

# 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

'§1093. Conversion of partnership to a business entity

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

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

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

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

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

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

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

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

**5. Liability.** A general partner who becomes a limited partner, general partner in a limited liability limited partnership, shareholder or member as a result of the conversion remains liable as a general partner of a partnership for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with a limited partnership, limited liability limited partnership, corporation or limited liability company reasonably believes when entering the transaction that the limited partner, general partner, shareholder or member is a general partner in a partnership or a general partner in a limited partnership, the limited partner, general partner, shareholder or member is liable for an obligation for which such partner would be personally liable under section 1034 that is incurred by the limited partnership, limited liability limited partnership, corporation or limited liability company within 90 days after the conversion takes effect. The limited partner's, general partner's, shareholder's or member's liability for all other obligations of the limited partnership, limited liability limited partnership, corporation or limited liability company incurred after the conversion takes effect is that of a limited partner, shareholder or member as provided in the jurisdiction in which the limited partnership, limited liability limited partnership, corporation or limited liability company is formed.'

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

'Maine Comment

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

### §1094. Effect of conversion

### §1094. Effect of conversion

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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

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

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

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

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

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

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

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

Further amend the bill by inserting after Part B the following:

## **PART C**

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

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

**UNIFORM LIMITED PARTNERSHIP ACT (2001)**

**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



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

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

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

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

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

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

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

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

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

That approach was unsatisfactory for at least two reasons. No matter how exhaustive the Drafting Committee's analysis might be, the Committee could not guarantee that courts and practitioners would reach the same conclusions. Therefore, in at least some situations linkage would have produced ambiguity. In addition, the Drafting Committee could not guarantee that all 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.

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

#### Liability Shield for Limited Partners

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

#### Transition Issues

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

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

#### Comparison of RULPA and this Act

The following table compares some of the major characteristics of RULPA and this Act. In most instances, the rules involved are "default" rules - i.e., subject to change by 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)
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)
28	duration	specified in certificate of limited partnership, Section 201(a)(4)	perpetual, Section 104(c); subject to change in partnership agreement
34	use of limited partner name in entity name	prohibited, except in unusual circumstances, Section 102(2)	permitted, Section 108(a)
38	annual report	none	required, Section 210
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,"

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2		303(a); safe harbor lists Section 303	
		many activities that do	
4		not constitute	
		participating in the	
6		control of the business,	
		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

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
		for sharing of	for profits and
		distributions, Section	losses; allocates
		504; allocates each	distributions
		according to	according to
		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)
34	partner liability	recapture liability if	following ULLCA
36	for distributions	distribution involved	Sections 406 and
38		"the return of . . .	407, the Act adopts
40		contribution"; one year	the RMBCA approach
42		recapture liability if	to improper
44		distribution rightful,	distributions,
		Section 608(a); six year	Sections 508 and
		recapture liability if	509
		wrongful, Section 608(b)	
46	limited partner	theoretically, limited	no "right to
48	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
50		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	general partner	right exists unless	RULPA rule carried
	voluntary	otherwise provided in	forward, although
32	dissociation	partnership agreement,	phrased
34		Section 602; power	differently,
		exists regardless of	Section 604(a);
36		partnership agreement,	dissociation
		Section 602	before termination
38			of the limited
			partnership is
40			defined as
			wrongful, Section
42			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

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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

2			partnership is terminated, Section 203
4			
6	procedures for	none	following ULLCA Sections 807 and 808, the Act adopts the RMBCA approach providing for giving notice and barring claims, Sections 806 and 807
8	barring claims		
10	against dissolved		
12	limited partnership		
14			
16	conversions and	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	mergers		
20			
22			
24			
26			
28			
30			
32			
34			
36			
38			
40			
42			
44			
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			

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

CHAPTER 19

UNIFORM LIMITED PARTNERSHIP ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§1301. Short title

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

§1302. Definitions

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

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

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

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

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

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

18        **4. Designated office.** "Designated office" means:

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

24        B. With respect to a foreign limited partnership, its  
      principal office.

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

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

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

44        **8. General partner.** "General partner" means:

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

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

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

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

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

10. Limited partner. "Limited partner" means:

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

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

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

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

11. Limited partnership. "Limited partnership," except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," means an entity having one or 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.

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

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

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

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

16. Principal office. "Principal office" means the office 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.

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

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

19. Sign. "Sign" means:

A. To execute or adopt a tangible symbol with the present intent to authenticate a record; or

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

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

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

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

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

### Uniform Comment

(This is section 102 of the Uniform Limited Partnership Act (2001).)

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

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

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

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

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

It is also of the essence of a limited partnership to have at least two partners. Section 101(11) codifies this requirement by referring to a limited partnership as "an entity . . . which is formed under this [Act] by two or more persons." Thus, while the same person may be both a general and limited partner, Section 113 (Dual Capacity), one person alone cannot be the "two 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 **1. Knowledge.** A person knows a fact if the person has  
30 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 **D. Has notice of it under subsection 3 or 4.**

42 **3. Certificate of limited partnership.** A certificate of  
44 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  
8        other person has dissociated or 90 days after the effective  
10       date of a statement of dissociation pertaining to the other  
12       person, whichever occurs first;

14       B. A limited partnership's dissolution 90 days after the  
16       effective date of an amendment to the certificate of limited  
18       partnership stating that the limited partnership is  
20       dissolved;

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

26       D. A limited partnership's conversion under subchapter 11  
28       90 days after the effective date of the articles of  
30       conversion; or

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

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

44       6. Receives notification. A person receives a notification  
46       when the notification:

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

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

56       7. Person other than individual; reasonable diligence.  
58       Except as otherwise provided in subsection 8, a person other than  
60       an individual knows, has notice or receives a notification of a  
62       fact for purposes of a particular transaction when the individual  
64       conducting the transaction for the person knows, has notice or  
66       receives a notification of the fact or in any event when the fact  
68       would have been brought to the individual's attention if the  
70       person had exercised reasonable diligence. A person other than an  
72       individual exercises reasonable diligence if it maintains  
74       reasonable routines for communicating significant information to  
76       the individual conducting the transaction for the person and  
78       there is reasonable compliance with the routines. Reasonable  
80       diligence does not require an individual acting for the person to

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

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

**Uniform Comment**

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

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

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

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

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

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

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

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

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

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

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

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 bind XYZ. See Section 606(a)(2)(B) (person dissociated as a general partner can bind the limited partnership only if, *inter alia*, "at the time the other party enters into the transaction . . . the other party does not have notice of the dissociation").

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

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

**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, information possessed by a person that is both a general partner and a limited partner is attributable to the limited partnership. See Section 113 (Dual Capacity)

#### §1304. Nature, purpose and duration of entity

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 partnership is a limited liability limited partnership.

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

3. Duration. A limited partnership has a perpetual duration.

#### **Uniform Comment**

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

**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.

2

**Uniform Comment**

4

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

6

8       This Act omits as unnecessary any detailed list of specific  
10 powers. The power to sue and be sued is mentioned specifically so  
12 that Section 110(b)(1) can prohibit the partnership agreement  
14 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.

16

**§1306. Governing law**

18

20       The law of this State governs relations among the partners  
22 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.

24

**Uniform Comment**

26

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

28

30       To partially define its scope, this section uses the phrase  
32 "relations among the partners of a limited partnership and  
34 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."

36

38       Despite the similarity of language, this section has no  
40 bearing on the power of a partnership agreement to vary other  
42 provisions of this Act. It is quite possible for a provision of  
44 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).

46

48       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,  
50 Section 408 applies to a limited partnership formed or otherwise

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

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

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

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

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

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

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

**Uniform Comment**

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

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



Predecessor law, RULPA Section 403, expressly equated the rights, powers, restrictions, and liabilities of a general partner in a limited partnership with the rights, powers, restrictions, and liabilities of a partner in a general partnership. This Act has no comparable provision. See Prefatory Note. Therefore, a court should not assume that a case concerning 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 involves a provision of this Act for which a comparable provision exists under the law of general partnerships; and (2) the fundamental differences between a general partnership and limited partnership are immaterial to the disputed issue.

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

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

**A. A limited partnership name:**

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

**(2) Must contain the phrase "limited partnership" or 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, subsection 2. If the phrase "Limited Partnership" is used, a limited partnership may also use the abbreviation "L.P." or "LP" without filing an assumed name under subsection 2; and**

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

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

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

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

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

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

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

13                   (2) Inappropriately promotes abusive or unlawful  
14                   activity;

15                   (3) Falsely suggests an association with public  
16                   institutions; or

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

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

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

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

35           E. A limited partnership may use the name, including the  
36           assumed or fictitious name, of another domestic or foreign  
37           limited partnership that is used in this State if the other  
38           limited partnership is organized or authorized to transact  
39           business in this State and the limited partnership proposing  
40           to use the name:

(1) Has merged with the other limited partnership;

(2) Has been converted into another limited partnership; or

(3) Has transferred substantially all of its assets including the conflicting name to the limited partnership.

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

(1) 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";

(2) The presence or absence of the words or symbols of the words "and" and "the"; and

(3) Differences in the use of punctuation, capitalization or special characters.

G. If a foreign limited partnership authorized to transact business in this State changes its name to one that does not satisfy the requirements of this section, it may not transact business in this State under the proposed new name until it adopts a name satisfying the requirements of this 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.

H. Notwithstanding subsection 2, the name of a limited partnership may not be distinguishable on the records of the Secretary of State if the limited partnership was organized under the laws of this State prior to January 1, 1992 or the 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.

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

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

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

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

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

(1) The limited partnership name;

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

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

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

(5) If a foreign limited partnership:

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

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

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

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

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

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.

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  
36 located;

38               (4) A brief description of the nature of the business  
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  
under whose law the foreign limited partnership is  
46 organized. The certificate of existence must have been  
made not more than 90 days prior to the delivery of the  
48 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  
8 C. A foreign limited partnership whose registration is  
9 effective may renew it for a successive year by delivering  
10 for filing to the Secretary of State a renewal application  
11 that complies with the requirements of this subsection  
12 between October 1st and December 31st. The renewal  
13 application, when filed, renews the registration for the  
14 following calendar year.

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

26 **Maine Comment**

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

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

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:  
50

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

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

8 C. Vary the requirements of section 1324;

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

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

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

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

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

32 I. Restrict the right of a partner under section 1440,  
34 subsection 1 to approve a conversion or merger or the right  
of a general partner under section 1440, subsection 2 to  
36 consent to an amendment to the certificate of limited  
partnership that deletes a statement that the limited  
partnership is a limited liability limited partnership; or

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

42           **3. Implied covenant of good faith and fair dealing.**  
43           Notwithstanding any other provision of this chapter, there  
44           exists, for purposes of this chapter, an implied contractual  
45           covenant of good faith and fair dealing in every partnership  
46           agreement which may not be eliminated by the terms of the  
              partnership agreement.

### Uniform Comment



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

**Source** - RUPA Section 103.

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

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

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

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

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

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

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

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           **Subsection (b)(8)** - This restriction applies only to the  
12           power of a person to dissociate as a general partner. The  
partnership agreement may eliminate the power of a person to  
14           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           The reasonableness of a restriction on derivative actions  
42           should be judged in light of the history and purpose of  
derivative actions. They originated as an equitable remedy,  
44           intended to protect passive owners against management abuses. A  
partnership agreement may not provide that all derivative claims  
46           will be subject to final determination by a special litigation  
committee appointed by the limited partnership, because that  
48           provision would eliminate, not merely restrict, a partner's right  
to bring a derivative action.

Subsection (b)(12) - Section 1110 imposes special consent requirements with regard to transactions that might make a partner personally liable for entity debts.

Subsection (b)(13) - The partnership agreement is a contract, and this provision reflects a basic notion of contract law - namely, that a contract can **directly** restrict rights only of parties to the contract and of persons who derive their rights from the contract. A provision of a partnership agreement can be determined to be unenforceable against third parties under paragraph (b)(13) without therefore and automatically being unenforceable inter se the partners and any transferees. How the former determination affects the latter question is a matter of other law.

#### Maine Comment

Maine has amended the uniform act to allow a partnership agreement to waive the fiduciary duties of loyalty and care that would otherwise apply in the relations among partners under this Act. Parties to a limited partnership agreement should have the freedom to structure their relations inter se in whatever manner they choose, including through the explicit elimination of some or all of the fiduciary duties that would otherwise apply.

#### §1311. Required information

A limited partnership shall maintain at its designated office the following information:

1. List of partners. A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

2. Certificate, amendments, restatements, powers of attorney. A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment or restatement has been signed;

3. Conversion or merger. A copy of any filed articles of conversion or merger;

4. Income tax returns and reports. A copy of the limited partnership's federal, state and local income tax returns and reports, if any, for the 3 most recent years;

2       5. Partnership agreement, amendments. A copy of any  
3       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  
7       of the limited partnership for the 3 most recent years;

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

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

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

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

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

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

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

36                               **Uniform Comment**

38       (This is section 111 of the Uniform Limited Partnership Act  
39       (2001).)

40               **Source** - RULPA Section 105.

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

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

form. It is possible for a partnership agreement to be made in part in a record and in part otherwise. See Comment to Section 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 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.

**Paragraph (8)** - This paragraph does not require a limited partnership to make a record of consents given and votes taken. However, if the limited partnership has made such a record, this paragraph requires that the limited partnership maintain the record for three years. The requirement applies to any record made by the limited partnership, not just to records made 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.

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

This paragraph is not a statute of frauds provision. For example, failure to comply with paragraph (9)(A) or (B) does not 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 upon the happening of which the limited partnership is to be dissolved and its activities wound up." See also Section 801(1).

Obversely, the mere fact that a limited partnership maintains a record in purported compliance with paragraph (9)(A) 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 paragraph (9)(D) does not prove that the partnership agreement actually includes the specified events as causes of dissolution.

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

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

promised to be made. If not, these provisions require that the value be stated in a record maintained as part of the limited partnership's required information. The Act does not authorize 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.

**Paragraph (9)(C)** - The information required by this provision is essential for determining what happens to the 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).

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

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

**Uniform Comment**

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

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

This section has no impact on a general partner's duty under Section 408(b)(2) (duty of loyalty includes refraining from acting as or for an adverse party) and means rather that this Act does not discriminate against a creditor of a limited partnership 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, 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.

**§1313. Dual capacity**

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

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

**Uniform Comment**

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

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

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

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

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

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

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

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

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

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

**Maine Comment**

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

**§1315. Change of registered office or registered agent**

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

A. The name of the limited partnership;

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

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

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

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

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

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

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

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.

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

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

20                               **Maine Comment**

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

26       **§1316. Resignation of registered agent**

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

32               A. A statement of resignation;

34               B. The names, jurisdiction and date of formation of all the  
35               limited partnerships; and

36               C. An affidavit, signed by the registered agent, setting  
37               forth the following information:

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

44                       (2) The name, capacity and address of the general  
45                       partner for each limited partnership to which the  
46                       statement of resignation was sent.  
48

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

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

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

### Maine Comment

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

**§1317. Service of process**

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

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

**3. Service on Secretary of State.** Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State duplicate copies of the process, notice or demand. If a process, notice or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified

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

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

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

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

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

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

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

#### Uniform Comment

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

Source - ULLCA Section 111.

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

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

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

#### Uniform Comment

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

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

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

## SUBCHAPTER 2

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

**\$1321. Formation of limited partnership; certificate of limited partnership**

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:

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

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;

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

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

E. Any additional information required by subchapter 11.

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.

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.

**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

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

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

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

**Uniform Comment**

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

**Source** - RULPA Section 201.

A limited partnership is a creature of statute, and this section governs how a limited partnership comes into existence. A limited partnership is formed only if (i) a certificate of limited partnership is prepared and delivered to the specified 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.

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

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

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

**Subsection (a)(4)** - This Act permits a limited partnership to be a limited liability limited partnership ("LLLP"), and this 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  
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.

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

30 This subsection does not expressly cover a situation in  
32 which (i) one of the specified filed records contains information  
in addition to, but not inconsistent with, the partnership  
34 agreement, and (ii) a person, other than a partner or transferee,  
detrimentally relies on the additional information. However, the  
36 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  
202(c). A general partner's failure to meet that responsibility  
42 can expose the general partner to liability to third parties  
under Section 208(a)(2) and might constitute a breach of the  
44 general partner's duties under Section 408. In addition, an  
aggrieved person may seek a remedy under Section 205 (Signing and  
46 Filing Pursuant to Judicial Order).

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

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

A. The name of the limited partnership;

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

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

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

A. The admission of a new general partner;

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

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

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

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

A. Cause the certificate to be amended; or

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

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

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

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

**Uniform Comment**

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

**Source** - RULPA Section 202.

**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.

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.

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

**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).

**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).

**Maine Comment**

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



**§1323. Statement of termination**

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

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

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

**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.

**Uniform Comment**

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

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 notice effectively terminates any apparent authority to bind the limited partnership.

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

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

**§1324. Signing of records**

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

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

**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.

**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  
3       general partner must be signed by that person.

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

8       E. Any other amendment must be signed by:

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

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

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

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

18                      (ii) The person has previously delivered to the  
19                      Secretary of State for filing a statement of  
20                      dissociation.

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

27       G. A statement of termination must be signed by all general  
28       partners listed in the certificate or, if the certificate of  
29       a dissolved limited partnership lists no general partners,  
30       by the person appointed pursuant to section 1393, subsection  
31       3 or 4 to wind up the dissolved limited partnership's  
32       activities.

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

35       I. Articles of merger must be signed as provided in section  
36       1438, subsection 1.

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

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

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

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

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

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

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

#### Uniform Comment

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

**Source** - ULLCA Section 205.

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

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

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

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

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

B. For a statement of withdrawal, send:

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

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

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

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

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

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

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

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

(1) The specified date; and

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

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

(1) The specified date; and

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

**Uniform Comment**

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

**Source** - ULLCA Section 206.

In order for a record prepared by a private person to become part of the public record under this Act, (i) someone must put a properly prepared version of the record into the possession of the public official specified in the Act as the appropriate 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.

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

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

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

**Subsection (c)** - This subsection allows most records to have a delayed effective date, up to 90 days after the date the record is filed by the filing officer. A record specifying a longer 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.

**§1327. Correcting filed record**

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

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

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

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

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

C. Correct the incorrect information or defective signature.

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

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

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

#### Uniform Comment

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

**Source** - ULLCA Section 207.

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

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

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

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

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

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

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

**Uniform Comment**

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

This section pertains to both limited partnerships and foreign limited partnerships.

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

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



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

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

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

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

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

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

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

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

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

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

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

**E. That the limited partnership's most recent annual report required by section 1330 has been delivered to the Secretary 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.

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

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

16  
17 **Maine Comment**

18  
19 This section is based on former section 416-A and maintains  
20 uniformity with the other Maine business entity laws for these  
21 types of certificates provided by the Secretary of State.

22  
23 **§1330. Annual report and amended annual report of domestic and**  
24 **foreign limited partnerships; failure to file annual**  
25 **report; penalty**

26  
27 1. Annual report. Each domestic limited partnership and  
28 each foreign limited partnership authorized to do business in  
29 this State shall file, within the time prescribed by this  
30 chapter, an annual report.

31 A. The annual report must set forth:

32  
33 (1) The name of the limited partnership;

34  
35 (2) The name of its registered agent and the address  
36 of its registered office in this State, including the  
37 street or rural route number, town or city and state,  
38 and, in the case of a foreign limited partnership, the  
39 address of its registered or principal office;

40  
41 (3) A brief statement of the character of the business  
42 in which the limited partnership is actually engaged in  
43 this State, if any; and

44  
45 (4) The name and business or residence address of each  
46 general partner, including the street or rural route  
47 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       (1) The name of the domestic or foreign limited  
41       partnership, the jurisdiction of its formation and its  
42       date of formation;

43       (2) The date on which the original annual report was  
44       filed; and

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

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

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

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

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

#### **Maine Comment**

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

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

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

### SUBCHAPTER 3

#### LIMITED PARTNERS

##### §1341. Becoming limited partner

A person becomes a limited partner:

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

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

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

#### Uniform Comment

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

Source - RULPA Section 301.

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

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

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

#### Uniform Comment

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

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.

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 agreement may as a matter of contract allocate managerial rights to one or more limited partners; and (iii) a separate agreement can empower and entitle a person that is a limited partner to act for the limited partnership in another capacity; e.g., as an agent. See Comment to Section 305.

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

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

- admission of a limited partner, Section 301(3)
- admission of a general partner, Section 401(4)
- amendment of the partnership agreement, Section 406(b)(1)
- the decision to amend the certificate of limited partnership so as to obtain or relinquish LLLP status, Section 406(b)(2)
- the disposition of all or substantially all of the limited partnership's property, outside the ordinary course, Section 406(b)(3)
- the compromise of a partner's obligation to make a contribution or return an improper distribution, Section 502(c)
- expulsion of a limited partner by consent of the other partners, Section 601(b)(4)
- expulsion of a general partner by consent of the other partners, Section 603(4)
- redemption of a transferable interest subject to 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  
14                when there is no general partner, Section 803(C)
- 16          •     approving, amending or abandoning a plan of conversion,  
               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  
36       (2001).)

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  
42       rule" with respect to personal liability for entity obligations  
      and brings limited partners into parity with LLC members, LLP  
      partners and corporate shareholders.

44       The "control rule" first appeared in an uniform act in 1916,  
46       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

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

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

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

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

This section does not eliminate a limited partner's liability for promised contributions, Section 502 or improper distributions. Section 509. That liability pertains to a person's status as a limited partner but is **not** liability for an obligation of the limited partnership.



The shield provided by this section applies whether or not a limited partnership is a limited liability limited partnership.

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

**1. Right to inspect and copy.** On 10 days' demand, made in a record received by the limited partnership, a limited partner 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.

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

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

**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**

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

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

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

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

**C. If the limited partnership declines to provide any demanded information, the limited partnership's reasons for 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       5. Response to demand by dissociated limited partner. The  
11       limited partnership shall respond to a demand made pursuant to  
12       subsection 4 in the same manner as provided in subsection 3.

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

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

21       8. Reasonable costs of copying. A limited partnership may  
22       charge a person that makes a demand under this section reasonable  
23       costs of copying, limited to the costs of labor and material.

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

30       10. Exercise of rights. A limited partner or person  
31       dissociated as a limited partner may exercise the rights under  
32       this section through an attorney or other agent. Any restriction  
33       imposed under subsection 7 or by the partnership agreement  
34       applies both to the attorney or other agent and to the limited  
35       partner or person dissociated as a limited partner.

36       11. Transferee; individual under legal disability. The  
37       rights stated in this section do not extend to a person as  
38       transferee but may be exercised by the legal representative of an  
39       individual under legal disability who is a limited partner or  
40       person dissociated as a limited partner.

Uniform Comment

(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

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

The access rights stated in this section are personal to 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Uniform Comment**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

#### **Uniform Comment**

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

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

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

#### **SUBCHAPTER 4**

#### **GENERAL PARTNERS**

#### **§1351. Becoming general partner**

A person becomes a general partner:

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

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

3. Conversion or merger. As the result of a conversion or 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

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

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

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

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

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

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

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

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

Uniform Comment

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

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

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

The last paragraph of that Comment states:

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

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

This section makes the limited partnership vicariously 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.

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

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

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

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

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

**3. Obligation of limited liability limited partnership.**

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

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

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

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

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

**Uniform Comment**

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

**Source** - RUPA Section 306.

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

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

**Maine Comment**

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

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

**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 separate action.

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

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

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

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

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

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

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

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

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

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

39                   Example: A sole general partner delegates responsibility for  
40     insurance renewals to the limited partnership's office  
41     manager, and that manager neglects to renew the fire  
42     insurance coverage on the building. Even assuming that the  
43     office manager has been grossly negligent, the general  
44     partner is not necessarily liable under Section 408(c). The  
45     office manager's gross negligence is not automatically  
46     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  
10 The partnership agreement may also provide for delegation  
and, subject to Section 110(b)(5) - (7), may modify a general  
partner's Section 408 duties.

12  
14 **Subsection (b)** - This subsection limits the managerial  
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  
provision for limited partners, because they are assumed to be  
22 passive. To the extent that by contract or other arrangement a  
limited partner has authority to act on behalf of the limited  
24 partnership, agency law principles will create an indemnity  
obligation. In other situations, principles of restitution might  
26 apply.

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

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

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

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

44  
46 **B. At a reasonable location specified by the limited  
partnership, any other records maintained by the limited  
partnership regarding the limited partnership's activities  
48 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 on the exercise of these rights shall be reasonable.

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

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

**Uniform Comment**

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

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

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

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

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

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