

# MAINE STATE LEGISLATURE

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

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

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

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

22 **§1358. General standards of general partner's conduct**

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

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

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

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

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

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

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

**4. Good faith and fair dealing.** A general 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.

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

#### Uniform Comment

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

**Source** - RUPA Section 404.

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

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

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

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

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

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

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

## SUBCHAPTER 5

### CONTRIBUTIONS AND DISTRIBUTIONS

#### §1361. Form of contribution

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

#### Uniform Comment

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

**Source** - ULLCA Section 401.

#### §1362. Liability for contribution

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

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

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

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**Uniform Comment**

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

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

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

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

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

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

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

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

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

2       **Example:** Same facts as the previous example, except that the  
4       public sale brings \$225,000. The limited partnership is not  
6       obliged to invoke this subsection and may instead sue for  
      breach of the promise to make the contribution, asserting  
      the \$225,000 figure as evidence of the actual loss suffered  
      as a result of the breach.

8       **Subsection (c)** - Source: ULLCA Section 402(b); RULPA Section  
10       502(c). The first sentence of this subsection applies not only to  
12       promised contributions but also to improper distributions. See  
      Sections 508 and 509. The second sentence, pertaining to  
      creditor's rights, applies only to promised contributions.

14       **§1363. Sharing of distributions**

16       A distribution by a limited partnership must be shared among  
18       the partners on the basis of the value, as stated in the required  
20       records when the limited partnership decides to make the  
      distribution, of the contributions the limited partnership has  
      received from each partner.

22                   **Uniform Comment**

24       (This is section 503 of the Uniform Limited Partnership Act  
26       (2001).)

28       This Act has no provision allocating profits and losses  
30       among the partners. Instead, the Act directly apportions the  
      right to receive distributions.

32       Nearly all limited partnerships will choose to allocate  
34       profits and losses in order to comply with applicable tax,  
36       accounting and other regulatory requirements. Those requirements,  
      rather than this Act, are the proper source of guidance for that  
      profit and loss allocation.

38       Unlike predecessor law, this section apportions  
40       distributions in relation to the value of contributions received  
42       from each partner without regard to whether the limited  
44       partnership has returned any of those contributions. Compare  
      RULPA Sections 503 and 504. This Act's approach produces the same  
      result as predecessor law, so long as the limited partnership  
      does not vary this section's approach to apportioning  
      distributions.

46       This section's rule for sharing distributions is subject to  
48       change under Section 110. A limited partnership that does vary  
50       the rule should be careful to consider not only the tax and  
      accounting consequences but also the "ripple" effect on other  
      provisions of this Act. See, e.g., Sections 801 and 803(c)

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

**§1364. Interim distributions**

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

**Uniform Comment**

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

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

**§1365. No distribution on account of dissociation**

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

**Uniform Comment**

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

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

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

**§1366. Distribution in kind**

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

**Uniform Comment**

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

Source - RULPA Section 605.

**§1367. Right to distribution**

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

**Uniform Comment**

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

Source - RULPA Section 606.

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

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

**§1368. Limitations on distribution**

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

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

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

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



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

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

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

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

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

20 (1) The distribution is authorized, if the payment  
21 occurs within 120 days after that date; or

22 (2) The payment is made, if payment occurs more than  
23 120 days after the distribution is authorized.

24 **5. Indebtedness to partner and general, unsecured**  
25 **creditors.** A limited partnership's indebtedness to a partner  
26 incurred by reason of a distribution made in accordance with this  
27 section is at parity with the limited partnership's indebtedness  
28 to its general, unsecured creditors.

29 **6. Indebtedness not considered liability.** A limited  
30 partnership's indebtedness, including indebtedness issued in  
31 connection with or as part of a distribution, is not considered a  
32 liability for purposes of subsection 2 if the terms of the  
33 indebtedness provide that payment of principal and interest are  
34 made only to the extent that a distribution could then be made to  
35 partners under this section.

36 **7. Indebtedness issued as distribution; date payment made.**  
37 If indebtedness is issued as a distribution, each payment of  
38 principal or interest on the indebtedness is treated as a  
39 distribution, the effect of which is measured on the date the  
40 payment is made.

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Uniform Comment

(This is section 508 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 406. See also RMBCA Section 6.40.

Subsection (c) - This subsection appears to impose a standard of ordinary care, in contrast with the general duty of care stated in Section 408(c). For a reconciliation of these two provisions, see Comment to Section 509(a).

**§1369. Liability for improper distributions**

**1. General partner liable if consent to distribution not in compliance.** A general partner that consents to a distribution made in violation of section 1368 is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 1358.

**2. Partner or transferee liable for excess amount received.** A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 1368 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 1368.

**3. General partner may implead, compel contribution.** A general partner against which an action is commenced under subsection 1 may:

**A. Implead in the action any other person that is liable under subsection 1 and compel contribution from the person; and**

**B. Implead in the action any person that received a distribution in violation of subsection 2 and compel contribution from the person in the amount the person received in violation of subsection 2.**

**4. Action within 2 years.** An action under this section is barred if it is not commenced within 2 years after the distribution.

Uniform Comment

(This is section 509 of the Uniform Limited Partnership Act (2001).)

**Source** - ULLCA Section 407. See also RMBCA Section 8.33.

In substance and effect this section protects the interests of creditors of the limited partnership. Therefore, according to Section 110(b)(13), the partnership agreement may not change this section in a way that restricts the rights of those creditors. As for a limited partnership's power to compromise a claim under this section, see Section 502(c).

**Subsection (a)** - This subsection refers both to Section 508, which includes in its subsection (c) a standard of ordinary care ("reasonable in the circumstances"), and to Section 408, which includes in its subsection (c) a general duty of care that is limited to "refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law."

A limited partnership's failure to meet the standard of Section 508(c) cannot by itself cause a general partner to be liable under Section 509(a). Both of the following would have to occur before a failure to satisfy Section 508(c) could occasion personal liability for a general partner under Section 509(a):

- the limited partnership "base[s] a determination that a distribution is not prohibited . . . on financial statements prepared on the basis of accounting practices and principles that are [not] reasonable in the circumstances or on a [not] fair valuation or other method that is [not] reasonable in the circumstances" [Section 508(c)]

AND

- the general partner's decision to rely on the improper methodology in consenting to the distribution constitutes "grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law" [Section 408(c)] or breaches some other duty under Section 408.

To serve the protective purpose of Sections 508 and 509, in this subsection "consent" must be understood as encompassing any form of approval, assent or acquiescence, whether formal or informal, express or tacit.

**Subsection (d)** - The subsection's limitation applies to the commencement of an action under subsection (a) or (b) and not to

subsection (c), under which a general partner may implead other persons.

**SUBCHAPTER 6**

**DISSOCIATION**

**§1371. Dissociation as limited partner**

**1. Prohibited before termination.** A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

**2. Dissociation upon occurrence of event.** A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

**A. The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;**

**B. An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;**

**C. The person's expulsion as a limited partner pursuant to the partnership agreement;**

**D. The person's expulsion as a limited partner by the unanimous consent of the other partners if:**

**(1) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;**

**(2) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;**

**(3) The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or**

(4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

E. On application by the limited partnership, the person's expulsion as a limited partner by judicial determination because:

(1) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(2) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 1345, subsection 2; or

(3) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as limited partner;

F. In the case of a person who is an individual, the person's death;

G. In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

H. In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

I. Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust or estate; or

J. The limited partnership's participation in a conversion or merger under subchapter 11, if the limited partnership:

(1) Is not the converted or surviving entity; or

(2) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

Uniform Comment

(This is section 601 of the Uniform Limited Partnership Act (2001).)

**Source** - RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim, except for provisions inappropriate to limited partners. For example, this section does not provide for the dissociation of a person as a limited partner on account of bankruptcy, insolvency or incompetency.

This Act refers to a person's dissociation as a limited partner rather than to the dissociation of a limited partner, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

**Subsection (a)** - This section varies substantially from predecessor law. See Comment to Section 505.

**Subsection (b)(1)** - This provision gives a person the power to dissociate as a limited partner even though the dissociation is wrongful under subsection (a). See, however, Section 110(b)(8) (prohibiting the partnership agreement from eliminating the power of a person to dissociate as a general partner but imposing no comparable restriction with regard to a person's dissociation as a limited partner).

**Subsection (b)(5)** - In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

**§1372. Effect of dissociation as limited partner**

**1. Rights; obligations; interests.** Upon a person's dissociation as a limited partner:

A. Subject to section 1384, the person does not have further rights as a limited partner;

B. The person's obligation of good faith and fair dealing as a limited partner under section 1345, subsection 2 continues only as to matters arising and events occurring before the dissociation; and

C. Subject to section 1384 and subchapter 11, any transferable interest owned by the person in the person's

capacity as a limited partner immediately before  
dissociation is owned by the person as a mere transferee.

**2. Obligations to partnership and partners.** A person's  
dissociation as a limited partner does not of itself discharge  
the person from any obligation to the limited partnership or the  
other partners that the person incurred while a limited partner.

**Uniform Comment**

(This is section 602 of the Uniform Limited Partnership Act  
(2001).)

**Source** - RUPA Section 603(b).

**Subsection (a)(1)** - In general, when a person dissociates as  
a limited partner, the person's rights as a limited partner  
disappear and, subject to Section 113 (Dual Status), the person's  
status degrades to that of a mere transferee. However, Section  
704 provides some special rights when dissociation is caused by  
an individual's death.

**Subsection (a)(3)** - For any person that is both a general  
partner and a limited partner, the required records must state  
which transferable interest is owned in which capacity. Section  
111(9)(C).

Article 11 provides for conversions and mergers. A plan of  
conversion or merger may provide for the dissociation of a person  
as a limited partner and may override the rule stated in this  
paragraph.

**§1373. Dissociation as general partner**

A person is dissociated from a limited partnership as a  
general partner upon the occurrence of any of the following  
events:

**1. Notice of express will to withdraw.** The limited  
partnership's having notice of the person's express will to  
withdraw as a general partner or on a later date specified by the  
person;

**2. Event in partnership agreement.** An event agreed to in  
the partnership agreement as causing the person's dissociation as  
a general partner;

**3. Expulsion pursuant to partnership agreement.** The  
person's expulsion as a general partner pursuant to the  
partnership agreement;

2        4. Expulsion by unanimous consent. The person's expulsion  
3        as a general partner by the unanimous consent of the other  
4        partners if:

6            A. It is unlawful to carry on the limited partnership's  
7            activities with the person as a general partner;

8            B. There has been a transfer of all or substantially all of  
9            the person's transferable interest in the limited  
10          partnership, other than a transfer for security purposes, or  
11          a court order charging the person's interest, that has not  
12          been foreclosed;

13          C. The person is a corporation and, within 90 days after  
14          the limited partnership notifies the person that it will be  
15          expelled as a general partner because it has filed a  
16          certificate of dissolution or the equivalent, its charter  
17          has been revoked or its right to conduct business has been  
18          suspended by the jurisdiction of its incorporation, there is  
19          no revocation of the certificate of dissolution or no  
20          reinstatement of its charter or its right to conduct  
21          business; or

22          D. The person is a limited liability company or partnership  
23          that has been dissolved and whose business is being wound up;

24        5. Expulsion upon judicial determination. On application  
25        by the limited partnership, the person's expulsion as a general  
26        partner by judicial determination because:

27            A. The person engaged in wrongful conduct that adversely  
28            and materially affected the limited partnership's activities;

29            B. The person willfully or persistently committed a  
30            material breach of the partnership agreement or of a duty  
31            owed to the partnership or the other partners under section  
32            1358; or

33            C. The person engaged in conduct relating to the limited  
34            partnership's activities which makes it not reasonably  
35            practicable to carry on the activities of the limited  
36            partnership with the person as a general partner;

37        6. Bankruptcy; execution of assignment; appointment of  
38        trustee, receiver or liquidator. The person's:

39            A. Becoming a debtor in bankruptcy;

40            B. Execution of an assignment for the benefit of creditors;



2        C. Seeking, consenting to or acquiescing in the appointment  
4        of a trustee, receiver or liquidator of the person or of all  
      or substantially all of the person's property; or

6        D. Failure, within 90 days after the appointment, to have  
8        vacated or stayed the appointment of a trustee, receiver or  
10       liquidator of the general partner or of all or substantially  
      all of the person's property obtained without the person's  
12       consent or acquiescence, or failing within 90 days after the  
      expiration of a stay to have the appointment vacated;

14       7. Death; appointment of guardian or conservator; judicial  
      determination. In the case of a person who is an individual:

16       A. The person's death;

18       B. The appointment of a guardian or general conservator for  
20       the person; or

22       C. A judicial determination that the person has otherwise  
24       become incapable of performing the person's duties as a  
      general partner under the partnership agreement;

26       8. Distribution of trust's interest. In the case of a  
28       person that is a trust or is acting as a general partner by  
30       virtue of being a trustee of a trust, distribution of the trust's  
      entire transferable interest in the limited partnership, but not  
      merely by reason of the substitution of a successor trustee;

32       9. Distribution of estate's interest. In the case of a  
34       person that is an estate or is acting as a general partner by  
36       virtue of being a personal representative of an estate,  
      distribution of the estate's entire transferable interest in the  
      limited partnership, but not merely by reason of the substitution  
      of a successor personal representative;

38       10. Termination of general partner. Termination of a  
40       general partner that is not an individual, partnership, limited  
      liability company, corporation, trust or estate; or

42       11. Conversion or merger. The limited partnership's  
44       participation in a conversion or merger under subchapter 11, if  
      the limited partnership:

46       A. Is not the converted or surviving entity; or

48       B. Is the converted or surviving entity but, as a result of  
50       the conversion or merger, the person ceases to be a general  
      partner.

Uniform Comment

(This is section 603 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim. This Act refers to a person's dissociation as a general partner rather than to the dissociation of a general partner, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

Paragraph (1) - The partnership agreement may not eliminate this power to dissociate. See Section 110(b)(8).

Paragraph (5) - In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

**§1374. Person's power to dissociate as general partner; wrongful dissociation**

**1. Dissociate by express will.** A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 1373, subsection 1.

**2. Wrongful dissociation.** A person's dissociation as a general partner is wrongful only if:

**A. It is in breach of an express provision of the partnership agreement; or**

**B. It occurs before the termination of the limited partnership and:**

**(1) The person withdraws as a general partner by express will;**

**(2) The person is expelled as a general partner by judicial determination under section 1373, subsection 5;**

**(3) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or**

**(4) In the case of a person that is not an individual, trust other than a business trust, or estate, the**

person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

**3. Liability when dissociation wrongful.** A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 1421, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

**Uniform Comment**

(This is section 604 of the Uniform Limited Partnership Act (2001).)

**Source** - RUPA Section 602.

**Subsection (a)** - The partnership agreement may not eliminate this power. See Section 110(b)(8).

**Subsection (b)(1)** - The reference to "an express provision of the partnership agreement" means that a person's dissociation as a general partner in breach of the obligation of good faith and fair dealing is not wrongful dissociation for the purposes of this section. The breach might be actionable on other grounds.

**Subsection (b)(2)** - The reference to "before the termination of the limited partnership" reflects the expectation that each general partner will shepherd the limited partnership through winding up. See Comment to Section 406(f). A person's obligation to remain as general partner through winding up continues even if another general partner dissociates and even if that dissociation leads to the limited partnership's premature dissolution under Section 801(3)(A).

**Subsection (c)** - The language "subject to Section 1001" is intended to preserve the distinction between direct and derivative claims.

**§1375. Effect of dissociation as general partner**

**1. Rights; duties; statement of dissociation; interests.**  
**Upon a person's dissociation as a general partner:**

**A. The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;**

B. The person's duty of loyalty as a general partner under section 1358, subsection 2, paragraph C terminates;

C. The person's duty of loyalty as a general partner under section 1358, subsection 2, paragraphs A and B and duty of care under section 1358, subsection 3 continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

D. The person may sign and deliver to the Secretary of State for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and

E. Subject to section 1384 and subchapter 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

2. Obligations to partnership and partners. A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner.

### Uniform Comment

(This is section 605 of the Uniform Limited Partnership Act (2001).)

**Source** - RUPA Section 603(b).

**Subsection (a)(1)** - Once a person dissociates as a general partner, the person loses all management rights as a general partner regardless of what happens to the limited partnership. This rule contrasts with RUPA Section 603(b)(1), which permits a dissociated general partner to participate in winding up in some circumstances.

**Subsection (a)(4)** - Both records covered by this paragraph have the same effect under Section 103(d) - namely, to give constructive notice that the person has dissociated as a general partner. The notice benefits the person by curtailing any further personal liability under Sections 607, 805, and 1111. The notice benefits the limited partnership by curtailing any lingering power to bind under Sections 606, 804, and 1112.

The limited partnership is in any event obligated to amend its certificate of limited partnership to reflect the dissociation of a person as general partner. See Section

202(b)(2). In most circumstances, the amendment requires the signature of the person that has dissociated. Section 204(a)(5)(C). If that signature is required and the person refuses or fails to sign, the limited partnership may invoke Section 205 (Signing and Filing Pursuant to Judicial Order).

**Subsection (a)(5)** - In general, when a person dissociates as a general partner, the person's rights as a general partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Section 704 provides some special rights when an individual dissociates by dying. Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a general partner and may override the rule stated in this paragraph.

**§1376. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner**

**1. Bound by act of dissociated general partner.** After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under subchapter 11 or merged out of existence under subchapter 11, the limited partnership is bound by an act of the person only if:

**A. The act would have bound the limited partnership under section 1352 before the dissociation; and**

**B. At the time the other party enters into the transaction:**

**(1) Less than 2 years has passed since the dissociation; and**

**(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.**

**2. Liability of dissociated general partner.** If a limited partnership is bound under subsection 1, the person dissociated as a general partner that caused the limited partnership to be bound is liable:

**A. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1; and**

B. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

### Uniform Comment

(This is section 606 of the Uniform Limited Partnership Act (2001).)

**Source** - RUPA Section 702.

This Act contains three sections pertaining to the lingering power to bind of a person dissociated as a general partner:

- this section, which applies until the limited partnership dissolves, converts to another form of organization under Article 11, or is merged out of existence under Article 11;
- Section 804(b), which applies after a limited partnership dissolves; and
- Section 1112(b), which applies after a conversion or merger.

**Subsection (a)(2)(B)** - A person might have notice under Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)** - The liability provided by this subsection is not exhaustive. For example, if a person dissociated as a general partner causes a limited partnership to be bound under subsection (a) and, due to a guaranty, some other person is liable on the resulting obligation, that other person may have a claim under other law against the person dissociated as a general partner.

**\$1377. Liability to other persons of person dissociated as general partner**

1. Liability of dissociated general partner. A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections 2 and 3, the person is not liable for a limited partnership's obligation incurred after dissociation.

2. Liability when dissociation resulted in dissolution. A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 1354 on an obligation incurred by the limited partnership under section 1394.

3. Liability when dissociation did not result in dissolution. A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

A. A general partner would be liable on the transaction; and

B. At the time the other party enters into the transaction:

(1) Less than 2 years has passed since the dissociation; and

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

4. Release upon agreement with creditor. By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

5. Release upon creditor's agreement to material alteration without consent. A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

#### Uniform Comment

(This is section 607 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 703.

A person's dissociation as a general partner does not categorically prevent the person from being liable as a general partner for subsequently incurred obligations of the limited partnership. If the dissociation results in dissolution, subsection (b) applies and the person will be liable as a general

partner on any partnership obligation incurred under Section 804. In these circumstances, neither filing a statement of dissociation nor amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering exposure to liability.

If the dissociation does not result in dissolution, subsection (c) applies. In this context, filing a statement of dissociation or amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering liability. See subsection (c)(2)(B).

If the limited partnership subsequently dissolves as the result of some other occurrence (i.e., not a result of the person's dissociation as a general partner), subsection (c) continues to apply. In that situation, Section 804 will determine whether, for the purposes of subsection (c), the limited partnership has entered into a transaction after dissolution.

If the limited partnership is a limited liability limited partnership, these liability rules are moot.

**Subsection (a)** - The phrase "liability as a general partner for an obligation of the limited partnership" refers to liability under Section 404. Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

**Subsection (c)(2)(B)** - A person might have notice under Section 103(d)(1) as well as under Section 103(b).

#### **SUBCHAPTER 7**

#### **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

#### **§1381. Partner's transferable interest**

The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property.

#### **Uniform Comment**

(This is section 701 of the Uniform Limited Partnership Act (2001).)

**Source** - RUPA Section 502.



Like all other partnership statutes, this Act dichotomizes each partner's rights into economic rights and other rights. The former are freely transferable, as provided in Section 702. The latter are not transferable at all, unless the partnership agreement so provides.

Although a partner or transferee owns a transferable interest as a present right, that right only entitles the owner to distributions if and when made. See Sections 504 (subject to any contrary provision in the partnership agreement, no right to interim distribution unless the limited partnership decides to make an interim distribution) and the Comment to Section 812 (subject to any contrary provision in the partnership agreement, no partner obligated to contribute for the purpose of equalizing or otherwise allocating capital losses).

**§1382. Transfer of partner's transferable interest**

**1. Transfer.** A transfer, in whole or in part, of a partner's transferable interest:

A. Is permissible;

B. Does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

C. Does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection 3 or to inspect or copy the required information or the limited partnership's other records.

**2. Transferee's right to receive.** A transferee has a right to receive, in accordance with the transfer:

A. Distributions to which the transferor would otherwise be entitled; and

B. Upon the dissolution and winding up of the limited partnership's activities, the net amount otherwise distributable to the transferor.

**3. Account for transferee.** In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

2 4. Transferor retains all other rights, duties and  
 4 obligations. Upon transfer, the transferor retains the rights of  
a partner other than the interest in distributions transferred  
and retains all duties and obligations of a partner.

6 5. Notice of transfer. A limited partnership need not give  
 8 effect to a transferee's rights under this section until the  
limited partnership has notice of the transfer.

10 6. Transfer in violation of restriction. A transfer of a  
 12 partner's transferable interest in the limited partnership in  
violation of a restriction on transfer contained in the  
 14 partnership agreement is ineffective as to a person having notice  
of the restriction at the time of transfer.

16 7. Transferee's liability for transferor's obligations. A  
 18 transferee that becomes a partner with respect to a transferable  
interest is liable for the transferor's obligations under  
 20 sections 1361 and 1369. However, the transferee is not obligated  
for liabilities unknown to the transferee at the time the  
transferee became a partner.

22 **Uniform Comment**

24 (This is section 702 of the Uniform Limited Partnership Act  
 26 (2001).)

28 **Source** - RUPA Section 503, except for subsection (g), which  
 30 derives from RULPA Section 704(b). Following RUPA, this Act uses  
 the words "transfer" and "transferee" rather than the words  
 "assignment" and "assignee." See RUPA Section 503.

32 **Subsection (a)(2)** - The phrase "by itself" is significant. A  
 34 transfer of all of a person's transferable interest could lead to  
 dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

36 **Subsection (a)(3)** - Mere transferees have no right to  
 38 intrude as the partners carry on their activities as partners.  
 Moreover, a partner's obligation of good faith and fair dealing  
 40 under Sections 305(b) and 408(d) is framed in reference to "the  
 limited partnership and the other partners." See also Comment to  
 42 Section 1102(b)(3) and Comment to Section 1106(b)(3).

44 **§1383. Rights of judgment creditor of partner or transferee**

46 1. Court order charging transferable interest; rights of  
transferee. On application to a court of competent jurisdiction  
 48 by any judgment creditor of a partner or transferee, the court  
may charge the transferable interest of the judgment debtor with  
 50 payment of the unsatisfied amount of the judgment with interest.

To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts and inquiries the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

**2. Charging order a lien; foreclosure; rights of transferee.** A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

**3. Redemption before foreclosure.** At any time before foreclosure, an interest charged may be redeemed:

A. By the judgment debtor;

B. With property other than limited partnership property, by one or more of the other partners; or

C. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

**4. Exemption laws applicable.** This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

**5. Exclusive remedy.** This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

#### Uniform Comment

(This is section 703 of the Uniform Limited Partnership Act (2001).)

**Source** - RUPA Section 504 and ULLCA Section 504.

This section balances the needs of a judgment creditor of a partner or transferee with the needs of the limited partnership and non-debtor partners and transferees. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited partnership.

2 Under this section, the judgment creditor of a partner or  
3 transferee is entitled to a charging order against the relevant  
4 transferable interest. While in effect, that order entitles the  
5 judgment creditor to whatever distributions would otherwise be  
6 due to the partner or transferee whose interest is subject to the  
7 order. The creditor has no say in the timing or amount of those  
8 distributions. The charging order does not entitle the creditor  
9 to accelerate any distributions or to otherwise interfere with  
10 the management and activities of the limited partnership.

12 Foreclosure of a charging order effects a permanent transfer  
13 of the charged transferable interest to the purchaser. The  
14 foreclosure does not, however, create any rights to participate  
15 in the management and conduct of the limited partnership's  
16 activities. The purchaser obtains nothing more than the status of  
17 a transferee.

18 **Subsection (a)** - The court's power to appoint a receiver and  
19 "make all other orders, directions, accounts, and inquiries the  
20 judgment debtor might have made or which the circumstances of the  
21 case may require" must be understood in the context of the  
22 balance described above. In particular, the court's power to make  
23 orders "which the circumstances may require" is limited to  
24 "giv[ing] effect to the charging order."

26 **Example:** A judgment creditor with a charging order believes  
27 that the limited partnership should invest less of its  
28 surplus in operations, leaving more funds for distributions.  
29 The creditor moves the court for an order directing the  
30 general partners to restrict re-investment. This section  
31 does not authorize the court to grant the motion.

34 **Example:** A judgment creditor with a judgment for \$10,000  
35 against a partner obtains a charging order against the  
36 partner's transferable interest. The limited partnership is  
37 duly served with the order. However, the limited partnership  
38 subsequently fails to comply with the order and makes a  
39 \$3000 distribution to the partner. The court has the power  
40 to order the limited partnership to turn over \$3000 to the  
41 judgment creditor to "give effect to the charging order."

42 The court also has the power to decide whether a particular  
43 payment is a distribution, because this decision determines  
44 whether the payment is part of a transferable interest subject to  
45 a charging order. (To the extent a payment is not a distribution,  
46 it is not part of the transferable interest and is not subject to  
47 subsection (e). The payment is therefore subject to whatever  
48 other creditor remedies may apply.)  
50

Subsection (c)(3) - This provision requires the consent of all the limited as well as general partners.

**§1384. Power of estate of deceased partner**

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 1382 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 1344.

**Uniform Comment**

(This is section 704 of the Uniform Limited Partnership Act (2001).)

Section 702 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 702(c).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate. For those purposes, the legal representative may exercise the informational rights of a current limited partner under Section 304. Those rights are of course subject to the limitations and obligations stated in that section - e.g., Section 304 (g) ( restrictions on use) and (h) (charges for copies) - as well as any generally applicable limitations stated in the partnership agreement.

**SUBCHAPTER 8**

**DISSOLUTION**

**§1391. Nonjudicial dissolution**

Except as otherwise provided in section 1392, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

1. Event specified in partnership agreement. The happening of an event specified in the partnership agreement;

2. Consent. The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;



Paragraph (1) - There is no requirement that the relevant provision of the partnership agreement be made in a record, unless the partnership agreement creates that requirement. However, if the relevant provision is not "contained in a partnership agreement made in a record," Section 111(9)(D) includes among the limited partnership's required information "a record stating . . . any events upon the happening of which the limited partnership is to be dissolved and its activities wound up."

Paragraph (2) - Rights to receive distributions owned by a person that is both a general and a limited partner figure into the limited partner determination only to the extent those rights are owned in the person's capacity as a limited partner. See Section 111(9)(C).

**Example:** XYZ is a limited partnership with three general partners, each of whom is also a limited partner, and 5 other limited partners. Rights to receive distributions are allocated as follows:

Partner #1 as general partner	- 3%
Partner #2 as general partner	- 2%
Partner #3 as general partner	- 1%
Partner #1 as limited partner	- 7%
Partner #2 as limited partner	- 3%
Partner #3 as limited partner	- 4%
Partner #4 as limited partner	- 5%
Partner #5 as limited partner	- 5%
Partner #6 as limited partner	- 5%
Partner #7 as limited partner	- 5%
Partner #8 as limited partner	- 5%
Several non-partner transferees, in the aggregate	- 55%

Distribution rights owned by persons as limited partners amount to 39% of total distribution rights. A majority is therefore anything greater than 19.5%. If only Partners 1, 2, 3 and 4 consent to dissolve, the limited partnership is not dissolved. Together these partners own as limited partners 19% of the distribution rights owned by persons as limited partners - just short of the necessary majority. For purposes of this calculation, distribution rights owned by non-partner transferees are irrelevant. So, too, are distribution rights owned by persons as general partners. (However, dissolution under this provision requires "the consent of all general partners.")

Paragraph (3)(A) - Unlike paragraph (2), this paragraph makes no distinction between distribution rights owned by persons as general partners and distribution rights owned by persons as

limited partners. Distribution rights owned by non-partner transferees are irrelevant.

**§1392. Judicial dissolution**

On application by a partner, the Superior Court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

**Uniform Comment**

(This is section 802 of the Uniform Limited Partnership Act (2001).)

**Source** - RULPA Section 802.

Section 110(b)(9) limits the power of the partnership agreement with regard to this section.

**§1393. Winding up**

**1. Purpose after dissolution.** A limited partnership continues after dissolution only for the purpose of winding up its activities.

**2. Winding up limited partnership.** In winding up its activities, the limited partnership:

A. May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 1323 and perform other necessary acts; and

B. Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities and marshal and distribute the assets of the partnership.

**3. Appointment to wind up activities.** If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:



2        A. Has the powers of a general partner under section 1394;  
3        and

4        B. Shall promptly amend the certificate of limited  
5        partnership to state:

6                (1) That the limited partnership does not have a  
7                general partner;

8                (2) The name of the person that has been appointed to  
9                wind up the limited partnership; and

10               (3) The street and mailing address of the person.

11        **4. Judicial supervision.** On the application of any  
12        partner, the Superior Court may order judicial supervision of the  
13        winding up, including the appointment of a person to wind up the  
14        dissolved limited partnership's activities, if:

15               A. The limited partnership does not have a general partner  
16               and within a reasonable time following the dissolution no  
17               person has been appointed pursuant to subsection 3; or

18               B. The applicant establishes other good cause.

19                                **Uniform Comment**

20        (This is section 803 of the Uniform Limited Partnership Act  
21        (2001).)

22        **Source** - RUPA Sections 802 and 803.

23        **Subsection (b)(2)** - A limited partnership may satisfy its  
24        duty to "discharge" a liability either by paying or by making an  
25        alternative arrangement satisfactory to the creditor.

26        **Subsection (c)** - The method for determining majority consent  
27        is analogous to the method applicable under Section 801(2). See  
28        the Comment to that paragraph.

29        A person appointed under this subsection is not a general  
30        partner and therefore is not subject to Section 408.

31        **§1394. Power of general partner and person dissociated as**  
32        **general partner to bind partnership after dissolution**

33               **1. General partner's act after dissolution.** A limited  
34               partnership is bound by a general partner's act after dissolution  
35               that:

2        A. Is appropriate for winding up the limited partnership's  
3        activities; or

4        B. Would have bound the limited partnership under section  
5        1352 before dissolution, if, at the time the other party  
6        enters into the transaction, the other party does not have  
7        notice of the dissolution.

8  
9  
10       2. Dissociated general partner's act after dissolution. A  
11       person dissociated as a general partner binds a limited  
12       partnership through an act occurring after dissolution if:

13       A. At the time the other party enters into the transaction:

14           (1) Less than 2 years has passed since the  
15           dissociation; and

16           (2) The other party does not have notice of the  
17           dissociation and reasonably believes that the person is  
18           a general partner; and

19       B. The act:

20           (1) Is appropriate for winding up the limited  
21           partnership's activities; or

22           (2) Would have bound the limited partnership under  
23           section 1352 before dissolution and at the time the  
24           other party enters into the transaction the other party  
25           does not have notice of the dissolution.

26  
27           **Uniform Comment**

28  
29       (This is section 804 of the Uniform Limited Partnership Act  
30       (2001).)

31       **Subsection (a) - Source: RUPA Section 804.**

32       **Subsection (a)(2) -** A person might have notice under Section  
33       103(d)(2) (amendment of certificate of limited partnership to  
34       indicate dissolution) as well as under Section 103(b).

35       **Subsection (b) -** This subsection deals with the  
36       post-dissolution power to bind of a person dissociated as a  
37       general partner. Paragraph (1) replicates the provisions of  
38       Section 606, pertaining to the pre-dissolution power to bind of a  
39       person dissociated as a general partner. Paragraph (2) replicates  
40       the provisions of subsection (a), which state the  
41       post-dissolution power to bind of a general partner. For a person

dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraph (1) and paragraph (2).

**Subsection (b)(1)(B)** - A person might have notice under Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)(2)(B)** - A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

**§1395. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners and persons dissociated as general partner**

**1. General partner liable for inappropriate act after dissolution.** If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 1394, subsection 1 by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

A. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

B. If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

**2. Dissociated general partner liable for incurring obligation.** If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 1394, subsection 2, the person is liable:

A. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

B. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**Uniform Comment**

(This is section 805 of the Uniform Limited Partnership Act (2001).)

Source - RUPA Section 806.

It is possible for more than one person to be liable under this section on account of the same limited partnership obligation. This Act does not provide any rule for apportioning liability in that circumstance.

Subsection (a)(2) - If the limited partnership is not a limited liability limited partnership, the liability created by this paragraph includes liability under Sections 404(a), 607(b), and 607(c). The paragraph also applies when a partner or person dissociated as a general partner suffers damage due to a contract of guaranty.

**§1396. Known claims against dissolved limited partnership**

**1. Dispose of known claims.** A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.

**2. Notice of dissolution.** A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

**A. Specify the information required to be included in a claim;**

**B. Provide a mailing address to which the claim is to be sent;**

**C. State the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;**

**D. State that the claim will be barred if not received by the deadline; and**

**E. Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 1354.**

**3. Claim barred.** A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and:

**A. The claim is not received by the specified deadline; or**

B. In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.

4. Claims or liability after dissolution. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

**Uniform Comment**

(This is section 806 of the Uniform Limited Partnership Act (2001).)

**Source** - ULLCA Section 807. See also RMBCA Section 14.06.

**Paragraph (b)(5)** - If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

**§1397. Other claims against dissolved limited partnership**

1. Notice of dissolution; claims. A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

2. Notice requirements. The notice must:

A. Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this State, in the county in which the limited partnership's designated office is or was last located;

B. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

C. State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within 5 years after publication of the notice; and

D. Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general

partner or person dissociated as a general partner that is based on section 1354.

**3. Claimants barred.** If a dissolved limited partnership publishes a notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within 5 years after the publication date of the notice:

A. A claimant that did not receive notice in a record under section 1396;

B. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

C. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

**4. Enforcement of claims.** A claim not barred under this section may be enforced:

A. Against the dissolved limited partnership, to the extent of its undistributed assets;

B. If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

C. Against any person liable on the claim under section 1354.

#### Uniform Comment

(This is section 807 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 808. See also RMBCA Section 14.07.

**Paragraph (b)(4)** - If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

**§1398. Liability of general partner and person dissociated as general partner when claim against limited partnership barred**

If a claim against a dissolved limited partnership is barred under section 1396 or 1397, any corresponding claim under section 1354 is also barred.

**Uniform Comment**

(This is section 808 of the Uniform Limited Partnership Act (2001).)

The liability under Section 404 of a general partner or person dissociated as a general partner is merely liability for the obligations of the limited partnership.

**§1399. Administrative dissolution of domestic limited partnership**

**1. Grounds for administrative dissolution.** Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under subsection 2 to administratively dissolve a domestic limited partnership if:

A. The domestic limited partnership does not pay when they are due any fees or penalties imposed by this chapter or other law;

B. The domestic limited partnership does not deliver its annual report to the Secretary of State as required by section 1330, subsection 1;

C. The domestic limited partnership does not pay the annual report late filing penalty as required by section 1330, subsection 3;

D. The domestic limited partnership fails to appoint or maintain a registered agent or registered office in this State as required by section 1314;

E. The domestic limited partnership does not notify the Secretary of State that its registered agent or registered office has been changed as required by section 1315 or that its registered agent has resigned as required by section 1316; or

F. A general partner, limited partner or agent of the domestic limited partnership signed a document with the knowledge that the document was false in a material respect

and with the intent that the document be delivered to the Secretary of State for filing.

**2. Procedure for administrative dissolution of domestic limited partnership.** If the Secretary of State determines that one or more grounds exist under subsection 1 for dissolving a domestic limited partnership, the Secretary of State shall issue a written notice of that determination to the limited partnership's last registered office address.

**3. Administrative dissolution.** The domestic limited partnership will be administratively dissolved if within 60 days after the notice under subsection 2 was issued the Secretary of State determines that the limited partnership has failed to correct the ground or grounds for the dissolution. The Secretary of State shall send notice to the limited partnership at its last registered office address that recites the ground or grounds for dissolution and the effective date of dissolution.

**4. Effect of administrative dissolution; prohibition.** A domestic limited partnership administratively dissolved under this section continues its existence but may not transact any business in this State except as necessary to wind up the affairs of the limited partnership.

**5. Liability of limited partners.** A limited partner of a domestic limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership's having been administratively dissolved under this section.

**6. Validity of contracts; right to be sued; right to defend suit.** The administrative dissolution of a domestic limited partnership under this section does not impair:

A. The validity of any contract or act of the domestic limited partnership;

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

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

**7. Authority of registered agent.** The administrative dissolution of a domestic limited partnership under this section does not terminate the authority of its registered agent.

**8. Protecting domestic limited partnership name after administrative dissolution.** The name of a domestic limited



partnership remains in the Secretary of State's record of limited partnership names and is protected for a period of 3 years following administrative dissolution under this section.

**9. Notice to Superintendent of Financial Institutions in case of financial institution or credit union.** In the case of a financial institution authorized to do business in this State or a credit union authorized to do business in this State, as defined in Title 9-B, the Secretary of State shall notify the Superintendent of Financial Institutions within a reasonable time prior to administratively dissolving the financial institution or credit union under this section.

**Maine Comment**

This section is based on former sections 408-A and 408-B and maintains uniformity with the other Maine business entity laws for grounds for, procedure for and effect of administrative dissolution.

**§1400. Reinstatement following administrative dissolution or suspension of domestic limited partnership**

**1. Reinstatement following administrative dissolution.** A domestic limited partnership administratively dissolved under section 1399 may apply to the Secretary of State for reinstatement within 6 years after the effective date of dissolution.

**A. The application for reinstatement must:**

(1) State the name of the domestic limited partnership and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the domestic limited partnership's name satisfies the requirements of section 1308.

**B. If the Secretary of State determines that the application contains the information required under this subsection and is accompanied by the reinstatement fee set forth in section 1460, subsection 6, and that the information is correct, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The Secretary of State**

shall send notice to the domestic limited partnership at its last registered office address.

C. When the reinstatement is effective under this subsection, it relates back to and takes effect as of the effective date of the administrative dissolution, and the domestic limited partnership resumes business as if the administrative dissolution had not occurred.

**2. Reinstatement after suspension.** A domestic limited partnership that was suspended before July 1, 2004 may apply to the Secretary of State for reinstatement.

A. The reinstatement may be granted if:

(1) The Secretary of State determines that the application contains the information required under subsection 1;

(2) The application for reinstatement is accompanied by the reinstatement fee set forth in section 1460, subsection 6; and

(3) The application for reinstatement is received by the Secretary of State by June 30, 2010.

B. A domestic limited partnership that fails to meet the requirements of this subsection is administratively dissolved and may not reinstate.

C. The name of a domestic limited partnership that is suspended remains in the Secretary of State's record of limited partnership names and is protected for a period of 3 years following suspension.

#### Maine Comment

This section is based on former sections 408-C and 408-E and maintains uniformity with the other Maine business entity laws for reinstatement after administrative dissolution or suspension.

#### **§1401. Appeal from denial of reinstatement of domestic limited partnership**

**1. Denial of reinstatement.** If the Secretary of State denies a domestic limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall mail a written notice that explains the reason or reasons for denial to the limited partnership at its last registered office address.

2        2. Appeal. A domestic limited partnership may appeal a  
4        denial of reinstatement under subsection 1 to the Superior Court  
6        of the county where the limited partnership's principal office is  
8        located or, if there is no principal office in this State, in  
10       Kennebec County within 30 days after the date of the notice of  
12       denial. The limited partnership appeals by petitioning the court  
14       to set aside the dissolution and attaching to the petition copies  
16       of the Secretary of State's notice of administrative dissolution,  
18       the limited partnership's application for reinstatement and the  
20       Secretary of State's notice of denial.

22       3. Court action. The court may summarily order the  
24       Secretary of State to reinstate an administratively dissolved  
26       domestic limited partnership or may take other action the court  
28       considers appropriate.

30       4. Final decision. The court's final decision in an appeal  
32       under this section may be appealed as in other civil proceedings.

34                    **Maine Comment**

36        This section is based on former section 408-D and maintains  
38        uniformity with the other Maine business entity laws for appeal  
40        for reinstatement after administrative dissolution.

42        **§1402. Disposition of assets; when contributions required**

44        1. Assets to satisfy creditors. In winding up a limited  
46        partnership's activities, the assets of the limited partnership,  
48        including the contributions required by this section, must be  
50        applied to satisfy the limited partnership's obligations to  
52        creditors, including, to the extent permitted by law, partners  
54        that are creditors.

56        2. Surplus paid in cash distribution. Any surplus  
58        remaining after the limited partnership complies with subsection  
60        1 must be paid in cash as a distribution.

62        3. Insufficient assets to satisfy all obligations. If a  
64        limited partnership's assets are insufficient to satisfy all of  
66        its obligations under subsection 1, with respect to each  
68        unsatisfied obligation incurred when the limited partnership was  
70        not a limited liability limited partnership, the following rules  
72        apply.

74            A. Each person that was a general partner when the  
76            obligation was incurred and that has not been released from  
78            the obligation under section 1377 shall contribute to the  
80            limited partnership for the purpose of enabling the limited

partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

B. If a person does not contribute the full amount required under paragraph A with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph A on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

C. If a person does not make the additional contribution required by paragraph B, further additional contributions are determined and due in the same manner as provided in that paragraph.

4. Additional contribution recoverable. A person that makes an additional contribution under subsection 3, paragraph B or C may recover from any person whose failure to contribute under subsection 3, paragraph A or B necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

5. Estate of deceased liable for obligations. The estate of a deceased individual is liable for the individual's obligations under this section.

6. Assignee, court appointee may enforce. An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection 3.

#### Uniform Comment

(This is section 812 of the Uniform Limited Partnership Act (2001).)

In some circumstances, this Act requires a partner to make payments to the limited partnership. See, e.g., Sections 502(b), 509(a), 509(b), and 812(c). In other circumstances, this Act requires a partner to make payments to other partners. See, e.g.,

Sections 509(c) and 812(d). In no circumstances does this Act require a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

**Example:** XYZ Limited Partnership ("XYZ") has one general partner and four limited partners. According to XYZ's required information, the value of each partner's contributions to XYZ are:

General partner - \$5,000  
Limited partner #1 - \$10,000  
Limited partner #2 - \$15,000  
Limited partner #3 - \$20,000  
Limited partner #4 - \$25,000

XYZ is unsuccessful and eventually dissolves without ever having made a distribution to its partners. XYZ lacks any assets with which to return to the partners the value of their respective contributions. No partner is obliged to make any payment either to the limited partnership or to fellow partners to adjust these capital losses. These losses are not part of "the limited partnership's obligations to creditors." Section 812(a).

**Example:** Same facts, except that Limited Partner #4 loaned \$25,000 to XYZ when XYZ was not a limited liability limited partnership, and XYZ lacks the assets to repay the loan. The general partner must contribute to the limited partnership whatever funds are necessary to enable XYZ to satisfy the obligation owed to Limited Partner #4 on account of the loan. Section 812(a) and (c).

**Subsection (c)** - Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

## SUBCHAPTER 9

### FOREIGN LIMITED PARTNERSHIPS

#### §1411. Governing law

1. Law under which organized governs. The laws of the State or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

2. Difference in laws. A foreign limited partnership may not be denied a certificate of authority under this subchapter by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this State.

**3. Certificate of authority.** A certificate of authority under this subchapter does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this State.

### Uniform Comment

(This is section 901 of the Uniform Limited Partnership Act (2001).)

**Source** - ULLCA Section 1001 for subsections (b) and (c).

**Subsection (a)** - This subsection parallels and is analogous in scope and effect to Section 106 (choice of law for domestic limited partnerships).

**\$1412. Application for certificate of authority**

1. Application. A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must state:

A. The name of the foreign limited partnership and, if the name does not comply with section 1308, the name under which it proposes to apply for authority to do business pursuant to section 1415, subsection 1.

B. The name of the State or other jurisdiction under whose law the foreign limited partnership is organized and its date of formation:

C. The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

D. The name and street and mailing address of the foreign limited partnership's initial registered agent and office in this State;

E. The name and street and mailing address of each of the foreign limited partnership's general partners; and

F. Whether the foreign limited partnership is a foreign limited liability limited partnership.

2. Certificate of existence or similar record. A foreign limited partnership shall deliver with the completed application under subsection 1 a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the limited partnership's publicly filed records in the State or other jurisdiction under whose law the foreign limited partnership is organized. The certificate of existence must have been made not more than 90 days prior to delivery of the application for filing.

**Uniform Comment**

(This is section 902 of the Uniform Limited Partnership Act (2001).)

**Source** - ULLCA Section 1002.

A certificate of authority applied for under this section is different than a certificate of authorization furnished under Section 209.

**Maine Comment**

The changes in this section are based on multiple sections of the former chapter 11 and maintain uniformity with the other Maine business entity laws for the filing requirement for foreign limited partnerships.

**§1412-A. Amendments to application**

1. Amendments to application. If any statement in the application for authority to do business of a foreign limited partnership requires change as a result of subsequent events, the foreign limited partnership shall promptly file with the Secretary of State a certificate, executed by a general partner, amending the statement. The statement must include:

A. The name of the foreign limited partnership;

B. The jurisdiction of organization and the date of its organization;

C. The date the foreign limited partnership was granted authority to transact business in this State; and

2        D. The information that is causing the amendment to be  
3        filed.

4  
5        2. Changes requiring prompt delivery of amendment. A  
6        foreign limited partnership shall promptly deliver to the  
7        Secretary of State for filing an amended application for  
8        authority to reflect:

10       A. The admission of a new general partner;

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

14       C. The change in the address of one or more of the general  
15       partners from that appearing on the record of the office of  
16       the Secretary of State. The application must be amended to  
17       set forth the new business, residence or mailing address of  
18       each partner; or

20       D. The address of the registered or principal office of the  
21       limited partnership.

22  
23       3. Responsibility of general partner. A general partner  
24       that knows that any information in a filed application of  
25       authority was false when the certificate was filed or has become  
26       false due to changed circumstances shall promptly:

28       A. Cause the application to be amended; or

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

34       4. Amendment at any time. An application for authority may  
35       be amended at any time for any other proper purpose as determined  
36       by the foreign limited partnership.

38       5. Effective when filed. Subject to section 1326,  
39       subsection 3, an amended application for authority is effective  
40       when filed by the Secretary of State.

42                    **Maine Comment**

44        This section is based on former section 495 and new section  
45        1322.

46        **§1413. Activities not constituting transacting business**

48  
49        1. Activities not constituting transacting business.  
50        Activities of a foreign limited partnership that do not



constitute transacting business in this State within the meaning of this subchapter include:

A. Maintaining, defending and settling an action or proceeding;

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

C. Maintaining accounts in financial institutions;

D. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

E. Selling through independent contractors;

F. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

G. Creating or acquiring indebtedness, mortgages or security interests in real or personal property;

H. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

I. Conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and

J. Transacting business in interstate commerce.

2. Ownership of property. For purposes of this subchapter, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this State.

3. Service of process, taxation or regulation under other law. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation or regulation under any other law of this State.

Uniform Comment

(This is section 903 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 1003.

**§1414. Filing of certificate of authority**

Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this State and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative.

**Uniform Comment**

(This is section 904 of the Uniform Limited Partnership Act (2001).)

Source - ULLCA Section 1004 and RULPA Section 903.

A certificate of authority filed under this section is different than a certificate of authorization furnished under Section 209.

**§1415. Fictitious name of foreign limited partnership**

1. Requirements for use of fictitious name. As used in this section, "fictitious name" means a name adopted by a foreign limited partnership authorized to transact business in this State because its real name is unavailable pursuant to section 1308, subsection 1.

2. Authorized to transact business. Upon complying with this section, a foreign limited partnership authorized to transact business in this State may transact its business in this State under its fictitious name.

3. File statement indicating use of fictitious name. Prior to transacting business in this State under a fictitious name, a foreign limited partnership shall execute and deliver to the Secretary of State for filing a statement setting forth:

A. The foreign limited partnership name;

B. The foreign limited partnership's jurisdiction of organization and date of organization;

C. That the foreign limited partnership intends to transact business under a fictitious name; and

D. The fictitious name that the foreign limited partnership proposes to use.

**4. Compliance required.** A fictitious name must comply with the requirements of section 1308, subsection 1.

**5. Enjoin use of fictitious name.** If a foreign limited partnership uses a fictitious name without complying with the requirements of this section, the continued use of the fictitious name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the fictitious name.

**6. Enjoin use despite compliance.** Notwithstanding its compliance with the requirements of this section, the use of a fictitious name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

A. The fictitious name did not, at the time the statement required by subsection 3 was filed, comply with the requirements of section 1308, subsection 1; or

B. The fictitious name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law.

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

**7. Terminate use of fictitious name.** A foreign limited partnership may terminate a fictitious name by executing and delivering a statement setting forth:

A. The name of the foreign limited partnership;

B. The foreign limited partnership's jurisdiction of organization and date of organization;

C. The date on which the foreign limited partnership was authorized to transact business in this State;

D. That the foreign limited partnership no longer intends to transact business under the fictitious name; and

2       E. The fictitious name the foreign limited partnership  
3       intends to terminate.

4                               **Maine Comment**

6               This section is based on former section 405-A and maintains  
7       uniformity with the other Maine business entity laws for  
8       fictitious name filings.

10                   **§1416. Revocation of authority**

12               1. Grounds for revocation of authority. Notwithstanding  
14       Title 4, chapter 5 and Title 5, chapter 375, the Secretary of  
16       State may commence a proceeding under subsection 2 to revoke the  
17       authority of a foreign limited partnership authorized to transact  
18       business in this State if:

20               A. The foreign limited partnership does not pay when they  
21       are due any fees or penalties imposed by this chapter or  
22       other law;

24               B. The foreign limited partnership does not deliver its  
25       annual report to the Secretary of State as required by  
26       section 1330, subsection 1;

28               C. The foreign limited partnership does not pay the annual  
29       report late filing penalty as required by section 1330,  
30       subsection 3;

32               D. The foreign limited partnership fails to appoint or  
33       maintain a registered agent or registered office in this  
34       State as required by section 1314;

36               E. The foreign limited partnership does not notify the  
37       Secretary of State that its registered agent or registered  
38       office has been changed as required by section 1315 or that  
39       its registered agent has resigned as required by section  
40       1316; or

42               F. A general partner, limited partner or agent of the  
43       foreign limited partnership signed a document with the  
44       knowledge that the document was false in a material respect  
45       and with the intent that the document be delivered to the  
46       Secretary of State for filing.

48               2. Procedure for revocation of foreign limited  
49       partnership. If the Secretary of State determines that one or  
50       more grounds exist under subsection 1 for the revocation of  
51       authority of a foreign limited partnership, the Secretary of

State shall issue a written notice of that determination to the limited partnership's last registered office address or to its last registered or principal office wherever located.

**3. Revocation of authority.** The foreign limited partnership's authority is revoked if within 60 days after the notice under subsection 2 was issued the Secretary of State determines that the foreign limited partnership has failed to correct the ground or grounds for the revocation. The Secretary of State shall send notice to the foreign limited partnership at its last registered office address or to its last registered or principal office wherever located that recites the ground or grounds for revocation and the effective date of revocation.

**4. Authority to transact business ceases.** The authority of a foreign limited partnership to transact business in this State ceases on the effective date of revocation of its authority.

**5. Registered agent; not terminated.** Revocation of a foreign limited partnership's authority to transact business in this State does not terminate the authority of the registered agent of the foreign limited partnership.

**6. Authorization after revocation.** A foreign limited partnership whose authority to transact business in this State has been revoked under this section and that wishes to transact business again in this State must be authorized as provided in this chapter.

#### Maine Comment

This section is based on former sections 498-A and 498-B and maintains uniformity with the other Maine business entity laws for grounds for, procedure for and effect of revocation of authority for foreign limited partnerships.

#### **§1417. Cancellation of certificate of authority; effect of failure to have certificate**

**1. Notice of cancellation.** In order to cancel its certificate of authority to transact business in this State, a foreign limited partnership must deliver to the Secretary of State for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 1326.

**2. Certificate of authority to maintain action or proceeding.** A foreign limited partnership transacting business in this State may not maintain an action or proceeding in this

State unless it has a certificate of authority to transact business in this State.

**3. Validity of contract or act; defending action or proceeding.** The failure of a foreign limited partnership to have a certificate of authority to transact business in this State does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this State.

**4. Liability based solely on transaction without certificate of authority.** A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without a certificate of authority.

**5. Secretary of State appointed as agent.** If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it appoints the Secretary of State as its agent for service of process for rights of action arising out of the transaction of business in this State.

**Uniform Comment**

(This is section 907 of the Uniform Limited Partnership Act (2001).)

**Source** - RULPA Section 907(d); ULLCA Section 1008.

**§1418. Action by Attorney General**

The Attorney General may maintain an action to restrain a foreign limited partnership from transacting business in this State in violation of this subchapter.

**Uniform Comment**

(This is section 908 of the Uniform Limited Partnership Act (2001).)

**Source** - RULPA Section 908; ULLCA Section 1009.

**SUBCHAPTER 10**

**ACTIONS BY PARTNERS**

**§1421. Direct action by partner**

1. Action against limited partnership or partner. Subject to subsection 2, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

2. Plead and prove actual or threatened injury. A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

3. Accrual of right of action; time limitation. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**Uniform Comment**

(This is section 1001 of the Uniform Limited Partnership Act (2001).)

**Subsection (a)** - Source: RUPA Section 405(b).

**Subsection (b)** - In ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract. Within a limited partnership, however, different circumstances may exist. A partner does not have a direct claim against another partner merely because the other partner has breached the partnership agreement. Likewise a partner's violation of this Act does not automatically create a direct claim for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the limited partnership.

The reference to "threatened" harm is intended to encompass claims for injunctive relief and does not relax standards for proving injury.

**§1422. Derivative action**

A partner may maintain a derivative action to enforce a right of a limited partnership if:

1. Demand for limited partnership to enforce. The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

2. Demand futile. A demand would be futile.

**Uniform Comment**

(This is section 1002 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 1001.

**§1423. Proper plaintiff**

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

1. Partner when conduct occurred. That was a partner when the conduct giving rise to the action occurred; or

2. Partner status. Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

**Uniform Comment**

(This is section 1003 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 1002.

**§1424. Pleading**

In a derivative action, the complaint must state with particularity:

1. Date and content of demand; response. The date and content of the plaintiff's demand and the general partners' response to the demand; or

2. Demand excused. Why the demand should be excused as futile.

**Uniform Comment**



(This is section 1004 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 1003.

**§1425. Proceeds and expenses**

**1. Proceeds.** Except as otherwise provided in subsection 2:

**A.** Any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the limited partnership and not to the derivative plaintiff; and

**B.** If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

**2. Expenses.** If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.

**Uniform Comment**

(This is section 1005 of the Uniform Limited Partnership Act (2001).)

Source - RULPA Section 1004.

**SUBCHAPTER 11**

**CONVERSION AND MERGER**

**§1431. Definitions**

As used in this subchapter, the following terms have the following meanings.

**1. Constituent limited partnership.** "Constituent limited partnership" means a constituent organization that is a limited partnership.

**2. Constituent organization.** "Constituent organization" means an organization that is party to a merger.

**3. Converted organization.** "Converted organization" means the organization into which a converting organization converts pursuant to sections 1432 to 1435.

2       4.   Converting limited partnership.   "Converting limited  
partnership" means a converting organization that is a limited  
partnership.

4  
6       5.   Converting organization.   "Converting organization"  
means an organization that converts into another organization  
pursuant to section 1432.

8  
10       6.   General partner.   "General partner" means a general  
partner of a limited partnership.

12       7.   Governing statute.   "Governing statute" of an  
organization means the statute that governs the organization's  
internal affairs.

14  
16       8.   Organization.   "Organization" means a general  
partnership, including a limited liability partnership; limited  
18       partnership, including a limited liability limited partnership;  
limited liability company; business trust; corporation; or any  
20       other person having a governing statute. "Organization" includes  
domestic and foreign organizations whether or not organized for  
22       profit.

24       9.   Organizational documents.   "Organizational documents"  
means:

26  
28       A.   For a domestic or foreign general partnership, its  
partnership agreement;

30       B.   For a limited partnership or foreign limited  
partnership, its certificate of limited partnership and  
32       partnership agreement;

34       C.   For a domestic or foreign limited liability company, its  
articles of organization and operating agreement, or  
36       comparable records as provided in its governing statute;

38       D.   For a business trust, its agreement of trust and  
declaration of trust;

40  
42       E.   For a domestic or foreign corporation for profit, its  
articles of incorporation, bylaws and other agreements among  
its shareholders that are authorized by its governing  
44       statute, or comparable records as provided in its governing  
statute; and

46  
48       F.   For any other organization, the basic records that  
create the organization and determine its internal  
governance and the relations among the persons that own it,  
50       have an interest in it or are members of it.

**10. Personal liability.** "Personal liability" means personal liability for a debt, liability or other obligation of an organization that is imposed on a person that co-owns, has an interest in or is a member of the organization:

A. By the organization's governing statute solely by reason of the person co-owning, having an interest in or being a member of the organization; or

B. By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in or being a member of the organization.

11. **Surviving organization.** "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

### Uniform Comment

(This is section 1101 of the Uniform Limited Partnership Act (2001).)

This section contains definitions specific to this Article.

### §1432. Conversion

1. Conversion to or from limited partnership. An organization other than a limited partnership may convert to a limited partnership and a limited partnership may convert to another organization pursuant to this section and sections 1433 to 1435 and a plan of conversion if:

A. The other organization's governing statute authorizes the conversion;

B. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

C. The other organization complies with its governing statute in effecting the conversion.

2. Plan of conversion. A plan of conversion must be in a record and must include:

A. The name and form of the organization before conversion;

B. The name and form of the organization after conversion;  
and

C. The terms and conditions of the conversion, including  
the manner and basis for converting interests in the  
converting organization into any combination of money,  
interests in the converted organization and other  
consideration; and

D. The organizational documents of the converted  
organization.

#### Uniform Comment

(This is section 1102 of the Uniform Limited Partnership Act  
(2001).)

In a statutory conversion an existing entity changes its form, the jurisdiction of its governing statute or both. For example, a limited partnership organized under the laws of one jurisdiction might convert to:

- limited liability company (or other form of entity) organized under the laws of the same jurisdiction,
- a limited liability company (or other form of entity) organized under the laws of another jurisdiction, or
- a limited partnership organized under the laws of another jurisdiction (referred to in some statutes as "domestication").

In contrast to a merger, which involves at least two entities, a conversion involves only one. The converting and converted organization are the same entity. See Section 1105(a). For this Act to apply to a conversion, either the converting or converted organization must be a limited partnership subject to this Act. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner's obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

**Subsection (a)(2)** - Given the very broad definition of "organization," Section 1101(8), this Act authorizes conversions

involving non-profit organizations. This provision is intended as an additional safeguard for that context.

**Subsection (b)(3)** - A plan of conversion may provide that some persons with interests in the converting organization will receive interests in the converted organization while other persons with interests in the converting organization will receive some other form of consideration. Thus, a "squeeze out" conversion is possible. As noted above, if the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which a squeeze out conversion occurs.

If the converting organization is a limited partnership, the plan of conversion will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a converting limited partnership or its partners to mere transferees. That issue is a matter for other law.

**Maine Comment**

Note that nonprofit organizations that are public charities must comply with the notice and approval provisions of chapter 9 of Title 5 (5 M.R.S.A. §§ 194 - 194-K) prior to completing a conversion transaction, as defined in 5 M.R.S.A. § 194-B.

**§1433. Action on plan of conversion by converting limited partnership**

**1. Consent.** Subject to section 1440, a plan of conversion must be consented to by all the partners of a converting limited partnership.

**2. Amend plan or abandon planned conversion.** Subject to section 1440 and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 1434, a converting limited partnership may amend the plan or abandon the planned conversion:

**A. As provided in the plan; and**

**B. Except as prohibited by the plan, by the same consent as was required to approve the plan.**

**Uniform Comment**

**(This is section 1103 of the Uniform Limited Partnership Act (2001).)**

2       Section 1110 imposes special consent requirements for  
4 transactions which might cause a partner to have "personal  
6 liability," as defined in Section 1101(10) for entity debts. The  
partnership agreement may not restrict the rights provided by  
Section 1110. See Section 110(b)(12).

8       **Subsection (a)** - Like many of the rules stated in this Act,  
10 this subsection's requirement of unanimous consent is a default  
12 rule. Subject only to Section 1110, the partnership agreement may  
14 state a different quantum of consent or provide a completely  
16 different approval mechanism. Varying this subsection's rule  
18 means that a partner might be subject to a conversion (including  
20 a "squeeze out" conversion) without consent and with no appraisal  
22 remedy. If the converting organization is a limited partnership  
24 subject to this Act, the partners of the converting organization  
are subject to the duties and obligations stated in this Act.  
Those duties would apply to the process and terms under which the  
conversion occurs. However, if the partnership agreement allows  
for a conversion with less than unanimous consent, the mere fact  
a partner objects to a conversion does not mean that the partners  
favoring, arranging, consenting to or effecting the conversation  
have breached a duty under this Act.

26 **§1434. Filings required for conversion; effective date**

28 **1. Deliver to Secretary of State articles of conversion;**  
**certificate of limited partnership. After a plan of conversion**  
**is approved:**

30 **A. A converting limited partnership shall deliver to the**  
**Secretary of State for filing articles of conversion, which**  
**must include:**

34 **(1) A statement that the limited partnership has been**  
**converted into another organization;**

36 **(2) The name and form of the organization and the**  
**jurisdiction of its governing statute;**

38 **(3) The date the conversion is effective under the**  
**governing statute of the converted organization;**

40 **(4) A statement that the conversion was approved as**  
**required by this chapter;**

42 **(5) A statement that the conversion was approved as**  
**required by the governing statute of the converted**  
**organization; and**

(6) If the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office that the Secretary of State may use for the purposes of section 1435, subsection 3; and

B. If the converting organization is not a converting limited partnership, the converting organization shall deliver to the Secretary of State for filing a certificate of limited partnership, which must include, in addition to the information required by section 1321:

(1) A statement that the limited partnership was converted from another organization;

(2) The name and form of the organization and the jurisdiction of its governing statute; and

(3) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

**2. Conversion effective.** A conversion becomes effective:

A. If the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

B. If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

#### **Uniform Comment**

(This is section 1104 of the Uniform Limited Partnership Act (2001).)

**Subsection (b)** - The effective date of a conversion is determined under the governing statute of the converted organization.

#### **§1435. Effect of conversion**

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

**2. Effect of conversion.** When a conversion takes effect:

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

4 converted organization;

8        conversion had not occurred;

12        converting organization remain vested in the converted  
        organization;

16       the terms and conditions of the plan of conversion take  
       effect; and

20       dissolve a converting limited partnership for the purposes  
       of subchapter 8.

24 converted organization that is a foreign organization consents to  
25 the jurisdiction of the courts of this State to enforce any  
26 obligation owed by the converting organization, if before the  
27 conversion the converting organization was subject to suit in  
28 this State on the obligation. A converted organization that is a  
29 foreign organization and not authorized to transact business in  
30 this State appoints the Secretary of State as its agent for  
31 service of process for purposes of enforcing an obligation under  
32 this subsection. Service on the Secretary of State under this  
33 subsection is made in the same manner and with the same  
34 consequences as in section 1317, subsections 3 and 4.

36 Uniform Comment

38     (This is section 1105 of the Uniform Limited Partnership Act  
       (2001).)

42           **Subsection (a)** - A conversion changes an entity's legal  
type, but does not create a new entity.

44           **Subsection (b)** - Unlike a merger, a conversion involves a  
single entity, and the conversion therefore does not transfer any  
46   of the entity's rights or obligations.

48 Maine Comment



The effect of a conversion on a Maine corporation that is a converting entity is governed by 13-C M.R.S.A. §957.

**§1436. Merger**

**1. Merger requirements.** A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 1437 through 1439 and a plan of merger if:

A. The governing statute of each of the other organizations authorizes the merger;

B. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

C. Each of the other organizations complies with its governing statute in effecting the merger.

**2. Plan of merger.** A plan of merger must be in a record and must include:

A. The name and form of each constituent organization;

B. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

C. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization and other consideration;

D. If the surviving organization is to be created by the merger, the surviving organization's organizational documents; and

E. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

**Uniform Comment**

(This is section 1106 of the Uniform Limited Partnership Act (2001).)

For this Act to apply to a merger, at least one of the constituent organizations must be a limited partnership subject to this Act. The partners of any such limited partnership are

subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner's obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

**Subsection (a)(2)** - Given the very broad definition of "organization," Section 1101(8), this Act authorizes mergers involving non-profit organizations. This provision is intended as an additional safeguard for that context.

**Subsection (b)(3)** - A plan of merger may provide that some persons with interests in a constituent organization will receive interests in the surviving organization, while other persons with interests in the same constituent organization will receive some other form of consideration. Thus, a "squeeze out" merger is possible. As noted above, the duties and obligations stated in this Act apply to the partners of a constituent organization that is a limited partnership subject to this Act. Those duties would apply to the process and terms under which a squeeze out merger occurs.

If a constituent organization is a limited partnership, the plan of merger will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a constituent limited partnership or its partners to mere transferees. That issue is a matter for other law.

#### **Maine Comment**

In Maine, nonprofit organizations that are public charities must comply with the notice and approval provisions of chapter 9 of Title 5 (5 M.R.S.A. §§ 194-194-K) prior to completing a merger or other conversion transaction, as defined in 5 M.R.S.A. § 194-B.

#### **§1437. Action on plan of merger by constituent limited partnership**

**1. Consent.** Subject to section 1440, a plan of merger must be consented to by all the partners of a constituent limited partnership.

**2. Amend plan or abandon planned merger.** Subject to section 1440 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 1438, a constituent limited partnership may amend the plan or abandon the planned merger:

**A. As provided in the plan; and**

B. Except as prohibited by the plan, with the same consent as was required to approve the plan.

**Uniform Comment**

(This is section 1107 of the Uniform Limited Partnership Act (2001).)

Section 1110 imposes special consent requirements for transactions which might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

**Subsection (a)** - Like many of the rules stated in this Act, this subsection's requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection's rule means that a partner might be subject to a merger (including a "squeeze out" merger) without consent and with no appraisal remedy. The partners of a constituent limited partnership are subject to the duties and obligations stated in this Act, and those duties would apply to the process and terms under which the merger occurs. However, if the partnership agreement allows for a merger with less than unanimous consent, the mere fact a partner objects to a merger does not mean that the partners favoring, arranging, consenting to or effecting the merger have breached a duty under this Act.

**§1438. Filings required for merger; effective date**

**1. Articles of merger; signed.** After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

A. Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

B. Each other preexisting constituent organization, by an authorized representative.

**2. Articles of merger; contents.** The articles of merger must include:

A. The name and form of each constituent organization and the jurisdiction of its governing statute;

B. The name and form of the surviving organization, the jurisdiction of its governing statute and, if the surviving

2       organization is created by the merger, a statement to that  
3       effect;

4       C. The date the merger is effective under the governing  
5       statute of the surviving organization;

6       D. If the surviving organization is to be created by the  
7       merger:

10           (1) If the surviving organization will be a limited  
11           partnership, the limited partnership's certificate of  
12           limited partnership; or

14           (2) If the surviving organization will be an  
15           organization other than a limited partnership, the  
16           organizational document that creates the organization;

18       E. If the surviving organization preexists the merger, any  
19       amendments provided for in the plan of merger for the  
20       organizational document that created the organization;

22       F. A statement as to each constituent organization that the  
23       merger was approved as required by the organization's  
24       governing statute;

26       G. If the surviving organization is a foreign organization  
27       not authorized to transact business in this State, the  
28       street and mailing address of an office that the Secretary  
29       of State may use for the purposes of section 1439,  
30       subsection 2; and

32       H. Any additional information required by the governing  
33       statute of any constituent organization.

34       3. Deliver to Secretary of State. Each constituent limited  
35       partnership shall deliver the articles of merger for filing in  
36       the office of the Secretary of State.

38       4. Merger effective. A merger becomes effective under this  
39       subchapter:

42       A. If the surviving organization is a limited partnership,  
43       upon the later of:

44           (1) Compliance with subsection 3; and

46           (2) Subject to section 1326, subsection 3, as  
47           specified in the articles of merger; or

B. If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

**Uniform Comment**

(This is section 1108 of the Uniform Limited Partnership Act (2001).)

**Subsection (b)** - The effective date of a merger is determined under the governing statute of the surviving organization.

**§1439. Effect of merger**

**1. Effect of merger. When a merger becomes effective:**

**A. The surviving organization continues or comes into existence;**

**B. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;**

**C. All property owned by each constituent organization that ceases to exist vests in the surviving organization;**

**D. All debts, liabilities and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;**

**E. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;**

**F. Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist vest in the surviving organization;**

**G. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;**

**H. Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of subchapter 8;**

**I. If the surviving organization is created by the merger:**

(1) If the surviving organization is a limited partnership, the certificate of limited partnership becomes effective; or

(2) If the surviving organization is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

J. If the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

**2. Foreign organization.** A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the Secretary of State as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in section 1317, subsections 3 and 4.

**Maine Comment**

The effect of a merger on a Maine corporation is governed by 13-C M.R.S.A. §1107.

**§1440. Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status**

**1. Consent for personal liability; exceptions.** If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner unless:

A. The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

B. The partner has consented to the provision of the partnership agreement.

**2. Consent required for amendment to certificate; exception.** An amendment to a certificate of limited partnership

that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

A. The limited partnership's partnership agreement provides for the amendment with the consent of fewer than all the general partners; and

B. Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

3. **Insufficient consent.** A partner does not give the consent required by subsection 1 or 2 merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

#### Uniform Comment

(This is section 1110 of the Uniform Limited Partnership Act (2001).)

This section imposes special consent requirements for transactions that might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by this section. See Section 110(b)(12).

**Subsection (c)** - This subsection prevents circumvention of the consent requirements of subsections (a) and (b).

**Example:** As initially a consented to, the partnership agreement of a limited partnership leaves in place the Act's rule requiring unanimous consent for a conversion or merger. The partnership agreement does provide, however, that the agreement may be amended with the affirmative vote of general partners owning 2/3 of the rights to receive distributions as general partners and of limited partners owning 2/3 of the rights to receive distributions as limited partners. The required vote is obtained for an amendment that permits approval of a conversion or merger by the same vote necessary to amend the partnership agreement. Partner X votes for the amendment. Partner Y votes against. Partner Z does not vote.

Subsequently the limited partnership proposes to convert to a limited partnership (not an LLLP) organized under the laws of another state, with Partners X, Y and Z each receiving interests as general partners. Under the amended partnership agreement, approval of the conversion does not require unanimous consent. However, since after the conversion, Partners X, Y and Z will

each have "personal liability with respect to [the] converted . . . organization," Section 1110(a) applies.

As a result, the approval of the plan of conversion will require the consent of Partner Y and Partner Z. They did not consent to the amendment that provided for non-unanimous approval of a conversion or merger. Their initial consent to the partnership agreement, with its provision permitting non-unanimous consent for amendments, does not satisfy the consent requirement of Subsection 1110(a)(2).

In contrast, Partner X's consent is not required. Partner X lost its Section 1110(a) veto right by consenting directly to the amendment to the partnership agreement which permitted non-unanimous consent to a conversion or merger.

**§1441. Liability of general partner after conversion or merger**

**1. Liability not discharged.** A conversion or merger under this subchapter does not discharge any liability under sections 1354 and 1377 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

A. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

B. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

C. If a person is required to pay any amount under this subsection:

(1) The person has a right of contribution from each other person that was liable as a general partner under section 1354 when the obligation was incurred and has not been released from the obligation under section 1377; and

(2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

**2. Additional liability.** In addition to any other liability provided by law:



2 A. A person that immediately before a conversion or merger  
3 became effective was a general partner in a converting or  
4 constituent limited partnership that was not a limited  
5 liability limited partnership is personally liable for each  
6 obligation of the converted or surviving organization  
7 arising from a transaction with a 3rd party after the  
8 conversion or merger becomes effective if, at the time the  
9 3rd party enters into the transaction, the 3rd party:

10 (1) Does not have notice of the conversion or merger;  
11 and

12 (2) Reasonably believes that:

13 (i) The converted or surviving business is the  
14 converting or constituent limited partnership;

15 (ii) The converting or constituent limited  
16 partnership is not a limited liability limited  
17 partnership; and

18 (iii) The person is a general partner in the  
19 converting or constituent limited partnership; and

20 B. A person that was dissociated as a general partner from  
21 a converting or constituent limited partnership before the  
22 conversion or merger became effective is personally liable  
23 for each obligation of the converted or surviving  
24 organization arising from a transaction with a 3rd party  
25 after the conversion or merger becomes effective if:

26 (1) Immediately before the conversion or merger became  
27 effective the converting or surviving limited  
28 partnership was not a limited liability limited  
29 partnership; and

30 (2) At the time the 3rd party enters into the  
31 transaction less than 2 years have passed since the  
32 person dissociated as a general partner and the 3rd  
33 party:

34 (i) Does not have notice of the dissociation;

35 (ii) Does not have notice of the conversion or  
36 merger; and

37 (iii) Reasonably believes that the converted or  
38 surviving organization is the converting or  
39 constituent limited partnership, the converting or  
40 constituent limited partnership is not a limited  
41 liability limited partnership;

liability limited partnership and the person is a  
general partner in the converting or constituent  
limited partnership.

**Uniform Comment**

(This is section 1111 of the Uniform Limited Partnership Act  
(2001).)

This section extrapolates the approach of Section 607 into  
the context of a conversion or merger involving a limited  
partnership.

**Subsection (a)** - This subsection pertains to general partner  
liability for obligations which a limited partnership incurred  
before a conversion or merger. Following RUPA and the UPA, this  
Act leaves to other law the question of when a limited  
partnership obligation is incurred.

If the converting or constituent limited partnership was a  
limited liability limited partnership at all times before the  
conversion or merger, this subsection will not apply because no  
person will have any liability under Section 404 or 607.

**Subsection (b)** - This subsection pertains to entity  
obligations incurred after a conversion or merger and creates  
lingering exposure to personal liability for general partners and  
persons previously dissociated as general partners. In contrast  
to subsection (a)(3), this subsection does not provide for  
contribution among persons personally liable under this section  
for the same entity obligation. That issue is left for other law.

**Subsection (b)(1)** - If the converting or constituent limited  
partnership was a limited liability limited partnership  
immediately before the conversion or merger, there is no  
lingering exposure to personal liability under this subsection.

**Subsection (b)(1)(A)** - A person might have notice under  
Section 103(d)(4) or (5) as well as under Section 103(b).

**Subsection (b)(2)(B)(i)** - A person might have notice under  
Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)(2)(B)(ii)** - A person might have notice under  
Section 103(d)(4) or (5) as well as under Section 103(b).

**§1442. Power of general partners and persons dissociated as  
general partners to bind organization after conversion or  
merger**

1. Act of general partner before conversion or merger. An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective if:

A. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 1352; and

B. At the time the 3rd party enters into the transaction, the 3rd party:

(1) Does not have notice of the conversion or merger; and

(2) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

2. Act of dissociated general partner before conversion or merger. An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective if:

A. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 1352 if the person had been a general partner; and

B. At the time the 3rd party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the 3rd party:

(1) Does not have notice of the dissociation;

(2) Does not have notice of the conversion or merger; and

(3) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

2 3. Liable for damage. If a person having knowledge of the  
3 conversion or merger causes a converted or surviving organization  
4 to incur an obligation under subsection 1 or 2, the person is  
5 liable:

6 A. To the converted or surviving organization for any  
7 damage caused to the organization arising from the  
8 obligation; and

10 B. If another person is liable for the obligation, to that  
11 other person for any damage caused to that other person  
12 arising from the liability.

14 **Uniform Comment**

16 (This is section 1112 of the Uniform Limited Partnership Act  
17 (2001).)

18  
19 This section extrapolates the approach of Section 606 into  
20 the context of a conversion or merger involving a limited  
21 partnership.

22  
23 **Subsection (a)(2)(A)** - A person might have notice under  
24 Section 103(d)(4) or (5) as well as under Section 103(b).

26 **Subsection (b)(2)(A)** - A person might have notice under  
27 Section 103(d)(1) as well as under Section 103(b).

28  
29 **Subsection (b)(2)(B)** - A person might have notice under  
30 Section 103(d)(4) or (5) as well as under Section 103(b).

32 **§1443. Subchapter not exclusive**

34 This subchapter does not preclude an entity from being  
35 converted or merged under other law.

38 **SUBCHAPTER 12**

40 **MISCELLANEOUS PROVISIONS**

42 **§1451. Uniformity of application and construction**

44 In applying and construing this Act, consideration must be  
45 given to the need to promote uniformity of the law with respect  
46 to its subject matter among states that enact it.

48 **§1452. Relation to electronic signatures in global and national**  
49 **commerce act**

This chapter modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but this chapter does not modify, limit or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

**§1453. Application to existing relationships**

1. Before July 1, 2008. Before July 1, 2008, this chapter governs only:

A. A limited partnership formed on or after July 1, 2007; and

B. Except as otherwise provided in subsections 3 and 4, a limited partnership formed before July 1, 2007 that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

2. On or after July 1, 2008. Except as otherwise provided in subsection 3, on and after July 1, 2008, this chapter governs all limited partnerships.

3. Existing limited partnerships. With respect to a limited partnership formed before July 1, 2007, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement.

A. Section 1304, subsection 3 does not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2007.

B. The limited partnership is not required to amend its certificate of limited partnership to comply with section 1321, subsection 1, paragraph D.

C. Sections 1371 and 1372 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before July 1, 2007.

D. Section 1373, subsection 4 does not apply.

E. Section 1373, subsection 5 does not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2007.

F. Section 1391, subsection 3 does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2007.

4. Limited partnership that elects to be subject. With respect to a limited partnership that elects pursuant to subsection 1, paragraph B to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to 3rd parties apply:

A. Before July 1, 2008, to:

(1) A 3rd party that had not done business with the limited partnership in the year before the election took effect; and

(2) A 3rd party that had done business with the limited partnership in the year before the election took effect only if the 3rd party knows or has received a notification of the election; and

B. On and after July 1, 2008, to all 3rd parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph A, subparagraph (2).

#### Uniform Comment

(This is section 1206 of the Uniform Limited Partner Act.)

**Source:** RUPA Section 1206.

This section pertains exclusively to domestic limited partnerships - i.e., to limited partnerships formed under this Act or a predecessor statute enacted by the same jurisdiction. For foreign limited partnerships, see the Comment to Section 1204.

This Act governs all limited partnerships formed on or after the Act's effective date. As for pre-existing limited partnerships, this section establishes an optional "elect in" period and a mandatory, all-inclusive date. The "elect in" period runs from the effective date, stated in Section 1204, until the all-inclusive date, stated in both subsection(a) and (b).

During the "elect in" period, a pre-existing limited partnership may elect to become subject to this Act. Subsection (d) states certain important consequences for a limited

partnership that elects in. Beginning on the all-inclusive date, each pre-existing limited partnership that has not previously elected in becomes subject to this Act by operation of law.

**Subsection (c)** - This subsection specifies six provisions of this Act which never automatically apply to any pre-existing limited partnership. Except for subsection (c)(2), the list refers to provisions governing the relationship of the partners inter se and considered too different than predecessor law to be fairly applied to a preexisting limited partnership without the consent of its partners. Each of these inter se provisions is subject to change in the partnership agreement. However, many pre-existing limited partnerships may have taken for granted the analogous provisions of predecessor law and may therefore not have addressed the issues in their partnership agreements.

**Subsection (c)(1)** - Section 104(c) provides that a limited partnership has a perpetual duration.

**Subsection (c)(2)** - Section 201(a)(4) requires the certificate of limited partnership to state "whether the limited partnership is a limited liability limited partnership." The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP and therefore is inapposite to pre-existing limited partnerships. Moreover, applying the requirement to pre-existing limited partnerships would create a significant administrative burden both for limited partnerships and the filing officer and probably would result in many pre-existing limited partnerships being in violation of the requirement.

**Subsection (c)(3)** - Section 601 and 602 concern a person's dissociation as a limited partner.

**Subsection (c)(4)** - Section 603(4) provides for the expulsion of a general partner by the unanimous consent of the other partners in specified circumstances.

**Subsection (c)(5)** - Section 603(5) provides for the expulsion of a general partner by a court in specified circumstances.

**Subsection (c)(6)** - Section 801(3) concerns the continuance or dissolution of a limited partnership following a person's dissociation as a general partner.

**Subsection (d)** - Following RUPA Section 1206(c), this subsection limits the efficacy of the Act's liability protections for partners of an "electing in" limited partnership. The limitation:

• applies only to the benefit of "a third party that had done business with the limited partnership in the year before the election took effect," and

• ceases to apply when "the third party knows or has received a notification of the election" or on the "all-inclusive" date, whichever occurs first.

If the limitation causes a provision of this Act to be inapplicable with regard to a third party, the comparable provision of predecessor law applies.

**Example:** A pre-existing limited partnership elects to be governed by this Act before the "all-inclusive" date. Two months before the election, Third Party provided services to the limited partnership. Third Party neither knows nor has received a notification of the election. Until the "all inclusive" date, with regard to Third Party, Section 303's full liability shield does not apply to each limited partner. Instead, each limited partner has the liability shield applicable under predecessor law.

**Subsection (d)(2)** - To the extent subsection (d) causes a provision of this Act to be inapplicable when an obligation is incurred, the inapplicability continues as to that obligation even after the "all inclusive" date.

**§1454. Savings clause**

This chapter does not affect an action commenced, proceeding brought or right accrued before this chapter takes effect.

**§1455. Duty of Secretary of State**

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

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

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

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

Maine Comment



This section is based on former section 528.

**§1456. Rules**

The Secretary of State may adopt rules not inconsistent with this chapter pertaining to the filing of documents with the Secretary of State. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. These may include, but are not limited to, rules to:

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

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

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

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

5. Effective dates of filings. Unless specifically stated in this chapter, set forth the effective dates of filings required by this chapter; and

6. Annual report filing date. Provide alternative dates for filing annual reports and for determining the dates covered by those reports.

**Maine Comment**

This section is based on former section 413.

**§1457. Expedited service**

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

2        Rules adopted pursuant to this section are routine technical  
4        rules as defined in Title 5, chapter 375, subchapter 2-A.

6                                **Maine Comment**

8                This section is based on former section 414.

10        **§1458. Access to data base**

12        The Secretary of State may provide public access to the data  
14        base through a dial-in modem, through public terminals and  
16        through electronic duplicates of the data base. If access to the  
18        data base is provided to the public, the Secretary of State may  
      adopt rules in accordance with the Maine Administrative Procedure  
      Act to establish a fee schedule and governing procedures.

20        Rules adopted pursuant to this section are routine technical  
      rules as defined in Title 5, chapter 375, subchapter 2-A.

22                                **Maine Comment**

24                This section is based on former section 415.

26        **§1459. Publications**

28        1. Fee schedule. The Secretary of State may establish by  
30        rule in accordance with the Maine Administrative Procedure Act a  
32        fee schedule to cover the cost of printing and distribution of  
      publications and to set the procedures for the sale of these  
      publications.

34        Rules adopted pursuant to this subsection are routine technical  
36        rules as defined in Title 5, chapter 375, subchapter 2-A.

38        2. Deposit in fund. All fees collected pursuant to this  
40        section must be deposited in a fund for use by the Secretary of  
      State for the purpose of replacing and updating publications  
      offered in accordance with this chapter and for funding new  
      publications.

42                                **Maine Comment**

44                This section is based on former section 416.

46        **§1460. Fees; penalties**

48        A document required to be filed under this chapter is not  
50        effective until the applicable fee required by this section is

paid. The following fees or penalties must be paid to and collected by the Secretary of State:

1. Reservation. For filing of an application for reservation of name or a notice of transfer or cancellation of reservation pursuant to section 1309, subsection 1, a fee of \$20 for each limited partnership affected;

2. Assumed or fictitious name. For filing of an application for an assumed name under section 1308, subsection 2, a fee in the amount of \$125, and for filing of an application for a fictitious name under section 1415, a fee of \$40;

3. Termination of assumed or fictitious name. For a termination of an assumed name under section 1308, subsection 2, a fee of \$20; for a termination of a fictitious name under section 1415, a fee of \$20;

4. Registered name. For filing of an application for a registered name of a foreign limited partnership under section 1309, subsection 2, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing. For filing an application to renew the registration of a registered name, a fee of \$200;

5. Change of registered agent and registered office or registered office for domestic limited partnerships. For filing of a statement by a registered agent under section 1315, subsection 2 to change the registered office or to change the name of the current registered agent or for filing of a statement under section 1315, subsection 1 to change the registered agent and registered office or for filing a notice of resignation of a registered agent under section 1316, a fee of \$35;

6. Reinstatement fee after administrative dissolution. For failure to file an annual report, a fee of \$150, to a maximum fee of \$600, regardless of the number of delinquent reports or the period of delinquency; for failure to pay the annual report late filing penalty, a fee of \$150; for failure to appoint or maintain a registered agent or registered office, a fee of \$150; for failure to notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued, a fee of \$150; for failure to file an amended application, a fee of \$150; and for filing false information, a fee of \$150;

7. Certificate of limited partnership, amendment or cancellation. For filing of a certificate of limited partnership under section 1321, a fee of \$175; for a certificate of amendment

under section 1322, a fee of \$50; and for a statement of termination under section 1323, a fee of \$75. For filing of a certificate of amendment under section 1322, subsection 2, paragraph D, a fee of \$20, and for filing a restated certificate of limited partnership under section 1322, a fee of \$80;

**8. Certificate of correction.** For filing of a certificate of correction under section 1327, a fee of \$50;

**9. Foreign limited partnerships.** For filing of an application for authority to do business as a foreign limited partnership under section 1412, a fee of \$250, and for a certificate of amendment under section 1412-A, subsection 2, paragraph A or B or a certificate of cancellation under section 1417, a fee of \$90. For filing a certificate of amendment under section 1412-A, subsection 2, paragraph C or D to change the address of a general partner or to change the address of the registered or principal office, a fee of \$35;

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

**11. Certified copies.** For providing certified copies of any instrument on file as provided for by this chapter, a fee of \$5 for each copy certified in addition to any fee due under subsection 10;

**12. Issuing certificate.** For issuing a certificate of existence, certificate of authority or certificate of fact as provided by section 1329, a fee of \$30;

**13. Preclearance of document.** For preclearance of any document for filing, a fee of \$100;

**14. All other filings.** For receiving and filing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$35;

**15. Annual report.** For filing of an annual report under section 1330 for a domestic limited partnership, a fee of \$85; for filing of an annual report under section 1330 for a foreign limited partnership, a fee of \$150;

**16. Amended annual report.** For filing an amended annual report for a domestic limited partnership under section 1330, subsection 2, a fee of \$85; for filing an amended annual report for a foreign limited partnership under section 1330, subsection 2, a fee of \$150;

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**§311. Applicability of chapter**

The provisions of this chapter govern the organization and management of financial institutions operating as corporations, limited liability companies, limited partnerships and limited liability partnerships. Unless otherwise indicated in this Title, the provisions of Title 13-C apply to financial institutions operating as corporations; Title 31, chapter ~~11~~, 19 applies to financial institutions operating as limited partnerships; Title 31, chapter 13 applies to financial institutions operating as limited liability companies; and Title 31, chapter 15 applies to financial institutions operating as limited liability partnerships.

**Sec. D-2. 9-B MRSA §316-A, first ¶**, as corrected by RR 2001, c. 2, Pt. B, §8 and affected by §58, is amended to read:

Except as provided in this section, the management and operations of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter ~~11~~ 19; Title 31, chapter 13; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of the governing body.

**Sec. D-3. 9-B MRSA §317-A, first ¶**, as corrected by RR 2001, c. 2, Pt. B, §9 and affected by §58, is amended to read:

Except as provided in this section, the powers and duties of officers of a financial institution organized under this chapter are governed by Title 13-C; Title 31, chapter ~~11~~ 19; Title 31, chapter 13; or Title 31, chapter 15, as appropriate, depending upon the organizational form of the financial institution operating under this chapter. The institution's organizational documents must address the powers and duties of officers.

**Sec. D-4. 9-B MRSA §352, sub-§5**, as corrected by RR 2001, c. 2, Pt. B, §12 and affected by §58, is amended to read:

**5. Rights of dissenting investors.** The rights of investors dissenting to the merger or consolidation are those specified in Title 13-C or Title 31, chapter ~~11~~, 13 or 15 or 19, depending upon the organizational form of the institution. To the extent that dissenters' rights are not addressed in Title 31 or these rights are less beneficial to the dissenting investors than those rights listed in the institution's organizational documents, the organizational documents govern.

2       **Sec. D-5. 9-B MRSA §1222, sub-§1**, as corrected by RR 2001, c.  
2, Pt. B, §20 and affected by §58, is amended to read:

4       **1. Organization.** A merchant bank must be organized  
6 pursuant to chapter 31 and must be managed and governed pursuant  
to this Title and the applicable provisions of Title 13-C and  
8 Title 31, chapters 11, 13 and, 15 and 19, depending upon the  
organizational form selected.

10       **Sec. D-6. 10 MRSA §1521, sub-§2-A**, as amended by PL 2003, c.  
12 344, Pt. A, §3, is further amended to read:

14       **2-A. Limited partnership name.** "Limited partnership name"  
includes a limited partnership name, ~~--reserved name, or assumed~~  
16 name under Title 31, section 1308 or reserved name or registered  
name as ~~these terms are~~ used in Title 31, ~~sections 403-A, 404-A,~~  
18 ~~405-A and 406-A respectively~~ section 1309.

20       **Sec. D-7. 10 MRSA §1522, sub-§1, ¶E**, as amended by PL 1981, c.  
684, §4, is further amended to read:

22       E. Consists of a mark ~~which~~ that, when applied to the goods  
24 or services of the applicant, is merely descriptive or  
deceptively misdescriptive of them or, when applied to the  
26 goods or services of the applicant, is primarily  
geographically descriptive or deceptively misdescriptive of  
28 them, except as indications of regional origin may be  
registrable under subsection 3, or is primarily merely a  
surname, provided that nothing in this paragraph may prevent  
30 the registration of a mark used in this State by the  
applicant ~~which~~ that has become distinctive of the  
32 applicant's goods or services. The Secretary of State may  
accept as evidence that the mark has become distinctive, as  
34 applied to the applicant's goods or services, proof of  
continuous use thereof as a mark by the applicant in this  
36 State or elsewhere for the 5 years next preceding the date  
of the filing of the application for registration;

38       **Sec. D-8. 10 MRSA §1522, sub-§1, ¶G**, as amended by PL 2003, c.  
40 344, Pt. A, §6, is further amended to read:

42       G. Is not distinguishable from the real, assumed,  
44 fictitious, reserved or registered name of a corporation,  
limited liability company, limited liability partnership ~~or,~~  
46 limited partnership or limited liability limited  
partnership, unless the corporation, limited liability  
company, limited liability partnership ~~or,~~ limited  
48 partnership or limited liability limited partnership  
executes and files with the Secretary of State proof of  
50 authorization of the use of a mark similar to the real,

assumed, fictitious, reserved or registered name of a corporation, limited liability company, limited liability partnership or, limited partnership or limited liability limited partnership by the applicant seeking to use the mark;

**Sec. D-9. 10 MRSA §1522, sub-§1, ¶J**, as enacted by PL 1997, c. 633, §2, is amended to read:

J. Notwithstanding paragraph G, is identical to a corporate, limited liability company, limited liability partnership or, limited partnership or limited liability limited partnership name, unless the corporation, limited liability company, limited liability partnership or, limited partnership or limited liability limited partnership is the same entity as the applicant that is seeking to register the mark and files proof of ownership with the Secretary of State.

**Sec. D-10. 13-B MRSA §301-A, sub-§6, ¶A**, as enacted by PL 2003, c. 344, Pt. B, §9, is amended to read:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";

**Sec. D-11. 13-C MRSA §401, sub-§6, ¶A**, as amended by PL 2003, c. 344, Pt. B, §46, is further amended to read:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" or "professional corporation";

**Sec. D-12. 18-B MRSA §1011, sub-§1**, as enacted by PL 2003, c. 618, Pt. A, §1 and affected by §2, is amended to read:

1. **Not personally liable on contract.** Except as otherwise provided in subsection 3 or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the



trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act or the ~~Maine--Revised~~ Uniform Limited Partnership Act.

**Sec. D-13. 31 MRSA §603-A, sub-§6, ¶A**, as enacted by PL 2003, c. 344, Pt. C, §20, is amended to read:

A. Words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";

**Sec. D-14. 31 MRSA §760**, as corrected by RR 2001, c. 2, Pt. B, §51 and affected by §58, is amended to read:

**§760. Application to existing foreign limited liability companies; definition**

All foreign limited liability companies qualified as foreign corporations or limited partnerships before January 1, 1995 are governed by this Act on and after January 1, 1995. By April 1, 1995 a manager or, if there is no manager, a member of each foreign limited liability company shall file with the Secretary of State an application for authority to do business in this State under this Act and cancel their authority to do business in this State under chapter ~~11~~ 19 and former Title 13-A. If the foreign limited liability company fails to file the new application for authority to do business in this State by April 1, 1995, the Secretary of State may revoke the authority of the limited liability company to do business in this State under section 719.

**Sec. D-15. 31 MRSA §762**, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

**§762. References to limited partnerships**

Unless the context indicates otherwise, all references to limited partnerships in any other statute in effect on the effective date of this chapter in this State are deemed to include limited liability companies. This section does not apply to the ~~Maine--Revised~~ Uniform Limited Partnership Act, it being the intent of this section only to include limited liability companies as entities when other entities are referenced for purposes other than those covered in this chapter.

2       **Sec. D-16. 31 MRSA §803-A, sub-§6, ¶A**, as enacted by PL 2003,  
c. 344, Pt. C, §35, is amended to read:

4           A. Words or abbreviations of words that describe the nature  
6       of the entity, including "professional association,"  
"corporation," "company," "incorporated," "chartered,"  
8       "limited," "limited partnership," "limited liability  
company," "professional limited liability company," "limited  
10       liability partnership," "registered limited liability  
partnership," "limited liability limited partnership,"  
12       "service corporation" and "professional corporation";

14       **Sec. D-17. 31 MRSA §876**, as corrected by RR 2001, c. 2, Pt.  
B, §53 and affected by §58, is amended to read:

16       **§876. Application to existing foreign limited liability**  
18       **partnerships; definition**

20       All foreign limited liability partnerships qualified as  
foreign corporations or limited partnerships or limited liability  
22       companies before September 1, 1996 are governed by this Act on  
and after September 1, 1996. By December 1, 1996 a partner of  
24       each foreign limited liability partnership shall file with the  
Secretary of State an application for authority to do business in  
26       this State under this Act and shall cancel the partnership's  
authority to do business in this State under chapter ~~11~~ 19,  
28       chapter 13 or former Title 13-A. If the foreign limited  
liability partnership fails to file the new application for  
30       authority to do business in this State by December 1, 1996, it  
must be treated as a general partnership without the status of a  
32       limited liability partnership with respect to any business  
conducted in this State between December 1, 1996 and the date on  
34       which it files that application.

36       **Sec. D-18. Effective date.** This Part takes effect July 1, 2007.'

38       Further amend the bill by relettering or renumbering any  
nonconsecutive Part letter or section number to read  
40       consecutively.

42                               **SUMMARY**

44       This amendment adds to the bill the Uniform Limited  
Partnership Act, adopted by the National Conference of  
46       Commissioners on Uniform State Laws in 2001. The amendment is  
intended to take the place of L.D. 986, which is a concept draft.  
48

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

2 Part A of the bill contains the Uniform Partnership Act, and  
Part B of the bill contains conforming amendments consistent with  
4 Part A. This amendment adds the Uniform Limited Partnership Act  
as Part C and the respective conforming amendments and  
6 cross-references as Part D. A Maine Comment is included when  
necessary to explain a deviation from the Uniform Limited  
Partnership Act.

8  
This amendment revises the conversion language in the  
10 Uniform Partnership Act.

12 This amendment sets the effective date for the Uniform  
Partnership Act, the Uniform Limited Partnership Act and all the  
14 conforming amendments as July 1, 2007.

FISCAL NOTE REQUIRED  
(See attached)

**COMMITTEE AMENDMENT**



Approved: 03/20/06 *MCC*

# 122nd MAINE LEGISLATURE

LD 1609

LR 1469(02)

An Act to Establish the Uniform Partnership Act

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

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## Fiscal Note

Minor cost increase - General Fund