

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2006

CHAPTER 543**S.P. 591 - L.D. 1609****An Act To Establish the Uniform Partnership Act and the Uniform Limited Partnership Act****Be it enacted by the People of the State of Maine as follows:****PART A****Sec. A-1. 31 MRSA c. 9**, as amended, is repealed.**Sec. A-2. 31 MRSA c. 17** is enacted to read:**CHAPTER 17****UNIFORM PARTNERSHIP ACT****SUBCHAPTER 1****GENERAL PROVISIONS****§1001. Definitions**

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

1. Business. "Business" includes every trade, occupation and profession.

2. Debtor in bankruptcy. "Debtor in bankruptcy" means a person who is the subject of:

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

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

3. Distribution. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

4. Foreign limited liability partnership. "Foreign limited liability partnership" means a partnership that:

A. Is formed under laws other than the laws of this State; and

B. Has the status of a limited liability partnership under those laws.

5. Limited liability partnership. "Limited liability partnership" means a partnership that has

registered as a limited liability partnership pursuant to section 821 and does not have a similar statement in effect in any other jurisdiction.

6. Partnership. "Partnership" means an association of 2 or more persons to carry on as co-owners a business for profit formed under section 1022, predecessor law or comparable law of another jurisdiction.

7. Partnership agreement. "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

8. Partnership at will. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

9. Partnership interest; partner's interest in partnership. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

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

11. Property. "Property" means all property, real, personal or mixed, tangible or intangible or any interest therein.

12. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

13. Statement. "Statement" means a statement of dissociation under section 1074, a statement of dissolution under section 1085, a statement of merger under section 1097, a statement electing to be governed by this chapter prior to July 1, 2006 or an amendment or cancellation of any of the foregoing.

14. Transfer. "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

§1002. Knowledge and notice

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

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

- A. Knows of it;
- B. Has received a notification of it; or
- C. Has reason to know it exists from all of the facts known to the person at the time in question.

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

4. Receives notification. A person receives a notification when the notification:

- A. Comes to the person's attention; or
- B. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

5. Person other than individual; reasonable diligence. Except as otherwise provided in subsection 6, a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if that person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

6. Effective as to partnership. A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership except in the case of a fraud on the partnership committed by or with the consent of that partner.

§1003. Effect of partnership agreement; nonwaivable provisions

1. Partnership agreement governs; default. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agree-

ment. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

2. Nonwaivable provisions of chapter. The partnership agreement may not:

A. Vary the rights and duties under section 1005 except to eliminate the duty to provide copies of statements to all of the partners;

B. Unreasonably restrict the right of access to books and records under section 1043, subsection 2;

C. Eliminate the duty of loyalty under section 1044, subsection 2 or section 1063, subsection 2, paragraph C, but:

(1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable; or

(2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

D. Unreasonably reduce the duty of care under section 1044, subsection 3 or section 1063, subsection 2, paragraph C;

E. Eliminate the obligation of good faith and fair dealing under section 1044, subsection 4, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

F. Vary the power to dissociate as a partner under section 1062, subsection 1, except to require the notice under section 1061, subsection 1 to be in writing;

G. Vary the right of a court to expel a partner in the events specified in section 1061, subsection 5;

H. Vary the requirement to wind up the partnership business in cases specified in section 1081, subsection 4, 5 or 6;

I. Vary the law applicable to a limited liability partnership under section 1006, subsection 2; or

J. Restrict rights of 3rd parties under this chapter.

§1004. Supplemental principles of law

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

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

§1005. Execution, filing and recording of statements

1. Filing with Secretary of State. To be effective under this chapter, a statement must be filed in the office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the office of the Secretary of State. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this State.

2. Recorded in registry of deeds. A certified copy of a statement that has been filed in the office of the Secretary of State and recorded in the registry of deeds of the county in which real property is located has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the Secretary of State does not have the effect provided for recorded statements in this chapter.

3. Execution. A statement filed by a partnership must be executed by at least one partner. Other statements must be executed either by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

4. Amendment or cancellation. A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation.

5. Copies. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

6. Secretary of State. The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The registry of deeds may collect a fee for recording a statement.

§1006. Governing law

1. Partnership. Except as otherwise provided in a filed statement, in a written partnership agreement or in subsection 2, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

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

§1007. Partnership subject to amendment or repeal of chapter

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

§1008. Forms

The Secretary of State may prescribe and furnish on request forms for any documents required or permitted to be filed by this chapter. If the Secretary of State so requires, use of these forms is mandatory.

§1009. Filing, service and copying fees

1. Filing fees. The following fees must be paid to the Secretary of State.

A. For filing a statement of disassociation under section 1074, the fee is \$20;

B. For filing a statement of dissolution under section 1085, the fee is \$75;

C. For filing a statement of conversion under section 1092 or 1093, the fee is \$150;

D. For filing a statement of merger under section 1095, the fee is \$150;

E. For any other statement required or permitted to be filed by this chapter, the fee is \$35; and

F. For preclearance of any statement for filing, the fee is \$100.

2. Service of process fee. The Secretary of State shall collect a fee of \$20 each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if that party prevails in the proceeding.

3. Copying and certifying fees. The Secretary of State shall charge the following fees for copying and certifying the copy of any filed documents.

A. For copying, the fee is \$2 per page.

B. For certifying the copy, the fee is \$5.

§1010. Expedited service

The Secretary of State may provide expedited service for the processing of documents in accordance with this chapter. The Secretary of State shall establish a fee schedule and adopt rules to set forth the procedures governing this expedited service. All fees collected as provided by this section must be deposited into a fund for use by the Secretary of State in providing improved filing service.

§1011. Filing duty of Secretary of State

1. Duty to file. If a document delivered to the office of the Secretary of State for filing pursuant to this chapter satisfies the requirements of section 1005, the Secretary of State shall file the document.

2. Recording as filed; acknowledgment. The Secretary of State files a document pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a document, the Secretary of State shall deliver to the partnership or its representative a copy of the document with an acknowledgment of the date of filing.

3. Refusal to file; written explanation. If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within 5 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

4. Ministerial. The Secretary of State's duty to file a document under this section is ministerial, and the filing or refusal to file a document does not:

- A. Affect the validity or invalidity of the document in whole or part;
- B. Relate to the correctness or incorrectness of information contained in the document; or
- C. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§1012. Appeal Secretary of State's refusal to file document

1. Commencing an appeal. If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the partnership within 30 days after the return of the document may appeal the refusal to the Superior Court of the county where the corporation's principal office is located or, if there is not a principal office in this State, of Kennebec County. The appeal is commenced by petitioning the court to compel filing of the document and by

attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

2. Court order. Upon the receipt of a petition filed under subsection 1, the court may summarily order the Secretary of State to file a document or take other action the court considers appropriate.

3. Appeal court's decision. The court's final decision may be appealed as in other civil proceedings.

§1013. Evidentiary effect of copy of filed document

A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State pursuant to section 1011 is conclusive evidence that the original document is on file with the Secretary of State.

§1014. Penalty for signing false document

A person commits a Class E crime if that person signs a document pursuant to this chapter knowing it is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

§1015. Powers

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this chapter, including the power to make rules not inconsistent with this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§1016. Access to Secretary of State's database

The Secretary of State may provide public access to the database of the Department of the Secretary of State through a dial-in modem, public terminals and electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may adopt rules to establish a fee schedule and governing procedures. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§1017. Publications

1. Informational publications. The Secretary of State may establish by rule a fee schedule to cover the cost of printing and distribution of publications and to set forth the procedures for the sale of these publications. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Funds; fees deposited. All fees collected pursuant to this 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 Title and for funding new publications.

SUBCHAPTER 2

NATURE OF PARTNERSHIP

§1021. Partnership as entity

1. Distinct from partners. A partnership is an entity distinct from its partners.

2. Limited liability partnership. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 821.

§1022. Formation of partnership

1. Formation of partnership. Except as otherwise provided in subsection 2, the association of 2 or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

2. Not partnership. An association formed under a statute other than this chapter, a predecessor statute or a comparable statute of another jurisdiction is not a partnership under this chapter.

3. Determination of formation; rules. In determining whether a partnership is formed, the following rules apply.

A. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

B. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

C. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

- (1) Of a debt by installments or otherwise;**
- (2) For services as an independent contractor or of wages or other compensation to an employee;**
- (3) Of rent;**
- (4) Of an annuity or other retirement or health benefit to a beneficiary, representa-**

tive or designee of a deceased or retired partner;

(5) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral; or

(6) For the sale of the goodwill of a business or other property by installments or otherwise.

§1023. Partnership property

Property acquired by a partnership is property of the partnership and not of the partners individually.

§1024. When property is partnership property

1. Partnership property. Property is partnership property if acquired in the name of:

A. The partnership; or

B. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

2. Property acquired by partnership. Property is acquired in the name of the partnership by a transfer to:

A. The partnership in its name; or

B. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

3. Presumed to be partnership property. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

4. Presumed to be separate property. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

SUBCHAPTER 3**RELATIONS OF PARTNERS TO PERSONS
DEALING WITH PARTNERSHIP****§1031. Partner agent of partnership**

1. Partner as agent. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

2. Other act binding on partnership if authorized. An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

§1032. Transfer of partnership property

1. Transfer of partnership property. Partnership property may be transferred as follows.

A. Partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

B. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to those partners of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

C. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to those persons of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

2. Recovery of property from transferee. A partnership may recover partnership property from a transferee only if the partnership proves that execution of the instrument of initial transfer did not bind the partnership under section 1031 and:

A. As to a subsequent transferee who gave value for property transferred under subsection 1, paragraph A or B, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

B. As to a transferee who gave value for property transferred under subsection 1, paragraph C, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

3. No recovery. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 2, from any earlier transferee of the property.

4. All partners' interests in one person. If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

§1033. Partnership liable for partner's actionable conduct

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

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

§1034. Partner's liability

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

2. Not personally liable for obligation prior to admission. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

3. Obligation incurred while limited liability partnership. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 821, subsection 2.

4. Exceptions to limited liability of shareholders. The exceptions under common law to a limited liability of shareholders of a business corporation organized under the Maine Business Corporation Act and shareholders of a professional corporation organized under the Maine Professional Service Corporation Act apply to the limited liability of partners in a professional limited liability partnership.

§1035. Actions by and against partnership and partners

1. Sue and be sued. A partnership may sue and be sued in the name of the partnership.

2. Action against partnership and partners. An action may be brought against the partnership and, to the extent not inconsistent with section 1034, any or all of the partners in the same action or in separate actions.

3. Judgment against partnership; partner. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. Execution against assets of partner. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 1034 and:

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

B. The partnership is a debtor in bankruptcy;

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

D. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to

satisfy the judgment, that exhaustion of partnership assets is excessively burdensome or that the grant of permission is an appropriate exercise of the court's equitable powers; or

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

5. Application to partnership liability or obligation. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 1036.

§1036. Liability of purported partner

1. Liability of purported partner. If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

2. Purported partner as agent. If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

3. Liability of dissociated partner. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation.

4. Nonpartners not liable as partners. Except as otherwise provided in subsections 1 and 2, persons who are not partners as to each other are not liable as partners to other persons.

SUBCHAPTER 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

§1041. Partner's rights and duties

1. Partner's account. Each partner is deemed to have an account that is:

A. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of the partnership profits; and

B. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that is distributed by the partnership to the partner and the partner's share of the partnership losses.

2. Partnership profits and losses. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

3. Reimbursement and indemnification. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

4. Advance to partnership. A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

5. Loan to partnership; interest. A payment or advance made by a partner that gives rise to a partnership obligation under subsection 3 or 4 constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

6. Management and conduct of business. Each partner has equal rights in the management and conduct of the partnership business.

7. Use or possess partnership property. A partner may use or possess partnership property only on behalf of the partnership.

8. Remuneration. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

9. Consent of all partners required. A person may become a partner only with the consent of all of the partners.

10. Decision by majority or unanimous. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

11. Obligations to other persons. This section does not affect the obligations of a partnership to other persons under section 1031.

§1042. Distributions in kind

A partner has no right to receive, and may not be required to accept, a distribution in kind.

§1043. Partner's rights and duties with respect to information

1. Books and records at chief executive office. A partnership shall keep its books and records, if any, at its chief executive office.

2. Access to books and records. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

3. Furnishing of information. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

A. Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

B. On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

§1044. General standards of partner's conduct

1. Partner's fiduciary duties. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3 as those duties may be clarified or limited in the partnership agree-

ment to the extent and in the manner authorized by section 1003, subsection 2.

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

A. To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

B. To refrain from knowingly dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

C. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

3. Duty of care. A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

4. Obligation of good faith and fair dealing. A 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, as those obligations may be clarified in the partnership agreement to the extent and in the manner authorized by section 1003, subsection 2.

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

6. Loan to and business with partnership. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

7. Personal or legal representative. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

§1045. Actions by partnership and partners

1. Partnership action against partner. A partnership may maintain an action against a partner for a

breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. Partner action against partnership. A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

A. Enforce the partner's rights under the partnership agreement;

B. Enforce the partner's rights under this chapter, including:

(1) The partner's rights under sections 1041, 1043 and 1044;

(2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 1071 or enforce any other right under subchapter 6 or 7; or

(3) The partner's right to compel a dissolution and winding up of the partnership business or enforce any other right under subchapter 8; or

C. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

3. 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.

§1046. Continuation of partnership beyond definite term or particular undertaking

1. Rights and duties as at expiration or completion. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

2. Presumption of agreement to continue. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

SUBCHAPTER 5**TRANSFEREES AND CREDITORS OF
PARTNER****§1051. Partner not co-owner of partnership property**

A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily.

§1052. Partner's transferable interest in partnership

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership, the allocations of income, gain, loss, deduction or credit or similar items related to such profits and losses and the partner's right to receive distributions. The interest is personal property.

§1053. Transfer of partner's transferable interest

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

A. Is permissible;

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

C. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions or to inspect or copy the partnership books or records.

2. Transferee of partner's interest. A transferee of a partner's transferable interest in the partnership has a right:

A. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

B. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

C. To seek under section 1081, subsection 6, a judicial determination that it is equitable to wind up the partnership business.

3. Account of transaction to transferee. In a dissolution and winding up, a transferee is entitled to

an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

4. Rights and duties retained. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

5. Effect to transferee's rights; notice. A partnership need not give effect to a transferee's rights under this section until the partnership has notice of the transfer.

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

§1054. Partner's transferable interest subject to charging order

1. Charging order; interest of judgment debtor. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. 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.

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

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

A. By the judgment debtor;

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

C. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

4. Exemptions apply. This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

5. Exclusive remedy for judgment creditor. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee

may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

SUBCHAPTER 6

PARTNER'S DISSOCIATION

§1061. Events causing partner's dissociation

A partner is dissociated from a partnership upon the occurrence of any of the following events:

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

2. Agreed event. An event agreed to in the partnership agreement as causing the partner's dissociation;

3. Expulsion pursuant to agreement. The partner's expulsion pursuant to the partnership agreement;

4. Expulsion by unanimous vote. The partner's expulsion by the unanimous vote of the other partners if:

A. It is unlawful to carry on the partnership business with that partner;

B. There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, that has not been foreclosed;

C. Within 90 days after the partnership notifies a partner who is a limited liability company or corporation that it will be expelled because it has filed a certificate of dissolution or the equivalent or that it has been judicially or administratively dissolved, the applicable certificate of dissolution or its equivalent has not been revoked or it has not been administratively reinstated;

D. Within 90 days after the partnership notifies a partner who is a limited liability company or corporation that it will be expelled because its right to do business has been suspended by the jurisdiction of organization or incorporation, there has been no reinstatement of its right to do business by such jurisdiction; or

E. A partnership that is a partner has been dissolved and its business is being wound up;

5. Expulsion by judicial determination. On application by the partnership or another partner, the partner's expulsion by judicial determination because:

A. The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

B. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 1044; or

C. The partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner;

6. Partner's actions. The partner's:

A. Becoming a debtor in bankruptcy;

B. Executing an assignment for the benefit of creditors;

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

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

7. Partner who is individual. In the case of a partner who is an individual:

A. The partner's death;

B. The appointment of a guardian or general conservator for the partner; or

C. A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

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

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

10. Termination. Termination of a partner who is not an individual, partnership, limited liability company, corporation, trust or estate.

§1062. Partner's power to dissociate; wrongful dissociation

1. By express will. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 1061, subsection 1.

2. Wrongful dissociation. A partner's dissociation is wrongful only if:

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

B. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(1) The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under section 1061, subsections 6 to 10 or wrongful dissociation under this subsection;

(2) The partner is expelled by judicial determination under section 1061, subsection 5;

(3) The partner is dissociated by becoming a debtor in bankruptcy; or

(4) In the case of a partner who is not an individual, trust other than a business trust or estate, the partner is expelled or otherwise dissociated because the partner willfully dissolved or terminated.

3. Liability for wrongful dissociation. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

§1063. Effect of partner's dissociation

1. Appreciation of law. If a partner's dissociation results in a dissolution and winding up of the partnership business, subchapter 8 applies; otherwise, subchapter 7 applies.

2. Internal effects of partner's dissociation. Upon a partner's dissociation:

A. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 1083;

B. The partner's duty of loyalty under section 1044, subsection 2, paragraph C terminates; and

C. The partner's duty of loyalty under section 1044, subsection 2, paragraphs A and B and duty of care under section 1044, subsection 3 continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 1083.

SUBCHAPTER 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

§1071. Purchase of dissociated partner's interest

1. Purchase of interest if no dissolution. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 1081, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.

2. Buyout price. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 1087, subsection 2 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

3. Damages for wrongful dissociation; interest. Damages for wrongful dissociation under section 1062, subsection 2, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

4. Indemnification. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 1072.

5. Payment after 120 days. If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.

6. Deferred payment. If a deferred payment is authorized under subsection 8, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection 3, stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.

7. Disclosures with payment or tender. The payment or tender required by subsection 5 or 6 must be accompanied by the following:

A. A statement of partnership assets and liabilities as of the date of dissociation;

B. The latest available partnership balance sheet and income statement, if any;

C. An explanation of how the estimated amount of the payment was calculated; and

D. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection 3 or other terms of the obligation to purchase.

8. Wrongful dissociation. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

9. Dissociated partner's action against partnership. A dissociated partner may maintain an action against the partnership, pursuant to section 1045, subsection 2, paragraph B, subparagraph (2), to determine the buyout price of that partner's interest, any offsets under subsection 3, or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court

finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7.

§1072. Dissociated partner's power to bind and liability to partnership

1. Apparent authority of dissociated partner.

For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under subchapter 9, is bound by an act of the dissociated partner that would have bound the partnership under section 1031 before dissociation only if at the time of entering into the transaction the other party:

A. Reasonably believed that the dissociated partner was then a partner;

B. Did not have notice of the partner's dissociation; and

C. Is not deemed to have notice under section 1074, subsection 2.

2. Liability for obligation after dissociation.

A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection 1.

§1073. Dissociated partner's liability to other persons

1. Liability for partnership obligation.

A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection 2.

2. Liability to other party.

A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under subchapter 9, within 2 years after the partner's dissociation, only if the partner is liable for the obligation under section 1034 and at the time of entering into the transaction the other party:

A. Reasonably believed that the dissociated partner was then a partner;

B. Did not have notice of the partner's dissociation; and

C. Is not deemed to have had notice under section 1074, subsection 2.

3. Released from liability for partnership obligation by agreement. By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

4. Released from liability for partnership obligation because of material alteration. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

§1074. Statement of dissociation

1. Filing of statement. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

2. Deemed to have notice. For the purposes of section 1072, subsection 1, paragraph C and section 1073, subsection 2, paragraph C, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

§1075. Continued use of partnership name

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

SUBCHAPTER 8

WINDING UP PARTNERSHIP BUSINESS

§1081. Events causing dissolution and winding up of partnership business

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. Notice of express will to withdraw. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 1061, subsections 2 to 10, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

2. Dissolution before expiration of term. In a partnership for a definite term or particular undertaking:

A. Within 90 days after a partner's dissociation by death or otherwise under section 1061, subsections 6 to 10 or wrongful dissociation under section 1062, subsection 2, the express will of at least 1/2 of the remaining partners to wind up the

partnership business, for which purpose a partner's rightful dissociation pursuant to section 1062, subsection 2, paragraph B, subparagraph (1) constitutes the expression of that partner's will to wind up the partnership business;

B. The express will of all of the partners to wind up the partnership business; or

C. The expiration of the term or the completion of the undertaking;

3. Event in partnership agreement. An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

4. Unlawful continuation; cure. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

5. Judicial determination; application by partner. On application by a partner, a judicial determination that:

A. The economic purpose of the partnership is likely to be unreasonably frustrated;

B. Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

C. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

6. Judicial determination; application by transferee. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

A. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

B. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

§1082. Partnership continues after dissolution

1. Continuation for purpose of winding up. Subject to subsection 2, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

2. Waiver of right to wind up business; terminate partnership. At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

A. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

B. The rights of a 3rd party accruing under section 1084, subsection 1 or arising out of conduct in reliance on the dissolution before the 3rd party knew or received a notification of the waiver may not be adversely affected.

§1083. Right to wind up partnership business

1. Participation of partner; judicial supervision. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative or transferee, the Superior Court, for good cause shown, may order judicial supervision of the winding up.

2. Legal representative of last surviving partner. The legal representative of the last surviving partner may wind up a partnership's business.

3. Powers of person winding up business. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 1087, settle disputes by mediation or arbitration and perform other necessary acts.

§1084. Partner's power to bind partnership after dissolution

Subject to section 1085, a partnership is bound by a partner's act after dissolution that:

1. Appropriate act. Is appropriate for winding up the partnership business; or

2. Act would have bound partnership. Would have bound the partnership under section 1031 before dissolution, if the other party to the transaction did not have notice of the dissolution.

§1085. Statement of dissolution

1. Filing of statement. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

2. Deemed to have notice. For the purposes of sections 1031 and 1084, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 30 days after it is filed.

§1086. Partner's liability to other partners after dissolution

1. Liable for partner's share. Except as otherwise provided in subsection 2 and section 1034, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 1084.

2. Liability for inappropriate act. A partner who, with knowledge of the dissolution, incurs a partnership liability under section 1084, subsection 2 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

§1087. Settlement of accounts and contributions among partners

1. Application of assets. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge the partnership's obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection 2.

2. Settlement of partnership accounts; distributions; contribution. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 1034.

3. Contribution by other partners; recovery.

If a partner fails to contribute the full amount required under subsection 2, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 1034. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 1034.

4. Contribution for losses after settlement.

After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 1034.

5. Deceased partner's estate liable. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

6. Enforcement for creditors. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

SUBCHAPTER 9**CONVERSIONS AND MERGERS****§1091. Definitions**

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

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

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

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

4. Limited liability limited partnership. "Limited liability limited partnership" means a limited

partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

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

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

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

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

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

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

§1092. Conversion of partnership to limited partnership

1. Conversion. A partnership may be converted to a limited partnership pursuant to this section.

2. Terms and conditions. The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

3. Certificate of limited partnership. After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

A. A statement that the partnership was converted to a limited partnership from a partnership;

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

C. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement; and

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

4. Effective date of conversion. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

5. Liability. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within 30 days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Maine Revised Uniform Limited Partnership Act.

§1093. Conversion of partnership to a business entity

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

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

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

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

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

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

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

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

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

§1094. Effect of conversion

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

2. Effective date. When a conversion takes effect:

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

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

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

§1095. Merger of partnerships

1. Merger pursuant to plan. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more partnerships or limited partnerships.

2. Plan of merger. The plan of merger must set forth:

A. The name, the jurisdiction of organization and the date of organization of each partnership or limited partnership that is a party to the merger;

B. The name of the surviving entity into which the other partnerships or limited partnerships will merge;

C. Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

D. The terms and conditions of the merger;

E. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

F. The street address of the surviving entity's chief executive office.

3. Approval of plan. The plan of merger must be approved:

A. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

B. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

4. Amendment or abandonment. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

5. Effective date of merger. The merger takes effect on the later of:

A. The approval of the plan of merger by all parties to the merger, as provided in subsection 3;

B. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

C. Any effective date specified in the plan of merger.

§1096. Effect of merger

1. Effect of merger. When a merger takes effect:

A. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

B. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

C. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

D. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

2. Agent for service of process. The Secretary of State is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.

3. Liability of partner. A partner of the surviving partnership or limited partnership is liable for:

A. All obligations of a party to the merger for which the partner was personally liable before the merger;

B. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

C. Except as otherwise provided in section 1034, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

4. Obligations incurred before merger. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 1087 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

5. Dissociated partner. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity of which that partner was a partner as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 1071 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 1072 by an act of a general partner dissociated under this subsection, and the partner is liable under section 1073 for transactions entered into by the surviving entity after the merger takes effect.

§1097. Statement of merger

1. Filing of statement. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

2. Statement of merger. A statement of merger must contain:

A. The name, the jurisdiction of organization and the date of organization of each partnership or limited partnership that is a party to the merger;

B. The name of the surviving entity into which the other partnerships or limited partnerships were merged;

C. The street address of the surviving entity's chief executive office and of an office in this State, if any;

D. Whether the surviving entity is a partnership or a limited partnership; and

E. If the surviving partnership or limited partnership is not organized under the laws of this

State, a statement that the surviving partnership or limited partnership:

(1) Agrees that it may be served with process in this State in a proceeding for enforcement of an obligation of a party to the merger that was organized under the laws of this State, as well as for enforcement of an obligation of the surviving partnership or limited partnership arising from the merger; and

(2) Appoints the Secretary of State as its agent for service of process in any such proceeding and the surviving partnership or limited partnership shall specify the address to which a copy of the process must be mailed by the Secretary of State.

3. Name in which property held. Except as otherwise provided in subsection 4, for the purposes of section 1032, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

4. Transfer of real property. For the purposes of section 1032, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity. A certified copy of the statement of merger may be recorded in the registry of deeds of the county in which the real property is located as evidence of title, but the failure to record the statement does not affect the validity of the transfer of title.

5. Incomplete statement. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to section 1005, subsection 3, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections 3 and 4.

§1098. Nonexclusive

This subchapter is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

SUBCHAPTER 10

MISCELLANEOUS PROVISIONS

§1101. Uniformity of application and construction

This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§1102. Short title

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

§1103. Effective date

This chapter takes effect July 1, 2007.

§1104. Applicability

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

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

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

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

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

§1105. Rules of construction

1. Savings clause. This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

2. Freedom to contract. It is the policy of the chapter to give maximum effect to the freedom of contract and to the enforceability of partnership agreements.

3. Law and equity. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

4. Statutes in derogation of common law. Rules that statutes in derogation of the common law are to be strictly construed do not apply to this chapter.

5. Obligations of contract. Neither this chapter nor any amendment of this chapter may be construed to impair the obligations of any contract existing when this chapter or amendment goes into effect.

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

PART B

Sec. B-1. 31 MRSA §811, first ¶, as corrected by RR 2001, c. 2, Pt. C, §5 and affected by §7, is amended to read:

A limited liability partnership may be registered under this Act for any lawful purpose. A professional limited liability partnership, as defined in Title 13, section ~~282~~ 723, subsection ~~5-A~~ 6, is subject to the Maine Professional Service Corporation Act except as follows.

Sec. B-2. 31 MRSA §821, as enacted by PL 1995, c. 633, Pt. B, §1, is repealed and the following enacted in its place:

§821. Registration

1. Filing of certificate. A partnership formed under the Uniform Partnership Act may be registered as a registered limited liability partnership by signing and filing a certificate of limited liability partnership with the Secretary of State.

2. Terms and conditions. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement or, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, by the vote necessary to amend those provisions.

Sec. B-3. 31 MRSA §822, sub-§1, ¶C, as enacted by PL 1995, c. 633, Pt. B, §1, is amended to read:

C. The name and the business, residence or mailing address of the contact partner; ~~and~~

Sec. B-4. 31 MRSA §822, sub-§1, ¶C-1 is enacted to read:

C-1. The street address of the partnership's chief executive office and, if different, the street address of an office in the State, if any; and

Sec. B-5. 31 MRSA §822, sub-§3 is enacted to read:

3. Errors; later changes. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the certificate under subsection 1.

Sec. B-6. 31 MRSA §858, as enacted by PL 1995, c. 633, Pt. B, §1, is repealed.

Sec. B-7. 31 MRSA §858-A is enacted to read:

§858-A. Effect of failure to qualify

1. No action or proceeding until granted authority; fees paid. A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State until it is granted authority to do business in this State and pays to the State all fees and penalties for the years or parts of years during which it did business in this State without having been granted authority to do business.

2. Validity of contract or act; defend action or proceeding. The failure of a foreign limited liability partnership to obtain authority to do business in this State in accordance with this chapter does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

3. Limitation on personal liability. A limitation on personal liability of a partner is not waived solely by transacting business in this State without being granted authority to do business in this State.

4. Agent for service of process. If a foreign limited liability partnership transacts business in this State without being granted the authority to do business in this State, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

Sec. B-8. 31 MRSA §859-A, first ¶, as enacted by PL 2003, c. 631, §71, is amended to read:

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 859-B to revoke the status authority of a partnership as a foreign limited liability partnership authorized to do business in this State if:

Sec. B-9. 31 MRSA §859-B, sub-§§2, 3 and 6, as enacted by PL 2003, c. 631, §71, are amended to read:

2. Revocation. The foreign partnership's ~~status as a limited liability partnership~~ authority to do business is revoked if within 60 days after the notice under subsection 1 was issued the Secretary of State determines that the foreign limited liability partnership

has failed to correct the ground or grounds for revocation. The Secretary of State shall send notice to the foreign partnership at the partnership's last registered office address in this State and to its last registered or principal office address in its jurisdiction of registration that recites the ground or grounds for revocation of the foreign partnership's status as a limited liability partnership and the effective date of revocation.

3. Authority to transact business ceases. The authority of a foreign limited liability partnership to transact business in this State ceases on the date of revocation of its authority unless such revocation is stayed pursuant to section 859-C, subsection 2.

6. Authorization after revocation. A foreign limited liability 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 may be reinstated pursuant to section 859-D regualified by applying for authority under this subchapter.

Sec. B-10. 31 MRSA §§859-D and 859-E, as enacted by PL 2003, c. 631, §71, are repealed.

Sec. B-11. 31 MRSA §864 is enacted to read:

§864. Action by Attorney General

The Superior Court has jurisdiction to enjoin a foreign limited liability partnership or any agent of the foreign limited liability partnership from doing business in this State if the foreign limited liability partnership has not been granted the authority to do business under this subchapter. The Attorney General may file a complaint in any county in which the foreign limited liability partnership is doing or has done business for the purpose of obtaining an injunction under this section.

Sec. B-12. 31 MRSA §873, sub-§1, ¶D, as enacted by PL 1995, c. 633, Pt. B, §1, is repealed and the following enacted in its place:

D. The street address of the partnership's chief executive office, the street address of an office of the partnership in this State and the name and street address of the contact partner.

Sec. B-13. 31 MRSA §874, sub-§1, as amended by PL 2003, c. 631, §80, is further amended to read:

1. Failure to file annual report; penalty. A registered or foreign limited liability partnership that is required to deliver an annual report for filing, as provided by section 873, that fails to deliver its properly completed annual report to the Secretary of State shall pay, in addition to the regular annual report

fee, the late filing penalty described in section 871, subsection 22, as long as the report is received by the Secretary of State prior to revocation of its status as a limited liability partnership or authority to do business as a foreign limited liability partnership, respectively. Upon a limited liability partnership's failure to file the annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 5 and Title 5, chapter 375, shall revoke the ~~status~~ authority to do business of that partnership as a foreign limited liability partnership or shall revoke the status of that partnership as a registered limited liability partnership. The Secretary of State shall use the procedures set forth in section 808-B to revoke the status of a registered limited liability partnership and the procedures set forth in section 859-B to revoke the ~~status~~ authority to do business of a partnership as a foreign limited liability partnership in this State. A foreign limited liability partnership whose ~~limited liability partnership status~~ authority to do business has been revoked under section 859-B that wishes to do business again as a limited liability partnership in this State must ~~follow the procedures set forth in section 859-B to reinstate~~ requalify by applying for authority under this subchapter. A partnership whose status as a registered limited liability partnership has been revoked under section 808-B must follow the requirements set forth in section 808-C to reinstate.

Sec. B-14. Savings clause. This Part does not affect an action or proceeding commenced or a right accrued before this Act takes effect.

Sec. B-15. Effective date. This Part takes effect July 1, 2007.

PART C

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

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

UNIFORM LIMITED PARTNERSHIP ACT (2001)

CHAPTER 19

UNIFORM LIMITED PARTNERSHIP ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§1301. Short title

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

§1302. Definitions

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

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

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

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

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

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

4. Designated office. "Designated office" means:

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

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

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

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

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

8. General partner. "General partner" means:

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

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

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

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

9. Limited liability limited partnership.

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

10. Limited partner. "Limited partner" means:

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

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

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

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

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

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

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

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

15. Person dissociated as general partner.

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

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

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

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

19. Sign. "Sign" means:

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

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

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

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

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

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

§1303. Knowledge and notice

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

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

A. Knows of it;

B. Has received a notification of it;

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

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

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

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

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

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

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

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

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

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

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

A. Comes to the person's attention; or

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

7. Person other than individual; reasonable diligence. Except as otherwise provided in subsection 8, a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises

reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

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

§1304. Nature, purpose and duration of entity

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

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

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

§1305. Powers

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

§1306. Governing law

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

§1307. Supplemental principles of law; rate of interest

1. Principles of law and equity supplement. Unless displaced by particular provisions of this

chapter, the principles of law and equity supplement this chapter.

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

§1308. Limited partnership name; assumed name

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

A. A limited partnership name:

- (1) May contain the name of any partner;
- (2) Must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP," unless the limited partnership is filing an assumed name under subsection 2 or a registration of name under section 1309, subsection 2. If the phrase "Limited Partnership" is used, a limited partnership may also use the abbreviation "L.P." or "LP" without filing an assumed name under subsection 2; and
- (3) May not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." unless it has been designed as a limited liability limited partnership. If so designated, the name must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "L.P." or "LP."

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

- (1) The name of a corporation, nonprofit corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State;
- (2) Assumed, fictitious, reserved and registered name filings for all entities; and
- (3) Marks registered under Title 10, chapter 301-A, unless the registered owner or holder of the mark is the same person or entity as the limited partnership seeking to use a name that is not distinguishable on the records of the Secretary of State and files proof of ownership with the Secretary of State.

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

- (1) Consists of or comprises language that is obscene;
- (2) Inappropriately promotes abusive or unlawful activity;
- (3) Falsely suggests an association with public institutions; or
- (4) Violates any other provision of the law of this State with respect to names.

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

- (1) The entity in possession of the name applied for consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from the name of the applicant; or
- (2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

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

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

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

- (1) Words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered,"

"limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";

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

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

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

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

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

2. Requirements for use of assumed name.

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

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

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

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

(1) The limited partnership name;

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

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

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

(5) If a foreign limited partnership:

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

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

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

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

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

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

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

(2) The assumed 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.

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

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

(1) The name of the limited partnership;

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

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

§1309. Reserved name; registered name of foreign limited partnership

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

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

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

(2) The name proposed to be reserved.

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

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

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

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

(1) The name of the limited partnership;

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

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

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

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

B. If the Secretary of State finds that the limited partnership name applied for is distinguishable on the records of the Secretary of State pursuant to section 1308, the Secretary of State shall register the name for the foreign limited partnership's exclusive use upon the effective date of the application until the end of the calendar year in which the application was filed.

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

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

§1310. Effect of partnership agreement; nonwaivable provisions

1. Agreement governs; default. Except as otherwise provided in subsection 2, the partnership agreement governs relations among the partners and between the partners and the partnership. It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

2. Nonwaivable provisions. A partnership agreement may not:

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

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

C. Vary the requirements of section 1324;

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

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

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

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

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

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

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

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

§1311. Required information

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

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

partners, in alphabetical order, and the limited partners, in alphabetical order;

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

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

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

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

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

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

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

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

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

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

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

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

§1312. Business transactions of partner with partnership

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

§1313. Dual capacity

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

§1314. Registered office; registered agent

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

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

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

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

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

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

3. Registered agent named in certificate of limited partnership. The initial registered agent of a limited partnership must be named in the certificate of limited partnership for that limited partnership. A registered agent continues in office until a successor is

chosen and qualifies and the statement required by section 1315 is filed or until the resignation notice required by section 1316 is filed.

§1315. Change of registered office or registered agent

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

A. The name of the limited partnership;

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

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

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

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

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

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

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

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

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

F. A recitation that states that a notice of the change under this subsection has been promptly mailed or otherwise delivered to a general partner of each limited partnership affected by the change.

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

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

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

§1316. Resignation of registered agent

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

- A. A statement of resignation;
- B. The names, jurisdiction and date of formation of all the limited partnerships; and
- C. An affidavit, signed by the registered agent, setting forth the following information:
 - (1) The date on which the statement of resignation was sent by certified or registered mail to a general partner of each limited partnership from which the registered agent is resigning as registered agent; and
 - (2) The name, capacity and address of the general partner for each limited partnership to which the statement of resignation was sent.

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

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

4. Resignation of agent; appointment by limited partnership; service of process. After receipt of the statement of the resignation of its registered agent under subsection 1, paragraph C, a limited partnership shall file a statement required by section 1315 designating a new registered agent. Until the limited partnership duly files a statement appointing a new registered agent, legal process against the limited

partnership may be served upon the Secretary of State in accordance with section 1317.

§1317. Service of process

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

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

3. Service on Secretary of State. Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State duplicate copies of the process, notice or demand. If a process, notice or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the limited partnership or foreign limited partnership at its designated office.

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

- A. The date the limited partnership or foreign limited partnership receives the process, notice or demand;
- B. The date shown on the return receipt, if signed on behalf of the limited partnership or foreign limited partnership; and
- C. Five days after the process, notice or demand is deposited in the mail, if mailed postpaid and correctly addressed.

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

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

§1318. Consent and proxies of partners

Action requiring the consent of partners under this chapter may be taken without a meeting, and a

partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

SUBCHAPTER 2

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

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

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

- A. The name of the limited partnership, which must comply with section 1308;
- B. The street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;
- C. The name and the street and mailing address of each general partner;
- D. Whether the limited partnership is a limited liability limited partnership; and
- E. Any additional information required by subchapter 11.

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

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

4. Inconsistencies between agreement and filed document. Subject to subsection 2, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination or change or filed articles of conversion or merger:

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

§1322. Amendment or restatement of certificate

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

- A. The name of the limited partnership;
- B. The date of filing of its initial certificate; and
- C. The changes the amendment makes to the certificate as most recently amended or restated.

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

- A. The admission of a new general partner;
- B. The dissociation of a person as a general partner;
- C. The appointment of a person to wind up the limited partnership's activities under section 1393, subsection 3 or 4; or
- D. The change in name or street address of one or more of its general partners.

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

- A. Cause the certificate to be amended; or

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

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

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

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

§1323. Statement of termination

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

- 1. Name.** The name of the limited partnership;
- 2. Date of initial certificate.** The date of filing of its initial certificate of limited partnership; and
- 3. Other information.** Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 1393, subsection 3 or 4.

§1324. Signing of records

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

- A. An initial certificate of limited partnership must be signed by all general partners listed in the certificate.
- B. An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.
- C. An amendment designating as general partner a person admitted under section 1391, subsection 3, paragraph B following the dissociation of a limited partnership's last general partner must be signed by that person.
- D. An amendment required by section 1393, subsection 3 following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.
- E. Any other amendment must be signed by:
 - (1) At least one general partner listed in the certificate;
 - (2) Each other person designated in the amendment as a new general partner; and
 - (3) Each person that the amendment indicates has dissociated as a general partner, unless:
 - (i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
 - (ii) The person has previously delivered to the Secretary of State for filing a statement of dissociation.

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

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

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

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

J. Any other record delivered on behalf of a limited partnership to the Secretary of State for filing must be signed by at least one general partner listed in the certificate.

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

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

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

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

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

§1325. Signing and filing pursuant to judicial order

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

- A. The person to sign the record;

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

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

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

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

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

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

A. For a statement of dissociation, send:

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

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

B. For a statement of withdrawal, send:

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

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

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

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

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

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

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

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

(1) The specified date; and

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

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

(1) The specified date; and

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

§1327. Correcting filed record

1. Statement of correction. A limited partnership or foreign limited partnership may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained false or erroneous information or was defectively signed.

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

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

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

C. Correct the incorrect information or defective signature.

3. Effective date of correction. When filed by the Secretary of State, a statement of correction is effective retroactively as of the effective date of the

record the statement corrects, but the statement is effective when filed:

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

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

§1328. Liability for false information in filed record

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

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

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

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

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

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

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

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

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

C. That, if a foreign limited partnership, the foreign limited partnership is authorized to transact business in this State, the date on which the lim-

ited partnership was authorized to transact business in this State and its jurisdiction of organization;

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

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

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

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

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

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

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

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

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

A. The annual report must set forth:

(1) The name of the limited partnership;

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

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

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

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

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

2. Amended annual report; period for filing.

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

A. An amended annual report must set forth:

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

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

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

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

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

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

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

SUBCHAPTER 3

LIMITED PARTNERS

§1341. Becoming limited partner

A person becomes a limited partner:

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

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

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

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

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

§1343. No liability as limited partner for limited partnership obligations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. The person meets the requirements of subsection 2.

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

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

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

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

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

10. Exercise of rights. A limited partner or person dissociated as a limited partner may exercise the

rights under this section through an attorney or other agent. Any restriction imposed under subsection 7 or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

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

§1345. Limited duties of limited partners

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

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

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

§1346. Person erroneously believing self to be limited partner

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

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

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

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

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

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

SUBCHAPTER 4

GENERAL PARTNERS

§1351. Becoming general partner

A person becomes a general partner:

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

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

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

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

§1352. General partner agent of limited partnership

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

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

if the act was actually authorized by all the other partners.

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

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

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

§1354. General partner's liability

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

2. Pre-existing obligation. A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

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

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

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

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

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

§1355. Actions by and against partnership and partners

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

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

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

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

B. The limited partnership is a debtor in bankruptcy;

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

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

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

§1356. Management rights of general partner

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

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

A. Amend the partnership agreement;

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

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

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

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

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

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

§1357. Right of general partner and former general partner to information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Exercise of rights. A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 6 or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

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

§1358. General standards of general partner's conduct

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

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

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

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

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

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.

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.

§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.

§1363. Sharing of distributions

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

§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.

§1365. No distribution on account of dissociation

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

§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.

§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.

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

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

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

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

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

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

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

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

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

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

§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.

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.

§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.

§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;

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

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

B. There has been a transfer of all or substantially 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;

C. The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general 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

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

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

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

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

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

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

A. Becoming a debtor in bankruptcy;

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

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

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

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

- A. The person's death;
- B. The appointment of a guardian or general conservator for the person; or
- C. A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

8. Distribution of trust's interest. In the case of a person that is a trust or is acting as a general 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;

9. Distribution of estate's interest. In the case of a person that is an estate or is acting as a general 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;

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

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

- A. Is not the converted or surviving entity; or
- B. Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

§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.

§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.

§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.

§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.

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.

§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 par-

ticipate 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.

4. Transferor retains all other rights, duties and 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.

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

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

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

§1383. Rights of judgment creditor of partner or transferee

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

§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.

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;

3. Dissociation of general partner. After the dissociation of a person as a general partner:

A. If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

B. If the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(1) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(2) At least one person is admitted as a general partner in accordance with the consent;

4. Dissociation of last limited partner. The passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

5. Declaration of dissolution. The signing and filing of a declaration of dissolution by the Secretary of State under section 1399, subsection 3.

§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.

§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:

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

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

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

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

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

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

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

B. The applicant establishes other good cause.

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

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

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

B. Would have bound the limited partnership under section 1352 before dissolution, if, at the time the other party enters into the transaction,

the other party does not have notice of the dissolution.

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

A. 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; and

B. The act:

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

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

§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.

§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.

§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.

§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.

§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.

§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.

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

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

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

§1402. Disposition of assets; when contributions required

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

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

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

A. Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 1377 shall contribute to the 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.

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.

§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.

§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

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

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

A. The admission of a new general partner;

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

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

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

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

A. Cause the application to be amended; or

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

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

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

§1413. Activities not constituting transacting business

1. Activities not constituting transacting business. 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.

§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.

§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

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

§1416. Revocation of authority

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

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

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

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

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

E. The foreign 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 foreign 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 revocation of foreign limited partnership. If the Secretary of State determines that one or more grounds exist under subsection 1 for the revocation of 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.

§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.

§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.

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.

§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.

§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.

§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.

§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.

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.

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

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

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

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

8. Organization. "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. "Organization" includes domestic

and foreign organizations whether or not organized for profit.

9. Organizational documents. "Organizational documents" means:

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

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

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

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

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 statute, or comparable records as provided in its governing statute; and

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, 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.

§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;

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.

§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.

§1434. Filings required for conversion; effective date

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

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

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

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

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

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

(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.

§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;

B. All debts, liabilities and other obligations of the converting organization continue as obligations of the converted organization;

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

D. Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting organization remain vested in the converted organization;

E. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

F. Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of subchapter 8.

3. Foreign organization; Secretary of State as agent. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting organization, if before the conversion the converting organization was subject to suit in this State on the obligation. A converted 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 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.

§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.

§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.

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

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

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

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

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

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

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

G. If the surviving 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 1439, subsection 2; and

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

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

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

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

(1) Compliance with subsection 3; and

(2) Subject to section 1326, subsection 3, as 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.

§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.

§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.

§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:

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

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

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

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

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

(1) Immediately before the conversion or merger became effective the converting or

surviving limited partnership was not a limited liability limited partnership; and

(2) 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:

(i) Does not have notice of the dissociation;

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

(iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership and the person is a general partner in the converting or constituent limited partnership.

§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.

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

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

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

§1443. Subchapter not exclusive

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

SUBCHAPTER 12

MISCELLANEOUS PROVISIONS

§1451. Uniformity of application and construction

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

§1452. Relation to electronic signatures in global and national 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).

§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.

§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.

§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.

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

§1458. Access to data base

The Secretary of State may provide public access to the data base through a dial-in modem, through public terminals and through electronic duplicates of the data base. If access to the 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.

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

§1459. Publications

1. Fee schedule. The Secretary of State may establish by rule in accordance with the Maine Administrative Procedure Act a fee schedule to cover the cost of printing and distribution of publications and to set the procedures for the sale of these publications.

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

2. Deposit in fund. All fees collected pursuant to this 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.

§1460. Fees; penalties

A document required to be filed under this chapter is not 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;

17. Service of process on Secretary of State as agent. For accepting service of process under section 1317, a fee of \$35;

18. Articles of merger or conversion. Articles of merger or conversion of a limited partnership with or to another type of business entity as provided by subchapter 11, a fee of \$150;

19. Late filing penalty. For failing to deliver an annual report by its due date, in addition to the annual report filing fee, a fee of \$50.

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

§1461. Effective date

This chapter takes effect July 1, 2007.

Sec. C-3. Effective date. That section of this Part that repeals the Maine Revised Statutes, Title 31, chapter 11 takes effect July 1, 2007.

PART D

Sec. D-1. 9-B MRSA §311, as corrected by RR 2001, c. 2, Pt. B, §7 and affected by §58, is amended to read:

§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 ~~44~~, 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 ~~44~~ 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 ~~44~~ 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 ~~44~~, 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.

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:

1. Organization. A merchant bank must be organized pursuant to chapter 31 and must be managed and governed pursuant to this Title and the applicable provisions of Title 13-C and Title 31, chapters ~~44~~, 13 ~~and~~ 15 and 19, depending upon the organizational form selected.

Sec. D-6. 10 MRSA §1521, sub-§2-A, as amended by PL 2003, c. 344, Pt. A, §3, is further amended to read:

2-A. Limited partnership name. "Limited partnership name" includes a limited partnership name, ~~reserved name, or assumed name under Title 31, section 1308 or reserved name or registered name as those terms are used in Title 31, sections 403-A, 404-A, 405-A and 406-A respectively~~ section 1309.

Sec. D-7. 10 MRSA §1522, sub-§1, ¶E, as amended by PL 1981, c. 684, §4, is further amended to read:

E. Consists of a mark ~~which~~ that, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them or, when applied to the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of 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 the registration of a mark used in this State by the applicant ~~which~~ that has become distinctive of the applicant's goods or services. The Secretary of State may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this State or elsewhere for the 5 years next preceding the date of the filing of the application for registration;

Sec. D-8. 10 MRSA §1522, sub-§1, ¶G, as amended by PL 2003, c. 344, Pt. A, §6, is further amended to read:

G. Is not distinguishable from 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, unless the corporation, limited liability company, limited liability partnership ~~or~~, limited partnership or limited liability limited partnership executes and files with the Secretary of State proof of 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 partner-

ship." "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 ~~44~~ 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.

Sec. D-16. 31 MRSA §803-A, sub-§6, ¶A, as enacted by PL 2003, c. 344, Pt. C, §35, 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-17. 31 MRSA §876, as corrected by RR 2001, c. 2, Pt. B, §53 and affected by §58, is amended to read:

§876. Application to existing foreign limited liability partnerships; definition

All foreign limited liability partnerships qualified as foreign corporations or limited partnerships or limited liability companies before September 1, 1996 are governed by this Act on and after September 1, 1996. By December 1, 1996 a partner of each foreign limited liability partnership shall file with the Secretary of State an application for authority to do business in this State under this Act and shall cancel the partnership's authority to do business in this State under chapter ~~44~~ 19, chapter 13 or former Title 13-A. If the foreign limited liability partnership fails to file the new application for authority to do business in this State by December 1, 1996, it must be treated as a general partnership without the status of a limited liability partnership with respect to any business

conducted in this State between December 1, 1996 and the date on which it files that application.

Sec. D-18. Effective date. This Part takes effect July 1, 2007.

See title page for effective date, unless otherwise indicated.

CHAPTER 544

H.P. 1325 - L.D. 1885

An Act To Protect Drivers' Privacy by Clarifying Ownership of Data Recorded by Motor Vehicle Data Recorders

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

Sec. 1. 29-A MRSA c. 17, sub-c. 3 is enacted to read:

SUBCHAPTER 3

MOTOR VEHICLE EVENT DATA RECORDERS

§1971. Definitions

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

1. Event data recorder. "Event data recorder" means a feature that is installed by the manufacturer of a motor vehicle and does one or more of the following for the purpose of capturing data for retrieval after a crash:

- A. Records vehicle speed, direction or both;
- B. Records vehicle location data;
- C. Records vehicle steering performance;
- D. Records vehicle brake performance, including whether brakes were applied before the crash;
- E. Records the driver's seatbelt status; and
- F. Has the ability to transmit information concerning a crash in which the motor vehicle has been involved to a central communication system when a crash occurs.

2. Owner. "Owner" means:

A. A person having all the incidents of ownership, including the legal title of the motor vehicle, whether or not the person lends, rents or creates a security interest in the motor vehicle;

B. A person entitled to the possession of the motor vehicle as the purchaser under a security agreement; or

C. A person entitled to possession of the motor vehicle as lessee pursuant to a written lease agreement, as long as the agreement at inception is for a period of at least 3 months.

§1972. Ownership and access to data

1. Ownership; access. Data described in section 2561, subsection 1 that are recorded on an event data recorder may not be downloaded or otherwise retrieved by a person other than the owner of the motor vehicle at the time the data are accessed, except under the following circumstances:

A. The owner of the motor vehicle or the owner's agent or legal representative consents to the retrieval of the information;

B. A court of competent jurisdiction in this State orders the production of the data;

C. For purposes of improving motor vehicle safety, security or traffic management, including medical research on the human body's reaction to motor vehicle crashes, as long as the identity of the owner or driver is not disclosed in connection with that retrieved data. For the purposes of this paragraph, the disclosure of the vehicle identification number with the last 4 digits deleted does not constitute the disclosure of the identity of the owner or driver;

D. The data are retrieved by a licensed motor vehicle dealer or by an automotive technician for the purpose of diagnosing, servicing or repairing the motor vehicle;

E. The data are retrieved for the purpose of determining the need for or facilitating emergency medical response in the event of a motor vehicle crash;

F. The data are retrieved by a law enforcement officer acting pursuant to authority recognized under applicable statutory or constitutional law; or

G. The data are requested as part of routine civil or criminal discovery.

2. Release of data prohibited; exceptions. A person, including a service or data processor operating on behalf of such person, authorized to download or