

A Bill for an Act Relating to the Uniform Limited Partnership Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM LIMITED PARTNERSHIP ACT
ARTICLE 1
GENERAL PROVISIONS**

§ -101 **Short title.** This chapter may be cited as the “Uniform Limited Partnership Act”.

§ -102 **Definitions.** As used in this chapter:

“Certificate of limited partnership” means the certificate required by section -201. The term includes the certificate as amended or restated.

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

“Debtor in bankruptcy” means a person that is the subject of:

- (1) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
- (2) A comparable order under federal, state, or foreign law governing insolvency.

“Director” means the director of the department of commerce and consumer affairs.

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

“Foreign limited liability limited partnership” means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section -404(c).

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

“General partner” means:

- (1) With respect to a limited partnership, a person that:
 - (A) Becomes a general partner under section -401; or
 - (B) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under section -1204(a) or (b);

and

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

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

“Limited partner” means:

- (1) With respect to a limited partnership, a person that:
- (A) Becomes a limited partner under section -301; or
 - (B) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section -1204(a) or (b);

and

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

“Limited partnership”, except in the phrases “foreign limited partnership” and “foreign limited liability limited partnership,” means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 or section -1204(a) or (b). The term includes a limited liability limited partnership.

“Partner” means a limited partner or general partner.

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

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

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

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

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

“Registered office” means the office that a domestic or foreign limited partnership is required to register and maintain under section -114.

“Required information” means the information that a limited partnership is required to maintain under section -111.

“Sign” means to execute or adopt a tangible symbol with the present intent to authenticate a record or to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

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

“This State” means the State of Hawaii.

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

“Transferable interest” means a partner’s right to receive distributions.

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

§ -103 Knowledge and notice. (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

- (1) Knows of it;
- (2) Has received a notification of it;
- (3) Has reason to know it exists from all of the facts known to the person at the time in question; or
- (4) Has notice of it under subsection (c) or (d).

(c) A certificate of limited partnership on file in the office of the director is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (d), the certificate is not notice of any other fact.

(d) A person has notice of:

- (1) Another person's dissociation as a general partner:
 - (A) Ninety days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated; or
 - (B) Ninety days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;
- (2) A limited partnership's dissolution, ninety days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;
- (3) A limited partnership's termination, ninety days after the effective date of a statement of termination;
- (4) A limited partnership's conversion under article 11, ninety days after the effective date of the articles of conversion; or
- (5) A merger under article 11, ninety days after the effective date of the articles of merger.

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

(f) A person receives a notification when the notification:

- (1) Comes to the person's attention; or
- (2) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

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

(h) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact

relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

§ **-104 Nature, purpose, and duration of entity.** (a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may be organized under this chapter for any lawful purpose.

(c) A limited partnership has a perpetual duration.

§ **-105 Powers.** A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

§ **-106 Governing law.** The law of this State governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

§ **-107 Supplemental principles of law; rate of interest.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 478-2.

§ **-108 Name.** (a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership that is not a limited liability limited partnership shall contain the phrase "limited partnership" or the abbreviation "L.P." or "LP", and shall not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(c) The name of a limited liability limited partnership shall contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.", and shall not contain the abbreviation "L.P." or "LP".

(d) Unless authorized by subsection (e), the name of a domestic limited partnership or limited liability limited partnership or foreign limited partnership or limited liability limited partnership as set forth in the certificate of limited partnership or certificate of authority shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or limited liability company existing or registered under the laws of this State, any foreign corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or foreign limited liability company authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter; except that this provision shall not apply if the applicant filed with the director either of the following:

- (1) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or

- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.

(e) A limited partnership may apply to the director for authorization to use a name that does not comply with subsection (d). The director shall authorize use of the name applied for if, for each conflicting name:

- (1) The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the director to change the conflicting name to a name that complies with subsection (d) and is not substantially identical to a name in the records of the director;
- (2) The applicant delivers to the director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this State the name applied for; or
- (3) The applicant delivers to the director proof satisfactory to the director that the present user, registrant, or owner of the conflicting name:
 - (A) Has merged into the applicant;
 - (B) Has been converted into the applicant; or
 - (C) Has transferred substantially all of its assets, including the conflicting name, to the applicant.

(f) Subject to section -905, this section applies to any foreign limited partnership transacting business in this State, having a certificate of authority to transact business in this State, or applying for a certificate of authority.

§ -108.5 Administrative order of abatement for infringement of limited partnership name. (a) Any domestic limited partnership or limited liability limited partnership in good standing or foreign limited partnership or limited liability limited partnership authorized to transact business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
 - (B) Require the entity to register the new name with the director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no

appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 414, 414D, 415A, 425, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602.

§ -109 Reserved name. (a) A person may reserve the exclusive use of a name that complies with section -108 including a fictitious name for a foreign limited partnership whose name is not available, by delivering an application to the director for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the director finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a one hundred twenty-day period from the date of filing.

(b) The owner of a name so reserved may transfer the reservation to another person by delivering to the director a signed notice of the transfer which states the name and address of the transferee.

§ -110 Effect of partnership agreement; nonwaivable provisions. (a) Except as otherwise provided in subsection (b), the partnership agreement governs relations among the partners, and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners, and between the partners and the partnership.

(b) A partnership agreement may not:

- (1) Vary a limited partnership's power under section -105 to sue, be sued, and defend in its own name;
- (2) Vary the law applicable to a limited partnership under section -106;
- (3) Vary the requirements of section -204;
- (4) Vary the information required under section -111 or unreasonably restrict the right to information under section -304 or -407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
- (5) Eliminate the duty of loyalty under section -408, but the partnership agreement may:
 - (A) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - (B) Specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (6) Unreasonably reduce the duty of care under section -408(c);
- (7) Eliminate the obligation of good faith and fair dealing under sections -305(b) and -408(d), but the partnership agreement may prescribe the standards by which the performance of the obligation shall be measured, if the standards are not manifestly unreasonable;
- (8) Vary the power of a person to dissociate as a general partner under section -604(a) except to require that the notice under section -603(1) be in a record;

- (9) Vary the power of a court to decree dissolution in the circumstances specified in section -802;
- (10) Vary the requirement to wind up the partnership's business as specified in section -803;
- (11) Unreasonably restrict the right to maintain an action under article 10;
- (12) Restrict the right of a partner under section -1110(a) to approve a conversion or merger or the right of a general partner under section -1110(b) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or
- (13) Restrict rights under this chapter of a person other than a partner or a transferee.

§ -111 **Required information.** A limited partnership shall maintain at its registered office the following information:

- (1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;
- (2) A copy of the certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been executed;
- (3) A copy of any filed articles of conversion or merger;
- (4) A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;
- (6) A copy of any financial statement of the limited partnership for the three most recent years;
- (7) A copy of the three most recent annual statements delivered by the limited partnership to the director pursuant to section -210;
- (8) A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and
- (9) Unless contained in a partnership agreement made in a record, a record stating:
 - (A) The amount of cash, and a description and statement of the agreed value of any other property or services, contributed or agreed to be contributed by each partner;
 - (B) The time or events that trigger any additional contributions agreed to be made by each partner are to be made;
 - (C) Unless contained in a written partnership agreement, a writing setting out any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution;
 - (D) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and
 - (E) Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

§ -112 **Business transactions between a partner and the partnership.** A partner may lend money to and transact other business with the limited partnership

and has the same rights and obligations with respect to the loan or other transaction as a person who is not a partner.

§ **-113 Dual capacity.** A person may be both a general partner and a limited partner. A person that is both a general and limited partner shall have the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person shall be subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person shall be subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

§ **-114 Registered office and registered agent.** Each domestic limited partnership or foreign limited partnership shall continuously maintain in this State:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this State and whose business office is identical with the registered office;
 - (B) A domestic entity authorized to transact business in this State whose business office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.

§ **-115 Designation or change of registered office or registered agent.**

(a) A domestic limited partnership or foreign limited partnership that does not already have a registered office and registered agent shall designate its registered office and registered agent by delivering to the director for filing, a statement of designation that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- (3) That the street addresses of its initial registered office and agent shall be identical.

(b) A domestic or foreign limited partnership may change its registered office or its registered agent by delivering to the director for filing, a statement of change that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.

(c) If the registered agent's street address changes, the registered agent may change the street address of the limited partnership's registered office by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director for filing, a statement that complies with the requirements of subsection (a) and recites that the limited partnership has been notified of the change.

§ **-116 Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director for filing, a signed statement of resignation. The statement may include a statement that the registered office shall also be discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the limited partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ -117 **Service on the partnership.** (a) Service of any notice or process authorized by law issued against any limited partnership, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent or general partner of the limited partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or general partner cannot be found, upon any person who is found in charge of the property, business, or office of the limited partnership within the jurisdiction of the court, officer, or board.

(b) If no general partner or other person in charge of the property, business, or office of the limited partnership can be found within this State, and in case the limited partnership has not filed with the director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of this State may be served, or the person named is not found within this State, service may be made upon the limited partnership by registered or certified mail, return receipt requested, addressed to the limited partnership at its principal office. Service by registered or certified mail shall be perfected at the earliest of:

- (1) The date the limited partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the limited partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner permitted by law.

§ -118 **Consent and proxies of partners.** Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

**ARTICLE 2
FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP;
OTHER FILINGS; FEES**

§ -201 **Certificate of limited partnership.** (a) In order to form a limited partnership, a certificate of limited partnership shall be executed and delivered to the office of the director for filing. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The mailing address of the limited partnership's initial principal office, the street address of the limited partnership's initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (3) The name and the address of each general partner;
- (4) The name and address of each limited partner;
- (5) Whether the limited partnership is a limited liability limited partnership;
- (6) Any additional information required by article 11; and
- (7) Any other matter the general partners determine to include therein.

(b) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in section -110(b) in a manner inconsistent with that section.

(c) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the director if there has been substantial compliance with the requirements of this section.

(d) Subject to subsection (b), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

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

§ -202 Amendment or restatement of certificate. (a) In order to amend its certificate of limited partnership, a limited partnership shall deliver to the director for filing an amendment or, pursuant to article 11, articles of merger stating:

- (1) The name of the limited partnership;
- (2) The date of filing of its initial certificate; and
- (3) The changes the amendment makes to the certificate as most recently amended or restated.

(b) A limited partnership shall within thirty days deliver to the director for filing an amendment to a certificate of limited partnership to reflect:

- (1) The admission of a new general partner;
- (2) The dissociation of a person as a general partner; or
- (3) The appointment of a person to wind up the limited partnership's activities under section -803(c) or (d).

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

- (1) Cause the certificate to be amended; or
- (2) If appropriate, deliver to the director for filing a statement of change pursuant to section -115 or a certificate of correction pursuant to section -207.

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

(e) A restated certificate of limited partnership may be delivered to the director for filing in the same manner as an amended certificate.

(f) Subject to section -206(c), an amendment or restated certificate shall be effective when filed with the director.

§ -203 Statement of termination. (a) A dissolved limited partnership that has completed winding up may deliver to the director for filing a statement of termination that states:

- (1) The name of the limited partnership;
- (2) The date of filing of its initial certificate of limited partnership; and
- (3) The effective date, which shall be a date and time certain, of cancellation, if it is not to be effective upon the filing of the certificate.

(b) A limited partnership shall be terminated upon the effective date of its statement of termination. The statement of termination may specify a delayed effective time and date, and if so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document shall

be effective at the close of business on that date. A delayed effective date for a document shall not be later than the thirtieth day after the date it is filed.

(c) If a partnership has terminated by the expiration of its term of existence, the partners may, at any time within two years of such termination, by taking action consistent with the partnership agreement and by amending the partnership's certificate of limited partnership, extend the term of partnership. Such extension shall be effective from the original filing of the certificate.

(d) Within the applicable two-year period, should the name of the limited partnership, or a name substantially identical, be registered or reserved by another entity or should such name or a name substantially identical be registered as a trade name, trademark, or service mark, then extension of its term of existence shall be allowed only upon the registration of a new name by the limited partnership pursuant to the amendment provisions of this chapter.

§ -204 Execution of records. (a) Each record delivered to the director for filing pursuant to this chapter shall be executed in the following manner:

- (1) A certificate of limited partnership shall be signed by at least one general partner;
- (2) An amendment that changes the status of the limited partnership as a limited liability limited partnership shall be signed by at least one general partner who shall certify that a majority of the general partners have agreed to the amendment;
- (3) An amendment designating as a general partner a person admitted under section -801(3)(B) following the dissociation of a limited partnership's last general partner shall be signed by the designated person;
- (4) An amendment required by section -803(c) following the appointment of a person to wind up the dissolved limited partnership's activities shall be signed by the appointed person;
- (5) Any other amendment shall be signed by:
 - (A) At least one general partner listed in the certificate;
 - (B) Each person designated in the amendment as a new general partner; and
 - (C) Each person that the amendment indicates has dissociated as a general partner, unless:
 - (i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
 - (ii) The person has previously delivered to the director for filing a statement of dissociation;
- (6) A restated certificate of limited partnership shall be signed by at least one general partner listed who shall certify that a majority of the general partners have agreed to the restatement and to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate shall be signed in a manner that satisfies that paragraph;
- (7) A statement of termination shall be signed by at least one general partner who shall certify that all of the general partners have agreed to the termination or if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section -803(c) or (d) to wind up the dissolved limited partnership's activities;

- (8) Articles of conversion shall be signed by at least one general partner who shall certify that a majority of the general partners have agreed to the conversion;
 - (9) Articles of merger shall be signed as provided in section -1107(a);
 - (10) Any other record delivered on behalf of a limited partnership to the director for filing shall be signed by at least one general partner;
 - (11) A statement by a person pursuant to section -605(a)(4) stating that the person has dissociated as a general partner shall be signed by that person;
 - (12) A statement of withdrawal by a person pursuant to section -306 shall be signed by that person;
 - (13) A record delivered on behalf of a foreign limited partnership to the director for filing shall be signed by at least one general partner of the foreign limited partnership; and
 - (14) Any other record delivered on behalf of any person to the director for filing shall be signed by that person.
- (b) Any person may sign by an attorney-in-fact any record to be filed pursuant to this chapter.

§ -205 Signing and filing pursuant to judicial order. (a) If a person required by this chapter to sign a record or deliver a record to the director for filing does not do so, any other person that is aggrieved may petition the circuit court to order:

- (1) The person to sign the record and deliver the record to the director for filing; or
- (2) The director to file the record unsigned.

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

(c) A record filed unsigned pursuant to this section shall be effective without being signed.

§ -206 Filing in the office of the director; effective time and date. (a) A certified and executed certificate of limited partnership, any certificate of amendment or cancellation, or of any judicial decree of amendment or cancellation, an application for registration as a foreign limited partnership, or any certificate relating thereto, shall be delivered to the director for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the director finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the document with the word "Filed" and the date of delivery thereof; and
- (2) File the document in the director's office.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the director, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership shall be canceled.

(c) Except as otherwise provided in subsection (d) and section -207, a document accepted for filing shall be effective at the time of filing on the date it is filed, as evidenced by the director's date and time endorsement on the original document.

(d) Articles of conversion and articles of merger may specify a delayed effective time and date, and if so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the thirtieth day after the date it is filed.

§ -206.5 **Filing requirements; filing duty of the director.** (a) To be entitled to filing by the director a document shall satisfy the requirements of this section, and of any other section that adds to or varies from these requirements.

(b) The document shall contain the information required by this chapter. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document shall not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§ -207 **Correcting a filed document.** (a) A domestic or foreign limited partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected:

- (1) By preparing a certificate of correction that:
 - (A) Describes the document, including its file date or attaches a copy of it to the certificate;
 - (B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (C) Corrects the incorrect statement or defective execution;
 and

- (2) By delivering the certificate to the director for filing.

(c) A certificate of correction shall be effective as of the effective date of the document it corrects; provided that the certificate shall be effective when filed:

- (1) For the purposes of section -103(c) and (d); and
- (2) As to persons relying on the uncorrected record and adversely affected by the correction.

§ -208 **Liability for false information in a filed record.** (a) If a record delivered to the director for filing under this chapter contains false information, any person that suffers loss by reliance on the false information may recover damages for the loss from:

- (1) Any person who executes the record, or causes another to execute it on the person's behalf, and knew the information to be false or should have known the information was false at the time the record was executed; and
- (2) Any general partner who has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section -202, file a petition pursuant to section -205, or deliver to the director for filing a statement of

change pursuant to section -115 or a certificate of correction pursuant to section -207.

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

§ **-209 Certificates and certified copies to be received in evidence.** All certificates issued by the director pursuant to this chapter, and all copies of documents filed in the director's office pursuant to this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies, as prima facie evidence of the facts therein stated. A certificate by the director, under the seal of the department of commerce and consumer affairs, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies, as prima facie evidence of the existence or nonexistence of the facts therein stated.

§ **-210 Annual statement.** (a) Each limited partnership and each foreign limited partnership authorized to transact business in this State shall deliver to the director for filing an annual statement that sets forth:

- (1) The name of the limited partnership and the state or country under whose law it is organized; and
- (2) The mailing address of the limited partnership's principal office, the street address of the limited partnership's registered office in this State, and the name of its registered agent at its registered office in this State.

(b) The annual statement shall be filed within the time periods prescribed in subsection (c).

(c) Effective January 1, 2005, for each limited partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual statement shall be filed on or before March 31 of each year and shall reflect the state of the limited partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual statement shall be filed on or before June 30 of each year and shall reflect the state of the limited partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual statement shall be filed on or before September 30 of each year and shall reflect the state of the limited partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual statement shall be filed on or before December 31 of each year and shall reflect the state of the limited partnership's affairs as of October 1 of the year when filed;

provided that if a limited partnership is registered in the same year in which the annual statement is due, the limited partnership shall not be required to file an annual statement for that year. Thereafter, the limited partnership shall comply with the requirements of this section.

(d) Each annual statement shall be certified as correct by any general partner.

§ **-211 Fees for filing documents and issuing certificates.** (a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, \$20;
- (3) Certificate of cancellation, \$20;
- (4) Annual statement for domestic or foreign limited partnership, \$10;

- (5) Any other certificate or document of domestic or foreign limited partnership, \$20;
 - (6) Application for registration as a foreign limited partnership, \$100;
 - (7) Any certificate of amendment or agent change for foreign limited partnership, \$20;
 - (8) Application for certificate of withdrawal of foreign limited partnership, \$20;
 - (9) Reservation of name, \$20;
 - (10) Transfer of reservation of name, \$20;
 - (11) Good standing certificate, \$25;
 - (12) Articles of conversion, \$200;
 - (13) Special handling fee for review of articles of conversion, \$150;
 - (14) Special handling fee for review of any limited partnership document, \$50;
 - (15) Special handling fee for certificates issued by the director, \$25 per certificate;
 - (16) Special handling fee for certification of documents, \$25; and
 - (17) Agent's statement of change of address, \$20 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected foreign limited partnership.
- (b) The director shall charge and collect:
 - (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited partnership, \$20 for the certificate and affixing the seal thereto; and
 - (2) At the time of any service of process on the director as agent for service of process of a limited partnership, \$25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.
 - (c) All fees collected under this section shall be managed in accordance with section 26-9.

**ARTICLE 3
LIMITED PARTNERS**

§ **-301 Limited partner.** A person becomes a limited partner:

- (1) As provided in the partnership agreement;
- (2) As the result of a conversion or merger under article 11; or
- (3) With the consent of all the partners.

§ **-302 No right or power as limited partner to bind limited partnership.** A limited partner shall not have the right or the power as a limited partner to act for or bind the limited partnership.

§ **-303 Liability as a limited partner.** An obligation of a limited partnership, whether arising in contract, tort, or otherwise, shall not be the obligation of a limited partner. A limited partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

§ **-304 Right of limited partner and former limited partner to information.** (a) Within ten days of a demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during

regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

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

- (1) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;
- (2) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and
- (3) The information sought is directly connected to the limited partner's purpose.

(c) Within ten days after receiving a demand pursuant to subsection (b), the limited partnership in a record shall inform the limited partner who made the demand:

- (1) What information the limited partnership will provide in response to the demand;
- (2) When and where the limited partnership will provide the information; and
- (3) If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

- (1) The information pertains to the period during which the person was a limited partner;
- (2) The person seeks the information in good faith; and
- (3) The person meets the requirements of subsection (b).

(e) The limited partnership shall respond to a demand made pursuant to subsection (d) in the same manner as provided in subsection (c).

(f) If a limited partner dies, section -704 applies.

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

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

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

(j) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (g) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

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

§ **-305 Limited duties of limited partners.** (a) A limited partner shall not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

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

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

§ **-306 Person erroneously believing self to be a limited partner.** (a) Except as otherwise provided in subsection (b), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise shall not be liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

- (1) Causes an appropriate certificate of limited partnership, amendment, or certificate of correction to be signed and delivered to the director for filing; or
- (2) Withdraws from future participation as an owner in the enterprise by signing and delivering to the director for filing a statement of withdrawal under this section.

(b) A person that makes an investment described in subsection (a) shall be liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before a statement of withdrawal, certificate of limited partnership, amendment, or certificate of correction is filed with the director to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subsection (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or certificate of correction to be signed and delivered to the director for filing, the person has the right to withdraw from the enterprise pursuant to subsection (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

ARTICLE 4 GENERAL PARTNERS

§ **-401 General partner.** A person becomes a general partner:

- (1) As provided in the partnership agreement;
- (2) Under section -801(3)(B) following the dissociation of a limited partnership's last general partner;
- (3) As the result of a conversion or merger under article 11; or
- (4) With the consent of all the partners.

§ **-402 General partner is an agent of the limited partnership.** (a) Each general partner shall be an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the

general partner was dealing knew, had received a notification, or had notice under section -103(d) that the general partner lacked authority.

(b) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

§ -403 Limited partnership liable for general partner's actionable conduct. (a) A limited partnership shall be liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

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

§ -404 General partner's liability. (a) Except as otherwise provided in subsections (b) and (c), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner of an existing limited partnership shall not be personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section -406(b)(2).

§ -405 Actions by and against partnership and partners. (a) To the extent not inconsistent with section -404, a general partner may be joined in an action against the limited partnership or named in a separate action.

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

(c) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the general partner is personally liable for the claim under section -404 and:

- (1) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
- (2) The limited partnership is a debtor in bankruptcy;
- (3) The general partner has agreed that the creditor need not exhaust limited partnership assets;
- (4) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy

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

- (5) Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

§ -406 Management rights of general partners. (a) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The consent of each general partner shall be necessary to:

- (1) Amend the partnership agreement;
- (2) Amend the certificate of limited partnership to add or, subject to section -1110, delete a statement that the limited partnership is a limited liability limited partnership; and
- (3) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

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

(d) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(e) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (c) or (d) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(f) A general partner shall not be entitled to remuneration for services performed for the partnership.

§ -407 Right of general partner and former general partner to information. (a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

- (1) In the limited partnership's designated office, required information; and
- (2) At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(b) Each general partner and the limited partnership shall furnish to a general partner:

- (1) Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and
- (2) On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) Subject to subsection (e), within ten days of a demand made in a record received by the limited partnership, a person dissociated as a general partner may

have access to the information and records described in subsection (a) at the location specified in subsection (a) if:

- (1) The information or record pertains to the period during which the person was a general partner;
- (2) The person seeks the information or record in good faith; and
- (3) The person satisfies the requirements imposed on a limited partner by section -304(b).

(d) The limited partnership shall respond to a demand made pursuant to subsection (c) in the same manner as provided in section -304(c).

(e) If a general partner dies, section -704 applies.

(f) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership shall bear the burden of proving reasonableness.

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

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (f) or by the partnership agreement shall apply both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(i) The rights under this section shall not extend to a person as transferee, but the rights under subsection (c) of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section -603(7)(B) or (C).

§ -408 General standards of a general partner's conduct. (a) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (b) and (c).

(b) A general partner's duty of loyalty to the limited partnership and the other partners shall be limited to the following:

- (1) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;
- (2) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and
- (3) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(c) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities shall be limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

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

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

ARTICLE 5
CONTRIBUTIONS AND DISTRIBUTIONS

§ **-501 Form of contribution.** A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

§ **-502 Liability for contribution.** (a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership shall not be excused by the partner's death, disability, or other inability to perform personally.

(b) If a partner does not make a promised non-monetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

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

§ **-503 Sharing of distributions.** A distribution by a limited partnership shall be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

§ **-504 Interim distributions.** A partner shall not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

§ **-505 No distribution on account of dissociation.** A person shall not have a right to receive a distribution on account of dissociation.

§ **-506 Distribution in kind.** A partner shall not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section -812(b), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

§ **-507 Right to distribution.** When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

§ **-508 Limitations on distribution.** (a) A limited partnership may not make a distribution in violation of the partnership agreement.

(b) A limited partnership may not make a distribution if after the distribution:

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

- (2) The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(c) A limited partnership may base a determination that a distribution is not prohibited under subsection (b) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(d) Except as otherwise provided in subsection (g), the effect of a distribution under subsection (b) shall be measured:

- (1) In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and
- (2) In all other cases, as of the date:
- (A) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or
- (B) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(e) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section shall be at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, shall not be considered a liability for purposes of subsection (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which is measured on the date the payment is made.

§ -509 Liability for improper distributions. (a) A general partner that consents to a distribution made in violation of section -508 shall be personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section -408.

(b) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section -508 shall be personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section -508.

(c) A general partner against which an action is commenced under subsection (a) may:

- (1) Implead in the action any other person that is liable under subsection (a) and compel contribution from the person; and
- (2) Implead in the action any person that received a distribution in violation of subsection (b) and compel contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred if it is not commenced within two years after the distribution.

**ARTICLE 6
DISSOCIATION**

§ **-601 Dissociation as a limited partner.** (a) A person shall not have a right to dissociate as a limited partner before the termination of the limited partnership.

(b) A person shall be dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

- (1) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;
- (2) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;
- (3) The person's expulsion as a limited partner pursuant to the partnership agreement;
- (4) The person's expulsion as a limited partner by the unanimous consent of the other partners if:
 - (A) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;
 - (B) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;
 - (C) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to transact business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to transact business; or
 - (D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (5) On application by the limited partnership, the person's expulsion as a limited partner by judicial order because:
 - (A) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;
 - (B) The person wilfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section -305(b); or
 - (C) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;
- (6) In the case of a person who is an individual, the person's death;
- (7) In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;
- (8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- (9) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

- (10) The limited partnership's participation in a conversion or merger under article 11, if the limited partnership:
- (A) Is not the converted or surviving entity; or
 - (B) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

§ **-602 Effect of dissociation as a limited partner.** (a) Upon a person's dissociation as a limited partner:

- (1) Subject to section -704, the person shall not have further rights as a limited partner;
- (2) The person's obligation of good faith and fair dealing as a limited partner under section -305(b) continues only as to matters arising and events occurring before the dissociation; and
- (3) Subject to section -704 and article 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation shall be owned by the person as a mere transferee.

(b) A person's dissociation as a limited partner shall not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

§ **-603 Dissociation as a general partner.** A person shall be dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

- (1) The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;
- (2) An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;
- (3) The person's expulsion as a general partner pursuant to the partnership agreement;
- (4) The person's expulsion as a general partner by the unanimous consent of the other partners if:
 - (A) It is unlawful to carry on the limited partnership's activities with the person as a general partner;
 - (B) There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;
 - (C) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to transact business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to transact business; or
 - (D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (5) On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:
 - (A) The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;
 - (B) The person wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section -408; or

- (C) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;
- (6) The person's:
 - (A) Becoming a debtor in bankruptcy;
 - (B) Execution of an assignment for the benefit of creditors;
 - (C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or
 - (D) Failure, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a person who is an individual:
 - (A) The person's death;
 - (B) The appointment of a guardian or general conservator for the person; or
 - (C) A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;
- (8) In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- (10) Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or
- (11) The limited partnership's participation in a conversion or merger under article 11, if the limited partnership:
 - (A) Is not the converted or surviving entity; or
 - (B) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

§ -604 Person's power to dissociate as a general partner; wrongful dissociation. (a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section -603(1).

- (b) A person's dissociation as a general partner is wrongful only if:
 - (1) It is in breach of an express provision of the partnership agreement; or
 - (2) It occurs before the termination of the limited partnership, and:
 - (A) The person withdraws as a general partner by express will;
 - (B) The person is expelled as a general partner by judicial determination under section -603(5);
 - (C) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or
 - (D) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise

dissociated as a general partner because it wilfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner shall be liable to the limited partnership and, subject to section -1001, to the other partners for damages caused by the dissociation. The liability shall be in addition to any other obligation of the general partner to the limited partnership or to the other partners.

§ -605 Effect of dissociation as a general partner. (a) Upon a person's dissociation as a general partner:

- (1) The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;
- (2) The person's duty of loyalty as a general partner under section -408(b)(3) terminates;
- (3) The person's duty of loyalty as a general partner under section -408(b)(1) and (2) and duty of care under section -408(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;
- (4) The person may sign and deliver to the director for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and
- (5) Subject to section -704 and article 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(b) A person's dissociation as a general partner shall not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

§ -606 Power to bind, and liability to, limited partnership before dissolution of partnership of a person dissociated as general partner. (a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11, or merged out of existence under article 11, the limited partnership shall be bound by an act of the person only if:

- (1) The act would have bound the limited partnership under section -402 before the dissociation; and
- (2) At the time the other party enters into the transaction:
 - (A) Less than two years has passed since the dissociation; and
 - (B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner which caused the limited partnership to be bound shall be liable:

- (1) To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (a); and
- (2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

§ -607 Liability to other persons of person dissociated as a general partner. (a) A person's dissociation as a general partner shall not of itself discharge the person's liability as a general partner for an obligation of the limited partnership

incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person shall not be liable for a limited partnership's obligation incurred after dissociation.

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities shall be liable to the same extent as a general partner under section -404 on an obligation incurred by the limited partnership under section -804.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities shall be liable on a transaction entered into by the limited partnership after the dissociation only if:

- (1) A general partner would be liable on the transaction; and
- (2) At the time the other party enters into the transaction:
 - (A) Less than two years has passed since the dissociation; and
 - (B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

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

(e) A person dissociated as a general partner shall be released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

**ARTICLE 7
TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES
AND CREDITORS**

§ -701 **Partner's transferable interest.** The only interest of a partner which shall be transferable is the partner's transferable interest. A transferable interest shall be personal property.

§ -702 **Transfer of partner's transferable interest.** (a) A transfer, in whole or in part, of a partner's transferable interest:

- (1) Is permissible;
 - (2) Shall not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and
 - (3) Shall not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c), or to inspect or copy the required information or the limited partnership's other records.
- (b) A transferee has a right to receive, in accordance with the transfer:
- (1) Distributions to which the transferor would otherwise be entitled; and
 - (2) Upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(c) In a dissolution and winding up, a transferee shall be entitled to an account of the limited partnership's transactions only from the date of dissolution.

(d) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement shall be ineffective as to a person having notice of the restriction at the time of transfer.

(g) A transferee that becomes a partner with respect to a transferable interest shall be liable for the transferor's obligations under sections -502 and -509. However, the transferee shall not be liable for obligations unknown to the transferee at the time the transferee became a partner.

§ **-703 Rights of creditors of partners or transferees.** (a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

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

(c) At any time before foreclosure, an interest charged may be redeemed:

- (1) By the judgment debtor;
- (2) With property other than limited partnership property, by one or more of the other partners; or
- (3) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(d) This chapter shall not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

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

§ **-704 Power of estate of deceased partner.** If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section -702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section -304.

ARTICLE 8 DISSOLUTION

§ **-801 Nonjudicial dissolution.** Except as otherwise provided in section -802, a limited partnership shall be dissolved, and its activities shall be wound up, only upon the occurrence of any of the following:

- (1) The happening of an event specified in the partnership agreement;
- (2) The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
- (3) After the dissociation of a person as a general partner:
 - (A) If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership is given within ninety days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

- (B) If the limited partnership does not have a remaining general partner, the passage of ninety days after the dissociation, unless before the end of the period:
 - (i) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
 - (ii) At least one person is admitted as a general partner in accordance with the consent;
- (4) The passage of ninety days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or
- (5) The signing and filing of a declaration of dissolution by the director under section -809.

§ -802 **Judicial dissolution.** On application by a partner, the circuit court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

§ -803 **Winding up.** (a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(b) In winding up its activities, the limited partnership:

- (1) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section -203, and perform other necessary acts; and
- (2) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

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

- (1) Has the powers of a general partner under section -804; and
- (2) Shall promptly amend the certificate of limited partnership to state:
 - (A) That the limited partnership does not have a general partner;
 - (B) The name of the person that has been appointed to wind up the limited partnership; and
 - (C) The street and mailing address of the person.

(d) On the application of any partner, the circuit court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

- (1) A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or
- (2) The applicant establishes other good cause.

§ -804 Power of general partner and person dissociated as general partner to bind partnership after dissolution. (a) A limited partnership shall be bound by a general partner's act after dissolution that:

- (1) Is appropriate for winding up the limited partnership's activities; or
 - (2) Would have bound the limited partnership under section -402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.
- (b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:
- (1) At the time the other party enters into the transaction:
 - (A) Less than two years has passed since the dissociation; and
 - (B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and
 - (2) The act:
 - (A) Is appropriate for winding up the limited partnership's activities; or
 - (B) Would have bound the limited partnership under section -402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

§ -805 Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partners. (a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section -804(a) by an act that is not appropriate for winding up the partnership's activities, the general partner shall be liable:

- (1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - (2) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.
- (b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under section -804(b), the person shall be liable:
- (1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - (2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

§ -806 Known claims against dissolved limited partnership. (a) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (b).

(b) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice shall:

- (1) Specify the information required to be included in a claim;
- (2) Provide a mailing address to which the claim is to be sent;
- (3) State the deadline for receipt of the claim, that may not be less than one hundred twenty days after the date the notice is received by the claimant;
- (4) State that the claim will be barred if not received by the deadline; and

- (5) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section -404.

(c) A claim against a dissolved limited partnership shall be barred if the requirements of subsection (b) are met and:

- (1) The claim is not received by the specified deadline; or
- (2) In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

(d) This section shall not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

§ -807 Other claims against dissolved limited partnership. (a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(b) The notice shall:

- (1) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this State, in the county in which the limited partnership's designated office is or was last located;
- (2) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;
- (3) State that a claim against the limited partnership shall be barred unless an action to enforce the claim is commenced within five years after publication of the notice; and
- (4) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership shall also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section -404.

(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants shall be barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:

- (1) A claimant that did not receive notice in a record under section -806;
- (2) A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

- (1) Against the dissolved limited partnership, to the extent of its undistributed assets;
- (2) If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph shall not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

- (3) Against any person liable on the claim under section -404.

§ -808 Liability of general partner and person dissociated as general partner when claim against limited partnership barred. If a claim against a dissolved limited partnership is barred under section -806 or -807, any corresponding claim under section -404 shall also be barred.

§ -809 Administrative dissolution. (a) The director may cancel the certificate of a limited partnership administratively if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required.

Administrative dissolution shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections -803 and -812 and to notify claimants under sections -806 and -807.

(c) The administrative dissolution of a limited partnership shall not terminate the authority of its agent for service of process.

§ -810 Reinstatement following administrative dissolution. (a) A limited partnership that has been administratively dissolved may apply to the director for reinstatement within two years after the effective date of dissolution. The application shall be delivered to the director for filing and:

- (1) State the name of the limited partnership and the effective date of its administrative dissolution;
- (2) State that the grounds for dissolution either did not exist or have been eliminated;
- (3) State that the limited partnership's name satisfies the requirements of section -108; and
- (4) Include a certificate from the department of taxation reciting that all taxes owed by the limited partnership have been paid.

(b) If the director determines that an application contains the information required by subsection (a) and that the information is correct, the director shall issue an order of reinstatement.

(c) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred.

§ -811 Appeal from denial of reinstatement. (a) If the director denies a limited partnership's application for reinstatement following administrative dissolution, the director shall notify the limited partnership of the reason or reasons for the denial.

(b) The limited partnership may appeal the denial of reinstatement to the circuit court within thirty days after the mailing of the notice of denial. The limited partnership may appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the director's declaration of dissolution, the limited partnership's application for reinstatement, and the director's notice of denial.

(c) The court may summarily order the director to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

§ **-812 Disposition of assets; when contributions required.** (a) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, shall be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(b) Any surplus remaining after the limited partnership complies with subsection (a) shall be paid in cash as a distribution.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

- (1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section -607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons shall be in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred;
- (2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons shall be in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred; and
- (3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(e) The estate of a deceased individual shall be liable for the person's obligations under this section.

(f) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (c).

ARTICLE 9 FOREIGN LIMITED PARTNERSHIPS

§ **-901 Governing law.** (a) Subject to the constitution of this State:

- (1) The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
- (2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

(b) A certificate of authority shall not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this State.

§ **-902 Application for certificate of authority.** (a) A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall state:

- (1) The name of the foreign limited partnership and, if the name does not comply with section -108, an alternate name adopted pursuant to section -905(a).
- (2) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
- (3) The mailing address of the foreign limited partnership's initial principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (4) The name and address of each general partner;
- (5) Whether the foreign limited partnership is a foreign limited liability limited partnership; and
- (6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn.

(b) The foreign limited partnership shall deliver with the completed application a certificate of good standing or a record of similar import duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law it is formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation in English attested to under oath by the translator shall accompany the certificate.

§ **-903 Activities not constituting transacting business.** (a) Activities of a foreign limited partnership that do not constitute transacting business in this State within the meaning of this article include:

- (1) Maintaining, defending, and settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining accounts in financial institutions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

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

§ -904 Issuance of certificate of authority. (a) If the director finds that an application for registration conforms to law and all requisite fees have been paid, the director shall issue a certificate of authority to transact business in this State.

(b) The certificate of authority shall be returned to the person who filed the application or that person's representative.

§ -905 Name. (a) A foreign limited partnership whose name does not comply with section -108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with section -108. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under that name unless the foreign limited partnership is authorized to transact business in this State under another name.

(b) If a foreign limited partnership authorized to transact business in this State changes its name to one that does not comply with section -108, it shall not thereafter transact business in this State until it complies with subsection (a) and obtains an amended certificate of authority.

§ -906 Cancellation of certificate of authority. (a) The director may cancel the certificate of authority of a limited partnership administratively if:

- (1) The partnership fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual statement for a period of two years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

(b) Cancellation of a certificate of authority shall not relieve the general partners of liability for the penalties for failure to file any statement or certificate required by this chapter.

§ -907 Certificate of withdrawal; effect of failure to have certificate. (a) A foreign limited partnership registered to transact business in this State may withdraw from this State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign limited partnership shall deliver to the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign limited partnership and the state or country under the laws of which it is formed;
- (2) That the foreign limited partnership is not transacting business in this State;
- (3) That the foreign limited partnership surrenders its authority to transact business in this State;

- (4) That the foreign limited partnership revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The name and address of each general partner;
- (6) The dates that notice of the foreign limited partnership's intent to withdraw from this State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in this State; or a statement that publication was not made;
- (7) That all taxes, debts, obligations, and liabilities of the foreign limited partnership in this State have been paid and discharged or that adequate provision has been made therefor;
- (8) A mailing address to which the director may mail a copy of any process against the foreign limited partnership that may be served on the director; and
- (9) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign limited partnership.

(b) After the filing of the application of withdrawal, the director shall issue a certificate of withdrawal which shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign limited partnership to transact business in this State shall cease.

(c) A withdrawal shall not terminate the authority of the director to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in this State.

(d) A foreign limited partnership transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State.

(e) The failure of a foreign limited partnership to have a certificate of authority to transact business in this State shall not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this State.

(f) A partner of a foreign limited partnership shall not be liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without a certificate of authority.

(g) If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it shall appoint the director as its agent for service of process for rights of action arising out of the transaction of business in this State.

§ -908 Changes and amendments. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangement or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the director a certificate, certified and signed by a general partner, correcting such statement.

**ARTICLE 10
ACTIONS BY PARTNERS**

§ **-1001 Direct action by a partner.** (a) Subject to subsection (b), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

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

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

§ **-1002 Derivative action.** A partner may maintain a derivative action to enforce a right of a limited partnership if:

- (1) The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or
- (2) A demand would be futile.

§ **-1003 Proper plaintiff.** A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

- (1) That was a partner when the conduct giving rise to the action occurred; or
- (2) Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

§ **-1004 Pleading.** In a derivative action, the complaint shall state with particularity:

- (1) The date and content of the plaintiff's demand and the general partners' response to the demand; or
- (2) Why demand should be excused as futile.

§ **-1005 Proceeds and expenses.** (a) Except as otherwise provided in subsection (b):

- (1) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff; and
- (2) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

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

**ARTICLE 11
CONVERSION AND MERGER**

§ **-1101 Definitions.** As used in this article:

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

“Constituent organization” means an organization that is a party to a merger.

“General partner” means a general partner of a limited partnership.

“Governing statute” of an organization means the statute that governs the organization’s internal affairs.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, or limited liability limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, limited liability company, general partnership, or limited liability partnership.

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

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

§ -1102 Conversion into or from limited partnerships. (a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:

- (1) The domestic limited partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections 425-203 and 428-904 to 428-906, as if the conversion is a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign limited partnership or other entity may adopt a plan of conversion and convert to a domestic limited partnership if the conversion is permitted by and complies with the laws of the state or country in which the foreign limited partnership or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial partnership agreement of the converted entity.

§ -1103 Articles of conversion. (a) If a plan of conversion has been approved in accordance with section -1102 and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, entity type, and state or country of incorporation, formation, or organization of the converting and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section -1102;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion, on written request and without cost, to any limited partner of the converting entity or the converted entity; and
- (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.
- (b) The articles of conversion shall be delivered to the director for filing.
- (c) The converted entity, if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents to the articles of conversion.

§ -1104 Effective date of the conversion. A conversion takes effect upon the filing date of the articles of conversion, or on the date subsequent to the filing set forth in the articles of conversion; provided that the effective date shall not be more than thirty days from the filing date.

- § -1105 Effect of conversion.** When a conversion becomes effective:
- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
 - (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
 - (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;

- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests or other forms of ownership in the converted entity, as provided in the plan of conversion, shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign limited partnership or other entity, the converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting limited partners of the converting domestic limited partnership; and
- (9) If the converting partnership is a domestic limited partnership, section -1106 shall apply as if the converted entity were the survivor of a merger with the converting entity.

§ -1106 Merger. (a) Pursuant to a plan of merger, a domestic or foreign limited partnership or limited liability limited partnership may merge with one or more domestic professional corporations or with one or more limited partnerships, limited liability limited partnerships, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign limited partnerships, limited liability limited partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

- (b) The plan of merger shall set forth:
 - (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
 - (2) The name of the surviving entity with or into which the other entity or entities will merge;
 - (3) The terms and conditions of the merger;
 - (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
 - (5) The street address of the surviving entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and

- (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.
- (c) A plan of merger may:
 - (1) Amend the partnership agreement of the limited or limited liability limited partnership; or
 - (2) Adopt a new partnership agreement, for a limited or limited liability limited partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited partnership or limited liability limited partnership's partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent limited partnership or constituent limited liability limited partnership to the merger (including a limited partnership or limited liability limited partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving limited or limited liability limited partnership.

- (d) A plan of merger may set forth other provisions relating to the merger.
- (e) A plan of merger shall be approved:
 - (1) In the case of a domestic limited or limited liability limited partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all general partners and by the limited partners; provided that if there is more than one class of limited partners, then by each class of limited partners, in either case, by limited partners who own more than fifty per cent of the then current percentage owned by all of the limited partners or by the limited partners in each class as appropriate; and
 - (2) In the case of a foreign limited or limited liability limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited or limited liability limited partnership is organized.
- (f) If a foreign limited or limited liability limited partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited or limited liability limited partnership is not already authorized to transact business in this State.
- (g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.
- (h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any limited or limited liability limited partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:
 - (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the partnership; or

- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

§ -1107 Articles of merger. (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each limited partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- (5) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding, and the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the limited partnership's organizing articles.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited or limited

liability limited partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a foreign entity registered in this State shall not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving constituent foreign entity no later than sixty days after the merger is effective.

§ -1108 **Effective date of the merger.** A merger takes effect upon the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.

§ -1109 **Effect of merger; dissenter's rights.** (a) When a merger becomes effective:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A general partner or limited partner of a surviving limited partnership shall be liable for all obligations of a party to the merger for which the general partner or limited partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger shall not require the limited partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

(e) The shareholders of a domestic corporation that is a party to a merger authorized by section -1106 shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414.

§ -1110 Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status. (a) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger shall be ineffective without the consent of the partner, unless:

- (1) The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and
- (2) The partner has consented to this provision in the limited partnership's partnership agreement.

(b) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership shall be ineffective without the consent of each general partner unless:

- (1) The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and
- (2) Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(c) A partner does not give the consent required by subsection (a) or (b) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

§ -1111 Liability of general partners after conversion or merger. (a) A conversion or merger under this article does not discharge any liability under sections - 404 and -607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership; provided that:

- (1) The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
- (2) For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and
- (3) If a person is required to pay any amount under this subsection:
 - (A) The person shall have a right of contribution from each other person that was liable as a general partner under section - 404 when the obligation was incurred and has not been released from the obligation under section -607; and
 - (B) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) In addition to any other liability provided by law:

- (1) A person that immediately before a conversion or merger became effective, was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership shall be personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:
 - (A) Does not have notice of the conversion or merger; and
 - (B) Reasonably believes that:
 - (i) The converted or surviving business is the converting or constituent limited partnership;
 - (ii) The converting or constituent limited partnership is not a limited liability limited partnership; and

- (iii) The person is a general partner in the converting or constituent limited partnership; and
- (2) A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective shall be personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:
 - (A) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and
 - (B) At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
 - (i) Does not have notice of the dissociation;
 - (ii) Does not have notice of the conversion or merger; and
 - (iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

§ -1112 Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. (a) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

- (1) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section -402; and
 - (2) At the time the third party enters into the transaction, the third party:
 - (A) Does not have notice of the conversion or merger; and
 - (B) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.
- (b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:
- (1) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section -402 if the person had been a general partner; and
 - (2) At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:
 - (A) Does not have notice of the dissociation;
 - (B) Does not have notice of the conversion or merger; and
 - (C) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(c) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (a) or (b), the person shall be liable:

- (1) To the converted or surviving organization for any damage caused to the organization arising from the obligation; and
- (2) If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

§ **-1113 Article not exclusive.** This article shall not preclude an entity from being converted or merged under other law.

§ **-1114 Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section - 1107(d).

ARTICLE 12 MISCELLANEOUS PROVISIONS

§ **-1201 Uniformity of application and construction.** In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ **-1202 Severability clause.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ **-1203 Relation to electronic signatures in global and national commerce act.** This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq.; provided that this chapter does not modify, limit, or supersede section 101(c) of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

§ **-1204 Application to existing relationships.** (a) Before December 31, 2004, this chapter governs only:

- (1) A limited partnership formed on or after July 1, 2004; and
- (2) Except as otherwise provided in subsections (c) and (d), a limited partnership formed before July 1, 2004, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(b) Except as otherwise provided in subsection (c), on and after December 31, 2004, this chapter shall govern all limited partnerships.

(c) With respect to a limited partnership formed before July 1, 2004, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

- (1) Section - 104(c) shall not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2004;
- (2) The limited partnership shall not be required to amend its certificate of limited partnership to comply with section - 201(a)(4);
- (3) Sections - 601 and - 602 shall not apply and a limited partner has the same right and power to dissociate from the limited partnership,

with the same consequences, as existed immediately before July 1, 2004;

- (4) Section - 603(4) shall not apply;
- (5) Section - 603(5) shall not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2004; and
- (6) Section - 801(3) shall not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2004.

(d) With respect to a limited partnership that elects pursuant to subsection (a)(2) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

- (1) Before December 31, 2004, to:
 - (A) A third party that had not done business with the limited partnership in the year before the election took effect; and
 - (B) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and
- (2) On and after December 31, 2004, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(B).

§ -1205 Savings clause. This chapter shall not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect."

SECTION 2. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

“§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 421, 425, [425D,] ____, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;

- (3) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (4) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
- (5) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5.”

SECTION 3. Section 235-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

“Nonresident person” means every person other than a resident person.

“Property” or “real property” has the meaning as the same term is defined in section 231-1.

“Resident person” means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter 414, 414D, or 415A;
- (3) Partnership formed or registered under chapter 425 or [425D;] ____;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or [425D;] ____;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) Estate included in the definition of resident estate in section 235-1.

“Transferee” means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

“Transferor” means any person disposing real property which is located in Hawaii.”

SECTION 4. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

“**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and

where applicable, upon such assignment or assignments of agreements of sale;

- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, [425D,] ____, or 428 to the surviving or new entity; and
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership."

SECTION 5. Section 414-53, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the department director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;

- (B) Require the entity to register the new name with the department director; and
- (C) Require the entity to conduct business in this State under its new name.

If the entity fails to comply with the order of abatement within sixty days, the department director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority; after the time to appeal has lapsed and no appeal has been timely filed. The department director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414D, 415A, 425, [425D,] ____, or 428, as applicable."

SECTION 6. Section 414D-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name but require the entity to register a new trade name with the department director under which the entity shall conduct business in this State; or
- (2) Require the entity to change its registered name, register a new name with the department director, and require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the department director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The department director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapters 414, 415A, 425, [425D,] ____, and 428, as applicable."

SECTION 7. Section 415A-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
 - (B) Require the entity to register the new name with the director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 414, 414D, 415A, 425, [425D,] ____, or 428, as applicable."

SECTION 8. Section 425-196, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
 - (B) Require the entity to register the new name with the director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 414, 414D, 415A, 425, [425D,] ___, or 428, as applicable.”

SECTION 9. Section 428-105.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
 - (B) Require the entity to register the new name with the director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 414, 414D, 415A, 425, [425D,] ___, or 428, as applicable.”

SECTION 10. Section 428-901, Hawaii Revised Statutes, is amended by amending the definition of “limited partnership” to read as follows:

““Limited partnership” means a limited partnership created under the Uniform Limited Partnership Act, chapter [425D,] ___, a predecessor law, or comparable law of another jurisdiction.”

SECTION 11. Section 436B-15.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other provision of law to the contrary, a licensee who has converted its form of business entity in accordance with sections [415-77.5,] 414-271, 414D-207, 415A-16.5, [415B-87, 425-192, 425D-1110,] ___-1102, and 428-902.5, and desires to continue engaging in a profession or vocation subject to this chapter in its new form of business entity shall:

- (1) File an application for conversion of a license and pay the initial application fee specified in the statutes or rules of the profession or vocation, within thirty calendar days after the effective date of the conversion; and
- (2) Continue to meet the other licensing requirements of that profession or vocation.”

SECTION 12. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the print, label, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print, label, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, or trade name which is substantially identical with any registered print, label, or trade name or with the name of any corporation, partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, [425D,] ____, and 428; provided further that the print, label, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States, or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, or limited liability company name, or trade name.”

SECTION 13. Section 482-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but require the entity to:
 - (A) Register a new trade name with the director; and
 - (B) Conduct business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
 - (A) Register a new trade name with the director; and
 - (B) Conduct business in this State under the new trade name.

If the entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity’s registration or certificate of authority after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 414, 414D, 415A, 425, [425D,] ____, or 428, as applicable.”

SECTION 14. Chapter 425D, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 2004.

(Approved June 26, 2003.)