

MAINE STATE LEGISLATURE

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**STATE OF MAINE
SENATE
122ND LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "**A**" to S.P. 591, L.D. 1609, Bill, "An Act To Establish the Uniform Partnership Act"

Amend the bill by striking out the title and substituting the following:

'An Act To Establish the Uniform Partnership Act and the Uniform Limited Partnership Act'

Further amend the bill in Part A in section 2 in that part designated "**\$1009.**" in subsection 2 in the first line (page 29, line 2 in L.D.) by striking out the following: "**Process**" and inserting in its place the following: '**Service of process**'

Further amend the bill in Part A in section 2 by striking out all of that part designated "**\$1091.**" (page 121, lines 2 to 19 in L.D.) and inserting in its place the following:

'\$1091. Definitions

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

1. Corporation. "Corporation" means a corporation created under the Maine Business Corporation Act, predecessor law or comparable law of another jurisdiction.

2. General partner. "General partner" means a partner in a partnership, a general partner in a limited partnership, a general partner in a limited liability partnership and a general partner in a limited liability limited partnership.

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2 3. Limited liability company. "Limited liability company"
3 means a limited liability company created under the Maine Limited
4 Liability Company Act, predecessor law or comparable law of
5 another jurisdiction.

6 4. Limited liability limited partnership. "Limited
7 liability limited partnership" means a limited partnership whose
8 certificate of limited partnership states that the limited
9 partnership is a limited liability limited partnership.

10 5. Limited partner. "Limited partner" means a limited
11 partner in a limited partnership and a limited partner in a
12 limited liability partnership.

13 6. Limited partnership. "Limited partnership" means a
14 limited partnership created under the Uniform Limited Partnership
15 Act, predecessor law or comparable law of another jurisdiction.

16 7. Member. "Member" means a person reflected in the
17 required records of a limited liability company as the owner of
18 some governance rights of a membership interest in the limited
19 liability company.

20 8. Partner. "Partner" includes both a general partner and
21 a limited partner.

22 9. Partnership. "Partnership" means a partnership formed
23 under section 1022 or any predecessor law.

24 10. Shareholder. "Shareholder" means the person in whose
25 name the units into which proprietary interests in a corporation
26 are divided are registered in the records of the corporation or
27 the beneficiary owner of such units to the extent of the rights
28 granted by a nominee certificate on file with a corporation.'

29 Further amend the bill in Part A in section 2 in that part
30 designated "~~§1092.~~" in subsection 3 by striking out all of
31 paragraph B (page 122, line 40 in L.D.) and inserting in its
32 place the following:

33 'B. The name of the partnership immediately before the
34 filing of the certificate of limited partnership and the
35 name to which the name of the partnership is to be changed,
36 which must be a name that satisfies the requirements of
37 section 1308;'

38 Further amend the bill in Part A in section 2 in that part
39 designated "~~§1092.~~" in subsection 3 in paragraph C in the last
40 line (page 122, line 45 in L.D.) by striking out the following:

2 "agreement." and inserting in its place the following:
3 'agreement; and'

4 Further amend the bill in Part A in section 2 in that part
5 designated "§1092." in subsection 3 by inserting after paragraph
6 C the following:

8 'D. A statement either that all the required provisions are
9 set forth in its public organic document with any other
10 desired provisions that are permitted or that a public
11 organic document is attached.'

12 Further amend the bill in Part A in section 2 by striking
13 out all of that part designated "§1093." (page 124, lines 16 to
14 39 in L.D.) and inserting in its place the following:

16 '§1093. Conversion of partnership to a business entity

18 1. Conversion. A partnership or a limited liability
19 partnership may be converted to a limited partnership, limited
20 liability limited partnership, corporation or limited liability
21 company pursuant to this section.

24 2. Terms and conditions. The terms and conditions of a
25 conversion of a partnership to a limited partnership, limited
26 liability limited partnership, corporation or limited liability
27 company must be approved by all of the partners or as otherwise
28 provided in the partnership agreement.

30 3. Organizational documents filed. After the conversion is
31 approved by the partners, articles of conversion must be executed
32 on behalf of the converting entity by a partner or other duly
33 authorized representative. The articles must:

34 A. Set forth the name of the entity immediately before the
35 filing of the articles of conversion and the name to which
36 the name of the entity is to be changed, which must be a
37 name that satisfies the organic law of the surviving entity;

40 B. State the type of entity that the surviving entity will
41 be;

42 C. Set forth a statement that the plan of entity conversion
43 was duly approved by the partners in the manner required by
44 this Act and the partnership agreement; and

46 D. If the surviving entity is a filing entity, either
47 contain all the provisions required to be set forth in its
48 public organic document with any other desired provisions

2 that are permitted or have attached a public organic
3 document.

4 4. Effective date of conversion. The conversion takes
5 effect when the articles of conversion are filed or at any later
6 date specified in the articles of conversion or as provided by
7 the organic laws of the surviving entity.

8
9
10 5. Liability. A general partner who becomes a limited
11 partner, general partner in a limited liability limited
12 partnership, shareholder or member as a result of the conversion
13 remains liable as a general partner of a partnership for an
14 obligation incurred by the partnership before the conversion
15 takes effect. If the other party to a transaction with a limited
16 partnership, limited liability limited partnership, corporation
17 or limited liability company reasonably believes when entering
18 the transaction that the limited partner, general partner,
19 shareholder or member is a general partner in a partnership or a
20 general partner in a limited partnership, the limited partner,
21 general partner, shareholder or member is liable for an
22 obligation for which such partner would be personally liable
23 under section 1034 that is incurred by the limited partnership,
24 limited liability limited partnership, corporation or limited
25 liability company within 90 days after the conversion takes
26 effect. The limited partner's, general partner's, shareholder's
27 or member's liability for all other obligations of the limited
28 partnership, limited liability limited partnership, corporation
29 or limited liability company incurred after the conversion takes
30 effect is that of a limited partner, shareholder or member as
31 provided in the jurisdiction in which the limited partnership,
32 limited liability limited partnership, corporation or limited
33 liability company is formed.'

34 Further amend the bill in Part A in section 2 by striking
35 out all of that part designated "§1094." and inserting in its
36 place the following:

37 **'Maine Comment**

38
39 In keeping with the general trend of rationalization in
40 business entities, Maine partnerships should be able to engage in
41 conversion transactions to the same extent as any other business
42 entity, through means of a conversion. It is important to
43 provide a mechanism for the conversion in the Uniform Partnership
44 Act, rather than relying upon the provisions for conversion in
45 the Maine Business Corporation Act.

46
47 **§1094. Effect of conversion**

1. Same entity. A partnership that has been converted pursuant to this subchapter is for all purposes the same entity that existed before the conversion.

2. Effective date. When a conversion takes effect:

A. All property owned by the converting partnership remains vested in the converted entity;

B. All obligations of the converting partnership continue as obligations of the converted entity; and

C. An action or proceeding pending by or against the converting partnership may be continued as if the conversion had not occurred.'

Further amend the bill in Part A in section 2 in that part designated "§1095." in subsection 2 in paragraph A in the first line (page 126, line 23 in L.D.) by inserting after the following: "name" the following: ', the jurisdiction of organization and the date of organization'

Further amend the bill in Part A in section 2 in that part designated "§1096." in subsection 2 in the 4th line (page 128, line 36 in L.D.) by striking out the following: "domestic"

Further amend the bill in Part A in section 2 in that part designated "§1097." in subsection 2 in paragraph A in the first line (page 131, line 32 in L.D.) by inserting after the following: "name" the following: ', the jurisdiction of organization and the date of organization'

Further amend the bill in Part A in section 2 in that part designated "§1103." in the first paragraph in the first line (page 134, line 9 in L.D.) by striking out the following: "2006" and inserting in its place the following: '2007'

Further amend the bill in Part A in section 2 by striking out all of that part designated "§1104." (page 134, lines 19 to 47 in L.D.) and inserting in its place the following:

'§1104. Applicability

1. Application before July 1, 2007. Before July 1, 2007, this chapter governs only a partnership formed:

A. After July 1, 2007, except a partnership that is continuing the business of a dissolved partnership under former Title 31, section 318; and

2 B. Before July 1, 2007 that elects, as provided by
3 subsection 3, to be governed by this chapter.

4 2. Application on and after July 1, 2007. On and after
5 July 1, 2007, this chapter governs all partnerships.

6
7 3. Election before July 1, 2007. Before July 1, 2007, a
8 partnership voluntarily may elect, in the manner provided in its
9 partnership agreement or by law for amending the partnership
10 agreement, to be governed by this chapter. The provisions of
11 this chapter relating to the liability of the partnership's
12 partners to 3rd parties apply to limit those partners' liability
13 to a 3rd party who had done business with the partnership within
14 one year before the partnership's election to be governed by this
15 chapter only if the 3rd party knows or has received a
16 notification of the partnership's election to be governed by this
17 chapter. A partnership may elect to be governed by this chapter
18 by filing a statement of election stating the name of the
19 partnership and that the partnership has made the election
20 pursuant to this section.'

21 Further amend the bill in Part A by inserting after section
22 2 the following:

23
24 **'Sec. A-3. Effective date.** That section of this Part that
25 repeals the Maine Revised Statutes, Title 31, chapter 9 takes
26 effect July 1, 2007.'

27
28 Further amend the bill in Part B in section 9 in subsection
29 2 in the 3rd line (page 138, line 35 in L.D.) by striking out the
30 following: "69 30" and inserting in its place the following:
31 '60'

32
33 Further amend the bill in Part B in section 15 in the first
34 line (page 140, line 22 in L.D.) by striking out the following:
35 "2006" and inserting in its place the following: '2007'

36
37 Further amend the bill by inserting after Part B the
38 following:

39
40
41 **PART C**

42
43 **Sec. C-1. 31 MRSA c. 11, as amended, is repealed.**

44
45 **Sec. C-2. 31 MRSA c. 19 is enacted to read:**

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49 **UNIFORM LIMITED PARTNERSHIP ACT (2001)**

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PREFATORY NOTE

The Act's Overall Approach

The new Limited Partnership Act is a "stand alone" act, "de-linked" from both the original general partnership act ("UPA") and the Revised Uniform Partnership Act ("RUPA"). To be able to stand alone, the Limited Partnership incorporates many provisions from RUPA and some from the Uniform Limited Liability Company Act ("ULLCA"). As a result, the new Act is far longer and more complex than its immediate predecessor, the Revised Uniform Limited Partnership Act ("RULPA").

The new Act has been drafted for a world in which limited liability partnerships and limited liability companies can meet many of the needs formerly met by limited partnerships. This Act therefore targets two types of enterprises that seem largely beyond the scope of LLPs and LLCs: (i) sophisticated, manager-entrenched commercial deals whose participants commit for the long term, and (ii) estate planning arrangements (family limited partnerships). This Act accordingly assumes that, more often than not, people utilizing it will want:

- strong centralized management, strongly entrenched, and
- passive investors with little control over or right to exit the entity

The Act's rules, and particularly its default rules, have been designed to reflect these assumptions.

The Decision to "De-Link" and Create a Stand Alone Act

Unlike this Act, RULPA is not a stand alone statute. RULPA was drafted to rest on and link to the UPA. RULPA Section 1105 states that "In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern." UPA Section 6(2) in turn provides that "this Act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith." More particularly, RULPA Section 403 defines the rights, powers, restrictions and liabilities of a "general partner of a limited partnership" by equating them to the rights, powers, restrictions and liabilities of "a partner in a partnership without limited partners."

This arrangement has not been completely satisfactory, because the consequences of linkage are not always clear. See, e.g., Frye v. Manacare Ltd., 431 So.2d 181, 183-84 (Fla. Dist. Ct. App. 1983) (applying UPA Section 42 in favor of a limited

2 partner), Porter v. Barnhouse, 354 N.W.2d 227, 232-33 (Iowa 1984)
3 (declining to apply UPA Section 42 in favor of a limited partner)
4 and Baltzell-Wolfe Agencies, Inc. v. Car Wash Investments No. 1,
5 Ltd., 389 N.E.2d 517, 518-20 (Ohio App. 1978) (holding that
6 neither the specific provisions of the general partnership
7 statute nor those of the limited partnership statute determined
8 the liability of a person who had withdrawn as general partner of
9 a limited partnership). Moreover, in some instances the "not
10 inconsistent" rules of the UPA can be inappropriate for the
11 fundamentally different relations involved in a limited
12 partnership.

13
14 In any event, the promulgation of RUPA unsettled matters.
15 RUPA differs substantially from the UPA, and the drafters of RUPA
16 expressly declined to decide whether RUPA provides a suitable
17 base and link for the limited partnership statute. According to
18 RUPA's Prefatory Note:

19
20 Partnership law no longer governs limited partnerships
21 pursuant to the provisions of RUPA itself. First, limited
22 partnerships are not "partnerships" within the RUPA
23 definition. Second, UPA Section 6(2), which provides that
24 the UPA governs limited partnerships in cases not provided
25 for in the Uniform Limited Partnership Act (1976) (1985)
26 ("RULPA") has been deleted. No substantive change in result
27 is intended, however. Section 1105 of RULPA already provides
28 that the UPA governs in any case not provided for in RULPA,
29 and thus the express linkage in RUPA is unnecessary.
30 Structurally, it is more appropriately left to RULPA to
31 determine the applicability of RUPA to limited partnerships.
32 It is contemplated that the Conference will review the
33 linkage question carefully, although no changes in RULPA may
34 be necessary despite the many changes in RUPA.

35
36 The linkage question was the first major issue considered
37 and decided by this Act's Drafting Committee. Since the
38 Conference has recommended the repeal of the UPA, it made no
39 sense to recommend retaining the UPA as the base and link for a
40 revised or new limited partnership act. The Drafting Committee
41 therefore had to choose between recommending linkage to the new
42 general partnership act (i.e., RUPA) or recommending de-linking
43 and a stand alone act.

44 The Committee saw several substantial advantages to
45 de-linking. A stand alone statute would:

- 46 • be more convenient, providing a single, self-contained
- 47 source of statutory authority for issues pertaining to
- 48 limited partnerships;

50

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- 2 • eliminate confusion as to which issues were solely
4 subject to the limited partnership act and which
6 required reference (i.e., linkage) to the general
8 partnership act; and
- 10 • rationalize future case law, by ending the automatic
12 link between the cases concerning partners in a general
14 partnership and issues pertaining to general partners
16 in a limited partnership.

18 Thus, a stand alone act seemed likely to promote efficiency,
20 clarity, and coherence in the law of limited partnerships.

22 In contrast, recommending linkage would have required the
24 Drafting Committee to (1) consider each provision of RUPA and
26 determine whether the provision addressed a matter provided for
28 in RULPA; (2) for each RUPA provision which addressed a matter
30 not provided for in RULPA, determine whether the provision stated
32 an appropriate rule for limited partnerships; and (3) for each
34 matter addressed both by RUPA and RULPA, determine whether RUPA
36 or RULPA stated the better rule for limited partnerships.

38 That approach was unsatisfactory for at least two reasons.
40 No matter how exhaustive the Drafting Committee's analysis might
42 be, the Committee could not guarantee that courts and
44 practitioners would reach the same conclusions. Therefore, in at
46 least some situations linkage would have produced ambiguity. In
48 addition, the Drafting Committee could not guarantee that all
50 currently appropriate links would remain appropriate as courts
begin to apply and interpret RUPA. Even if the Committee
recommended linkage, RUPA was destined to be interpreted
primarily in the context of general partnerships. Those
interpretations might not make sense for limited partnership law,
because the modern limited partnership involves fundamentally
different relations than those involved in "the small, often
informal, partnership" that is "[t]he primary focus of RUPA."
RUPA, Prefatory Note.

The Drafting Committee therefore decided to draft and
recommend a stand alone act.

Availability of LLLP Status

Following the example of a growing number of States, this
Act provides for limited liability limited partnerships. In a
limited liability limited partnership ("LLLP"), no partner -
whether general or limited - is liable on account of partner
status for the limited partnership's obligations. Both general
and limited partners benefit from a full, status-based liability
shield that is equivalent to the shield enjoyed by corporate
shareholders, LLC members, and partners in an LLP.

2 This Act is designed to serve preexisting limited
3 partnerships as well as limited partnerships formed after the
4 Act's enactment. Most of those preexisting limited partnership
5 will not be LLLPs, and accordingly the Act does not prefer or
6 presume LLLP status. Instead, the Act makes LLLP status available
7 through a simple statement in the certificate of limited
8 partnership. See Sections 102(9), 201(a)(4) and 404(c).

10 **Liability Shield for Limited Partners**

12 RULPA provides only a restricted liability shield for
13 limited partners. The shield is at risk for any limited partner
14 who "participates in the control of the business." RULPA Section
15 303(a). Although this "control rule" is subject to a lengthy list
16 of safe harbors, RULPA Section 303(b), in a world with LLPs, LLCs
17 and, most importantly, LLLPs, the rule is an anachronism. This
18 Act therefore eliminates the control rule and provides a full,
19 status-based shield against limited partner liability for entity
20 obligations. The shield applies whether or not the limited
21 partnership is an LLLP. See Section 303.

22 **Transition Issues**

24 Following RUPA's example, this Act provides (i) an effective
25 date, after which all newly formed limited partnerships are
26 subject to this Act; (ii) an optional period, during which
27 limited partnerships formed under a predecessor statute may elect
28 to become subject to this Act; and (iii) a mandatory date, on
29 which all preexisting limited partnerships become subject to this
30 Act by operation of law.

32 A few provisions of this Act differ so substantially from
33 prior law that they should not apply automatically to a
34 preexisting limited partnership. Section 1206(c) lists these
35 provisions and states that each remains inapplicable to a
36 preexisting limited partnership, unless the limited partnership
37 elects for the provision to apply.

40 **Comparison of RULPA and this Act**

42 The following table compares some of the major
43 characteristics of RULPA and this Act. In most instances, the
44 rules involved are "default" rules - i.e., subject to change by
45 the partnership agreement.

Characteristic	RULPA	this Act
relationship to general partnership	linked, Sections 1105, 403; UPA Section 6(2)	de-linked (but many RUPA

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2	act		provisions incorporated)
4	permitted purposes	subject to any specified exceptions, "any business that a partnership without limited partners may carry on, " Section 106	any lawful purpose, Section 104(b)
6			
8			
10	constructive notice via publicly filed documents	only that limited partnership exists and that designated general partners are general partners, Section 208	RULPA constructive notice provisions carried forward, Section 103(c), plus constructive notice, 90 days after appropriate filing, of: general partner dissociation and of limited partnership dissolution, termination, merger and conversion, Section 103(d)
12			
14			
16			
18			
20			
22			
24			
26			
28	duration	specified in certificate of limited partnership, Section 201(a)(4)	perpetual, Section 104(c); subject to change in partnership agreement
30			
32			
34	use of limited partner name in entity name	prohibited, except in unusual circumstances, Section 102(2)	permitted, Section 108(a)
36			
38	annual report	none	required, Section 210
40			
42	limited partner liability for entity debts	none unless limited partner "participates in the control of the business" and person "transact[s] business with the limited partnership reasonably believing. . . that the limited partner is a general partner," Section	none, regardless of whether the limited partnership is an LLLP, "even if the limited partner participates in the management and control of the limited partnership,"
44			
46			
48			
50			

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2		303(a); safe harbor lists	Section 303
		many activities that do	
		not constitute	
4		participating in the	
		control of the business,	
6		Section 303(b)	
8	limited partner	none specified	no fiduciary
	duties		duties "solely by
10			reason of being a
			limited partner,"
12			Section 305(a);
			each limited
14			partner is obliged
			to "discharge
16			duties . . . and
			exercise rights
18			consistently with
			the obligation of
20			good faith and
			fair dealing,"
22			Section 305(b)
24	partner access to	all partners have right	list of required
	information -	of access; no requirement	information
26	required records/	of good cause; Act does	expanded slightly;
	information	not state whether	Act expressly
28		partnership agreement may	states that partner
		limit access; Sections	does not have to
30		105(b) and 305(1)	show good cause;
			Sections 304(a),
32			407(a); however,
			the partnership
34			agreement may set
			reasonable
36			restrictions on
			access to and use
38			of required
			information,
40			Section 110(b)(4),
			and limited
42			partnership may
			impose reasonable
44			restrictions on
			the use of
46			information,
			Sections 304(g)
48			and 407(f)
50	partner access to	limited partners have the	for limited

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2	information - other	right to obtain other	partners, RULPA
	information	relevant information	approach
4		"upon reasonable demand,"	essentially
		Section 305(2); general	carried forward,
6		partner rights linked to	with procedures
		general partnership act,	and standards for
8		Section 403	making a reasonable
			demand stated in
10			greater detail,
			plus requirement
12			that limited
			partnership supply
14			known material
			information when
16			limited partner
			consent sought,
18			Section 304;
			general partner
20			access rights made
			explicit,
22			following ULLCA
			and RUPA,
24			including
			obligation of
26			limited
			partnership and
28			general partners
			to volunteer
30			certain
			information,
32			Section 407;
			access rights
34			provided for
			former partners,
36			Sections 304 and
			407
38	general partner	complete, automatic and	LLLP status
	liability for entity	formally inescapable,	available via a
40	debts	Section 403(b)	simple statement in
		(n.b. - in practice, most	the certificate of
42		modern limited	limited,
		partnerships have used a	partnership
44		general partner that has	Sections 102(9),
		its own liability shield;	201(a)(4); LLLP
46		e.g., a corporation or	status provides a
		limited liability	full liability
48		company)	shield to all
			general partners,
50			Section 404(c); if

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2			the limited
4			partnership is not
6			an LLLP, general
8			partners are
			liable just as
			under RULPA,
			Section 404(a)
10	general partner	linked to duties of	RUPA general
12	duties	partners in a general	partner duties
14		partnership, Section 403	imported, Section
16			408; general
18			partner's
			non-compete duty
			continues during
			winding up,
			Section 408(b)(3)
20	allocation of	provides separately for	eliminates as
22	profits, losses and	sharing of profits and	unnecessary the
24	distributions	losses, Section 503, and	allocation rule
26		for sharing of	for profits and
28		distributions, Section	losses; allocates
30		504; allocates each	distributions
32		according to	according to
34		contributions made and	contributions made,
		not returned	Section 503 (n.b.
			- in the default
			mode, the Act's
			formulation
			produces the same
			result as RULPA
			formulation)
36	partner liability	recapture liability if	following ULLCA
38	for distributions	distribution involved	Sections 406 and
40		"the return of . . .	407, the Act adopts
42		contribution"; one year	the RMBCA approach
44		recapture liability if	to improper
46		distribution rightful,	distributions,
48		Section 608(a); six year	Sections 508 and
50		recapture liability if	509
		wrongful, Section 608(b)	
	limited partner	theoretically, limited	no "right to
	voluntary	partner may withdraw on	dissociate as a
	dissociation	six months notice unless	limited partner
		partnership agreement	before the
		specifies a term for the	termination of the
		limited partnership or	limited

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2		withdrawal events for	partnership,"
		limited partner, Section	Section 601(a);
4		603; practically,	power to
		virtually every	dissociate
6		partnership agreement	expressly
		specifies a term,	recognized, Section
8		thereby eliminating the	601(b)(1), but can
		right to withdraw	be eliminated by
10		(n.b. - due to estate	the partnership
		planning concerns,	agreement
12		several States have	
		amended RULPA to prohibit	
14		limited partner	
		withdrawal unless	
16		otherwise provided in the	
		partnership agreement)	
18	limited partner	not addressed	lengthy list of
	involuntary		causes, Section
20	dissociation		601(b), taken with
			some modification
22			from RUPA
24	limited partner	"fair value . . . based	no payout; person
	dissociation -	upon [the partner's]	becomes transferee
26	payout	right to share in	of its own
		distributions," Section	transferable
28		604	interest, Section
			602(3)
30			
32	general partner	right exists unless	RULPA rule carried
	voluntary	otherwise provided in	forward, although
34	dissociation	partnership agreement,	phrased
		Section 602; power	differently,
36		exists regardless of	Section 604(a);
		partnership agreement,	dissociation
38		Section 602	before termination
			of the limited
40			partnership is
			defined as
42			wrongful, Section
			604(b)(2)
44	general partner	Section 402 lists causes	following RUPA,
	involuntary		Section 603 expands
46	dissociation		the list of
			causes, including
48			expulsion by court
			order, Section
50			603(5)

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2	general partner	"fair value . . . based	no payout; person
	dissociation -	upon [the partner's]	becomes transferee
4	payout	right to share in	of its own
		distributions," Section	transferable
6		604, subject to offset	interest, Section
		for damages caused by	605(5)
8		wrongful withdrawal,	
		Section 602	
10			
	transfer of	"Assignment of	"Transfer of
12	partner interest -	Partnership Interest,"	Partner's
	nomenclature	Section 702	Transferable
14			Interest," Section
			702
16			
	transfer of partner	economic rights fully	same rule, but
18	interest - substance	transferable, but	Sections 701 and
		management rights and	702 follow RUPA's
20		partner status are not	more detailed and
		transferable, Section 702	less oblique
22			formulation
24	rights of creditor	limited to charging	essentially the
	of partner	order, Section 703	same rule, but,
26			following RUPA and
			ULLCA, the Act has
28			a more elaborate
			provision that
30			expressly extends
			to creditors of
32			transferees,
			Section 703
34			
	dissolution by	requires unanimous	requires consent of
36	partner consent	written consent, Section	"all general
		801(3)	partners and of
38			limited partners
			owning a majority
40			of the rights to
			receive
42			distributions as
			limited partners
44			at the time the
			consent is to be
46			effective,"
			Section 801(2)
48			
	dissolution	occurs automatically	if at least one
50	following	unless all partners agree	general partner

COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1609

2	dissociation of a general partner	to continue the business and, if there is no remaining general partner, to appoint a replacement general partner, Section 801(4)	remains, no dissolution unless "within 90 days after the dissociation . . . partners owning a majority of the rights to receive distributions as partners" consent to dissolve the limited partnership; Section 801(3)(A); if no general partner remains, dissolution occurs upon the passage of 90 days after the dissociation, unless before that deadline limited partners owning a majority of the rights to receive distributions owned by limited partners consent to continue the business and admit at least one new general partner and a new general partner is admitted, Section 801(3)(B)
38	filings related to entity termination	certificate of limited partnership to be cancelled when limited partnership dissolves and begins winding up, Section 203	limited partnership may amend certificate to indicate dissolution, Section 803(b)(1), and may file statement of termination indicating that winding up has been completed and the limited

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1609

2			partnership is terminated, Section 203
4			
6	procedures for barring claims against dissolved limited partnership	none	following ULLCA Sections 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, Sections 806 and 807
10			
12			
14			
16	conversions and mergers	no provision	Article 11 permits conversions to and from and mergers with any "organization," defined as "a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other entity having a governing statute . . . [including] domestic and foreign entities regardless of whether organized for profit." Section 1101(8)
18			
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46			
48	writing requirements	some provisions pertain only to written understandings; see, e.g., Sections 401	removes virtually all writing requirements; but does require that
50			

2 (partnership agreement certain information
may "provide in writing be maintained in
4 for the admission of record form,
additional general Section 111
partners"; such admission
6 also permitted "with the
written consent of all
8 partners"), 502(a)
(limited partner's
10 promise to contribute
"is not enforceable
12 unless set out in a
writing signed by the
14 limited partner"), 801(2)
and (3) (dissolution
16 occurs "upon the
happening of events
18 specified in writing in
the partnership
20 agreement" and upon
"written consent of all
22 partners"), 801(4)
(dissolution avoided
24 following withdrawal of
a general partner if "all
26 partners agree in
writing")

30 CHAPTER 19
32 UNIFORM LIMITED PARTNERSHIP ACT
34 SUBCHAPTER 1
36 GENERAL PROVISIONS

38 §1301. Short title

40 This chapter may be known and cited as "the Uniform Limited
42 Partnership Act of 2007."

44 §1302. Definitions

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

48 1. Certificate of limited partnership. "Certificate of
limited partnership" means the certificate required by section
50 1321. The term includes the certificate as amended or restated.

2 2. Contribution. "Contribution," except in the phrase
3 "right of contribution," means any benefit provided by a person
4 to a limited partnership in order to become a partner or in the
5 person's capacity as a partner.

6
7 3. Debtor in bankruptcy. "Debtor in bankruptcy" means a
8 person that is the subject of:

9 A. An order for relief under Title 11 of the United States
10 Code or a comparable order under a successor statute of
11 general application; or

12
13 B. A comparable order under federal, state or foreign law
14 governing insolvency.

15
16 4. Designated office. "Designated office" means:

17 A. With respect to a limited partnership, the office that
18 the limited partnership is required to designate and
19 maintain under section 1314; and

20
21 B. With respect to a foreign limited partnership, its
22 principal office.

23
24 5. Distribution. "Distribution" means a transfer of money
25 or other property from a limited partnership to a partner in the
26 partner's capacity as a partner or to a transferee on account of
27 a transferable interest owned by the transferee.

28
29 6. Foreign limited liability limited partnership. "Foreign
30 limited liability limited partnership" means a foreign limited
31 partnership whose general partners have limited liability for the
32 obligations of the foreign limited partnership under a provision
33 similar to section 1354, subsection 3.

34
35 7. Foreign limited partnership. "Foreign limited
36 partnership" means a partnership formed under the laws of a
37 jurisdiction other than this State and required by those laws to
38 have one or more general partners and one or more limited
39 partners. The term includes a foreign limited liability limited
40 partnership.

41
42 8. General partner. "General partner" means:

43 A. With respect to a limited partnership, a person that:

44 (1) Becomes a general partner under section 1351; or

2 (2) Was a general partner in a limited partnership
4 when the limited partnership became subject to this
 chapter under section 1453, subsection 1 or 2; and

6 B. With respect to a foreign limited partnership, a person
 that has rights, powers and obligations similar to those of
8 a general partner in a limited partnership.

10 9. Limited liability limited partnership. "Limited
12 liability limited partnership," except in the phrase "foreign
14 limited liability limited partnership," means a limited
 partnership whose certificate of limited partnership states that
 the limited partnership is a limited liability limited
 partnership.

16 10. Limited partner. "Limited partner" means:

18 A. With respect to a limited partnership, a person that:

20 (1) Becomes a limited partner under section 1341; or

22 (2) Was a limited partner in a limited partnership
24 when the limited partnership became subject to this
 chapter under section 1453, subsection 1 or 2; and

26 B. With respect to a foreign limited partnership, a person
28 that has rights, powers and obligations similar to those of
 a limited partner in a limited partnership.

30 11. Limited partnership. "Limited partnership," except in
32 the phrases "foreign limited partnership" and "foreign limited
34 liability limited partnership," means an entity having one or
36 more general partners and one or more limited partners that is
 formed under this chapter by 2 or more persons or becomes subject
 to this chapter under subchapter 11 or section 1453, subsection 1
 or 2. The term includes a limited liability limited partnership.

38 12. Partner. "Partner" means a limited partner or general
40 partner.

42 13. Partnership agreement. "Partnership agreement" means
44 the partners' agreement, whether oral, implied, in a record or in
 any combination, concerning the limited partnership. The term
 includes the agreement as amended.

46 14. Person. "Person" means an individual; corporation;
48 business trust; estate; trust; partnership; limited liability
50 company; association; joint venture; government; governmental
 subdivision, agency or instrumentality; public corporation; or
 any other legal or commercial entity.

2 15. Person dissociated as general partner. "Person
4 dissociated as a general partner" means a person dissociated as a
general partner of a limited partnership.

6 16. Principal office. "Principal office" means the office
8 where the principal executive office of a limited partnership or
foreign limited partnership is located, whether or not the office
is located in this State.

10 17. Record. "Record" means information that is inscribed
12 on a tangible medium or that is stored in an electronic or other
medium and is retrievable in perceivable form.

14 18. Required information. "Required information" means the
16 information that a limited partnership is required to maintain
under section 1311.

18 19. Sign. "Sign" means:
20 A. To execute or adopt a tangible symbol with the present
22 intent to authenticate a record; or

24 B. To attach or logically associate an electronic symbol,
26 sound or process to or with a record with the present intent
to authenticate the record.

28 20. State. "State" means a state of the United States, the
30 District of Columbia, Puerto Rico, the United States Virgin
Islands or any territory or insular possession subject to the
jurisdiction of the United States.

32 21. Transfer. "Transfer" includes an assignment,
34 conveyance, deed, bill of sale, lease, mortgage, security
interest, encumbrance, gift and transfer by operation of law.

36 22. Transferable interest. "Transferable interest" means a
38 partner's right to receive distributions.

40 23. Transferee. "Transferee" means a person to which all
42 or part of a transferable interest has been transferred, whether
or not the transferor is a partner.

44 **Uniform Comment**
46 (This is section 102 of the Uniform Limited Partnership Act
(2001).)

48

2 This section contains definitions applicable throughout the
Act. Section 1101 provides additional definitions applicable
within Article 11.

4 **Paragraph 8(A)(i) [General partner]** - A partnership
6 agreement may vary Section 401 and provide a process or mechanism
for becoming a general partner which is different from or
8 additional to the rules stated in that section. For the purposes
of this definition, a person who becomes a general partner
10 pursuant to a provision of the partnership agreement "becomes a
general partner under Section 401."

12 **Paragraph 10(A)(i) [Limited partner]** - The Comment to
14 Paragraph 8(A)(i) applies here as well. For the purposes of this
definition, a person who becomes a limited partner pursuant to a
16 provision of the partnership agreement "becomes a limited partner
under Section 301."

18 **Paragraph (11) [Limited partnership]** - This definition
20 pertains to what is commonly termed a "domestic" limited
partnership. The definition encompasses: (i) limited partnerships
22 originally formed under this Act, including limited partnerships
formed under Section 1101(11) to be the surviving organization in
24 a merger; (ii) any entity that becomes subject to this Act by
converting into a limited partnership under Article 11; (iii) any
26 preexisting domestic limited partnership that elects pursuant to
Section 1206(a) to become subject to this Act; and (iv) all other
28 preexisting domestic limited partnerships when they become
subject to this Act under Section 1206(b).

30 Following the approach of predecessor law, RULPA Section
32 101(7), this definition contains two substantive requirements.
First, it is of the essence of a limited partnership to have two
34 classes of partners. Accordingly, under Section 101(11) a limited
partnership must have at least one general and one limited
36 partner. Section 801(3)(B) and (4) provide that a limited
partnership dissolves if its sole general partner or sole limited
38 partner dissociates and the limited partnership fails to admit a
replacement within 90 days of the dissociation. The 90 day
40 limitation is a default rule, but, in light of Section 101(11), a
limited partnership may not indefinitely delay "having one or
42 more general partners and one or more limited partners."

44 It is also of the essence of a limited partnership to have
at least two partners. Section 101(11) codifies this requirement
46 by referring to a limited partnership as "an entity . . . which
is formed under this [Act] by two or more persons." Thus, while
48 the same person may be both a general and limited partner,
Section 113 (Dual Capacity), one person alone cannot be the "two
50 persons" contemplated by this definition. However, nothing in

2 this definition prevents two closely affiliated persons from
satisfying the two person requirement.

4 Paragraph (13) [Partnership agreement] - Section 110 is
essential to understanding the significance of the partnership
6 agreement. See also Section 201(d) (resolving inconsistencies
between the certificate of limited partnership and the
8 partnership agreement).

10 Paragraph (21) [Transfer] - Following RUPA, this Act uses
the words "transfer" and "transferee" rather than the words
12 "assignment" and "assignee." See RUPA Section 503.

14 The reference to "transfer by operation of law" is
significant in connection with Section 702 (Transfer of Partner's
16 Transferable Interest). That section severely restricts a
transferee's rights (absent the consent of the partners), and
18 this definition makes those restrictions applicable, for example,
to transfers ordered by a family court as part of a divorce
20 proceeding and transfers resulting from the death of a partner.

22 Paragraph (23) [Transferee] - See comment to Paragraph 21
for an explanation of why this Act refers to "transferee" rather
24 than "assignee."

26

§1303. Knowledge and notice

28

30 1. Knowledge. A person knows a fact if the person has
actual knowledge of it.

32 2. Notice. A person has notice of a fact if the person:

34 A. Knows of it;

36 B. Has received a notification of it;

38 C. Has reason to know it exists from all of the facts known
to the person at the time in question; or

40

42 D. Has notice of it under subsection 3 or 4.

44 3. Certificate of limited partnership. A certificate of
limited partnership on file in the office of the Secretary of
State is notice that the partnership is a limited partnership and
46 the persons designated in the certificate as general partners are
general partners. Except as otherwise provided in subsection 4,
48 the certificate is not notice of any other fact.

50 4. Notice of certain events. A person has notice of:

2 A. Another person's dissociation as a general partner 90
4 days after the effective date of an amendment to the
6 certificate of limited partnership that states that the
 other person has dissociated or 90 days after the effective
 date of a statement of dissociation pertaining to the other
 person, whichever occurs first;

8
10 B. A limited partnership's dissolution 90 days after the
12 effective date of an amendment to the certificate of limited
 partnership stating that the limited partnership is
 dissolved;

14 C. A limited partnership's termination 90 days after the
16 effective date of a statement of termination;

18 D. A limited partnership's conversion under subchapter 11
20 90 days after the effective date of the articles of
 conversion; or

22 E. A merger under subchapter 11 90 days after the effective
 date of the articles of merger.

24 5. Notifies or gives notification. A person notifies or
26 gives a notification to another person by taking steps reasonably
 required to inform the other person in ordinary course, whether
 or not the other person learns of it.

28 6. Receives notification. A person receives a notification
30 when the notification:

32 A. Comes to the person's attention; or

34 B. Is delivered at the person's place of business or at any
36 other place held out by the person as a place for receiving
 communications.

38 7. Person other than individual; reasonable diligence.
40 Except as otherwise provided in subsection 8, a person other than
42 an individual knows, has notice or receives a notification of a
44 fact for purposes of a particular transaction when the individual
46 conducting the transaction for the person knows, has notice or
48 receives a notification of the fact or in any event when the fact
 would have been brought to the individual's attention if the
 person had exercised reasonable diligence. A person other than an
 individual exercises reasonable diligence if it maintains
 reasonable routines for communicating significant information to
 the individual conducting the transaction for the person and
 there is reasonable compliance with the routines. Reasonable
50 diligence does not require an individual acting for the person to

2 communicate information unless the communication is part of the
3 individual's regular duties or the individual has reason to know
4 of the transaction and that the transaction would be materially
5 affected by the information.

6 **8. General partner.** A general partner's knowledge, notice
7 or receipt of a notification of a fact relating to the limited
8 partnership is effective immediately as knowledge of, notice to
9 or receipt of a notification by the limited partnership, except
10 in the case of a fraud on the limited partnership committed by or
11 with the consent of the general partner. A limited partner's
12 knowledge, notice or receipt of a notification of a fact relating
13 to the limited partnership is not effective as knowledge of,
14 notice to or receipt of a notification by the limited partnership.

15 **Uniform Comment**

16
17 (This is section 103 of the Uniform Limited Partnership Act
18 (2001).)

19
20 **Source** - RUPA Section 102; RULPA Section 208.

21
22
23 **Notice and the relationship among subsections (b), (c) and**
24 **(d)** - These subsections provide separate and independent avenues
25 through which a person can have notice of a fact. A person has
26 notice of a fact as soon as any of the avenues applies.

27 **Example:** A limited partnership dissolves and amends its
28 certificate of limited partnership to indicate
29 dissolution. The amendment is effective on March
30 1. On March 15, Person #1 has reason to know of
31 the dissolution and therefore has "notice" of the
32 dissolution under Section 103(b)(3) even though
33 Section 103(d)(2) does not yet apply. Person #2
34 does not have actual knowledge of the dissolution
35 until June 15. Nonetheless, under Section
36 103(d)(2) Person #2 has "notice" of the
37 dissolution on May 30.

38
39 **Subsection (c)** - This subsection provides what is commonly
40 called constructive notice and comes essentially verbatim from
41 RULPA Section 208. As for the significance of constructive notice
42 "that the partnership is a limited partnership," see Water, Waste
43 & Land, Inc. v. Lanham, 955 P.2d 997, 1001-1003 (Colo. 1998)
44 (interpreting a comparable provision of the Colorado LLC statute
45 and holding the provision ineffective to change common law agency
46 principles, including the rules relating to the liability of an
47 agent that transacts business for an undisclosed principal).

2 As for constructive notice that "the persons designated in
the certificate as general partners are general partners,"
4 Section 201(a)(3) requires the initial certificate of limited
partnership to name each general partner, and Section 202(b)
6 requires a limited partnership to promptly amend its certificate
of limited partnership to reflect any change in the identity of
8 its general partners. Nonetheless, it will be possible, albeit
improper, for a person to be designated in the certificate of
10 limited partnership as a general partner without having become a
general partner as contemplated by Section 401. Likewise, it will
12 be possible for a person to have become a general partner under
Section 401 without being designated as a general partner in the
14 certificate of limited partnership. According to the last clause
of this subsection, the fact that a person is **not** listed as in
16 the certificate as a general partner is **not** notice that the
person is **not** a general partner. For further discussion of this
point, see the Comment to Section 401.

18
19 If the partnership agreement and the public record are
20 inconsistent, Section 201(d) applies (partnership agreement
controls *inter se*; public record controls as to third parties who
22 have relied). See also Section 202(b) (requiring the limited
partnership to amend its certificate of limited partnership to
24 keep accurate the listing of general partners), 202(c) (requiring
a general partner to take corrective action when the general
26 partner knows that the certificate of limited partnership
contains false information), and 208 (imposing liability for
28 false information *inter alia* the certificate of limited
partnership).

30
31 **Subsection (d)** - This subsection also provides what is
32 commonly called constructive notice and works in conjunction with
other sections of this Act to curtail the power to bind and
34 personal liability of general partners and persons dissociated as
general partners. See Sections 402, 606, 607, 804, 805, 1111, and
36 1112. Following RUPA (in substance, although not in form), the
constructive notice begins 90 days after the effective date of
38 the filed record. For the Act's rules on delayed effective dates,
see Section 206(c).

40
41 The 90-day delay applies only to the constructive notice and
42 not to the event described in the filed record.

44 **Example:** On March 15 X dissociates as a general partner from
XYZ Limited Partnership by giving notice to XYZ. See Section
46 603(1). On March 20, XYZ amends its certificate of limited
partnership to remove X's name from the list of general
48 partners. See Section 202(b)(2).

2 X's **dissociation** is effective March 15. If on March 16 X
purports to be a general partner of XYZ and under Section
4 606(a) binds XYZ to some obligation, X will be liable under
Section 606(b) as a "person dissociated as a general
partner."

6
8 On June 13 (90 days after March 15), the world has
constructive notice of X's dissociation as a general
partner. Beginning on that date, X will lack the power to
10 bind XYZ. See Section 606(a)(2)(B) (person dissociated as a
general partner can bind the limited partnership only if,
12 inter alia, "at the time the other party enters into the
transaction . . . the other party does not have notice of
14 the dissociation").

16 Constructive notice under this subsection applies to
partners and transferees as well as other persons.

18
20 **Subsection (e)** - The phrase "person learns of it" in this
subsection is equivalent to the phrase "knows of it" in
subsection (b)(1).

22
24 **Subsection (h)** - Under this subsection and Section 302,
information possessed by a person that is only a limited partner
is not attributable to the limited partnership. However,
26 information possessed by a person that is both a general partner
and a limited partner is attributable to the limited partnership.
28 See Section 113 (Dual Capacity)

30
32 **§1304. Nature, purpose and duration of entity**

34 **1. Nature.** A limited partnership is an entity distinct
from its partners. A limited partnership is the same entity
regardless of whether its certificate states that the limited
36 partnership is a limited liability limited partnership.

38 **2. Purpose.** A limited partnership may be organized under
this chapter for any lawful purpose.

40
42 **3. Duration.** A limited partnership has a perpetual
duration.

44 **Uniform Comment**

46 (This is section 104 of the Uniform Limited Partnership Act
(2001).)

48
50 **Subsection (a)** - Acquiring or relinquishing an LLLP shield
changes only the rules governing a general partner's liability

for subsequently incurred obligations of the limited partnership.
The underlying entity is unaffected.

Subsection (b) - In contrast with RULPA Section 106, this Act does not require a limited partnership to have a business purpose. However, many of the Act's default rules presuppose at least a profit-making purpose. See, e.g., Section 503 (providing for the sharing of distributions in proportion to the value of contributions), 701 (defining a transferable interest in terms of the right to receive distributions), 801 (allocating the right to consent to cause or avoid dissolution in proportion to partners' rights to receive distributions), and 812 (providing that, after a dissolved limited partnership has paid its creditors, "[a]ny surplus remaining . . . must be paid in cash as a distribution" to partners and transferees). If a limited partnership is organized for an essentially non-pecuniary purpose, the organizers should carefully review the Act's default rules and override them as necessary via the partnership agreement.

Subsection (c) - The partnership agreement has the power to vary this subsection, either by stating a definite term or by specifying an event or events which cause dissolution. Sections 110(a) and 801(1). Section 801 also recognizes several other occurrences that cause dissolution. Thus, the public record pertaining to a limited partnership will not necessarily reveal whether the limited partnership actually has a perpetual duration.

The public record might also fail to reveal whether the limited partnership has in fact dissolved. A dissolved limited partnership may amend its certificate of limited partnership to indicate dissolution but is not required to do so. Section 803(b)(1).

Predecessor law took a somewhat different approach. RULPA Section 201(4) required the certificate of limited partnership to state "the latest date upon which the limited partnership is to dissolve." Although RULPA Section 801(2) provided for a limited partnership to dissolve "upon the happening of events specified in writing in the partnership agreement," RULPA Section 203 required the limited partnership to file a certificate of cancellation to indicate that dissolution had occurred.

§1305. Powers

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

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Uniform Comment

(This is section 105 of the Uniform Limited Partnership Act (2001).)

This Act omits as unnecessary any detailed list of specific powers. The power to sue and be sued is mentioned specifically so that Section 110(b)(1) can prohibit the partnership agreement from varying that power. The power to maintain an action against a partner is mentioned specifically to establish that the limited partnership itself has standing to enforce the partnership agreement.

§1306. Governing law

The law of this State governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

Uniform Comment

(This is section 106 of the Uniform Limited Partnership Act (2001).)

To partially define its scope, this section uses the phrase "relations among the partners of a limited partnership and between the partners and the limited partnership." Section 110(a) uses essentially identical language in defining the proper realm of the partnership agreement: "relations among the partners and between the partners and the partnership."

Despite the similarity of language, this section has no bearing on the power of a partnership agreement to vary other provisions of this Act. It is quite possible for a provision of this Act to involve "relations among the partners of a limited partnership and between the partners and the limited partnership" and thus come within this section, and yet not be subject to variation by the partnership agreement. Although Section 110(a) grants plenary authority to the partnership agreement to regulate "relations among the partners and between the partners and the partnership," that authority is subject to Section 110(b).

For example, Section 408 (General Standards of General Partners's Conduct) certainly involves "relations among the partners of a limited partnership and between the partners and the limited partnership." Therefore, according to this section, Section 408 applies to a limited partnership formed or otherwise

2 subject to this Act. Just as certainly, Section 408 pertains to
3 "relations among the partners and between the partners and the
4 partnership" for the purposes of Section 110(a), and therefore
5 the partnership agreement may properly address matters covered by
6 Section 408. However, Section 110(b)(5), (6), and (7) limit the
7 power of the partnership agreement to vary the rules stated in
8 Section 408. See also, e.g., Section 502(c) (stating creditor's
9 rights, which are protected under Section 110(b)(13) from being
10 restricted by the partnership agreement) and Comment to Section
11 509.

12 This section also applies to "the liability of partners as
13 partners for an obligation of a limited partnership." The phrase
14 "as partners" contemplates the liability shield for limited
15 partners under Section 303 and the rules for general partner
16 liability stated in Section 404. Other grounds for liability can
17 be supplied by other law, including the law of some other
18 jurisdiction. For example, a partner's contractual guaranty of a
19 limited partnership obligation might well be governed by the law
20 of some other jurisdiction.

21 Transferees derive their rights and status under this Act
22 from partners and accordingly this section applies to the
23 relations of a transferee to the limited partnership.

24 The partnership agreement may not vary the rule stated in
25 this section. See Section 110(b)(2).

26 **§1307. Supplemental principles of law; rate of interest**

27 **1. Principles of law and equity supplement.** Unless
28 displaced by particular provisions of this chapter, the
29 principles of law and equity supplement this chapter.

30 **2. Default interest rate.** If an obligation to pay interest
31 arises under this chapter and the rate is not specified, the rate
32 is that specified in Title 14, section 1602-B.

33 **Uniform Comment**

34 (This is section 107 of the Uniform Limited Partnership Act
35 (2001).)

36 **Subsection (a)** - This language comes from RUPA Section 104
37 and does not address an important question raised by the
38 de-linking of this Act from the UPA and RUPA - namely, to what
39 extent is the case law of general partnerships relevant to
40 limited partnerships governed by this Act?

2 Predecessor law, RULPA Section 403, expressly equated the
rights, powers, restrictions, and liabilities of a general
4 partner in a limited partnership with the rights, powers,
restrictions, and liabilities of a partner in a general
6 partnership. This Act has no comparable provision. See Prefatory
Note. Therefore, a court should not assume that a case concerning
8 a general partnership is automatically relevant to a limited
partnership governed by this Act. A general partnership case may
be relevant by analogy, especially if (1) the issue in dispute
10 involves a provision of this Act for which a comparable provision
exists under the law of general partnerships; and (2) the
12 fundamental differences between a general partnership and limited
partnership are immaterial to the disputed issue.

14 **§1308. Limited partnership name; assumed name**

16 **1. Requirements for real name.** This subsection governs the
18 real name of a limited partnership.

20 **A. A limited partnership name:**

22 (1) May contain the name of any partner;

24 (2) Must contain the phrase "limited partnership" or
26 the abbreviation "L.P." or "LP," unless the limited
partnership is filing an assumed name under subsection
2 or a registration of name under section 1309,
28 subsection 2. If the phrase "Limited Partnership" is
used, a limited partnership may also use the
30 abbreviation "L.P." or "LP" without filing an assumed
name under subsection 2; and

32 (3) May not contain the phrase "limited liability
34 limited partnership" or the abbreviation "LLLP" or
"L.L.L.P." unless it has been designed as a limited
36 liability limited partnership. If so designated, the
name must contain the phrase "limited liability limited
38 partnership" or the abbreviation "LLLP" or "L.L.L.P."
and may not contain the abbreviation "L.P." or "LP."

40 **B. Except as authorized by paragraphs C and D, a limited**
42 **partnership name must be distinguishable on the records of**
44 **the Secretary of State from:**

46 (1) The name of a corporation, nonprofit corporation,
48 limited liability company, limited liability
partnership or limited partnership that is
50 incorporated, organized or authorized to transact
business or carry on activities in this State;

2 (2) Assumed, fictitious, reserved and registered name
filings for all entities; and

4 (3) Marks registered under Title 10, chapter 301-A,
unless the registered owner or holder of the mark is
6 the same person or entity as the limited partnership
8 seeking to use a name that is not distinguishable on
the records of the Secretary of State and files proof
of ownership with the Secretary of State.

10 C. The Secretary of State, in the Secretary of State's
12 discretion, may refuse to file a name that:

14 (1) Consists of or comprises language that is obscene;

16 (2) Inappropriately promotes abusive or unlawful
activity;

18 (3) Falsely suggests an association with public
20 institutions; or

22 (4) Violates any other provision of the law of this
24 State with respect to names.

26 D. A limited partnership may apply to the Secretary of
State for authorization to use a name that is not
28 distinguishable on the records of the Secretary of State
from one or more of the names described in paragraph B. The
30 Secretary of State shall authorize use of the name applied
for if:

32 (1) The entity in possession of the name applied for
consents to the use in writing and submits an
34 undertaking in a form satisfactory to the Secretary of
State to change its name to a name that is
36 distinguishable on the records of the Secretary of
State from the name of the applicant; or

38 (2) The applicant delivers to the Secretary of State a
40 certified copy of the final judgment of a court of
competent jurisdiction establishing the applicant's
42 right to use the name applied for in this State.

44 E. A limited partnership may use the name, including the
assumed or fictitious name, of another domestic or foreign
46 limited partnership that is used in this State if the other
limited partnership is organized or authorized to transact
48 business in this State and the limited partnership proposing
to use the name:

50

- 2 (1) Has merged with the other limited partnership;
- 4 (2) Has been converted into another limited
partnership; or
- 6 (3) Has transferred substantially all of its assets
8 including the conflicting name to the limited
partnership.

10 F. In determining whether names are distinguishable on the
12 records, the Secretary of State shall disregard the
14 following:

- 14 (1) Words or abbreviations of words that describe the
16 nature of the entity, including "professional
18 association," "corporation," "company," "incorporated,"
20 "chartered," "limited," "limited partnership," "limited
22 liability company," "professional limited liability
24 company," "limited liability partnership," "registered
26 limited liability partnership," "limited liability
28 limited partnership," "service corporation" and
30 "professional corporation";
- 32 (2) The presence or absence of the words or symbols of
34 the words "and" and "the"; and
- 36 (3) Differences in the use of punctuation,
38 capitalization or special characters.

40 G. If a foreign limited partnership authorized to transact
42 business in this State changes its name to one that does not
44 satisfy the requirements of this section, it may not
46 transact business in this State under the proposed new name
48 until it adopts a name satisfying the requirements of this
50 section and files an amended application for authority under
section 1412, subsection 2 that is accompanied by a
statement of use of a fictitious name under section 1415.

52 H. Notwithstanding subsection 2, the name of a limited
54 partnership may not be distinguishable on the records of the
56 Secretary of State if the limited partnership was organized
58 under the laws of this State prior to January 1, 1992 or the
60 foreign limited partnership was authorized to do business in
this State prior to January 1, 1992 and had the right to use
the name as its legal name prior to January 1, 1992.

62 I. Subsection 2 does not apply to the name of any limited
64 partnership, the certificate of which is suspended, on and
66 after the 3rd anniversary of the suspension.

2 2. Requirements for use of assumed name. This subsection
3 governs the use of an assumed name by a limited partnership.

4 A. As used in this subsection, "assumed name" means a trade
5 name or any name other than the real name of a limited
6 partnership except a fictitious name.

8 B. Upon complying with this subsection, a domestic limited
9 partnership or foreign limited partnership authorized to
10 transact business in this State may transact its business in
11 this State under one or more assumed names.

12 C. Prior to transacting business in this State under an
13 assumed name, a limited partnership shall execute and
14 deliver to the Secretary of State for filing a statement
15 setting forth:

18 (1) The limited partnership name;

20 (2) That the limited partnership intends to transact
21 business under an assumed name;

22 (3) The assumed name that the limited partnership
23 proposes to use;

26 (4) If the assumed name is not to be used at all of
27 the limited partnership's places of business in this
28 State, the locations where it will be used; and

30 (5) If a foreign limited partnership:

32 (a) The jurisdiction of organization and its date
33 of organization; and

34 (b) The date on which it was authorized to
35 transact business in this State.

38 D. A separate statement must be executed and delivered for
39 filing with respect to each assumed name that the limited
40 partnership proposes to use.

42 E. Each assumed name must comply with the requirements of
43 subsection 1.

44 F. If a limited partnership uses an assumed name without
45 complying with the requirements of this subsection, the
46 continued use of the assumed name may be enjoined upon suit
47 by the Attorney General or by any person adversely affected
48 by the use of the assumed name.

50

2 G. Notwithstanding its compliance with the requirements of
3 this section, the use of an assumed name may be enjoined
4 upon suit of the Attorney General or of any person adversely
5 affected by such use if:

6 (1) The assumed name did not, at the time the
7 statement required by this subsection was filed, comply
8 with the requirements of subsection 1; or

10 (2) The assumed name is not distinguishable on the
11 records of the Secretary of State from a name in which
12 the plaintiff has prior rights by virtue of the common
13 law or statutory law of unfair competition, unfair
14 trade practices, common law copyright or similar law.

16 H. The mere filing of a statement under this subsection
17 does not constitute actual use of the assumed name set out
18 in that statement for purposes of determining priority of
19 rights.

20 I. A limited partnership may terminate an assumed name by
21 executing and delivering a statement setting forth:

24 (1) The name of the limited partnership;

26 (2) That the limited partnership no longer intends to
27 transact business under the assumed name; and

28 (3) The assumed name the limited partnership intends
29 to terminate.

32 **Maine Comment**

34 Subsection 1 is based on former section 403-A and maintains
35 uniformity with the other Maine business entity laws for the name
36 availability standard.

38 Subsection 2 is based on former section 405-A and is a
39 nonuniform public protection provision to require a limited
40 partnership that uses a name other than its real name to make a
41 filing on the public record.

42 **§1309. Reserved name; registered name of foreign limited**
43 **partnership**

46 1. Reserve use of name. A person may reserve the exclusive
47 use of a limited partnership name, including an assumed or
48 fictitious name, by executing and delivering for filing an
49 application to the Secretary of State.

50

2 A. The application to reserve a name must set forth:

4 (1) The name and address of the applicant; and

6 (2) The name proposed to be reserved.

8 B. If the Secretary of State finds that the limited
10 partnership name applied for is distinguishable on the
12 records of the Secretary of State pursuant to section 1308,
the Secretary of State shall reserve the name for the
applicant's exclusive use for a nonrenewable period of 120
days.

14 C. The owner of a reserved limited partnership name under
16 this subsection may transfer the reservation to another
18 person by executing and delivering for filing to the
Secretary of State a notice of the transfer, signed by the
transferor, that states the name and address of the
transferee.

20 2. Register limited partnership name. A foreign limited
22 partnership may register its limited partnership name by
24 executing and delivering for filing an application to the
Secretary of State.

26 A. The application to register a limited partnership name
28 must set forth:

30 (1) The name of the limited partnership;

32 (2) The jurisdiction of its organization and the date
of its organization;

34 (3) The address of its principal office wherever
located;

36 (4) A brief description of the nature of the business
38 in which it is engaged; and

40 (5) Is accompanied by a certificate of existence or a
42 document of similar import duly authenticated by the
44 secretary of state or other official having custody of
limited partnership records in the state or country
46 under whose law the foreign limited partnership is
organized. The certificate of existence must have been
48 made not more than 90 days prior to the delivery of the
application for filing.

50 B. If the Secretary of State finds that the limited
partnership name applied for is distinguishable on the

2 records of the Secretary of State pursuant to section 1308,
3 the Secretary of State shall register the name for the
4 foreign limited partnership's exclusive use upon the
5 effective date of the application until the end of the
6 calendar year in which the application was filed.

7 C. A foreign limited partnership whose registration is
8 effective may renew it for a successive year by delivering
9 for filing to the Secretary of State a renewal application
10 that complies with the requirements of this subsection
11 between October 1st and December 31st. The renewal
12 application, when filed, renews the registration for the
13 following calendar year.

14 D. After its registration is effective, a foreign limited
15 partnership may qualify as a foreign limited partnership
16 under the registered name or may consent in writing to the
17 use of that name by a limited partnership organized under
18 this chapter or by another foreign limited partnership
19 authorized to transact business in this State. The
20 registration terminates when the domestic limited
21 partnership is organized or the foreign limited partnership
22 qualifies or consents to the qualification of another
23 foreign limited partnership under the registered name.

24
25 **Maine Comment**

26
27 Subsection 1 is based on former section 404-A and maintains
28 uniformity with the other Maine business entity laws for the
29 reservation of name process.

30
31 Subsection 2 is based on former section 406-A and is a
32 nonuniform provision to allow a foreign limited partnership to
33 register its name in Maine while not actually transacting
34 business in this State.

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36
37 **§1310. Effect of partnership agreement; nonwaivable provisions**

38
39 **1. Agreement governs; default.** Except as otherwise
40 provided in subsection 2, the partnership agreement governs
41 relations among the partners and between the partners and the
42 partnership. It is the policy of this chapter to give maximum
43 effect to the principle of freedom of contract and to the
44 enforceability of partnership agreements. To the extent the
45 partnership agreement does not otherwise provide, this chapter
46 governs relations among the partners and between the partners and
47 the partnership.

48
49 **2. Nonwaivable provisions.** A partnership agreement may not:

2 A. Vary a limited partnership's power under section 1305 to
3 sue, be sued and defend in its own name;

4 B. Vary the law applicable to a limited partnership under
5 section 1306;

6 C. Vary the requirements of section 1324;

7 D. Vary the information required under section 1311 or
8 unreasonably restrict the right to information under section
9 1344 or 1357, but the partnership agreement may impose
10 reasonable restrictions on the availability and use of
11 information obtained under those sections and may define
12 appropriate remedies, including liquidated damages, for a
13 breach of any reasonable restriction on use;

14 E. Vary the power of a person to dissociate as a general
15 partner under section 1374, subsection 1 except to require
16 that the notice under section 1373, subsection 1 be in a
17 record;

18 F. Vary the power of a court to decree dissolution in the
19 circumstances specified in section 1392;

20 G. Vary the requirement to wind up the partnership's
21 business as specified in section 1393;

22 H. Unreasonably restrict the right to maintain an action
23 under subchapter 10;

24 I. Restrict the right of a partner under section 1440,
25 subsection 1 to approve a conversion or merger or the right
26 of a general partner under section 1440, subsection 2 to
27 consent to an amendment to the certificate of limited
28 partnership that deletes a statement that the limited
29 partnership is a limited liability limited partnership; or

30 J. Restrict rights under this chapter of a person other
31 than a partner or a transferee.

32 3. Implied covenant of good faith and fair dealing.
33 Notwithstanding any other provision of this chapter, there
34 exists, for purposes of this chapter, an implied contractual
35 covenant of good faith and fair dealing in every partnership
36 agreement which may not be eliminated by the terms of the
37 partnership agreement.

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Uniform Comment

2 (This is section 110 of the Uniform Limited Partnership Act
3 (2001).)

4 **Source** - RUPA Section 103.

6 Subject only to subsection (b), the partnership agreement
7 has plenary power to structure and regulate the relations of the
8 partners inter se. Although the certificate of limited
9 partnership is a limited partnership's foundational document,
10 among the partners the partnership agreement controls. See
11 Section 201(d).

12
13 The partnership agreement has the power to control the
14 manner of its own amendment. In particular, a provision of the
15 agreement prohibiting oral modifications is enforceable, despite
16 any common law antagonism to "no oral modification" provisions.
17 Likewise, a partnership agreement can impose "made in a record"
18 requirements on other aspects of the partners' relationship, such
19 as requiring consents to be made in a record and signed, or
20 rendering unenforceable oral promises to make contributions or
21 oral understandings as to "events upon the happening of which the
22 limited partnership is to be dissolved," Section 111(9)(D). See
23 also Section 801(1).

24
25 **Subsection (b)(3)** - The referenced section states who must
26 sign various documents.

27
28 **Subsection (b)(4)** - In determining whether a restriction is
29 reasonable, a court might consider: (i) the danger or other
30 problem the restriction seeks to avoid; (ii) the purpose for
31 which the information is sought; and (iii) whether, in light of
32 both the problem and the purpose, the restriction is reasonably
33 tailored. Restricting access to or use of the names and addresses
34 of limited partners is not per se unreasonable.

35
36 Under this Act, general and limited partners have sharply
37 different roles. A restriction that is reasonable as to a limited
38 partner is not necessarily reasonable as to a general partner.

39
40 Sections 304(g) and 407(f) authorize the limited partnership
41 (as distinguished from the partnership agreement) to impose
42 restrictions on the use of information. For a comparison of
43 restrictions contained in the partnership agreement and
44 restrictions imposed unilaterally by the limited partnership, see
45 the Comment to Section 304(g).

46
47 **Subsection (b)(5)(A)** - It is not per se manifestly
48 unreasonable for the partnership agreement to permit a general
49 partner to compete with the limited partnership.

50

2 **Subsection (b)(5)(B)** - The Act does not require that the
authorization or ratification be by **disinterested** partners,
4 although the partnership agreement may so provide. The Act does
require that the disclosure be made to all partners, even if the
6 partnership agreement excludes some partners from the
authorization or ratification process. An interested partner that
8 participates in the authorization or ratification process is
subject to the obligation of good faith and fair dealing.
Sections 305(b) and 408(d).

10
12 **Subsection (b)(8)** - This restriction applies only to the
power of a person to dissociate as a general partner. The
14 partnership agreement may eliminate the power of a person to
dissociate as a limited partner.

16 **Subsection (b)(9)** - This provision should not be read to
limit a partnership agreement's power to provide for arbitration.
18 For example, an agreement to arbitrate all disputes - including
dissolution disputes - is enforceable. Any other interpretation
20 would put this Act at odds with federal law. See Southland Corp.
v. Keating, 465 U.S. 1 (1984) (holding that the Federal
22 Arbitration Act preempts state statutes that seek to invalidate
agreements to arbitrate) and Allied-Bruce Terminix Cos., Inc. v.
24 Dobson, 513 U.S. 265 (1995) (same). This provision does prohibit
any narrowing of the substantive grounds for judicial dissolution
26 as stated in Section 802.

28 **Example:** A provision of a partnership agreement states that
no partner may obtain judicial dissolution without showing
30 that a general partner is in material breach of the
partnership agreement. The provision is ineffective to
32 prevent a court from ordering dissolution under Section 802.

34 **Subsection (b)(11)** - Section 1001 codifies a partner's right
to bring a direct action, and the rest of Article 10 provides for
36 derivative actions. The partnership agreement may not restrict a
partner's right to bring either type of action if the effect is
38 to undercut or frustrate the duties and rights protected by
Section 110(b).

40
42 The reasonableness of a restriction on derivative actions
should be judged in light of the history and purpose of
44 derivative actions. They originated as an equitable remedy,
intended to protect passive owners against management abuses. A
46 partnership agreement may not provide that all derivative claims
will be subject to final determination by a special litigation
48 committee appointed by the limited partnership, because that
provision would eliminate, not merely restrict, a partner's right
to bring a derivative action.

2 5. Partnership agreement, amendments. A copy of any
partnership agreement made in a record and any amendment made in
4 a record to any partnership agreement;

6 6. Financial statement. A copy of any financial statement
of the limited partnership for the 3 most recent years;

8 7. Annual reports. A copy of the 3 most recent annual
10 reports delivered by the limited partnership to the Secretary of
State pursuant to section 1330;

12 8. Record of consent. A copy of any record made by the
14 limited partnership during the past 3 years of any consent given
by or vote taken of any partner pursuant to this chapter or the
16 partnership agreement; and

18 9. Record of contributions, transferable interests, events
causing dissolution. Unless contained in a partnership agreement
20 made in a record, a record stating:

22 A. The amount of cash, and a description and statement of
the agreed value of the other benefits, contributed and
24 agreed to be contributed by each partner;

26 B. The times at which, or events on the happening of which,
any additional contributions agreed to be made by each
28 partner are to be made;

30 C. For any person that is both a general partner and a
limited partner, a specification of what transferable
32 interest the person owns in each capacity; and

34 D. Events upon the happening of which the limited
partnership is to be dissolved and its activities wound up.

36 **Uniform Comment**

38 (This is section 111 of the Uniform Limited Partnership Act
40 (2001).)

42 **Source** - RULPA Section 105.

44 Sections 304 and 407 govern access to the information
46 required by this section, as well as to other information
pertaining to a limited partnership.

48 **Paragraph (5)** - This requirement applies to superseded as
50 well as current agreements and amendments. An agreement or
amendment is "made in a record " to the extent the agreement is
"integrated" into a record and consented to in that memorialized

2 form. It is possible for a partnership agreement to be made in
part in a record and in part otherwise. See Comment to Section
4 110. An oral agreement that is subsequently inscribed in a record
(but not consented to as such) was not "made in a record" and is
6 not covered by paragraph (5). However, if the limited partnership
happens to have such a record, Section 304(b) might and Section
407(a)(2) will provide a right of access.

8
10 **Paragraph (8)** - This paragraph does not require a limited
partnership to make a record of consents given and votes taken.
12 However, if the limited partnership has made such a record, this
paragraph requires that the limited partnership maintain the
14 record for three years. The requirement applies to any record
made by the limited partnership, not just to records made
16 contemporaneously with the giving of consent or voting. The three
year period runs from when the record was made and not from when
the consent was given or vote taken.

18
20 **Paragraph (9)** - Information is "contained in a partnership
agreement made in a record" only to the extent that the
22 information is "integrated" into a record and, in that
memorialized form, has been consented to as part of the
partnership agreement.

24
26 This paragraph is not a statute of frauds provision. For
example, failure to comply with paragraph (9)(A) or (B) does not
28 render unenforceable an oral promise to make a contribution.
Likewise, failure to comply with paragraph (9)(D) does not
invalidate an oral term of the partnership specifying "events
30 upon the happening of which the limited partnership is to be
dissolved and its activities wound up." See also Section 801(1).

32
34 Obversely, the mere fact that a limited partnership
maintains a record in purported compliance with paragraph (9)(A)
36 or (B) does not prove that a person has actually promised to make
a contribution. Likewise, the mere fact that a limited
partnership maintains a record in purported compliance with
38 paragraph (9)(D) does not prove that the partnership agreement
actually includes the specified events as causes of dissolution.

40
42 Consistent with the partnership agreement's plenary power to
structure and regulate the relations of the partners inter se, a
44 partnership agreement can impose "made in a record" requirements
which render unenforceable oral promises to make contributions or
46 oral understandings as to "events upon the happening of which the
limited partnership is to be dissolved." See Comment to Section
110.

48
50 **Paragraph (9)(A) and (B)** - Often the partnership agreement
will state in record form the value of contributions made and

2 promised to be made. If not, these provisions require that the
4 value be stated in a record maintained as part of the limited
6 partnership's required information. The Act does not authorize
8 the limited partnership or the general partners to set the value
of a contribution without the concurrence of the person who has
made or promised the contribution, although the partnership
agreement itself can grant that authority.

10 **Paragraph (9)(C)** - The information required by this
12 provision is essential for determining what happens to the
14 transferable interests of a person that is both a general partner
and a limited partner and that dissociates in one of those
capacities but not the other. See Sections 602(3) and 605(5).

16 **§1312. Business transactions of partner with partnership**

18 A partner may lend money to and transact other business with
20 the limited partnership and has the same rights and obligations
with respect to the loan or other transaction as a person that is
22 not a partner.

24 **Uniform Comment**

26 (This is section 112 of the Uniform Limited Partnership Act
(2001).)

28 **Source** - RULPA Section 107. See also RUPA Section 404(f) and
30 ULLCA Section 409(f).

32 This section has no impact on a general partner's duty under
34 Section 408(b)(2) (duty of loyalty includes refraining from
36 acting as or for an adverse party) and means rather that this Act
38 does not discriminate against a creditor of a limited partnership
40 that happens also to be a partner. See, e.g., BT-I v. Equitable
Life Assurance Society of the United States, 75 Cal.App.4th 1406,
42 1415, 89 Cal.Rptr.2d 811, 814 (Cal.App. 4 Dist.1999). and SEC v.
DuPont, Homsey & Co., 204 F. Supp. 944, 946 (D. Mass. 1962),
vacated and remanded on other grounds, 334 F2d 704 (1st Cir.
1964). This section does not, however, override other law, such
as fraudulent transfer or conveyance acts.

44 **§1313. Dual capacity**

46 A person may be both a general partner and a limited
48 partner. A person that is both a general and limited partner has
the rights, powers, duties and obligations provided by this
50 chapter and the partnership agreement in each of those
capacities. When the person acts as a general partner, the person

2 is subject to the obligations, duties and restrictions under this
3 chapter and the partnership agreement for general partners. When
4 the person acts as a limited partner, the person is subject to
5 the obligations, duties and restrictions under this chapter and
6 the partnership agreement for limited partners.

8 **Uniform Comment**

9 (This is section 113 of the Uniform Limited Partnership Act
10 (2001).)

12 **Source** - RULPA Section 404, redrafted for reasons of style.

14 **§1314. Registered office; registered agent**

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

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

24 **B. A registered agent for service of process on the limited**
25 **partnership. The agent may be either:**

26 **(1) An individual resident of this State whose**
28 **business office or residential address is identical**
29 **with the limited partnership's registered office; or**

30 **(2) A domestic or foreign limited partnership, whether**
32 **business or nonprofit, authorized to do business or**
33 **carry on activities in this State whose registered**
34 **office also serves as the registered office of the**
35 **limited partnership.**

36 **2. Acceptance of designation of agent. Unless the**
37 **registered agent signed the document making the appointment, the**
38 **appointment of a registered agent or a successor registered agent**
39 **on whom process may be served is not effective until the**
40 **registered agent delivers a written statement to the Secretary of**
41 **State accepting the appointment.**

42 **3. Registered agent named in certificate of limited**
43 **partnership. The initial registered agent of a limited**
44 **partnership must be named in the certificate of limited**
45 **partnership for that limited partnership. A registered agent**
46 **continues in office until a successor is chosen and qualifies and**
47 **the statement required by section 1315 is filed or until the**
48 **resignation notice required by section 1316 is filed.**

Maine Comment

2 This section is based on former section 407, subsections 1
4 and 1-A and maintains uniformity with the other Maine business
6 entity laws for the registered agent filing requirements.

8 §1315. Change of registered office or registered agent

10 1. Change of registered agent. A limited partnership may
12 change its registered agent by executing and delivering for
filing as provided by section 1324 a statement setting forth:

14 A. The name of the limited partnership;

16 B. Its jurisdiction of formation and date of formation in
18 that jurisdiction;

20 C. The name and address of its current registered agent; and

22 D. The name and address of its successor registered agent.

24 2. Name or address change. If the name of the current
26 registered agent or address of the registered office of one or
28 more limited partnerships changes from the name of the current
30 registered agent or address of the registered office appearing on
32 the record in the office of the Secretary of State, the
34 registered agent shall execute and deliver for filing, in
36 accordance with section 1324, a statement setting forth:

38 A. The name of the registered agent appearing on the record
40 in the office of the Secretary of State;

42 B. If the current registered agent has had a name change,
44 the new name of the registered agent;

46 C. The address of the registered office appearing on the
48 record in the office of the Secretary of State;

50 D. If the address of the registered office has changed, the
address of the new registered office, including the street
address and a mailing address, if different. For the
address, a post office box alone is not sufficient to meet
the requirements of this paragraph;

E. The name of each limited partnership affected by the
change as provided in this subsection; and

F. A recitation that states that a notice of the change
under this subsection has been promptly mailed or otherwise

2 delivered to a general partner of each limited partnership
3 affected by the change.

4 In lieu of the bulk filing, the registered agent may file for
5 each such limited partnership a separate statement containing the
6 information.

7 3. Statement of change. Filing by a limited partnership of
8 a statement of a change of its registered agent, as provided in
9 subsection 1, constitutes both an appointment of the new
10 registered agent named in the statement of change and a
11 termination of the appointment of its former registered agent.

12 4. Document filed to change registered agent. Any document
13 to be filed by the Secretary of State, the effect of which is to
14 change the registered agent, must be signed by the person
15 designated in the document as the new registered agent or in
16 accordance with section 1314, subsection 2 and section 1324.

17 **Maine Comment**

18 This section is based on former section 407, subsection 2
19 and maintains uniformity with the other Maine business entity
20 laws for the registered agent filing requirements.

21 **§1316. Resignation of registered agent**

22 1. Resignation of registered agent. A registered agent may
23 resign by filing a statement with the Secretary of State. The
24 statement must include:

25 A. A statement of resignation;

26 B. The names, jurisdiction and date of formation of all the
27 limited partnerships; and

28 C. An affidavit, signed by the registered agent, setting
29 forth the following information:

30 (1) The date on which the statement of resignation was
31 sent by certified or registered mail to a general
32 partner of each limited partnership from which the
33 registered agent is resigning as registered agent; and

34 (2) The name, capacity and address of the general
35 partner for each limited partnership to which the
36 statement of resignation was sent.

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2 2. Effectiveness of statement. A statement of resignation
3 takes effect under this paragraph on the 31st day after the
4 Secretary of State files the statement.

6 3. Effect of resignation. When a statement of resignation
7 takes effect, the registered agent ceases to have responsibility
8 for any matter tendered to it as registered agent for the limited
9 partnership.

10 4. Resignation of agent; appointment by limited
11 partnership; service of process. After receipt of the statement
12 of the resignation of its registered agent under subsection 1,
13 paragraph C, a limited partnership shall file a statement
14 required by section 1315 designating a new registered agent.
15 Until the limited partnership duly files a statement appointing a
16 new registered agent, legal process against the limited
17 partnership may be served upon the Secretary of State in
18 accordance with section 1317.

20 **Maine Comment**

22 This section is based on former section 407, subsection 3
23 and maintains uniformity with the other Maine business entity
24 laws for the registered agent filing requirements.

26 **§1317. Service of process**

28 1. Agent for service of process, notice or demand. An
29 agent for service of process appointed by a limited partnership
30 or foreign limited partnership is an agent of the limited
31 partnership or foreign limited partnership for service of any
32 process, notice or demand required or permitted by law to be
33 served upon the limited partnership or foreign limited
34 partnership.

36 2. Secretary of State default agent. If a limited
37 partnership or foreign limited partnership does not appoint or
38 maintain an agent for service of process in this State or the
39 agent for service of process cannot with reasonable diligence be
40 found at the agent's address, the Secretary of State is an agent
41 of the limited partnership or foreign limited partnership upon
42 whom process, notice or demand may be served.

44 3. Service on Secretary of State. Service of any process,
45 notice or demand on the Secretary of State may be made by
46 delivering to and leaving with the Secretary of State duplicate
47 copies of the process, notice or demand. If a process, notice or
48 demand is served on the Secretary of State, the Secretary of
49 State shall forward one of the copies by registered or certified
50 mail.

2 mail, return receipt requested, to the limited partnership or
foreign limited partnership at its designated office.

4 4. Service effected. Service is effected under subsection
3 at the earliest of:

6 A. The date the limited partnership or foreign limited
8 partnership receives the process, notice or demand;

10 B. The date shown on the return receipt, if signed on
12 behalf of the limited partnership or foreign limited
partnership; and

14 C. Five days after the process, notice or demand is
16 deposited in the mail, if mailed postpaid and correctly
addressed.

18 5. Record of Secretary of State. The Secretary of State
20 shall keep a record of each process, notice and demand served
pursuant to this section and record the time of, and the action
22 taken regarding, the service.

24 6. Service in other manner. This section does not affect
the right to serve process, notice or demand in any other manner
26 provided by law.

28 **Uniform Comment**

30 (This is section 117 of the Uniform Limited Partnership Act
(2001).)

32 **Source** - ULLCA Section 111.

34 Requiring a foreign limited partnership to name an agent for
36 service of process is a change from RULPA. See RULPA Section
902(3).

38 **§1318. Consent and proxies of partners**

40 Action requiring the consent of partners under this chapter
42 may be taken without a meeting, and a partner may appoint a proxy
44 to consent or otherwise act for the partner by signing an
appointment record, either personally or by the partner's
46 attorney in fact.

48 **Uniform Comment**

50 (This is section 118 of the Uniform Limited Partnership Act
(2001).)

2 **Source** - ULLCA Section 404(d) and (e).

4 This Act imposes no meeting requirement and does not
6 distinguish among oral, record, express and tacit consent. The
partnership agreement may establish such requirements and make
such distinctions.

8

10

SUBCHAPTER 2

12

**FORMATION; CERTIFICATE OF
LIMITED PARTNERSHIP AND OTHER FILINGS**

14

16

**§1321. Formation of limited partnership; certificate of limited
partnership**

18

20

22

1. Certificate of limited partnership. In order for a
limited partnership to be formed, a certificate of limited
partnership must be delivered to the Secretary of State for
filing. The certificate must state:

24

**A. The name of the limited partnership, which must comply
with section 1308;**

26

28

**B. The street and mailing address of the initial designated
office and the name and street and mailing address of the
initial agent for service of process;**

30

32

**C. The name and the street and mailing address of each
general partner;**

34

**D. Whether the limited partnership is a limited liability
limited partnership; and**

36

E. Any additional information required by subchapter 11.

38

40

42

2. Other matters. A certificate of limited partnership may
also contain any other matters but may not vary or otherwise
affect the provisions specified in section 1310, subsection 2 in
a manner inconsistent with that section.

44

46

3. Formed when filed. If there has been substantial
compliance with subsection 1, subject to section 1326, subsection
3 a limited partnership is formed when the Secretary of State
files the certificate of limited partnership.

48

50

4. Inconsistencies between agreement and filed document.
Subject to subsection 2, if any provision of a partnership
agreement is inconsistent with the filed certificate of limited

2 partnership or with a filed statement of dissociation,
termination or change or filed articles of conversion or merger:

4 A. The partnership agreement prevails as to partners and
transferees; and

6
8 B. The filed certificate of limited partnership, statement
of dissociation, termination or change or articles of
10 conversion or merger prevail as to persons, other than
partners and transferees, that reasonably rely on the filed
12 record to their detriment.

14 **Uniform Comment**

16 (This is section 201 of the Uniform Limited Partnership Act
(2001).)

18 **Source** - RULPA Section 201.

20 A limited partnership is a creature of statute, and this
22 section governs how a limited partnership comes into existence. A
24 limited partnership is formed only if (i) a certificate of
26 limited partnership is prepared and delivered to the specified
28 public official for filing, (ii) the public official files the
certificate, and (iii) the certificate, delivery and filing are
in "substantial compliance" with the requirements of subsection
(a). Section 206(c) governs when a limited partnership comes into
existence.

30 Despite its foundational importance, a certificate of
32 limited partnership is far less powerful than a corporation's
34 articles of incorporation. Among partners and transferees, for
example, the partnership agreement is paramount. See Section
201(d).

36 **Subsection (a)(1)** -Section 108 contains name requirements.
38 To be acceptable for filing, a certificate of limited partnership
40 must state a name for the limited partnership that complies with
Section 108.

42 **Subsection (a)(3)** - This provision should be read in
44 conjunction with Section 103(c) and Section 401. See the Comment
to those sections.

46 **Subsection (a)(4)** - This Act permits a limited partnership
48 to be a limited liability limited partnership ("LLLP"), and this
50 provision requires the certificate of limited partnership to
state whether the limited partnership is an LLLP. The requirement
is intended to force the organizers of a limited partnership to
decide whether the limited partnership is to be an LLLP.

2 Subject to Sections 406(b)(2) and 1110, a limited
4 partnership may amend its certificate of limited partnership to
6 add or delete a statement that the limited partnership is a
8 limited liability limited partnership. An amendment deleting such
10 a statement must be accompanied by an amendment stating that the
12 limited partnership is **not** a limited liability limited
partnership. Section 201(a)(4) does not permit a certificate of
limited partnership to be silent on this point, except for
pre-existing partnerships that become subject to this Act under
Section 1206. See Section 1206(c)(2).

14 **Subsection (d) - Source: ULLCA Section 203(c).**

16 A limited partnership is a creature of contract as well as a
18 creature of statute. It will be possible, albeit improper, for
20 the partnership agreement to be inconsistent with the certificate
22 of limited partnership or other specified public filings relating
to the limited partnership. For those circumstances, this
subsection provides the rule for determining which source of
information prevails.

24 For partners and transferees, the partnership agreement is
26 paramount. For third parties seeking to invoke the public record,
28 actual knowledge of that record is necessary and notice under
30 Section 103(c) or (d) is irrelevant. A third party wishing to
enforce the public record over the partnership agreement must
show reasonable reliance on the public record, and reliance
presupposes knowledge.

32 This subsection does not expressly cover a situation in
34 which (i) one of the specified filed records contains information
36 in addition to, but not inconsistent with, the partnership
agreement, and (ii) a person, other than a partner or transferee,
detrimentally relies on the additional information. However, the
policy reflected in this subsection seems equally applicable to
that situation.

38 Responsibility for maintaining a limited partnership's
40 public record rests with the general partner or partners. Section
42 202(c). A general partner's failure to meet that responsibility
44 can expose the general partner to liability to third parties
46 under Section 208(a)(2) and might constitute a breach of the
general partner's duties under Section 408. In addition, an
aggrieved person may seek a remedy under Section 205 (Signing and
Filing Pursuant to Judicial Order).

48 **§1322. Amendment or restatement of certificate**

50

2 1. Amendment of certificate. In order to amend its
3 certificate of limited partnership, a limited partnership must
4 deliver to the Secretary of State for filing an amendment or,
5 pursuant to subchapter 11, articles of merger stating:

6 A. The name of the limited partnership;

8 B. The date of filing of its initial certificate; and

10 C. The changes the amendment makes to the certificate as
11 most recently amended or restated.

12 2. Changes requiring prompt delivery of amendment. A
13 limited partnership shall promptly deliver to the Secretary of
14 State for filing an amendment to a certificate of limited
15 partnership to reflect:

18 A. The admission of a new general partner;

20 B. The dissociation of a person as a general partner;

22 C. The appointment of a person to wind up the limited
23 partnership's activities under section 1393, subsection 3 or
24 4; or

26 D. The change in name or street address of one or more of
27 its general partners.

28 3. Responsibility of general partner. A general partner
29 that knows that any information in a filed certificate of limited
30 partnership was false when the certificate was filed or has
31 become false due to changed circumstances shall promptly:

34 A. Cause the certificate to be amended; or

36 B. If appropriate, deliver to the Secretary of State for
37 filing a statement of change pursuant to section 1315 or a
38 statement of correction pursuant to section 1327.

40 4. Amendment at any time. A certificate of limited
41 partnership may be amended at any time for any other proper
42 purpose as determined by the limited partnership.

44 5. Delivery of restated certificate. A restated
45 certificate of limited partnership may be delivered to the
46 Secretary of State for filing in the same manner as an amendment.

48 6. Effective when filed. Subject to section 1326,
49 subsection 3, an amendment or restated certificate is effective
50 when filed by the Secretary of State.

2

Uniform Comment

4

(This is section 202 of the Uniform Limited Partnership Act (2001).)

6

Source - RULPA Section 202.

8

Subsection (b) - This subsection lists changes in circumstances which require an amendment to the certificate. Neither a statement of change, Section 115, nor the annual report, Section 210(e), suffice to report the addition or deletion of a general partner or the appointment of a person to wind up a limited partnership that has no general partner.

16

18

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24

This subsection states an obligation of the limited partnership. However, so long as the limited partnership has at least one general partner, the general partner or partners are responsible for managing the limited partnership's activities. Section 406(a). That management responsibility includes maintaining accuracy in the limited partnership's public record. Moreover, subsection (c) imposes direct responsibility on any general partner that knows that the filed certificate of limited partnership contains false information.

26

28

Acquiring or relinquishing LLLP status also requires an amendment to the certificate. See Sections 201(a)(4), 406(b)(2), and 1110(b)(2).

30

32

34

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38

Subsection (c) - This provision imposes an obligation directly on the general partners rather than on the limited partnership. A general partner's failure to meet that responsibility can expose the general partner to liability to third parties under Section 208(a)(2) and might constitute a breach of the general partner's duties under Section 408. In addition, an aggrieved person may seek a remedy under Section 205 (Signing and Filing Pursuant to Judicial Order).

40

42

Subsection (d) - A limited partnership that desires to change its name will have to amend its certificate of limited partnership. The new name will have to comply with Section 108. See Section 201(a)(1).

44

Maine Comment

46

48

Subsection 2, paragraph D has been added to ensure that the information provided in the certificate of limited partnership remains accurate.

50

§1323. Statement of termination

2
4 A dissolved limited partnership that has completed winding up may deliver to the Secretary of State for filing a statement of termination that states:

6 1. Name. The name of the limited partnership;

8
10 2. Date of initial certificate. The date of filing of its initial certificate of limited partnership; and

12 3. Other information. Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 1393, subsection 3 or 4.

16 **Uniform Comment**

18 (This is section 203 of the Uniform Limited Partnership Act (2001).)

20
22 Under Section 103(d)(3), a filed statement of termination provides constructive notice, 90 days after the statement's effective date, that the limited partnership is terminated. That
24 notice effectively terminates any apparent authority to bind the limited partnership.

26
28 However, this section is permissive. Therefore, it is not possible to use Section 205 (Signing and Filing Pursuant to
30 Judicial Order) to cause a statement of termination to be filed.

32 This section differs from predecessor law, RULPA Section 203, which required the filing of a certificate of cancellation when a limited partnership dissolved.

34 **§1324. Signing of records**

36
38 1. Required signatures. Each record delivered to the Secretary of State for filing pursuant to this chapter must be signed in the following manner.

40
42 A. An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

44
46 B. An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

48
50 C. An amendment designating as general partner a person admitted under section 1391, subsection 3, paragraph B

2 following the dissociation of a limited partnership's last
general partner must be signed by that person.

4 D. An amendment required by section 1393, subsection 3
following the appointment of a person to wind up the
6 dissolved limited partnership's activities must be signed by
that person.

8 E. Any other amendment must be signed by:

10 (1) At least one general partner listed in the
12 certificate;

14 (2) Each other person designated in the amendment as a
new general partner; and

16 (3) Each person that the amendment indicates has
18 dissociated as a general partner, unless:

20 (i) The person is deceased or a guardian or
general conservator has been appointed for the
22 person and the amendment so states; or

24 (ii) The person has previously delivered to the
Secretary of State for filing a statement of
26 dissociation.

28 F. A restated certificate of limited partnership must be
signed by at least one general partner listed in the
30 certificate, and, to the extent the restated certificate
effects a change under any other paragraph of this
32 subsection, the certificate must be signed in a manner that
satisfies that paragraph.

34 G. A statement of termination must be signed by all general
36 partners listed in the certificate or, if the certificate of
a dissolved limited partnership lists no general partners,
38 by the person appointed pursuant to section 1393, subsection
3 or 4 to wind up the dissolved limited partnership's
40 activities.

42 H. Articles of conversion must be signed by each general
partner listed in the certificate of limited partnership.

44 I. Articles of merger must be signed as provided in section
46 1438, subsection 1.

48 J. Any other record delivered on behalf of a limited
partnership to the Secretary of State for filing must be

2 signed by at least one general partner listed in the
3 certificate.

4 K. A statement by a person pursuant to section 1375,
5 subsection 1, paragraph D stating that the person has
6 dissociated as a general partner must be signed by that
7 person.

8 L. A statement of withdrawal by a person pursuant to
9 section 1346 must be signed by that person.

10 M. A record delivered on behalf of a foreign limited
11 partnership to the Secretary of State for filing must be
12 signed by at least one general partner of the foreign
13 limited partnership.

14 N. Any other record delivered on behalf of any person to
15 the Secretary of State for filing must be signed by that
16 person.

17 2. **Attorney-in-fact.** Any person may sign by an
18 attorney-in-fact any record to be filed pursuant to this chapter.

19 **Uniform Comment**

20 (This is section 204 of the Uniform Limited Partnership Act
21 (2001).)

22 **Source** - ULLCA Section 205.

23 This section pertains only to signing requirements and
24 implies nothing about approval requirements. For example, Section
25 204(a)(2) requires that an amendment changing a limited
26 partnership's LLLP status be signed by all **general** partners
27 listed in the certificate, but under Section 406(b)(2) all
28 partners must consent to that change unless otherwise provided in
29 the partnership agreement.

30 A person who signs a record without ascertaining that the
31 record has been properly authorized risks liability under Section
32 208.

33 **Subsection (a)** - The recurring reference to general partners
34 "listed in the certificate" recognizes that a person might be
35 admitted as a general partner under Section 401 without
36 immediately being listed in the certificate of limited
37 partnership. Such persons may have rights, powers and obligations
38 despite their unlisted status, but they cannot act as general
39 partners for the purpose of affecting the limited partnership's

public record. See the Comment to Section 103(c) and the Comment to Section 401.

§1325. Signing and filing pursuant to judicial order

1. Court order. If a person required by this chapter to sign a record or deliver a record to the Secretary of State for filing does not do so, any other person that is aggrieved may petition the Superior Court to order:

A. The person to sign the record;

B. The person to deliver the record to the Secretary of State for filing; or

C. The Secretary of State to file the record unsigned.

2. Party to action. If the person aggrieved under subsection 1 is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in the same action in combination or in the alternative.

3. Effective without signature. A record filed unsigned pursuant to this section is effective without being signed.

Uniform Comment

(This is section 205 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 205.

§1326. Delivery to and filing of records by Secretary of State; effective time and date

1. Requirements for filing. A record authorized or required to be delivered to the Secretary of State for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the Secretary of State and be delivered to the Secretary of State. Unless the Secretary of State determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the Secretary of State shall file the record and:

A. For a statement of dissociation, send:

COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1609

2 (1) A copy of the filed statement and a receipt for
3 the fees to the person the statement indicates has
4 dissociated as a general partner; and

6 (2) A copy of the filed statement and receipt to the
7 limited partnership;

8 B. For a statement of withdrawal, send:

10 (1) A copy of the filed statement and a receipt for
11 the fees to the person on whose behalf the record was
12 filed; and

14 (2) If the statement refers to an existing limited
15 partnership, a copy of the filed statement and receipt
16 to the limited partnership; and

18 C. For all other records, send a copy of the filed record
19 and a receipt for the fees to the person on whose behalf the
20 record was filed.

22 2. Certified copy upon request. Upon request and payment
23 of a fee, the Secretary of State shall send to the requester a
24 certified copy of the requested record.

26 3. Effective date; specified; default. Except as otherwise
27 provided in sections 1316 and 1327, a record delivered to the
28 Secretary of State for filing under this chapter may specify an
29 effective time and a delayed effective date. Except as otherwise
30 provided in this chapter, a record filed by the Secretary of
31 State is effective:

32 A. If the record does not specify an effective time and
33 does not specify a delayed effective date, on the date and
34 at the time the record is filed as evidenced by the
35 Secretary of State endorsement of the date and time on the
36 record;

38 B. If the record specifies an effective time but not a
39 delayed effective date, on the date the record is filed at
40 the time specified in the record;

42 C. If the record specifies a delayed effective date but not
43 an effective time, at 12:01 a.m. on the earlier of:

46 (1) The specified date; and

48 (2) The 90th day after the record is filed; or

2 D. If the record specifies an effective time and a delayed
effective date, at the specified time on the earlier of:

4 (1) The specified date; and

6 (2) The 90th day after the record is filed.

8 **Uniform Comment**

10 (This is section 206 of the Uniform Limited Partnership Act
(2001).)

12 **Source** - ULLCA Section 206.

14
16 In order for a record prepared by a private person to become
18 part of the public record under this Act, (i) someone must put a
20 properly prepared version of the record into the possession of
22 the public official specified in the Act as the appropriate
24 filing officer, and (ii) that filing officer must determine that
the record complies with the filing requirements of this Act and
then officially make the record part of the public record. This
Act refers to the first step as delivery to the [Secretary of
State] for filing and refers to the second step as filing. Thus,
under this Act "filing" is an official act.

26 **Subsection (a)** - The caption need only indicate the title of
28 the record; e.g., Certificate of Limited Partnership, Statement
of Change for Limited Partnership.

30 Filing officers typically note on a filed record the fact,
32 date and time of filing. The copies provided by the filing
officer under this subsection should contain that notation.

34 This Act does not provide a remedy if the filing officer
wrongfully fails or refuses to file a record.

36
38 **Subsection (c)** - This subsection allows most records to have
40 a delayed effective date, up to 90 days after the date the record
42 is filed by the filing officer. A record specifying a longer
44 delay will **not** be rejected. Instead, under paragraph (c)(3) and
(4), the delayed effective date is adjusted by operation of law
to the "90th day after the record is filed." The Act does not
require the filing officer to notify anyone of the adjustment.

46 **§1327. Correcting filed record**

48 **1. Statement of correction.** A limited partnership or
foreign limited partnership may deliver to the Secretary of State
50 for filing a statement of correction to correct a record

2 previously delivered by the limited partnership or foreign
3 limited partnership to the Secretary of State and filed by the
4 Secretary of State, if at the time of filing the record contained
5 false or erroneous information or was defectively signed.

6 2. Contents of statement. A statement of correction may
7 not state a delayed effective date and must:

8
9 A. Describe the record to be corrected, including its
10 filing date;

11 B. Specify the incorrect information and the reason it is
12 incorrect or the manner in which the signing was defective;
13 and

14
15 C. Correct the incorrect information or defective signature.

16
17 3. Effective date of correction. When filed by the
18 Secretary of State, a statement of correction is effective
19 retroactively as of the effective date of the record the
20 statement corrects, but the statement is effective when filed:

21
22 A. For the purposes of section 1303, subsections 3 and 4;
23 and

24
25 B. As to persons relying on the uncorrected record and
26 adversely affected by the correction.

27
28 **Uniform Comment**

29
30 (This is section 207 of the Uniform Limited Partnership Act
31 (2001).)

32
33 **Source** - ULLCA Section 207.

34
35 A statement of correction is appropriate only to correct
36 inaccuracies that existed or signatures that were defective "at
37 the time of filing." A statement of correction may not be used to
38 correct a record that was accurate when filed but has become
39 inaccurate due to subsequent events.

40
41 **Subsection (c)** - Generally, a statement of correction
42 "relates back." However, there is no retroactive effect: (1) for
43 the purposes of constructive notice under Section 103(c) and (d);
44 and (2) against persons who have relied on the uncorrected record
45 and would be adversely affected if the correction related back.

46
47 **§1328. Liability for false information in filed record**

1 1. Damages for record containing false information. If a
2 record delivered to the Secretary of State for filing under this
3 chapter and filed by the Secretary of State contains false
4 information, a person that suffers loss by reliance on the
5 information may recover damages for the loss from:

6
7 A. A person that signed the record, or caused another to
8 sign it on the person's behalf, and knew the information to
9 be false at the time the record was signed; and

10
11 B. A general partner that has notice that the information
12 was false when the record was filed or has become false
13 because of changed circumstances, if the general partner has
14 notice for a reasonably sufficient time before the
15 information is relied upon to enable the general partner to
16 effect an amendment under section 1322, file a petition
17 pursuant to section 1325, or deliver to the Secretary of
18 State for filing a statement of change pursuant to section
19 1315 or a statement of correction pursuant to section 1327.

20
21 2. Signing constitutes affirmation. Signing a record
22 authorized or required to be filed under this chapter constitutes
23 an affirmation under the penalties of perjury that the facts
24 stated in the record are true.

25
26 **Uniform Comment**

27 (This is section 208 of the Uniform Limited Partnership Act
28 (2001).)

29
30
31 This section pertains to both limited partnerships and
32 foreign limited partnerships.

33
34 LLLP status is irrelevant to this section. The LLLP shield
35 protects only to the extent that (i) the obligation involved is
36 an obligation of the limited partnership or foreign limited
37 partnership, and (ii) a partner is claimed to be liable for that
38 obligation by reason of being a partner. This section does not
39 address the obligations of a limited partnership or foreign
40 limited partnership and instead imposes direct liability on
41 signers and general partners.

42
43 **Subsection (a)** - This subsection's liability rules apply
44 only to records (i) created by private persons ("delivered to the
45 [Secretary of State] for filing"), (ii) which actually become
46 part of the public record ("filed by the [Secretary of State]").
47 This subsection does not preempt other law, which might provide
48 remedies for misleading information contained, for example, in a
record that is delivered to the filing officer for filing but

2 withdrawn before the filing officer takes the official action of
filing the record.

4 Records filed under this Act are signed subject to the
penalties for perjury. See subsection (b). This subsection
6 therefore does not require a party who relies on a record to
demonstrate that the reliance was reasonable. Contrast Section
8 201(d)(2), which provides that, if the partnership agreement is
inconsistent with the public record, the public record prevails
10 in favor of a person that is neither a partner nor a transferee
and that reasonably relied on the record.

12 **§1329. Certificate of existence; certificate of authority;**
14 **certificate of fact**

16 **1. Application.** Any person may apply to the Secretary of
State for a certificate of existence for a domestic limited
18 partnership or a certificate of authority for a foreign limited
partnership.

20 **2. Contents.** A certificate of existence or certificate of
22 authority sets forth:

24 **A. The limited partnership's name used in this State;**

26 **B. That, if a domestic limited partnership, the limited**
28 **partnership is duly formed under the laws of this State and**
the date of its formation;

30 **C. That, if a foreign limited partnership, the foreign**
32 **limited partnership is authorized to transact business in**
this State, the date on which the limited partnership was
34 **authorized to transact business in this State and its**
jurisdiction of organization;

36 **D. That all fees and penalties owed to this State have been**
paid if:

38 **(1) Payment is reflected in the records of the**
40 **Secretary of State; and**

42 **(2) Nonpayment affects the existence or authorization**
44 **of the domestic or foreign limited partnership;**

46 **E. That the limited partnership's most recent annual report**
required by section 1330 has been delivered to the Secretary
48 **of State; and**

2 F. Any facts of record in the office of the Secretary of
3 State that may be requested by the applicant under
4 subsection 1.

6 3. Evidence of existence or authority. Subject to any
7 qualification stated in the certificate, a certificate of
8 existence or certificate of authority issued by the Secretary of
9 State may be relied upon as conclusive evidence that the domestic
10 or foreign limited partnership is in existence or is authorized
11 to transact business in this State.

12 4. Certificate of fact. In addition to the certificate
13 authorized under subsection 2, the Secretary of State may issue a
14 certificate attesting to any fact of record in the office of the
15 Secretary of State that may be requested by the applicant under
16 subsection 1.

18 **Maine Comment**

20 This section is based on former section 416-A and maintains
21 uniformity with the other Maine business entity laws for these
22 types of certificates provided by the Secretary of State.

24 **§1330. Annual report and amended annual report of domestic and**
25 **foreign limited partnerships; failure to file annual**
26 **report; penalty**

28 1. Annual report. Each domestic limited partnership and
29 each foreign limited partnership authorized to do business in
30 this State shall file, within the time prescribed by this
31 chapter, an annual report.

34 A. The annual report must set forth:

36 (1) The name of the limited partnership;

38 (2) The name of its registered agent and the address
39 of its registered office in this State, including the
40 street or rural route number, town or city and state,
41 and, in the case of a foreign limited partnership, the
42 address of its registered or principal office;

44 (3) A brief statement of the character of the business
45 in which the limited partnership is actually engaged in
46 this State, if any; and

48 (4) The name and business or residence address of each
49 general partner, including the street or rural route
50 number, town or city and state.

2 B. The Secretary of State shall specify by rule the period
3 of time to which the annual report applies as provided in
4 paragraph C. The information contained in the annual report
5 must be current as of the date the report is signed.

6 C. The annual report must be executed and signed by a
7 general partner or any other duly authorized individual.
8 Subject to rules adopted under section 1456, the report must
9 be delivered to the Secretary of State or a designee for
10 filing. Proof to the satisfaction of the Secretary of State
11 that, prior to the date that penalties become effective for
12 late delivery of annual reports as established by the
13 Secretary of State by rule, the report was deposited in the
14 United States mail in a sealed envelope, properly addressed,
15 with postage prepaid, or delivered by electronic means as
16 provided by the Secretary of State, is deemed a compliance
17 with this requirement. One copy of the report, together with
18 the filing fee required by this chapter, must be delivered
19 for filing to the Secretary of State, who shall file the
20 report if the Secretary of State finds that it conforms to
21 the requirements of this chapter. If the Secretary of State
22 finds that the report does not so conform, the Secretary of
23 State shall promptly mail or otherwise return the report to
24 the limited partnership for any necessary corrections. The
25 penalties prescribed by this chapter for failure to file the
26 report within the time provided in this section do not apply
27 if the report is corrected to conform to the requirements of
28 this chapter and returned to the Secretary of State within
29 30 days from the date on which it was so mailed or otherwise
30 returned to the limited partnership by the Secretary of
31 State.

32 2. Amended annual report; period for filing. If the
33 information contained in an annual report filed under subsection
34 1 has changed, a domestic or foreign limited partnership may, if
35 it determines it to be necessary, deliver to the Secretary of
36 State for filing an amended annual report to change the
37 information on file. The amended annual report must be executed
38 as provided in subsection 1, paragraph C.

39 A. An amended annual report must set forth:

40
41 (1) The name of the domestic or foreign limited
42 partnership, the jurisdiction of its formation and its
43 date of formation;

44
45 (2) The date on which the original annual report was
46 filed; and
47
48

2 (3) The information that has changed and the date on
 which it changed.

4 B. An amended annual report may be filed by the domestic or
 foreign limited partnership after the date of the original
6 filing and until December 31st of that filing year.

8 3. Failure to file annual report; penalty. A domestic or
 foreign limited partnership that is required to deliver an annual
10 report for filing as provided in subsection 1 that fails to
 deliver its properly completed annual report to the Secretary of
12 State shall pay, in addition to the regular annual report fee,
 the late filing penalty described in section 1460, subsection 19,
14 as long as the report is received by the Secretary of State prior
 to revocation or administrative dissolution. Upon a limited
16 partnership's failure to file the annual report and to pay the
 annual report fee or the penalty, the Secretary of State,
18 notwithstanding Title 4, chapter 5 and Title 5, chapter 375,
 shall revoke a foreign limited partnership's authority to do
20 business in this State and administratively dissolve a domestic
 limited partnership. The Secretary of State shall use the
22 procedures set forth in section 1399 to administratively dissolve
 a domestic limited partnership and the procedure set forth in
24 section 1416 to revoke a foreign limited partnership's authority
 to transact business in this State. A domestic limited
26 partnership that has been administratively dissolved under
 section 1399 must follow the requirements set forth in section
28 1400 to reinstate.

30 A. If the Secretary of State finds that any annual report
 of a domestic or foreign limited partnership delivered for
32 filing does not conform with the requirements of subsection
 1, the report must be returned for correction.

34 B. If the annual report of a domestic or foreign limited
 partnership is not delivered for filing within the time
36 specified in subsection 1, the limited partnership is
 excused from the liability provided in this section and from
38 any other penalty for failure to file timely the report if
 it establishes, to the satisfaction of the Secretary of
40 State, that failure to file was the result of excusable
 neglect and it furnishes the Secretary of State a copy of
42 the report within 30 days after it learns that the Secretary
44 of State failed to receive the original report.

46 **Maine Comment**

48 Subsection 1 is based on former section 529 and maintains
50 uniformity with the other Maine business entity laws for annual
 report filing requirements.

2 Subsection 2 is based on former section 529-A and maintains
4 uniformity with the other Maine business entity laws for amended
annual report filing requirements.

6 Subsection 3 is based on former section 530 and maintains
8 uniformity with the other Maine business entity laws for late
filing penalties resulting from failure to file an annual report.

10

SUBCHAPTER 3

12

LIMITED PARTNERS

14

§1341. Becoming limited partner

16

A person becomes a limited partner:

18

1. Partnership agreement. As provided in the partnership
20 agreement;

22

2. Conversion or merger. As the result of a conversion or
24 merger under subchapter 11; or

24

3. Consent. With the consent of all the partners.

26

Uniform Comment

28

(This is section 301 of the Uniform Limited Partnership Act
30 (2001).)

32

Source - RULPA Section 301.

34

Although Section 801(4) contemplates the admission of a
36 limited partner to avoid dissolution, that provision does not
itself authorize the admission. Instead, this section controls.
38 Contrast Section 801(3)(B), which itself authorizes the admission
of a general partner in order to avoid dissolution.

40

§1342. No right or power as limited partner to bind limited
42 **partnership**

42

A limited partner does not have the right or the power as a
44 limited partner to act for or bind the limited partnership.

46

Uniform Comment

48

(This is section 302 of the Uniform Limited Partnership Act
50 (2001).)

50

2 In this respect a limited partner is analogous to a
shareholder in a corporation; status as owner provides neither
the right to manage nor a reasonable appearance of that right.

4
6 The phrase "as a limited partner" is intended to recognize
that: (i) this section does not disable a general partner that
also owns a limited partner interest, (ii) the partnership
8 agreement may as a matter of contract allocate managerial rights
to one or more limited partners; and (iii) a separate agreement
10 can empower and entitle a person that is a limited partner to act
for the limited partnership in another capacity; e.g., as an
12 agent. See Comment to Section 305.

14 The fact that a limited partner qua limited partner has no
power to bind the limited partnership means that, subject to
16 Section 113 (Dual Capacity), information possessed by a limited
partner is not attributed to the limited partnership. See Section
18 103(h).

20 This Act specifies various circumstances in which limited
partners have consent rights, including:

- 22 • admission of a limited partner, Section 301(3)
- 24 • admission of a general partner, Section 401(4)
- 26 • amendment of the partnership agreement, Section
28 406(b)(1)
- 30 • the decision to amend the certificate of limited
32 partnership so as to obtain or relinquish LLLP status,
Section 406(b)(2)
- 34 • the disposition of all or substantially all of the
36 limited partnership's property, outside the ordinary
course, Section 406(b)(3)
- 38 • the compromise of a partner's obligation to make a
40 contribution or return an improper distribution,
Section 502(c)
- 42 • expulsion of a limited partner by consent of the other
partners, Section 601(b)(4)
- 44 • expulsion of a general partner by consent of the other
46 partners, Section 603(4)
- 48 • redemption of a transferable interest subject to
50 charging order, using limited partnership property,
Section 703(c)(3)

- 2 • causing dissolution by consent, Section 801(2)
- 4 • causing dissolution by consent following the
6 dissociation of a general partner, when at least one
general partner remains, Section 801(3)(A)
- 8 • avoiding dissolution and appointing a successor general
10 partner, following the dissociation of the sole general
partner, Section 801(3)(B)
- 12 • appointing a person to wind up the limited partnership
when there is no general partner, Section 803(C)
- 14 • approving, amending or abandoning a plan of conversion,
16 Section 1103(a) and (b)(2)
- 18 • approving, amending or abandoning a plan of merger,
Section 1107(a) and (b)(2).

20 **§1343. No liability as limited partner for limited partnership**
22 **obligations**

24 An obligation of a limited partnership, whether arising in
26 contract, tort or otherwise, is not the obligation of a limited
partner. A limited partner is not personally liable, directly or
28 indirectly, by way of contribution or otherwise, for an
obligation of the limited partnership solely by reason of being a
30 limited partner, even if the limited partner participates in the
management and control of the limited partnership.

32 **Uniform Comment**

34 (This is section 303 of the Uniform Limited Partnership Act
(2001).)

36
38 This section provides a full, status-based liability shield
for each limited partner, "even if the limited partner
40 participates in the management and control of the limited
partnership." The section thus eliminates the so-called "control
rule" with respect to personal liability for entity obligations
42 and brings limited partners into parity with LLC members, LLP
partners and corporate shareholders.

44
46 The "control rule" first appeared in an uniform act in 1916,
although the concept is much older. Section 7 of the original
Uniform Limited Partnership Act provided that "A limited partner
48 shall not become liable as a general partner [i.e., for the
obligations of the limited partnership] unless . . . he takes
50 part in the control of the business." The 1976 Uniform Limited

2 Partnership Act (ULPA - 1976) "carrie[d] over the basic test from
3 former Section 7," but recognized "the difficulty of determining
4 when the 'control' line has been overstepped." Comment to
5 ULPA-1976, Section 303. Accordingly, ULPA-1976 tried to buttress
6 the limited partner's shield by (i) providing a safe harbor for a
7 lengthy list of activities deemed not to constitute participating
8 in control, ULPA-1976, Section 303(b), and (ii) limiting a
9 limited partner's "control rule" liability "only to persons who
10 transact business with the limited partnership with actual
11 knowledge of [the limited partner's] participation in control."
12 ULPA-1976, Section 303(a). However, these protections were
13 complicated by a countervailing rule which made a limited partner
14 generally liable for the limited partnership's obligations "if
15 the limited partner's participation in the control of the
16 business is . . . substantially the same as the exercise of the
17 powers of a general partner." ULPA-1976, Section 303(a).

18 The 1985 amendments to ULPA-1976 (i.e., RULPA) further
19 buttressed the limited partner's shield, removing the
20 "substantially the same" rule, expanding the list of safe harbor
21 activities and limiting "control rule" liability "only to persons
22 who transact business with the limited partnership reasonably
23 believing, based upon the limited partner's conduct, that the
24 limited partner is a general partner."

25 In a world with LLPs, LLCs and, most importantly, LLLPs, the
26 control rule has become an anachronism. This Act therefore takes
27 the next logical step in the evolution of the limited partner's
28 liability shield and renders the control rule extinct.

29 The shield established by this section protects only against
30 liability for the limited partnership's obligations and only to
31 the extent that the limited partner is claimed to be liable on
32 account of being a limited partner. Thus, a person that is both a
33 general and limited partner will be liable as a general partner
34 for the limited partnership's obligations. Moreover, this section
35 does not prevent a limited partner from being liable as a result
36 of the limited partner's own conduct and is therefore
37 inapplicable when a third party asserts that a limited partner's
38 own wrongful conduct has injured the third party. This section is
39 likewise inapplicable to claims by the limited partnership or
40 another partner that a limited partner has breached a duty under
41 this Act or the partnership agreement.

42 This section does not eliminate a limited partner's
43 liability for promised contributions, Section 502 or improper
44 distributions. Section 509. That liability pertains to a person's
45 status as a limited partner but is **not** liability for an
46 obligation of the limited partnership.
47
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2 The shield provided by this section applies whether or not a
limited partnership is a limited liability limited partnership.

4 §1344. Right of limited partner and former limited partner to
information

6
8 1. Right to inspect and copy. On 10 days' demand, made in
10 a record received by the limited partnership, a limited partner
12 may inspect and copy required information during regular business
hours in the limited partnership's designated office. The limited
partner need not have any particular purpose for seeking the
information.

14 2. Right to information about activities and financial
condition. During regular business hours and at a reasonable
16 location specified by the limited partnership, a limited partner
18 may obtain from the limited partnership and inspect and copy true
and full information regarding the state of the activities and
20 financial condition of the limited partnership and other
information regarding the activities of the limited partnership
as is just and reasonable if:

22
24 A. The limited partner seeks the information for a purpose
reasonably related to the partner's interest as a limited
partner;

26
28 B. The limited partner makes a demand in a record received
by the limited partnership, describing with reasonable
particularity the information sought and the purpose for
seeking the information; and

30
32 C. The information sought is directly connected to the
limited partner's purpose.

34
36 3. Response to demand for information about activities and
financial condition. Within 10 days after receiving a demand
38 pursuant to subsection 2, the limited partnership in a record
shall inform the limited partner that made the demand:

40 A. What information the limited partnership will provide in
response to the demand;

42
44 B. When and where the limited partnership will provide the
information; and

46 C. If the limited partnership declines to provide any
demand information, the limited partnership's reasons for
48 declining.

2 4. Right of dissociated limited partner. Subject to
3 subsection 6, a person dissociated as a limited partner may
4 inspect and copy required information during regular business
5 hours in the limited partnership's designated office if:

6 A. The information pertains to the period during which the
7 person was a limited partner;

8 B. The person seeks the information in good faith; and

9 C. The person meets the requirements of subsection 2.

10
11 5. Response to demand by dissociated limited partner. The
12 limited partnership shall respond to a demand made pursuant to
13 subsection 4 in the same manner as provided in subsection 3.

14
15 6. Death of limited partner. If a limited partner dies,
16 section 1384 applies.

17
18 7. Reasonable restrictions on use of information. The
19 limited partnership may impose reasonable restrictions on the use
20 of information obtained under this section. In a dispute
21 concerning the reasonableness of a restriction under this
22 subsection, the limited partnership has the burden of proving
23 reasonableness.

24
25 8. Reasonable costs of copying. A limited partnership may
26 charge a person that makes a demand under this section reasonable
27 costs of copying, limited to the costs of labor and material.

28
29 9. Information provided without demand. Whenever this
30 chapter or a partnership agreement provides for a limited partner
31 to give or withhold consent to a matter, before the consent is
32 given or withheld, the limited partnership shall, without demand,
33 provide the limited partner with all information material to the
34 limited partner's decision that the limited partnership knows.

35
36 10. Exercise of rights. A limited partner or person
37 dissociated as a limited partner may exercise the rights under
38 this section through an attorney or other agent. Any restriction
39 imposed under subsection 7 or by the partnership agreement
40 applies both to the attorney or other agent and to the limited
41 partner or person dissociated as a limited partner.

42
43 11. Transferee; individual under legal disability. The
44 rights stated in this section do not extend to a person as
45 transferee but may be exercised by the legal representative of an
46 individual under legal disability who is a limited partner or
47 person dissociated as a limited partner.

Uniform Comment

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(This is section 304 of the Uniform Limited Partnership Act (2001).)

This section balances two countervailing concerns relating to information: the need of limited partners and former limited partners for access versus the limited partnership's need to protect confidential business data and other intellectual property. The balance must be understood in the context of fiduciary duties. The general partners are obliged through their duties of care and loyalty to protect information whose confidentiality is important to the limited partnership or otherwise inappropriate for dissemination. See Section 408 (general standards of general partner conduct). A limited partner, in contrast, "does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner." Section 305(a). (Both general partners and limited partners are subject to a duty of good faith and fair dealing. Section 305(b) and 408(d).)

Like predecessor law, this Act divides limited partner access rights into two categories - required information and other information. However, this Act builds on predecessor law by:

- expanding slightly the category of required information and stating explicitly that a limited partner may have access to that information without having to show cause
- specifying a procedure for limited partners to follow when demanding access to other information
- specifying how a limited partnership must respond to such a demand and setting a time limit for the response
- retaining predecessor law's "just and reasonable" standard for determining a limited partner's right to other information, while recognizing that, to be "just and reasonable," a limited partner's demand for other information must meet at minimum standards of relatedness and particularity
- expressly requiring the limited partnership to volunteer known, material information when seeking or obtaining consent from limited partners
- codifying (while limiting) the power of the partnership agreement to vary limited partner access rights

- 2 • permitting the limited partnership to establish other reasonable limits on access
- 4 • providing access rights for former limited partners.

6 The access rights stated in this section are personal to
8 each limited partner and are enforceable through a direct action
under Section 1001(a). These access rights are in addition to
whatever discovery rights a party has in a civil suit.

10 **Subsection (a)** - The phrase "required information" is a
12 defined term. See Sections 102(18) and 111. This subsection's
14 broad right of access is subject not only to reasonable
limitations in the partnership agreement, Section 110(b)(4), but
16 also to the power of the limited partnership to impose reasonable
limitations on use. Unless the partnership agreement provides
18 otherwise, it will be the general partner or partners that have
the authority to use that power. See Section 406(a).

20 **Subsection (b)** - The language describing the information to
be provided comes essentially verbatim from RULPA Section
22 305(a)(2)(i) and (iii). The procedural requirements derive from
RMBCA Section 16.02(c). This subsection does not impose a
24 requirement of good faith, because Section 305(b) contains a
generally applicable obligation of good faith and fair dealing
26 for limited partners.

28 **Subsection (d)** - The notion that former owners should have
information rights comes from RUPA Section 403(b) and ULLCA
30 Section 408(a). The access is limited to the required information
and is subject to certain conditions.

32 **Example:** A person dissociated as a limited partner seeks
34 data which the limited partnership has compiled, which
relates to the period when the person was a limited partner,
36 but which is beyond the scope of the information required by
Section 111. No matter how reasonable the person's purpose
38 and how well drafted the person's demand, the limited
partnership is not obliged to provide the data.

40 **Example:** A person dissociated as a limited partner seeks
42 access to required information pertaining to the period
during which the person was a limited partner. The person
44 makes a bald demand, merely stating a desire to review the
required information at the limited partnership's designated
46 office. In particular, the demand does not describe "with
reasonable particularity the information sought and the
48 purpose for seeking the information." See subsection (b)(2).
The limited partnership is not obliged to allow access. The

2 person must first comply with subsection (d), which
incorporates by reference the requirements of subsection (b).

4 **Subsection (f)** and Section 704 provide greater access rights
for the estate of a deceased limited partner.

6 **Subsection (d)(2)** - A duty of good faith is needed here,
8 because a person claiming access under this subsection is no
longer a limited partner and is no longer subject to Section
10 305(b). See Section 602(a)(2) (dissociation as a limited partner
terminates duty of good faith as to subsequent events).

12 **Subsection (g)** - This subsection permits the limited
14 partnership - as distinguished from the partnership agreement -
to impose use limitations. Contrast Section 110(b)(4). Under
16 Section 406(a), it will be the general partner or partners that
decide whether the limited partnership will impose use
18 restrictions.

20 The limited partnership bears the burden of proving the
reasonableness of any restriction imposed under this subsection.
22 In determining whether a restriction is reasonable, a court might
consider: (i) the danger or other problem the restriction seeks
24 to avoid; (ii) the purpose for which the information is sought;
and (iii) whether, in light of both the problem and the purpose,
26 the restriction is reasonably tailored. Restricting use of the
names and addresses of limited partners is not per se
28 unreasonable.

30 The following table compares the limitations available
through the partnership agreement with those available under this
32 subsection.

34		partnership agreement	Section 304(g)
36	how restrictions	by the consent of	by the general
38	adopted	partners when they adopt	partners, acting
40		or amend the partnership	under Section
42		agreement, unless the	406(a)
44		partnership agreement	
46		provides another method	
48		of amendment	
44	what restrictions	"reasonable restrictions	"reasonable
46	may be imposed	on the availability and	restrictions on
48		use of information	the use of
50		obtained," Section	information
		110(b)(4)	obtained"
	burden of proof	the person challenging	"the limited

2 the restriction must partnership has
3 prove that the the burden of
4 restriction will proving
5 "unreasonably restrict reasonableness"
6 the right of
7 information," Section
8 110(b)(4)

10 **Subsection (h)** - Source: RUPA Section 403(b) and ULLCA
11 Section 408(a).

12 **Subsection (i)** - Source: ULLCA Section 408(b).

14 The duty stated in this subsection is at the core of the
15 duties owed the limited partners by a limited partnership and its
16 general partners. This subsection imposes an affirmative duty to
17 volunteer information, but that obligation is limited to
18 information which is both material and known by the limited
19 partnership. The duty applies to known, material information,
20 even if the limited partnership does not know that the
21 information is material.

22 A limited partnership will "know" what its general partners
23 know. Section 103(h). A limited partnership may also know
24 information known by the "individual conducting the transaction
25 for the [limited partnership]." Section 103(g).

26 A limited partner's right to information under this
27 subsection is enforceable through the full panoply of "legal or
28 equitable relief" provided by Section 1001(a), including in
29 appropriate circumstances the withdrawal or invalidation of
30 improperly obtained consent and the invalidation or rescision of
31 action taken pursuant to that consent.

32 **Subsection (k)** - Section 304 provides no information rights
33 to a transferee as transferee. Transferee status brings only the
34 very limited information rights stated in Section 702(c).

35 It is nonetheless possible for a person that happens to be a
36 transferee to have rights under this section. For example, under
37 Section 602(a)(3) a person dissociated as a limited partner
38 becomes a "mere transferee" of its own transferable interest.
39 While that status provides the person no rights under this
40 section, the status of person dissociated as a limited partner
41 triggers rights under subsection (d).

42 **§1345. Limited duties of limited partners**

43

1 1. No fiduciary duty. A limited partner does not have any
2 fiduciary duty to the limited partnership or to any other partner
3 solely by reason of being a limited partner.

4
5 2. Good faith and fair dealing. A limited partner shall
6 discharge the duties to the partnership and the other partners
7 under this chapter or under the partnership agreement and
8 exercise any rights consistently with the obligation of good
9 faith and fair dealing.

10
11 3. Limited partner's own interest. A limited partner does
12 not violate a duty or obligation under this chapter or under the
13 partnership agreement merely because the limited partner's
14 conduct furthers the limited partner's own interest.

15 **Uniform Comment**

16
17 (This is section 305 of the Uniform Limited Partnership Act
18 (2001).)

19
20 **Subsection (a)** - Fiduciary duty typically attaches to a
21 person whose status or role creates significant power for that
22 person over the interests of another person. Under this Act,
23 limited partners have very limited power of any sort in the
24 regular activities of the limited partnership and no power
25 whatsoever justifying the imposition of fiduciary duties either
26 to the limited partnership or fellow partners. It is possible for
27 a partnership agreement to allocate significant managerial
28 authority and power to a limited partner, but in that case the
29 power exists not as a matter of status or role but rather as a
30 matter of contract. The proper limit on such contract-based power
31 is the obligation of good faith and fair dealing, not fiduciary
32 duty, unless the partnership agreement itself expressly imposes a
33 fiduciary duty or creates a role for a limited partner which, as
34 a matter of other law, gives rise to a fiduciary duty. For
35 example, if the partnership agreement makes a limited partner an
36 agent for the limited partnership as to particular matters, the
37 law of agency will impose fiduciary duties on the limited partner
38 with respect to the limited partner's role as agent.

39
40 **Subsection (b)** - Source: RUPA Section 404 (d). The same
41 language appears in Section 408(d), pertaining to general
42 partners.

43
44
45 The obligation of good faith and fair dealing is not a
46 fiduciary duty, does not command altruism or self-abnegation, and
47 does not prevent a partner from acting in the partner's own
48 self-interest. Courts should not use the obligation to change ex
49 post facto the parties' or this Act's allocation of risk and
50 power. To the contrary, in light of the nature of a limited

2 partnership, the obligation should be used only to protect
3 agreed-upon arrangements from conduct that is manifestly beyond
4 what a reasonable person could have contemplated when the
5 arrangements were made.

6 The partnership agreement or this Act may grant discretion
7 to a partner, and that partner may properly exercise that
8 discretion even though another partner suffers as a consequence.
9 Conduct does not violate the obligation of good faith and fair
10 dealing merely because that conduct substantially prejudices a
11 party. Indeed, parties allocate risk precisely because prejudice
12 may occur. The exercise of discretion constitutes a breach of the
13 obligation of good faith and fair dealing only when the party
14 claiming breach shows that the conduct has no honestly-held
15 purpose that legitimately comports with the parties' agreed-upon
16 arrangements. Once such a purpose appears, courts should not
17 second guess a party's choice of method in serving that purpose,
18 unless the party invoking the obligation of good faith and fair
19 dealing shows that the choice of method itself lacks any
20 honestly-held purpose that legitimately comports with the
21 parties' agreed-upon arrangements.

22 In sum, the purpose of the obligation of good faith and fair
23 dealing is to protect the arrangement the partners have chosen
24 for themselves, not to restructure that arrangement under the
25 guise of safeguarding it.

26 **§1346. Person erroneously believing self to be limited partner**

27 **1. Not liable for enterprise's obligations.** Except as
28 otherwise provided in subsection 2, a person that makes an
29 investment in a business enterprise and erroneously but in good
30 faith believes that the person has become a limited partner in
31 the enterprise is not liable for the enterprise's obligations by
32 reason of making the investment, receiving distributions from the
33 enterprise or exercising any rights of or appropriate to a
34 limited partner, if, on ascertaining the mistake, the person:

35 A. Causes an appropriate certificate of limited
36 partnership, amendment or statement of correction to be
37 signed and delivered to the Secretary of State for filing; or

38 B. Withdraws from future participation as an owner in the
39 enterprise by signing and delivering to the Secretary of
40 State for filing a statement of withdrawal under this
41 section.

42 **2. Liable to 3rd party.** A person that makes an investment
43 described in subsection 1 is liable to the same extent as a
44 general partner to any 3rd party that enters into a transaction
45 with the enterprise.

2 with the enterprise, believing in good faith that the person is a
3 general partner, before the Secretary of State files a statement
4 of withdrawal, certificate of limited partnership, amendment or
5 statement of correction to show that the person is not a general
6 partner.

7 3. Right to withdraw without breach. If a person makes a
8 diligent effort in good faith to comply with subsection 1,
9 paragraph A and is unable to cause the appropriate certificate of
10 limited partnership, amendment or statement of correction to be
11 signed and delivered to the Secretary of State for filing, the
12 person has the right to withdraw from the enterprise pursuant to
13 subsection 1, paragraph B even if the withdrawal would otherwise
14 breach an agreement with others that are or have agreed to become
15 co-owners of the enterprise.

16 **Uniform Comment**

17 (This is section 306 of the Uniform Limited Partnership Act
18 (2001).)

19 **Source** - RULPA Section 304, substantially redrafted for
20 reasons of style.

21 **Subsection (a)(2)** - The requirement that a person
22 "withdraw[]" from future participation as an owner in the
23 enterprise" means, in part, that the person refrain from taking
24 any further profit from the enterprise. The requirement does not
25 mean, however, that the person is required to return previously
26 obtained profits or forfeit any investment.

27 **SUBCHAPTER 4**

28 **GENERAL PARTNERS**

29 **§1351. Becoming general partner**

30 A person becomes a general partner:

31 1. Partnership agreement. As provided in the partnership
32 agreement;

33 2. Admitted general partner. Under section 1391,
34 subsection 3, paragraph B following the dissociation of a limited
35 partnership's last general partner;

36 3. Conversion or merger. As the result of a conversion or
37 merger under subchapter 11; or

4. Consent. With the consent of all the partners.

Uniform Comment

(This is section 401 of the Uniform Limited Partnership Act (2001).)

This section does not make a person's status as a general partner dependent on the person being so designated in the certificate of limited partnership. If a person does become a general partner under this section without being so designated:

- the limited partnership is obligated to promptly and appropriately amend the certificate of limited partnership, Section 202(b)(1);

- each general partner that knows of the anomaly is personally obligated to cause the certificate to be promptly and appropriately amended, Section 202(c)(1), and is subject to liability for failing to do so, Section 208(a)(2);

- the "non-designated" general partner has:

all the rights and duties of a general partner to the limited partnership and the other partners, and

the powers of a general partner to bind the limited partnership under Sections 402 and 403, but

no power to sign records which are to be filed on behalf of the limited partnership this Act

Example: By consent of the partners of XYZ Limited Partnership, G is admitted as a general partner. However, XYZ's certificate of limited partnership is not amended accordingly. Later, G - acting without actual authority - purports to bind XYZ to a transaction with Third Party. Third Party does not review the filed certificate of limited partnership before entering into the transaction. XYZ might be bound under Section 402.

Section 402 attributes to a limited partnership "[a]n act of a general partner . . . for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership." The limited partnership's liability under Section 402 does not depend on the "act of a general partner" being the act of a general partner designated in the certificate of limited partnership. Moreover, the notice provided by Section 103(c) does not undercut G's appearance of authority. Section 402 refers only to notice under Section 103(d) and, in any event, according to the second

2 sentence of Section 103(c), the fact that a person is **not** listed
as in the certificate as a general partner is **not** notice that the
4 person is **not** a general partner. See Comment to Section 103(c).

6 **Example:** Same facts, except that Third Party does review the
certificate of limited partnership before entering into the
8 transaction. The result might still be the same.

10 The omission of a person's name from the certificate's list of
general partners is **not** notice that the person is **not** a general
12 partner. Therefore, Third Party's review of the certificate does
not mean that Third Party knew, had received a notification or
14 had notice that G lacked authority. At most, XYZ could argue
that, because Third Party knew that G was not listed in the
16 certificate, a transaction entered into by G could not appear to
Third Party to be for apparently carrying on the limited
18 partnership's activities in the ordinary course.

20 **§1352. General partner agent of limited partnership**

22 **1. Agent if carrying on in the ordinary course of**
activities. Each general partner is an agent of the limited
24 partnership for the purposes of its activities. An act of a
general partner, including the signing of a record in the
26 partnership's name, for apparently carrying on in the ordinary
course the limited partnership's activities or activities of the
28 kind carried on by the limited partnership binds the limited
partnership, unless the general partner did not have authority to
30 act for the limited partnership in the particular matter and the
person with which the general partner was dealing knew, had
32 received a notification or had notice under section 1303,
subsection 4 that the general partner lacked authority.

34 **2. Agent only if actually authorized.** An act of a general
partner that is not apparently for carrying on in the ordinary
36 course the limited partnership's activities or activities of the
kind carried on by the limited partnership binds the limited
38 partnership only if the act was actually authorized by all the
other partners.

40 **Uniform Comment**

42 (This is section 402 of the Uniform Limited Partnership Act
44 (2001).)

46 **Source** - RUPA Section 301. For the meaning of "authority" in
subsection (a) and "authorized" in subsection (b), see RUPA
48 Section 301, Comment 3 (stating that "Subsection (2) [of RUPA
Section 301] makes it clear that the partnership is bound by a

2 partner's actual authority, even if the partner has no apparent
authority"; emphasis added).

4 The fact that a person is not listed in the certificate of
6 limited partnership as a general partner is **not** notice that the
person is **not** a partner and is **not** notice that the person lacks
8 authority to act for the limited partnership. See Comment to
Section 103(c) and Comment to Section 401.

10 Section 103(f) defines receipt of notification. Section
12 103(d) lists various public filings, each of which provides
notice 90 days after its effective date.

14 **Example:** For the past ten years, X has been a general
16 partner of XYZ Limited Partnership and has regularly
conducted the limited partnership's business with Third
18 Party. However, 100 days ago the limited partnership
expelled X as a general partner and the next day delivered
20 for filing an amendment to XYZ's certificate of limited
partnership which stated that X was no longer a general
22 partner. On that same day, the filing officer filed the
amendment.

24 Today X approaches Third Party, purports still be to a
26 general partner of XYZ and purports to enter into a
transaction with Third Party on XYZ's behalf. Third Party is
28 unaware that X has been expelled and has no reason to doubt
that X's bona fides. Nonetheless, XYZ is not liable on the
30 transaction. Under Section 103(d), Third Party has notice
that X is dissociated and perforce has notice that X is not
32 a general partner authorized to bind XYZ.

34 **§1353. Limited partnership liable for general partner's
actionable conduct**

36 **1. General partner acting in ordinary course or with
authority.** A limited partnership is liable for loss or injury
38 caused to a person, or for a penalty incurred, as a result of a
wrongful act or omission or other actionable conduct of a general
40 partner acting in the ordinary course of activities of the
limited partnership or with authority of the limited partnership.

42 **2. Misapplication of money or property by general partner.**
44 If, in the course of the limited partnership's activities or
while acting with authority of the limited partnership, a general
46 partner receives or causes the limited partnership to receive
money or property of a person not a partner, and the money or
48 property is misapplied by a general partner, the limited
partnership is liable for the loss.

50

Uniform Comment

2

4 (This is section 403 of the Uniform Limited Partnership Act
4 (2001).)

6 **Source** - RUPA Section 305. For the meaning of "authority" in
8 subsections (a) and (b), see RUPA Section 305, Comment. The
8 third-to-last paragraph of that Comment states:

10 The partnership is liable for the actionable conduct or
12 omission of a partner acting in the ordinary course of its
12 business or "with the authority of the partnership." This is
14 intended to include a partner's apparent, as well as actual,
14 authority, thereby bringing within Section 305(a) the
situation covered in UPA Section 14(a).

16

The last paragraph of that Comment states:

18

20 Section 305(b) is drawn from UPA Section 14(b), but has been
20 edited to improve clarity. It imposes strict liability on
the partnership for the misapplication of money or property
22 received by a partner in the course of the partnership's
24 business or otherwise within the scope of the partner's
actual authority.

26 Section 403(a) of this Act is taken essentially verbatim from
28 RUPA Section 305(a), and Section 403(b) of this Act is taken
essentially verbatim from RUPA Section 305(b).

30 This section makes the limited partnership vicariously
32 liable for a partner's misconduct. That vicariously liability in
no way discharges or diminishes the partner's direct liability
for the partner's own misconduct.

34

36 A general partner can cause a limited partnership to be
36 liable under this section, even if the general partner is not
designated as a general partner in the certificate of limited
38 partnership. See Comment to Section 401.

40 **§1354. General partner's liability**

42 **1. Joint and several liability.** Except as otherwise
44 provided in subsections 2 and 3, all general partners are liable
jointly and severally for all obligations of the limited
46 partnership unless otherwise agreed by the claimant or provided
by law.

48 **2. Pre-existing obligation.** A person that becomes a
general partner of an existing limited partnership is not

2 personally liable for an obligation of a limited partnership
3 incurred before the person became a general partner.

4 **3. Obligation of limited liability limited partnership.**
5 Subject to the provisions of subsection 4, an obligation of a
6 limited partnership incurred while the limited partnership is a
7 limited liability limited partnership, whether arising in
8 contract, tort or otherwise, is solely the obligation of the
9 limited partnership. A general partner is not personally liable,
10 directly or indirectly, by way of contribution or otherwise, for
11 such an obligation solely by reason of being or acting as a
12 general partner. This subsection applies despite anything
13 inconsistent in the partnership agreement that existed
14 immediately before the consent required to become a limited
15 liability limited partnership under section 1356, subsection 2,
16 paragraph B.

17 **4. Professional limited liability limited partnership**
18 **exception.** A partner of a professional limited liability
19 limited partnership is jointly and severally liable for claims
20 arising from the rendering of a professional service by such a
21 professional limited liability partnership if that partner:

22 A. Personally and directly participated in rendering that
23 portion of the professional service that was performed
24 negligently or in breach of any other legal duty; or

25 B. Directly supervised and controlled that portion of the
26 professional service rendered by another person that was
27 performed negligently or in breach of any other legal duty.

28 For purposes of this subsection, a "professional limited
29 liability limited partnership" means a limited liability limited
30 partnership that, by virtue of the business conducted by it,
31 would be required to incorporate under the Maine Professional
32 Service Corporation Act if that limited partnership were a
33 corporation.

34 **Uniform Comment**

35 (This is section 404 of the Uniform Limited Partnership Act
36 (2001).)

37 **Source - RUPA Section 306.**

38 Following RUPA and the UPA, this Act leaves to other law the
39 question of when a limited partnership obligation is incurred.

2 Subsection (c) - For an explanation of the decision to
provide for limited liability limited partnerships, see the
Prefatory Note.

4
6 **Maine Comment**

Maine has amended this section to add language clarifying
8 the scope of the liability shield for professional limited
liability partnerships.

10 **§1355. Actions by and against partnership and partners**

12
14 **1. General partner as party.** To the extent not
inconsistent with section 1354, a general partner may be joined
in an action against the limited partnership or named in a
16 separate action.

18 **2. Judgment against limited partnership.** A judgment
against a limited partnership is not by itself a judgment against
20 a general partner. A judgment against a limited partnership may
not be satisfied from a general partner's assets unless there is
22 also a judgment against the general partner.

24 **3. Judgment creditor of general partner.** A judgment
creditor of a general partner may not levy execution against the
26 assets of the general partner to satisfy a judgment based on a
claim against the limited partnership unless the partner is
28 personally liable for the claim under section 1354 and:

30 **A. A judgment based on the same claim has been obtained**
32 **against the limited partnership and a writ of execution on**
the judgment has been returned unsatisfied in whole or in
part;

34 **B. The limited partnership is a debtor in bankruptcy;**

36 **C. The general partner has agreed that the creditor need**
38 **not exhaust limited partnership assets;**

40 **D. A court grants permission to the judgment creditor to**
42 **levy execution against the assets of a general partner based**
on a finding that limited partnership assets subject to
44 **execution are clearly insufficient to satisfy the judgment,**
that exhaustion of limited partnership assets is excessively
46 **burdensome or that the grant of permission is an appropriate**
exercise of the court's equitable powers; or

48 **E. Liability is imposed on the general partner by law or**
50 **contract independent of the existence of the limited**
partnership.

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Uniform Comment

(This is section 405 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 307.

If a limited partnership is a limited liability limited partnership throughout its existence, this section will bar a creditor of a limited partnership from impleading, suing or reaching the assets of a general partner unless the creditor can satisfy subsection (c)(5).

§1356. Management rights of general partner

1. General partner or partners. Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

2. Consent required. The consent of each partner is necessary to:

A. Amend the partnership agreement;

B. Amend the certificate of limited partnership to add or, subject to section 1440, delete a statement that the limited partnership is a limited liability limited partnership; and

C. Sell, lease, exchange or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

3. Payments by and liabilities of general partner. A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

4. Advances by general partner. A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

2 5. Payment or advance constitutes loan. A payment or
3 advance made by a general partner that gives rise to an
4 obligation of the limited partnership under subsection 3 or 4
5 constitutes a loan to the limited partnership that accrues
6 interest from the date of the payment or advance.

7 6. No remuneration. A general partner is not entitled to
8 remuneration for services performed for the partnership.

10 **Uniform Comment**

12 (This is section 406 of the Uniform Limited Partnership Act
13 (2001).)

14 **Source** - RUPA Section 401 and ULLCA Section 404.

16 **Subsection (a)** - As explained in the Prefatory Note, this
18 Act assumes that, more often than not, people utilizing the Act
19 will want (i) strong centralized management, strongly entrenched,
20 and (ii) passive investors with little control over the entity.
21 Section 302 essentially excludes limited partners from the
22 ordinary management of a limited partnership's activities. This
23 subsection states affirmatively the general partners' commanding
24 role. Only the partnership agreement and the express provisions
25 of this Act can limit that role.

26 The authority granted by this subsection includes the
28 authority to delegate. Delegation does not relieve the delegating
29 general partner or partners of their duties under Section 408.
30 However, the fact of delegation is a fact relevant to any breach
31 of duty analysis.

32 **Example:** A sole general partner personally handles all
34 "important paperwork" for a limited partnership. The general
35 partner neglects to renew the fire insurance coverage on the
36 a building owned by the limited partnership, despite having
37 received and read a warning notice from the insurance
38 company. The building subsequently burns to the ground and
39 is a total loss. The general partner might be liable for
40 breach of the duty of care under Section 408(c) (gross
41 negligence).

42 **Example:** A sole general partner delegates responsibility for
44 insurance renewals to the limited partnership's office
45 manager, and that manager neglects to renew the fire
46 insurance coverage on the building. Even assuming that the
47 office manager has been grossly negligent, the general
48 partner is not necessarily liable under Section 408(c). The
49 office manager's gross negligence is not automatically
50 attributed to the general partner. Under Section 408(c), the

2 question is whether the general partner was grossly
negligent (or worse) in selecting the general manager,
4 delegating insurance renewal matters to the general manager
and supervising the general manager after the delegation.

6 For the consequences of delegating authority to a person that is
a limited partner, see the Comment to Section 305.

8
The partnership agreement may also provide for delegation
10 and, subject to Section 110(b)(5) - (7), may modify a general
partner's Section 408 duties.

12
Subsection (b) - This subsection limits the managerial
14 rights of the general partners, requiring the consent of each
general and limited partner for the specified actions. The
16 subsection is subject to change by the partnership agreement,
except as provided in Section 110(b)(12) (pertaining to consent
18 rights established by Section 1110).

20
Subsection (c) - This Act does not include any parallel
22 provision for limited partners, because they are assumed to be
passive. To the extent that by contract or other arrangement a
24 limited partner has authority to act on behalf of the limited
partnership, agency law principles will create an indemnity
26 obligation. In other situations, principles of restitution might
apply.

28
Subsection (f) - Unlike RUPA Section 401(h), this subsection
30 provides no compensation for winding up efforts. In a limited
partnership, winding up is one of the tasks for which the limited
32 partners depend on the general partner. There is no reason for
the Act to single out this particular task as giving rise to
compensation.

34
§1357. Right of general partner and former general partner to
36 **information**

38
1. Right to inspect and copy. A general partner, without
40 having any particular purpose for seeking the information, may
inspect and copy during regular business hours:

42
A. In the limited partnership's designated office, required
44 **information; and**

46
B. At a reasonable location specified by the limited
partnership, any other records maintained by the limited
48 **partnership regarding the limited partnership's activities**
and financial condition.

2 2. Information furnished to general partner. Each general
3 partner and the limited partnership shall furnish to a general
4 partner:

5 A. Without demand, any information concerning the limited
6 partnership's activities and activities reasonably required
7 for the proper exercise of the general partner's rights and
8 duties under the partnership agreement or this chapter; and

9 B. On demand, any other information concerning the limited
10 partnership's activities, except to the extent the demand or
11 the information demanded is unreasonable or otherwise
12 improper under the circumstances.

13 3. Right of dissociated general partner. Subject to
14 subsection 5, on 10 days' demand made in a record received by the
15 limited partnership, a person dissociated as a general partner
16 may have access to the information and records described in
17 subsection 1 at the location specified in subsection 1 if:

18 A. The information or record pertains to the period during
19 which the person was a general partner;

20 B. The person seeks the information or record in good
21 faith; and

22 C. The person satisfies the requirements imposed on a
23 limited partner by section 1344, subsection 2.

24 4. Response to demand. The limited partnership shall
25 respond to a demand made pursuant to subsection 3 in the same
26 manner as provided in section 1344, subsection 3.

27 5. Death of general partner. If a general partner dies,
28 section 1384 applies.

29 6. Reasonable restrictions on use of information. The
30 limited partnership may impose reasonable restrictions on the use
31 of information under this section. In any dispute concerning the
32 reasonableness of a restriction under this subsection, the
33 limited partnership has the burden of proving reasonableness.

34 7. Reasonable costs of copying. A limited partnership may
35 charge a person dissociated as a general partner that makes a
36 demand under this section reasonable costs of copying, limited to
37 the costs of labor and material.

38 8. Exercise of rights. A general partner or person
39 dissociated as a general partner may exercise the rights under
40 this section through an attorney or other agent. Any restriction
41 under this section shall not be subject to the provisions of
42 section 1384.

2 imposed under subsection 6 or by the partnership agreement
3 applies both to the attorney or other agent and to the general
4 partner or person dissociated as a general partner.

6 9. Transferee; individual under legal disability. The
7 rights under this section do not extend to a person as
8 transferee, but the rights under subsection 3 of a person
9 dissociated as a general partner may be exercised by the legal
10 representative of an individual who dissociated as a general
11 partner under section 1373, subsection 7, paragraph B or C.

12 **Uniform Comment**

14 (This is section 407 of the Uniform Limited Partnership Act
15 (2001).)

16 This section's structure parallels the structure of Section
17 304 and the Comment to that section may be helpful in
18 understanding this section.

20 **Subsection (b) - Source:** RUPA Section 403(c).

22 **Subsection (b)(1) -** If a particular item of material
23 information is apparent in the limited partnership's records,
24 whether a general partner is obliged to disseminate that
25 information to fellow general partners depends on the
26 circumstances.

28 **Example:** A limited partnership has two general partners:
29 each of which is regularly engaged in conducting the limited
30 partnership's activities; both of which are aware of and
31 have regular access to all significant limited partnership
32 records; and neither of which has special responsibility for
33 or knowledge about any particular aspect of those activities
34 or the partnership records pertaining to any particular
35 aspect of those activities. Most likely, neither general
36 partner is obliged to draw the other general partner's
37 attention to information apparent in the limited
38 partnership's records.

40 **Example:** Although a limited partnership has three general
41 partners, one is the managing partner with day-to-day
42 responsibility for running the limited partnership's
43 activities. The other two meet periodically with the
44 managing general partner, and together with that partner
45 function in a manner analogous to a corporate board of
46 directors. Most likely, the managing general partner has a
47 duty to draw the attention of the other general partners to
48 important information, even if that information would be
49 apparent from a review of the limited partnership's records.

2 In all events under subsection (b)(1), the question is
4 whether the disclosure by one general partner is "reasonably
6 required for the proper exercise" of the other general partner's
rights and duties.

8 **Subsection (f)** - This provision is identical to Section
10 304(g) and the Comment to Section 304(g) is applicable here.
Under this Act, general and limited partners have sharply
12 different roles. A restriction that is reasonable as to a limited
partner is not necessarily reasonable as to a general partner.

14 **Subsection (g)** - No charge is allowed for current general
partners, because in almost all cases they would be entitled to
16 reimbursement under Section 406(c). Contrast Section 304(h),
which authorizes charges to current limited partners.

18 **Subsection (i)** - The Comment to Section 304(k) is applicable
here.

20 **§1358. General standards of general partner's conduct**

22 **1. Fiduciary duties.** The only fiduciary duties that a
24 general partner has to the limited partnership and the other
partners are the duties of loyalty and care under subsections 2
26 and 3.

28 **2. Duty of loyalty.** A general partner's duty of loyalty to
30 the limited partnership and the other partners is limited to the
following:

32 A. To account to the limited partnership and hold as
34 trustee for it any property, profit or benefit derived by
the general partner in the conduct and winding up of the
36 limited partnership's activities or derived from a use by
the general partner of limited partnership property,
38 including the appropriation of a limited partnership
opportunity;

40 B. To refrain from dealing with the limited partnership in
42 the conduct or winding up of the limited partnership's
activities as or on behalf of a party having an interest
44 adverse to the limited partnership; and

46 C. To refrain from competing with the limited partnership
in the conduct or winding up of the limited partnership's
48 activities.

50 **3. Duty of care.** A general partner's duty of care to the
limited partnership and the other partners in the conduct and

2 winding up of the limited partnership's activities is limited to
3 refraining from engaging in grossly negligent or reckless
4 conduct, intentional misconduct or a knowing violation of law.

6 4. Good faith and fair dealing. A general partner shall
7 discharge the duties to the partnership and the other partners
8 under this chapter or under the partnership agreement and
9 exercise any rights consistently with the obligation of good
10 faith and fair dealing.

12 5. General partner's own interest. A general partner does
13 not violate a duty or obligation under this chapter or under the
14 partnership agreement merely because the general partner's
15 conduct furthers the general partner's own interest.

16 **Uniform Comment**

18 (This is section 408 of the Uniform Limited Partnership Act
19 (2001).)

20 **Source** - RUPA Section 404.

22 This section does not prevent a general partner from
24 delegating one or more duties, but delegation does not discharge
26 the duty. For further discussion, see the Comment to Section
27 406(a).

28 If the partnership agreement removes a particular
30 responsibility from a general partner, that general partner's
31 fiduciary duty must be judged according to the rights and powers
32 the general partner retains. For example, if the partnership
33 agreement denies a general partner the right to act in a
34 particular matter, the general partner's compliance with the
35 partnership agreement cannot be a breach of fiduciary duty.
36 However, the general partner may still have a duty to provide
37 advice with regard to the matter. That duty could arise from the
38 fiduciary duty of care under Section 408(c) and the duty to
39 provide information under Sections 304(i) and 407(b).

40 For the partnership agreement's power directly to
42 circumscribe a general partner's fiduciary duty, see Section
43 110(b)(5) and (6).

44 **Subsection (a)** - The reference to "the other partners" does
45 not affect the distinction between direct and derivative claims.
46 See Section 1001(b) (prerequisites for a partner bringing a
47 direct claim).

48 **Subsection (b)** - A general partner's duty under this
50 subsection continues through winding up, since the limited

2 partners' dependence on the general partner does not end at
dissolution. See Comment to Section 406(f) (explaining why this
4 Act provides no remuneration for a general partner's winding up
efforts).

6 **Subsection (d)** - This provision is identical to Section
305(b) and the Comment to Section 305(b) is applicable here.

8
10 **SUBCHAPTER 5**
12 **CONTRIBUTIONS AND DISTRIBUTIONS**

14 **§1361. Form of contribution**

16 A contribution of a partner may consist of tangible or
intangible property or other benefit to the limited partnership,
including money, services performed, promissory notes, other
18 agreements to contribute cash or property and contracts for
services to be performed.

20 **Uniform Comment**

22 (This is section 501 of the Uniform Limited Partnership Act
24 (2001).)

26 **Source** - ULLCA Section 401.

28 **§1362. Liability for contribution**

30 **1. Obligation not excused by death, disability or other**
inability. A partner's obligation to contribute money or other
32 property or other benefit to, or to perform services for, a
limited partnership is not excused by the partner's death,
34 disability or other inability to perform personally.

36 **2. Obligation to contribute money equal to promised**
nonmonetary contribution. If a partner does not make a promised
38 nonmonetary contribution, the partner is obligated at the option
of the limited partnership to contribute money equal to that
40 portion of the value, as stated in the required information, of
the stated contribution that has not been made.

42 **3. Obligation in violation of chapter; enforcement by**
creditor. The obligation of a partner to make a contribution or
44 return money or other property paid or distributed in violation
of this chapter may be compromised only by consent of all
46 partners. A creditor of a limited partnership that extends credit
48 or otherwise acts in reliance on an obligation described in
subsection 1, without notice of any compromise under this
50 subsection, may enforce the original obligation.

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Uniform Comment

(This is section 502 of the Uniform Limited Partnership Act (2001).)

In contrast with predecessor law, RULPA Section 502(a), this Act does not include a statute of frauds provision covering promised contributions. Section 111(9)(A) does require that the value of a promised contribution be memorialized, but that requirement does not affect enforceability. See Comment to Section 111(9).

Subsection (a) - Source: RULPA Section 502(b).

Under common law principles of impracticability, an individual's death or incapacity will sometimes discharge a duty to render performance. Restatement (Second) of Contracts, Sections 261 and 262. This subsection overrides those principles.

Subsection (b) - RULPA Section 502(b).

This subsection is a statutory liquidated damage provision, exercisable at the option of the limited partnership, with the damage amount set according to the value of the promised, non-monetary contribution as stated in the required information.

Example: In order to become a limited partner, a person promises to contribute to the limited partnership various assets which the partnership agreement values at \$150,000. In return for the person's promise, and in light of the agreed value, the limited partnership admits the person as a limited partner with a right to receive 25% of the limited partnership's distributions.

The promised assets are subject to a security agreement, but the limited partner promises to contribute them "free and clear." Before the limited partner can contribute the assets, the secured party forecloses on the security interest and sells the assets at a public sale for \$75,000. Even if the \$75,000 reflects the actual fair market value of the assets, under this subsection the limited partnership has a claim against the limited partner for "the value, as stated in the required information, of the stated contribution which has not been made" - i.e., \$150,000.

This section applies "at the option of the limited partnership" and does not affect other remedies which the limited partnership may have under other law.

(apportioning consent power in relation to the right to receive distributions).

§1364. Interim distributions

A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

Uniform Comment

(This is section 504 of the Uniform Limited Partnership Act (2001).)

Under Section 406(a), the general partner or partners make this decision for the limited partnership.

§1365. No distribution on account of dissociation

A person does not have a right to receive a distribution on account of dissociation.

Uniform Comment

(This is section 505 of the Uniform Limited Partnership Act (2001).)

This section varies substantially from predecessor law. RULPA Sections 603 and 604 permitted a limited partner to withdraw on six months notice and receive the fair value of the limited partnership interest, unless the partnership agreement provided the limited partner with some exit right or stated a definite duration for the limited partnership.

Under this Act, a partner that dissociates becomes a transferee of its own transferable interest. See Sections 602(a)(3) (person dissociated as a limited partner) and 605(a)(5) (person dissociated as a general partner).

§1366. Distribution in kind

A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 1402, subsection 2, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

Uniform Comment

2 (This is section 506 of the Uniform Limited Partnership Act
3 (2001).)

4 Source - RULPA Section 605.

6 **§1367. Right to distribution**

8 When a partner or transferee becomes entitled to receive a
9 distribution, the partner or transferee has the status of, and is
10 entitled to all remedies available to, a creditor of the limited
11 partnership with respect to the distribution. However, the
12 limited partnership's obligation to make a distribution is
13 subject to offset for any amount owed to the limited partnership
14 by the partner or dissociated partner on whose account the
15 distribution is made.

16 **Uniform Comment**

18 (This is section 507 of the Uniform Limited Partnership Act
19 (2001).)

22 Source - RULPA Section 606.

24 This section's first sentence refers to distributions
25 generally. Contrast Section 508(e), which refers to indebtedness
26 issued as a distribution.

28 The reference in the second sentence to "dissociated
29 partner" encompasses circumstances in which the partner is gone
30 and the dissociated partner's transferable interest is all that
31 remains.

32 **§1368. Limitations on distribution**

34 **1. In violation of partnership agreement.** A limited
35 partnership may not make a distribution in violation of the
36 partnership agreement.

38 **2. Unable to pay debts or satisfy superior preferential**
39 **rights.** A limited partnership may not make a distribution if
40 after the distribution:

42 A. The limited partnership would not be able to pay its
43 debts as they become due in the ordinary course of the
44 limited partnership's activities; or

46 B. The limited partnership's total assets would be less
47 than the sum of its total liabilities plus the amount that
48 would be needed, if the limited partnership were to be
49 dissolved, wound up and terminated at the time of the
50 distribution.

2 distribution, to satisfy the preferential rights upon
3 dissolution, winding up and termination of partners whose
4 preferential rights are superior to those of persons
5 receiving the distribution.

6 **3. Basis for determination that distribution not**
7 **prohibited.** A limited partnership may base a determination that
8 a distribution is not prohibited under subsection 2 on financial
9 statements prepared on the basis of accounting practices and
10 principles that are reasonable in the circumstances or on a fair
11 valuation or other method that is reasonable in the circumstances.

12 **4. Measuring effect of distribution.** Except as otherwise
13 provided in subsection 7, the effect of a distribution under
14 subsection 2 is measured:

15 **A. In the case of distribution by purchase, redemption or**
16 **other acquisition of a transferable interest in the limited**
17 **partnership, as of the date money or other property is**
18 **transferred or debt incurred by the limited partnership; and**

19 **B. In all other cases, as of the date:**

20 **(1) The distribution is authorized, if the payment**
21 **occurs within 120 days after that date; or**

22 **(2) The payment is made, if payment occurs more than**
23 **120 days after the distribution is authorized.**

24 **5. Indebtedness to partner and general, unsecured**
25 **creditors.** A limited partnership's indebtedness to a partner
26 incurred by reason of a distribution made in accordance with this
27 section is at parity with the limited partnership's indebtedness
28 to its general, unsecured creditors.

29 **6. Indebtedness not considered liability.** A limited
30 partnership's indebtedness, including indebtedness issued in
31 connection with or as part of a distribution, is not considered a
32 liability for purposes of subsection 2 if the terms of the
33 indebtedness provide that payment of principal and interest are
34 made only to the extent that a distribution could then be made to
35 partners under this section.

36 **7. Indebtedness issued as distribution; date payment made.**
37 If indebtedness is issued as a distribution, each payment of
38 principal or interest on the indebtedness is treated as a
39 distribution, the effect of which is measured on the date the
40 payment is made.

41 **Uniform Comment**

2 (This is section 508 of the Uniform Limited Partnership Act
4 (2001).)

6 **Source** - ULLCA Section 406. See also RMBCA Section 6.40.

8 **Subsection (c)** - This subsection appears to impose a
10 standard of ordinary care, in contrast with the general duty of
12 care stated in Section 408(c). For a reconciliation of these two
14 provisions, see Comment to Section 509(a).

12 **§1369. Liability for improper distributions**

14 **1. General partner liable if consent to distribution not in**
16 **compliance.** A general partner that consents to a distribution
18 made in violation of section 1368 is personally liable to the
20 limited partnership for the amount of the distribution that
22 exceeds the amount that could have been distributed without the
violation if it is established that in consenting to the
distribution the general partner failed to comply with section
1358.

24 **2. Partner or transferee liable for excess amount**
26 **received.** A partner or transferee that received a distribution
28 knowing that the distribution to that partner or transferee was
made in violation of section 1368 is personally liable to the
limited partnership but only to the extent that the distribution
received by the partner or transferee exceeded the amount that
could have been properly paid under section 1368.

30 **3. General partner may implead, compel contribution.** A
32 general partner against which an action is commenced under
subsection 1 may:

34 **A. Implead in the action any other person that is liable**
36 **under subsection 1 and compel contribution from the person;**
38 **and**

40 **B. Implead in the action any person that received a**
42 **distribution in violation of subsection 2 and compel**
contribution from the person in the amount the person
received in violation of subsection 2.

44 **4. Action within 2 years.** An action under this section is
46 **barred if it is not commenced within 2 years after the**
distribution.

48 **Uniform Comment**

(This is section 509 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 407. See also RMBCA Section 8.33.

In substance and effect this section protects the interests of creditors of the limited partnership. Therefore, according to Section 110(b)(13), the partnership agreement may not change this section in a way that restricts the rights of those creditors. As for a limited partnership's power to compromise a claim under this section, see Section 502(c).

Subsection (a) - This subsection refers both to Section 508, which includes in its subsection (c) a standard of ordinary care ("reasonable in the circumstances"), and to Section 408, which includes in its subsection (c) a general duty of care that is limited to "refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."

A limited partnership's failure to meet the standard of Section 508(c) cannot by itself cause a general partner to be liable under Section 509(a). Both of the following would have to occur before a failure to satisfy Section 508(c) could occasion personal liability for a general partner under Section 509(a):

- the limited partnership "base[s] a determination that a distribution is not prohibited . . . on financial statements prepared on the basis of accounting practices and principles that are [not] reasonable in the circumstances or on a [not] fair valuation or other method that is [not] reasonable in the circumstances" [Section 508(c)]

AND

- the general partner's decision to rely on the improper methodology in consenting to the distribution constitutes "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law" [Section 408(c)] or breaches some other duty under Section 408.

To serve the protective purpose of Sections 508 and 509, in this subsection "consent" must be understood as encompassing any form of approval, assent or acquiescence, whether formal or informal, express or tacit.

Subsection (d) - The subsection's limitation applies to the commencement of an action under subsection (a) or (b) and not to

subsection (c), under which a general partner may implead other persons.

SUBCHAPTER 6

DISSOCIATION

§1371. Dissociation as limited partner

1. Prohibited before termination. A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

2. Dissociation upon occurrence of event. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

A. The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

B. An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

C. The person's expulsion as a limited partner pursuant to the partnership agreement;

D. The person's expulsion as a limited partner by the unanimous consent of the other partners if:

(1) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(2) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;

(3) The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

2 (4) The person is a limited liability company or
3 partnership that has been dissolved and whose business
4 is being wound up;

5 E. On application by the limited partnership, the person's
6 expulsion as a limited partner by judicial determination
7 because:

8 (1) The person engaged in wrongful conduct that
9 adversely and materially affected the limited
10 partnership's activities;

11 (2) The person willfully or persistently committed a
12 material breach of the partnership agreement or of the
13 obligation of good faith and fair dealing under section
14 1345, subsection 2; or

15 (3) The person engaged in conduct relating to the
16 limited partnership's activities that makes it not
17 reasonably practicable to carry on the activities with
18 the person as limited partner;

19 F. In the case of a person who is an individual, the
20 person's death;

21 G. In the case of a person that is a trust or is acting as
22 a limited partner by virtue of being a trustee of a trust,
23 distribution of the trust's entire transferable interest in
24 the limited partnership, but not merely by reason of the
25 substitution of a successor trustee;

26 H. In the case of a person that is an estate or is acting
27 as a limited partner by virtue of being a personal
28 representative of an estate, distribution of the estate's
29 entire transferable interest in the limited partnership, but
30 not merely by reason of the substitution of a successor
31 personal representative;

32 I. Termination of a limited partner that is not an
33 individual, partnership, limited liability company,
34 corporation, trust or estate; or

35 J. The limited partnership's participation in a conversion
36 or merger under subchapter 11, if the limited partnership:

37 (1) Is not the converted or surviving entity; or

38 (2) Is the converted or surviving entity but, as a
39 result of the conversion or merger, the person ceases
40 to be a limited partner.

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Uniform Comment

(This is section 601 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim, except for provisions inappropriate to limited partners. For example, this section does not provide for the dissociation of a person as a limited partner on account of bankruptcy, insolvency or incompetency.

This Act refers to a person's dissociation as a limited partner rather than to the dissociation of a limited partner, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Subsection (a) - This section varies substantially from predecessor law. See Comment to Section 505.

Subsection (b)(1) - This provision gives a person the power to dissociate as a limited partner even though the dissociation is wrongful under subsection (a). See, however, Section 110(b)(8) (prohibiting the partnership agreement from eliminating the power of a person to dissociate as a general partner but imposing no comparable restriction with regard to a person's dissociation as a limited partner).

Subsection (b)(5) - In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

§1372. Effect of dissociation as limited partner

1. Rights; obligations; interests. Upon a person's dissociation as a limited partner:

A. Subject to section 1384, the person does not have further rights as a limited partner;

B. The person's obligation of good faith and fair dealing as a limited partner under section 1345, subsection 2 continues only as to matters arising and events occurring before the dissociation; and

C. Subject to section 1384 and subchapter 11, any transferable interest owned by the person in the person's

2 capacity as a limited partner immediately before
 dissociation is owned by the person as a mere transferee.

4 **2. Obligations to partnership and partners.** A person's
 dissociation as a limited partner does not of itself discharge
6 the person from any obligation to the limited partnership or the
 other partners that the person incurred while a limited partner.

8

Uniform Comment

10

(This is section 602 of the Uniform Limited Partnership Act
12 (2001).)

14

Source - RUPA Section 603(b).

16

Subsection (a)(1) - In general, when a person dissociates as
a limited partner, the person's rights as a limited partner
18 disappear and, subject to Section 113 (Dual Status), the person's
 status degrades to that of a mere transferee. However, Section
20 704 provides some special rights when dissociation is caused by
 an individual's death.

22

Subsection (a)(3) - For any person that is both a general
24 partner and a limited partner, the required records must state
 which transferable interest is owned in which capacity. Section
26 111(9)(C).

28

Article 11 provides for conversions and mergers. A plan of
conversion or merger may provide for the dissociation of a person
30 as a limited partner and may override the rule stated in this
 paragraph.

32

§1373. Dissociation as general partner

34

A person is dissociated from a limited partnership as a
36 general partner upon the occurrence of any of the following
 events:

38

1. Notice of express will to withdraw. The limited
40 partnership's having notice of the person's express will to
 withdraw as a general partner or on a later date specified by the
42 person;

44

2. Event in partnership agreement. An event agreed to in
44 the partnership agreement as causing the person's dissociation as
46 a general partner;

48

3. Expulsion pursuant to partnership agreement. The
48 person's expulsion as a general partner pursuant to the
50 partnership agreement;

2 4. Expulsion by unanimous consent. The person's expulsion
3 as a general partner by the unanimous consent of the other
4 partners if:

6 A. It is unlawful to carry on the limited partnership's
7 activities with the person as a general partner;

8 B. There has been a transfer of all or substantially all of
9 the person's transferable interest in the limited
10 partnership, other than a transfer for security purposes, or
11 a court order charging the person's interest, that has not
12 been foreclosed;

14 C. The person is a corporation and, within 90 days after
15 the limited partnership notifies the person that it will be
16 expelled as a general partner because it has filed a
17 certificate of dissolution or the equivalent, its charter
18 has been revoked or its right to conduct business has been
19 suspended by the jurisdiction of its incorporation, there is
20 no revocation of the certificate of dissolution or no
21 reinstatement of its charter or its right to conduct
22 business; or

24 D. The person is a limited liability company or partnership
25 that has been dissolved and whose business is being wound up;

28 5. Expulsion upon judicial determination. On application
29 by the limited partnership, the person's expulsion as a general
30 partner by judicial determination because:

32 A. The person engaged in wrongful conduct that adversely
33 and materially affected the limited partnership's activities;

34 B. The person willfully or persistently committed a
35 material breach of the partnership agreement or of a duty
36 owed to the partnership or the other partners under section
37 1358; or

38 C. The person engaged in conduct relating to the limited
39 partnership's activities which makes it not reasonably
40 practicable to carry on the activities of the limited
41 partnership with the person as a general partner;

44 6. Bankruptcy; execution of assignment; appointment of
45 trustee, receiver or liquidator. The person's:

48 A. Becoming a debtor in bankruptcy;

50 B. Execution of an assignment for the benefit of creditors;

2 C. Seeking, consenting to or acquiescing in the appointment
3 of a trustee, receiver or liquidator of the person or of all
4 or substantially all of the person's property; or

6 D. Failure, within 90 days after the appointment, to have
7 vacated or stayed the appointment of a trustee, receiver or
8 liquidator of the general partner or of all or substantially
9 all of the person's property obtained without the person's
10 consent or acquiescence, or failing within 90 days after the
11 expiration of a stay to have the appointment vacated;

12 **7. Death; appointment of guardian or conservator; judicial**
13 **determination. In the case of a person who is an individual:**

16 A. The person's death;

18 B. The appointment of a guardian or general conservator for
19 the person; or

20 C. A judicial determination that the person has otherwise
21 become incapable of performing the person's duties as a
22 general partner under the partnership agreement;

24 **8. Distribution of trust's interest. In the case of a**
25 **person that is a trust or is acting as a general partner by**
26 **virtue of being a trustee of a trust, distribution of the trust's**
27 **entire transferable interest in the limited partnership, but not**
28 **merely by reason of the substitution of a successor trustee;**

30 **9. Distribution of estate's interest. In the case of a**
31 **person that is an estate or is acting as a general partner by**
32 **virtue of being a personal representative of an estate,**
33 **distribution of the estate's entire transferable interest in the**
34 **limited partnership, but not merely by reason of the substitution**
35 **of a successor personal representative;**

38 **10. Termination of general partner. Termination of a**
39 **general partner that is not an individual, partnership, limited**
40 **liability company, corporation, trust or estate; or**

42 **11. Conversion or merger. The limited partnership's**
43 **participation in a conversion or merger under subchapter 11, if**
44 **the limited partnership:**

46 A. Is not the converted or surviving entity; or

48 B. Is the converted or surviving entity but, as a result of
49 the conversion or merger, the person ceases to be a general
50 partner.

Uniform Comment

(This is section 603 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim. This Act refers to a person's dissociation as a general partner rather than to the dissociation of a general partner, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Paragraph (1) - The partnership agreement may not eliminate this power to dissociate. See Section 110(b)(8).

Paragraph (5) - In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

§1374. Person's power to dissociate as general partner; wrongful dissociation

1. Dissociate by express will. A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 1373, subsection 1.

2. Wrongful dissociation. A person's dissociation as a general partner is wrongful only if:

A. It is in breach of an express provision of the partnership agreement; or

B. It occurs before the termination of the limited partnership and:

(1) The person withdraws as a general partner by express will;

(2) The person is expelled as a general partner by judicial determination under section 1373, subsection 5;

(3) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(4) In the case of a person that is not an individual, trust other than a business trust, or estate, the

2 person is expelled or otherwise dissociated as a
3 general partner because it willfully dissolved or
4 terminated.

5 3. Liability when dissociation wrongful. A person that
6 wrongfully dissociates as a general partner is liable to the
7 limited partnership and, subject to section 1421, to the other
8 partners for damages caused by the dissociation. The liability is
9 in addition to any other obligation of the general partner to the
10 limited partnership or to the other partners.

11 **Uniform Comment**

12 (This is section 604 of the Uniform Limited Partnership Act
13 (2001).)

14 **Source** - RUPA Section 602.

15 **Subsection (a)** - The partnership agreement may not eliminate
16 this power. See Section 110(b)(8).

17 **Subsection (b)(1)** - The reference to "an express provision
18 of the partnership agreement" means that a person's dissociation
19 as a general partner in breach of the obligation of good faith
20 and fair dealing is not wrongful dissociation for the purposes of
21 this section. The breach might be actionable on other grounds.

22 **Subsection (b)(2)** - The reference to "before the termination
23 of the limited partnership" reflects the expectation that each
24 general partner will shepherd the limited partnership through
25 winding up. See Comment to Section 406(f). A person's obligation
26 to remain as general partner through winding up continues even if
27 another general partner dissociates and even if that dissociation
28 leads to the limited partnership's premature dissolution under
29 Section 801(3)(A).

30 **Subsection (c)** - The language "subject to Section 1001" is
31 intended to preserve the distinction between direct and
32 derivative claims.

33 **§1375. Effect of dissociation as general partner**

34 **1. Rights; duties; statement of dissociation; interests.**
35 **Upon a person's dissociation as a general partner:**

36 **A. The person's right to participate as a general partner**
37 **in the management and conduct of the partnership's**
38 **activities terminates;**

2 B. The person's duty of loyalty as a general partner under
section 1358, subsection 2, paragraph C terminates;

4 C. The person's duty of loyalty as a general partner under
section 1358, subsection 2, paragraphs A and B and duty of
6 care under section 1358, subsection 3 continue only with
regard to matters arising and events occurring before the
8 person's dissociation as a general partner;

10 D. The person may sign and deliver to the Secretary of
State for filing a statement of dissociation pertaining to
12 the person and, at the request of the limited partnership,
shall sign an amendment to the certificate of limited
14 partnership that states that the person has dissociated; and

16 E. Subject to section 1384 and subchapter 11, any
transferable interest owned by the person immediately before
18 dissociation in the person's capacity as a general partner
is owned by the person as a mere transferee.

20 2. Obligations to partnership and partners. A person's
22 dissociation as a general partner does not of itself discharge
the person from any obligation to the limited partnership or the
24 other partners that the person incurred while a general partner.

26 **Uniform Comment**

28 (This is section 605 of the Uniform Limited Partnership Act
(2001).)

30 **Source** - RUPA Section 603(b).

32 **Subsection (a)(1)** - Once a person dissociates as a general
34 partner, the person loses all management rights as a general
partner regardless of what happens to the limited partnership.
36 This rule contrasts with RUPA Section 603(b)(1), which permits a
dissociated general partner to participate in winding up in some
38 circumstances.

40 **Subsection (a)(4)** - Both records covered by this paragraph
42 have the same effect under Section 103(d) - namely, to give
constructive notice that the person has dissociated as a general
partner. The notice benefits the person by curtailing any further
44 personal liability under Sections 607, 805, and 1111. The notice
benefits the limited partnership by curtailing any lingering
46 power to bind under Sections 606, 804, and 1112.

48 The limited partnership is in any event obligated to amend
its certificate of limited partnership to reflect the
50 dissociation of a person as general partner. See Section

202(b)(2). In most circumstances, the amendment requires the signature of the person that has dissociated. Section 204(a)(5)(C). If that signature is required and the person refuses or fails to sign, the limited partnership may invoke Section 205 (Signing and Filing Pursuant to Judicial Order).

Subsection (a)(5) - In general, when a person dissociates as a general partner, the person's rights as a general partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Section 704 provides some special rights when an individual dissociates by dying. Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a general partner and may override the rule stated in this paragraph.

§1376. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner

1. Bound by act of dissociated general partner. After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under subchapter 11 or merged out of existence under subchapter 11, the limited partnership is bound by an act of the person only if:

A. The act would have bound the limited partnership under section 1352 before the dissociation; and

B. At the time the other party enters into the transaction:

(1) Less than 2 years has passed since the dissociation; and

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

2. Liability of dissociated general partner. If a limited partnership is bound under subsection 1, the person dissociated as a general partner that caused the limited partnership to be bound is liable:

A. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1; and

2 B. If a general partner or another person dissociated as a
4 general partner is liable for the obligation, to the general
6 partner or other person for any damage caused to the general
partner or other person arising from the liability.

8 **Uniform Comment**

10 (This is section 606 of the Uniform Limited Partnership Act
(2001).)

12 **Source** - RUPA Section 702.

14 This Act contains three sections pertaining to the lingering
16 power to bind of a person dissociated as a general partner:

- 18 • this section, which applies until the limited
20 partnership dissolves, converts to another form of
22 organization under Article 11, or is merged out of existence
24 under Article 11;
- 26 • Section 804(b), which applies after a limited
partnership dissolves; and
- Section 1112(b), which applies after a conversion or
merger.

28 **Subsection (a)(2)(B)** - A person might have notice under
30 Section 103(d)(1) as well as under Section 103(b).

32 **Subsection (b)** - The liability provided by this subsection
34 is not exhaustive. For example, if a person dissociated as a
36 general partner causes a limited partnership to be bound under
subsection (a) and, due to a guaranty, some other person is
liable on the resulting obligation, that other person may have a
claim under other law against the person dissociated as a general
partner.

38 **§1377. Liability to other persons of person dissociated as**
40 **general partner**

42 **1. Liability of dissociated general partner.** A person's
44 dissociation as a general partner does not of itself discharge
46 the person's liability as a general partner for an obligation of
48 the limited partnership incurred before dissociation. Except as
otherwise provided in subsections 2 and 3, the person is not
liable for a limited partnership's obligation incurred after
dissociation.

2 2. Liability when dissociation resulted in dissolution. A
3 person whose dissociation as a general partner resulted in a
4 dissolution and winding up of the limited partnership's
5 activities is liable to the same extent as a general partner
6 under section 1354 on an obligation incurred by the limited
7 partnership under section 1394.

8 3. Liability when dissociation did not result in
9 dissolution. A person that has dissociated as a general partner
10 but whose dissociation did not result in a dissolution and
11 winding up of the limited partnership's activities is liable on a
12 transaction entered into by the limited partnership after the
13 dissociation only if:

14 A. A general partner would be liable on the transaction; and

15 B. At the time the other party enters into the transaction:

16 (1) Less than 2 years has passed since the
17 dissociation; and

18 (2) The other party does not have notice of the
19 dissociation and reasonably believes that the person is
20 a general partner.

21 4. Release upon agreement with creditor. By agreement with
22 a creditor of a limited partnership and the limited partnership,
23 a person dissociated as a general partner may be released from
24 liability for an obligation of the limited partnership.

25 5. Release upon creditor's agreement to material alteration
26 without consent. A person dissociated as a general partner is
27 released from liability for an obligation of the limited
28 partnership if the limited partnership's creditor, with notice of
29 the person's dissociation as a general partner but without the
30 person's consent, agrees to a material alteration in the nature
31 or time of payment of the obligation.

32 **Uniform Comment**

33 (This is section 607 of the Uniform Limited Partnership Act
34 (2001).)

35 **Source** - RUPA Section 703.

36 A person's dissociation as a general partner does not
37 categorically prevent the person from being liable as a general
38 partner for subsequently incurred obligations of the limited
39 partnership. If the dissociation results in dissolution,
40 subsection (b) applies and the person will be liable as a general

2 partner on any partnership obligation incurred under Section 804.
3 In these circumstances, neither filing a statement of
4 dissociation nor amending the certificate of limited partnership
5 to state that the person has dissociated as a general partner
6 will curtail the person's lingering exposure to liability.

7
8 If the dissociation does not result in dissolution,
9 subsection (c) applies. In this context, filing a statement of
10 dissociation or amending the certificate of limited partnership
11 to state that the person has dissociated as a general partner
12 will curtail the person's lingering liability. See subsection
13 (c)(2)(B).

14 If the limited partnership subsequently dissolves as the
15 result of some other occurrence (i.e., not a result of the
16 person's dissociation as a general partner), subsection (c)
17 continues to apply. In that situation, Section 804 will determine
18 whether, for the purposes of subsection (c), the limited
19 partnership has entered into a transaction after dissolution.
20

21 If the limited partnership is a limited liability limited
22 partnership, these liability rules are moot.

23
24 **Subsection (a)** - The phrase "liability as a general partner
25 for an obligation of the limited partnership" refers to liability
26 under Section 404. Following RUPA and the UPA, this Act leaves to
27 other law the question of when a limited partnership obligation
28 is incurred.

29
30 **Subsection (c)(2)(B)** - A person might have notice under
31 Section 103(d)(1) as well as under Section 103(b).
32

33
34 **SUBCHAPTER 7**

35
36 **TRANSFERABLE INTERESTS AND RIGHTS**
37 **OF TRANSFEREES AND CREDITORS**

38 **§1381. Partner's transferable interest**

39
40 The only interest of a partner that is transferable is the
41 partner's transferable interest. A transferable interest is
42 personal property.

43
44 **Uniform Comment**

45
46 (This is section 701 of the Uniform Limited Partnership Act
47 (2001).)

48
49 **Source** - RUPA Section 502.
50

2 Like all other partnership statutes, this Act dichotomizes
3 each partner's rights into economic rights and other rights. The
4 former are freely transferable, as provided in Section 702. The
5 latter are not transferable at all, unless the partnership
6 agreement so provides.

7 Although a partner or transferee owns a transferable
8 interest as a present right, that right only entitles the owner
9 to distributions if and when made. See Sections 504 (subject to
10 any contrary provision in the partnership agreement, no right to
11 interim distribution unless the limited partnership decides to
12 make an interim distribution) and the Comment to Section 812
13 (subject to any contrary provision in the partnership agreement,
14 no partner obligated to contribute for the purpose of equalizing
15 or otherwise allocating capital losses).

16 **§1382. Transfer of partner's transferable interest**

17 **1. Transfer.** A transfer, in whole or in part, of a
18 partner's transferable interest:

19 A. Is permissible;

20 B. Does not by itself cause the partner's dissociation or a
21 dissolution and winding up of the limited partnership's
22 activities; and

23 C. Does not, as against the other partners or the limited
24 partnership, entitle the transferee to participate in the
25 management or conduct of the limited partnership's
26 activities, to require access to information concerning the
27 limited partnership's transactions except as otherwise
28 provided in subsection 3 or to inspect or copy the required
29 information or the limited partnership's other records.

30 **2. Transferee's right to receive.** A transferee has a right
31 to receive, in accordance with the transfer:

32 A. Distributions to which the transferor would otherwise be
33 entitled; and

34 B. Upon the dissolution and winding up of the limited
35 partnership's activities, the net amount otherwise
36 distributable to the transferor.

37 **3. Account for transferee.** In a dissolution and winding
38 up, a transferee is entitled to an account of the limited
39 partnership's transactions only from the date of dissolution.
40

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2 4. Transferor retains all other rights, duties and
3 obligations. Upon transfer, the transferor retains the rights of
4 a partner other than the interest in distributions transferred
5 and retains all duties and obligations of a partner.

6 5. Notice of transfer. A limited partnership need not give
7 effect to a transferee's rights under this section until the
8 limited partnership has notice of the transfer.

10 6. Transfer in violation of restriction. A transfer of a
11 partner's transferable interest in the limited partnership in
12 violation of a restriction on transfer contained in the
13 partnership agreement is ineffective as to a person having notice
14 of the restriction at the time of transfer.

16 7. Transferee's liability for transferor's obligations. A
17 transferee that becomes a partner with respect to a transferable
18 interest is liable for the transferor's obligations under
19 sections 1361 and 1369. However, the transferee is not obligated
20 for liabilities unknown to the transferee at the time the
21 transferee became a partner.

22 **Uniform Comment**

24 (This is section 702 of the Uniform Limited Partnership Act
25 (2001).)

28 **Source** - RUPA Section 503, except for subsection (g), which
29 derives from RULPA Section 704(b). Following RUPA, this Act uses
30 the words "transfer" and "transferee" rather than the words
31 "assignment" and "assignee." See RUPA Section 503.

32 **Subsection (a)(2)** - The phrase "by itself" is significant. A
33 transfer of all of a person's transferable interest could lead to
34 dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

36 **Subsection (a)(3)** - Mere transferees have no right to
37 intrude as the partners carry on their activities as partners.
38 Moreover, a partner's obligation of good faith and fair dealing
39 under Sections 305(b) and 408(d) is framed in reference to "the
40 limited partnership and the other partners." See also Comment to
41 Section 1102(b)(3) and Comment to Section 1106(b)(3).

44 **§1383. Rights of judgment creditor of partner or transferee**

46 1. Court order charging transferable interest; rights of
47 transferee. On application to a court of competent jurisdiction
48 by any judgment creditor of a partner or transferee, the court
49 may charge the transferable interest of the judgment debtor with
50 payment of the unsatisfied amount of the judgment with interest.

2 To the extent so charged, the judgment creditor has only the
4 rights of a transferee. The court may appoint a receiver of the
6 share of the distributions due or to become due to the judgment
8 debtor in respect of the partnership and make all other orders,
10 directions, accounts and inquiries the judgment debtor might have
12 made or that the circumstances of the case may require to give
14 effect to the charging order.

16 2. Charging order a lien; foreclosure; rights of
18 transferee. A charging order constitutes a lien on the judgment
20 debtor's transferable interest. The court may order a foreclosure
22 upon the interest subject to the charging order at any time. The
24 purchaser at the foreclosure sale has the rights of a transferee.

26 3. Redemption before foreclosure. At any time before
28 foreclosure, an interest charged may be redeemed:

30 A. By the judgment debtor;

32 B. With property other than limited partnership property,
34 by one or more of the other partners; or

36 C. With limited partnership property, by the limited
38 partnership with the consent of all partners whose interests
40 are not so charged.

42 4. Exemption laws applicable. This chapter does not
44 deprive any partner or transferee of the benefit of any exemption
46 laws applicable to the partner's or transferee's transferable
48 interest.

50 5. Exclusive remedy. This section provides the exclusive
52 remedy by which a judgment creditor of a partner or transferee
54 may satisfy a judgment out of the judgment debtor's transferable
56 interest.

Uniform Comment

(This is section 703 of the Uniform Limited Partnership Act
(2001).)

Source - RUPA Section 504 and ULLCA Section 504.

This section balances the needs of a judgment creditor of a partner or transferee with the needs of the limited partnership and non-debtor partners and transferees. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited partnership.

2 Under this section, the judgment creditor of a partner or
3 transferee is entitled to a charging order against the relevant
4 transferable interest. While in effect, that order entitles the
5 judgment creditor to whatever distributions would otherwise be
6 due to the partner or transferee whose interest is subject to the
7 order. The creditor has no say in the timing or amount of those
8 distributions. The charging order does not entitle the creditor
9 to accelerate any distributions or to otherwise interfere with
10 the management and activities of the limited partnership.

12 Foreclosure of a charging order effects a permanent transfer
13 of the charged transferable interest to the purchaser. The
14 foreclosure does not, however, create any rights to participate
15 in the management and conduct of the limited partnership's
16 activities. The purchaser obtains nothing more than the status of
17 a transferee.

18 **Subsection (a)** - The court's power to appoint a receiver and
19 "make all other orders, directions, accounts, and inquiries the
20 judgment debtor might have made or which the circumstances of the
21 case may require" must be understood in the context of the
22 balance described above. In particular, the court's power to make
23 orders "which the circumstances may require" is limited to
24 "giv[ing] effect to the charging order."

26 **Example:** A judgment creditor with a charging order believes
27 that the limited partnership should invest less of its
28 surplus in operations, leaving more funds for distributions.
29 The creditor moves the court for an order directing the
30 general partners to restrict re-investment. This section
31 does not authorize the court to grant the motion.

34 **Example:** A judgment creditor with a judgment for \$10,000
35 against a partner obtains a charging order against the
36 partner's transferable interest. The limited partnership is
37 duly served with the order. However, the limited partnership
38 subsequently fails to comply with the order and makes a
39 \$3000 distribution to the partner. The court has the power
40 to order the limited partnership to turn over \$3000 to the
41 judgment creditor to "give effect to the charging order."

42 The court also has the power to decide whether a particular
43 payment is a distribution, because this decision determines
44 whether the payment is part of a transferable interest subject to
45 a charging order. (To the extent a payment is not a distribution,
46 it is not part of the transferable interest and is not subject to
47 subsection (e). The payment is therefore subject to whatever
48 other creditor remedies may apply.)

50

Subsection (c)(3) - This provision requires the consent of all the limited as well as general partners.

§1384. Power of estate of deceased partner

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 1382 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 1344.

Uniform Comment

(This is section 704 of the Uniform Limited Partnership Act (2001).)

Section 702 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 702(c).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate. For those purposes, the legal representative may exercise the informational rights of a current limited partner under Section 304. Those rights are of course subject to the limitations and obligations stated in that section - e.g., Section 304 (g) (restrictions on use) and (h) (charges for copies) - as well as any generally applicable limitations stated in the partnership agreement.

SUBCHAPTER 8

DISSOLUTION

§1391. Nonjudicial dissolution

Except as otherwise provided in section 1392, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

1. Event specified in partnership agreement. The happening of an event specified in the partnership agreement;

2. Consent. The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

2 3. Dissociation of general partner. After the dissociation
3 of a person as a general partner:

4
5 A. If the limited partnership has at least one remaining
6 general partner, the consent to dissolve the limited
7 partnership given within 90 days after the dissociation by
8 partners owning a majority of the rights to receive
9 distributions as partners at the time the consent is to be
10 effective; or

11 B. If the limited partnership does not have a remaining
12 general partner, the passage of 90 days after the
13 dissociation, unless before the end of the period:

14
15 (1) Consent to continue the activities of the limited
16 partnership and admit at least one general partner is
17 given by limited partners owning a majority of the
18 rights to receive distributions as limited partners at
19 the time the consent is to be effective; and

20 (2) At least one person is admitted as a general
21 partner in accordance with the consent;

22
23 4. Dissociation of last limited partner. The passage of 90
24 days after the dissociation of the limited partnership's last
25 limited partner, unless before the end of the period the limited
26 partnership admits at least one limited partner; or

27 5. Declaration of dissolution. The signing and filing of a
28 declaration of dissolution by the Secretary of State under
29 section 1399, subsection 3.

30
31 **Uniform Comment**

32 (This is section 801 of the Uniform Limited Partnership Act
33 (2001).)

34
35 This Act does not require that any of the consents referred
36 to in this section be given in the form of a signed record. The
37 partnership agreement has the power to impose that requirement.
38 See Comment to Section 110.

39 In several provisions, this section provides for consent in
40 terms of rights to receive distributions. Distribution rights of
41 non-partner transferees are not relevant. Mere transferees have
42 no consent rights, and their distribution rights are not counted
43 in determining whether majority consent has been obtained.

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2 Paragraph (1) - There is no requirement that the relevant
3 provision of the partnership agreement be made in a record,
4 unless the partnership agreement creates that requirement.
5 However, if the relevant provision is not "contained in a
6 partnership agreement made in a record," Section 111(9)(D)
7 includes among the limited partnership's required information "a
8 record stating . . . any events upon the happening of which the
9 limited partnership is to be dissolved and its activities wound
10 up."

11 Paragraph (2) - Rights to receive distributions owned by a
12 person that is both a general and a limited partner figure into
13 the limited partner determination only to the extent those rights
14 are owned in the person's capacity as a limited partner. See
15 Section 111(9)(C).

16 Example: XYZ is a limited partnership with three general
17 partners, each of whom is also a limited partner, and 5
18 other limited partners. Rights to receive distributions are
19 allocated as follows:
20

21 Partner #1 as general partner - 3%
22 Partner #2 as general partner - 2%
23 Partner #3 as general partner - 1%
24 Partner #1 as limited partner - 7%
25 Partner #2 as limited partner - 3%
26 Partner #3 as limited partner - 4%
27 Partner #4 as limited partner - 5%
28 Partner #5 as limited partner - 5%
29 Partner #6 as limited partner - 5%
30 Partner #7 as limited partner - 5%
31 Partner #8 as limited partner - 5%
32 Several non-partner transferees, in the aggregate - 55%

33 Distribution rights owned by persons as limited partners
34 amount to 39% of total distribution rights. A majority is
35 therefore anything greater than 19.5%. If only Partners 1,2,
36 3 and 4 consent to dissolve, the limited partnership is not
37 dissolved. Together these partners own as limited partners
38 19% of the distribution rights owned by persons as limited
39 partners - just short of the necessary majority. For
40 purposes of this calculation, distribution rights owned by
41 non-partner transferees are irrelevant. So, too, are
42 distribution rights owned by persons as general partners.
43 (However, dissolution under this provision requires "the
44 consent of all general partners.")
45

46 Paragraph (3)(A) - Unlike paragraph (2), this paragraph
47 makes no distinction between distribution rights owned by persons
48 as general partners and distribution rights owned by persons as
49

limited partners. Distribution rights owned by non-partner transferees are irrelevant.

§1392. Judicial dissolution

On application by a partner, the Superior Court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

Uniform Comment

(This is section 802 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 802.

Section 110(b)(9) limits the power of the partnership agreement with regard to this section.

§1393. Winding up

1. Purpose after dissolution. A limited partnership continues after dissolution only for the purpose of winding up its activities.

2. Winding up limited partnership. In winding up its activities, the limited partnership:

A. May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 1323 and perform other necessary acts; and

B. Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities and marshal and distribute the assets of the partnership.

3. Appointment to wind up activities. If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

2 A. Has the powers of a general partner under section 1394;
3 and

4 B. Shall promptly amend the certificate of limited
5 partnership to state:

6 (1) That the limited partnership does not have a
7 general partner;

10

8 (2) The name of the person that has been appointed to
9 wind up the limited partnership; and

12

13 (3) The street and mailing address of the person.

14

15 4. Judicial supervision. On the application of any
16 partner, the Superior Court may order judicial supervision of the
17 winding up, including the appointment of a person to wind up the
18 dissolved limited partnership's activities, if:

20

19 A. The limited partnership does not have a general partner
20 and within a reasonable time following the dissolution no
21 person has been appointed pursuant to subsection 3; or

22

23

24 B. The applicant establishes other good cause.

26

27 **Uniform Comment**

28

29 (This is section 803 of the Uniform Limited Partnership Act
30 (2001).)

30

31 **Source** - RUPA Sections 802 and 803.

32

33 **Subsection (b)(2)** - A limited partnership may satisfy its
34 duty to "discharge" a liability either by paying or by making an
35 alternative arrangement satisfactory to the creditor.

34

36

37 **Subsection (c)** - The method for determining majority consent
38 is analogous to the method applicable under Section 801(2). See
39 the Comment to that paragraph.

38

40

41 A person appointed under this subsection is not a general
42 partner and therefore is not subject to Section 408.

42

43

44 §1394. Power of general partner and person dissociated as
45 general partner to bind partnership after dissolution

46

47 1. General partner's act after dissolution. A limited
48 partnership is bound by a general partner's act after dissolution
49 that:

50

2 A. Is appropriate for winding up the limited partnership's
3 activities; or

4
5 B. Would have bound the limited partnership under section
6 1352 before dissolution, if, at the time the other party
7 enters into the transaction, the other party does not have
8 notice of the dissolution.

9
10 2. Dissociated general partner's act after dissolution. A
11 person dissociated as a general partner binds a limited
12 partnership through an act occurring after dissolution if:

13 A. At the time the other party enters into the transaction:

14
15 (1) Less than 2 years has passed since the
16 dissociation; and

17
18 (2) The other party does not have notice of the
19 dissociation and reasonably believes that the person is
20 a general partner; and

21 B. The act:

22
23 (1) Is appropriate for winding up the limited
24 partnership's activities; or

25
26 (2) Would have bound the limited partnership under
27 section 1352 before dissolution and at the time the
28 other party enters into the transaction the other party
29 does not have notice of the dissolution.

30
31 **Uniform Comment**

32
33 (This is section 804 of the Uniform Limited Partnership Act
34 (2001).)

35
36 **Subsection (a) - Source: RUPA Section 804.**

37
38 **Subsection (a)(2) -** A person might have notice under Section
39 103(d)(2) (amendment of certificate of limited partnership to
40 indicate dissolution) as well as under Section 103(b).

41
42 **Subsection (b) -** This subsection deals with the
43 post-dissolution power to bind of a person dissociated as a
44 general partner. Paragraph (1) replicates the provisions of
45 Section 606, pertaining to the pre-dissolution power to bind of a
46 person dissociated as a general partner. Paragraph (2) replicates
47 the provisions of subsection (a), which state the
48 post-dissolution power to bind of a general partner. For a person
49
50

dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraph (1) and paragraph (2).

Subsection (b)(1)(B) - A person might have notice under Section 103(d)(1) as well as under Section 103(b).

Subsection (b)(2)(B) - A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

§1395. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners and persons dissociated as general partner

1. General partner liable for inappropriate act after dissolution. If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 1394, subsection 1 by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

A. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

B. If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

2. Dissociated general partner liable for incurring obligation. If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 1394, subsection 2, the person is liable:

A. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

B. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Uniform Comment

(This is section 805 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 806.

It is possible for more than one person to be liable under this section on account of the same limited partnership obligation. This Act does not provide any rule for apportioning liability in that circumstance.

Subsection (a)(2) - If the limited partnership is not a limited liability limited partnership, the liability created by this paragraph includes liability under Sections 404(a), 607(b), and 607(c). The paragraph also applies when a partner or person dissociated as a general partner suffers damage due to a contract of guaranty.

§1396. Known claims against dissolved limited partnership

1. Dispose of known claims. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.

2. Notice of dissolution. A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

A. Specify the information required to be included in a claim;

B. Provide a mailing address to which the claim is to be sent;

C. State the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;

D. State that the claim will be barred if not received by the deadline; and

E. Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 1354.

3. Claim barred. A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and:

A. The claim is not received by the specified deadline; or

2 B. In the case of a claim that is timely received but
3 rejected by the dissolved limited partnership, the claimant
4 does not commence an action to enforce the claim against the
5 limited partnership within 90 days after the receipt of the
6 notice of the rejection.

7 4. Claims or liability after dissolution. This section
8 does not apply to a claim based on an event occurring after the
9 effective date of dissolution or a liability that is contingent
10 on that date.

11 **Uniform Comment**

12 (This is section 806 of the Uniform Limited Partnership Act
13 (2001).)

14 **Source** - ULLCA Section 807. See also RMBCA Section 14.06.

15 **Paragraph (b)(5)** - If the limited partnership has always
16 been a limited liability limited partnership, there can be no
17 liability under Section 404 for any general partner or person
18 dissociated as a general partner.

19 **§1397. Other claims against dissolved limited partnership**

20 1. Notice of dissolution; claims. A dissolved limited
21 partnership may publish notice of its dissolution and request
22 persons having claims against the limited partnership to present
23 them in accordance with the notice.

24 2. Notice requirements. The notice must:

25 A. Be published at least once in a newspaper of general
26 circulation in the county in which the dissolved limited
27 partnership's principal office is located or, if it has none
28 in this State, in the county in which the limited
29 partnership's designated office is or was last located;

30 B. Describe the information required to be contained in a
31 claim and provide a mailing address to which the claim is to
32 be sent;

33 C. State that a claim against the limited partnership is
34 barred unless an action to enforce the claim is commenced
35 within 5 years after publication of the notice; and

36 D. Unless the limited partnership has been throughout its
37 existence a limited liability limited partnership, state
38 that the barring of a claim against the limited partnership
39 will also bar any corresponding claim against any general
40 partner.

R. S.

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partner or person dissociated as a general partner that is based on section 1354.

3. Claimants barred. If a dissolved limited partnership publishes a notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within 5 years after the publication date of the notice:

A. A claimant that did not receive notice in a record under section 1396;

B. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

C. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. Enforcement of claims. A claim not barred under this section may be enforced:

A. Against the dissolved limited partnership, to the extent of its undistributed assets;

B. If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

C. Against any person liable on the claim under section 1354.

Uniform Comment

(This is section 807 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 808. See also RMBCA Section 14.07.

Paragraph (b)(4) - If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

2 **§1398. Liability of general partner and person dissociated as**
3 **general partner when claim against limited partnership**
4 **barred**

5 If a claim against a dissolved limited partnership is barred
6 under section 1396 or 1397, any corresponding claim under section
7 1354 is also barred.

8 **Uniform Comment**

9 (This is section 808 of the Uniform Limited Partnership Act
10 (2001).)

11 The liability under Section 404 of a general partner or
12 person dissociated as a general partner is merely liability for
13 the obligations of the limited partnership.

14 **§1399. Administrative dissolution of domestic limited partnership**

15 **1. Grounds for administrative dissolution.** Notwithstanding
16 Title 4, chapter 5 and Title 5, chapter 375, the Secretary of
17 State may commence a proceeding under subsection 2 to
18 administratively dissolve a domestic limited partnership if:

19 A. The domestic limited partnership does not pay when they
20 are due any fees or penalties imposed by this chapter or
21 other law;

22 B. The domestic limited partnership does not deliver its
23 annual report to the Secretary of State as required by
24 section 1330, subsection 1;

25 C. The domestic limited partnership does not pay the annual
26 report late filing penalty as required by section 1330,
27 subsection 3;

28 D. The domestic limited partnership fails to appoint or
29 maintain a registered agent or registered office in this
30 State as required by section 1314;

31 E. The domestic limited partnership does not notify the
32 Secretary of State that its registered agent or registered
33 office has been changed as required by section 1315 or that
34 its registered agent has resigned as required by section
35 1316; or

36 F. A general partner, limited partner or agent of the
37 domestic limited partnership signed a document with the
38 knowledge that the document was false in a material respect
39

2 and with the intent that the document be delivered to the
Secretary of State for filing.

4 2. Procedure for administrative dissolution of domestic
limited partnership. If the Secretary of State determines that
6 one or more grounds exist under subsection 1 for dissolving a
domestic limited partnership, the Secretary of State shall issue
8 a written notice of that determination to the limited
partnership's last registered office address.

10 3. Administrative dissolution. The domestic limited
12 partnership will be administratively dissolved if within 60 days
after the notice under subsection 2 was issued the Secretary of
14 State determines that the limited partnership has failed to
correct the ground or grounds for the dissolution. The Secretary
16 of State shall send notice to the limited partnership at its last
registered office address that recites the ground or grounds for
18 dissolution and the effective date of dissolution.

20 4. Effect of administrative dissolution; prohibition. A
22 domestic limited partnership administratively dissolved under
this section continues its existence but may not transact any
24 business in this State except as necessary to wind up the affairs
of the limited partnership.

26 5. Liability of limited partners. A limited partner of a
28 domestic limited partnership is not liable as a general partner
of the limited partnership solely by reason of the limited
30 partnership's having been administratively dissolved under this
section.

32 6. Validity of contracts; right to be sued; right to defend
suit. The administrative dissolution of a domestic limited
34 partnership under this section does not impair:

36 A. The validity of any contract or act of the domestic
limited partnership;

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

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

44 7. Authority of registered agent. The administrative
46 dissolution of a domestic limited partnership under this section
does not terminate the authority of its registered agent.

48 8. Protecting domestic limited partnership name after
50 administrative dissolution. The name of a domestic limited

2 partnership remains in the Secretary of State's record of limited
3 partnership names and is protected for a period of 3 years
4 following administrative dissolution under this section.

6 9. Notice to Superintendent of Financial Institutions in
7 case of financial institution or credit union. In the case of a
8 financial institution authorized to do business in this State or
9 a credit union authorized to do business in this State, as
10 defined in Title 9-B, the Secretary of State shall notify the
11 Superintendent of Financial Institutions within a reasonable time
12 prior to administratively dissolving the financial institution or
13 credit union under this section.

14 **Maine Comment**

16 This section is based on former sections 408-A and 408-B and
17 maintains uniformity with the other Maine business entity laws
18 for grounds for, procedure for and effect of administrative
19 dissolution.

22 §1400. Reinstatement following administrative dissolution or
23 suspension of domestic limited partnership

24 1. Reinstatement following administrative dissolution. A
25 domestic limited partnership administratively dissolved under
26 section 1399 may apply to the Secretary of State for
27 reinstatement within 6 years after the effective date of
28 dissolution.

30 A. The application for reinstatement must:

32 (1) State the name of the domestic limited partnership
33 and the effective date of its administrative
34 dissolution;

35 (2) State that the ground or grounds for dissolution
36 either did not exist or have been eliminated; and

37 (3) State that the domestic limited partnership's name
38 satisfies the requirements of section 1308.

40 B. If the Secretary of State determines that the
41 application contains the information required under this
42 subsection and is accompanied by the reinstatement fee set
43 forth in section 1460, subsection 6, and that the
44 information is correct, the Secretary of State shall cancel
45 the administrative dissolution and prepare a notice of
46 reinstatement that recites that determination and the
47 effective date of reinstatement. The Secretary of State
48 shall
49 prepare a notice of reinstatement that recites that determination and the
50 effective date of reinstatement. The Secretary of State

2 shall send notice to the domestic limited partnership at its
3 last registered office address.

4 C. When the reinstatement is effective under this
5 subsection, it relates back to and takes effect as of the
6 effective date of the administrative dissolution, and the
7 domestic limited partnership resumes business as if the
8 administrative dissolution had not occurred.

10 2. Reinstatement after suspension. A domestic limited
11 partnership that was suspended before July 1, 2004 may apply to
12 the Secretary of State for reinstatement.

14 A. The reinstatement may be granted if:

16 (1) The Secretary of State determines that the
17 application contains the information required under
18 subsection 1;

20 (2) The application for reinstatement is accompanied
21 by the reinstatement fee set forth in section 1460,
22 subsection 6; and

24 (3) The application for reinstatement is received by
25 the Secretary of State by June 30, 2010.

26 B. A domestic limited partnership that fails to meet the
27 requirements of this subsection is administratively
28 dissolved and may not reinstate.

30 C. The name of a domestic limited partnership that is
31 suspended remains in the Secretary of State's record of
32 limited partnership names and is protected for a period of 3
33 years following suspension.

36 **Maine Comment**

38 This section is based on former sections 408-C and 408-E and
39 maintains uniformity with the other Maine business entity laws
40 for reinstatement after administrative dissolution or suspension.

42 **§1401. Appeal from denial of reinstatement of domestic limited**
43 **partnership**

44 1. Denial of reinstatement. If the Secretary of State
45 denies a domestic limited partnership's application for
46 reinstatement following administrative dissolution, the Secretary
47 of State shall mail a written notice that explains the reason or
48 reasons for denial to the limited partnership at its last
49 registered office address.

2 2. Appeal. A domestic limited partnership may appeal a
3 denial of reinstatement under subsection 1 to the Superior Court
4 of the county where the limited partnership's principal office is
5 located or, if there is no principal office in this State, in
6 Kennebec County within 30 days after the date of the notice of
7 denial. The limited partnership appeals by petitioning the court
8 to set aside the dissolution and attaching to the petition copies
9 of the Secretary of State's notice of administrative dissolution,
10 the limited partnership's application for reinstatement and the
11 Secretary of State's notice of denial.

12 3. Court action. The court may summarily order the
13 Secretary of State to reinstate an administratively dissolved
14 domestic limited partnership or may take other action the court
15 considers appropriate.

16 4. Final decision. The court's final decision in an appeal
17 under this section may be appealed as in other civil proceedings.

18
19
20 **Maine Comment**

21
22 This section is based on former section 408-D and maintains
23 uniformity with the other Maine business entity laws for appeal
24 for reinstatement after administrative dissolution.

25 **§1402. Disposition of assets; when contributions required**

26
27 1. Assets to satisfy creditors. In winding up a limited
28 partnership's activities, the assets of the limited partnership,
29 including the contributions required by this section, must be
30 applied to satisfy the limited partnership's obligations to
31 creditors, including, to the extent permitted by law, partners
32 that are creditors.

33 2. Surplus paid in cash distribution. Any surplus
34 remaining after the limited partnership complies with subsection
35 1 must be paid in cash as a distribution.

36 3. Insufficient assets to satisfy all obligations. If a
37 limited partnership's assets are insufficient to satisfy all of
38 its obligations under subsection 1, with respect to each
39 unsatisfied obligation incurred when the limited partnership was
40 not a limited liability limited partnership, the following rules
41 apply.

42 A. Each person that was a general partner when the
43 obligation was incurred and that has not been released from
44 the obligation under section 1377 shall contribute to the
45 limited partnership for the purpose of enabling the limited
46

2 partnership to satisfy the obligation. The contribution due
3 from each of those persons is in proportion to the right to
4 receive distributions in the capacity of general partner in
5 effect for each of those persons when the obligation was
6 incurred.

7 B. If a person does not contribute the full amount required
8 under paragraph A with respect to an unsatisfied obligation
9 of the limited partnership, the other persons required to
10 contribute by paragraph A on account of the obligation shall
11 contribute the additional amount necessary to discharge the
12 obligation. The additional contribution due from each of
13 those other persons is in proportion to the right to receive
14 distributions in the capacity of general partner in effect
15 for each of those other persons when the obligation was
16 incurred.

17 C. If a person does not make the additional contribution
18 required by paragraph B, further additional contributions
19 are determined and due in the same manner as provided in
20 that paragraph.

21 4. Additional contribution recoverable. A person that
22 makes an additional contribution under subsection 3, paragraph B
23 or C may recover from any person whose failure to contribute
24 under subsection 3, paragraph A or B necessitated the additional
25 contribution. A person may not recover under this subsection more
26 than the amount additionally contributed. A person's liability
27 under this subsection may not exceed the amount the person failed
28 to contribute.

29 5. Estate of deceased liable for obligations. The estate
30 of a deceased individual is liable for the individual's
31 obligations under this section.

32 6. Assignee, court appointee may enforce. An assignee for
33 the benefit of creditors of a limited partnership or a partner,
34 or a person appointed by a court to represent creditors of a
35 limited partnership or a partner, may enforce a person's
36 obligation to contribute under subsection 3.

37 **Uniform Comment**

38 (This is section 812 of the Uniform Limited Partnership Act
39 (2001).)

40 In some circumstances, this Act requires a partner to make
41 payments to the limited partnership. See, e.g., Sections 502(b),
42 509(a), 509(b), and 812(c). In other circumstances, this Act
43 requires a partner to make payments to other partners. See, e.g.,

Sections 509(c) and 812(d). In no circumstances does this Act require a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

Example: XYZ Limited Partnership ("XYZ") has one general partner and four limited partners. According to XYZ's required information, the value of each partner's contributions to XYZ are:

General partner - \$5,000
Limited partner #1 - \$10,000
Limited partner #2 - \$15,000
Limited partner #3 - \$20,000
Limited partner #4 - \$25,000

XYZ is unsuccessful and eventually dissolves without ever having made a distribution to its partners. XYZ lacks any assets with which to return to the partners the value of their respective contributions. No partner is obliged to make any payment either to the limited partnership or to fellow partners to adjust these capital losses. These losses are not part of "the limited partnership's obligations to creditors." Section 812(a).

Example: Same facts, except that Limited Partner #4 loaned \$25,000 to XYZ when XYZ was not a limited liability limited partnership, and XYZ lacks the assets to repay the loan. The general partner must contribute to the limited partnership whatever funds are necessary to enable XYZ to satisfy the obligation owed to Limited Partner #4 on account of the loan. Section 812(a) and (c).

Subsection (c) - Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

SUBCHAPTER 9

FOREIGN LIMITED PARTNERSHIPS

§1411. Governing law

1. Law under which organized governs. The laws of the State or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

2 2. Difference in laws. A foreign limited partnership may
3 not be denied a certificate of authority under this subchapter by
4 reason of any difference between the laws of the jurisdiction
5 under which the foreign limited partnership is organized and the
6 laws of this State.

7 3. Certificate of authority. A certificate of authority
8 under this subchapter does not authorize a foreign limited
9 partnership to engage in any business or exercise any power that
10 a limited partnership may not engage in or exercise in this State.

11 **Uniform Comment**

12 (This is section 901 of the Uniform Limited Partnership Act
13 (2001).)

14 **Source** - ULLCA Section 1001 for subsections (b) and (c).

15 **Subsection (a)** - This subsection parallels and is analogous
16 in scope and effect to Section 106 (choice of law for domestic
17 limited partnerships).

18 **§1412. Application for certificate of authority**

19 1. Application. A foreign limited partnership may apply
20 for a certificate of authority to transact business in this State
21 by delivering an application to the Secretary of State for
22 filing. The application must state:

23 A. The name of the foreign limited partnership and, if the
24 name does not comply with section 1308, the name under which
25 it proposes to apply for authority to do business pursuant
26 to section 1415, subsection 1.

27 B. The name of the State or other jurisdiction under whose
28 law the foreign limited partnership is organized and its
29 date of formation;

30 C. The street and mailing address of the foreign limited
31 partnership's principal office and, if the laws of the
32 jurisdiction under which the foreign limited partnership is
33 organized require the foreign limited partnership to
34 maintain an office in that jurisdiction, the street and
35 mailing address of the required office;

36 D. The name and street and mailing address of the foreign
37 limited partnership's initial registered agent and office in
38 this State;

2 E. The name and street and mailing address of each of the
foreign limited partnership's general partners; and

4 F. Whether the foreign limited partnership is a foreign
limited liability limited partnership.

6
8 2. Certificate of existence or similar record. A foreign
limited partnership shall deliver with the completed application
under subsection 1 a certificate of existence or a record of
10 similar import signed by the Secretary of State or other official
having custody of the limited partnership's publicly filed
12 records in the State or other jurisdiction under whose law the
foreign limited partnership is organized. The certificate of
14 existence must have been made not more than 90 days prior to
delivery of the application for filing.

16 **Uniform Comment**

18 (This is section 902 of the Uniform Limited Partnership Act
20 (2001).)

22 **Source** - ULLCA Section 1002.

24 A certificate of authority applied for under this section is
26 different than a certificate of authorization furnished under
Section 209.

28 **Maine Comment**

30 The changes in this section are based on multiple sections
32 of the former chapter 11 and maintain uniformity with the other
Maine business entity laws for the filing requirement for foreign
34 limited partnerships.

36 **§1412-A. Amendments to application**

38 1. Amendments to application. If any statement in the
application for authority to do business of a foreign limited
40 partnership requires change as a result of subsequent events, the
foreign limited partnership shall promptly file with the
42 Secretary of State a certificate, executed by a general partner,
amending the statement. The statement must include:

44 A. The name of the foreign limited partnership;

46 B. The jurisdiction of organization and the date of its
organization;

48 C. The date the foreign limited partnership was granted
50 authority to transact business in this State; and

2 constitute transacting business in this State within the meaning
3 of this subchapter include:

4 A. Maintaining, defending and settling an action or
5 proceeding;

6 B. Holding meetings of its partners or carrying on any
7 other activity concerning its internal affairs;

8 C. Maintaining accounts in financial institutions;

9 D. Maintaining offices or agencies for the transfer,
10 exchange and registration of the foreign limited
11 partnership's own securities or maintaining trustees or
12 depositories with respect to those securities;

13 E. Selling through independent contractors;

14 F. Soliciting or obtaining orders, whether by mail or
15 electronic means or through employees or agents or
16 otherwise, if the orders require acceptance outside this
17 State before they become contracts;

18 G. Creating or acquiring indebtedness, mortgages or
19 security interests in real or personal property;

20 H. Securing or collecting debts or enforcing mortgages or
21 other security interests in property securing the debts, and
22 holding, protecting and maintaining property so acquired;

23 I. Conducting an isolated transaction that is completed
24 within 30 days and is not one in the course of similar
25 transactions of a like manner; and

26 J. Transacting business in interstate commerce.

27 **2. Ownership of property.** For purposes of this subchapter,
28 the ownership in this State of income-producing real property or
29 tangible personal property, other than property excluded under
30 subsection 1, constitutes transacting business in this State.

31 **3. Service of process, taxation or regulation under other**
32 **law.** This section does not apply in determining the contacts or
33 activities that may subject a foreign limited partnership to
34 service of process, taxation or regulation under any other law of
35 this State.

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48 **Uniform Comment**

(This is section 903 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 1003.

§1414. Filing of certificate of authority

Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this State and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative.

Uniform Comment

(This is section 904 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 1004 and RULPA Section 903.

A certificate of authority filed under this section is different than a certificate of authorization furnished under Section 209.

§1415. Fictitious name of foreign limited partnership

1. Requirements for use of fictitious name. As used in this section, "fictitious name" means a name adopted by a foreign limited partnership authorized to transact business in this State because its real name is unavailable pursuant to section 1308, subsection 1.

2. Authorized to transact business. Upon complying with this section, a foreign limited partnership authorized to transact business in this State may transact its business in this State under its fictitious name.

3. File statement indicating use of fictitious name. Prior to transacting business in this State under a fictitious name, a foreign limited partnership shall execute and deliver to the Secretary of State for filing a statement setting forth:

A. The foreign limited partnership name;

B. The foreign limited partnership's jurisdiction of organization and date of organization;

2 C. That the foreign limited partnership intends to transact
business under a fictitious name; and

4 D. The fictitious name that the foreign limited partnership
proposes to use.

6 4. Compliance required. A fictitious name must comply with
8 the requirements of section 1308, subsection 1.

10 5. Enjoin use of fictitious name. If a foreign limited
12 partnership uses a fictitious name without complying with the
14 requirements of this section, the continued use of the fictitious
name may be enjoined upon suit by the Attorney General or by any
person adversely affected by the use of the fictitious name.

16 6. Enjoin use despite compliance. Notwithstanding its
18 compliance with the requirements of this section, the use of a
fictitious name may be enjoined upon suit of the Attorney General
20 or of any person adversely affected by such use if:

22 A. The fictitious name did not, at the time the statement
24 required by subsection 3 was filed, comply with the
requirements of section 1308, subsection 1; or

26 B. The fictitious name is not distinguishable on the
28 records of the Secretary of State from a name in which the
plaintiff has prior rights by virtue of the common law or
30 statutory law of unfair competition, unfair trade practices,
common law copyright or similar law.

32 The mere filing of a statement pursuant to subsection 3 does not
34 constitute actual use of the fictitious name set out in that
statement for purposes of determining priority of rights.

36 7. Terminate use of fictitious name. A foreign limited
38 partnership may terminate a fictitious name by executing and
delivering a statement setting forth:

40 A. The name of the foreign limited partnership;

42 B. The foreign limited partnership's jurisdiction of
organization and date of organization;

44 C. The date on which the foreign limited partnership was
46 authorized to transact business in this State;

48 D. That the foreign limited partnership no longer intends
to transact business under the fictitious name; and

2 E. The fictitious name the foreign limited partnership
3 intends to terminate.

4 **Maine Comment**

6 This section is based on former section 405-A and maintains
7 uniformity with the other Maine business entity laws for
8 fictitious name filings.

10 **§1416. Revocation of authority**
12

14 1. Grounds for revocation of authority. Notwithstanding
15 Title 4, chapter 5 and Title 5, chapter 375, the Secretary of
16 State may commence a proceeding under subsection 2 to revoke the
17 authority of a foreign limited partnership authorized to transact
18 business in this State if:

20 A. The foreign limited partnership does not pay when they
21 are due any fees or penalties imposed by this chapter or
22 other law;

24 B. The foreign limited partnership does not deliver its
25 annual report to the Secretary of State as required by
26 section 1330, subsection 1;

28 C. The foreign limited partnership does not pay the annual
29 report late filing penalty as required by section 1330,
30 subsection 3;

32 D. The foreign limited partnership fails to appoint or
33 maintain a registered agent or registered office in this
34 State as required by section 1314;

36 E. The foreign limited partnership does not notify the
37 Secretary of State that its registered agent or registered
38 office has been changed as required by section 1315 or that
39 its registered agent has resigned as required by section
40 1316; or

42 F. A general partner, limited partner or agent of the
43 foreign limited partnership signed a document with the
44 knowledge that the document was false in a material respect
45 and with the intent that the document be delivered to the
46 Secretary of State for filing.

48 2. Procedure for revocation of foreign limited
49 partnership. If the Secretary of State determines that one or
50 more grounds exist under subsection 1 for the revocation of
authority of a foreign limited partnership, the Secretary of

2 State shall issue a written notice of that determination to the
limited partnership's last registered office address or to its
4 last registered or principal office wherever located.

6 3. Revocation of authority. The foreign limited
partnership's authority is revoked if within 60 days after the
8 notice under subsection 2 was issued the Secretary of State
determines that the foreign limited partnership has failed to
10 correct the ground or grounds for the revocation. The Secretary
of State shall send notice to the foreign limited partnership at
12 its last registered office address or to its last registered or
principal office wherever located that recites the ground or
14 grounds for revocation and the effective date of revocation.

16 4. Authority to transact business ceases. The authority of
a foreign limited partnership to transact business in this State
18 ceases on the effective date of revocation of its authority.

20 5. Registered agent; not terminated. Revocation of a
foreign limited partnership's authority to transact business in
22 this State does not terminate the authority of the registered
agent of the foreign limited partnership.

24 6. Authorization after revocation. A foreign limited
partnership whose authority to transact business in this State
26 has been revoked under this section and that wishes to transact
business again in this State must be authorized as provided in
28 this chapter.

30 **Maine Comment**

32 This section is based on former sections 498-A and 498-B and
34 maintains uniformity with the other Maine business entity laws
36 for grounds for, procedure for and effect of revocation of
authority for foreign limited partnerships.

38 **§1417. Cancellation of certificate of authority; effect of**
40 **failure to have certificate**

42 1. Notice of cancellation. In order to cancel its
certificate of authority to transact business in this State, a
44 foreign limited partnership must deliver to the Secretary of
State for filing a notice of cancellation. The certificate is
46 canceled when the notice becomes effective under section 1326.

48 2. Certificate of authority to maintain action or
proceeding. A foreign limited partnership transacting business
in this State may not maintain an action or proceeding in this

2 State unless it has a certificate of authority to transact
business in this State.

4 3. Validity of contract or act; defending action or
proceeding. The failure of a foreign limited partnership to have
6 a certificate of authority to transact business in this State
does not impair the validity of a contract or act of the foreign
8 limited partnership or prevent the foreign limited partnership
from defending an action or proceeding in this State.

10 4. Liability based solely on transaction without
certificate of authority. A partner of a foreign limited
12 partnership is not liable for the obligations of the foreign
14 limited partnership solely by reason of the foreign limited
partnership's having transacted business in this State without a
16 certificate of authority.

18 5. Secretary of State appointed as agent. If a foreign
limited partnership transacts business in this State without a
20 certificate of authority or cancels its certificate of authority,
it appoints the Secretary of State as its agent for service of
22 process for rights of action arising out of the transaction of
business in this State.

24 **Uniform Comment**

26 (This is section 907 of the Uniform Limited Partnership Act
28 (2001).)

30 **Source** - RULPA Section 907(d); ULLCA Section 1008.

32 **§1418. Action by Attorney General**

34 The Attorney General may maintain an action to restrain a
foreign limited partnership from transacting business in this
36 State in violation of this subchapter.

38 **Uniform Comment**

40 (This is section 908 of the Uniform Limited Partnership Act
(2001).)

42 **Source** - RULPA Section 908; ULLCA Section 1009.

44 **SUBCHAPTER 10**

46 **ACTIONS BY PARTNERS**

48 **§1421. Direct action by partner**

50

2 1. Action against limited partnership or partner. Subject
4 to subsection 2, a partner may maintain a direct action against
6 the limited partnership or another partner for legal or equitable
8 relief, with or without an accounting as to the partnership's
activities, to enforce the rights and otherwise protect the
interests of the partner, including rights and interests under
the partnership agreement or this chapter or arising
independently of the partnership relationship.

10 2. Plead and prove actual or threatened injury. A partner
12 commencing a direct action under this section is required to
14 plead and prove an actual or threatened injury that is not solely
the result of an injury suffered or threatened to be suffered by
the limited partnership.

16 3. Accrual of right of action; time limitation. The
18 accrual of, and any time limitation on, a right of action for a
20 remedy under this section is governed by other law. A right to an
accounting upon a dissolution and winding up does not revive a
claim barred by law.

22 **Uniform Comment**

24 (This is section 1001 of the Uniform Limited Partnership Act
26 (2001).)

28 **Subsection (a) - Source: RUPA Section 405(b).**

30 **Subsection (b) -** In ordinary contractual situations it is
32 axiomatic that each party to a contract has standing to sue for
34 breach of that contract. Within a limited partnership, however,
36 different circumstances may exist. A partner does not have a
38 direct claim against another partner merely because the other
40 partner has breached the partnership agreement. Likewise a
partner's violation of this Act does not automatically create a
direct claim for every other partner. To have standing in his,
her, or its own right, a partner plaintiff must be able to show a
harm that occurs independently of the harm caused or threatened
to be caused to the limited partnership.

42 The reference to "threatened" harm is intended to encompass
44 claims for injunctive relief and does not relax standards for
proving injury.

46 **§1422. Derivative action**

48 A partner may maintain a derivative action to enforce a
right of a limited partnership if:

1. Demand for limited partnership to enforce. The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

2. Demand futile. A demand would be futile.

Uniform Comment

(This is section 1002 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 1001.

§1423. Proper plaintiff

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

1. Partner when conduct occurred. That was a partner when the conduct giving rise to the action occurred; or

2. Partner status. Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

Uniform Comment

(This is section 1003 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 1002.

§1424. Pleading

In a derivative action, the complaint must state with particularity:

1. Date and content of demand; response. The date and content of the plaintiff's demand and the general partners' response to the demand; or

2. Demand excused. Why the demand should be excused as futile.

Uniform Comment

2 (This is section 1004 of the Uniform Limited Partnership Act
3 (2001).)

4 Source - RULPA Section 1003.

6 **§1425. Proceeds and expenses**

8 **1. Proceeds.** Except as otherwise provided in subsection 2:

10 **A. Any proceeds or other benefits of a derivative action,**
12 **whether by judgment, compromise or settlement, belong to the**
limited partnership and not to the derivative plaintiff; and

14 **B. If the derivative plaintiff receives any proceeds, the**
16 **derivative plaintiff shall immediately remit them to the**
limited partnership.

18 **2. Expenses.** If a derivative action is successful in whole
20 **or in part, the court may award the plaintiff reasonable**
expenses, including reasonable attorney's fees, from the recovery
22 **of the limited partnership.**

24 **Uniform Comment**

26 (This is section 1005 of the Uniform Limited Partnership Act
28 (2001).)

30 Source - RULPA Section 1004.

32 **SUBCHAPTER 11**

34 **CONVERSION AND MERGER**

36 **§1431. Definitions**

38 As used in this subchapter, the following terms have the
40 following meanings.

42 **1. Constituent limited partnership.** "Constituent limited
44 **partnership"** means a constituent organization that is a limited
46 **partnership.**

48 **2. Constituent organization.** "Constituent organization"
50 **means an organization that is party to a merger.**

3. Converted organization. "Converted organization" means
the organization into which a converting organization converts
pursuant to sections 1432 to 1435.

2 4. Converting limited partnership. "Converting limited
partnership" means a converting organization that is a limited
partnership.

4
6 5. Converting organization. "Converting organization"
means an organization that converts into another organization
pursuant to section 1432.

8
10 6. General partner. "General partner" means a general
partner of a limited partnership.

12 7. Governing statute. "Governing statute" of an
organization means the statute that governs the organization's
14 internal affairs.

16 8. Organization. "Organization" means a general
partnership, including a limited liability partnership; limited
18 partnership, including a limited liability limited partnership;
limited liability company; business trust; corporation; or any
20 other person having a governing statute. "Organization" includes
domestic and foreign organizations whether or not organized for
22 profit.

24 9. Organizational documents. "Organizational documents"
means:

26
28 A. For a domestic or foreign general partnership, its
partnership agreement;

30 B. For a limited partnership or foreign limited
partnership, its certificate of limited partnership and
32 partnership agreement;

34 C. For a domestic or foreign limited liability company, its
articles of organization and operating agreement, or
36 comparable records as provided in its governing statute;

38 D. For a business trust, its agreement of trust and
declaration of trust;

40
42 E. For a domestic or foreign corporation for profit, its
articles of incorporation, bylaws and other agreements among
its shareholders that are authorized by its governing
44 statute, or comparable records as provided in its governing
statute; and

46
48 F. For any other organization, the basic records that
create the organization and determine its internal
governance and the relations among the persons that own it,
50 have an interest in it or are members of it.

2 **10. Personal liability.** "Personal liability" means
3 personal liability for a debt, liability or other obligation of
4 an organization that is imposed on a person that co-owns, has an
5 interest in or is a member of the organization:

6 A. By the organization's governing statute solely by reason
7 of the person co-owning, having an interest in or being a
8 member of the organization; or

9 B. By the organization's organizational documents under a
10 provision of the organization's governing statute
11 authorizing those documents to make one or more specified
12 persons liable for all or specified debts, liabilities and
13 other obligations of the organization solely by reason of
14 the person or persons co-owning, having an interest in or
15 being a member of the organization.

16 **11. Surviving organization.** "Surviving organization" means
17 an organization into which one or more other organizations are
18 merged. A surviving organization may preexist the merger or be
19 created by the merger.

20 **Uniform Comment**

21 (This is section 1101 of the Uniform Limited Partnership Act
22 (2001).)

23 This section contains definitions specific to this Article.

24 **§1432. Conversion**

25 **1. Conversion to or from limited partnership.** An
26 organization other than a limited partnership may convert to a
27 limited partnership and a limited partnership may convert to
28 another organization pursuant to this section and sections 1433
29 to 1435 and a plan of conversion if:

30 A. The other organization's governing statute authorizes
31 the conversion;

32 B. The conversion is not prohibited by the law of the
33 jurisdiction that enacted the governing statute; and

34 C. The other organization complies with its governing
35 statute in effecting the conversion.

36 **2. Plan of conversion.** A plan of conversion must be in a
37 record and must include:

2 A. The name and form of the organization before conversion;

4 B. The name and form of the organization after conversion;
and

6 C. The terms and conditions of the conversion, including
8 the manner and basis for converting interests in the
10 converting organization into any combination of money,
interests in the converted organization and other
consideration; and

12 D. The organizational documents of the converted
organization.

14 **Uniform Comment**

16 (This is section 1102 of the Uniform Limited Partnership Act
18 (2001).)

20 In a statutory conversion an existing entity changes its
22 form, the jurisdiction of its governing statute or both. For
example, a limited partnership organized under the laws of one
jurisdiction might convert to:

- 24
- 26 • limited liability company (or other form of entity)
organized under the laws of the same jurisdiction,
 - 28 • a limited liability company (or other form of entity)
organized under the laws of another jurisdiction, or
 - 30 • a limited partnership organized under the laws of
32 another jurisdiction (referred to in some statutes as
"domestication").
- 34

36 In contrast to a merger, which involves at least two
entities, a conversion involves only one. The converting and
38 converted organization are the same entity. See Section 1105(a).
For this Act to apply to a conversion, either the converting or
40 converted organization must be a limited partnership subject to
this Act. If the converting organization is a limited partnership
42 subject to this Act, the partners of the converting organization
are subject to the duties and obligations stated in this Act,
44 including Sections 304 (informational rights of limited
partners), 305(b) (limited partner's obligation of good faith and
fair dealing), 407 (informational rights of general partners),
46 and 408 (general partner duties).

48 **Subsection (a)(2)** - Given the very broad definition of
"organization," Section 1101(8), this Act authorizes conversions

involving non-profit organizations. This provision is intended as
an additional safeguard for that context.

Subsection (b)(3) - A plan of conversion may provide that
some persons with interests in the converting organization will
receive interests in the converted organization while other
persons with interests in the converting organization will
receive some other form of consideration. Thus, a "squeeze out"
conversion is possible. As noted above, if the converting
organization is a limited partnership subject to this Act, the
partners of the converting organization are subject to the duties
and obligations stated in this Act. Those duties would apply to
the process and terms under which a squeeze out conversion occurs.

If the converting organization is a limited partnership, the
plan of conversion will determine the fate of any interests held
by mere transferees. This Act does not state any duty or
obligation owed by a converting limited partnership or its
partners to mere transferees. That issue is a matter for other
law.

Maine Comment

Note that nonprofit organizations that are public charities must
comply with the notice and approval provisions of chapter 9 of
Title 5 (5 M.R.S.A. §§ 194 - 194-K) prior to completing a
conversion transaction, as defined in 5 M.R.S.A. § 194-B.

**§1433. Action on plan of conversion by converting limited
partnership**

1. Consent. Subject to section 1440, a plan of conversion
must be consented to by all the partners of a converting limited
partnership.

2. Amend plan or abandon planned conversion. Subject to
section 1440 and any contractual rights, after a conversion is
approved, and at any time before a filing is made under section
1434, a converting limited partnership may amend the plan or
abandon the planned conversion:

A. As provided in the plan; and

**B. Except as prohibited by the plan, by the same consent as
was required to approve the plan.**

Uniform Comment

(This is section 1103 of the Uniform Limited Partnership Act
(2001).)

2 Section 1110 imposes special consent requirements for
3 transactions which might cause a partner to have "personal
4 liability," as defined in Section 1101(10) for entity debts. The
5 partnership agreement may not restrict the rights provided by
6 Section 1110. See Section 110(b)(12).

8 **Subsection (a)** - Like many of the rules stated in this Act,
9 this subsection's requirement of unanimous consent is a default
10 rule. Subject only to Section 1110, the partnership agreement may
11 state a different quantum of consent or provide a completely
12 different approval mechanism. Varying this subsection's rule
13 means that a partner might be subject to a conversion (including a
14 "squeeze out" conversion) without consent and with no appraisal
15 remedy. If the converting organization is a limited partnership
16 subject to this Act, the partners of the converting organization
17 are subject to the duties and obligations stated in this Act.
18 Those duties would apply to the process and terms under which the
19 conversion occurs. However, if the partnership agreement allows
20 for a conversion with less than unanimous consent, the mere fact
21 a partner objects to a conversion does not mean that the partners
22 favoring, arranging, consenting to or effecting the conversation
23 have breached a duty under this Act.

24 **§1434. Filings required for conversion; effective date**

26 **1. Deliver to Secretary of State articles of conversion;**
27 **certificate of limited partnership. After a plan of conversion**
28 **is approved:**

30 **A. A converting limited partnership shall deliver to the**
31 **Secretary of State for filing articles of conversion, which**
32 **must include:**

34 **(1) A statement that the limited partnership has been**
35 **converted into another organization;**

36 **(2) The name and form of the organization and the**
37 **jurisdiction of its governing statute;**

38 **(3) The date the conversion is effective under the**
39 **governing statute of the converted organization;**

40 **(4) A statement that the conversion was approved as**
41 **required by this chapter;**

42 **(5) A statement that the conversion was approved as**
43 **required by the governing statute of the converted**
44 **organization; and**

2 (6) If the converted organization is a foreign
3 organization not authorized to transact business in
4 this State, the street and mailing address of an office
5 that the Secretary of State may use for the purposes of
6 section 1435, subsection 3; and

7 B. If the converting organization is not a converting
8 limited partnership, the converting organization shall
9 deliver to the Secretary of State for filing a certificate
10 of limited partnership, which must include, in addition to
11 the information required by section 1321:

12 (1) A statement that the limited partnership was
13 converted from another organization;

14 (2) The name and form of the organization and the
15 jurisdiction of its governing statute; and

16 (3) A statement that the conversion was approved in a
17 manner that complied with the organization's governing
18 statute.

19 2. Conversion effective. A conversion becomes effective:

20 A. If the converted organization is a limited partnership,
21 when the certificate of limited partnership takes effect; and

22 B. If the converted organization is not a limited
23 partnership, as provided by the governing statute of the
24 converted organization.

25 **Uniform Comment**

26 (This is section 1104 of the Uniform Limited Partnership Act
27 (2001).)

28 **Subsection (b)** - The effective date of a conversion is
29 determined under the governing statute of the converted
30 organization.

31 **§1435. Effect of conversion**

32 1. Same entity. An organization that has been converted
33 pursuant to this subchapter is for all purposes the same entity
34 that existed before the conversion.

35 2. Effect of conversion. When a conversion takes effect:

36 A. All property owned by the converting organization
37 remains vested in the converted organization;

2 B. All debts, liabilities and other obligations of the
4 converting organization continue as obligations of the
converted organization;

6 C. An action or proceeding pending by or against the
8 converting organization may be continued as if the
conversion had not occurred;

10 D. Except as prohibited by other law, all of the rights,
12 privileges, immunities, powers and purposes of the
converting organization remain vested in the converted
14 organization;

16 E. Except as otherwise provided in the plan of conversion,
the terms and conditions of the plan of conversion take
18 effect; and

20 F. Except as otherwise agreed, the conversion does not
dissolve a converting limited partnership for the purposes
22 of subchapter 8.

24 3. Foreign organization; Secretary of State as agent. A
converted organization that is a foreign organization consents to
the jurisdiction of the courts of this State to enforce any
26 obligation owed by the converting organization, if before the
conversion the converting organization was subject to suit in
28 this State on the obligation. A converted organization that is a
foreign organization and not authorized to transact business in
30 this State appoints the Secretary of State as its agent for
service of process for purposes of enforcing an obligation under
32 this subsection. Service on the Secretary of State under this
subsection is made in the same manner and with the same
34 consequences as in section 1317, subsections 3 and 4.

36 **Uniform Comment**

38 (This is section 1105 of the Uniform Limited Partnership Act
40 (2001).)

42 **Subsection (a)** - A conversion changes an entity's legal
type, but does not create a new entity.

44 **Subsection (b)** - Unlike a merger, a conversion involves a
46 single entity, and the conversion therefore does not transfer any
of the entity's rights or obligations.

48 **Maine Comment**

The effect of a conversion on a Maine corporation that is a converting entity is governed by 13-C M.R.S.A. §957.

§1436. Merger

1. Merger requirements. A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 1437 through 1439 and a plan of merger if:

A. The governing statute of each of the other organizations authorizes the merger;

B. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

C. Each of the other organizations complies with its governing statute in effecting the merger.

2. Plan of merger. A plan of merger must be in a record and must include:

A. The name and form of each constituent organization;

B. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

C. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization and other consideration;

D. If the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

E. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

Uniform Comment

(This is section 1106 of the Uniform Limited Partnership Act (2001).)

For this Act to apply to a merger, at least one of the constituent organizations must be a limited partnership subject to this Act. The partners of any such limited partnership are

2 subject to the duties and obligations stated in this Act,
including Sections 304 (informational rights of limited
4 partners), 305(b) (limited partner's obligation of good faith and
fair dealing), 407 (informational rights of general partners),
and 408 (general partner duties).

6
8 **Subsection (a)(2)** - Given the very broad definition of
"organization," Section 1101(8), this Act authorizes mergers
10 involving non-profit organizations. This provision is intended as
an additional safeguard for that context.

12 **Subsection (b)(3)** - A plan of merger may provide that some
14 persons with interests in a constituent organization will receive
interests in the surviving organization, while other persons with
16 interests in the same constituent organization will receive some
other form of consideration. Thus, a "squeeze out" merger is
18 possible. As noted above, the duties and obligations stated in
this Act apply to the partners of a constituent organization that
20 is a limited partnership subject to this Act. Those duties would
apply to the process and terms under which a squeeze out merger
occurs.

22
24 If a constituent organization is a limited partnership, the
plan of merger will determine the fate of any interests held by
26 mere transferees. This Act does not state any duty or obligation
owed by a constituent limited partnership or its partners to mere
transferees. That issue is a matter for other law.

28
30 **Maine Comment**

32 In Maine, nonprofit organizations that are public charities
must comply with the notice and approval provisions of chapter 9
of Title 5 (5 M.R.S.A. §§ 194-194-K) prior to completing a merger
34 or other conversion transaction, as defined in 5 M.R.S.A. § 194-B.

36 **§1437. Action on plan of merger by constituent limited
partnership**

38
40 **1. Consent.** Subject to section 1440, a plan of merger must
be consented to by all the partners of a constituent limited
partnership.

42
44 **2. Amend plan or abandon planned merger.** Subject to
section 1440 and any contractual rights, after a merger is
46 approved, and at any time before a filing is made under section
1438, a constituent limited partnership may amend the plan or
abandon the planned merger:

48
50 **A. As provided in the plan; and**

2 B. Except as prohibited by the plan, with the same consent
3 as was required to approve the plan.

4 **Uniform Comment**

6 (This is section 1107 of the Uniform Limited Partnership Act
7 (2001).)

8
9 Section 1110 imposes special consent requirements for
10 transactions which might make a partner personally liable for
11 entity debts. The partnership agreement may not restrict the
12 rights provided by Section 1110. See Section 110(b)(12).

14 **Subsection (a)** - Like many of the rules stated in this Act,
15 this subsection's requirement of unanimous consent is a default
16 rule. Subject only to Section 1110, the partnership agreement may
17 state a different quantum of consent or provide a completely
18 different approval mechanism. Varying this subsection's rule
19 means that a partner might be subject to a merger (including a
20 "squeeze out" merger) without consent and with no appraisal
21 remedy. The partners of a constituent limited partnership are
22 subject to the duties and obligations stated in this Act, and
23 those duties would apply to the process and terms under which the
24 merger occurs. However, if the partnership agreement allows for a
25 merger with less than unanimous consent, the mere fact a partner
26 objects to a merger does not mean that the partners favoring,
27 arranging, consenting to or effecting the merger have breached a
28 duty under this Act.

30 **§1438. Filings required for merger; effective date**

32 **1. Articles of merger; signed.** After each constituent
33 organization has approved a merger, articles of merger must be
34 signed on behalf of:

36 A. Each preexisting constituent limited partnership, by
37 each general partner listed in the certificate of limited
38 partnership; and

40 B. Each other preexisting constituent organization, by an
41 authorized representative.

42 **2. Articles of merger; contents.** The articles of merger
44 must include:

46 A. The name and form of each constituent organization and
47 the jurisdiction of its governing statute;

48 B. The name and form of the surviving organization, the
50 jurisdiction of its governing statute and, if the surviving

2 organization is created by the merger, a statement to that
effect;

4 C. The date the merger is effective under the governing
statute of the surviving organization;

6 D. If the surviving organization is to be created by the
8 merger:

10 (1) If the surviving organization will be a limited
12 partnership, the limited partnership's certificate of
limited partnership; or

14 (2) If the surviving organization will be an
16 organization other than a limited partnership, the
organizational document that creates the organization;

18 E. If the surviving organization preexists the merger, any
20 amendments provided for in the plan of merger for the
organizational document that created the organization;

22 F. A statement as to each constituent organization that the
24 merger was approved as required by the organization's
governing statute;

26 G. If the surviving organization is a foreign organization
28 not authorized to transact business in this State, the
street and mailing address of an office that the Secretary
30 of State may use for the purposes of section 1439,
subsection 2; and

32 H. Any additional information required by the governing
34 statute of any constituent organization.

36 3. Deliver to Secretary of State. Each constituent limited
partnership shall deliver the articles of merger for filing in
38 the office of the Secretary of State.

40 4. Merger effective. A merger becomes effective under this
subchapter:

42 A. If the surviving organization is a limited partnership,
44 upon the later of:

46 (1) Compliance with subsection 3; and

48 (2) Subject to section 1326, subsection 3, as
specified in the articles of merger; or

2 B. If the surviving organization is not a limited
partnership, as provided by the governing statute of the
4 surviving organization.

6 **Uniform Comment**

8 (This is section 1108 of the Uniform Limited Partnership Act
(2001).)

10 **Subsection (b)** - The effective date of a merger is
12 determined under the governing statute of the surviving
organization.

14 **§1439. Effect of merger**

16 **1. Effect of merger. When a merger becomes effective:**

18 A. The surviving organization continues or comes into
20 existence;

22 B. Each constituent organization that merges into the
surviving organization ceases to exist as a separate entity;

24 C. All property owned by each constituent organization that
ceases to exist vests in the surviving organization;

26 D. All debts, liabilities and other obligations of each
28 constituent organization that ceases to exist continue as
obligations of the surviving organization;

30 E. An action or proceeding pending by or against any
32 constituent organization that ceases to exist may be
continued as if the merger had not occurred;

34 F. Except as prohibited by other law, all of the rights,
36 privileges, immunities, powers and purposes of each
38 constituent organization that ceases to exist vest in the
surviving organization;

40 G. Except as otherwise provided in the plan of merger, the
terms and conditions of the plan of merger take effect;

42 H. Except as otherwise agreed, if a constituent limited
44 partnership ceases to exist, the merger does not dissolve
the limited partnership for the purposes of subchapter 8;

46 I. If the surviving organization is created by the merger:
48

2 (1) If the surviving organization is a limited
partnership, the certificate of limited partnership
4 becomes effective; or

6 (2) If the surviving organization is an organization
other than a limited partnership, the organizational
8 document that creates the organization becomes
effective; and

10 J. If the surviving organization preexists the merger, any
amendments provided for in the articles of merger for the
12 organizational document that created the organization become
effective.

14 2. Foreign organization. A surviving organization that is
16 a foreign organization consents to the jurisdiction of the courts
of this State to enforce any obligation owed by a constituent
18 organization, if before the merger the constituent organization
was subject to suit in this State on the obligation. A surviving
20 organization that is a foreign organization and not authorized to
transact business in this State appoints the Secretary of State
22 as its agent for service of process for the purposes of enforcing
an obligation under this subsection. Service on the Secretary of
24 State under this subsection is made in the same manner and with
the same consequences as in section 1317, subsections 3 and 4.

26 **Maine Comment**

28 The effect of a merger on a Maine corporation is governed by
30 13-C M.R.S.A. §1107.

32 **§1440. Restrictions on approval of conversions and mergers and**
34 **on relinquishing limited liability limited partnership**
status

36 1. Consent for personal liability; exceptions. If a
38 partner of a converting or constituent limited partnership will
have personal liability with respect to a converted or surviving
40 organization, approval and amendment of a plan of conversion or
merger are ineffective without the consent of the partner unless:

42 A. The limited partnership's partnership agreement provides
for the approval of the conversion or merger with the
44 consent of fewer than all the partners; and

46 B. The partner has consented to the provision of the
partnership agreement.

48 2. Consent required for amendment to certificate;
50 exception. An amendment to a certificate of limited partnership

2 that deletes a statement that the limited partnership is a
3 limited liability limited partnership is ineffective without the
4 consent of each general partner unless:

6 A. The limited partnership's partnership agreement provides
7 for the amendment with the consent of fewer than all the
8 general partners; and

10 B. Each general partner that does not consent to the
11 amendment has consented to the provision of the partnership
12 agreement.

14 3. Insufficient consent. A partner does not give the
15 consent required by subsection 1 or 2 merely by consenting to a
16 provision of the partnership agreement that permits the
17 partnership agreement to be amended with the consent of fewer
18 than all the partners.

20 **Uniform Comment**

22 (This is section 1110 of the Uniform Limited Partnership Act
23 (2001).)

24 This section imposes special consent requirements for
25 transactions that might make a partner personally liable for
26 entity debts. The partnership agreement may not restrict the
27 rights provided by this section. See Section 110(b)(12).

28 **Subsection (c)** - This subsection prevents circumvention of
29 the consent requirements of subsections (a) and (b).

32 **Example:** As initially consented to, the partnership
33 agreement of a limited partnership leaves in place the Act's rule
34 requiring unanimous consent for a conversion or merger. The
35 partnership agreement does provide, however, that the agreement
36 may be amended with the affirmative vote of general partners
37 owning 2/3 of the rights to receive distributions as general
38 partners and of limited partners owning 2/3 of the rights to
39 receive distributions as limited partners. The required vote is
40 obtained for an amendment that permits approval of a conversion
41 or merger by the same vote necessary to amend the partnership
42 agreement. Partner X votes for the amendment. Partner Y votes
43 against. Partner Z does not vote.

44 Subsequently the limited partnership proposes to convert to
45 a limited partnership (not an LLLP) organized under the laws of
46 another state, with Partners X, Y and Z each receiving interests
47 as general partners. Under the amended partnership agreement,
48 approval of the conversion does not require unanimous consent.
49 However, since after the conversion, Partners X, Y and Z will

2 each have "personal liability with respect to [the] converted . .
3 . organization," Section 1110(a) applies.

4 As a result, the approval of the plan of conversion will
5 require the consent of Partner Y and Partner Z. They did not
6 consent to the amendment that provided for non-unanimous approval
7 of a conversion or merger. Their initial consent to the
8 partnership agreement, with its provision permitting
9 non-unanimous consent for amendments, does not satisfy the
10 consent requirement of Subsection 1110(a)(2).

12 In contrast, Partner X's consent is not required. Partner X
13 lost its Section 1110(a) veto right by consenting directly to the
14 amendment to the partnership agreement which permitted
15 non-unanimous consent to a conversion or merger.

18 **§1441. Liability of general partner after conversion or merger**

20 **1. Liability not discharged.** A conversion or merger under
21 this subchapter does not discharge any liability under sections
22 1354 and 1377 of a person that was a general partner in or
23 dissociated as a general partner from a converting or constituent
24 limited partnership, but:

26 A. The provisions of this chapter pertaining to the
27 collection or discharge of the liability continue to apply
28 to the liability;

30 B. For the purposes of applying those provisions, the
31 converted or surviving organization is deemed to be the
32 converting or constituent limited partnership; and

34 C. If a person is required to pay any amount under this
35 subsection:

36 (1) The person has a right of contribution from each
37 other person that was liable as a general partner under
38 section 1354 when the obligation was incurred and has
39 not been released from the obligation under section
40 1377; and

41 (2) The contribution due from each of those persons is
42 in proportion to the right to receive distributions in
43 the capacity of general partner in effect for each of
44 those persons when the obligation was incurred.

46 **2. Additional liability.** In addition to any other
47 liability provided by law:
48

50

2 A. A person that immediately before a conversion or merger
3 became effective was a general partner in a converting or
4 constituent limited partnership that was not a limited
5 liability limited partnership is personally liable for each
6 obligation of the converted or surviving organization
7 arising from a transaction with a 3rd party after the
8 conversion or merger becomes effective if, at the time the
9 3rd party enters into the transaction, the 3rd party:

10 (1) Does not have notice of the conversion or merger;
11 and

12 (2) Reasonably believes that:

13 (i) The converted or surviving business is the
14 converting or constituent limited partnership;

15 (ii) The converting or constituent limited
16 partnership is not a limited liability limited
17 partnership; and

18 (iii) The person is a general partner in the
19 converting or constituent limited partnership; and

20
21
22 B. A person that was dissociated as a general partner from
23 a converting or constituent limited partnership before the
24 conversion or merger became effective is personally liable
25 for each obligation of the converted or surviving
26 organization arising from a transaction with a 3rd party
27 after the conversion or merger becomes effective if:

28 (1) Immediately before the conversion or merger became
29 effective the converting or surviving limited
30 partnership was not a limited liability limited
31 partnership; and

32 (2) At the time the 3rd party enters into the
33 transaction less than 2 years have passed since the
34 person dissociated as a general partner and the 3rd
35 party:

36 (i) Does not have notice of the dissociation;

37 (ii) Does not have notice of the conversion or
38 merger; and

39 (iii) Reasonably believes that the converted or
40 surviving organization is the converting or
41 constituent limited partnership, the converting or
42 constituent limited partnership is not a limited
43

2 liability limited partnership and the person is a
3 general partner in the converting or constituent
4 limited partnership.

6 **Uniform Comment**

8 (This is section 1111 of the Uniform Limited Partnership Act
9 (2001).)

10 This section extrapolates the approach of Section 607 into
11 the context of a conversion or merger involving a limited
12 partnership.

14 **Subsection (a)** - This subsection pertains to general partner
15 liability for obligations which a limited partnership incurred
16 before a conversion or merger. Following RUPA and the UPA, this
17 Act leaves to other law the question of when a limited
18 partnership obligation is incurred.

20 If the converting or constituent limited partnership was a
21 limited liability limited partnership at all times before the
22 conversion or merger, this subsection will not apply because no
23 person will have any liability under Section 404 or 607.

24 **Subsection (b)** - This subsection pertains to entity
25 obligations incurred after a conversion or merger and creates
26 lingering exposure to personal liability for general partners and
27 persons previously dissociated as general partners. In contrast
28 to subsection (a)(3), this subsection does not provide for
29 contribution among persons personally liable under this section
30 for the same entity obligation. That issue is left for other law.

32 **Subsection (b)(1)** - If the converting or constituent limited
33 partnership was a limited liability limited partnership
34 immediately before the conversion or merger, there is no
35 lingering exposure to personal liability under this subsection.

38 **Subsection (b)(1)(A)** - A person might have notice under
39 Section 103(d)(4) or (5) as well as under Section 103(b).

42 **Subsection (b)(2)(B)(i)** - A person might have notice under
43 Section 103(d)(1) as well as under Section 103(b).

44 **Subsection (b)(2)(B)(ii)** - A person might have notice under
45 Section 103(d)(4) or (5) as well as under Section 103(b).

48 **§1442. Power of general partners and persons dissociated as**
49 **general partners to bind organization after conversion or**
50 **merger**

2 1. Act of general partner before conversion or merger. An
3 act of a person that immediately before a conversion or merger
4 became effective was a general partner in a converting or
5 constituent limited partnership binds the converted or surviving
6 organization after the conversion or merger becomes effective if:

7 A. Before the conversion or merger became effective, the
8 act would have bound the converting or constituent limited
9 partnership under section 1352; and

10 B. At the time the 3rd party enters into the transaction,
11 the 3rd party:

12 (1) Does not have notice of the conversion or merger;
13 and

14 (2) Reasonably believes that the converted or
15 surviving business is the converting or constituent
16 limited partnership and that the person is a general
17 partner in the converting or constituent limited
18 partnership.

19 2. Act of dissociated general partner before conversion or
20 merger. An act of a person that before a conversion or merger
21 became effective was dissociated as a general partner from a
22 converting or constituent limited partnership binds the converted
23 or surviving organization after the conversion or merger becomes
24 effective if:

25 A. Before the conversion or merger became effective, the
26 act would have bound the converting or constituent limited
27 partnership under section 1352 if the person had been a
28 general partner; and

29 B. At the time the 3rd party enters into the transaction,
30 less than 2 years have passed since the person dissociated
31 as a general partner and the 3rd party:

32 (1) Does not have notice of the dissociation;

33 (2) Does not have notice of the conversion or merger;
34 and

35 (3) Reasonably believes that the converted or
36 surviving organization is the converting or constituent
37 limited partnership and that the person is a general
38 partner in the converting or constituent limited
39 partnership.

2 3. Liable for damage. If a person having knowledge of the
3 conversion or merger causes a converted or surviving organization
4 to incur an obligation under subsection 1 or 2, the person is
5 liable:

6 A. To the converted or surviving organization for any
7 damage caused to the organization arising from the
8 obligation; and

10 B. If another person is liable for the obligation, to that
11 other person for any damage caused to that other person
12 arising from the liability.

14 **Uniform Comment**

16 (This is section 1112 of the Uniform Limited Partnership Act
17 (2001).)

18
19 This section extrapolates the approach of Section 606 into
20 the context of a conversion or merger involving a limited
21 partnership.

22
23 **Subsection (a)(2)(A)** - A person might have notice under
24 Section 103(d)(4) or (5) as well as under Section 103(b).

26 **Subsection (b)(2)(A)** - A person might have notice under
27 Section 103(d)(1) as well as under Section 103(b).

28
29 **Subsection (b)(2)(B)** - A person might have notice under
30 Section 103(d)(4) or (5) as well as under Section 103(b).

32 **§1443. Subchapter not exclusive**

34 This subchapter does not preclude an entity from being
35 converted or merged under other law.

38 **SUBCHAPTER 12**

40 **MISCELLANEOUS PROVISIONS**

42 **§1451. Uniformity of application and construction**

44 In applying and construing this Act, consideration must be
45 given to the need to promote uniformity of the law with respect
46 to its subject matter among states that enact it.

48 **§1452. Relation to electronic signatures in global and national**
49 **commerce act**

2 This chapter modifies, limits or supersedes the federal
3 Electronic Signatures in Global and National Commerce Act, 15
4 United States Code, Section 7001 et seq., but this chapter does
5 not modify, limit or supersede Section 101(c) of that Act or
6 authorize electronic delivery of any of the notices described in
7 Section 103(b) of that Act.

8 **§1453. Application to existing relationships**

10 1. Before July 1, 2008. Before July 1, 2008, this chapter
11 governs only:

12 A. A limited partnership formed on or after July 1, 2007;
13 and

14 B. Except as otherwise provided in subsections 3 and 4, a
15 limited partnership formed before July 1, 2007 that elects,
16 in the manner provided in its partnership agreement or by
17 law for amending the partnership agreement, to be subject to
18 this chapter.

19 2. On or after July 1, 2008. Except as otherwise provided
20 in subsection 3, on and after July 1, 2008, this chapter governs
21 all limited partnerships.

22 3. Existing limited partnerships. With respect to a
23 limited partnership formed before July 1, 2007, the following
24 rules apply except as the partners otherwise elect in the manner
25 provided in the partnership agreement or by law for amending the
26 partnership agreement.

27 A. Section 1304, subsection 3 does not apply and the
28 limited partnership has whatever duration it had under the
29 law applicable immediately before July 1, 2007.

30 B. The limited partnership is not required to amend its
31 certificate of limited partnership to comply with section
32 1321, subsection 1, paragraph D.

33 C. Sections 1371 and 1372 do not apply and a limited
34 partner has the same right and power to dissociate from the
35 limited partnership, with the same consequences, as existed
36 immediately before July 1, 2007.

37 D. Section 1373, subsection 4 does not apply.

38 E. Section 1373, subsection 5 does not apply and a court
39 has the same power to expel a general partner as the court
40 had immediately before July 1, 2007.

41

2 F. Section 1391, subsection 3 does not apply and the
3 connection between a person's dissociation as a general
4 partner and the dissolution of the limited partnership is
5 the same as existed immediately before July 1, 2007.

6 4. Limited partnership that elects to be subject. With
7 respect to a limited partnership that elects pursuant to
8 subsection 1, paragraph B to be subject to this chapter, after
9 the election takes effect the provisions of this chapter relating
10 to the liability of the limited partnership's general partners to
11 3rd parties apply:

12 A. Before July 1, 2008, to:

13 (1) A 3rd party that had not done business with the
14 limited partnership in the year before the election
15 took effect; and

16 (2) A 3rd party that had done business with the
17 limited partnership in the year before the election
18 took effect only if the 3rd party knows or has received
19 a notification of the election; and

20 B. On and after July 1, 2008, to all 3rd parties, but those
21 provisions remain inapplicable to any obligation incurred
22 while those provisions were inapplicable under paragraph A,
23 subparagraph (2).

24 **Uniform Comment**

25 (This is section 1206 of the Uniform Limited Partner Act.)

26 **Source:** RUPA Section 1206.

27 This section pertains exclusively to domestic limited
28 partnerships - i.e., to limited partnerships formed under this
29 Act or a predecessor statute enacted by the same jurisdiction.
30 For foreign limited partnerships, see the Comment to Section 1204.

31 This Act governs all limited partnerships formed on or after
32 the Act's effective date. As for pre-existing limited
33 partnerships, this section establishes an optional "elect in"
34 period and a mandatory, all-inclusive date. The "elect in" period
35 runs from the effective date, stated in Section 1204, until the
36 all-inclusive date, stated in both subsection(a) and (b).

37 During the "elect in" period, a pre-existing limited
38 partnership may elect to become subject to this Act. Subsection
39 (d) states certain important consequences for a limited
40 partnership.

2 partnership that elects in. Beginning on the all-inclusive date,
each pre-existing limited partnership that has not previously
4 elected in becomes subject to this Act by operation of law.

6 **Subsection (c)** - This subsection specifies six provisions of
this Act which never automatically apply to any pre-existing
8 limited partnership. Except for subsection (c)(2), the list
refers to provisions governing the relationship of the partners
10 inter se and considered too different than predecessor law to be
fairly applied to a preexisting limited partnership without the
12 consent of its partners. Each of these inter se provisions is
subject to change in the partnership agreement. However, many
14 pre-existing limited partnerships may have taken for granted the
analogous provisions of predecessor law and may therefore not
16 have addressed the issues in their partnership agreements.

18 **Subsection (c)(1)** - Section 104(c) provides that a limited
partnership has a perpetual duration.

20 **Subsection (c)(2)** - Section 201(a)(4) requires the
certificate of limited partnership to state "whether the limited
22 partnership is a limited liability limited partnership." The
requirement is intended to force the organizers of a limited
24 partnership to decide whether the limited partnership is to be an
LLLP and therefore is inapposite to pre-existing limited
26 partnerships. Moreover, applying the requirement to pre-existing
limited partnerships would create a significant administrative
28 burden both for limited partnerships and the filing officer and
probably would result in many pre-existing limited partnerships
30 being in violation of the requirement.

32 **Subsection (c)(3)** - Section 601 and 602 concern a person's
dissociation as a limited partner.

34 **Subsection (c)(4)** - Section 603(4) provides for the
36 expulsion of a general partner by the unanimous consent of the
other partners in specified circumstances.

38 **Subsection (c)(5)** - Section 603(5) provides for the
40 expulsion of a general partner by a court in specified
circumstances.

42 **Subsection (c)(6)** - Section 801(3) concerns the continuance
44 or dissolution of a limited partnership following a person's
dissociation as a general partner.

46 **Subsection (d)** - Following RUPA Section 1206(c), this
48 subsection limits the efficacy of the Act's liability protections
for partners of an "electing in" limited partnership. The
50 limitation:

2 • applies only to the benefit of "a third party that had
4 done business with the limited partnership in the year
before the election took effect," and

6 • ceases to apply when "the third party knows or has
8 received a notification of the election" or on the
"all-inclusive" date, whichever occurs first.

10 If the limitation causes a provision of this Act to be
12 inapplicable with regard to a third party, the comparable
provision of predecessor law applies.

14 **Example:** A pre-existing limited partnership elects to be
16 governed by this Act before the "all-inclusive" date. Two
months before the election, Third Party provided services to
18 the limited partnership. Third Party neither knows nor has
received a notification of the election. Until the "all
20 inclusive" date, with regard to Third Party, Section 303's
full liability shield does not apply to each limited
22 partner. Instead, each limited partner has the liability
shield applicable under predecessor law.

24 **Subsection (d)(2)** - To the extent subsection (d) causes a
26 provision of this Act to be inapplicable when an obligation is
incurred, the inapplicability continues as to that obligation
28 even after the "all inclusive" date.

30 **§1454. Savings clause**

32 This chapter does not affect an action commenced, proceeding
brought or right accrued before this chapter takes effect.

34 **§1455. Duty of Secretary of State**

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

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

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

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

50 **Maine Comment**

2 This section is based on former section 528.

4 **§1456. Rules**

6 The Secretary of State may adopt rules not inconsistent with
8 this chapter pertaining to the filing of documents with the
10 Secretary of State. Rules adopted pursuant to this section are
12 routine technical rules as defined in Title 5, chapter 375,
14 subchapter 2-A. These may include, but are not limited to, rules
16 to:

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

26 2. Approve filing. Refuse to file any document that is not
28 clearly legible or that may not be clearly reproducible
30 photographically;

32 3. Appoint designee. Appoint a designee or other agent to
34 receive documents for filing and to file documents on behalf of
36 the Secretary of State;

38 4. Electronic filings; facsimile signatures. Permit the
40 filing of documents by electronic transmission and permit
42 facsimile signatures on documents to be filed;

44 5. Effective dates of filings. Unless specifically stated
46 in this chapter, set forth the effective dates of filings
48 required by this chapter; and

50 6. Annual report filing date. Provide alternative dates for
filing annual reports and for determining the dates covered by
those reports.

38 **Maine Comment**

40 This section is based on former section 413.

42 **§1457. Expedited service**

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

2 Rules adopted pursuant to this section are routine technical
4 rules as defined in Title 5, chapter 375, subchapter 2-A.

6 **Maine Comment**

8 This section is based on former section 414.

10 **§1458. Access to data base**

12 The Secretary of State may provide public access to the data
14 base through a dial-in modem, through public terminals and
16 through electronic duplicates of the data base. If access to the
18 data base is provided to the public, the Secretary of State may
adopt rules in accordance with the Maine Administrative Procedure
Act to establish a fee schedule and governing procedures.

20 Rules adopted pursuant to this section are routine technical
rules as defined in Title 5, chapter 375, subchapter 2-A.

22 **Maine Comment**

24 This section is based on former section 415.

26 **§1459. Publications**

28 1. Fee schedule. The Secretary of State may establish by
30 rule in accordance with the Maine Administrative Procedure Act a
32 fee schedule to cover the cost of printing and distribution of
publications and to set the procedures for the sale of these
publications.

34 Rules adopted pursuant to this subsection are routine technical
rules as defined in Title 5, chapter 375, subchapter 2-A.

36 2. Deposit in fund. All fees collected pursuant to this
38 section must be deposited in a fund for use by the Secretary of
40 State for the purpose of replacing and updating publications
offered in accordance with this chapter and for funding new
publications.

42 **Maine Comment**

44 This section is based on former section 416.

46 **§1460. Fees; penalties**

48 A document required to be filed under this chapter is not
50 effective until the applicable fee required by this section is

paid. The following fees or penalties must be paid to and collected by the Secretary of State:

1. Reservation. For filing of an application for reservation of name or a notice of transfer or cancellation of reservation pursuant to section 1309, subsection 1, a fee of \$20 for each limited partnership affected;

2. Assumed or fictitious name. For filing of an application for an assumed name under section 1308, subsection 2, a fee in the amount of \$125, and for filing of an application for a fictitious name under section 1415, a fee of \$40;

3. Termination of assumed or fictitious name. For a termination of an assumed name under section 1308, subsection 2, a fee of \$20; for a termination of a fictitious name under section 1415, a fee of \$20;

4. Registered name. For filing of an application for a registered name of a foreign limited partnership under section 1309, subsection 2, 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 filing an application to renew the registration of a registered name, a fee of \$200;

5. Change of registered agent and registered office or registered office for domestic limited partnerships. For filing of a statement by a registered agent under section 1315, subsection 2 to change the registered office or to change the name of the current registered agent or for filing of a statement under section 1315, subsection 1 to change the registered agent and registered office or for filing a notice of resignation of a registered agent under section 1316, a fee of \$35;

6. Reinstatement fee after administrative dissolution. For failure to file an annual report, a fee of \$150, to a maximum fee of \$600, regardless of the number of delinquent reports or the period of delinquency; for failure to pay the annual report late filing penalty, a fee of \$150; for failure to appoint or maintain a registered agent or registered office, a fee of \$150; for failure to notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued, a fee of \$150; for failure to file an amended application, a fee of \$150; and for filing false information, a fee of \$150;

7. Certificate of limited partnership, amendment or cancellation. For filing of a certificate of limited partnership under section 1321, a fee of \$175; for a certificate of amendment

under section 1322, a fee of \$50; and for a statement of termination under section 1323, a fee of \$75. For filing of a certificate of amendment under section 1322, subsection 2, paragraph D, a fee of \$20, and for filing a restated certificate of limited partnership under section 1322, a fee of \$80;

8. Certificate of correction. For filing of a certificate of correction under section 1327, a fee of \$50;

9. Foreign limited partnerships. For filing of an application for authority to do business as a foreign limited partnership under section 1412, a fee of \$250, and for a certificate of amendment under section 1412-A, subsection 2, paragraph A or B or a certificate of cancellation under section 1417, a fee of \$90. For filing a certificate of amendment under section 1412-A, subsection 2, paragraph C or D to change the address of a general partner or to change the address of the registered or principal office, a fee of \$35;

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

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

12. Issuing certificate. For issuing a certificate of existence, certificate of authority or certificate of fact as provided by section 1329, a fee of \$30;

13. Preclearance of document. For preclearance of any document for filing, a fee of \$100;

14. All other filings. For receiving and filing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$35;

15. Annual report. For filing of an annual report under section 1330 for a domestic limited partnership, a fee of \$85; for filing of an annual report under section 1330 for a foreign limited partnership, a fee of \$150;

16. Amended annual report. For filing an amended annual report for a domestic limited partnership under section 1330, subsection 2, a fee of \$85; for filing an amended annual report for a foreign limited partnership under section 1330, subsection 2, a fee of \$150;

2 17. Service of process on Secretary of State as agent. For
3 accepting service of process under section 1317, a fee of \$35;

4 18. Articles of merger or conversion. Articles of merger or
5 conversion of a limited partnership with or to another type of
6 business entity as provided by subchapter 11, a fee of \$150;

7 19. Late filing penalty. For failing to deliver an annual
8 report by its due date, in addition to the annual report filing
9 fee, a fee of \$50.

10 All fees collected as provided by this chapter must be
11 remitted to the Treasurer of State for the use of the State with
12 the exception of those fees established by rule and collected for
13 expedited service. Fees for expedited service are deposited into
14 a fund for use by the Secretary of State in providing an improved
15 filing service.

16 **Maine Comment**

17 This section is based on former section 526.

18 **§1461. Effective date**

19 This chapter takes effect July 1, 2007.

20 **Uniform Comment**

21 (This is section 1204 of the Uniform Limited Partnership Act)

22 Section 1206 specifies how this Act affects domestic limited
23 partnerships, with special provisions pertaining to domestic
24 limited partnerships formed before the Act's effective date.
25 Section 1206 contains no comparable provisions for foreign
26 limited partnerships. Therefore, once this Act is effective, it
27 applies immediately to all foreign limited partnerships, whether
28 formed before or after the Act's effective date.

29 **Sec. C-3. Effective date.** That section of this Part that
30 repeals the Maine Revised Statutes, Title 31, chapter 11 takes
31 effect July 1, 2007.

32 **PART D**

33 **Sec. D-1. 9-B MRSA §311,** as corrected by RR 2001, c. 2, Pt.
34 B, §7 and affected by §58, is amended to read:

R. 40.

§311. Applicability of chapter

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The provisions of this chapter govern the organization and management of financial institutions operating as corporations, limited liability companies, limited partnerships and limited liability partnerships. Unless otherwise indicated in this Title, the provisions of Title 13-C apply to financial institutions operating as corporations; Title 31, chapter ~~11~~, 19 applies to financial institutions operating as limited partnerships; Title 31, chapter 13 applies to financial institutions operating as limited liability companies; and Title 31, chapter 15 applies to financial institutions operating as limited liability partnerships.

Sec. D-2. 9-B MRSA §316-A, first ¶, as corrected by RR 2001, c. 2, Pt. B, §8 and affected by §58, is amended to read:

Except as provided in this section, the management and operations of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter ~~11~~ 19; Title 31, chapter 13; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of the governing body.

Sec. D-3. 9-B MRSA §317-A, first ¶, as corrected by RR 2001, c. 2, Pt. B, §9 and affected by §58, is amended to read:

Except as provided in this section, the powers and duties of officers of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter ~~11~~ 19; Title 31, chapter 13; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of officers.

Sec. D-4. 9-B MRSA §352, sub-§5, as corrected by RR 2001, c. 2, Pt. B, §12 and affected by §58, is amended to read:

5. Rights of dissenting investors. The rights of investors dissenting to the merger or consolidation are those specified in Title 13-C or Title 31, chapter ~~11~~, 13 ~~ex~~, 15 ~~or~~ 19, depending upon the organizational form of the institution. To the extent that dissenters' rights are not addressed in Title 31 or these rights are less beneficial to the dissenting investors than those rights listed in the institution's organizational documents, the organizational documents govern.

2 **Sec. D-5. 9-B MRSA §1222, sub-§1**, as corrected by RR 2001, c.
2, Pt. B, §20 and affected by §58, is amended to read:

4 **1. Organization.** A merchant bank must be organized
6 pursuant to chapter 31 and must be managed and governed pursuant
to this Title and the applicable provisions of Title 13-C and
8 Title 31, chapters ~~11, 13 and, 15~~ and 19, depending upon the
organizational form selected.

10 **Sec. D-6. 10 MRSA §1521, sub-§2-A**, as amended by PL 2003, c.
344, Pt. A, §3, is further amended to read:

12 **2-A. Limited partnership name.** "Limited partnership name"
14 includes a limited partnership name, ~~--reserved name, or~~ assumed
name under Title 31, section 1308 or reserved name or registered
16 name as ~~these terms are~~ used in Title 31, ~~sections 403-A, 404-A,~~
~~405-A and 406-A respectively~~ section 1309.

18 **Sec. D-7. 10 MRSA §1522, sub-§1, ¶E**, as amended by PL 1981, c.
20 684, §4, is further amended to read:

22 E. Consists of a mark ~~which~~ that, when applied to the goods
24 or services of the applicant, is merely descriptive or
deceptively misdescriptive of them or, when applied to the
26 goods or services of the applicant, is primarily
geographically descriptive or deceptively misdescriptive of
28 them, except as indications of regional origin may be
registrable under subsection 3, or is primarily merely a
surname, provided that nothing in this paragraph may prevent
30 the registration of a mark used in this State by the
applicant ~~which~~ that has become distinctive of the
32 applicant's goods or services. The Secretary of State may
accept as evidence that the mark has become distinctive, as
34 applied to the applicant's goods or services, proof of
continuous use thereof as a mark by the applicant in this
36 State or elsewhere for the 5 years next preceding the date
of the filing of the application for registration;

38 **Sec. D-8. 10 MRSA §1522, sub-§1, ¶G**, as amended by PL 2003, c.
40 344, Pt. A, §6, is further amended to read:

42 G. Is not distinguishable from the real, assumed,
44 fictitious, reserved or registered name of a corporation,
limited liability company, limited liability partnership ~~or,~~
46 limited partnership or limited liability limited
partnership, unless the corporation, limited liability
company, limited liability partnership ~~or,~~ limited
48 partnership or limited liability limited partnership
executes and files with the Secretary of State proof of
50 authorization of the use of a mark similar to the real,

assumed, fictitious, reserved or registered name of a corporation, limited liability company, limited liability partnership ~~or~~, limited partnership or limited liability limited partnership by the applicant seeking to use the mark;

Sec. D-9. 10 MRSA §1522, sub-§1, ¶J, as enacted by PL 1997, c. 633, §2, is amended to read:

J. Notwithstanding paragraph G, is identical to a corporate, limited liability company, limited liability partnership ~~or~~, limited partnership or limited liability limited partnership name, unless the corporation, limited liability company, limited liability partnership ~~or~~, limited partnership or limited liability limited partnership is the same entity as the applicant that is seeking to register the mark and files proof of ownership with the Secretary of State.

Sec. D-10. 13-B MRSA §301-A, sub-§6, ¶A, as enacted by PL 2003, c. 344, Pt. B, §9, is amended to read:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";

Sec. D-11. 13-C MRSA §401, sub-§6, ¶A, as amended by PL 2003, c. 344, Pt. B, §46, is further amended to read:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" or "professional corporation";

Sec. D-12. 18-B MRSA §1011, sub-§1, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

1. **Not personally liable on contract.** Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the

trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act or the ~~Maine--Revised~~ Uniform Limited Partnership Act.

Sec. D-13. 31 MRSA §603-A, sub-§6, ¶A, as enacted by PL 2003, c. 344, Pt. C, §20, is amended to read:

A. Words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";

Sec. D-14. 31 MRSA §760, as corrected by RR 2001, c. 2, Pt. B, §51 and affected by §58, is amended to read:

§760. Application to existing foreign limited liability companies; definition

All foreign limited liability companies qualified as foreign corporations or limited partnerships before January 1, 1995 are governed by this Act on and after January 1, 1995. By April 1, 1995 a manager or, if there is no manager, a member of each foreign limited liability company shall file with the Secretary of State an application for authority to do business in this State under this Act and cancel their authority to do business in this State under chapter ~~11 19~~ and former Title 13-A. If the foreign limited liability company fails to file the new application for authority to do business in this State by April 1, 1995, the Secretary of State may revoke the authority of the limited liability company to do business in this State under section 719.

Sec. D-15. 31 MRSA §762, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

§762. References to limited partnerships

Unless the context indicates otherwise, all references to limited partnerships in any other statute in effect on the effective date of this chapter in this State are deemed to include limited liability companies. This section does not apply to the ~~Maine--Revised~~ Uniform Limited Partnership Act, it being the intent of this section only to include limited liability companies as entities when other entities are referenced for purposes other than those covered in this chapter.

2 **Sec. D-16. 31 MRSA §803-A, sub-§6, ¶A**, as enacted by PL 2003,
c. 344, Pt. C, §35, is amended to read:

4 A. Words or abbreviations of words that describe the nature
6 of the entity, including "professional association,"
"corporation," "company," "incorporated," "chartered,"
8 "limited," "limited partnership," "limited liability
company," "professional limited liability company," "limited
10 liability partnership," "registered limited liability
partnership," "limited liability limited partnership,"
12 "service corporation" and "professional corporation";

14 **Sec. D-17. 31 MRSA §876**, as corrected by RR 2001, c. 2, Pt.
B, §53 and affected by §58, is amended to read:

16 **§876. Application to existing foreign limited liability**
18 **partnerships; definition**

20 All foreign limited liability partnerships qualified as
foreign corporations or limited partnerships or limited liability
22 companies before September 1, 1996 are governed by this Act on
and after September 1, 1996. By December 1, 1996 a partner of
24 each foreign limited liability partnership shall file with the
Secretary of State an application for authority to do business in
26 this State under this Act and shall cancel the partnership's
authority to do business in this State under chapter ~~11~~ 19,
28 chapter 13 or former Title 13-A. If the foreign limited
liability partnership fails to file the new application for
30 authority to do business in this State by December 1, 1996, it
must be treated as a general partnership without the status of a
32 limited liability partnership with respect to any business
conducted in this State between December 1, 1996 and the date on
34 which it files that application.

36 **Sec. D-18. Effective date.** This Part takes effect July 1, 2007.'

38 Further amend the bill by relettering or renumbering any
nonconsecutive Part letter or section number to read
40 consecutively.

42 **SUMMARY**

44 This amendment adds to the bill the Uniform Limited
46 Partnership Act, adopted by the National Conference of
Commissioners on Uniform State Laws in 2001. The amendment is
48 intended to take the place of L.D. 986, which is a concept draft.

COMMITTEE AMENDMENT "A" to S.P. 591, L.D. 1609

2 Part A of the bill contains the Uniform Partnership Act, and
3 Part B of the bill contains conforming amendments consistent with
4 Part A. This amendment adds the Uniform Limited Partnership Act
5 as Part C and the respective conforming amendments and
6 cross-references as Part D. A Maine Comment is included when
7 necessary to explain a deviation from the Uniform Limited
8 Partnership Act.

9 This amendment revises the conversion language in the
10 Uniform Partnership Act.

11 This amendment sets the effective date for the Uniform
12 Partnership Act, the Uniform Limited Partnership Act and all the
13 conforming amendments as July 1, 2007.
14

FISCAL NOTE REQUIRED
(See attached)



122nd MAINE LEGISLATURE

LD 1609

LR 1469(02)

An Act to Establish the Uniform Partnership Act

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund