

STATE OF NEW JERSEY

INTRODUCED JANUARY 13, 1953

By Mr. CLAPP

Referred to Committee on Revision and Amendment of Laws

AN ACT concerning partnerships, and revising parts of the statutory law.

1 **BE ENACTED** by the Senate and General Assembly of the State of New
2 Jersey:

3 **Section 42:1-31** of the Revised Statutes is amended to read as
4 follows:

5 **42:1-31. Dissolution is caused:**

6 1. Without violation of the agreement between the partners,

7 a. By the termination of the definite term or particular undertaking
8 specified in the agreement;

9 b. By the express will of any partner when no definite term or par-
10 ticular undertaking is specified;

11 c. By the express will of all the partners who have not assigned
12 their interests or suffered them to be charged for their separate debts,
13 either before or after the termination of any specified term or partic-
14 ular undertaking;

15 d. By the expulsion of any partner from the business bona fide in
16 accordance with such a power conferred by the agreement between
17 the partners;

18 2. In contravention of the agreement between the partners, where the
19 circumstances do not permit a dissolution under any other provision of
20 this section, by the express will of any partner at any time;

21 3. By any event which makes it unlawful for the business of the part-
22 nership to be carried on or for the members to carry it on in partnership;

- 19 4. By the death of any partner;
- 20 5. By the bankruptcy of any partner or the partnership;
- 21 6. By a judgment of court under section 42:1-32 of this Title.

2 Section 42:1-32 of the Revised Statutes is amended to read as

2 follows:

3 42:1-32. The court shall enter judgment of dissolution:

4 1. On application by or for a partner whenever

5 a. A partner has been declared a lunatic in any judicial proceed-
6 ing, or is shown to be of unsound mind;

7 b. A partner becomes in any other way incapable of performing his
8 part of the partnership contract;

9 c. A partner has been guilty of such conduct as tends to affect
10 prejudicially the carrying on of the business;

11 d. A partner willfully or persistently commits a breach of the part-
12 nership agreement, or otherwise so conducts himself in matters relating
13 to the partnership business that it is not reasonably practicable to carry
14 on the business in partnership with him;

15 e. The business of the partnership can only be carried on at a loss;

16 f. Other circumstances render a dissolution equitable.

17 2. On application of the purchaser of a partner's interest under sections
18 42:1-28 or 42:1-29 of this Title,

19 a. After the termination of the specified term or particular under-
20 taking;

21 b. At any time if the partnership was a partnership at will when
22 the interest was assigned or when the charging order was issued.

23 3. Section 42:2-14 of the Revised Statutes is amended to read as follows:

24 42:2-14. 1. A limited partner shall have the same rights as a general
25 partner to

26 a. Have the partnership books kept at the principal place of busi-
27 ness of the partnership, and at all times to inspect and copy any of
28 them,

7. Have on demand true and full information of all things affecting
8 the partnership, and a formal account of partnership affairs whenever
9 circumstances render it just and reasonable, and

10 c. Have dissolution and winding up by judgment of court.

11 2. A limited partner shall have the right to receive a share of the
12 profits or other compensation by way of income, and to the return of his
13 contribution as provided in sections 42:2-19 and 42:2-20 of this Title.

14 3. Section 42:2-29 of the Revised Statutes is amended to read as
15 follows:

16 42:2-29. The writing to amend a certificate shall

17 a. Conform to the requirements of paragraph "1a" of section
18 42:2-6 of this Title as far as necessary to set forth clearly the change
19 to be made in the certificate which it is desired to make, and

20 be signed and sworn to by all members, and an amendment sub-
21 stituting a limited partner or adding a limited or general partner shall
22 be signed also by the member to be substituted or added, and when a
23 limited partner is to be substituted, the amendment shall also be signed
24 by the resigning limited partner.

25 b. The writing to cancel a certificate shall be signed by all members.

26 3. A person desiring the cancellation or amendment of a certificate, if
27 any person designated in paragraphs "1f" and "2" of this section as a per-
28 son who must execute the writing refuses to do so, may bring an action in
29 the Superior Court to direct a cancellation or amendment thereof. The court
30 may proceed in the action in a summary manner or otherwise.

31 4. If the court finds that the plaintiff has a right to have the writing
32 executed by a person who refuses to do so, it shall direct the county clerk
33 in the office where the certificate is recorded to record the cancellation or
34 amendment of the certificate, and where the certificate is to be amended,
35 the court shall also cause to be filed for the record in said office a certified
36 copy of its order or judgment setting forth the amendment.

24 5. A certificate is amended or canceled when there is filed for record in
25 the office of the clerk of the county where the certificate is recorded

26 a. A writing in accordance with the provisions of paragraph "1,"
27 or "2," or paragraph 3d of section 42:3-6 shall not be available

28 b. A certified copy of the order or judgment of court in accordance
29 with the provisions of paragraph "4" of this section shall be a sufficient

30 6. After the certificate is duly amended in accordance with this sec-
31 tion, the amended certificate shall thereafter be for all purposes the certifi-
32 cate provided for by this chapter.

1 5. Section 42:3-6 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:3-6. A limited partnership association may purchase and hold real
4 estate and dispose of the same in fee simple, or less estate, the title thereof
5 to be in the name adopted by the association, and shall be as valid and
6 effectual as if the same were held in the individual names of the partners
7 of the association.

8 The title to any real estate acquired by any such association prior to
9 March twenty-third, one thousand eight hundred and eighty-three, and held
10 in the association name on that date, shall be as valid as if the same had been
11 acquired under this section.

1 6. Section 42:3-9 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:3-9. The members of any limited partnership association shall not be
4 liable under any judgment or order obtained against the association, or for
5 any debt or engagement of the association, except that, if any execution,
6 sequestration or other process in the nature of execution be issued against
7 the property or effects of the association, and if there cannot be found
8 sufficient thereof on which to levy or enforce such process, such execution,
9 sequestration or other process may be issued against any of the members to
10 the extent of the portions of their subscriptions respectively, in the capital
11 of the association not then paid up.

1 Section 42:3-11 of the Revised Statutes is amended to read as fol-
 2 lows:

3 42:3-11. Interests in a limited partnership association shall be personal
 4 estate, and may be transferred under such rules and regulations as the as-
 5 sociation may prescribe. No transferee of any interest, or the representa-
 6 tive of any decedent member or of any insolvent member shall be entitled
 7 thereafter to any participation in the subsequent business of the association,
 8 unless he be elected thereto by a vote of the majority of the members in
 9 number and value of their interests. Any change of ownership in the prop-
 10 erty of the association, whether by sale, death, bankruptcy or otherwise,
 11 which shall not be followed by election to the association, shall entitle the
 12 owner only to his interest in the association at a price and upon terms to
 13 be mutually agreed upon, and in default of such agreement the price and
 14 terms shall be fixed by an appraiser appointed by the County Court of the
 15 proper county, subject to the approval of the court.

16 Section 42:3-16 of the Revised Statutes is amended to read as fol-
 17 lows:

18 42:3-16. The managers of any expired or dissolved limited partnership
 19 associations, or, where a vacancy exists at the time of or occurs subsequent
 20 to the expiration or dissolution, the surviving managers or manager shall be
 21 the trustees or trustee thereof, as the case may be.

22 The trustees or trustee shall have full power to settle the affairs of the
 23 association, collect the outstanding debts, sell and convey the property and
 24 assets of all kinds, real and personal, and divide the moneys and other prop-
 25 erty among the members, after paying its debts, as far as such money and
 26 property shall enable them.

27 The trustees shall have power to meet and act under regulations made
 28 by a majority of them. They or the survivor of them shall have power to
 29 prescribe the terms and conditions of sale of such property and may sell all
 30 or any part for cash, or partly on credit, or take mortgages and bonds for
 31 part of the purchase price for all or any part of such property. They may

137 in their discretion compound and settle with any debtor or creditor of the as-
 138 sociation, or with persons having possession of its property, or in any way
 139 responsible to the association, at the time of the termination or dissolution
 140 thereof or afterwards, upon such terms and in such manner as they shall
 141 deem just and beneficial to the association. This power of compromise may,
 142 in the case of actual dealings between the association and any person, allow
 143 just claims in favor of such person in all cases in which the same ought
 144 to be allowed, and they shall have full power to perform all such other acts
 145 as shall be necessary to carry out the provisions of this article.

146 Section 42:3-19 of the Revised Statutes is amended to read as fol-
 147 lows:

148 42:3-19. Any creditor or member of any limited partnership association
 149 which has expired by its own limitation, or been otherwise dissolved, or
 150 which shall so expire or be dissolved, may, at any time after such expiration
 151 or dissolution in an action apply to the Superior Court for the appointment
 152 of a receiver or receivers for the association. The court upon such notice
 153 as it may direct, may proceed in a summary manner or otherwise.

154 Section 42:3-20 of the Revised Statutes is amended to read as
 155 follows:

156 42:3-20. If, in the action under section 42:3-19 of this Title, it shall
 157 appear to the court that such association has so expired or been dissolved, it
 158 may, if the court so directs, the managers acting as such at the expiration or disso-
 159 lution of the association, or the surviving managers or manager, trustees or
 160 trustees as provided by section 42:3-16 of this Title, or appoint one or more
 161 persons to be receivers of such association, and the creditors and members
 162 thereof.

163 Section 42:3-21 of the Revised Statutes is amended to read as
 164 follows:

165 42:3-21. The receivers, appointed under authority of section 42:3-20 of
 166 this Title, shall have full power and authority to demand, sue for, collect, re-
 167 ceive and take into their possession all the property, both real and personal of

6 every decision, belonging to the association, and to sue for the recovery of
 7 any estate, property, damages or demands existing in favor of the associa-
 8 tion. The receivers may, in their discretion, compound and settle with any
 9 debtor or creditor of the association, or with persons having possession of
 10 its property or responsible to the association at the time of its expiration
 11 or dissolution or afterwards, upon such terms as such receivers shall deem
 12 just and beneficial to the association.

13 The receivers may, in the case of mutual dealings between the associa-
 14 tion and any person, allow a set-off in favor of such person where the
 15 same ought to be allowed.

16 The receivers shall also have power and authority to do all other acts
 17 which might be done by the association if in being, and that may be necessary
 18 for the final settlement of the unfinished business of the association.

19 Section 42-3-22 of the Revised Statutes is amended to read as
 20 follows:

21 42-3-22. The receivers appointed under authority of section 42-3-20 of
 22 this Title shall have power to sell, convey and assign all of the estate, prop-
 23 erty, rights and interests of the association, and shall hold and dispose of the
 24 proceeds of any such sale under the direction of the Superior Court.

25 The title of the grantees or purchasers to the lands and property thus
 26 conveyed and assigned by said receivers shall be the same as if the property
 27 had been sold, conveyed and assigned by the association and all of its indi-
 28 vidual partners or members before the expiration or dissolution thereof or
 29 by all of the individual partners or members after the expiration or dissolu-
 30 tion.

31 Section 42-3-23 of the Revised Statutes is amended to read as
 32 follows:

33 42-3-23. The powers and authority vested in the receivers appointed un-
 34 der authority of section 42-3-20 of this Title may be continued as long as the
 35 Superior Court shall deem necessary.

1 14. Section 42:3-24 of the Revised Statutes is amended to read as
2 follows:

3 42:3-24. Any creditor or member of any limited partnership association
4 formed under authority of article one of this chapter (§ 42:3-1 et seq.) which
5 has become or is or shall become insolvent, or which has or shall suspend its
6 ordinary business for want of funds to carry on the same, or the business of
7 which has been and is being conducted at a great loss, greatly prejudicial to
8 the interest of its creditors or members, may in an action apply to the Su-
9 perior Court for injunctive relief and the appointment of a receiver or re-
10 ceivers or trustee or trustees for the association:

1 15. Section 42:3-25 of the Revised Statutes is amended to read as
2 follows:

3 42:3-25. The court may proceed in the action in a summary manner or
4 otherwise. If it shall appear to the court that the association has become in-
5 solvent and is not about to resume its business in a short time thereafter, or
6 that its business has been and is being conducted at a great loss and greatly
7 prejudicial to the interests of its creditors or members, so that its business
8 cannot be conducted with safety to the public and advantage to the members,
9 it may provide injunctive relief to restrain the association, and its officers
10 and agents, from exercising any of its privileges or franchises and from col-
11 lecting or receiving any debts, or paying out, selling, assigning or transfer-
12 ring any of its estate, moneys, funds, lands, tenements or effects, except to a
13 receiver appointed by the court, until the court shall otherwise order.

1 16. Section 42:3-26 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:3-26. The Superior Court, at the time of providing injunctive relief
4 as stated in section 42:3-25 of this Title, or at any time thereafter, may ap-
5 point a receiver or receivers or trustees for the creditors and members of the
6 association, who shall have all the powers and authority, rights and privi-
7 leges, in this article prescribed and conferred upon the receiver or receivers
8 hereinbefore provided for.

1 17. Section 42:3-27 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:3-27. Every receiver or trustee shall, before assuming the duties of
4 his office, enter into such bond and comply with such terms as the court may
5 prescribe, and take and subscribe the following oath:

6 "I,, do swear that I will faithfully, honestly and im-
7 partially execute the powers and trusts reposed in me as receiver (or trustee),
8 for the creditors and members of the, and that without
9 fear or affection."

Such oath shall be filed in the office of the Clerk of the
10 Superior Court within ten days after the taking thereof.

11 18. Section 42:3-28 of the Revised Statutes is amended to read as fol-
12 lows:

13 42:3-28. The Superior Court shall have jurisdiction of the actions pro-
14 vided for in this article, and all questions arising therein, and may make
15 such orders and judgments therein as justice and equity shall require.

16 19. Section 42:3-30 of the Revised Statutes is hereby repealed.

17 20. Section 42:4-1 of the Revised Statutes is amended to read as fol-
18 lows:

19 42:4-1. This article is remedial, provides additional remedies, and shall
20 be liberally construed to effect its purpose, which is to permit the Superior
21 Court speedily to dispose of actions involving dissolution of partnerships and
22 the distribution of assets, and to prevent the acquisition of liens and prefer-
23 ences after the commencement of an action looking toward the distribution of
24 the assets of a partnership amongst creditors. It shall not be so construed as
25 to deprive the Superior Court of any of its existing jurisdiction.

26 21. Section 42:4-2 of the Revised Statutes is amended to read as fol-
27 lows:

28 42:4-2. When an action is brought in the Superior Court for the dissolu-
29 tion of a partnership, with a view to a distribution of assets amongst credi-
30 tors and others entitled thereto, the court may proceed in the action in a
31 summary manner or otherwise.

1 22. Section 42:4-3 of the Revised Statutes is hereby repealed.

1 23. Section 42:4-4 of the Revised Statutes is hereby repealed.

1 24. Section 42:4-5 of the Revised Statutes is hereby repealed.

1 25. Section 42:4-6 of the Revised Statutes is hereby repealed.

1 26. Section 42:4-7 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:4-7. On application at the time of the commencement of the action
4 or at any subsequent time before or after a judgment of dissolution or
5 other judgment, the court may appoint a temporary receiver or may charge
6 the persons in actual control of the partnership assets as trustees under ap-
7 pointment by and accountable to the court, and, from the time of the making
8 of such order, the property of the partnership shall, until an order of the
9 court made to the contrary, be considered as in custodia legis, with a view
10 to ultimate distribution amongst creditors and others entitled to participate
11 therein.

1 27. Section 42:4-8 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:4-8. The court may, either before or after a judgment of dissolution,
4 make an order directing creditors to file their claims within such reasonable
5 time as the court shall, by special order, prescribe and may make an order
6 barring creditors.

1 28. Section 42:4-9 of the Revised Statutes is amended to read as fol-
2 lows:

3 42:4-9. The proceedings upon the dissolution and winding up of a part-
4 nership shall be as near as may be similar to those provided for the winding
5 up of corporations under Title 14, Corporations, General.

1 29. Section 42:4-10 of the Revised Statutes is hereby repealed.

1 30. Section 42:4-11 of the Revised Statutes is hereby repealed.

1 31. Section 42:4-12 of the Revised Statutes is hereby repealed.

32. Section 42:4-13 of the Revised Statutes is amended to read as follows:

42:4-13. When a member of a partnership has been or shall be adjudged a lunatic, the court may in an action and on application of any of the other partners or such other person as the court shall determine to be entitled to make the application, dissolve the partnership. The court may proceed in the action in a summary manner or otherwise.

33. Section 42:4-14 of the Revised Statutes is amended to read as follows:

42:4-14. When a partnership is dissolved as provided by section 42:4-13 of this Title, or is otherwise dissolved by due course of law, and a member thereof has been or shall be adjudged a lunatic, the guardian of such lunatic, in the name and behalf of his ward, may join and concur with the other members of the partnership or other persons interested in disposing of all the partnership property, in such manner and upon such terms as the court may direct.

34. Section 42:4-15 of the Revised Statutes is amended to read as follows:

42:4-15. The guardian mentioned in section 42:4-14 of this Title may make and execute all such conveyances and do all things necessary to effectuate the provisions of this article as the court may direct. He shall also dispose of all money or property by him received for, from or on account of the lunatic's share or interest in the partnership as the court may direct.

35. Section 42:6-1 of the Revised Statutes is amended to read as follows:

42:6-1. When any voluntary association, carrying on business with partnership liabilities, is or shall become insolvent, has suspended or shall suspend its ordinary business for want of funds to carry on the same, or whose debts are unpaid and whose business is unsettled, any creditor or member of such association may in an action apply to the Superior Court for injunctive relief and the appointment of receivers or trustees for the winding

9 up of the business and payment of the debts of the association. Thereupon the
 10 court may proceed in the action in a summary manner or otherwise and the
 11 proceedings shall be as near as may be similar to those provided by law for
 12 winding up insolvent corporations.

13 36. Section 42:6-2 of the Revised Statutes is amended to read as
 14 follows:

15 42:6-2. Upon the commencement of the action process shall issue, di-
 16 rected to the trustees or managers of the association as in other cases, who
 17 shall, on penalty of being proceeded against as for contempt, file with the
 18 clerk of the Superior Court within ten days after service of process, a
 19 duly verified list of the names of all members of the association, with their
 20 several places of residence. Such members shall be made defendants to the
 21 action.

22 37. Section 42:6-3 of the Revised Statutes is hereby repealed.

23 38. Section 42:6-4 of the Revised Statutes is hereby repealed.

24 39. Section 42:6-5 of the Revised Statutes is amended to read as
 25 follows:

26 42:6-5. The receivers or trustees appointed for the association shall give
 27 such notice as the court may direct to the creditors thereof, requiring them to
 28 file with them any claims they may have against the association, within such
 29 time as the court may direct, or be barred from all relief under the proceed-
 30 ings had by virtue of this chapter.

31 40. Section 42:6-6 of the Revised Statutes is hereby repealed.

32 41. Section 42:6-7 of the Revised Statutes is amended to read as
 33 follows:

34 42:6-7. If it shall appear by the report filed by the receivers or trustees
 35 that the assets of the association are insufficient to pay its debts and the ex-
 36 penses attending the winding up of the same, the court may assess against
 37 each member thereof a sum to be paid by him to the receivers or trustees in
 38 liquidation of such indebtedness. In making the assessment, the court may in-
 39 quire into the solvency or ability of the members to pay the same, in order

9 to assess sufficient moneys to pay all claims. If a sufficient amount to pay all
10 claims is not assessed at one time, the court may, from time to time, make
11 additional assessments, until an amount sufficient to satisfy all claims is
12 obtained.

1 42. This act shall take effect immediately.