limited partnership;
- 39
- 40 B. Promptly after becoming available, a copy of the limited
41 partnership's federal, state and local income tax returns
42 for each year;
- 43
- 44 C. A current list of the name and last known business,
45 residence or mailing address of each partner;
- 46
- 47 D. A copy of any written partnership agreement and
48 certificate of limited partnership and all amendments
49 thereto, together with executed copies of any written powers
50 of attorney pursuant to which the partnership agreement and
51 of attorney pursuant to which the partnership agreement and
52 of attorney pursuant to which the partnership agreement and

2 any certificate and all amendments thereto have been
3 executed;

4 E. True and full information regarding the amount of cash
5 and a description and statement of the agreed value of any
6 other property or services contributed by each partner and
7 that each partner has agreed to contribute in the future,
8 and the date on which each became a partner; and

10 F. Other information regarding the affairs of the limited
11 partnership as is just and reasonable.

12 2. Confidential information. Except for those items
13 contained in subsection 1, paragraphs A to E and those items
14 specifically required to be disclosed by the partnership
15 agreement, a general partner has the right to keep confidential
16 from limited partners for such a period of time as the general
17 partner deems reasonable, any information not required to be
18 disclosed by the partnership agreement that the general partner
19 reasonably believes to be in the nature of trade secrets or other
20 information the disclosure of which the general partner in good
21 faith believes is not in the best interest of the limited
22 partnership or could damage the limited partnership or its
23 business or that the limited partnership is required by law or by
24 agreement with a 3rd party to keep confidential.

26 3. Records; medium. A limited partnership may maintain its
27 records in other than written form if such form is capable of
28 conversion into written form within a reasonable time.

30 4. Demands in writing. Except for information or documents
31 requested under subsection 1, paragraphs B to E, any demand under
32 this section must be in writing and must state the purpose of the
33 demand.

36 5. Actions; Superior Court. Any action to enforce any
37 right arising under this section must be brought in Superior
38 Court of the county in which the principal office of the limited
39 partnership is located or in Superior Court in Kennebec County.

40 6. Court costs. In any action under this section, if the
41 court finds the failure of the partnership to comply with the
42 requirements of this section to have been without justification,
43 the court may award an amount sufficient to reimburse the
44 partners bringing the action for the reasonable expenses incurred
45 by the partners, including attorney's fees, in connection with
46 the action or proceeding.

48 §436. Remedies for breach of partnership agreement by limited
49 partner

2 A partnership agreement may provide that a limited partner
4 who fails to perform in accordance with, or to comply with the
6 terms and conditions of, the partnership agreement is subject to
8 specified penalties or specified consequences. The agreement may
10 also specify at what time or upon the happening of which events
12 the penalties or consequences take effect.

8 §437. Disclosure of limited partners

10 1. Required by Secretary of State; oath. If the Secretary
12 of State considers the request to be in the public interest, the
14 Secretary of State, on the Secretary of State's own initiative
16 or at the request of a 3rd party, shall require the partnership
18 to disclose in writing the names and addresses of its limited
20 partners. In determining whether a request by a 3rd party is in
22 the public interest, the Secretary of State may require the 3rd
24 party to state under oath the use that will be made of the
26 requested information. The use of the information for
28 commercial purposes may not be deemed in the public interest.

22 2. Penalty. If the limited partnership fails to disclose
24 the names of the limited partners within 10 working days after
26 the request has been delivered, the Secretary of State may assess
28 a fine of \$10 a day for each day the information is not filed.
30 In no case may this penalty exceed \$500. The Secretary of State
32 may, at any time, suspend the limited partnership under section
34 408, subsection 1 for noncompliance with this section.

30 3. Rules. The Secretary of State may establish by rule
32 procedures to govern this section and criteria to determine
34 whether disclosure is in the public interest.

34 SUBCHAPTER IV

36 GENERAL PARTNERS

38 §441. Admission of general partners

40 1. Written consent of partners. After the filing of a
42 limited partnership's initial certificate of limited partnership,
44 unless otherwise provided in the partnership agreement,
46 additional general partners may be admitted only with the written
48 consent of each partner.

46 2. Contribution not required. A person may be admitted to
48 a limited partnership as a general partner of the limited
50 partnership and may receive a partnership interest in the limited
52 partnership without making a contribution or being obligated to
make a contribution to the limited partnership. Nothing
contained in this subsection affects the first sentence of
section 443, subsection 2.

2 §442. Events of withdrawal

4 I. Reasons for withdrawal of general partner. A person
6 ceases to be a general partner of a limited partnership upon the
8 happening of any of the following events:

10 A. The general partner withdraws from the limited
12 partnership as provided in section 462;

14 B. The general partner ceases to be a general partner of
16 the limited partnership as provided in section 472;

18 C. The general partner is removed as a general partner in
20 accordance with the partnership agreement;

22 D. Unless otherwise provided in the partnership agreement,
24 or with the written consent of all partners, the general
26 partner:

28 (1) Makes an assignment for the benefit of creditors;

30 (2) Files a voluntary petition in bankruptcy;

32 (3) Is adjudged a bankrupt or insolvent, or has
34 entered against the general partner an order of relief
36 in any bankruptcy or insolvency proceeding;

38 (4) Files a petition or answer seeking for the general
40 partner any reorganization, arrangement, composition,
42 readjustment, liquidation, dissolution or similar
44 relief under any statute, law or regulation;

46 (5) Files an answer or other pleading admitting or
48 failing to contest the material allegations of a
50 petition filed against the general partner in any
52 proceeding of this nature; or

(6) 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
the general partner's properties;

E. Unless otherwise provided in the partnership agreement,
or with the written consent of all partners, 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 the general partner's consent or acquiescence of a
trustee, receiver or liquidator of the general partner or of
all or any substantial part of the general partner's

2 properties, the appointment is not vacated or stayed, or
3 within 90 days after the expiration of any such stay, the
4 appointment is not vacated;

6 F. In the case of a general partner who is a natural person:

8 (1) The general partner's death; or

10 (2) The entry by court of competent jurisdiction
11 adjudicating the general partner incompetent to manage
12 the general partner's person or the general partner's
13 property;

14 G. In the case of a general partner who is acting as a
15 general partner by virtue of being a trustee of a trust, the
16 termination of the trust; but not merely the substitution of
17 a new trustee;

18 H. In the case of a general partner that is a separate
19 partnership, the dissolution and commencement of winding up
20 of the separate partnership;

22 I. In the case of a general partner that is a corporation,
23 the filing of a certificate of dissolution, or its
24 equivalent, for the corporation or the suspension of its
25 charter and the expiration of 90 days after the date of
26 notice to the corporation of suspension without a
27 reinstatement of its charter; or

30 J. Unless otherwise provided in the partnership agreement,
31 or with the written consent of all partners, in the case of
32 a general partner that is an estate, the distribution by the
33 fiduciary of the estate's entire interest in the limited
34 partnership.

36 2. Notification in writing. A general partner who suffers
37 an event that with the passage of the specified period becomes an
38 event of withdrawal under subsection 1, paragraph D or E shall
39 notify each other general partner, or in the event that there are
40 no other general partners, each limited partner, of the
41 occurrence of the event within 30 days after the date of
42 occurrence of the event of withdrawal.

44 §443. General powers and liabilities

46 1. Rights and powers. Except as provided in this chapter
47 or in the partnership agreement, a general partner but not a
48 limited partner of a limited partnership has the rights and
49 powers and is subject to the restrictions of a partner in a
50 partnership without limited partners.

2 2. Liabilities. Except as provided in this chapter, a
4 general partner of a limited partnership has the liabilities of a
6 partner in a partnership without limited partners to persons
8 other than the partnership and the other partners. Except as
10 provided in this chapter or in the partnership agreement, a
12 general partner of a limited partnership has the liabilities of a
14 partner in a partnership without limited partners to the
16 partnership and to the other partners.

18 §444. Contributions by a general partner

20 A general partner of a limited partnership may make
22 contributions to the limited partnership and share in the profits
24 and losses of, and in distributions from, the limited partnership
26 as a general partner. A general partner also may make
28 contributions to and share in profits, losses and distributions
30 as a limited partner. A person who is both a general partner and
32 a limited partner has the rights and powers, and is subject to
34 the restrictions and liabilities, of a general partner and except
36 as provided in the partnership agreement also has the rights and
38 powers, and is subject to the restrictions, of a limited partner
40 to the extent of the general partner's participation in the
42 partnership as a limited partner.

44 §445. Classes and voting

46 1. Classes or groups of general partners. A partnership
48 agreement may provide for classes or groups of general partners
50 having such relative rights, powers and duties as the partnership
52 agreement may provide, and may make provision for the future
54 creation in the manner provided in the partnership agreement of
56 additional classes or groups of general partners having such
58 relative rights, powers and duties as may from time to time be
60 established, including rights, powers and duties senior to
62 existing classes and groups of general partners. A partnership
64 agreement may provide for the taking of an action, including the
66 amendment of the partnership agreement, without the vote or
68 approval of any general partner or class or group of general
70 partners, including an action to create under the provisions of
72 the partnership agreement a class or group of partnership
74 interests that was not previously outstanding.

76 2. Voting. The partnership agreement may grant to all or
78 certain identified general partners or a specified class or group
80 of the general partners the right to vote, separately or with all
82 or any class or group of the limited partners or the general
84 partners, on any matter. Voting by general partners may be on a
86 per capita, number, financial interest, class, group or any other
88 basis.

90 3. Notice of meetings. A partnership agreement that grants
92 a right to vote may set forth provisions relating to notice of

2 the time, place or purpose of any meeting at which any matter is
4 to be voted on by any general partners, waiver of any such
6 notice, action by consent without a meeting, the establishment of
8 a record date, quorum requirements, voting in person or by proxy
10 or any other matter with respect to the exercise of any such
12 right to vote.

14 **§446. Nature of general partner's services**

16 A general partner's services are deemed to be personal in
18 nature and, unless the partnership agreement otherwise provides,
20 may not be assumed by another party without the consent of all
22 partners.

24 **§447. Remedies for breach of partnership agreement by general**
26 **partner**

28 A partnership agreement may provide that:

30 1. Failure to comply. A general partner who fails to
32 perform in accordance with, or to comply with the terms and
34 conditions of, the partnership agreement is subject to specified
36 penalties or specified consequences; and

38 2. Subject to penalties. At the time or upon the happening
40 of events specified in the partnership agreement, a general
42 partner is subject to specified penalties or specified
44 consequences.

46 **SUBCHAPTER V**

48 **FINANCE**

50 **§451. Form of contribution**

52 The contribution of a partner may be in cash, tangible or
54 intangible property, or services rendered, or a promissory note
56 or other obligation to contribute cash or property or to perform
58 services.

60 **§452. Liability for contribution**

62 1. Contribution. Except as provided in the partnership
64 agreement, a partner is obligated to the limited partnership to
66 perform any promise to contribute cash or property or to perform
68 services, even if the partner is unable to perform because of
70 death, disability or any other reason. If a partner does not
72 make the required contribution of property or services, the
74 partner is obligated at the option of the limited partnership to
76 contribute cash equal to that portion of the agreed value as
78 stated in the records of the limited partnership of the
80 contribution that has not been made. The option of the limited

2 partnership is in addition to, and not in lieu of, any other
3 rights, including the right to specific performance, that the
4 limited partnership may have against such a partner under the
5 partnership agreement or applicable law.

6 2. Liability limited. Unless otherwise provided in the
7 partnership agreement, the obligation of a partner to make a
8 contribution, or to pay any interest payable on the contribution,
9 or return money or other property paid or distributed in
10 violation of this chapter may be compromised only by consent of
11 all the partners. Notwithstanding the compromise, a creditor of
12 a limited partnership who acts or refrains from acting in
13 reasonable reliance on that obligation, and who does not know of
14 such compromise, may enforce the obligation. A conditional
15 obligation of a partner to make a contribution or return money or
16 other property to a limited partnership may not be enforced
17 unless the conditions to the obligation have been satisfied or
18 waived as to or by that partner. Conditional obligations include
19 contributions payable upon a discretionary call of a limited
20 partnership or a general partner prior to the time the call
21 occurs.

22 3. Penalty. A partnership agreement may provide that the
23 interest of any partner who fails to make any contribution that
24 the partner is obligated to make is subject to specified
25 penalties for, or specified consequences of, such a failure. The
26 penalty or consequence may take the form of reducing or
27 eliminating the defaulting partner's proportionate interest in
28 the limited partnership, subordinating the partner's partnership
29 interest to that of nondefaulting partners, a forced sale of the
30 partner's partnership interest, forfeiture of the partner's
31 partnership interest, the lending by other partners of the amount
32 necessary to meet the partner's commitment, a fixing of the value
33 of the partner's partnership interest by appraisal or by formula
34 and redemption or sale of the partner's partnership interest at
35 that value, or other penalty or consequence.

36 **§453. Allocation of profits and losses**

37 The profits and losses of a limited partnership must be
38 allocated among the partners, and among classes or groups of
39 partners, in the manner provided in the partnership agreement.
40 If the partnership agreement does not so provide, the profits and
41 losses must be allocated on the basis of the agreed value, as
42 stated in the records of the limited partnership, of the
43 contributions made by each partner to the extent they have been
44 received by the limited partnership and have not been returned.

45 **§454. Allocation of distributions**

46 Distributions of cash or other assets of a limited
47 partnership must be allocated among the partners, and among
48

2 classes or groups of partners, in the manner provided in the
partnership agreement.

4 If the partnership agreement does not so provide,
6 distributions must be made on the basis of the agreed value, as
8 stated in the records of the limited partnership, of the
contributions made by each partner to the extent they have been
received by the limited partnership and have not been returned.

10 **SUBCHAPTER VI**

12 **DISTRIBUTIONS AND WITHDRAWAL**

14 **§461. Interim distributions**

16 Except as provided in this subchapter, to the extent and at
18 the times or upon the happening of the events specified in the
20 partnership agreement, a partner is entitled to receive from a
22 limited partnership distributions before the partner's withdrawal
from the limited partnership and before the dissolution and
winding up of the limited partnership.

24 **§462. Withdrawal of general partner and assignment of general**
partner's partnership interest

26 1. Terms of withdrawal in partnership agreement. A general
28 partner may withdraw from a limited partnership at the time or
upon the happening of events specified in the partnership
agreement and in accordance with the partnership agreement.

30 2. Penalty, violation of withdrawal terms in partnership
32 agreement. A partnership agreement may provide that a general
34 partner does not have the right to withdraw as a general partner
of a limited partnership. Notwithstanding that a partnership
36 agreement provides that a general partner does not have the right
to withdraw as a general partner of a limited partnership, a
38 general partner may withdraw from a limited partnership at any
time by giving written notice to the other partners. If the
40 withdrawal of a general partner violates the partnership
agreement, in addition to any remedies otherwise available under
42 applicable law, the limited partnership may recover from the
withdrawing general partner damages for breach of the partnership
44 agreement and offset the damages against any amounts otherwise
distributable or payable to the withdrawing general partner under
the partnership agreement or otherwise.

46 3. Prohibition on assignment of interest. Notwithstanding
48 anything to the contrary set forth in this chapter, a partnership
agreement may provide that a general partner may not assign a
50 partnership interest in a limited partnership prior to the
dissolution and winding up of the limited partnership.

2 **§463. Withdrawal of limited partner**

4 A limited partner may withdraw from a limited partnership at
6 the time or upon the happening of events specified in the
8 partnership agreement and in accordance with the partnership
10 agreement. If the partnership agreement does not specify the
12 time or the events upon the happening of which a limited partner
14 may withdraw or a definite time for the dissolution and winding
16 up of the limited partnership, a limited partner may withdraw
18 upon not less than 6 months' prior written notice to each general
20 partner at the general partner's address as set forth in the
22 certificate of limited partnership filed with the Secretary of
24 State. Notwithstanding anything to the contrary set forth in this
26 chapter, a partnership agreement may provide that a limited
28 partner may not withdraw from a limited partnership or assign a
30 partnership interest in a limited partnership prior to the
32 dissolution and winding up of the limited partnership.

34 **§464. Distribution upon withdrawal**

36 Except as provided in this subchapter, upon withdrawal any
38 withdrawing partner is entitled to receive any distribution to
40 which the partner is entitled under the partnership agreement
42 and, if not otherwise provided in the partnership agreement, the
44 partner is entitled to receive, within a reasonable time after
46 withdrawal, the fair value of the partner's interest in the
48 limited partnership as of the date of withdrawal.

50 **§465. Distribution in kind**

52 Except as provided in the partnership agreement, a partner,
54 regardless of the nature of the partner's contribution, has no
56 right to demand and receive any distribution from a limited
58 partnership in any form other than cash. Except as provided in
60 the partnership agreement, a partner may not be compelled to
62 accept a distribution of any asset in kind from a limited
64 partnership to the extent that the percentage of the asset
66 distributed to the partner exceeds a percentage of that asset
68 that is equal to the percentage in which the partner shares in
70 distributions from the limited partnership.

72 **§466. Right to distribution**

74 Subject to sections 467 and 484, and unless otherwise
76 provided in the partnership agreement, at the time a partner
78 becomes entitled to receive a distribution, the partner has the
80 status of, and is entitled to all remedies available to, a
82 creditor of the limited partnership with respect to the
84 distribution. A partnership agreement may provide for the
86 establishment of a record date with respect to allocations and
88 distributions by the limited partnership.

2 §467. Limitations on distribution

4 1. Limit on distributions. A limited partnership may not
6 make a distribution to a partner to the extent that at the time
8 of the distributions, after giving effect to the distribution,
10 all liabilities of the limited partnership, other than
12 liabilities to partners on account of their partnership interests
14 and liabilities for which the recourse of creditors is limited to
specified property of the limited partnership, exceed the fair
value of the assets of the limited partnership, except that the
fair value of property that is subject to a liability for which
the recourse of creditors is limited is included in the assets of
the limited partnership only to the extent that the fair value of
that property exceeds that liability.

16 2. Liability for receipt of distributions in excess of
18 allowable amount. A partner who receives a distribution in
20 violation of subsection 1 is liable to the limited partnership
22 for the amount of the distribution. Notwithstanding the
24 preceding sentence, a limited partner who receives a distribution
26 in violation of subsection 1, and who did not know, and did not
have reason to know, at the time of the distribution that the
distribution violated subsection 1, is not liable for the amount
of the distribution. Subject to subsection 3, this subsection
does not affect any obligation or liability of a limited partner
under a partnership agreement or under applicable law for the
amount of a distribution.

28 3. Limited partners liability for receipt of distributions
30 in excess of the allowable amount. Unless otherwise agreed, a
32 limited partner who receives a distribution from a limited
34 partnership has no liability under this chapter or other
applicable law for the amount of the distribution after the
expiration of 3 years from the date of the distribution.

36 SUBCHAPTER VII

38 ASSIGNMENT OF PARTNERSHIP INTERESTS

40 §471. Nature of partnership interest

42 A partnership interest is personal property. A partner has
44 no interest in specific limited partnership property.

46 §472. Assignment of partnership interest

48 1. General rules. Unless otherwise provided in the
partnership agreement:

50 A. A partnership interest is assignable in whole or in part;

2 B. An assignment of a partnership interest does not dissolve
4 a limited partnership or entitle the assignee to become or
to exercise any rights or powers of a partner;

6 C. An assignment entitles the assignee to share in profits
8 and losses, to receive distribution or distributions and to
10 receive such allocation of income, gain, loss, deduction or
credit or similar item to which the assignor was entitled,
to the extent assigned. An assignment is not binding upon
the partnership unless it has notice of the assignment; and

12 D. Until the assignee of a partnership interest becomes a
14 partner, the assignor partner continues to be a partner and
16 to have the power to exercise any rights or powers of a
18 partner, except to the extent those rights or powers are
20 assigned. On the assignment by a general partner of all of
the general partner's rights as a general partner, the
general partner's status as a general partner may be
terminated by the affirmative vote of a majority in interest
of the limited partners.

22 2. Evidence of interest. The partnership agreement may
24 provide that a partner's interest in a limited partnership may be
26 evidenced by a certificate of partnership interest issued by the
28 limited partnership and may also provide for the assignment or
transfer of any partnership interest represented by such a
certificate and make other provisions with respect to the
certificates.

30 3. Liability of assignee. Unless otherwise provided in a
32 partnership agreement and to the extent assumed by agreement,
34 until an assignee of a partnership interest becomes a partner,
the assignee has no liability as a partner solely as a result of
the assignment.

36 §473. Rights of judgment creditor

38 On application to a court of competent jurisdiction by any
40 judgment creditor of a partner, the court may charge the
42 partnership interest of the partner with payment of the
44 unsatisfied amount of the judgment with interest. To the extent
46 so charged, the judgment creditor has only the rights of an
assignee of the partnership interest. This chapter does not
deprive any partner of the benefit of any exemption laws
applicable to that partner's partnership interest.

48 §474. Right of assignee to become limited partner

50 1. Right to become limited partner. An assignee of a
52 partnership interest, including an assignee of a general partner,
may become a limited partner if and to the extent that:

2 A. The partnership agreement so provides; or

4 B. All other partners and the assignee consent.

6 2. Rights; powers; restrictions; liabilities of assignee
7 who becomes limited partner. An assignee who has become a
8 limited partner has, to the extent assigned, the rights and
9 powers and is subject to the restrictions and liabilities of a
10 limited partner under the partnership agreement and this
11 chapter. Notwithstanding the foregoing, unless otherwise
12 provided in the partnership agreement, an assignee who becomes a
13 limited partner is liable for the obligations of the assignee's
14 assignor to make contributions as provided in section 452, but is
15 not liable for the obligations of the assignee's assignor under
16 subchapter VI. The assignee is not obligated for liabilities,
17 including the obligations of the assignee's assignor to make
18 contributions as provided in section 452, unless these
19 liabilities are known to the assignee at the time the assignee
20 became a limited partner or could have been ascertained from the
21 partnership agreement.

22 3. Assignor's continuing liabilities. Unless otherwise
23 provided in the partnership agreement, whether or not an assignee
24 of a partnership interest becomes a limited partner, the assignor
25 is not released from the assignor's liability to the limited
26 partnership under subchapters V and VI.

28 §475. Powers of estate of deceased or incompetent partner

30 If a partner who is an individual dies or a court of
31 competent jurisdiction adjudges the partner to be incompetent to
32 manage the partner's person or property, the partner's executor,
33 administrator, guardian, conservator or other legal
34 representative may exercise all of the partner's rights for the
35 purpose of settling the partner's estate or administering the
36 partner's property, including any power the partner had to give
37 an assignee the right to become a limited partner. If a partner
38 is a corporation, trust or other entity and is dissolved or
39 terminated, the powers of that partner may be exercised by its
40 legal representative or successor.

42 SUBCHAPTER VIII

44 DISSOLUTION

46 §481. Nonjudicial dissolution

48 A limited partnership is dissolved and its affairs are wound
49 up upon the first to occur of the following:

50 1. Specified time or event. At the time or upon the
52 happening of events specified in the partnership agreement;

2 **2. Consent. Written consent of all partners;**

4 **3. Withdrawal of general partner.** An event of withdrawal
6 of a general partner, unless at the time there is at least one
8 other general partner and the partnership agreement permits the
10 business of the limited partnership to be carried on by the
12 remaining general partner and that partner does so; but the
14 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,
effective as of the date of withdrawal, of one or more additional
general partners if necessary or desired; or

16 **4. Judicial dissolution.** Entry of decree of judicial
18 dissolution under section 482.

20 **§482. Judicial dissolution**

22 On application by or for a partner, the Superior Court may
24 decree dissolution of a limited partnership whenever it is not
reasonably practicable to carry on the business in conformity
with the partnership agreement.

26 **§483. Winding up**

28 **1. Persons authorized to wind up a partnership.** Unless
30 otherwise provided in the partnership agreement, the general
32 partners who have not wrongfully dissolved a limited partnership
34 or, if none, the limited partners or one or more liquidating
36 trustees approved by the limited partners or, if there is more
than one class or group of limited partners, then by each class
or group of limited partners, in either case by a majority in
interest of the limited partners, may wind up the limited
partnership's affairs; but the Superior Court, upon cause shown,
may wind up the limited partnership's affairs upon application of
any partner or a partner's legal representative or assignee, and
in connection with the winding up, may appoint a liquidating
trustee.

42 **2. Liquidation process.** Upon dissolution of a limited
44 partnership and until the filing of a certificate of
46 cancellation as provided in section 423, the persons winding up
48 the limited partnership's affairs may, in the name of, and for
and on behalf of, the limited partnership prosecute and defend
suits, whether civil, criminal or administrative, settle and
close the limited partnership's business, dispose of and convey
the limited partnership's property, discharge or make reasonable
provision for the limited partnership's liabilities and
50 distribute to the partners any remaining assets of the limited
52 partnership, all without affecting the liability of limited

2 partners and without imposing the liability of a general partner
3 on the liquidating trustee.

4 **§484. Distribution of assets**

6 1. Priority of distribution. Upon the winding up of a
7 limited partnership, the assets must be distributed as follows:

8
9 A. To the creditors, including partners who are creditors,
10 in satisfaction of liabilities of the limited partnership,
11 whether by payment or the making of reasonable provision for
12 payment, other than liabilities for which reasonable
13 provision for payment has been made and liabilities for
14 distributions to partners under section 461 or 464;

15 B. Unless otherwise provided in the partnership agreement,
16 to partners and former partners in satisfaction of
17 liabilities for distributions under section 461 or 464; and

18
19 C. Unless otherwise provided in the partnership agreement,
20 to partners:

21
22 (1) For the return of their contributions; and

23
24 (2) Respecting their partnership interests, in the
25 proportions in which the partners share in
26 distributions.

27
28 2. Payment or provisions for payment for liabilities. A
29 limited partnership that has dissolved shall pay or make
30 reasonable provision to pay all claims and obligations, including
31 all contingent, conditional or unmatured claims and obligations,
32 known to the limited partnership and all claims and obligations
33 that are known to the limited partnership but for which the
34 identity of the claimant is unknown. If there are sufficient
35 assets, the claims and obligations must be paid in full and any
36 such provision for payment made must be made in full. If there
37 are insufficient assets, the claims and obligations must be paid
38 or provided for according to their priority and, among claims and
39 obligations of equal priority, ratably to the extent of assets
40 available therefore. Unless otherwise provided in a partnership
41 agreement, any remaining assets must be distributed as provided
42 in this chapter. Any liquidating trustee winding up a limited
43 partnership's affairs who has complied with this section is not
44 personally liable to the claimants of the dissolved limited
45 partnership by reason of that person's actions in winding up the
46 limited partnership.

47
48
49 **SUBCHAPTER IX**

50 **FOREIGN LIMITED PARTNERSHIPS**

2 §491. Law governing

4 1. Law governing. Unless otherwise provided by the
Constitution of Maine:

6 A. The laws of the state, territory, possession or other
8 jurisdiction, including the District of Columbia or the
10 Commonwealth of Puerto Rico, or country under which a
12 foreign limited partnership is organized govern its
14 organization and internal affairs and the liability of its
16 limited partners; and

18 B. A foreign limited partnership may not be denied the
20 authority to do business by reason of any difference between
22 the laws referred to in this subsection and the laws of this
24 State.

26 2. Type of business. A foreign limited partnership may
28 transact any business in this State that may be transacted by a
30 domestic limited partnership.

32 §492. Authority to do business required; application

34 Before doing business in this State, a foreign limited
36 partnership must obtain authority to do business from the
38 Secretary of State.

40 1. Definitions. As used in this subchapter, "doing
42 business," "the doing of business" or "business done in this
44 State," by any foreign limited partnership means the course or
46 practice of carrying on any business activities in this State.
48 Without excluding other activities that may not constitute
50 transacting business in this State, a foreign limited partnership
52 is not considered to be transacting business in this State,
exclusively for the purpose of qualification under this
subchapter, solely by reason of carrying on in this State any one
or more of the following activities:

A. Maintaining or defending any action or administrative or
arbitration proceeding or effecting the settlement thereof
or the settlement of claims or disputes;

B. Holding meetings of its partners or carrying on other
activities concerning its internal affairs;

C. Maintaining bank accounts, share accounts in savings and
loan associations, custodial or agency arrangements with a
bank or trust company or stock or bond brokerage accounts;

D. Maintaining offices or agencies for the transfer,
exchange and registration of its partnership interests or
appointing and maintaining trustees or depositaries with
relation to its partnership interests;

- 2 E. Effecting sales through independent contractors;
- 4 F. Soliciting or procuring orders, whether by mail or
6 through employees or agents or otherwise, when the orders
8 require acceptance outside this State before becoming
 binding contracts and when the contracts do not involve any
 local performance other than delivery and installation;
- 10 G. Making loans or creating or acquiring evidences of debt,
12 mortgages or liens on real or personal property, or
 recording same;
- 14 H. Securing or collecting debts or enforcing any rights in
 property securing the same;
- 16 I. Effecting transactions in interstate or foreign commerce;
- 18 J. Owning or controlling a subsidiary corporation
20 incorporated in or transacting business within this State;
- 22 K. Owning or controlling a general or limited partnership
24 organized or transacting business within this State;
- 26 L. Conducting an isolated transaction not in the course of a
 number of repeated transactions of like nature;
- 28 M. Serving as trustee, executor, administrator or guardian,
30 or in like fiduciary capacity, when permitted so to serve by
 the laws of this State; or
- 32 N. Being a partner in a domestic limited partnership.
- 34 2. General partner. The limited partnership shall submit
36 an application for authority to do business to the Secretary of
 State executed by a general partner on a form prescribed by or
 furnished by the Secretary of State.
- 38 3. Contents of the application. The application must
40 include:
- 42 A. The name of the foreign limited partnership and, if
44 different, the name under which it proposes to apply for
 authority to do business in this State;
- 46 B. The state, territory, possession or other jurisdiction,
48 including the District of Columbia or the Commonwealth of
50 Puerto Rico, or country where organized, the date of its
52 organization and a statement that, as of the date of filing,
 the foreign limited partnership validly exists as a limited
 partnership under the laws of the jurisdiction of its
 organization;

- 2 C. The nature of the business or purposes to be conducted
3 or promoted in this State;
- 4
- 5 D. The address of the registered office and the name and
6 address of the registered agent for service of process
7 required to be maintained by section 494, subsection 2;
- 8
- 9 E. A statement that the Secretary of State is appointed the
10 agent of the foreign limited partnership for service of
11 process;
- 12
- 13 F. The name and business, residence or mailing address of
14 each of the general partners;
- 15
- 16 G. The date on which the foreign limited partnership first
17 did, or intends to do, business in this State; and
- 18
- 19 H. A certificate of good standing or its equivalent from the
20 proper officer of its jurisdiction of organization. The
21 certificate of good standing must have been made not more
22 than 90 days prior to the delivery of the application for
23 filing.

24 **§493. Evidence of authority to do business**

25 If the Secretary of State finds that an application for the
26 authority to do business conforms to the requirements of this
27 chapter and all requisite fees have been paid, the Secretary of
28 State shall:

29 1. Attest application. Attest that the application has
30 been filed by:

31 A. Endorsing upon the original application the word "filed"
32 and the day, month and year of the filing. The person
33 delivering the application for filing may have the
34 endorsement include the hour and minute of the filing of the
35 application. This endorsement is conclusive of the date,
36 and time if included in the endorsement, and of its filing,
37 in the absence of actual fraud; and

38 B. Signing, initialing or placing an identifying mark on the
39 endorsement in paragraph A in person or by agent.

40 2. File the application. File and index the endorsed
41 application; and

42 3. Copy to limited partnership. Furnish to the registered
43 agent an attested copy of the application.

44 **§494. Name; registered office; registered agent**

2 1. Name. A foreign limited partnership may apply to do
3 business with the Secretary of State under any name that conforms
4 with the requirements of section 403. The name does not need to
5 be the same as the name under which it is authorized to do
6 business in the jurisdiction of its organization.

8 2. Registered office and registered agent. Each foreign
9 limited partnership must have and maintain in this State:

10 A. A registered office, which may, but need not, be a place
11 of its business in this State; and

12 B. A registered agent for service of process on the limited
13 partnership. The agent may be either:

14 (1) An individual resident of this State whose business
15 office or residential address is identical with the
16 limited partnership's registered office; or

17 (2) A domestic or a foreign corporation, whether
18 business or nonprofit, authorized to do business or
19 carry on activities in this State having a business or
20 registered office identical with the limited
21 partnership's registered office.

22 3. Change in registered office or registered agent. The
23 registered office and registered agent may be changed by:

24 A. Filing a certificate of amendment under section 495; or

25 B. Executing and filing a certificate by the registered
26 agent. The certificate must include:

27 (1) For the change of address of the registered office
28 of the limited partnerships for which the agent is the
29 registered agent to another address in this State:

30 (a) A list of the names of all the limited
31 partnerships represented by that registered agent;

32 (b) The address at which the registered agent has
33 maintained the registered office for each of the
34 limited partnerships; and

35 (c) The new address to which the registered office
36 will be changed; or

37 (2) For a change in the name of any person acting as
38 the registered agent:

39 (a) The new name of the registered agent;

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(b) The name of the registered agent before it was changed;

(c) A list of the names of all the limited partnerships represented by the agent; and

(d) The address at which the registered agent has maintained the registered office for each of the limited partnerships.

Any registered agent filing a certificate under this paragraph shall upon filing promptly mail or otherwise deliver a copy of the certificate to a general partner of each limited partnership affected by the change.

4. Resignation of registered agent. A registered agent may resign by filing a certificate with the Secretary of State. The certificate must include:

A. When the registered agent appoints a successor:

(1) A statement of resignation;

(2) A list of the names of all the limited partnerships represented by the agent for which the agent is resigning as agent;

(3) The name and address of the successor registered agent; and

(4) An attached statement executed by each affected limited partnership, signed by a general partner, ratifying and approving the change of registered agent; or

B. When the registered agent does not appoint a successor:

(1) A statement of resignation;

(2) A list of the names of all the limited partnerships represented by the agent; and

(3) An attached affidavit stating that at least 30 days prior to and again on or about the date of the filing of certificate of resignation, notices that the registered agent is resigning as registered agent were sent by certified or registered mail to the principal office of each limited partnership within or outside this State, if known to the registered agent or, if not, to the last known address of the individual at whose request the registered agent was appointed.

2 The resignation takes effect under this paragraph 60 days
3 after the certificate is filed.

4
5 5. Secretary of State. The Secretary of State shall
6 furnish to the current registered agent an attested copy of any
7 certificate filed under this section.

8
9 6. Resignation of agent; appointment by partnership;
10 service of process. After receipt of the notice of the
11 resignation of its registered agent under subsection 3, paragraph
12 B, a limited partnership shall file a certificate of amendment
13 designating a new registered agent. If the partnership fails to
14 appoint a new registered agent within the 60-day period after the
15 filing of the certificate of resignation:

16
17 A. The authority of that foreign limited partnership to
18 carry out business in this State is canceled and the foreign
19 limited partnership may not carry out business in this
20 State; and

21 B. Legal process against the limited partnership may be
22 served upon the Secretary of State in accordance with
23 section 501.

24
25 §495. Amendments to application

26
27 If any statement in the application for authority to do
28 business of a foreign limited partnership was materially
29 inaccurate when made or has become materially inaccurate as a
30 result of subsequent events, the foreign limited partnership
31 shall promptly file with the Secretary of State a certificate,
32 executed by a general partner, correcting the statement.

33 §496. Cancellation of authority to do business

34
35 A foreign limited partnership may cancel its authority to do
36 business by filing with the Secretary of State a certificate of
37 cancellation. A cancellation does not terminate the authority of
38 the Secretary of State to accept service of process on the
39 foreign limited partnership with respect to causes of action
40 arising out of the doing of business in this State.

41 §497. Doing business without authority; right to sue and be
42 sued; liability of limited partners; penalties

43
44 1. Prohibition against bringing an action, suit or
45 proceeding. A foreign limited partnership doing business in this
46 State may not maintain any action, suit or proceeding in this
47 State until it is granted authority to do business in this State
48 and pays to the State all fees and penalties for the years or
49 months during which it has done business in this State.

2 parts of years during which it did business in this State without
3 having been granted the authority to do business.

4 2. Validity of contracts; right to be sued; right to defend
5 suit. The failure of a foreign limited partnership to obtain
6 authority to do business in this State in accordance with this
7 chapter does not impair:

8
9 A. The validity of any contract or act of the foreign
10 limited partnership;

11 B. The right of any other party to the contract to maintain
12 any action, suit or proceeding on the contract; or

13 C. The right of the foreign limited partnership to defend
14 any action, suit or proceeding in any court of this State.

15
16
17 3. Liability of limited partners. A limited partner of a
18 foreign limited partnership is not liable as a general partner of
19 the foreign limited partnership solely by reason of the limited
20 partnership having done business in this State without being
21 granted the authority to do business in this State.

22
23 4. Penalty. The Secretary of State may fine any foreign
24 limited partnership doing business in this State without first
25 having been granted the authority to do business in this State
26 \$750 for each year or part of a year during which the foreign
27 limited partnership failed to obtain authority do business in
28 this State.

29
30 §498. Doing business without authority; court injunction;
31 revocation by Secretary of State

32
33 1. Enjoin from doing business. The Superior Court has
34 jurisdiction to enjoin any foreign limited partnership or any
35 agent of the foreign limited partnership from doing any business
36 in this State if the foreign limited partnership has not been
37 granted the authority to do business under this subchapter. The
38 Attorney General may file a complaint in any county in which the
39 foreign limited partnership is doing or has done business for the
40 purpose of obtaining an injunction under this subsection.

41
42 2. Revocation by Secretary of State. The Secretary of
43 State may revoke a foreign limited partnership's authority to do
44 business in the State in accordance with this subsection.

45
46 A. Notwithstanding Title 4, chapter 25 and Title 5, chapter
47 375, the authority of a foreign limited partnership to do
48 business in this State may be revoked by the Secretary of
49 State as provided in paragraphs C and D when:
50

2 (1) The foreign limited partnership fails to pay any
4 fees or penalties as prescribed by this subchapter when
 they become due and payable;

6 (2) The foreign limited partnership fails to appoint
8 and maintain a registered agent in this State as
 required by section 494;

10 (3) The foreign limited partnership fails, after change
12 of its registered office or registered agent, to file
 with the Secretary of State a statement of the change
 required by section 494;

14 (4) The foreign limited partnership has failed to file
16 with the Secretary of State an amended application for
 authority required by section 495; or

18 (5) A misrepresentation of a material fact is made in
20 any application, report, affidavit or other document
 required by this subchapter.

22 B. The authority of a foreign limited partnership may be
24 revoked only after:

26 (1) The Secretary of State has mailed to the
28 partnership's last registered office in this State at
30 least 60 days' notice of pending revocation of its
 authority to do business in this State. The notice
 must specify the default; and

32 (2) The partnership has not, prior to revocation,
 removed the ground of default specified in the notice.

34 C. After the expiration of the 60-day notice period, if a
36 foreign limited partnership has not corrected the specified
38 default or convinced the Secretary of State, by affidavit or
40 otherwise, that there was no misrepresentation relative to
42 paragraph A, subparagraph (5), the Secretary of State shall
44 issue and file a certificate revoking the foreign limited
 partnership's authority to do business in this State and
 shall mail copies of the certificate of revocation to the
 foreign limited partnership's last registered office in this
 State.

46 D. The partnership may appeal the action of the Secretary of
48 State in revoking its authority to do business to the
 Superior Court in Kennebec County. The appeal is governed
 by the Maine Rules of Civil Procedure, Rule 80B, as amended.

50 E. The authority of the foreign limited partnership to do
52 business in this State ceases as of the date of filing of
 the certificate of revocation, unless stayed by the court.

2 F. A foreign limited partnership that has its authority to
3 do business in this State revoked may be requalified by
4 applying for authority to do business under this subchapter.

6 §499. Execution of documents; liability for false statements

8 Section 424, subsection 3 governing false swearing and
9 section 427 on liability for false statements apply to foreign
10 limited partnerships as if the application for authority to do
11 business were a certificate of limited partnership.

12 §500. Service of process on foreign limited partnerships
13 authorized to do business in State

14 1. General partner. Process may be served on any general
15 partner that is present or found in this State.

16 2. Registered agent. Process may be served on the
17 registered agent of the limited partnership.

18 3. Service on Secretary of State. If a foreign limited
19 partnership authorized to do business in this State fails to
20 appoint or maintain a registered agent in this State, any such
21 registered agent can not with reasonable diligence be found at
22 the registered office or the authority of a foreign limited
23 partnership is revoked, the Secretary of State is an agent of
24 that foreign limited partnership upon whom any such process,
25 notice or demand may be served. Service on the Secretary of
26 State of any such process, notice or demand must be made as
27 provided in section 502.

28 4. Other means of service. Nothing in this section limits
29 or affects the right to serve any process, notice or demand
30 required or permitted by law to be served upon a foreign limited
31 partnership in any other manner permitted by statute or rule of
32 court.

33 §501. Service of process on foreign limited partnerships not
34 authorized to do business in State

35 1. Service on Secretary of State. Every foreign limited
36 partnership that does any business in this State without having
37 been authorized to do business in this State thereby submits
38 itself to the jurisdiction of the courts of this State, and also
39 thereby designates the Secretary of State as its agent upon whom
40 any process, notice or demand upon it may be served in any action
41 or proceeding arising out of or in connection with the doing of
42 any business in this State.

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2 2. Method of serving process. In addition to other methods
3 of service that may be authorized by statute or by rule, service
4 of process may be made as provided in section 502.

6 §502. Service of process on Secretary of State for foreign
7 limited partnership

8 When any process, notice or demand is to be served on the
9 Secretary of State as the agent of a foreign limited partnership
10 pursuant to a provision of this chapter:

12 1. Delivery to Secretary of State. The process, notice or
13 demand must be served by delivering it to the Secretary of State
14 or to any person designated by the Secretary of State to receive
15 such service;

16 2. Copy; foreign limited partnership. The party serving
17 the process shall promptly send a duplicate copy of the process,
18 notice or demand via registered or certified mail, return receipt
19 requested, marked "deliver to addressee only," to the foreign
20 limited partnership at:

22 A. Its last registered office in this State on file in the
23 office of the Secretary of State, if any; and

26 B. Its last registered or principal office in the
27 jurisdiction of its formation on file in the office of the
28 Secretary of State, if any; or if no such office has been
29 listed in the office of the Secretary of State, at the last
30 address of the foreign limited partnership known to the
31 person serving the process.

32 3. Proof of service. Proof of service must be by return of
33 service on the Secretary of State and by an affidavit of the
34 person serving the process or that person's attorney setting
35 forth compliance with subsection 2. The affidavit must be
36 appended by the return receipt signed by the foreign limited
37 partnership or other official proof of delivery or, if acceptance
38 was refused or the addressee was not found at the address given,
39 the original envelope bearing the notation of the postal
40 authorities showing the reason for nondelivery. Service is
41 complete when subsections 1 and 2 have been complied with.

44 SUBCHAPTER X

46 DERIVATIVE ACTIONS

48 §511. Right to bring action

50 A limited partner may bring an action in Superior Court in
51 the right of a limited partnership to recover a judgment in its
52 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.

§512. Proper plaintiff

In a derivative action, the plaintiff must:

1. At time of action. Be a partner at the time of bringing the action; and

2. At time of transaction. Either:

A. Have been a partner at the time of the transaction to which the action relates; or

B. Have acquired the status of partner 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.

§513. Complaint

In a derivative action, the complaint must set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

§514. 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 any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. The court shall order that any such award be paid out of the proceeds received by the plaintiff, if any, in which case the plaintiff shall remit to the limited partnership the remainder. If those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the court may direct that any such award of plaintiff's expenses or a portion thereof be paid by the limited partnership.

SUBCHAPTER XI

MISCELLANEOUS

§521. Construction and application of chapter

1. Promote uniformity. This chapter must be so applied and construed to effectuate its general purpose to promote uniformity of the law with respect to the subject of this chapter among states enacting the Revised Uniform Limited Partnership Act.

2 2. Not strictly construed. The rule that statutes in
derogation of the common law are to be strictly construed has no
application to this chapter.

4 §522. Construction and application of partnership agreement

6 1. Principles. It is the policy of this chapter to give
8 maximum effect to the principle of freedom of contract and to the
enforceability of partnership agreements.

10 2. Partner's duties and liabilities. To the extent that,
12 at law or in equity, a partner has duties, including fiduciary
duties, and liabilities relating to those duties, to a limited
14 partnership or to another partner:

16 A. That partner acting under a partnership agreement is not
18 liable to the limited partnership or to any other partner
for the partner's good faith reliance on the provisions of
the partnership agreement; and

20 B. The partner's duties and liabilities may be expanded or
22 restricted by provisions in a partnership agreement.

24 §523. Effective date

26 This Act takes effect January 1, 1992. All limited
28 partnerships formed on or after that date and all foreign limited
partnerships applying for authority to transact business within
this State on or after that date are governed by this Act.

30 §524. Application to existing limited partnership; definition

32 1. Exemptions from requirements of chapter. Except as
34 provided in subsection 2, all limited partnerships formed prior
to the effective date of this Act and all foreign limited
36 partnerships having obtained the authority to do business within
this State prior to the effective date of this Act are governed
38 by this Act on and after the effective date of this Act, except
that:

40 A. The provisions of law in former chapter 7 governing
42 distributions to a withdrawing partner, rather than the
provisions of section 484, and distribution of assets upon
44 the winding up of a limited partnership, rather than the
provisions of section 484, apply to a limited partnership
46 formed prior to the effective date of this Act;

48 B. The provisions of section 403, subsection 1, paragraph A,
requiring that the name of all limited partnerships contain
50 the words "Limited Partnership" or the abbreviation "L.P.,"
do not apply to a limited partnership formed prior to the
52 effective date of this Act or a foreign limited partnership

2 having obtained the authority to transact business within
3 this State prior to the effective date of this Act, until
4 such time as the limited partnership has filed an amendment
5 to its certificate of limited partnership or application for
6 authority to do business as a foreign limited partnership
7 pursuant to subsection 2;

8 C. The provisions of section 407, subsection 1, and section
9 494, subsection 2, requiring that all limited partnerships
10 have and maintain in this State a registered office and a
11 registered agent for service of process, do not apply to a
12 limited partnership formed prior to the effective date of
13 this Act or a foreign limited partnership having obtained
14 authority to transact business within this State prior to
15 the effective date of this Act, until such time as the
16 limited partnership has filed an amendment to its
17 certificate of limited partnership or application for
18 authority to do business in this State as a foreign limited
19 partnership pursuant to subsection 2; except that until such
20 time as a limited partnership has established a registered
21 office and appointed a registered agent, the general partner
22 first named in the partnership's certificate of limited
23 partnership and having an address within this State is
24 deemed to be the partnership's registered agent and that
25 partner's address as stated in the certificate of limited
26 partnership is deemed to be that partnership's registered
27 office; and

28 D. The provisions of law in former section 163 governing
29 loans by and transactions with limited partners continue to
30 apply for the benefit of any creditors of any limited
31 partnership whose claims arose prior to the effective date
32 of this Act.

33 2. Application of chapter to existing limited
34 partnerships. Any domestic limited partnership formed, and any
35 foreign limited partnership granted authority to do business in
36 this State, prior to the effective date of this Act may at any
37 time, and must at the first time after the effective date of this
38 Act when such limited partnership files any amendment to its
39 certificate of limited partnership or any amendment to its
40 application for authority to do business in this State as a
41 foreign limited partnership, file with the Secretary of State a
42 certificate of limited partnership or an application for
43 authority to do business as a foreign limited partnership that
44 complies with this chapter, or a certificate of amendment or
45 amendment to its application for authority to do business that
46 would cause its certificate of limited partnership or application
47 to comply with this chapter.

48 §525. Cases not provided for in chapter

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2 In any case not provided for in this chapter, the Uniform
Partnership Act and the rules of law and equity govern.

4 §526. Fees, penalties

6 A document required to be filed under this chapter is not
8 effective until the applicable fee required by this section is
paid. The following fees or penalties must be paid to and
10 collected by the Secretary of State:

12 1. Reservation. For filing of an application for
reservation of name, an application for renewal of reservation or
14 a notice of transfer or cancellation of reservation pursuant to
section 404, a fee in the amount of \$20 for each limited
16 partnership affected;

18 2. Assumed name. For filing of an application for an
assumed name under section 405, a fee in the amount of \$105. The
20 addition of the words "Limited Partnership" or the abbreviation
"L.P." to a foreign corporation's name for use in this State is
22 not, for the purpose of this section, deemed an assumed name;

24 3. Termination of assumed name. For a termination of an
assumed name under section 405, a fee of \$20;

26 4. Registered name. For filing and application for a
registered name of a foreign limited partnership under section
28 406, a fee of \$20 per month for the number of months or fraction
of a month remaining in the calendar year when first filing. For
30 filing applications to renew the registration of a registered
32 name, a fee of \$155;

34 5. Change of registered agent or registered office for
domestic limited partnerships. For filing of a certificate by a
36 registered agent under section 407, changing the registered agent
or address of the registered office or resigning, a fee in the
38 amount of \$20;

40 6. Penalty. As a penalty prior to being reinstated as a
domestic limited partnership under section 408, a fee of \$20;

42 7. Certificate of limited partnership, amendment,
cancellation, merger or consolidation. For filing of a
44 certificate of limited partnership under section 421, a
certificate of amendment under section 422, a certificate of
46 cancellation under section 423, a certificate of merger or
48 consolidation under section 424, a fee in the amount of \$250;

50 8. Foreign limited partnerships. For filing of an
application for authority to do business as a foreign limited
partnership under section 492, a certificate of amendment under

2 section 495 or a certificate of cancellation under section 496, a
3 fee in the amount of \$250;

4 9. Change of registered agent or registered office for
5 foreign limited partnerships. For filing of a certificate by a
6 registered agent under section 494, changing the registered agent
7 or address of the registered office or resigning, a fee in the
8 amount of \$30;

10 10. Photocopies. For all photocopies, whether certified or
11 not, a fee in the amount of \$2 per page. The Secretary of State
12 may issue photocopies of instruments on file as well as other
13 copies;

14 11. Certified copies. For providing certified copies of
15 any paper on file as provided for by this chapter, a fee in the
16 amount of \$5 for each copy certified in addition to any fee due
17 under subsection 10;

18 12. Issuing certificate. For issuing any certificate of
19 the Secretary of State, including but not limited to a
20 certificate of existence, other than a certification of a copy
21 under subsection 11, a fee in the amount of \$25;

22 13. Preclearance of document. For preclearance of any
23 document for filing, a fee in the amount of \$100; and

24 14. All other filings. For receiving and filing any
25 certificate, affidavit, agreement or any other paper provided for
26 by this chapter, for which no different fee is specifically
27 prescribed, a fee in the amount of \$20.

28 All fees collected as provided by this chapter must be
29 remitted to the Treasurer of State for the use of the State with
30 the exception of those fees established by rule and collected for
31 expedited service. Fees for expedited service are deposited into
32 a fund for use by the Secretary of State in providing an improved
33 filing service.

34 **§527. Reserved power of State to alter or repeal chapter**

35 All provisions of this chapter may be altered from time to
36 time or repealed and all rights of partners are subject to this
37 reservation.

38 **§528. Duty of Secretary of State**

39 The Secretary of State's duty to file documents under this
40 chapter is ministerial. The filing or refusal to file a document
41 does not:

1. Validity of documents. Affect the validity or
invalidity of the document in whole or in part;

2. Correctness of information. Relate to the correctness
or incorrectness of information contained in the document; or

3. Presumption of validity or correctness. Create a
presumption that the document is valid or invalid or that the
information in the document is correct or incorrect.

Sec. 3. Effective date. This Act takes effect on January 1, 1992.

STATEMENT OF FACT

This bill establishes a new revised uniform limited partnership law.