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**Limited Liability Partnership Study Group**

**Final Report**

**to the**

**Joint Standing Committee on Judiciary**

January 9, 1996

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## *Introduction*

LD 1358, An Act to Authorize the Formation of Limited Liability Partnerships was introduced in the first regular session of the 117th Legislature and referenced to the Joint Standing Committee on Judiciary, where it received public hearing. In order to ensure that the this complicated and lengthy legislation receive proper scrutiny, the Joint Standing Committee on Judiciary requested and received authorization to carry over LD 1358 to the second regular session, and requested Secretary of State Bill Diamond to convene a study group to identify issues for discussion by the Committee and to further develop the legislation to include filing and default language. This report and attached draft amendment to LD 1385 reflect the efforts of the study group.

### *The Limited Liability Partnership*

The first state to enact limited liability partnership (hereafter, LLP) legislation was Texas in 1991, and this option is now available in 39 states. This relatively new concept allows partners in a general partnership to shield their personal assets from unlimited liability for certain partnership obligations. Generally, the types of liability protected against are those arising from the omissions, negligence, wrongful acts, misconduct, or malpractice of *other* partners or employees that are *not* under the direct supervision and control of a partner. *No protection* is given for a *partner's own acts or omissions*, etc., *nor* is any protection given *for debt or liability under ordinary contracts*, including loans. The attached draft amendment to LD 1385 follows this approach.

An LLP is *not* a separate entity form like a corporation or a limited liability company, but rather an *election* made by a general partnership. The LLP election allows a general partnership to preserve its traditional structure and any pre-existing agreements between the partners, while offering the partners some protection from vicarious liability for claims arising from the conduct of the partnership's business. In the event a partnership neglects to comply with certain filing requirements, it is the *status* of the partnership as a limited liability partnership, and all of the associated protections from liability, that is revoked and not the partnership's ability to conduct business in this State. The partnership is also free to rescind its status as a limited liability partnership at any time.

The internal governance of the LLP is subject to the state's general partnership law and any partnership agreement between the partners. Written partnership agreements are usually not required by law, and in the absence of such an agreement, or a provable oral agreement, the partnership relies on any default provisions provided by statute. It was the consensus of the Study Group to allow the current default provisions as provided by Maine's Uniform Partnership Act to suffice until a new uniform partnership act is available to states for adoption.

While, initially, the LLP election was created to apply primarily to professionals, the vast majority of state LLP laws also allow for partnerships formed by nonprofessional to make the election.

## ***Professional Liability Provisions***

The attached draft amendment to LD 1358 incorporates the liability provisions that apply to professionals organized as a professional service corporations by reference (sec. 811). The draft further creates a *floor* for foreign professionals organized as partnerships and authorized to conduct business as a limited liability partnership in this State (sec. 851.1.A). This floor ensures that foreign professional LLPs are subject to at least the same level of liability as domestic professional LLPs.

## ***Use of Abbreviations in the LLP Name***

The attached draft amendment to LD 1358 requires the name of a limited liability partnership to include the words "Limited Liability Partnership" (sec. 803.A). This is consistent with the statutes pertaining to the names of limited partnerships and limited liability companies. There was much discussion in the Study Group on allowing the use of the abbreviation "L.L.P." or the designation "LLP", and alternate language that reflects this alternative is available in *Appendix 'A'*. Following is a discussion of the reasons for and against the use of abbreviations:

**Arguments for use of abbreviations:** allows the partnership more flexibility in choosing a denomination; reduces concerns over the effect on the partnership's liability protection if the entire name is not printed or recited each time it is used, for example, when answering the phone; corporations are *not* required to include any comparable designator, such as "Incorporated" or "Inc."; professional LLPs would also be required to use the words "Professional Association", "P.A." or "Chartered", and the additional words would further complicated the name of the partnership; foreign LLPs that are allowed to use an abbreviation in their home jurisdiction would be required to reprint letterhead, reports, sales materials, etc. for use in this State; the purpose of the entity designation is to put the public on notice that they may want or need to inquire further about the entity's organization, and an abbreviation can also perform this function. *Note: Appendix "B" contains a partial listing of permitted LLP names in other states.*

**Arguments against the use of abbreviations:** the LLP election is relatively new and the average person would be unaware of what the initials "L.L.P." stood for; the words "limited liability partnership" serve as a notice to potential creditors and others that the partnership has limited liability protection.

There was also discussion in the Study Group regarding the elimination of the requirement to use the words "Professional Association", "P.A." or "Chartered" in the name of a *professional* LLP, however, the attached draft amendment to LD 1358 retains the requirement to include this designator (sec. 811, also reference Title 13, sec. 713). One argument for elimination is that the required inclusion of a designator indicating the limited liability partnership status would alert any interested party to investigate further, whereupon it would be evident in the records of the Secretary of State that the LLP was also a professional association. Alternate language that reflects this alternative is available in *Appendix 'A'*.

## ***Execution of Documents***

The Study Group discussed how certain filings of the partnership were to be executed and arrived at the following conclusions (sec. 826):

*initial certificate of limited partnership* is to be signed by one or more authorized partners.

*certificates of amendment, restatement, correction* or any other document to be signed by at least one partner.

*certificate of renunciation* to be signed by the contact partner or majority in interest of the partners, if the partners are winding up the partnership's affairs. Or, to be signed by all liquidating trustees, if the partners are not winding up the partnership's affairs.

## ***Effect of Revocation of LLP Status***

When a LLP fails to deliver its annual report, or maintain a registered agent and office, or otherwise fails to comply with the law, the Secretary of State may revoke its *status* as a limited liability partnership. The draft amendment to LD 1358 provides that the partnership may legally continue to conduct business, but loses the umbrella of protection provided by the election of the LLP status (sec. 974). The revocation does not impair the liabilities of partners with regard to events, acts or omissions occurring before the date of revocation (sec. 808). The penalty for a business corporation, limited partnership or limited liability company for similar compliance failures is *suspension from the conduct of business*. But because LLP status is an election of a general partnership, revocation of that status only causes the loss of the umbrella of protection from liability, not a suspension from conducting business as a partnership.

## ***Disclosure of Partners***

Records on file with the Secretary of State for various business entities disclose information about the persons who manage the business of the entity. The business of a general partnership, and therefore an LLP, is managed by the partners. Alternatives for the level of partner disclosure were discussed by the Study Group. One extreme is to require all partners and their residence addresses to be disclosed in the original certificate of limited liability partnership and to further require amendment of the certificate each time that information changes. A similar approach was formerly used for limited partnerships, but was altered to provide for disclosure only upon request. This is the approach taken in the draft amendment to LD 1358 (sec. 872), however, the draft amendment also requires the disclosure of a *contact partner* in the initial certificate of limited partnership (sec. 822). Other options are to require the disclosure of the partners once per year in the annual report or to not require any disclosure of partners at all.

**"An Act to Authorize the Formation of Limited Liability Partnerships"**

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# *Amendment to L.D. 1358*

## **FINAL DRAFT**

### **"An Act to Establish Limited Liability Partnerships"**

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

#### **PART A**

Sec. A-1, 31 MRSA § 282, sub-§§4-A, 4-B, and 5-B are enacted to read:

4-A. Foreign limited liability partnership. "Foreign limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction and registered under the laws of such jurisdiction.

5-A. Professional limited liability partnership. "Professional limited liability partnership" means a registered limited liability partnership which, by virtue of the business conducted by it, would be subject to the Professional Service Corporation Act if it were a corporation.

6-A. Registered limited liability partnership. "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by this act and registered under the Limited Liability Partnership Act.

Sec. A-2. 31 MRSA §286, first ¶, as amended by PL 1977, c. 322, §2, is further amended to read:

A partnership ~~shall~~ means an association of 2 or more persons, including an association of a husband and wife, to carry on as co-owners a business for profit and includes, for all purposes of the laws of this state, a registered limited liability partnership.

Sec. A-3. 31 MRSA §295, as enacted by PL 1973, c. 377, §1, is repealed.

Sec. A-4. 31 MRSA §295-A is enacted to read:

#### § 295-A. Nature of partner's liability

1. Partnership Liability. Except as provided in subsection 2, all partners are liable:

A. Jointly and severally for everything chargeable to the partnership under sections 293 and 294; and

B. Jointly for all other debts and obligations of the

partnership; but any partner may enter into a separate obligation to perform a partnership contract.

2. Registered limited liability partnership. Except as provided in subsection 3, a partner in a registered limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment or otherwise for debts, obligations and liabilities however chargeable to the partnership or to another partner or partners, whether or not in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct, or malpractice committed by another partner, employee, agent or representative of the partnership in the course of the partnership business while the partnership is a registered limited liability partnership.

3. Supervision and control. Notwithstanding subsection 2:

A. A partner in a registered limited liability partnership, other than a professional limited liability partnership, is liable for the partner's own omission, negligence, wrongful act, misconduct or malpractice, or that of any person under the partner's direct supervision and control;

B. A partner in a professional limited liability partnership is liable as set forth in section 708-A of the Professional Service Corporation Act.

4. Liability of partner. A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or to enforce the obligations arising out of the acts, omissions, malpractice, or misconduct of the type described in subsection 2, unless such partner is personally liable under subsection 3, or under section 811.

Sec. A-5. 31 MRSA § 298, sub-§1, as enacted by PL 1973, c. 377, §1, is amended to read:

1. Contributions. Each partner shall must be repaid his that partner's contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and except as provided in section 295-A, subsection 2, each partner must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his that partner's share in the profits.

Sec. A-6. 31 MRSA §314, sub-§§1 and 2, as enacted by PL 1973, c. 377, §1, are amended to read:

1. Knowledge of dissolution. The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

2. Knowledge of death or bankruptcy. The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy- ;or

Sec. A-7. 31 MRSA §314, sub-§3 is enacted to read:

3. Partner not liable for the liability. The liability is for a debt, obligation or other liability for which the partner is not liable as provided in section 295-A, subsection 2.

Sec. A-8. 31 MRSA §316, as enacted by PL 1973, c.377, §1, is amended to read:

**§ 316. Effect of dissolution on partner's existing liability**

The dissolution of the partnership does not of itself discharge the existing liability of any partner.

A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between ~~himself~~ that partner, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

~~Where~~ When a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed ~~shall be~~ are discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

The individual property of a deceased partner ~~shall be~~ is liable for ~~all~~ those obligations of the partnership incurred while he was a partner and for which that partner was liable under section 295-A but subject to the prior payment of ~~his~~ that partner's separate debts.

Sec. A-9. 31 MRSA §320, sub-§1, ¶B, as enacted by PL 1973, c. 377, §1, is amended to read:

B. The contributions of the partners ~~necessary for the payment of all the liabilities~~ specified in subsections 2 and 4.

Sec. A-10. 31 MRSA §320, sub-§4, as enacted by PL 1973, c.377, §1, is repealed and the following enacted in its place:

4. Contribution of partners. Except as provided in section 295-A, subsection 2:

A. The partners shall contribute, as provided by section 298, subsection 1, the amount necessary to satisfy the liabilities; and

B. If any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

## **PART B**

Sec. B-1. 31 MRSA c. 15 is enacted to read:

### **CHAPTER 15**

#### **LIMITED LIABILITY PARTNERSHIPS**

##### **SUBCHAPTER I**

##### **GENERAL PROVISIONS**

###### **§ 801. Short title**

This Act may be known and cited as the "Maine Limited Liability Partnership Act."

###### **§ 802. Definitions**

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

1. Foreign limited liability partnership. "Foreign limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction and registered under the laws of such jurisdiction.

2. Registered limited liability partnership. "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the Uniform Partnership Act and registered under this act.

###### **§ 803. Registered limited liability partnership name**

1. Requirements. The name of a registered limited liability partnership:

A. Must contain the words "Limited Liability Partnership" unless filing a registration of name under section 806; and

B. May not be the same as or deceptively similar to:

(1) The name of any domestic corporation, limited partnership, limited liability company or registered limited liability partnership organized under the laws of this State or any foreign corporation, foreign limited partnership, foreign limited liability company or foreign

limited liability partnership authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under sections 404, 604 and 804; Title 13-A, section 302; and Title 13-B, section 302;

(3) A name that is registered under section 606; Title 13-A, section 303; Title 13-B, section 303; or Title 31, sections 406 and 806;

(4) The assumed name of a corporation, limited partnership, limited liability company or limited liability partnership as provided in section 605; Title 13-A, section 307; Title 13-B, section 308; or Title 31, sections 405 and 805; or

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

2. Exceptions. The name may be the same or deceptively similar:

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

B. If a foreign limited liability partnership seeking to file under the same or deceptively similar name executes and files with the Secretary of State proof that it will not do business in this State under that same or deceptively similar name but instead will do business under an assumed name, as provided for in section 805; or

C. If the foreign limited liability partnership was authorized to do business in this State before January 1, 1996 and had the right to use the name as its legal name before that date.

3. Names of limited liability partnerships revoked. Subsection 2, paragraph C does not apply to the name of a partnership whose status as a limited liability partnership has been revoked for at least 3 years.

4. Final determination of availability. The Secretary of State shall make the final determination regarding the availability of a name for filing.

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

A. Consists of or comprises language that is obscene, contemptuous, profane or prejudicial;

B. Inappropriately promotes abusive or unlawful activity; or

C. Falsely suggests an association with public institutions.

§ 804. Reservation of name

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

A. A person intending to organize a registered limited liability partnership under this chapter and to adopt that name;

B. A registered limited liability partnership or a foreign limited liability partnership authorized to do business in this State and intending to change its name;

C. A foreign limited liability partnership intending to apply for authority to transact business in this State and to adopt that name;

D. A registered limited liability partnership or a foreign limited liability partnership authorized to do business in this State intending to utilize the name as an assumed name; or

E. A person intending to organize a foreign limited liability partnership and intending to have that limited liability partnership apply for authority to transact business in this State and adopt that name.

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

A. If the Secretary of State finds that the name is available for use by a registered or foreign limited liability partnership, the Secretary of State shall reserve the name for the exclusive use of the applicant for a period of 120 days.

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

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

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

§ 805. Assumed name

1. Definition. As used in this section, "assumed name" includes a trade name or a name other than the true name of a limited liability partnership.

2. Right to transact business under assumed name. Upon complying with this section, a registered limited liability partnership or foreign limited liability partnership authorized to do business in this State may transact its business in this State under one or more assumed names.

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

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

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

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

D. Whether the assumed name will be used at fewer than all of the limited liability partnership's places of business in this State, and if so, where it will be used.

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

4. Requirements for name. Each assumed name must comply with the requirements of section 803, subsection 1, except for the case of similarity with the true name of the limited liability partnership proposing to use the assumed name.

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

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

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

C. The assumed name that it intends to terminate.

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

7. Deceptively similar names; injunction. Notwithstanding



compliance with the requirements of this section, the use of an assumed name may be enjoined upon suit by the Attorney General or by a person adversely affected by such use if the assumed name is deceptively similar to a name in which a person has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law.

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

**§ 806. Registered name and renewal for foreign limited liability partnership; termination**

**1. Name registered.** A foreign limited liability partnership may register its name under this chapter provided that the name meets the requirements of section 803, subsection 1.

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

**A. The name of the limited liability partnership;**

**B. The state or territory under the laws of which it is organized and the current principal or registered office;**

**C. The date of its organization;**

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

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

**F. A certificate of good standing or its equivalent from the proper officer of its jurisdiction of organization. The certificate of good standing must have been made not more than 90 days prior to the delivery of the application for filing.**

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

**4. Renewal of registration.** A foreign limited liability partnership that has registered its name under this section may renew the registration annually by filing an application for renewal. That application must set forth the information required in subsection 2 and may be filed between October 1st and December 31st.

**5. Termination of name.** A foreign limited liability partnership may terminate a registered name by executing and delivering for filing a statement setting forth:

**A. The name of the foreign limited liability partnership and**

the address of its principal or registered office;

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

C. The date of its organization; and

D. That the registration of name is terminated.

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

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

A. A registered office in this State, which may be the same as its place of business; and

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

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

(2) A domestic or foreign corporation, 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 liability 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 agent delivers a written statement accepting the appointment to the Secretary of State.

**3. Change in registered office or registered agent.** The registered office or registered agent may be changed by:

A. Filing a certificate of amendment under section 823; or

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

(1) For the change of address of the registered office of one or more limited liability partnerships for whom the agent is the registered agent to another address in this State:

(a) The names of all limited liability partnerships represented by the agent;

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

(c) The new address of the registered office; or

(2) For a change in the name or identity of a person acting as the registered agent:

(a) The new name or identity of the registered agent;

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

(c) The names of the limited liability partnerships represented by the agent; and

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

Upon filing a certificate under this paragraph, any registered agent shall mail promptly or otherwise deliver a copy of the certificate to a partner of each limited liability partnership affected by the change.

4. Effective date of change or new appointment. The change of address of the registered office or registered agent is effective upon delivery of the certificate to the Secretary of State. The appointment of a new registered agent is effective upon delivery of the certificate to the Secretary of State and upon receipt by the Secretary of State of evidence that the new registered agent has accepted appointment pursuant to subsection 2.

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

A. When the registered agent appoints a successor:

(1) A statement of resignation;

(2) The names of the limited liability partnerships;

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

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

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

(1) A statement of resignation;

(2) The names of all the limited liability partnerships;  
and

(3) An attached affidavit stating that on or about the date of the filing of certificate of resignation, notices were sent by certified or registered mail to a partner of each registered limited liability partnership from which the registered agent is resigning at the address of the partner, as shown on the most recent annual report of a limited liability partnership.

A resignation takes effect under this paragraph upon filing a certificate with the Secretary of State.

6. Secretary of State. The Secretary of State shall furnish to the person submitting the document for filing or to that person's representative, an attested copy of a certificate filed under this section.

7. Resignation of agent; appointment by registered limited liability partnership; service of process. After receipt of the notice of the resignation of its registered agent under subsection 5, a registered limited liability partnership shall file a certificate of amendment designating a new registered agent. Until a registered limited liability partnership duly files a certificate appointing a new registered agent, legal process against that registered limited liability partnership may be served upon the Secretary of State in accordance with section 809.

§ 808. Revocation of registered limited liability partnership status by Secretary of State

1. Secretary of State's authority to revoke. The Secretary of State:

A. Shall revoke the status of a partnership as a registered limited liability partnership when:

(1) The registered limited liability partnership fails to deliver its annual report for filing within the time specified by this chapter or fails to pay fees or penalties as prescribed by this chapter when they become due and payable;

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

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

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

B. May revoke the status of a partnership as a registered limited liability partnership when that partnership fails to file a list of the names and addresses of the partners under section 873.

2. Procedures. The Secretary of State shall use the procedures set forth in section 859, subsection 1 relative to the revoking of the right of a foreign limited liability partnership to do business in this State for revoking the status of a partnership as a registered limited liability partnership.

3. Reinstatement. A partnership whose status as a registered limited liability partnership has been revoked under this section may have such status reinstated by:

- A. Filing the current annual report;
- B. Filing proper notification of change of registered agent or registered office, or both;
- C. Correcting a misrepresentation; or
- D. Providing a list of partners.

All delinquent fees and the penalty as set forth in section 875, subsection 1, or section 871, subsection 7, must be paid.

4. Validity of contracts; right to be sued; right to defend suit. The revocation of the status of a partnership as a registered limited liability partnership under this section does not impair:

- A. The existence of the partnership;
- B. The validity of a contract or act of the registered limited liability partnership;
- C. The right of another party to the contract to maintain an action, suit or proceeding on the contract;
- D. The right of the registered limited liability partnership to defend an action, suit or proceeding in a court of this State; or
- E. The liabilities of the partners thereof with regard to events, acts or omissions occurring before the date of revocation.

§ 809. Service of process upon registered limited liability partnership

1. Serving process; general provisions. Legal process on a registered limited liability partnership may be served upon:

A. A partner of the limited liability partnership in this State;

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

C. A liquidating trustee of the limited liability partnership.

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

3. Other means of service. This section does not limit or impair the right to serve process, notice or demand required or permitted by law to be served upon a registered limited liability partnership in any other manner permitted by law or rule of court.

§ 810. Service of nonresident partners of registered limited liability partnerships

1. Secretary of State; agent to receive service. Each partner of a registered limited liability partnership who is a nonresident of this State or who becomes a nonresident is deemed to have appointed the Secretary of State as an agent to receive service of process upon that partner in an action or proceeding relating to actions of a registered limited liability partnership and arising while that partner was serving in that capacity.

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

A. A copy of the process must be mailed to the nonresident partner at the business, residence or mailing address of the partner shown on the limited liability partnership's certificate or most recent annual report.

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

§ 811. Nature of professional limited liability partnership business

A limited liability partnership may be registered under this Act for any lawful purpose. A professional limited liability partnership, as defined in section 282, subsection 5-A, shall be subject to the Professional Service Corporation Act except as follows:

1. Not applicable. Sections 701, 702, 704, 705, 706, 714, and 715 do not apply.

2. Application. All references to:

A. Shareholders are deemed to be references to partners;

B. Corporations, or corporations organized or incorporated under the Professional Service Corporation Act, are deemed to be references to professional limited liability partnerships; and

C. Stock are deemed to be references to partnership interests.

3. Revocation. Any provision providing for the forfeiture of articles of incorporation or dissolution are deemed to provide for revocation of the status of the partnership as a limited liability partnership.

## § 812. Rules

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

1. Forms. Prescribing forms for documents required or permitted to be delivered for filing under this chapter and refusing to file documents not utilizing these prescribed forms;

2. Disapproved filing. Disapproving the filing of a document that is not clearly legible or one that may not be clearly reproducible photographically;

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

4. Electronic filing; facsimile signatures. Permitting the filing of documents by electronic transmission and permitting facsimile signatures on documents to be filed;

5. Definition of deceptively similar. Setting forth criteria to define the term "deceptively similar";

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

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

#### § 813. 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. Fees collected for expedited service must be deposited into a fund for use by the Secretary of State in providing an improved filing service.

#### § 814. Access to database

The Secretary of State may provide public access to the database through a dial-in modem, through public terminals and through electronic duplicates of the database. If access to the database 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.

#### § 815. Publications

1. Fee for publications. 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 forth the procedures for the sale of these publications.

2. Use of fees. Fees collected pursuant to this section must be deposited in a fund for use by the Secretary of State to replace and update publications offered in accordance with this chapter and to fund new publications.

### SUBCHAPTER II

#### REGISTRATION

#### § 821. Registration

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.

#### § 822. Certificate of limited liability partnership

1. Certificate of limited liability partnership. In order to register a limited liability partnership, a certificate of limited liability partnership must be filed with the Secretary of State. The certificate must set forth:



- A. The name of the registered limited liability partnership;
- B. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 807;
- C. The name and the business, residence or mailing address of the contact partner; and
- D. Any other matters the partners determine to include therein.

2. Effective Date. A partnership becomes a registered limited liability partnership effective at the time of the filing of the initial certificate of limited liability partnership with the Secretary of State if there has been substantial compliance with the requirements of this section.

### § 823. Amendment to certificate

1. Certificate of amendment. The certificate of limited liability partnership is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment must set forth:

- A. The name of the registered limited liability partnership; and
- B. The amendment or amendments to the certificate.

2. Inaccuracies. A partner who becomes aware that a statement in the certificate of limited liability partnership or any certificate filed under this section has become inaccurate in any material respect as a result of subsequent events shall promptly amend the certificate.

3. Amendment required. No later than 90 days after the following event or events occur, an amendment to the certificate of limited liability partnership reflecting the event or events must be filed by a partner:

- A. A change in the name of the registered limited liability partnership;
- B. Except as provided in section 807, subsections 3 and 5, a change in the address of the registered office or a change in the name, identity or address of the registered agent of the registered limited liability partnership;
- C. A partner becomes aware that the certificate of limited liability partnership contains a false or erroneous statement; or
- D. A change in the name or the address of the contact partner.

4. Amendment not required. No amendment to the certificate of limited liability partnership shall be required as a result of a change in the number of partners of the registered limited liability partnership or in the business in which the registered limited liability partnership engages. To the extent that any partnership would be deemed terminated by any such change and a successor partnership would be deemed to come into existence, such successor partnership (a) is covered by the prior partnership's certificate of limited liability partnership and (b) will succeed to the status of the prior partnership as a registered limited liability partnership.

5. Right to amend at any time. Except as otherwise provided in the certificate of limited liability partnership, a certificate of limited liability partnership may be amended at any time for any other purpose.

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

A. That it is a restatement;

B. The registered limited liability partnership's present name;

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

D. The date of filing of the initial certificate of limited liability partnership.

The restated certificate of limited liability partnership must be executed and filed in the manner provided for any other amendment to the certificate of limited liability partnership. Upon filing of the restated certificate of limited liability partnership by the Secretary of State, the restatement, including further amendments made as a result of the restatement, constitutes the certificate of the limited liability partnership pursuant to section 822.

#### § 824. Certificate of correction

A partner who becomes aware that any statement in a certificate of limited liability partnership or any certificate filed under this section was inaccurate when made, shall file a certificate of correction with the Secretary of State. The certificate of correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form. The corrected instrument is effective as of the

date the original instrument was filed, except for those persons who are substantially and adversely affected by the correction. For those persons, the corrected instrument is effective from the filing date.

#### § 825. Certificate of renunciation

1. Renunciation of status. A partnership may renounce its status as a registered limited liability partnership by filing a certificate of renunciation with the Secretary of State, setting forth:

- A. The name of the registered limited liability partnership;
- B. The date of filing of its certificate of limited liability partnership;
- C. The reason for filing the certificate of renunciation;
- D. The future effective date or time of renunciation, which must be a date or time certain, if it is not to be effective upon the filing of the certificate; and
- E. Any other information the person filing the certificate of renunciation determines necessary.

2. Effect of renunciation. Renunciation of the status of a registered limited liability partnership shall not affect the existence of said partnership or the liability of the partners thereof with regard to events, acts or omissions occurring before the date of renunciation.

#### § 826. Execution

Each document delivered to the Secretary of State for filing pursuant to this chapter must be executed in the following manner.

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

- A. In the case of the initial certificate of limited liability partnership, by one or more partners who are authorized;
- B. In the case of a certificate of amendment, restatement, certificate of correction or any other document filed under this chapter not otherwise provided for by at least one partner.
- C. In the case of a certificate of renunciation or other document filed after the dissolution of a registered limited liability partnership:

(1) If the partners are winding up the registered limited liability partnership's affairs, then by the contact partner or by a majority in interest of the

partners.

(2) If the partners are not winding up the registered limited liability partnership's affairs, then by all liquidating trustees; or

2. Signature by agent. Any person may sign any certificate or amendment to a certificate, including an attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment to a certificate need not be in writing, sworn to, verified or acknowledged and need not be filed with the Secretary of State, but if in writing, it must be retained by a partner.

3. Oath; unsworn falsification. The execution of a certificate constitutes an oath or affirmation, under the penalties of false swearing under Title 17-A, section 453, that to the best of the signer's knowledge and belief the facts stated in the certificate are true.

#### § 827. Execution or amendment by judicial order

If a person required by section 826 to execute a certificate fails or refuses to do so, then a person who is adversely affected by the failure or refusal may petition the Superior Court to direct the execution of the certificate as follows.

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

2. Venue. Venue for an action under this section lies in the county in this State in which the registered office of the registered limited liability partnership is located or, if there is no registered office in this State, then in Kennebec County Superior Court.

#### § 828. Filing

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

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

B. Unless the Secretary of State finds that the certificate or other document on its face does not conform to law, upon receipt of all filing fees required by law, the Secretary of State shall attest that the document has been filed with the Secretary of State by endorsing thereon the word "filed" and the day, month and year of the filing and by signing or

initialing that endorsement in person or by agent. If the person delivering the document for filing so requests, the endorsement must further include the hour and minute of the filing of the document.

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

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

E. The filing date is the date first received unless otherwise specified by law or rule.

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

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

#### § 829. Materially inaccurate statement

1. Liability. If the certificate of renunciation, certificate of limited liability partnership or certificate of amendment contains a materially inaccurate statement, a person who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

A. Any partner who executes the certificate and knew or should have known the statement was inaccurate in a material respect at the time the certificate was executed; and

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

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

§ 830. Notice

The fact that a certificate of limited liability partnership is on file with the Secretary of State constitutes notice of facts set forth in the certificate that are required by section 822, subsection 1 and by section 823, subsection 6.

SUBCHAPTER III

FOREIGN LIMITED LIABILITY PARTNERSHIPS

§ 851. Laws governing foreign limited liability partnerships

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

A. The laws of the state or country under which a foreign limited liability partnership is organized govern its organization and internal affairs and the liability of its partners, provided, that each partner, employee or agent of a foreign limited liability partnership who performs professional services in this state on behalf of such foreign limited liability partnership shall be personally and fully liable for his or her own omission, negligence, wrongful act, misconduct or malpractice arising out of such services or that of any person under his or her direct supervision and control arising out of professional services performed in this State; and

B. A foreign limited liability partnership may not be denied the authority to do business by reason of a difference between the laws referred to in this subsection and the laws of this State.

2. Type of business. A foreign limited liability partnership may transact any business in this State that may be transacted by a registered limited liability partnership.

§ 852. Authority to do business required; application

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

1. Definitions. As used in this subchapter, "doing business," "the doing of business" or "business done in this State," by a foreign limited liability partnership means the course or practice of carrying on any business activities in this State. Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership is not considered to be transacting business in this State, exclusively for the purpose of qualification under this

subchapter, solely by reason of carrying on in this State one or more of the following activities:

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

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

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

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

E. Effecting sales through independent contractors;

F. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, when the orders require acceptance outside this State before becoming binding contracts and when the contracts do not involve any local performance other than delivery and installation;

G. Making loans or creating or acquiring evidences of debt, mortgages or liens on real or personal property or recording the same;

H. Securing or collecting debts or enforcing any rights in property securing the same;

I. Effecting transactions in interstate or foreign commerce;

J. Owning or controlling a subsidiary corporation incorporated in or transacting business within this State;

K. Owning or controlling a general or limited partnership or a limited liability company organized or transacting business within this State;

L. Conducting an isolated transaction not in the course of a number of repeated similar transactions;

M. Serving as trustee, executor, administrator or guardian or in like fiduciary capacity as permitted by the laws of this State; or

N. Being a partner in a registered limited partnership or a domestic general partnership or a member in a domestic limited liability company.

2. Execution. The foreign limited liability partnership

shall submit an application for authority to do business to the Secretary of State, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation on a form prescribed by or furnished by the Secretary of State.

3. Contents of the application. The application must include:

A. The name of the foreign limited liability partnership and, if different, the name under which that partnership proposes to apply for authority to do business in this State;

B. The state or country where organized, the date of its organization and a statement that, as of the date of filing, the foreign limited liability partnership validly exists as a limited liability partnership under the laws of the jurisdiction of its organization;

C. The nature of the business or purposes to be conducted or promoted in this State;

D. The address of the registered office and the name and address of the registered agent for service of process required to be maintained under section 854, subsection 2;

E. A statement that the Secretary of State is appointed the agent of the foreign limited liability partnership for service of process;

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

G. The date on which the foreign limited liability partnership first did, or intends to do, business in this State;

H. A certificate of good standing or its equivalent from the proper officer of its jurisdiction of organization. For the purpose of this paragraph a copy of the foreign limited liability partnership's registration certified or stamped by the Secretary of State or other proper officer in its domestic jurisdiction, shall be a sufficient equivalent if such officer does not produce any other type of certificate of existence. The certificate of good standing or its equivalent must have been made not more than 90 days prior to the delivery of the application for filing; and

I. The address of the registered or principal office of the limited liability partnership in the jurisdiction of its organization.

### § 853. Evidence of authority to do business

If the Secretary of State finds that an application for the authority to do business conforms to the requirements of this



chapter and all requisite fees have been paid, the Secretary of State shall:

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

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

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

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

3. Copy to limited liability partnership. Furnish to the person submitting the document for filing, or that person's representative, an attested copy of the application.

§ 854. Name; registered office; registered agent

1. Name. A foreign limited liability partnership may apply to the Secretary of State to do business in this State under a name that conforms with the requirements of section 803, subsection 1. The name does not need to be the same as the name under which it is authorized to do business in the jurisdiction of its organization.

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

A. A registered office, which may or may not be a place of its business in this State; and

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

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

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

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

A. Filing a certificate of amendment under section 855; or

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

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

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

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

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

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

(a) The new name of the registered agent;

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

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

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

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

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

A. When the registered agent appoints a successor:

(1) A statement of resignation;

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

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

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

or

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

(1) A statement of resignation;

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

(3) An attached affidavit stating that on or about the date of the filing of certificate of resignation, notices that the registered agent is resigning as registered agent were sent by certified or registered mail to the registered or principal office of each foreign limited liability partnership in the jurisdiction of its organization, as filed with the Secretary of State.

The resignation takes effect under this paragraph upon filing with the Secretary of State.

5. Secretary of State. The Secretary of State shall furnish to the person submitting the document for filing, or that person's representative, an attested copy of a certificate filed under this section.

6. Resignation of agent; appointment by foreign limited liability partnership; service of process. After receipt of the notice of the resignation of its registered agent under subsection 3, paragraph B, the foreign limited liability partnership shall file a certificate of amendment designating a new registered agent. If the foreign limited liability partnership fails to appoint a new registered agent within 30 days after the filing of the certificate of resignation, the authority of that foreign limited liability partnership to carry on business in this State is canceled and the foreign limited liability partnership may not carry on business in this State.

#### § 855. Amendments to application

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

#### § 856. Certificate of correction

If a statement in the application for authority to do business of a foreign limited liability partnership was materially inaccurate when made, the foreign limited liability partnership shall promptly file with the Secretary of State a certificate, executed by a partner correcting the statement. The certificate of correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form.

The corrected instrument is effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and for those persons the corrected instrument is effective from the filing date.

**§ 857. Cancellation of authority to do business**

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

**§ 858. Doing business without authority; treatment as general partnership**

A foreign limited liability partnership doing business in this State shall be treated as a general partnership without the status of a limited liability partnership with respect to any business conducted in this State during any period during which it lacked authority to do business in this State as a foreign limited liability partnership.

**§ 859. Doing business without authority; revocation by Secretary of State**

1. Revocation by Secretary of State. The Secretary of State may revoke the status of a foreign partnership as a limited liability partnership with respect to doing business in the State in accordance with this subsection.

A. Notwithstanding Title 4, chapter 25 and Title 5, chapter 375, the status of a foreign partnership as a limited liability partnership with respect to doing business in this State may be revoked by the Secretary of State as provided in paragraphs C and D when:

(1) The foreign limited liability partnership fails to deliver its annual report for filing within the time specified by this chapter or fails to pay any fees or penalties as prescribed by this chapter when they become due and payable;

(2) The foreign limited liability partnership fails to appoint and maintain a registered agent in this State as required by section 807;

(3) The foreign limited liability partnership fails, after change of its registered office or registered agent, to file with the Secretary of State a statement of the change required by section 807;

(4) The foreign limited liability partnership has failed

to file with the Secretary of State an amended application for authority required by section 855; or

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

B. A foreign partnership's status as a limited liability partnership in this State may be revoked only after:

(1) The Secretary of State has mailed to the foreign limited liability partnership's last registered office in this State and to its last registered or principal office in its jurisdiction of organization as filed with the Secretary of State, a 30-day notice of pending revocation of its status as a foreign limited liability partnership in this State. The notice must specify the default; and

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

C. After the expiration of the 30-day notice period, if a foreign limited liability partnership has not corrected the specified default or convinced the Secretary of State, by affidavit or otherwise, that there was no misrepresentation relative to paragraph A, subparagraph (5), the Secretary of State shall issue and file a certificate revoking the status of the partnership as a foreign limited liability partnership in this State and mail copies of the certificate of revocation to the foreign limited liability partnership's last registered office in this State and to its last registered or principal office in its jurisdiction of organization as filed with the Secretary of State.

D. The foreign limited liability partnership may appeal the action of the Secretary of State in revoking its status to the Superior Court in Kennebec County. The appeal is governed by the Maine Rules of Civil Procedure, Rule 80B, as amended.

E. The status of the partnership as a foreign limited liability partnership in this State ceases as of the date of filing of the certificate of revocation unless stayed by the court.

F. A foreign partnership that has its status as a limited liability partnership in this State revoked may be requalified by applying under this subchapter.

#### § 860. Execution of documents; liability for false statements

1. Signature. Documents must be signed by a partner except as otherwise provided.

2. False swearing; false statements. Section 826, subsection

3 governing false swearing and section 829 on liability for false statements apply to foreign limited liability partnerships as if the application for authority to do business were the certificate of limited liability partnership of a registered limited liability partnership.

§ 861. Service of process on foreign limited liability partnerships authorized to do business in State

1. Partner. Process may be served on a partner that is present or found in this State.

2. Registered agent. Process may be served on the registered agent of the foreign limited liability partnership.

3. Service on Secretary of State. If a foreign limited liability partnership authorized to do business in this State fails to appoint or maintain a registered agent in this State, any such registered agent can not with reasonable diligence be found at the registered office or the authority of a foreign limited liability partnership is revoked, the Secretary of State is an agent of that foreign limited liability partnership upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand must be made as provided in section 863.

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

§ 862. Service of process on foreign limited liability partnership not authorized to do business in State

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

2. Method of serving process. In addition to other methods of service that may be authorized by law or by rule, service of process may be made as provided in section 863.

§ 863. Service of process on Secretary of State for foreign limited liability partnership

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

1. Delivery to Secretary of State. The process, notice or demand must be served by delivering it to the Secretary of State or

to a person designated by the Secretary of State to receive such service;

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

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

B. Its last registered or principal office in the jurisdiction of its organization on file in the office of the Secretary of State, if any; or if no such office has been listed in the office of the Secretary of State, at the last address of the foreign limited liability partnership known to the person serving the process; and

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

#### SUBCHAPTER IV

#### MISCELLANEOUS

#### § 871. Fees; penalties

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

1. Reservation. For filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to section 804, a fee of \$20 for each limited liability partnership affected;

2. Assumed name. For filing of an application for an assumed name under section 805, a fee of \$105;

3. Termination of assumed name. For filing of a termination of an assumed name under section 805 subsection 5, a fee of \$20;

4. Registered name. For filing of an application for a registered name of a foreign limited liability partnership under section 806, 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 \$155;

5. Termination of registered name. For filing of a termination of registered name under section 806, subsection 5, a fee of \$20;

6. Change of registered agent or registered office for registered limited liability partnerships. For filing of a certificate by a registered agent under section 807 or a certificate of amendment under section 823 changing the registered agent or address of the registered office or the resignation of the registered agent, a fee of \$20;

7. Penalty. Except as provided for in section 875, as a penalty prior to being reinstated as a registered limited liability partnership under section 808, a fee of \$100;

8. Certificate of limited liability partnership, amendment or renunciation. For filing of certificate of limited liability partnership under section 822, certificate of amendment under section 823, except as provided in subsection 6 or a certificate of renunciation under section 825, a fee of \$250;

9. Certificate of correction. For filing of a certificate of correction under section 824, a fee of \$20;

10. Foreign limited liability partnerships. For filing of an application for authority to do business as a foreign limited liability partnership under section 852, a certificate of amendment under section 855, except as provided in subsection 12 or a certificate of cancellation under section 857, a fee of \$250. For filing a certificate of amendment under section 855 to change the address of the registered or principal office in the jurisdiction of its organization, a fee of \$30.

11. Certificate of correction for foreign limited liability partnerships. For filing of a certificate of correction under section 856, a fee of \$30;

12. Change of registered agent or registered office for foreign limited liability partnerships. For filing of a certificate by a registered agent under section 854 or a certificate of amendment under section 855 changing the registered agent or address of the registered office or the resignation of the registered agent, a fee of \$30;

13. 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;

14. Certified copies. For providing certified copies of any paper on file as provided for by this chapter, a fee of \$5 for each copy certified in addition to any fee due under subsection 13;



15. Issuing certificate. For issuing a short form certificate of change of name, a fee of \$25. For issuing a short form certificate of limited liability partnership condition, a fee of \$25. For issuing a long form certificate of limited liability partnership condition, listing amendments, a fee of \$35. For issuing a certificate of diligent search, a fee of \$45. For issuing a specially worded certificate, a fee of \$45;

16. Preclearance of document. For preclearance of a document for filing, a fee of \$100;

17. All other filings. For receiving and filing of a certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$20;

18. Annual report. For filing of an annual report under section 874, a fee of \$60;

19. Information request. For written response to a request for information on file, a fee of \$5; and

20. Service of process on Secretary of State as agent. For accepting service of process under section 809, 810, 861 or 862, a fee of \$20.

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.

#### § 872. Duty of Secretary of State

The duty of the Secretary of State 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.

#### § 873. Disclosure of partners

1. Required by Secretary of State. A registered limited liability partnership shall file with the Secretary of State a written list of the names and addresses of its partners upon request by the Secretary of State. The Secretary of State shall

request the list if the Secretary of State is requested in writing to do so by a third party who must state the purpose for the request.

2. Use of information; oath. The list of the names and addresses filed under subsection 1 may not be used for commercial solicitation purposes. The Secretary of State may require persons requesting the list under subsection 1 to state under oath that the list will not be used for those purposes.

3. Penalty. If a registered limited liability partnership fails to file the list under subsection 1 within 10 working days after requested by the Secretary of State, the Secretary of State may assess a fine of \$10 a day for each day the information is not filed. The penalty may not exceed \$500 in any case. The Secretary of State may, at any time, revoke the status of a partnership as a limited liability partnership under section 808, subsection 1 for noncompliance with this section.

4. Rules. The Secretary of State may adopt rules in accordance with the Maine Administrative Procedure Act that establish procedures governing this section.

5. Fees. The Secretary of State may charge a fee to cover the cost of processing requests under subsection 1.

§ 874. Annual report of registered and foreign limited liability partnerships

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

A. The name of the limited liability partnership;

B. 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 liability partnership, the address of its registered or principal office in its jurisdiction of organization;

C. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this State, if any; and

D. The name and business or residence address of the contact partner including the street or rural route number, town or city and state.

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

3. Execution. The annual report must be executed and signed by a partner or any other duly authorized individual. Subject to rules adopted under section 812, the report must be delivered to the Secretary of State or a designee for filing. The annual report may be delivered to the Secretary of State on a staggered basis as defined by the Secretary of State by rule in accordance with the Maine Administrative Procedure Act. The report must apply to the 12-month period specified by the Secretary of State. Proof to the satisfaction of the Secretary of State that, prior to the date that penalties become effective for late delivery of an annual report 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 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 it does not so conform, the Secretary of State shall promptly mail or otherwise return the report to the limited liability partnership for any necessary correction. 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 the report was mailed or otherwise returned to the limited liability partnership by the Secretary of State.

§ 875. Failure to file annual report; incorrect report; penalties

1. Failure to file annual report. A limited liability partnership required to deliver an annual report for filing as provided by section 874 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 sum of \$25, providing the report is received by the Secretary of State prior to revocation of its status as a limited liability partnership. Upon failure to file the annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 25 and Title 5, chapter 375, shall revoke the status of such partnership as a foreign limited liability partnership or a registered limited liability partnership. The Secretary of State shall use the procedures set forth in section 859, subsection 1, relative to revoking the status of a partnership as a foreign limited liability partnership for revoking the status of a partnership as a registered limited liability partnership. A foreign limited liability partnership whose status as such has been revoked under this subsection that wishes to do business again as a limited liability partnership in this State must follow the procedures set forth in section 808, subsection 3, relative to reinstatement of registered limited liability partnerships. A partnership whose status as a registered limited liability partnership that has been revoked under this subsection may be reinstated by filing the current annual report together with the current annual filing fee and by paying the reinstatement fee of \$125 for each year the limited liability partnership failed to file

an annual report. The maximum reinstatement fee may not exceed \$500, regardless of the number of delinquent reports or the period of delinquency.

2. Nonconformity. If the Secretary of State finds that an annual report delivered for filing does not conform with the requirements of section 874, the report must be returned for correction.

3. Revocation. During any period in which a partnership's status as a limited liability partnership has been revoked, it shall be treated as a general partnership without such status.

4. Time limit specified. If the annual report of a limited liability partnership is not delivered for filing within the time specified in section 874, the limited liability 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 with a copy of the report within 30 days after learning that the Secretary of State failed to receive the original report.

#### § 876. Effective date

This Act takes effect September 1, 1996. All partnerships which register as registered limited liability partnerships on or after that date and all foreign limited liability partnerships applying for authority to transact business within this State on or after that date are governed by this Act.

#### § 877. 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 cancel their authority to do business in this State under chapter 11, chapter 13 or 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 shall 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 such application.

## PART C

Sec. C-1. 10 MRSA §1521, sub-§2-C is enacted to read:

2-C. Limited liability partnership name. "Limited liability partnership name" includes a limited liability partnership name, reserved name, assumed name or registered name as those terms are used in Title 31, sections 803 to 806.

Sec. C-2. 10 MRSA §1522, sub-§1, ¶G, as amended by PL 1993, c. 718, §B-2, is further amended to read:

G. Consists of or comprises a corporate, limited liability company, limited liability partnership or limited partnership name, unless the corporation, limited liability company, limited liability partnership or limited partnership executes and files with the Secretary of State proof of authorization of the use of a mark similar to the corporation, limited liability company, limited liability partnership or limited partnership name by the applicant seeking to use the mark.

Sec. C-3. 10 MRSA §1525, sub-§2, as amended by PL 1993, c. 316, §6, is further amended to read:

2. Corporate, limited liability company or partnership name. Any holder of a certificate of registration issued pursuant to section 1523 may grant to any domestic or foreign corporation, limited liability company, limited liability partnership or limited partnership authorized to do business in this State the exclusive right to the use of a name similar to the mark shown on the certificate.

Sec. C-4. 13-A MRSA §301, sub-§1, ¶E, is further amended to read:

E. May not be the same as, or deceptively similar to, the name of a domestic limited liability company existing under the laws of this State or a foreign limited liability company authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 604 or the name of a limited liability company that has in effect a registration of its limited liability company name as provided in Title 31, section 606 or the assumed name of a limited liability company as provided in Title 31, section 605, unless:

(1) The limited liability company executes and files with the Secretary of State as provided in Title 31, section 603 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State as provided in sections 104 and 106

proof of a resolution of its board of directors that the foreign corporation will not do business under that similar or identical name but will do business under an assumed name as provided in section 307- ;and

Sec. C-5. 13-A MRSA §301, sub-§1, ¶F, is enacted to read:

F. May not be the same as, or deceptively similar to, the name of a registered limited liability partnership existing under the laws of this State or a foreign limited liability partnership authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 804 or the name of a limited liability partnership that has in effect a registration of its limited liability partnership name as provided in Title 31, section 806 or the assumed name of a limited liability partnership as provided in Title 31, section 805, unless:

(1) The limited liability partnership executes and files with the Secretary of State as provided in Title 31, section 803 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors that the foreign corporation will not do business under that similar or identical name but will do business under an assumed name as provided in section 307.

Sec. C-6. 13-B MRSA §301, sub-§1, ¶F, as amended by PL 1993, c. 718, Sec. B-8 is amended to read:

F. May not be the same as, or deceptively similar to, the name of any domestic limited liability company existing under the laws of this State or any foreign limited liability company authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 604 or the name of a limited liability company that has in effect a registration of its limited liability company name as provided in Title 31, section 606 or the assumed name of a limited liability company as provided in Title 31, section 605, unless:

(1) The limited liability company executes and files with the Secretary of State as provided in Title 31, section 603 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the

Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors that the foreign corporation will not carry on activities under that similar or identical name but will carry on activities under an assumed name as provided in section 308- ;and

Sec. C-7. 13-B MRSA §301, sub-§1, ¶G, is enacted to read:

G. May not be the same as, or deceptively similar to, the name of any registered limited liability partnership existing under the laws of this State or any foreign limited liability partnership authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 804 or the name of a limited liability partnership that has in effect a registration of its limited liability partnership name as provided in Title 31, section 806 or the assumed name of a limited liability partnership as provided in Title 31, section 805, unless:

(1) The limited liability partnership executes and files with the Secretary of State as provided in Title 31, section 803 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors that the foreign corporation will not carry on activities under that similar or identical name but will carry on activities under an assumed name as provided in section 308.

Sec. C-8. 31 MRSA §6, is further amended to read:

**§6. Prohibition of certain names**

No person or persons, partnership or other entity engaged in any business, except a corporation, may adopt a name for such business that contains the words "corporation," "incorporated" or "limited," or any abbreviation of any such words. A limited partnership may use the term "limited partnership" as part of its name ~~and~~ a limited liability company may use the term "limited liability company" as part of its name- and a limited liability partnership may use the term "limited liability partnership" as part of its name.

Sec. C-9. 31 MRSA §403, sub-§1, ¶C, as amended by PL 1993, c. 718, sec. B-9, is further amended to read:

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

(1) The name of any domestic corporation or limited partnership or limited liability company or registered limited liability partnership organized under the laws of this State or any foreign corporation or foreign limited partnership or foreign limited liability company or foreign limited liability partnership authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under section 404 ~~or~~ 604 or 804; Title 13-A, section 302; or Title 13-B, section 302;

(3) A name that is registered under section 406 ~~or~~ 606 or 806; Title 13-A, section 303; or Title 13-B, section 303;

(4) The assumed name of a corporation or limited partnership or limited liability company or registered limited liability partnership as provided in section 405 ~~or~~ 605 or 805; Title 13-A, section 307; or Title 13-B, section 308; or

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

**Sec. C-10. 31 MRSA §603, sub-§1, paragraph B,** is amended to read:

**B.** May not be the same as or deceptively similar to:

(1) The name of any domestic corporation, limited partnership, registered limited liability partnership or limited liability company organized under the laws of this State or any foreign corporation, foreign limited partnership, foreign limited liability partnership or foreign limited liability company authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under sections 404, ~~and~~ 604 and 804; Title 13-A, section 302; and Title 13-B, section 302;

(3) A name that is registered under section 606; Title 13-A, section 303; Title 13-B, section 303; or Title 31, section 406 or 806;

(4) The assumed name of a corporation, limited partnership, limited liability partnership or limited liability company as provided in section 605; Title 13-A, section 307; Title 13-B, section 308; or Title 31, section 405 or 805;

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



## *Appendix "A"*

### **Registered Limited Liability Partnership Name**

#### *Alternate Language for section 803, subsection 1, paragraph A:*

A. Must contain the words "Limited Liability Partnership", or the abbreviation "L.L.P.", or the designation "LLP"; and

*Note: Should this alternative be selected, changes to the Limited Partnership Act and the Limited Liability Company Act, to allow a similar abbreviation or designation for those entities, should also be considered.*

### **Nature of Professional Limited Liability Partnership Business**

#### *Alternate Language for section 811, subsection 1:*

1. Not applicable. Sections 701, 702, 704, 705, 706, 713, 714, and 715 do not apply.

*Note: Should this alternative be selected, a change to the Limited Liability Company Act, to allow the abbreviation "P.A." or the words "Professional Association" to be omitted from the name of that entity type, should also be considered.*

## Appendix "B"

### PERMITTED LIMITED LIABILITY PARTNERSHIP NAMES

#### ABA PROTOTYPE

§ 911

Registered Limited Liability Partnership, Limited Liability Partnership, R.L.L.P., L.L.P., RLLP, LLP.

Arizona

Ariz. Rev. Stat. Ann. § 29-245: Registered Limited Liability Partnership, L.L.P.

Connecticut

Ct. Gen. Stat. tit. 34, Public Act 94-128, § 20: Registered Limited Liability Partnership, Limited Liability Partnership, L.L.P., LLP.

Delaware

Del. Code Ann. tit. 6, § 1545: Registered Limited Liability Partnership, L.L.P., LLP.

District of  
Columbia

D.C. Code Ann. § 41-144: Registered Limited Liability Partnership, L.L.P.

Georgia

Ga. Code Ann. § 14-8-48: Limited Liability Partnership, Ltd. Liability Partnership, L.L.P.

Illinois

805 ILCS 205/8.2: Registered Limited Liability Partnership, L.L.P., LLP.

Iowa

Iowa Code Ann. § 486.45: Registered Limited Liability Partnership, L.L.P.

Kansas

Kan. Stat. Ann. ch. 17, § 2: Registered Limited Liability Partnersihp, L.L.P., LLP.

Kentucky

Ky. Rev. Stat. Ann. § 362.565: Registered Limited Liability Partnership, LLP.

Louisiana

La. Rev. Stat. tit. 11, § 9:3433: Registered Limited Liability Partnership, L.L.P.

Maryland

Md. Corps. & Ass'ns. Code Ann. § 9-803: Limited Liability Partnership, L.L.P.

Michigan

Public Act 94-323, § 45: Limited Liability Partnership, L.L.P., LLP.

Minnesota

Minn. Stat. § 319A.07: Professional Limited Liability Partnership, P.L.L.P.

Mississippi

House Bill No. 977, § 7: Registered Limited Liability Partnership, L.L.P., R.L.L.P.

New Jersey

N.J. Stat. Ann. tit. 42, ch. 2B: [Recognizes only foreign limited liability partnerships].

New York

N.Y. Partnership Law § 121-1501: Registered Limited Liability Partnership, Limited Liability Partnership, R.L.L.P., RLLP, L.L.P., LLP.

<b>N. Carolina</b>	N.C. Gen. Stat. § 59-84.3: Registered Limited Liability Partnership, L.L.P.
<b>Ohio</b>	Ohio Rev. Code Ann. § 1775.62: Registered partnership having limited liability, P.L.L.
<b>Pennsylvania</b>	Pa. C.S.A. tit. 15, § 8203: Company, limited, limited liability partnership, or abbreviation therefor.
<b>S. Carolina</b>	S.C. Code § 33-41-1120: Registered Limited Liability Partnership, L.L.P.
<b>Texas</b>	Tex. Rev. Civ. Stat. Ann. art. 6132b, § 45-B: Registered Limited Liability Partnership, L.L.P.
<b>Utah</b>	Utah Code Ann. § 48-1-45: Limited Liability Partnership, L.L.P., LLP.
<b>Virginia</b>	Va. Code § 50-43.2. Registered Limited Liability Partnership, L.L.P.

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