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LIMITED PARTNERSHIP

CHARACTERISTICS OF A LIMITED PARTNERSHIP

In many particulars, the **limited partnership** is the same as a general partnership. It is an association of two or more persons carrying on business as co-owners for profit with one or more general partners and one or more limited partners.¹ The limited partnership enjoys certain characteristics of a corporation insofar as the limited partners are concerned, since their investment and limited liability resemble those of a shareholder of a corporation. The general partners in a limited partnership are governed by all the rules of general partnership discussed in Chapter 3. A limited partnership, however, is a two-part business form, and the rights and responsibilities of the limited and general partners must be distinguished.

Most states have adopted a form of the Uniform Limited Partnership Act² to regulate the formation and operation of limited partnerships. The original Uniform Limited Partnership Act was approved in 1916, and a few states still use the act in its original form. A substantially revised act was approved by the commissioners in 1976 and several amendments were made in 1985. This Revised Uniform Limited Partnership Act (RULPA) has been adopted in most states and is currently the basis for most limited partnerships throughout the country. In 2001, the commissioners further modified the uniform law and published a Uniform Limited Partnership Act of 2001 (ULPA 2001), which further modernizes limited partnership law and removes some of the traps for the unwary practitioner that developed under the prior statutes. State legislatures are currently considering whether to adopt ULPA 2001. Consequently, at least three different approaches may be found in any local laws concerning the statutory basis for limited partnerships. This chapter refers primarily to the rules from RULPA, since it states the law that most states currently use, although it discusses unique issues that arose under the original act and important new changes that are being proposed in ULPA 2001 (for those who insist on knowing everything about limited partnership law throughout the country).

The most important statutory requirement under all versions of the act, the filing of a limited partnership certificate, is discussed in detail later in this chapter. It is important to note at the outset, however, that the limited partnership may be formed only with the formality prescribed in the statute and

may not be born of a simple private agreement between the parties. Like a corporation, this form of business is formed by filing documents with a public filing office, usually the Secretary of State, and the fact that these documents disclose information about the operation of the business and the identity of the participants may pose additional problems for the person drafting the documents.

GENERAL PARTNERS OF A LIMITED PARTNERSHIP

Each limited partnership must have at least one general partner who faces the same risks and responsibilities as a partner in a general partnership. The liability exposure of limited partners is confined to their contributions, but the general partner suffers unlimited liability, meaning that his or her individual assets are vulnerable to firm creditors. In the previous chapter, you learned that in many states a partnership can be registered as a limited liability partnership to insulate the general partner from individual liability for partnership debts and obligations. Those same statutes also allow for limited partnerships to register to avoid the personal liability of the general partner.³ The general partner also has full responsibility for management and control of the partnership affairs, since limited partners historically have been forbidden to participate in the control of the business if they are to maintain their limited liability status.⁴

One person may be both a general partner and a limited partner at the same time⁵ simply by naming the person as a partner in both capacities in the partnership agreement and the certificate of limited partnership filed to form the partnership. This may produce some benefits for the person serving in both capacities. In a person's status as general partner, he or she is fully liable for firm obligations and has no limited liability. However, that person's contribution as a limited partner ranks with the priorities of other limited partners for dissolution purposes,⁶ and his or her limited partnership interest is freely transferable without causing a dissolution of the partnership.⁷

If the limited partnership has two or more general partners, the rights and responsibilities between those general partners are the same as in any general partnership.

A partner's status is that of a general partner if that partner is identified as a general partner in the partnership agreement and named as a general partner in the certificate of limited partnership.⁸ Once the original certificate of limited partnership has been filed, additional general partners may be admitted in the manner provided in the partnership agreement, or if the agreement is silent, with the written consent of all partners, both general and limited.⁹

There are several ways a general partner can dissociate or withdraw from the limited partnership, either intentionally or accidentally. The general partner "ceases to be a general partner of the partnership" whenever one or more of the following situations occur.

1. The general partner withdraws by giving notice to the other partners (this action may violate the partnership agreement and cause the general partner to be liable for damages).¹⁰
2. The general partner assigns the interest he or she owns in the partnership to another person who is not a partner. This action does not make the other person a partner in the partnership; it merely entitles that person to receive the distributions to which the general partner would be entitled. Nevertheless, the assignment causes the general partner to cease being a partner of the partnership.¹¹
3. The general partner is expelled or removed as a general partner in accordance with the procedure described in the partnership agreement.¹²
4. The general partner admits personal insolvency (such as by filing a petition in bankruptcy or by agreeing to reorganization of his, her or its debts), but the general partner may continue being a partner if the partnership agreement excuses such an act.¹³
5. The general partner dies or is incompetent, or in the case of a general partner that is an association (such as a corporation, a trust, or another partnership), the association is terminated or dissolved.¹⁴

Recall that the withdrawal of a general partner has the effect of dissolving the partnership under general partnership law.¹⁵ The same effect occurs under limited partnership law, with

three major exceptions: (1) all of the partners may consent to the continued service of a general partner who has been subject to the foregoing events of withdrawal;¹⁶ (2) another general partner may be permitted under the partnership agreement to continue the business even though a fellow general partner has withdrawn; (3) all of the partners may agree in writing within ninety days after the withdrawal of the general partner to continue the business by the appointment of one or more additional general partners.¹⁷

If the partnership agreement permits it, general partners have a right to vote (on a per capita or any other basis prescribed in the agreement) separately as general partners or together with the limited partners on any matter affecting partnership business.¹⁸

The remaining sections in this chapter deal with the limited partnership's unique variations from a general partnership. In all respects except those specifically set forth in the following sections, a limited partnership is governed by the same rules as a general partnership, including the general partner's fiduciary duties to account for profits, care for partnership assets, not compete with the partnership business, faithfully serve the partnership business without diversions, fully disclose information relevant to partnership affairs, and act in a reasonably prudent way in administering the partnership activities.¹⁹

LIMITED LIABILITY AND CONTRIBUTIONS

The most significant characteristic of the limited partnership is that limited partners are protected from full individual liability. The liability of the limited partner is limited to the amount of that partner's investment as stated in the partnership agreement,²⁰ and the limited partner's individual assets cannot be reached by partnership creditors for obligations of the limited partnership. In this respect, the limited partner is almost exactly like a shareholder of a corporation. This feature makes the limited partnership particularly attractive for persons with substantial private resources that they prefer not to risk in the business enterprise. The only potential loss is the investment.

The original Uniform Limited Partnership Act significantly restricted the limited partner's available source of contributions. That statute permitted contributions by a limited partner in cash or other property only. No contribution of services was permitted.²¹ This rule was based, in part, on the prohibition against a limited partner's participation in management. Under the revised and new acts, partners may contribute cash, property, or services rendered, or may simply promise through a promissory note or other agreement to contribute cash or property or perform services in the future.²² These expanded contribution rules reflect the attitude of the drafters of the revised act that persons who participate as limited partners in modern limited partnerships should be able to participate in some aspects of the management of the business without losing their limited liability protection. The management rights of the limited partner under the new statutory provisions are discussed in the next section of this chapter.

Partnership creditors are entitled to rely upon a limited partner's contribution as a source for payment of their obligations. Consequently, the limited partner's written promise in the partnership agreement to contribute assets or services to the partnership can be enforced by the creditors of the partnership. If a partner is unable to perform (because he or she has disposed of the asset promised to be contributed or is dead or disabled), that partner (or his or her estate) will be obligated to contribute cash equal to the value of the defaulted contribution.²³ The other partners of the partnership may be forgiving, however, and may, by a unanimous consent, agree to forgo any contribution not made by a limited partner. Nevertheless, any creditors who extended credit to the partnership before the other partners forgave the obligation may still be able to enforce the original obligation for the contribution against the limited partner.²⁴

Historically, the law provided two limitations on the manner in which the limited partner's involvement in the partnership was projected to the outside world. Limited liability will only be observed provided the limited partner does not actively participate in the control of the business and does not knowingly permit the use of his or her name in the firm name (with

some exceptions that are discussed later). The new act eliminates these restrictions on a limited partner's activity. However, even with these restrictions under the laws currently in effect in most states, the limited partner would be liable to a person who reasonably believes, based upon the limited partner's conduct, that the limited partner is a general partner of the partnership. The limited partner could also be liable to creditors who extend credit to the partnership without actual knowledge that the limited partner is not a general partner.²⁵

When a limited partner discovers that there is a possibility of personal liability and erroneously and in good faith believes that he or she is a limited partner in the partnership, that partner may avoid individual liability by filing the appropriate certificate or amendment to the certificate (if a creditor is asserting that the limited partnership was improperly formed or maintained). The limited partner may withdraw from future equity participation in the partnership by filing a certificate of withdrawal. By taking these actions, a limited partner would be liable only to a creditor who believed in good faith that the limited partner was a general partner of the partnership at the time of the transaction for which liability is claimed.²⁶ For example, suppose that Robbie Schwarz agreed to be a limited partner in a limited partnership formed with Michael Crouch as the general partner to operate an apartment building. Although the partnership agreement was signed by both Robbie and Michael, the limited partnership certificate was not filed properly, and, consequently, the limited partnership was not properly formed. A contractor was hired to construct some improvements to the apartment building and took instructions from Robbie because Michael was out of town when the work was begun. If the contractor's bill is not paid, the contractor might attempt to recover from both Michael and Robbie personally as partners. Robbie could avoid liability to the contractor by filing the certificate of limited partnership or filing a certificate of withdrawal *and* by showing that the contractor did not believe in good faith that Robbie was a general partner of the limited partnership.

MANAGEMENT AND CONTROL

The general partners of a limited partnership manage the business, and their management responsibilities and rights are the same in a limited partnership as they are in a general partnership.²⁷ The partnership agreement usually provides for the specific authority of the general partner and for any desired limitations on the general partner's authority. There are certain activities a general partner may never do without the consent of the limited partners, including acting in contravention of the agreement or interfering with the ordinary business of the partnership, possessing partnership property for other than business purposes, admitting another general partner, and confessing a judgment against the firm.²⁸ The general partner also has the fiduciary duties inherent in the partnership relationship and as any agent would have to the principal for whom the agent is conducting business.²⁹

To preserve the limited partner's limited liability status, all management and control over partnership affairs should be vested in the general partner. Historically, this prohibition against management participation has caused some uncomfortable uncertainty in the limited partnership organization because it is difficult to predict the extent of participation that will defeat a limited partner's limited liability status.

Under most states' current law, limited partners are not permitted to participate in the control of the business if they wish to enjoy limited liability; however, a limited partner is not regarded as participating in the control of the business simply because he or she is involved in one or more of the following situations:

1. being a contractor for or agent or employee of the limited partnership or the general partner, or being an officer, director, or shareholder of the corporate general partner;
2. consulting with and advising the general partner regarding the business of the partnership;
3. acting as a surety for the partnership to guarantee or assume its specific obligations;
4. bringing a derivative action on behalf of the partnership;
5. requesting or attending a meeting of partners; or

6. proposing or voting on the firm's dissolution, a sale of substantially all of the firm's assets, the incurrence of debt outside the ordinary course of business, a change in the nature of the business, the admission or removal of a general or limited partner, amendments to the partnership agreement, transactions having a conflict of interest, or anything else that the partnership agreement permits the limited partners to decide by vote.

These activities described in the statutes are regarded as **safe harbor activities**, meaning that a limited partner may safely participate in these activities without risking the loss of limited liability. Most statutes even recognize that this is not a complete list of activities a limited partner may undertake. Because of the difficulty in applying the management rules to limited partners and the uncertainty created by the general standards stated in the statutes, the new uniform act assures limited partners of limited liability "even if the limited partner participates in the management and control of the limited partnership."³⁰ However, the issue of the limited partner's participation in the control of the business still remains an issue under most states' current laws.

Limited partners are always entitled to inspect and copy the books and to have an accounting of partnership affairs. They also have the right to be informed on all matters respecting the business of the firm, and may demand any information from the general partners as is just and reasonable.³¹

ADMISSION, SUBSTITUTION, AND WITHDRAWAL OF A LIMITED PARTNER

Unlike general partners, limited partners may freely come and go, with very few restrictions. If provisions are made in the partnership agreement and the certificate of limited partnership, additional limited partners may be admitted without the consent of the existing limited partners by complying with the procedures in the partnership agreement, and if necessary under local law, by filing an amendment to the certificate.³² Similarly, a limited partner may withdraw from the partnership and receive a return of his or her capital contribution without causing a dissolution of the firm.³³ If the limited partner's contribution is essential to the continued operation of business, however, this right to withdraw may be restricted or denied by the agreement.

The law permits a limited partner to withdraw and demand the return of his or her contribution on the date specified for return of the contribution in the partnership agreement or upon giving six months' notice in writing.³⁴ The contribution also may be returned at any time if all partners, general and limited, consent to its return. However, the investment will be returned only if the firm's creditors have been paid or sufficient assets remain to pay them, which may mean that a limited partner will receive nothing if the partnership's debts are greater than its assets.³⁵ Unless the partnership agreement provides otherwise, or all partners consent, the limited partner has the right to demand only cash in withdrawal, even if other property was contributed to the partnership.³⁶ In many states, an amendment of the certificate must be filed to reflect the withdrawal.

The partnership agreement or certificate may grant to a limited partner authority to substitute a new limited partner in his or her place without the consent of the other partners. If the agreement does not contain such express authority, the transfer or assignment of a limited partner's interest has an effect similar to that of the assignment of a general partner's interest. The assignment grants to the assignee the right to receive the valuable characteristics of the limited partner's interest (the right to profits and other distributions—called the "limited partner's transferable interest" under the new law) but it does not make the transferee a new partner unless all the partners consent.³⁷ Any substitution of limited partners, by the power of agreement or by consent, may require an amendment to the certificate to reflect the change.³⁸ (See Exhibit 4-1, Assignment of a Limited Partner's Transferable Interest, and Exhibit 4-2, Consent to Substitution of a Limited Partner.)

Exhibit 4–1.

Assignment of a Limited Partner's Transferrable Interest

ASSIGNMENT OF A LIMITED PARTNER'S TRANSFERABLE INTEREST

For value received, I, the undersigned, of _____, hereby assign to _____, of _____, the whole of my interest in the limited partnership of _____, conducting business under a partnership agreement dated _____, 20____. Effective upon the signing of this instrument, the assignee shall be entitled to receive the transferable interest, including without limitations, the share of the profits or other compensation by way of income to which I would otherwise be entitled, and to the return of my contribution to the capital of the partnership. In the event that all the other members of the partnership consent thereto, the assignee shall be entitled to all the rights which I, as a limited partner, had in the partnership.

Dated _____, 20____.

[Signature]

[Acknowledgement]

Exhibit 4–2.

Consent to Substitution of a Limited Partner

CONSENT TO SUBSTITUTION OF A LIMITED PARTNER

We, the undersigned, being all the members of the limited partnership of _____, except _____, who by an instrument dated _____, 20____, and duly acknowledged by her, has assigned her entire interest as a limited partner in this partnership to _____, of _____, do hereby consent that _____ be substituted as a limited partner in the place of _____, and entitled to all the rights which _____ had as a limited partner in this partnership pursuant to the terms of the partnership agreement dated _____, 20____.

Dated _____, 20____.

[Signatures]

DISSOLUTION OF A LIMITED PARTNERSHIP

Causes of Dissolution

Dissolution of limited partnerships is very similar to dissolution of general partnerships (discussed in Chapter 3). The major distinctions stem from the limited partner's typical position outside of the management of the business. A limited partner is usually a passive investor, like a shareholder of a corporation, and although the limited partner's demise, insanity, bankruptcy, or withdrawal may be a sad event, none of those things will affect the continuation of the business. Consequently, the incapacity of a limited partner does not cause dissolution. Similarly, the limited partner may withdraw his or her capital contribution (investment) and demand its distribution, and the partnership may continue without that partner. Most authorities agree, however, that misconduct by a limited partner, including any act that would adversely affect the business of the firm, would be grounds for dissolution by the other partners. In general, a limited partner has a contractual relationship with a limited partnership and is not regarded as an integral person for the operation of the business of the partnership. Nevertheless, the withdrawal by a limited partner before the termination of the partnership may be disruptive, at least, and a serious breach of the agreement, at worst. To guard against challenges to the permanence of estate planning limited partnerships, some states have amended their laws to prohibit limited partner withdrawal unless otherwise provided in the limited partnership agreement, and the new uniform act recognizes the limited partner's power to withdraw but permits the partnership agreement to eliminate it. If a limited partner withdraws from the partnership, rightfully or wrongfully, the business may continue, and any damages caused by the limited

partner's withdrawal will simply be subtracted from the return of the limited partner's investment, as would be the case with any contract breach.

The limited partnership will be dissolved at the times for termination of the partnership specified in the certificate of limited partnership or in the partnership agreement. Furthermore, as with general partnerships, all partners of the limited partnership may consent to a dissolution at any time.³⁹

Limited partners have only limited rights to ask for dissolution of the partnership if all other partners are not willing to dissolve the firm. A limited partner may have the right to request a dissolution by decree of court whenever it is not reasonably practical to carry on the business under the partnership agreement.⁴⁰ This is a very broad standard and probably incorporates most of the causes justifying dissolution under the original laws of limited partnership, such as incapacity of a general partner, misconduct or breach of the partnership agreement by a partner, or other business or legal reasons that would justify termination of the business based upon changed circumstances.⁴¹ On the other hand, the limited partner may not be able to require a dissolution of the partnership for purely selfish reasons under the Revised Uniform Limited Partnership Act. For example, under the original act, it was possible for a limited partner to request a dissolution of the firm if the limited partner had rightfully demanded a return of a capital contribution but the demand had been ignored.⁴² Under the revised act, the demanding limited partner is simply treated as an ordinary creditor of the partnership and may obtain a judgment for the amount of the unreturned contribution; and under the new uniform act, the limited partner is simply treated as a transferee of its own transferable interest in profits and other distributions.⁴³ In the formation of the partnership, however, limited partners can be granted the power to request dissolution under such circumstances and that right can be incorporated into the original partnership agreement.

The general partner is the only integral partner of the firm in the law of limited partnerships. A general partner will be deemed to have withdrawn from the limited partnership by resigning (through written notice); assigning his or her interest in the partnership to a third person; being removed in accordance with the agreement; becoming bankrupt (or taking action similar to bankruptcy); dying; becoming incompetent; or in the case of a general partner that is another business organization, ceasing to be a valid entity under law.⁴⁴ These **events of withdrawal** result in a dissolution of the partnership unless there is at least one other general partner and the partnership agreement permits the business to be carried on by the remaining general partner, or unless, within ninety days after the withdrawal, all partners agree in writing to continue the business and to the appointment of a new or additional general partner.⁴⁵ Although the various acts do not explicitly so state, acts of misconduct by the general partner that violate the partnership agreement but that do not result in removal of the partner probably still qualify as grounds for dissolution through court action on the request of either general or limited partners.⁴⁶

Continuation of a Limited Partnership Following Dissolution

A disadvantage of a general partnership is the possibility that an accidental dissolution will trigger the obligation to wind up and liquidate the assets of the business at an inopportune time. The antiquated rules of general partnership permit a continuation of the business by the remaining partners only if the agreement anticipates the dissolution or if the dissolution is wrongfully caused.⁴⁷ Since the limited partnership is considered to be a useful business organization for modern transactions, and since limited partnership law has been revised several times in response to modern practices, the consequences of dissolution are much less drastic under limited partnership law than they are under general partnership law. As previously mentioned, the mere inability of the general partner to continue in that capacity does not eliminate the continuation of the partnership business. The partnership agreement may anticipate such an event and provide for the continuation of the business by another named general partner. Even if the partnership agreement is silent on this issue, the limited partners may, within ninety days after an event of withdrawal, agree in writing to continue the business without interruption.⁴⁸ Nevertheless, it is preferable to anticipate all potential events of dissolution and to provide in the partnership agreement for the procedure to continue the business. It is also best to name the person who will serve as a general partner if the original general partner is unable to continue to serve.

Termination and Winding Up

If a cause for dissolution occurs and the business is not continued, the limited partnership must be liquidated. The partnership agreement may (and should) anticipate the procedure for winding up by designating appropriate liquidators and giving them specific instructions concerning the procedure for liquidation. Limited partners were formerly prohibited from participating in the winding up of a limited partnership unless they obtained court permission.⁴⁹ Under the revised and new acts, unless the partnership agreement provides otherwise, limited partners may serve as liquidators, as may general partners who have not wrongfully dissolved the limited partnership.⁵⁰

The original act prescribed a scheme of priorities for the distribution of assets of a limited partnership that created a substantial incentive for capital investment by limited partners. The effect of the original act was to prefer limited partners in the distribution of assets, so the general partners could be paid only after the limited partners were fully satisfied.

Under the current law there is no preference for limited partners unless the agreement creates one. The assets of the limited partnership are to be distributed as follows:

1. to creditors, including partners who are creditors, in satisfaction of liabilities of limited partnership, other than liabilities for distributions provided to the partners in the partnership agreement;
2. to all partners and former partners in satisfaction of any liabilities for distributions agreed under the partnership agreement; and
3. to all partners for the return of their contributions and, then, for their proportionate share of the excess assets (which constitute their share of profit.)⁵¹

Notice that general and limited partners rank at the same level for receipt of partnership distributions under the modern statutory provisions, but, as with general partnerships, it is still possible to provide for a different scheme of distributions in the partnership agreement, as long as business creditors are fully paid. Thus, a preference to distributions can be used as an incentive to obtain capital contributions of limited partners.

TAXATION OF A LIMITED PARTNERSHIP

Typically, a limited partnership is treated like a general partnership for tax purposes. Recall that the general partnership acts only as a conduit through which income is deemed to be distributed to each partner in the proportions specified in the agreement. The normal limited partnership has the same treatment, which may be an advantage to the limited partner seeking to declare losses to offset similar passive income from other sources.

This tax advantage from offsetting losses is one reason limited partnerships have become favored forms of organization for developing real estate and operating rental property. The accelerated depreciation allowances available for these enterprises produce paper losses, which are passed directly to the partners and shelter other income from taxation. More recent tax laws have significantly reduced this advantage, however, by requiring that losses from partnership investments (where a partner is not actively involved in the business of the partnership) be offset only against income from other passive investment sources. For example, if a limited partnership owned an apartment building and received income from rents, reduced by expenses of operation and depreciation of the building, any losses that resulted from the fact that expenses and depreciation exceeded the income could only be offset against other income from other rental properties. It is not possible to offset the “passive” partnership losses against income of a partner received from his or her employment. Federal law has developed a hostile attitude toward tax-sheltered investments of any type and has imposed significant restrictions on a partner’s ability to offset income with losses and severe penalties for tax-motivated deductions that are not clearly authorized by the law. Consequently, the perception of a limited partnership as a tax-advantaged business enterprise has been considerably blurred. Most limited partnerships now promise significant real economic benefits to attract limited partners, rather than promising paper deductions and losses to tax-motivated investors.

Recently, the Internal Revenue Service issued new classification regulations⁵² for taxation of business entities to replace the former rules and regulations, which had become extremely complex through the years of interpretation and forced limited partnerships to attempt to avoid corporate characteristics (such as free transferability of ownership interests, perpetual duration, etc.) to avoid being reclassified as a corporation for tax purposes.⁵³ Under the new regulations limited partnerships are treated as partnerships, even though the structure of the limited partnership may include many similarities to a corporation, unless the limited partnership affirmatively elects to be treated as a corporation for tax purposes. One reason that a limited partnership may want to be treated as a corporation is that the business will require significant capital accumulation for expansion, and the partners do not want to be taxed personally on the annual income of the business because they need to leave all of the available money in the business for expansion. Taxation as a corporation requires that the partnership pay corporate taxes on income, but the individual partners do not have to use other personal funds to pay individual taxes. Under the new regulations, a limited partnership is automatically taxed as a partnership if

1. the limited partnership is properly formed under state law as a business entity;
2. the limited partnership is not engaged in certain businesses that must be taxed as corporations, such as insurance companies, banks, and other businesses that are owned by governments; and
3. the limited partnership does not elect to be taxed as a corporation.

Limited partnerships formed prior to 1997 that have been taxed as partnerships will continue to be so taxed as long as there is a reasonable basis for that tax classification, the partners report their taxes under the partnership rules, and the Internal Revenue Service has not challenged the limited partnership's right to use the partnership classification for tax purposes.

FORMATION AND OPERATION OF A LIMITED PARTNERSHIP

With the singular, but extremely important, exception of the limited partnership certificate, the formation of a limited partnership is the same as the formation of a general partnership. Thus, licensing requirements have identical application to this form of business, and other state formalities must be observed. The agreement plays an even more important role in a limited partnership and should give special attention to the idiosyncrasies of the limited partnership.

Name

The revised statute governing the name of the limited partnership is very similar to statutes regulating corporate names. The name of the limited partnership must be stated in the limited partnership certificate (the public filing), and the name of the limited partnership must contain, without abbreviation, the words *limited partnership*, which should give notice to the world of the limited liability of certain of the firm's partners.⁵⁴ Some states permit the use of abbreviations, such as *L.P.* or *Ltd.*, although at least the latter may cause some confusion with corporate organizations, which are also permitted to use the words Limited or Ltd. If the limited partnership registers as a limited liability limited partnership to protect the general partner from personal liability for the partnership obligations, the name of the limited partnership must contain some acknowledgment that the partnership has full limited liability. An abbreviation of *registered limited liability limited partnership (R.L.L.L.P.)* is usually required.

The name usually may not contain any word or phrase indicating or implying that the partnership is organized other than for a purpose stated in its agreement or certificate, and the name may not be the same as or deceptively similar to the name of any corporation or other limited partnership organized or qualified under the laws of the local jurisdiction.

The name of the limited partnership may be reserved by anyone attempting to organize the limited partnership or intending to qualify a foreign limited partnership in the state. (See Exhibit 4-3, Reservation of a Limited Partnership Name.) The normal period for the reservation of a

Exhibit 4–3.

Reservation of a Limited Partnership Name

<p>Secretary of State</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Ladies and Gentlemen:</p> <p>Enclosed please find my check in the amount of \$_____ to cover the cost of reserving the following limited partnership name for a period of 120 days in your records:</p> <p style="text-align: center;">[_____]</p> <p>I intend to organize a domestic limited partnership using said name.</p> <p>Please acknowledge receipt of this reservation of limited partnership name and your acceptance of this reservation by receipting and returning to me the enclosed copy of this letter in the enclosed self-addressed envelope.</p> <p>Thank you for your anticipated assistance.</p> <p style="text-align: right;">Sincerely,</p>	<p style="text-align: right;">Re: Reservation of limited partnership name for [proposed name]</p> <p style="text-align: right;">[Signature]</p>
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name is 120 days, and the reservation usually may be extended for an additional 60 days. Moreover, similar to corporate law, limited partnership law allows the reserved limited partnership name to be transferred by an appropriate notice of transfer.⁵⁵

Both the old and new laws contain a provision designed to avoid confusion of persons doing business with a partnership as to the identity of the general and limited partners. The use of a limited partner's surname in the name of the limited partnership is prohibited if the limited liability of that partner is to be maintained, unless (1) the partnership has a general partner with the same name, or (2) the business had been carried on under a name including the limited partner's surname before that person became a limited partner. Thus, a limited partnership composed of Ron Williams and Charlie Langhoff as general partners and Mary Williams, Scott Charlton, and Bob Thompson as limited partners could use the name "Williams and Langhoff, Limited Partnership," based on the first exception, even though Mary Williams is a limited partner. Similarly, if Charlie Langhoff subsequently became a limited partner, the firm could continue under the name "Williams and Langhoff, Limited Partnership," under the second exception. The new uniform act has removed that restriction and permits the use of a limited partner's name in the firm name.

The Partnership Agreement

The *partnership agreement* is defined in the current law as any valid agreement, written or oral, of the partners as to the affairs of the limited partnership and the conduct of business. (The agreement should be written, but the definition permits the use of an oral agreement.) The original act did not refer to the partnership agreement at all, and appeared to assume that all important matters would be set forth in the certificate of limited partnership. Under modern practice, however, it is common for partners to enter into a comprehensive partnership agreement, only part of which is included in the certificate, which is filed as a matter of public notice. The certificate has gained less and less importance in subsequent revisions of the law. The revised act originally provided that the certificate would be the source of public information concerning the addition and withdrawal of partners and capital and any other important issues concerning the structure of the partnership that might be important to creditors and others doing business with the partnership. In subsequent revisions to the revised act and in the new uniform act, the certificate is relegated to simply confirming the addresses and identity of the partnership and the general partners. All other issues are now left to be included in the partnership agreement.⁵⁶

Preparation of the limited partnership agreement usually is based upon the expressed desires of the proposed general partners, since limited partners play a passive role in the forma-

tion and operation of the business. The basic form of the agreement resembles a general partnership agreement, since the limited partnership includes at least one general partner. All considerations specified in the checklist proposed for general partnerships (see “Formation and Operation of a General Partnership” in Chapter 3) should be considered in the drafting of the limited partnership agreement, especially when more than one general partner will manage the business.

Several special matters, raised by the specific statutory rules that govern limited partnerships, also should be addressed in the agreement. The following checklist is designed to be used in addition to that provided in Chapter 3 to draft a complete limited partnership agreement.

Checklist

1. Provide for the filing and recording of a certificate of limited partnership and other necessary documents in the appropriate places.

Certificate of Limited Partnership

EXAMPLE

A Certificate of Limited Partnership created hereby shall be recorded in accordance with the Limited Partnership Act in each state in which the Partnership may establish a place of business. In addition, the General Partner shall file and publish any other notices, certificates, statements, or other instruments required by any provision of any law of the state in which the partnership is organized or is qualified to do business.

2. State provisions for the admission of additional limited partners.

Admission of Additional Limited Partners

EXAMPLE

Subject to any other provision of this Agreement, after the formation of the Partnership, a person may be admitted as an additional Limited Partner with the written consent of the General Partner and the execution by the additional Limited Partner of a counterpart of this Agreement.

3. State provisions for the admission of transferees of limited partners.

Admission of Transferees of Limited Partners

EXAMPLE

Subject to the other provisions of this Agreement, a person who has received a valid written transfer of a partnership interest in this Partnership, including a transferee of a General Partner, may become a Limited Partner in the Partnership by a specific grant of authority from the transferor to the transferee of the right to become a Limited Partner in the Partnership. In addition, prior to admission of the transferee as a Limited Partner in the Partnership, the General Partner may require such opinions of counsel as are necessary or desired in the sole discretion of the General Partner, to determine that the transfer of the interest in the Partnership from the transferor to the transferee does not violate any federal or state securities law, or affect the tax consequences of the Partnership. The transferee shall also be required to execute a counterpart of this Agreement prior to admission as a Limited Partner.

4. Provide that any new partners must agree to be bound by the terms of the partnership agreement.

Additional Partners Bound by Agreement

EXAMPLE

Notwithstanding any other provisions of this Agreement, before any person is admitted or substituted as a Limited Partner, he or she shall agree in writing to be bound by all of the provisions of this Agreement.

5. Provide for additional capital contributions by limited partners if desired, and describe any restrictions or limitations on additional capital contributions.

EXAMPLE**Limitation on Additional Capital Contributions**

After the initial capital contributions have been paid, Limited Partners may be required to contribute their proportionate share of the capital of this Partnership or such additional sums of money or property as shall be determined to be necessary by the General Partner to meet operating expenses of the Partnership when funds generated from Partnership operations are insufficient to meet such expenses. However, Limited Partners shall not be required to contribute more than twenty percent (20%) of their initial capital contributions as additional capital.

6. Describe the rights of limited partners to withdraw or reduce their capital contributions to the partnership. In addition, if limited partners will have the right to demand or receive property other than cash in return for a contribution, describe the circumstances under which such property would be distributed.

EXAMPLE**Withdrawal and Return of Capital**

No Limited Partner shall have the right to withdraw or reduce his or her contribution to the capital of the Partnership without the consent of the General Partner. No Limited Partner shall have the right to bring an action for partition against the Partnership. No Limited Partner shall have the right to demand or receive property other than cash in return for his or her contribution. No Limited Partner shall have priority over any other Limited Partner, either as to the return of his or her contribution of capital or as to profits, losses, or distributions.

7. Although the modern uniform acts have become completely permissive concerning limited partner's participation in management of the business, current states' laws still usually restrict the limited partners from participation in the control of the business. To avoid any questions about the limited liability of a limited partner, it is best to restrict the limited partner's participation in typical management activities.

EXAMPLE**Role of Limited Partner**

Except as otherwise provided in the Agreement, a Limited Partner shall have no part in or interfere in any manner with the conduct or control of the business of the Partnership, and shall have no right or authority to act for or by the Partnership. The Limited Partner of this Partnership will be permitted, if agreed by the General Partner, to perform the following acts on behalf of the Partnership:

- 1) acting as a contractor for or agent or employee of the Limited Partnership or of the General Partner or being an officer, director, or shareholder of the Corporate General Partner;
- 2) consulting with and advising the General Partner with respect to the business of the Limited Partnership;
- 3) acting as a surety for the Limited Partnership or guaranteeing or assuming one or more specific obligations of the Limited Partnership;
- 4) taking any action required or permitted by the laws of the state under which the Partnership was organized or qualified to bring or pursue a derivative action in the right of the Limited Partnership;
- 5) requesting or attending a meeting of partners; and
- 6) proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:
 - i) the dissolution and winding up of the Partnership;
 - ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the Limited Partnership;
 - iii) the incurrence of indebtedness by the Limited Partnership other than the ordinary course of its business;
 - iv) a change in the nature of the business;
 - v) the admission or removal of a General Partner;
 - vi) the admission or removal of a Limited Partner;
 - vii) a transaction involving an actual or potential conflict of interest between the General Partner and the Partnership or the Limited Partners;
 - viii) an amendment to the Partnership Agreement or Certificate of Limited Partnership;
 - ix) the approval of capital contributions in excess of \$100,000; and
 - x) the location of the Partnership's offices within this state.

8. Describe in some detail the rights, powers, and obligations of the general partner, and the extent to which management may be delegated.

Rights, Powers, and Obligations of the General Partner

EXAMPLE

The management and control of the Partnership and its business and affairs shall rest exclusively with the General Partner who shall have all the rights and powers which may be possessed by a general partner by law, and such rights and powers as are otherwise conferred by law or are necessary, advisable or convenient, to the discharge of its duties under this Agreement and to the management of the business and affairs of the Partnership. Without limiting the generality of the foregoing, the General Partner shall have the following rights and powers:

- a) to spend the capital and net income of the Partnership in the exercise of any rights or powers possessed by the General Partner hereunder;
- b) to acquire, purchase, hold, and sell real estate and lease the same to third parties and to enter into agreements with others with respect to such activities, which agreements may contain such terms, provisions, and conditions as the General Partner in its sole and absolute discretion shall approve;
- c) to borrow money to discharge the Partnership's obligations, or to protect and preserve the assets of the Partnership, or to incur any other indebtedness in the ordinary course of business and to pledge all or any of the Partnership's assets or income to secure such loans;
- d) to employ a business manager or managers to manage the Partnership's affairs;
- e) to execute leases, licenses, rental agreements, and use agreements, on behalf of the Partnership, of and with respect to all or any portion of the real property; and
- f) to delegate all or any of its duties hereunder, and in furtherance of any such delegation to appoint, employ, or contract with any person it may in its sole discretion deem necessary or desirable for the transaction of the business of the Partnership, which persons may, under the supervision of the General Partner: administer the day-to-day operations of the Partnership; serve as the Partnership's advisers and consultants in connection with policy decisions made by the General Partner; act as consultants, accountants, correspondents, attorneys, brokers, escrow agents, or in any other capacity deemed by the General Partner necessary or desirable; investigate, select, and on behalf of the Partnership, conduct relations with persons acting in such capacities, and enter into appropriate contracts with, or employ, or retain services performed or to be performed by, all or any of them in connection with the real estate; perform or assist in the performance of such administrative or managerial functions necessary in the management of the Partnership and its business as may be agreed upon with the General Partner; and perform such other acts or services for the Partnership as the General Partner, in its sole and absolute discretion, may approve.

9. Describe any limitations or restrictions on the general partner's powers.

Limitations on General Partner's Powers

EXAMPLE

The General Partner shall not, without the written consent or ratification of the specific act by the Limited Partners:

- a) make, execute, or deliver any assignment for the benefit of creditors, or sign any confession of judgment on behalf of the Partnership;
- b) possess partnership property or assign its rights in specific partnership property for other than a Partnership purpose;
- c) act in contravention of the Agreement;
- d) conduct any act that would make it impossible to carry on the ordinary business of the Partnership;
- e) admit a person as a general partner; or
- f) permit a creditor who makes a nonrecourse loan to the Partnership to acquire any interest in profits, capital, or property of the Partnership other than as a secured creditor.

10. Describe the rights of limited partners, consistent with the limited partners' passive role in the partnership.

EXAMPLE**Rights of the Limited Partners**

Limited Partners shall have the right to:

- a) have the Partnership books kept at the principal place of business of the Partnership or such other place as designated by the General Partner, and to inspect and copy any of them in accordance with this Agreement;
- b) obtain from the General Partner any information concerning the financial condition of the Partnership by requesting the same with 72 hours' written notice and meeting with the General Partner to obtain such information during normal business hours of the Partnership; and
- c) receive a copy of the Limited Partnership's federal, state, and local income tax returns for each year within 120 days after the close of the Partnership's fiscal year.

11. Describe any rights that will be granted to the limited partners to remove and replace the general partner. Since the limited partners cannot take active part in management without losing limited liability, their failure to designate a new general partner should require a liquidation of the partnership.

EXAMPLE**Removal of General Partner**

Limited Partners shall have the right to remove the General Partner, by written vote or written consent signed and acknowledged by at least ninety percent (90%) of the then outstanding limited partnership interests, and given to the General Partner within thirty (30) days prior to the effective date of removal according to the following:

- a) removal of the General Partner shall be effective upon the substitution of the new General Partner.
- b) concurrently with notice of removal or within thirty (30) days thereafter by notice similarly given, the Limited Partners shall designate a new General Partner.
- c) substitution of a new General Partner shall be effective upon written acceptance of the duties and the responsibilities of General Partner hereunder. Upon effective substitution of a new General Partner, this Agreement shall remain in full force except for the change in General Partner, and the business of the Partnership shall be continued by the new General Partner. The new General Partner shall thereupon execute, acknowledge, file, and publish, as appropriate, amendments to the Certificate of Limited Partnership and Trade Name Affidavit.
- d) failure of the Limited Partners to designate a General Partner within the time specified herein or failure of a new General Partner so designated to execute written acceptance of the duties and responsibilities of General Partner hereunder within ten (10) days after such designation shall require the liquidation of the Partnership as provided in this Agreement.

12. For ease of management of the partnership, each limited partner may grant a power of attorney to the general partner to execute documents to maintain limited partnership status in his or her name. This practice avoids the nuisance of locating all limited partners to obtain their signatures for documents that need to be filed to properly maintain the partnership. Under the revised and new uniform acts, only general partners are required to sign the limited partnership certificate. However, most local laws are still based upon the original act and the unamended revised act, so administrative requirements such as these should be considered.

EXAMPLE**Power of Attorney**

Each of the Limited Partners hereby irrevocably constitutes and appoints the General Partner as true and lawful attorney-in-fact for such Limited Partner with power and authority to act in his or her name and on his or her behalf in the execution, acknowledgment, filing, and recording of documents, which shall include the following:

- a) a Certificate of Limited Partnership and any amendment thereto, under the laws of the State of Colorado or the laws of any other state or other jurisdiction in which such certificate or any other amendment is required to be filed;

- b) any other instrument that may be required to be filed or recorded by the Partnership under the laws of any state or by any governmental agency; or which, in the General Partner’s discretion, it is advisable to file or record; and
- c) any document that may be required to effect the continuation of the Partnership, the admission of an additional or substituted Limited Partner to the Partnership, or the dissolution and termination of the Partnership, provided that such documents are in accordance with the terms of the Partnership Agreement.

EXAMPLE

Such Power of Attorney (i) shall be a special power of attorney coupled with an interest, shall be irrevocable, and shall survive the death of the Limited Partner; (ii) may be exercised by the General Partner for each Limited Partner by a facsimile signature of the General Partner or by listing all of the Limited Partners executing any instrument with a single signature of the General Partner acting as attorney-in-fact for all of them; and (iii) shall survive the delivery of any assignment by the Limited Partner of the whole or any portions of his or her interest except that where the assignee of the whole thereof has been approved by the General Partner for admission to the Partnership as a substituted Limited Partner, the Power of Attorney shall survive the delivery of such assignment for the sole purpose of enabling the General Partner to execute, acknowledge, and file any instrument necessary to effect the substitution.

13. Describe any limitations to be placed on the transfer of limited partnership interests.

Transfer of Limited Partnership Transferable Interests

EXAMPLE

No heir, successor, donee, assignee, or other transferee (including a partner’s spouse) of the whole or any interest in a Limited Partner’s transferable interest in the Partnership shall have the right to become a substituted Limited Partner in place of his or her assignor unless all of the following conditions are satisfied:

- a) Upon receipt of a bona fide offer to purchase a limited partnership transferable interest in an amount at least equal to or greater than the minimum subscription amount required by the securities laws in the respective states where the transferor and transferee reside, the holder of the transferable interest shall communicate the offer to the General Partner. The General Partner shall have a right of first refusal to purchase the transferable interest according to the price and terms of the bona fide offer, which option must be exercised within thirty (30) days from the date of first receipt of the notice of said bona fide offer. In the event that the General Partner fails to exercise its option hereunder, the Limited Partner may transfer his or her transferable interest upon the same terms as the offer and upon satisfaction of all other requirements of this Article.
- b) The written instrument of assignment that has been filed with the Partnership is fully executed and acknowledged and sets forth the intention of the assignor that the assignee become a substituted Limited Partner in his or her place.
- c) The assignor and assignee execute and acknowledge such other instruments as the General Partner may deem necessary or desirable to effect the substitution, including the written acceptance and adoption by the assignee of the provisions of the Agreement.
- d) Recordation of an amendment to the Certificate of Limited Partnership in accordance with the Colorado Limited Partnership Act.
- e) Payment by the transferor of all reasonable expenses of the Partnership connected with the transfer, including, but not limited to, legal fees and costs (which costs may include, for example, the cost of obtaining opinion of counsel as to the transferability of the interest or of filing any amendment to the Certificate of Limited Partnership).
- f) The consent to the transfer in writing by the General Partner.

14. Describe any limitations to be placed upon partnership loans or other transactions of business with a limited partnership.

Limitations on Partnership Loans

EXAMPLE

No Partner, General or Limited, may lend money to the Partnership on a basis that is less favorable than the Partnership may obtain from independent financial institutions. All Partnership loans shall bear interest at a rate not to exceed the prime lending rate of the Partnership’s principal financial institution, and shall provide for repayment no earlier than six months after the date of the loan.

15. Describe any voting procedures and rights that are desired for the various partners.

EXAMPLE

Voting Rights of Partners

The General Partners shall be permitted to vote on all matters respecting the business of the Partnership. The Limited Partners shall be entitled to vote on all matters that are referred to them by the General Partners for their approval. In any vote of the Partnership, the matters submitted to the vote of the Partners shall be approved by a majority of the vote of the General Partners, with the General Partners voting as a class, and a majority of the Limited Partners, with the Limited Partners voting as a class.

16. Provide for the admission of additional general partners, if desired, with a procedure that is different from the consent of all partners of the partnership.

EXAMPLE

Admission of General Partners

Additional General Partners may be admitted to the Partnership by the majority vote of the Limited Partners.

17. Provide for any limitations of the general partner's liability to the partnership or to the limited partners. It is not possible to limit the liability of the general partner to outsiders, but the partnership agreement may regulate claims among the partners.

EXAMPLE

Limitations on Liability of General Partner

The General Partner in this Partnership shall not be liable to the Partnership or to the Limited Partners except for acts of gross negligence and willful misconduct.

The Limited Partnership Certificate

A traditionally troublesome formality associated with the limited partnership is the certificate, which has to be properly filed and maintained to ensure limited liability for the limited partners. Failure to properly file and amend the certificate when necessary prevents recognition of the limited partnership, and all partners are treated as though they belonged to a general partnership. Recognizing that the failure to maintain the certificate of limited partnership could accidentally cause a change in the status of the partners, the drafters of the revised and new uniform acts substantially minimized the importance of the certificate in the most recent amendments. The policy of the revised act is to place greater emphasis on the terms of the partnership agreement, and to permit the certificate to be simply public notice of matters the general partners desire to make known and the public needs to know.


Content Many existing limited partnerships that were formed under the original Uniform Limited Partnership Act are operating with certificates of limited partnership that resemble a corporation's articles of incorporation (see Exhibit 4-4, Limited Partnership Certificate). These certificates, in some respects, are more specific and revealing about the structure of the agreement among the partners. In fact, in many cases, the partners simply filed the limited partnership agreement as the certificate of limited partnership.

Under current law, the information contained in the certificate of limited partnership is substantially simplified, requiring only the following (see Exhibit 4-5, Limited Partnership Certificate [Revised Uniform Limited Partnership Act]):

1. name of the limited partnership;
2. address of the office and name and address of the agent for service of process (discussed later in this section);

Exhibit 4-4.

Limited Partnership Certificate (Virginia)



**LPA-73.11
(07/03)**

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

CERTIFICATE OF LIMITED PARTNERSHIP

This certificate of limited partnership is presented for filing pursuant to § 50-73.11 of the Code of Virginia.

1. The name of the limited partnership is _____

2. The post office address, including the street and number, if any, of the specified office where the records shall be maintained pursuant to § 50-73.8 of the Code of Virginia is

(number/street)

(city or town) (state) (zip)

3. A. The initial registered agent's name is _____

B. The registered agent is (mark appropriate box):

(1) an **INDIVIDUAL** who is a resident of Virginia **and**

a general partner of the limited partnership.

an officer or director of a corporation that is a general partner of the limited partnership.

a general partner of a general partner of the limited partnership.

a member or manager of a limited liability company that is a general partner of the limited partnership.

a trustee of a trust that is a general partner of the limited partnership.

a member of the Virginia State Bar.

OR

(2) a domestic or foreign stock or nonstock corporation, limited liability company or registered limited liability partnership authorized to transact business in Virginia.

4. The business address of the initial registered agent is:

(number/street)

_____ VA _____

(city or town) (zip)

which is located in the city or county of _____

5. The name, business address and SCC ID # (if assigned) of each general partner:

(name and SCC ID #, if assigned)

(street address) (city or town) (state) (zip)

(name and SCC ID #, if assigned)

(street address) (city or town) (state) (zip)

Check and complete if applicable:

The following general partner(s) is (are) serving, without more, as a general partner of, or as a partner in a partnership which is a general partner of, a domestic or foreign limited partnership which does not otherwise transact business in this Commonwealth pursuant to § 50-73.61 and/or § 13.1-757 of the Code of Virginia:

[OVER]

3. name and business address of each general partner;
4. latest date upon which the limited partnership is to dissolve; and
5. any other matters the general partner has determined to include in the certificate of limited partnership.⁵⁷

All states have some combination of the original act and the amended revised act as the local requirements for certificates of limited partnership. In each case, local law must be carefully reviewed to ensure that the certificate contains the required information.

Exhibit 4-4.

(continued)

6. The latest date upon which the limited partnership is to be dissolved and its affairs wound up is

7. Signature(s) of all general partner(s):

_____	_____	_____
(signature)	(printed name)	(date)
_____	_____	_____
(signature)	(printed name)	(date)
_____	_____	_____
(signature)	(printed name)	(date)

INSTRUCTIONS

The certificate must be in the English language, typewritten or printed in black, legible and reproducible. See § 50-73.17 of the Code of Virginia. The document must be presented on uniformly white, opaque paper, free of visible watermarks and background logos.

You can download this form from our website at www.state.va.us/scc/division/clk/index.htm.

The name of the limited partnership must contain the words "Limited Partnership" or "a Limited Partnership," the abbreviation "L.P." or "LP;" provided, however, that if the limited partnership is also applying for registered limited liability partnership status pursuant to § 50-73.132 of the Code of Virginia, the name must include either (1) (a) the words "limited partnership" or "a limited partnership," or the abbreviation "L.P." or "LP" and (b) the words "Registered Limited Liability Partnership" or "Limited Liability Partnership," the abbreviation "R.L.L.P." or "L.L.P." or the designation "RLLP" or "LLP," or (2) the words "Registered Limited Liability Limited Partnership" or "Limited Liability Limited Partnership," the abbreviation "R.L.L.L.P." or "L.L.L.L.P." or the designation "RLLLLP" or "LLLLP." See § 50-73.2 of the Code of Virginia.

The specified office is the location at which a current list of the full name and last known address of each general partner of the limited partnership is kept, as well as the other limited partnership information and records specified in § 50-73.8 of the Code of Virginia.

The address of the specified office must include a street address. A rural route and box number may only be used if no street address is associated with the specified office's location. A post office box is only acceptable for towns/cities that have a population of 2,000 or less if no street address or rural route and box number is associated with the specified office's location.

A registered limited liability partnership may not serve as its own registered agent.

The address of the registered agent's business office must include a street address. A rural route and box number may only be used if no street address is associated with the location of the registered agent's business office. A post office box is only acceptable for towns/cities that have a population of 2,000 or less if no street address or rural route and box number is associated with the location of the registered agent's business office. Set forth the name of the county or independent city in which the office is physically located. Counties and independent cities in Virginia are separate local jurisdictions.

This certificate must include the SCC ID # of each general partner that is of record with the State Corporation Commission.

This certificate must be signed by all of the general partners. Any person may sign a certificate by an attorney-in-fact. Each person signing this statement must set forth his printed name next to or beneath his signature. A person signing on behalf of a general partner that is a business entity should set forth the business entity's name, his or her printed name, and the capacity in which he or she is signing on behalf of the business entity. **As provided in § 50-73.15 C of the Code of Virginia, the execution of this certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated herein are true.**

Submit the original, signed certificate to the Clerk of the State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197, (Street address: 1300 East Main Street, Tyler Building, 1st floor, Richmond, Virginia 23219), along with a check for the filing fee in the amount of **\$100.00**, payable to the State Corporation Commission. **PLEASE DO NOT SEND CASH.** If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Registered Office and Agent The benefit to the public and to local government agencies of a designated office for business records and an agent for service of process has long been recognized for corporations. An agent for service of process on the limited partnership must be an individual resident of the state and must be continuously maintained by the limited partnership. The limited partnership also must specify an office, which need not be its place of business in the state, where records of the partnership will be maintained.⁵⁸ At this office, the

partnership is required to keep a current list of all partners in alphabetical order; a copy of the certificate of limited partnership and all amendments; copies of the partnership's financial statements and federal, state, and local income tax returns for three years; and copies of any effective written partnership agreement. The records maintained at the registered office must include a description of the capital contributions of each partner, the times when additional capital contributions will be required, the right of a partner to receive a distribution that may

Exhibit 4-5.

Limited Partnership Certificate (Revised Uniform Limited Partnership Act)

(REVISED UNIFORM LIMITED PARTNERSHIP ACT)

We, the undersigned, for the purpose of forming a limited partnership pursuant to the Revised Uniform Limited Partnership Act as set forth in sections _____ of the _____ Code, hereby certify:

1. **Name.** The name of the partnership is _____.
2. **Character of Business.** The character of the business to be carried on is to engage in the business of _____.
3. **Address and Agent.** The address of the office of the partnership is _____, and the agent for service of process upon the partnership is _____.
4. **Members.** The name and the business address of each member of the partnership are as follows:

Name	Business Address	Type of Member
_____	_____	[General]
_____	_____	[Limited]
_____	_____	[Limited]

5. **Initial Contribution of Each Partner.** The amount of cash and a description and statement of the agreed value of other property or services contributed by each partner are as follows:

Name	Cash	Description of Property or Services	Agreed Value of Property or Services
_____	_____	_____	_____
_____	_____	_____	_____

6. **Additional Contributions.** The times or events that will require additional contributions to be made by each partner are as follows: _____

7. **Assignment of a Limited Partner's Interest.** Each limited partner is given the right to substitute an assignee as contributor in his or her place, provided that the assignment is approved by the general partners.

8. **Termination of Membership.** With sixty (60) days' written notice to the general partners, any member of the partnership may terminate his or her membership in the partnership and receive a full distribution of his or her partnership interest in cash, provided, however, that no such distribution shall be made unless the assets of the partnership exceed the liabilities of the partnership on a ratio of at least 2:1.

9. **Distributions.** The partners may receive from the partnership from time to time such property of the partnership, including cash, as may be agreed upon by the general partners.

10. **Return of a Capital Contribution.** The general partners may, from time to time, as they agree, distribute to the other partners such portions of the capital contributions of the other partners as the general partners may deem appropriate.

Exhibit 4–5.*(continued)*

<p>11. Dissolution. The partnership shall be dissolved and its affairs wound up upon the happening of any of the following:</p> <ul style="list-style-type: none"> a. unanimous agreement by all members; b. death, insanity, disability, or retirement of a general partner without a successor general partner being elected within 90 days; c. sale or disposition of substantially all of the partnership property; or d. any event which, in the opinion of the general partners, prevents the partnership from carrying on its ordinary business. <p>12. Continuation of Business. Notwithstanding any event of dissolution, the remaining members of the partnership may continue the business of the partnership without liquidation of the partnership by electing a successor or replacement general partner within 90 days from the event that causes the dissolution.</p> <p>13. Other Matters. _____</p> <p>_____</p> <p>_____</p> <p>Date this _____ day of _____, 20____.</p> <p style="text-align: center;">[Signatures of general and limited partners]</p> <p>Subscribed and sworn to before me this ____day of _____, 20____.</p> <p style="text-align: right;">_____ Notary Public</p>

include part of the contributions, and any events upon which the partnership will be dissolved. If these items are contained in the written partnership agreement, separate records do not have to be maintained for such matters. These records are subject to inspection and copying by any partner upon reasonable request during normal business hours.

Filing Most states designate the office of the secretary of state as the repository for the certificate. A few states require a single filing of the certificate in the office of the county clerk in the county in which the partnership's principal place of business is situated. Even fewer states require filing in both places. New York requires publication once a week for six weeks in two newspapers of general circulation in the county, one of which should be in the city in which the partnership is located. The appropriate state statute should be carefully reviewed in any case. Moreover, if the partnership intends to do business in more than one location, appropriate multiple filings should be made to avoid any question of compliance with these important provisions.

Amendments During the course of operating a limited partnership, several situations may require that the certificate be amended. Much information is required in the certificate of limited partnership under the original act, so amendments frequently are required under local laws following that statute.⁵⁹

Under the revised and new law, the certificate may be amended at any time the general partners decide to add or delete information that is optionally included, and must be amended whenever a general partner is aware that a statement in the certificate is false or that circumstances have changed to make a statement inaccurate. An amendment must be filed within thirty days after a new general partner is admitted, an old general partner withdraws, or the business has been continued after a general partner has withdrawn.⁶⁰

The amending statement (see Exhibit 4–6, Amendment of Limited Partnership Certificate) must state the name of the limited partnership, the filing date of the certificate, and the contents of the amendment. It must be signed by at least one general partner and by any new general partner. In jurisdictions that operate under the original act, signatures of limited partners are required on the amendment. To avoid the nuisance of locating and obtaining the signature of each limited partner (or of a new general partner), the partnership agreement may grant a

Exhibit 4–6.

Amendment of Limited Partnership Certificate (Delaware)

**STATE OF DELAWARE
AMENDMENT TO THE CERTIFICATE OF
LIMITED PARTNERSHIP**

The undersigned, desiring to amend the Certificate of Limited Partnership of _____

 pursuant to the provisions of Section 17-202 of the Revised Uniform Limited Partnership Act of the State of Delaware, does hereby certify as follows:

FIRST: The name of the Limited Partnership is _____
 _____.

SECOND: Article ____ of the Certificate of Limited Partnership shall be amended as follows: _____

 _____.

IN WITNESS WHEREOF, the undersigned executed this Amendment to the Certificate of Limited Partnership on this ____ day of _____, A.D._____.

By: _____
 General Partner(s)

Name: _____
 Print or Type


power of attorney to an existing general partner to enable that partner to sign amendments on behalf of other partners.⁶¹

Even under the revised act, the amendment procedure is cumbersome and may be annoying. The details for which a limited partnership amendment is required are even more specific, especially under the original statute, than the details for which a corporate amendment is required. For example, a corporation does not have to amend its articles of incorporation every time it acquires a new shareholder or loses a director, but the limited partnership may be required to amend for analogous changes in personnel.

Cancellation of the Certificate When the limited partnership is dissolved and winding up has commenced, or when there are no more limited partners, the certificate of limited partnership must be cancelled. Since the limited partnership was formed in a public manner by filing the certificate, it should be dissolved with the same formality. A certificate of cancellation (see Exhibit 4–7, Statement of Cancellation) is provided for this purpose, and it must be signed by all general partners.⁶² If no certificate of cancellation is filed—as when, for example, limited partnership is insolvent and the partners have dispersed without observing dissolution formalities—the limited partnership may be administratively dissolved by the secretary of state (for not filing annual reports, if required by local law) or simply remains as a dormant business entity.

Exhibit 4–7.

Statement of Cancellation
(Idaho)



CERTIFICATE OF CANCELLATION OF LIMITED PARTNERSHIP

(Instructions on back of application)

1. The name of the limited partnership is: _____

2. The date its certificate of limited partnership was filed with the Secretary of State: _____
3. The limited partnership hereby cancels its certificate of limited partnership.
4. The effective date of cancellation, if other than the date of filing, is: _____
(Leave blank if effective date is to be date of filing, or specify a **future** date.)
5. The reason for the cancellation is:

6. Other matters (optional):

7. Signatures of all general partners:

Signature	_____
Typed Name	_____
Signature	_____
Typed Name	_____
Signature	_____
Typed Name	_____
Signature	_____
Typed Name	_____

Secretary of State use only

g:\compliance_forms\cancellation_LP.pptg
Revised 1/2001


The certificate of cancellation is required when there is a dissolution of the partnership, but only if the partnership has commenced a procedure to wind up its affairs. A technical dissolution may occur under a number of situations, such as the death of a general partner; however, such a situation does not necessarily require that the partnership be liquidated. The agreement may allow the business to continue with an existing additional general partner or with the limited partners' appointment of another general partner. Consequently, only the commencement of the winding up of the partnership requires a certificate of cancellation. If the business is to be continued following a dissolution, a certificate of cancellation need not be filed.

Foreign Limited Partnerships

The modern uniform acts have borrowed a number of corporate rules providing for the qualification and registration of **foreign limited partnerships** in other states. Any foreign limited partnership (defined as a partnership formed under the laws of some other state) must register

Exhibit 4–8.

Application for Registration of a Foreign Limited Partnership (Nevada)

 <p>DEAN HELLER Secretary of State 202 North Carson Street Carson City, Nevada 89701-4201 (775) 684 5708</p>		<p>Application for Registration of Foreign Limited Partnership (PURSUANT TO NRS 88.570)</p>		Office Use Only:	
<p><i>Important: Read attached instructions before completing form.</i></p>					
1. <u>Name of Foreign Limited Partnership:</u>					
2. <u>Name Being Registered with Nevada:</u> <small>(name under which this foreign limited partnership proposes to register and transact business in Nevada)</small>					
3. <u>Date of Formation and State or Country in which Partnership was Formed:</u>	_____		_____		
	Date Formed		State or Country where authorized		
4. <u>Resident Agent Name and Street Address:</u> <small>(must be a Nevada address where process may be served)</small>	Name _____ Physical Street Address _____ City _____ NEVADA _____ Zip Code _____ Additional Mailing Address _____ City _____ State _____ Zip Code _____ This Foreign Limited Partnership hereby undertakes to keep a list of the names and addresses of the limited partners and their capital contributions at this office until its registration in Nevada is cancelled or withdrawn. In the event the above-designated Agent for Service of Process resigns and is not replaced or the agent's authority has been revoked or the agent cannot be found or served with exercise of reasonable diligence, then the Secretary of State is hereby appointed as the Agent for Service of Process.				
5. <u>Street Address of Principal Office:</u> <small>(for office required to be maintained in the domicile state by the laws of that state)</small>	Street Address _____ City _____ State _____ Zip Code _____				
6. <u>Names and Addresses of each General Partner:</u> <small>(attach additional pages if there are more than 2)</small>	1. _____ Name _____ Street Address _____ City _____ State _____ Zip Code _____ 2. _____ Name _____ Street Address _____ City _____ State _____ Zip Code _____				
7. <u>Name and Signature of General Partner making Statement:</u>	Name _____ Signature _____ I hereby declare and affirm under the penalties of perjury that I am a General Partner in the above-named Foreign Limited Partnership and that the execution of this application for registration is my act and deed and that the facts stated herein are true.				
8. <u>Certificate of Acceptance of Appointment of Resident Agent:</u>	I hereby accept appointment as Resident Agent for the above named Foreign Limited Partnership. _____ Authorized Signature of R.A. or On Behalf of R.A. Company Date _____				
<p><small>This form must be accompanied by appropriate fees. See attached fee schedule. Nevada Secretary of State Form FOREIGNLPREG1999.01 Revised on: 12/11/02</small></p>					

with the secretary of state before transacting business in a new state (see Exhibit 4–8, Application for Registration of a Foreign Limited Partnership).⁶³

An application for registration as a foreign limited partnership must contain the following items:

1. name of the foreign limited partnership and, if different, name under which that partnership proposes to register and transact business in the new state (including the words *Limited Partnership* as part of the name);
2. state and date of the partnership's formation;
3. name and address of any agent for service of process who is either a resident of the new state or an entity formed under the laws of and or qualified to do business in the new state;
4. appointment of the secretary of state of the new state as the agent of the foreign limited partnership if the otherwise appointed agent can no longer be found;
5. address of the partnership's office;
6. name and business address of each general partner; and

7. address of the office at which the list of names and addresses of the limited partners and their capital contributions may be found—The foreign limited partnership must commit to keep those records available until its registration in the foreign state is withdrawn.⁶⁴

There are requirements for amendments to the registration certificate and for cancellation of registration when the partnership ceases to do business in the foreign state.⁶⁵

A foreign limited partnership that transacts business without registration in a state operating under the modern acts is prohibited from maintaining any action, suit, or other proceeding in a court of that state until registration has occurred. However, mere failure to register does not affect any contract or act the foreign limited partnership conducts in the new state, nor does it affect the limited liability of limited partners in the new state.⁶⁶ For example, if the limited partnership between Michael Crouch, as general partner, and Robbie Schwarz, as limited partner, were formed in Delaware and bought and operated an apartment building in Maryland, it would be required to register to do business as a foreign limited partnership in Maryland. If Michael failed to register the partnership under the laws of Maryland, the partnership could not sue any of its tenants for past due rent in Maryland until it completed its registration in that state (and, if necessary, paid any fees or penalties assessed for failure to register). However, the contracts with its tenants, such as apartment leases, are valid under Maryland law, and Robbie's status as a limited partner and his right to limited liability are secure, notwithstanding the fact that the partnership has not properly registered in Maryland.

Derivative Actions

As you will learn in Chapter 6, stockholders of a corporation elect directors to manage the business and legal affairs of the corporation. In some cases, the directors may fail to act to enforce the legal rights of the corporation. In such circumstances, the stockholders may maintain a lawsuit to enforce the rights of their corporation. Because they are owners of the business, if the business has been legally injured, the owners may sue on behalf of the business to recover the damages suffered. Such an action is called a **derivative action**, since the stockholders are suing not for injury to themselves as individuals but rather to enforce rights derived from their ownership of the injured entity. A similar relationship exists in a limited partnership, where the general partner is expected to manage the business and legal affairs of the limited partnership for the benefit of all partners. However, a limited partner never expressly had the right to bring a derivative action under the original uniform act, and many cases have considered whether limited partners are entitled to bring derivative actions, with diverse results. The revised laws expressly permit a limited partner to bring an action in the right of the limited partnership to recover a judgment in its favor if the general partners with authority to do so have refused to bring the action or if an effort to cause the general partners to bring such an action is not likely to succeed.⁶⁷

For example, in the limited partnership with Michael Crouch as general partner and Robbie Schwarz as limited partner, if Michael has leased one of the partnership's apartments to his fiancé, Heather, and Heather has failed to pay the rent for several months, the partnership has a right to collect the rent under the terms of Heather's lease. Michael, as general partner, should enforce the partnership's rights against Heather, but he may be reluctant to do so. Before the revised act, Robbie may not have been able to enforce the claim against Heather on behalf of the partnership and may have been limited to a claim against Michael for breaching his fiduciary duty as general partner to the partnership in not pursuing the partnership's rights. Under the revised act, however, Robbie, as a limited partner, may bring a lawsuit derivatively on behalf of the limited partnership to enforce the partnership's rights against Heather and recover the past due rent from her.

The provisions for derivative actions under the revised and new uniform acts are similar to those under state corporate laws. The partner bringing the action must have been a partner at the time of the transaction that is the subject of the lawsuit, and must be a partner at the time of bringing the action. The partner must attempt to have the general partners bring the action on behalf of the partnership, and must state with particularity in a complaint what actions were

taken in that regard. If a partner is successful in prosecuting a claim on behalf of the partnership and obtains a judgment, compromise, or settlement of the claim, that partner may be awarded reasonable expenses, including attorneys' fees, for bringing the action.⁶⁸

KEY TERMS

limited partnership	event of withdrawal	derivative action
safe harbor activities	foreign limited partnership	

WEB RESOURCES

The limited partnership agreement is the principal document required for the formation of a limited partnership. Like the general partnership, if the parties want to form a limited liability limited partnership, registration forms are available from a public filing officer, usually the Secretary of State, to register the limited liability limited partnership.

Various sources exist for sample partnership agreements that may be tailored to the specific desires of the client. In addition to the sites mentioned under "Web Resources" for General Partnerships in Chapter 3, limited partnership form templates are available on the following sites:

- <<http://www.partnershipkit.com>>
- <<http://www.secure.uslegalforms.com>>
- <<http://www.legaldocs.com>>

Access to state laws regarding licensing and regulatory requirements may be obtained through the Legal Information Institute maintained at the Cornell Law School:

<<http://www.law.cornell.edu>>

The uniform laws of partnership, including the original Uniform Limited Partnership Act, the Revised Uniform Limited Partnership Act with Amendments, and the Uni-

form Limited Partnership Act of 2001 also can be accessed through the Legal Information Institute:

<<http://www.law.cornell.edu>>

The National Association of Secretaries of State maintains links directly to the offices of the Secretaries of State in all states. Most states requiring registration of limited liability limited partnerships provide forms for that purpose through the Secretary of State or Department of Commerce Web sites. These can be accessed through

<<http://www.nass.org>>

Tax forms, including the federal income tax returns and schedules, and the Classification of Entity tax elections may be accessed on line through

<<http://www.irs.gov>>

Searching and locating trade names can be accomplished through various services offered on the Internet. Most of these services charge a fee for useful searches. They include

- <<http://www.tmexpress.com>>
- <<http://www.trademark-search-services.com>>



CASES

ZEIGER V. WILF

333 N.J. Super. 258, 755 A.2d 608
 July 19, 2000
 LESEMANN, J.A.D.

This case offers a virtual primer in the Byzantine relationships among various forms of business organizations em-

ployed in a modern venture capital project. It includes a limited partnership, a corporation, a general partnership and several sophisticated individuals all involved in the proposed redevelopment of a hotel/office building in downtown Trenton. It also demonstrates the significance of limited individual liability which is a key reason for employing some of those entities, and the inevitable risk that anticipated rewards from such a venture may not be realized.

At issue here is an argument by which plaintiff, a seller of the property to be renovated, was to receive a "consultant fee" of \$23,000 per year for sixteen years. The payments, however, ceased after two years. A jury found the redevelopers (a limited partnership and a corporation) liable for those payments, and an appeal by those entities has

now been abandoned. As a result, the matter now focuses on plaintiff's claim that Joseph Wilf, the individual who led the various defendant entities, should be held personally liable for the consultant payments and that such liability should also be imposed on a general partnership owned by Wilf and members of his family.

There is no claim that Wilf personally, or his general partnership, ever guaranteed the consultant payments or that plaintiff ever believed Wilf had made such guarantees. Nor is there a claim that plaintiff did not understand at all times that he was contracting only with a limited partnership and/or a corporation, and not with Wilf personally or with his general partnership. For those reasons, and also because we find no merit in various other theories of individual liability advanced by plaintiff, we affirm the summary judgment entered in favor of Wilf individually, and we reverse the judgment against Wilf's family-owned general partnership.

The property in question was a rundown hotel on West State Street in Trenton located near several State government buildings. In or shortly before 1981, plaintiff Shelley Zeiger and his associate, Darius Kapadia, purchased the property with the intention of renovating and operating the hotel. They undertook some renovation and began operations but could not obtain sufficient financing to complete the project.

In or around March 1985, Steven Novick, an experienced developer, approached plaintiff concerning a possible purchase of the property. Novick believed the building could be successfully renovated and operated as an office building, (with perhaps some hotel facilities included), particularly if he could lease some or all of the office space to the State. Richard Goldberger, another experienced developer, soon joined Novick in the project, as did another associate, said to have considerable contacts within the State government. Plaintiff was also well known in Trenton governmental and political circles.

As the negotiations proceeded, Novick brought defendant Joseph Wilf into the picture. Wilf was described as a "deep pocket partner," whose financial means could help insure the success of the project. He was also a well known and successful real estate developer and soon became the leader and primary spokesman for the purchasing group. Novick and Goldberger generally deferred to Wilf during the negotiations and structuring of the transaction.

On February 17, 1987, the negotiations culminated in a contract with a purchase price of \$3,840,000 for the real estate, a liquor license, and miscellaneous assets connected with the hotel's operation. The contract was signed by a corporation formed by the purchasers, known as Goldberger, Moore & Novick, Trenton, No. 2, Inc., (hereinafter, "Trenton, Inc." or "the corporation").

As the deal was finally struck, the parties also agreed that plaintiff would receive a "consulting fee" of \$27,000 per year payable monthly for sixteen years. While plaintiff was to provide assistance when requested, it is clear

that he was not expected to devote much time or effort to the project. The agreement specified he would not be required to spend more than two days per month in consultations. Plaintiff claims the consultation payments were, in reality, an additional part of the payment price, structured as they were to provide tax benefits to the Novick/Goldberger/Wilf group. In addition, plaintiff was to receive from the project two and one half percent of "annual net cash flow after debt service."

Closing took place on March 4, 1986. Trenton, Inc., was the purchaser and also signed the consultant agreement with plaintiff. The contract documents authorized the corporation to assign its property interests, as well as the consulting contract, to another entity, and on the day following closing the corporation did that by assignment to a limited partnership named Goldberger, Moore & Novick, Trenton, L.P., (hereinafter "Trenton L.P." or "the limited partnership").

The limited partnership then began the anticipated renovation and operation of the hotel/office building. Trenton, L.P. consisted of one general partner—the corporation just referred to (Trenton, Inc.), which owned 4.9 percent of the limited partnership. In addition, it had four limited partners: an entity known as Midnov, owned by Novick and Goldberger, which held a 42.7 percent interest; another entity known as Capitol Plaza Associations (CPA), controlled by Wilf and his family and described further below, which also owned 42.7 percent; George Albanese, a former State official, who held a 5.1 percent interest; and plaintiff Shelley Zeiger who owned a 4.9 percent interest.

The stock of Trenton, Inc., was owned fifty percent by Midnov (Novick and Goldberger's entity) and fifty percent by CPA (the Wilf family entity). Goldberger became president of Trenton, Inc.; Wilf was vice president; Novick was secretary/treasurer, and Bernadette Lynch was assistant secretary.

Thus, all of Wilf's interests in both the limited partnership and the corporation were held through his family entity, CPA. CPA was a general partnership and defendant Joseph Wilf was one of the general partners. While other family members were also general partners in CPA, Joseph Wilf was clearly its guiding and dominating force.

Shortly after closing, Trenton, L.P. began its attempts to secure both state leases for the property and a 9.5 million dollar mortgage to finance the required renovation. Wilf was the leader in that operation as he was in all aspects of the project. He maintains that in doing so, he was functioning as vice president of the corporation, which was the only general partner of the limited partnership. In substance, he claims that the limited partnership was operating (as it was required to do) through its general partner. Since that general partner was a corporation, the corporation was, in turn, operating in the only way that a corporation can operate: by the actions of its officers and agents. He maintains further that Goldberger and Novick soon abdicated most responsibility and simply

stopped functioning as corporate officers—a claim not disputed by plaintiff. Thus, Wilf says, it was left to him to function as the responsible corporate officer.

Both the limited partnership and the corporation operated informally. There were few, if any, corporate meetings, resolutions or minutes. Wilf was less than meticulous in affixing his corporate title to documents or other papers which he says he signed as an officer of the corporate general partner. Significantly, however, plaintiff makes no claim that at any time he thought Wilf was operating in some other capacity, or that he believed Wilf or CPA were undertaking any personal responsibility or liability for any part of the project.

The limited partnership began making the monthly consultation payments to plaintiff in early 1986, and it continued to do so for approximately two years. In March 1988, however, the payments were stopped at Wilf's direction. An additional \$12,000 was paid in May 1989 (which represented almost all the amount then due to plaintiff), but thereafter no further payments were made. Wilf said at the time that the money was needed for the renovation project and that (alone among all the participants), plaintiff was contributing nothing to the project. Plaintiff complained to Novick, and Novick promised to discuss the matter with Wilf. Novick did so, but Wilf continued to maintain that plaintiff should receive no further payments and thus, no further payments were made. Wilf subsequently acknowledged that he was not familiar with the terms of the consultation agreement or plaintiff's rights thereunder.

* * *

Eventually, the project failed. The limited partnership and the corporation filed bankruptcy, as did Novick individually. On July 19, 1993, plaintiff sued Wilf, claiming that Wilf had become the "surviving partner and owner of the partnership assets" pertaining to the "purchase and transfer of" the hotel, and that he was in default respecting payment of plaintiff's consulting fees.

* * *

[P]laintiff claims the limited partnership statute imposes general partner liability on Wilf because he functioned as the operating head of the parties' renovation project. We find the claim inconsistent with both the policy and the language of the statute.

A basic principle of the Uniform Limited Partnership Law (1976), *N.J.S.A. 42:2A-1 to -72*, is a differentiation between the broad liability of a general partner for the obligations of a limited partnership (*see N.J.S.A. 42:2A-32b*), and the nonliability of a limited partner for such obligations. *See N.J.S.A. 42:2A-27a*. Preservation of that distinction and protection against imposing unwarranted liability on a limited partner has been a consistent concern of the drafters of the Uniform Act on which our New Jersey statute is based, and has been described as "the single most difficult issue facing

lawyers who use the limited partnership form of organization." *See Revised Unif. Limited Partnership Act* Prefatory Note preceding § 101, U.L.A. (1976) (hereinafter "Commissioners' Report"). Indeed, the history of the Uniform Limited Partnership Act, and thus the evolution of our New Jersey statute, shows a consistent movement to insure certainty and predictability respecting the obligations and potential liability of limited partners. The framers of the Act have accomplished that by consistently reducing and restricting the bases on which a general partner's unrestricted liability can be imposed on a limited partner. Under the present version of the Uniform Act, the imposition of such liability (absent fraud or misleading) is severely limited. Our New Jersey statute (as discussed below) reflects that same philosophy in the provisions of *N.J.S.A. 42:2A-27a*.

The original version of the ULPA was adopted in 1916. That enactment dealt with the question of a limited partner's liability in one short provision. In Section 7 it said,

A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as **limited partner**, he takes part in the **control** of the **business**.

In 1976, the original ULPA was substantially replaced by a revised version (on which the New Jersey statute is based) which "was intended to modernize the prior uniform law." *See Commissioners Report Prefatory Note* preceding Section 101. One of the ways that modernization was effected was by a new Section 303, which replaced the old Section 7, and was adopted virtually verbatim as Section 27 of the New Jersey statute. Section 303 reads as follows:

[A] limited partner is not liable for the obligations of a limited partnership unless . . . , in addition to the exercise of his [or her] rights and powers as a **limited partner**, he [or she] takes part in the **control** of the **business**. However, if the **limited partner's** participation in **control** of the **business** is not substantially the same as the exercise of the powers of a general partner, he [or she] is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

The Commissioners' Report in the comment to Section 303 states:

Section 303 makes several important changes in Section 7 of the 1916 Act. . . . The second sentence of Section 303(a) reflects a wholly new concept. . . . It was adopted partly because . . . it was thought unfair to impose general partner's liability on a **limited partner** except to the extent that a third party had knowledge of his participation in **control** of the business . . . , but also (and more importantly) because of a determination that it is not sound public policy to hold a limited partner who is not also a general partner liable for the obligations of the partnership except to persons who have done business with the limited partnership reasonably believing, based on the limited partner's conduct, that he is a general partner.

Following that 1976 version, more limitations on a limited partner's liability came in 1988, with a series of "Safe

Harbor” amendments, virtually all of which were adopted in New Jersey. *See N.J.S.A. 42:2A-27b*. The Commissioners’ Report explained the reason for those additions to Section 303 of the Uniform Act:

Paragraph (b) is intended to provide a “Safe Harbor” by enumerating certain activities which a **limited partner** may carry on for the partnership without being deemed to have taken part in **control** of the **business**. This “Safe Harbor” list has been expanded beyond that set out in the 1976 Act to reflect case law and statutory developments and more clearly to assure that limited partners are not subjected to general liability where such liability is inappropriate.

Although plaintiff argues that Section 27 of the New Jersey statute imposes a general partner’s liability on Wilf (and CPA) because Wilf took “part in the control of the business,” we are satisfied that the argument has no merit. To accept it, and impose such liability on the facts presented here, would reverse the evolution described above and create precisely the instability and uncertainty that the drafters of the ULPA (and the New Jersey Act) were determined to avoid.

Plaintiff’s argument rests on Wilf’s key role in the renovation project. Wilf acknowledges that role, but argues that his actions were taken as a vice president of Trenton, Inc.—the corporation which was the sole general partner of Trenton, L.P. Wilf argues that since the corporation is an artificial entity, it can only function through its officer *see Printing Mart- Morristown v. Sharp Electronics Corp.*, 116 N.J. 739, 761, 563 A.2d 31 (1989), and that is precisely what he was doing at all times when he acted concerning this enterprise. Wilf also points to the “Safe Harbor” provisions of *N.J.S.A. 42:2A-27b* to reinforce his claim that his actions here did not impose general partner liability upon him.

We agree with that analysis. As noted, the 1988 “Safe Harbor” provisions set out a number of activities which, under the statute, do not constitute participating in “the **control** of” a **business** so as to impose a general partner’s liability on a **limited partner**. The provision to which Wilf particularly refers is subsection b(6) of section 27, which provides that,

b. A **limited partner** does not participate in the **control** of the **business** within the meaning of subsection a. solely by[.]

(6) Serving as an officer, director or shareholder of a corporate general partner;

That provision clearly applies here and essentially undercuts plaintiff’s argument: while plaintiff claims that Wilf’s activities constitute “control” of the activities of Trenton, L.P., the statute says, in just so many words, that those activities do not constitute the exercise of control.

In addition to the “Safe Harbor” protections, section 27a itself sharply limits the circumstances under which the exercise of “control” could lead to imposition of general partner liability on a limited partner. It first provides that if a limited partner’s control activities are so extensive as to be “substantially the same as” those of a general partner, that control, by itself, is sufficient to impose liability: *i.e.*, if a limited partner acts “the same as” a general partner, he will be treated as a general partner. However, but for that extreme case, mere participation in control does not impose liability on a limited partner. Such liability may be imposed only as to “persons who,” in essence, rely on the limited partner’s participation in control and thus regard him as a general partner.

That limitation of liability to those who rely on a limited partner’s exercise of control is critical to a sound reading of the statute. It is consistent with the series of amendments from 1916 to now, which have been designed to insure predictability and certainty in the use of the limited partnership form of business organization. To reject plaintiff’s claim of liability would be consistent with that view of the statute. To accept the claim would inject precisely the instability and uncertainty which the statute is designed to avoid.

* * *

We are satisfied that, were we to find individual liability against Wilf because of his “control” here, we would be encouraging precisely the instability and uncertainty which are anathema to widespread use of the limited partnership as a business entity. The modern, sound view, epitomized by the ULPA, the New Jersey statute and the well reasoned decisions discussed above is in the other direction: to curtail the threat of personal liability unless there is some “reliance on the part of the outsider dealing with the limited partnership.” There was no such reliance here, and there is no basis for imposing personal liability on Wilf.

EVANS v. GALARDI

546 P.2d 313 (Cal. 1976)

SULLIVAN, JUSTICE

The facts are not in dispute. El Dorado is a limited partnership formed for the purpose of owning and managing certain real property in the City of South Lake Tahoe, California, and of constructing, owning and managing a motel on the premises. Eventually, a motel known as the

Rodeway Inn was built. When the partnership was formed in June 1969, plaintiff and defendants were the limited partners and entitled to receive all of the partnership net profits. The general partner at all times material herein was a California corporation known as El Dorado Improvement Corporation which operated the motel and whose stock initially was owned entirely by plaintiff and defendants. Raymond Haley was the president of the corporate general partner and in this position was charged with the over-all

management of the business and with the supervision of its large number of employees.

About September 15, 1970, plaintiff, defendants and El Dorado Improvement Corporation entered into a written contract whereby plaintiff agreed to sell and defendants agreed to purchase for the sum of \$50,000 all of plaintiff's right, title and interest in the limited partnership and all of plaintiff's stock in the corporate general partner. Defendants executed and delivered to plaintiff their promissory note for the full amount of the purchase price. The respective obligations were undertaken by the parties as individuals, and not in their status as limited partners or shareholders of the corporate general partner. El Dorado was not a party to the agreement of purchase and sale and did not sign either the agreement or the promissory note. As a result of this transaction, defendants as limited partners in El Dorado each became entitled to 50 percent of its net profits, if any, and became the owners of all of the stock of the corporate general partner.

Defendants defaulted on the promissory note and about April 2, 1971, plaintiff brought an action against them in their individual capacity to recover on it. Ultimately judgment was entered in favor of plaintiff and against defendants individually in the sum of \$60,008.15.

On May 9, 1973, plaintiff obtained a writ of execution for the full amount of the judgment, and instructed the Sheriff of El Dorado County to levy execution upon the Rodeway Inn and to place a keeper there to collect the receipts of the business until the judgment was satisfied.

* * *

Plaintiff does not dispute that the legal title to the Rodeway Inn and to the money receipts generated by the motel is vested in El Dorado. Rather, he asserts that since defendants in their capacities as limited partners are each entitled to one-half of the net profits, they together in fact own the entire equitable and beneficial interest in El Dorado's assets.

* * *

We begin our analysis by observing that as a general rule "[a]ll goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law . . . are liable to execution." (Code Civ.Proc., § 688.) Thus, the initial and most important question confronting us is whether defendants, in their capacities as limited partners, have any interest in the assets of El Dorado as such which renders these assets potentially subject to execution in satisfaction of a personal judgment against defendants. In answering this question, we find it helpful to discuss briefly some of the basic principles underlying the law governing limited partnerships.

The form of business association known as a "limited partnership" was not recognized as common law and is strictly a creature of statute. [Citations omitted] It can generally be described as a type of partnership comprised

of one or more general partners who manage the business and who are personally liable for partnership debts, and one or more limited partners who contribute capital and share in the profits, but who take no part in running the business and incur no liability with respect to partnership obligations beyond their capital contribution. (Corp. Code, § 15501; 2 Barrett & Seago, *Partners and Partnerships, Law and Taxation, supra*, Limited Partnerships, § 1. p.482; 2 Rowley on Partnership, *supra*, Limited Partnerships, § 53.0, p.549.) The obvious purpose underlying legislative recognition of this type of business entity was to encourage trade by permitting "a person possessing capital to invest in business and to reap a share of the profits of the business, without becoming liable generally for the debts of the firm, or risking in the venture more than the capital contributed, provided he does not hold himself out as a general partner, or participate actively in the conduct of the business." (*Skolny v. Richter, supra*, 124 N.Y.S. 152, 155; see also *Clapp v. Lacey* (1868) 35 Conn. 463, 466.)

The California Legislature first legitimated limited partnerships in this state in 1870 by enacting a "special partnership" statute (Stats.1869-1870, ch. 129, p.123). These provisions were subsequently repealed in 1929, when the Legislature adopted the Uniform Limited Partnership Act. Among other things, this act sets forth with considerable specificity the rights and obligations of the general and the limited partners, including a detailed description of their proprietary interest in the business. With certain specified limitations, the general partner has all of the rights and powers enjoyed by partners in "non-limited" partnerships. (§ 15509.) Thus, by reference to the Uniform Partnership Act (§ 15001 et seq.), his property rights include: "(1) *his rights in specific partnership property*, (2) his interest in the partnership, and (3) his right to participate in the management." (§ 15024, italics added.) In sharp contrast, the limited partner is given no property interest in the specific partnership assets as such. Rather, he is entitled, among other things, "to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in Sections 15515 and 15516." (§ 15510, subd. 2.)

This unwillingness on the part of the Legislature to grant the limited partner a property interest in the specific assets owned by the partnership, while at the same time providing for such an interest in the general partner, compels the conclusion that the limited partner has no interest in the partnership property by virtue of his status as a limited partner. Thus, such assets are not available to satisfy a judgment against the limited partner in his individual capacity. (Code Civ.Proc., § 688.)

While our research has disclosed no reported California decision which has considered this question, we note that our conclusion in this regard finds ample support in the decisions of our sister states and of the federal courts as well

as in various treatises and other legal authorities. [Citations omitted]

Thus, in a case substantially identical to the one at bench, the New York Court of Appeals held that a sheriff lacked the power and jurisdiction to sell property owned by a limited partnership in execution of a judgment against a limited partner. In so holding, the court reasoned: “The interest of Harris [the limited partner] in the property of a limited partnership can hardly be said to be an interest in the property of the firm. He advanced to the firm a sum of money, which he is entitled to receive back, with interest, at the termination of the partnership; he is also entitled to a share in the profits; but he is to no further extent the owner of the property. Upon payment of these claims, the property would belong to the general partners.” (*Harris v. Murray, supra*, 28 N.Y. 574, 86 Am.Dec. 268, 270.)

Quite apart from the lucid statutory language and the overwhelming weight of authority, the very nature of the limited partner’s relationship with the business organization indicates that he has no property interest in the specific partnership assets which would render them available to his personal creditors. The limited partner is, primarily, an investor, who contributes capital and thereby acquires the right to share in the business profits. (See Uniform Limited Partnership Act, Official Comment, § 1.) His contribution must be in the form of cash or other property, may not con-

sist of services (§ 15504), and must be specified as to amount in the partnership certificate. (§ 15502.) His surname may not be used as part of the firm name. (§ 15505.) He may not actively participate in the conduct of the business. (§ 15507.) Assuming that he complies with these conditions, he is not liable as a general partner on business debts and obligations, except to the extent of his capital contribution. (§§ 15501, 15507.) His death or withdrawal will not dissolve the partnership (§§ 15519, 15520, 15521), and he is not a proper party to proceedings by or against the firm. (§ 15526.) In sum, “[t]he most striking feature of the relation of a special partner to the copartnership is its detached and impersonal character which accentuates sharply its dissimilarity from the relations of a general partner.” (*Skolny v. Richter, supra*, 124 N.Y.S. at p.155.)

In the instant case, it is undisputed that plaintiff’s action on the promissory note and the ensuing judgment were against defendants as individuals, and that El Dorado was not named as a party to the action or as a judgment debtor. Furthermore, there is no question but that the cash receipts of the Rodeway Inn constitute an asset owned by El Dorado. Therefore, under the principles heretofore discussed, defendants in their capacities as limited partners had no property interest in these receipts; accordingly, the receipts were improperly levied upon in execution of plaintiff’s judgment against defendants.

* * *

PROBLEMS

1. Why would a person want to be both a general and a limited partner at the same time?
2. Compare your state’s limited partnership law with the Revised Uniform Limited Partnership Act of 1976 with 1985 amendments (R.U.L.P.A.) and the Uniform Limited Partnership Act of 2001 (U.L.P.A. 2001) and answer the following questions:
 - a. What may be contributed as capital
 - (1) by a general partner under your local law?
 - (2) by a limited partner under your local law?
 - (3) by a general partner under the R.U.L.P.A.?
 - (4) by a limited partner under the R.U.L.P.A.?
 - b. What must a limited partner do to withdraw from the partnership under your state law, the R.U.L.P.A., and the U.L.P.A. 2001? What does a limited partner get when he or she withdraws under the respective acts?
 - c. What can a limited partner do if he or she learns that a limited partnership has not been created and the limited partner wants to avoid personal liability for partnership debts under your state law, the R.U.L.P.A., and the U.L.P.A. 2001?
 - (1) If you were a limited partner in this circumstance, would you prefer to be governed by your state law, the R.U.L.P.A., or the U.L.P.A. 2001, and why?
 - (2) Is it easier to avoid limited liability under your state law, the R.U.L.P.A., or the U.L.P.A. 2001 under this circumstance and why?
3. Review section 303 of the R.U.L.P.A. and section 303 of the U.L.P.A. 2001, and review the facts and holding of *Zeiger v. Wilf* as it applies to Wilf. Under which statute would you prefer to argue that Wilf is liable because of his activities on behalf of the partnership?
4. Review sections 701 through 703 of the U.L.P.A. 2001. How, if at all, will this statute change or confirm the result of *Evans v. Galardi*?
5. How many general partners and how many limited partners are required for a limited partnership?

PRACTICE ASSIGNMENT

- Review the Revised Uniform Partnership Act of 1976 with 1985 amendments (R.U.L.P.A.). Section 101(9) permits an oral agreement to form a limited partnership. Make a list of the provisions in the R.U.L.P.A. that require a “written” agreement to implement or amend.
- Contact your local public filing office for limited partnerships (e.g., secretary of state or local corporate/partnership recording office). Obtain your local forms for a certificate of limited partnership and an amendment of the certificate of limited partnership. Complete the certificate form for a partnership that has your mother as the general partner, your father and you as the limited partners, and your address as the principal place of business of the partnership. Then amend the certificate to reflect the fact that your cousin just bought your father’s interest as a limited partner and has been substituted in his place.
- The investors of Post Petroleum Exploration-93, a limited partnership formed in January 1993 to engage in the exploration and drilling of oil and gas, were recently concerned to hear of the death of Roy C. Post, founder and chair of the board of directors of Post Petroleum, Inc., the corporate general partner of the partnership. The corporation assured the investors that the partnership would continue its activities as before and that, in fact, the remaining members of the board of directors had decided to expand the drilling activities of the partnership and would require additional cash contributions from each of the limited partners. All limited partners agreed to contribute an amount equal to their initial contribution of \$50,000, except Paul Fogelberg who said he would like to assign his interest in the partnership to his daughter-in-law, Connie Hendrickson, in Minnetonka, Minnesota, who would be willing to contribute the additional cash. Prepare the necessary documents to accomplish all transactions described that require documentation, including any documents that would normally be filed for public record.
- Jeb Pitkin and Winifred Alexis have asked you to prepare the limited partnership documents for their new enterprise, a summer camp for gifted children. The camp will be called “Camp Runamuck.” At least \$250,000 is needed to open the camp and pay the initial expenses. Jeb and Winifred expect to find ten or fewer investors to contribute that capital. Jeb and Winifred will serve as the general partners and will contribute cash equal to 5% of the amount contributed by the limited partners when the partnership is formed. They are willing to pay all cash generated by the business to return the capital contributions to the limited partners with a cumulative return of 10% per year before any amounts are paid to them as general partners, including their annual salaries of \$50,000. Jeb and Winifred will retain 60% of the profits of the business, and the limited partners will be entitled to 40% of the profits after initial capital contributions have been returned in full. If both Jeb and Winifred are unable to continue as general partners for any reason, they want the partnership dissolved and liquidated, regardless of the desires of the limited partners at the time. Use the sample form, Form I-2, in Appendix I, and prepare the documents necessary to form this limited partnership.

ENDNOTES

- Uniform Limited Partnership Act (hereafter cited as U.L.P.A.) § 1; Revised Uniform Limited Partnership Act (hereafter cited as R.U.L.P.A.) § 101(7). U.L.P.A. 2001 § 102(11).
- 6 U.L.A. 561 (2003). Louisiana has its own laws based upon the civil code for a “Partnership in Commendam,” the equivalent of a limited partnership. The references to the uniform laws are confusing: “U.L.P.A.” or “original act” refers to the original uniform act; “R.U.L.P.A.” or “revised act” refers to the 1976 revised act with 1985 amendments; and “U.L.P.A. 2001” or “new act” refers to the 2001 revision to the uniform law.
- See “Registration as a Limited Liability Partnership” in Chapter 3.
- U.L.P.A. § 7; R.U.L.P.A. § 303(a); U.L.P.A. 2001 § 303 now permits limited partners to participate in the management and control of the limited partnership without losing limited liability protection for partnership debts.
- U.L.P.A. § 12; R.U.L.P.A. § 404; U.L.P.A. 2001 § 113.
- See “Dissolution of a Limited Partnership” later in this chapter.
- U.L.P.A. § 19(1); R.U.L.P.A. § 702; U.L.P.A. 2001 § 702.
- R.U.L.P.A. § 101(5); U.L.P.A. 2001 § 201.
- U.L.P.A. § 9(1)(e); R.U.L.P.A. § 401; U.L.P.A. 2001 § 401.
- R.U.L.P.A. §§ 402(1), 602; U.L.P.A. 2001 § 603.
- R.U.L.P.A. §§ 402(2), 702; U.L.P.A. 2001 § 603.
- R.U.L.P.A. § 402(3); U.L.P.A. 2001 § 603.
- R.U.L.P.A. § 402(4); U.L.P.A. 2001 § 603.
- R.U.L.P.A. § 402(6)–(10); U.L.P.A. 2001 § 603.
- See “Dissolution and Termination of a Partnership” in Chapter 3.
- R.U.L.P.A. § 402; U.L.P.A. 2001 § 605.
- R.U.L.P.A. § 801(4); U.L.P.A. 2001 § 801.
- R.U.L.P.A. § 405; U.L.P.A. 2001 § 406.

19. U.L.P.A. § 6(2); R.U.L.P.A. § 1105, and see “Management of a Partnership—Standards of Conduct of Partners” in Chapter 3. U.L.P.A. 2001 departs from the historical approach of linking the limited partnership law to the general partnership act to fill any gaps in the rules for limited partnership, but U.L.P.A. 2001 incorporates into its sections many of the Revised Uniform Partnership Act rules that would apply to partners in a limited partnership. With respect to fiduciary duties, U.L.P.A. 2001 provides that the only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of care and loyalty, including the duty to account, to refrain from dealing with adverse parties and to refrain from competing. U.L.P.A. 2001 § 408.

20. U.L.P.A. § 7; R.U.L.P.A. § 303(a); U.L.P.A. 2001 § 303.

21. U.L.P.A. § 4.

22. R.U.L.P.A. § 501; U.L.P.A. 2001 § 501.

23. R.U.L.P.A. § 502(b); U.L.P.A. 2001 § 502.

24. R.U.L.P.A. § 502(c); U.L.P.A. 2001 § 502(c).

25. R.U.L.P.A. § 303.

26. R.U.L.P.A. § 304; U.L.P.A. 2001 § 306.

27. R.U.L.P.A. § 403; U.L.P.A. 2001 § 406.

28. U.L.P.A. § 9; R.U.L.P.A. § 403. U.L.P.A. 2001 requires the consent of the limited partners to amend the partnership agreement, amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership, and to sell, lease, exchange, or otherwise dispose of all, or substantially all, of the partnership’s property other than in the usual and regular course of the partnership’s business. U.L.P.A. 2001 § 406.

29. See “Types of Agents—Duties and Obligations between the Principal and the Agent” in Chapter 1 and “Standards of Conduct of Partners” in Chapter 3.

30. U.L.P.A. 2001 § 303. Compare R.U.L.P.A. § 303(a).

31. U.L.P.A. § 10; R.U.L.P.A. § 303; U.L.P.A. 2001 § 304.

32. U.L.P.A. § 8; R.U.L.P.A. § 301(a); U.L.P.A. 2001 § 301.

33. U.L.P.A. § 16; R.U.L.P.A. § 603.

34. U.L.P.A. § 16; R.U.L.P.A. § 603. Under the original act, notice must be given to “all members”; under the revised act, notice is given to “each general partner.” U.L.P.A. 2001 § 602 provides that upon the dissociation of a limited partner, the limited partner ceases to have rights of a partner, but is in the same position of a transferee of the limited partner’s transferable interest—namely, entitled to receive distributions of profits and assets, but not allowed to withdraw capital from the partnership.

35. U.L.P.A. § 16; R.U.L.P.A. § 607.

36. U.L.P.A. § 16(3); R.U.L.P.A. § 605.

37. U.L.P.A. § 19(4); R.U.L.P.A. §§ 301(2), U.L.P.A. 2001 § 602(3).

38. U.L.P.A. § 19; R.U.L.P.A. § 301(b). The revised act abandons the terminology of a “substituted” limited partner. Instead, the revised act refers to an assignee who has been granted the right to become a limited partner. Amendment of the certificate is discussed in “Formation and Operation of a Limited Partnership” later in this chapter.

39. U.L.P.A. §§ 9(1) (g), 20; R.U.L.P.A. § 801; U.L.P.A. 2001 § 801.

40. R.U.L.P.A. § 802; U.L.P.A. 2001 § 802.

41. See U.L.P.A. § 10(c); U.P.A. § 32.

42. U.L.P.A. § 16(4) (a).

43. R.U.L.P.A. § 606; U.L.P.A. 2001 § 603(3).

44. R.U.L.P.A. § 402. U.L.P.A. 2001 § 603. See “General Partners of a Limited Partnership” earlier in this chapter.

45. R.U.L.P.A. § 801(3).

46. The misconduct of a general partner would cause dissolution to be “equitable and proper” under U.L.P.A. § 10(c) and presumably would be an event that makes it reasonably impracticable “to carry on the business in conformity with the partnership agreement” under R.U.L.P.A. § 802 and U.L.P.A. 2001 § 802.

47. See “Dissolution and Termination of a Partnership” in Chapter 3.

48. R.U.L.P.A. § 801(4); U.L.P.A. 2001 § 801. An example of an agreement to continue the business appears in clause 26 of the sample limited partnership agreement, Exhibit I-2, in Appendix I.

49. U.L.P.A. § 10(c).

50. R.U.L.P.A. § 803; U.L.P.A. 2001 § 803.

51. R.U.L.P.A. § 804; U.L.P.A. 2001 § 812.

52. Treas. Reg. §§ 301.7701-1 through 301.7701-3 (*1996, as amended).

53. See Treas. Reg. § 3-1.7701-2 (1960, as amended) specifying corporate characteristics that would affect the tax status of limited partnerships.

54. R.U.L.P.A. § 102; U.L.P.A. 2001 § 108.

55. R.U.L.P.A. § 103; U.L.P.A. 2001 § 109.

56. R.U.L.P.A. § 101(9); U.L.P.A. 2001 §§ 102(13), 110.

57. R.U.L.P.A. § 201; U.L.P.A. 2001 § 201.

58. R.U.L.P.A. § 104.

59. Under the original act, amendments are required whenever there is a change in the name of the partnership, amount or character of the limited partners’ contributions; the character of the business; or the time for dissolution or return of contributions. Amendments also are required on the admission of any partner; on the substitution of a limited partner; for the continuation of the business after withdrawal, death, or insanity of a general partner; or in any case where there is a need to correct an erroneous statement in the certificate or to represent accurately the agreement between partners. U.L.P.A. § 24.

60. R.U.L.P.A. § 202; U.L.P.A. 2001 § 202.

61. R.U.L.P.A. § 204; U.L.P.A. 2001 § 204.

62. R.U.L.P.A. § 203; U.L.P.A. 2001 § 203.

63. R.U.L.P.A. §§ 101(4), 902; U.L.P.A. 2001 § 902.

64. R.U.L.P.A. § 902; U.L.P.A. 2001 § 902.

65. R.U.L.P.A. §§ 905, 906; U.L.P.A. 2001 §§ 905, 906.

66. R.U.L.P.A. § 907; U.L.P.A. 2001 § 907.

67. R.U.L.P.A. § 1001; U.L.P.A. 2001 § 1002.

68. R.U.L.P.A. §§ 1002–1004; U.L.P.A. 2001 §§ 1003–1005.