

ASSEMBLY, No. 1140

STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman DAVID C. RUSSO

District 40 (Bergen and Passaic)

Assemblyman WILFREDO CARABALLO

District 28 (Essex)

SYNOPSIS

Enacts the "Uniform Partnership Act (1996)."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning partnerships and certain other business entities
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Sections 1 through 56 and 60 of this act shall be known and may
8 be cited as the "Uniform Partnership Act (1996)."

9
10 ARTICLE 1. GENERAL PROVISIONS

11
12 2. As used in this act:

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

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

15 (1) an order for relief under Title 11 of the United States Code or
16 a comparable order under a successor statute of general application;

17 or

18 (2) a comparable order under federal, state, or foreign law
19 governing insolvency.

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

23 "Foreign limited liability partnership" means a partnership that:

24 (1) is formed under laws other than the laws of this State; and

25 (2) has the status of a limited liability partnership under those laws.

26 "Limited liability partnership" means a partnership that has filed a
27 statement of qualification under section 47 of this act and does not
28 have a similar statement in effect in any other jurisdiction.

29 "Partnership" means an association of two or more persons to carry
30 on as co-owners a business for profit formed under section 10 of this
31 act, predecessor law, or comparable law of another jurisdiction.

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

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

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

41 "Person" means an individual, corporation, business trust, estate,
42 trust, partnership, limited liability company, or other limited liability
43 entity, association, joint venture, government, governmental

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 subdivision, agency, or instrumentality, or any other legal or
2 commercial entity.

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

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

8 "Statement" means a statement of partnership authority under
9 section 15, a statement of denial under section 16, a statement of
10 dissociation under section 37, a statement of dissolution under section
11 43, a statement of qualification under section 47 of this act, or a
12 statement of foreign qualification under section 51 of this act, or an
13 amendment or cancellation of any of the foregoing.

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

16

17 3. a. A person knows a fact if the person has actual knowledge of
18 it.

19 b. A person has notice of a fact if the person:

20 (1) knows of it;

21 (2) has received a notification of it; or

22 (3) has reason to know it exists from all of the facts known to the
23 person at the time in question.

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

27 d. A person receives a notification when the notification:

28 (1) comes to the person's attention; or

29 (2) is duly delivered at the person's place of business or at any
30 other place held out by the person as a place for receiving
31 communications.

32 e. Except as otherwise provided in subsection f. of this section, a
33 person other than an individual knows, has notice, or receives a
34 notification of a fact for purposes of a particular transaction when the
35 individual conducting the transaction knows, has notice, or receives a
36 notification of the fact, or in any event when the fact would have been
37 brought to the individual's attention if that person had exercised
38 reasonable diligence. The person exercises reasonable diligence if it
39 maintains reasonable routines for communicating significant
40 information to the individual conducting the transaction and there is
41 reasonable compliance with the routines. Reasonable diligence does
42 not require an individual acting for the person to communicate
43 information unless the communication is part of the individual's regular
44 duties or the individual has reason to know of the transaction and that
45 the transaction would be materially affected by the information.

46 f. A partner's knowledge, notice, or receipt of a notification of a

1 fact relating to the partnership is effective immediately as knowledge
2 by, notice to, or receipt of, a notification by the partnership, except in
3 the case of a fraud on the partnership committed by or with the
4 consent of that partner.

5
6 4. a. Except as otherwise provided in subsection b. of this section,
7 relations among the partners and between the partners and the
8 partnership are governed by the partnership agreement. To the extent
9 the partnership agreement does not otherwise provide, this act governs
10 relations among the partners and between the partners and the
11 partnership.

12 b. The partnership agreement shall not:

13 (1) unreasonably restrict the right of access to books and records
14 under subsection b. of section 23 of this act;

15 (2) reduce the duty of loyalty under subsection b. of section 24 or
16 subsection b. of section 33 of this act so as to permit a partner to
17 engage in conduct which is intentionally injurious to the partnership;

18 (3) unreasonably reduce the duty of care under subsection c. of
19 section 24 or paragraph (3) of subsection b. of section 33 of this act;

20 (4) vary the right of a court to expel a partner in the events
21 specified in subsection e. of section 31 of this act;

22 (5) vary the requirement to wind up the partnership business in
23 cases specified in subsection d., e. or f. of section 39 of this act;

24 (6) vary the law applicable to a limited liability partnership under
25 subsection b. of section 7 of this act; or

26 (7) restrict rights of third parties under this act.

27
28 5. a. Unless displaced by particular provisions of this act, the
29 principles of law and equity supplement this act.

30 b. If an obligation to pay interest arises under this act and the rate
31 is not specified, the rate of interest shall be at the rates provided by the
32 Rules Governing the Courts of the State of New Jersey for the
33 applicable period of time.

34
35 6. a. A statement may be filed in the office of the Division of
36 Commercial Recording in the Department of the Treasury. A certified
37 copy of a statement that is filed in an office in another state may be
38 filed in the office of the Division of Commercial Recording in the
39 Department of the Treasury. This statement may indicate the authority
40 of one or more particular partners with respect to any matter or class
41 of matters. In addition, either filing has the effect provided in this act
42 with respect to partnership property located in or transactions that
43 occur in this State.

44 b. A certified copy of a statement that has been filed in the office
45 of the Division of Commercial Recording in the Department of the
46 Treasury and recorded in the office of the county recording officer has

1 the effect provided for recorded statements in this act. A recorded
2 statement that is not a certified copy of a statement filed in the office
3 of the Division of Commercial Recording in the Department of the
4 Treasury does not have the effect provided for recorded statements in
5 this act.

6 c. A statement filed by a partnership shall be executed by at least
7 two partners. Other statements shall be executed by a partner or other
8 person authorized by this act. An individual who executes a statement
9 as, or on behalf of, a partner or other person named as a partner in a
10 statement shall personally declare under penalty of perjury that the
11 contents of the statement are accurate.

12 d. A person authorized by this act to file a statement may amend
13 or cancel the statement by filing an amendment or cancellation that
14 names the partnership, identifies the statement, and states the
15 substance of the amendment or cancellation.

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

21 f. The Division of Commercial Recording in the Department of the
22 Treasury may collect a fee for filing or providing a certified copy of a
23 statement. The county recording officer may collect a fee for
24 recording a statement.

25

26 7. a. Except as otherwise provided in subsection b. of this section,
27 the law of the jurisdiction in which a partnership has its chief executive
28 office governs relations among the partners and between the partners
29 and the partnership.

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

33

34 8. A partnership governed by the provisions of this act is subject
35 to any amendment to or repeal of this act.

36

37 ARTICLE 2. NATURE OF PARTNERSHIP

38

39 9. a. A partnership is an entity distinct from its partners.

40 b. A limited liability partnership continues to be the same entity
41 that existed before the filing of a statement of qualification under
42 section 47 of this act.

43

44 10. a. Except as otherwise provided in subsection b. of this
45 section, the association of two or more persons to carry on as
46 co-owners a business for profit forms a partnership, whether or not the

1 persons intend to form a partnership.

2 b. An association formed under a statute other than this act, a
3 predecessor statute, or a comparable statute of another jurisdiction is
4 not a partnership under this act.

5 c. In determining whether a partnership is formed, the following
6 rules apply:

7 (1) Joint tenancy, tenancy in common, tenancy by the entireties,
8 joint property, common property, or part ownership does not by itself
9 establish a partnership, even if the co-owners share profits made by the
10 use of the property.

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

14 (3) A person who receives a share of the profits of a business is
15 presumed to be a partner in the business, unless the profits were
16 received in payment:

17 (a) of a debt by installments or otherwise;

18 (b) for services as an independent contractor or of wages or other
19 compensation to an employee;

20 (c) of rent;

21 (d) of an annuity or other retirement or health benefit to a
22 beneficiary, representative, or designee of a deceased or retired
23 partner;

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

28 (f) for the sale of the goodwill of a business or other property by
29 installments or otherwise.

30

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

33

34 12. a. Property is partnership property if acquired in the name of:

35 (1) the partnership; or

36 (2) one or more partners with an indication in the instrument
37 transferring title to the property of the person's capacity as a partner
38 or of the existence of a partnership but without an indication of the
39 name of the partnership.

40 b. Property is acquired in the name of the partnership by a transfer
41 to:

42 (1) the partnership in its name; or

43 (2) one or more partners in their capacity as partners in the
44 partnership, if the name of the partnership is indicated in the
45 instrument transferring title to the property.

46 c. Property is presumed to be partnership property if purchased

1 with partnership assets, even if not acquired in the name of the
2 partnership or of one or more partners with an indication in the
3 instrument transferring title to the property of the person's capacity as
4 a partner or of the existence of a partnership.

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

10
11 ARTICLE 3. RELATIONS OF PARTNERS TO
12 PERSONS DEALING WITH PARTNERSHIP
13

14 13. Subject to the effect of a statement of partnership authority
15 under section 15 of this act:

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

24 b. An act of a partner which is not apparently for carrying on in the
25 ordinary course the partnership business or business of the kind carried
26 on by the partnership binds the partnership only if the act was
27 authorized by the other partners.

28
29 14. a. Partnership property may be transferred as follows:

30 (1) subject to the effect of a statement of partnership authority
31 under section 15 of this act, partnership property held in the name of
32 the partnership may be transferred by an instrument of transfer
33 executed by a partner in the partnership name.

34 (2) partnership property held in the name of one or more partners
35 with an indication in the instrument transferring the property to them
36 of their capacity as partners or of the existence of a partnership, but
37 without an indication of the name of the partnership, may be
38 transferred by an instrument of transfer executed by the persons in
39 whose name the property is held.

40 (3) partnership property held in the name of one or more persons
41 other than the partnership, without an indication in the instrument
42 transferring the property to them of their capacity as partners or of the
43 existence of a partnership, may be transferred by an instrument of
44 transfer executed by the persons in whose name the property is held.

45 b. A partnership may recover partnership property from a
46 transferee only if it proves that execution of the instrument of initial

1 transfer did not bind the partnership under section 13 of this act and:

2 (1) as to a subsequent transferee who gave value for property
3 transferred under paragraphs (1) and (2) of subsection a. of this
4 section, proves that the subsequent transferee knew or had received a
5 notification that the person who executed the instrument of initial
6 transfer lacked authority to bind the partnership; or

7 (2) as to a transferee who gave value for property transferred
8 under paragraph (3) of subsection a. of this section, proves that the
9 transferee knew or had received a notification that the property was
10 partnership property and that the person who executed the instrument
11 of initial transfer lacked authority to bind the partnership.

12 c. A partnership may not recover partnership property from a
13 subsequent transferee if the partnership would not have been entitled
14 to recover the property, under subsection b. of this section, from any
15 earlier transferee of the property.

16 d. If a person holds all of the partners' interests in the partnership,
17 all of the partnership property vests in that person. The person may
18 execute a document in the name of the partnership to evidence vesting
19 of the property in that person and may file or record the document.

20

21 15. a. A partnership may file a statement of partnership authority,
22 which:

23 (1) shall include:

24 (a) the name of the partnership;

25 (b) the street address of its chief executive office and of one office
26 in this State, if there is one;

27 (c) the names and mailing addresses of all of the partners or of an
28 agent appointed and maintained by the partnership for the purpose of
29 subsection b. of this section; and

30 (d) the names of the partners authorized to execute an instrument
31 transferring real property held in the name of the partnership; and

32 (2) may state the authority, or limitations on the authority, of some
33 or all of the partners to enter into other transactions on behalf of the
34 partnership and any other matter.

35 b. If a statement of partnership authority names an agent, the agent
36 shall maintain a list of the names and mailing addresses of all of the
37 partners and make it available to any person on request for good cause
38 shown.

39 c. If a filed statement of partnership authority is executed pursuant
40 to subsection c. of section 6 of this act, and states the name of the
41 partnership, but does not contain all of the other information required
42 by subsection a. of this section, the statement nevertheless operates
43 with respect to a person not a partner as provided in subsections d.
44 and e. of this section.

45 d. A filed statement of partnership authority supplements the
46 authority of a partner to enter into transactions on behalf of the

1 partnership as follows:

2 (1) except for transfers of real property, a grant of authority
3 contained in a filed statement of partnership authority is conclusive in
4 favor of a person who gives value without knowledge to the contrary,
5 so long as and to the extent that a limitation on that authority is not
6 then contained in another filed statement. A filed cancellation of a
7 limitation on authority revives the previous grant of authority.

8 (2) a grant of authority to transfer real property held in the name
9 of the partnership contained in a certified copy of a filed statement of
10 partnership authority recorded in the office of the county recording
11 officer is conclusive in favor of a person who gives value without
12 knowledge to the contrary, so long as and to the extent that a certified
13 copy of a filed statement containing a limitation on that authority is
14 not then of record in the office of the county recording officer. The
15 recording in the office of the county recording officer of a certified
16 copy of a filed cancellation of a limitation on authority revives the
17 previous grant of authority.

18 e. A person not a partner is deemed to know of a limitation on the
19 authority of a partner to transfer real property held in the name of the
20 partnership if a certified copy of the filed statement containing the
21 limitation on authority is of record in the office of the county
22 recording officer.

23 f. Except as otherwise provided in subsections d. and e. of this
24 section and sections 37 and 43 of this act, a person not a partner is not
25 deemed to know of a limitation on the authority of a partner merely
26 because the limitation is contained in a filed statement.

27

28 16. A partner or other person named as a partner in a filed
29 statement of partnership authority or in a list maintained by an agent
30 pursuant to subsection b. of section 15 of this act may file a statement
31 of denial stating the name of the partnership and the fact that is being
32 denied, which may include denial of a person's authority or status as
33 a partner. A statement of denial is a limitation on authority as
34 provided in subsections d. and e. of section 15 of this act.

35

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

40 b. If, in the course of the partnership's business or while acting
41 with the authority of the partnership, a partner receives or causes the
42 partnership to receive money or property of a person not a partner,
43 and the money or property is misapplied by a partner, the partnership
44 is liable for the loss.

45

46 18. a. Except as otherwise provided in subsections b. and c. of this

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

4 b. A person admitted as a partner into an existing partnership is not
5 personally liable for any partnership obligation incurred before the
6 person's admission as a partner.

7 c. An obligation of a partnership incurred while the partnership is
8 a limited liability partnership, whether arising in contract, tort, or
9 otherwise, is solely the obligation of the partnership. A partner is not
10 personally liable, directly or indirectly, by way of contribution or
11 otherwise, for such an obligation solely by reason of being or so acting
12 as a partner. This subsection applies notwithstanding anything
13 inconsistent in the partnership agreement that existed immediately
14 before the vote required to become a limited liability partnership under
15 subsection b. of section 47 of this act.

16

17 19. a. A partnership may sue and be sued in the name of the
18 partnership.

19 b. An action may be brought against the partnership and, to the
20 extent not inconsistent with section 18 of this act, any or all of the
21 partners in the same action or in separate actions.

22 c. A judgment against a partnership is not by itself a judgment
23 against a partner. A judgment against a partnership shall not be
24 satisfied from a partner's assets unless there is also a judgment against
25 the partner.

26 d. A judgment creditor of a partner shall not levy execution against
27 the assets of the partner to satisfy a judgment based on a claim against
28 the partnership unless the partner is personally liable for the claim
29 under section 18 of this act and:

30 (1) a judgment based on the same claim has been obtained against
31 the partnership and a writ of execution on the judgment has been
32 returned unsatisfied in whole or in part;

33 (2) the partnership is a debtor in bankruptcy;

34 (3) the partner has agreed that the creditor need not exhaust
35 partnership assets;

36 (4) a court grants permission to the judgment creditor to levy
37 execution against the assets of a partner based on a finding that
38 partnership assets subject to execution are clearly insufficient to satisfy
39 the judgment, that exhaustion of partnership assets is excessively
40 burdensome, or that the grant of permission is an appropriate exercise
41 of the court's equitable powers; or

42 (5) liability is imposed on the partner by law or contract
43 independent of the existence of the partnership.

44 e. This section applies to any partnership liability or obligation
45 resulting from a representation by a partner or purported partner under
46 section 20 of this act.

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

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

27 c. A person is not liable as a partner merely because the person is
28 named by another in a statement of partnership authority.

29 d. A person does not continue to be liable as a partner merely
30 because of a failure to file a statement of dissociation or to amend a
31 statement of partnership authority to indicate the partner's dissociation
32 from the partnership.

33 e. Except as otherwise provided in subsections a. and b. of this
34 section, persons who are not partners as to each other are not liable as
35 partners to other persons.

36

37 ARTICLE 4. RELATIONS OF PARTNERS
38 TO EACH OTHER AND TO PARTNERSHIP

39

40 21. a. Each partner is deemed to have an account that is:

41 (1) credited with an amount equal to the money plus the value of
42 any other property, net of the amount of any liabilities, the partner
43 contributes to the partnership and the partner's share of the partnership
44 profits; and

45 (2) charged with an amount equal to the money plus the value of
46 any other property, net of the amount of any liabilities, distributed by

- 1 the partnership to the partner and the partner's share of the partnership
2 losses.
- 3 b. Each partner is entitled to an equal share of the partnership
4 profits and is chargeable with a share of the partnership losses in
5 proportion to the partner's share of the profits.
- 6 c. A partnership shall reimburse a partner for payments made and
7 indemnify a partner for liabilities incurred by the partner in the
8 ordinary course of the business of the partnership or for the
9 preservation of its business or property.
- 10 d. A partnership shall reimburse a partner for an advance to the
11 partnership beyond the amount of capital the partner agreed to
12 contribute.
- 13 e. A payment or advance made by a partner which gives rise to a
14 partnership obligation under subsection c. or d. of this section
15 constitutes a loan to the partnership which accrues interest from the
16 date of the payment or advance.
- 17 f. Each partner has equal rights in the management and conduct of
18 the partnership business.
- 19 g. A partner shall use or possess partnership property only on
20 behalf of the partnership.
- 21 h. A partner is not entitled to remuneration for services performed
22 for the partnership, except for reasonable compensation for services
23 rendered in winding up the business of the partnership.
- 24 i. A person shall become a partner only with the consent of all of
25 the partners.
- 26 j. A difference arising as to a matter in the ordinary course of
27 business of a partnership shall be decided by a majority of the partners.
28 An act outside the ordinary course of business of a partnership and an
29 amendment to the partnership agreement shall be undertaken only with
30 the consent of all of the partners.
- 31 k. This section shall not affect the obligations of a partnership to
32 other persons under section 13 of this act.
- 33
- 34 22. A partner has no right to receive, and shall not be required to
35 accept, a distribution in kind.
- 36
- 37 23. a. A partnership shall keep its books and records, if any, at its
38 chief executive office.
- 39 b. A partnership shall provide partners and their agents and
40 attorneys access to its books and records. It shall provide former
41 partners and their agents and attorneys access to books and records
42 pertaining to the period during which they were partners. The right of
43 access provides the opportunity to inspect and copy books and records
44 during ordinary business hours. A partnership may impose a
45 reasonable charge, covering the costs of labor and material, for copies
46 of documents furnished.

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

4 (1) without demand, any information concerning the partnership's
5 business and affairs reasonably required for the proper exercise of the
6 partner's rights and duties under the partnership agreement or this act;
7 and

8 (2) on demand, any other information concerning the partnership's
9 business and affairs, except to the extent the demand or the
10 information demanded is unreasonable or otherwise improper under
11 the circumstances.

12
13 24. a. The only fiduciary duties a partner owes to the partnership
14 and the other partners are the duty of loyalty and the duty of care set
15 forth in subsections b. and c. of this section, as those duties may be
16 clarified or limited in the partnership agreement, subject to subsection
17 b. of section 4 of this act.

18 b. A partner's duty of loyalty to the partnership and the other
19 partners is limited to the following:

20 (1) to account to the partnership and hold as trustee for it any
21 property, profit, or benefit derived by the partner in the conduct and
22 winding up of the partnership business or derived from a use by the
23 partner of partnership property, including the appropriation of a
24 partnership opportunity;

25 (2) to refrain from knowingly dealing with the partnership in the
26 conduct or winding up of the partnership business as or on behalf of
27 a party having an interest materially adverse to the partnership; and

28 (3) to refrain from actions intended to cause material injury to the
29 partnership in the conduct of the partnership business before the
30 dissolution of the partnership.

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

35 d. A partner does not violate a duty or obligation under this act or
36 under the partnership agreement merely because the partner's conduct
37 furthers the partner's own interest.

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

42 f. This section applies to a person winding up the partnership
43 business as the personal or legal representative of the last surviving
44 partner as if the person were a partner.

45
46 25. a. A partnership may maintain an action against a partner for

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

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

6 (1) enforce the partner's rights under the partnership agreement;

7 (2) enforce the partner's rights under this act, including:

8 (a) the partner's rights under sections 21, 23 or 24 of this act;

9 (b) the partner's right on dissociation to have the partner's interest
10 in the partnership purchased pursuant to section 34 of this act or
11 enforce any other right under Article 6 or 7 of this act; or

12 (c) the partner's right to compel a dissolution and winding up of
13 the partnership business under section 39 of this act or enforce any
14 other right under Article 8 of this act; or

15 (3) enforce the rights and otherwise protect the interests of the
16 partner, including rights and interests arising independently of the
17 partnership relationship.

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

22

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

28 b. If the partners, or those of them who habitually acted in the
29 business during the term or undertaking, continue the business without
30 any settlement or liquidation of the partnership, they are presumed to
31 have agreed that the partnership will continue.

32

33 ARTICLE 5. TRANSFEREES AND CREDITORS
34 OF PARTNER

35

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

39

40 28. The only transferable interest of a partner in the partnership is
41 the partner's share of the profits and losses of the partnership and the
42 partner's right to receive distributions. The interest is personal
43 property.

44

45 29. a. A transfer, in whole or in part, of a partner's transferable
46 interest in the partnership:

1 (1) is permissible;

2 (2) does not by itself cause the partner's dissociation or a
3 dissolution and winding up of the partnership business; and

4 (3) does not, as against the other partners or the partnership,
5 entitle the transferee, during the continuance of the partnership, to
6 participate in the management or conduct of the partnership business,
7 to require access to information concerning partnership transactions,
8 or to inspect or copy the partnership books or records.

9 b. A transferee of a partner's transferable interest in the partnership
10 has a right:

11 (1) to receive, in accordance with the transfer, distributions to
12 which the transferor would otherwise be entitled;

13 (2) to receive upon the dissolution and winding up of the
14 partnership business, in accordance with the transfer, the net amount
15 otherwise distributable to the transferor; and

16 (3) to seek, under subsection f. of section 39 of this act, a judicial
17 determination that it is equitable to wind up the partnership business.

18 c. In a dissolution and winding up, a transferee is entitled to an
19 account of partnership transactions only from the date of the latest
20 account agreed to by all of the partners.

21 d. Upon transfer, the transferor retains the rights and duties of a
22 partner other than the interest in distributions transferred.

23 e. A partnership need not give effect to a transferee's rights under
24 this section until it has notice of the transfer.

25 f. A transfer of a partner's transferable interest in the partnership
26 in violation of a restriction on transfer contained in the partnership
27 agreement is ineffective as to a person having notice of the restriction
28 at the time of transfer.

29

30 30. a. On application by a judgment creditor of a partner or of a
31 partner's transferee, a court having jurisdiction may charge the
32 transferable interest of the judgment debtor to satisfy the judgment.
33 The court order charging the transferable interest of a partner or of a
34 partner's transferee shall be the sole remedy of a judgment creditor,
35 who shall have no right under this act or any other State law to
36 interfere with the management or to force dissolution of the
37 partnership or to seek an order of the court requiring a foreclosure
38 sale of the transferable interest. The court may appoint a receiver of
39 the share of the distributions due or to become due to the judgment
40 debtor in respect of the partnership and make all other orders,
41 directions, accounts, and inquiries the judgment debtor might have
42 made or which the circumstances of the case may require.

43 b. A charging order constitutes a right to receive distributions
44 made with respect to the judgment debtor's transferable interest in the
45 partnership.

46 c. At any time before foreclosure, an interest charged may be

1 redeemed:

2 (1) by the judgment debtor;

3 (2) with property other than partnership property, by one or more
4 of the other partners; or

5 (3) with partnership property, by one or more of the other partners
6 with the consent of all of the partners whose interests are not so
7 charged.

8 d. This act does not deprive a partner of a right under exemption
9 laws with respect to the partner's interest in the partnership.

10 e. This section provides the exclusive remedy by which a judgment
11 creditor of a partner or partner's transferee may satisfy a judgment out
12 of the judgment debtor's transferable interest in the partnership.

13

14

ARTICLE 6. PARTNER'S DISSOCIATION

15

16 31. A partner is dissociated from a partnership upon the occurrence
17 of any of the following events:

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

20 b. An event agreed to in the partnership agreement as causing the
21 partner's dissociation;

22 c. The partner's expulsion pursuant to the partnership agreement;

23 d. The partner's expulsion by the unanimous vote of the other
24 partners if:

25 (1) it is unlawful to carry on the partnership business with that
26 partner;

27 (2) there has been a transfer of all or substantially all of that
28 partner's transferable interest in the partnership, other than a transfer
29 for security purposes, or a court order charging the partner's interest,
30 which has not been foreclosed;

31 (3) within 90 days after the partnership notifies a corporate partner
32 that it will be expelled because it has filed a certificate of dissolution
33 or the equivalent, its charter has been revoked, or its right to conduct
34 business has been suspended by the jurisdiction of its incorporation,
35 there is no revocation of the certificate of dissolution or no
36 reinstatement of its charter or its right to conduct business; or

37 (4) a partnership that is a partner has been dissolved and its
38 business is being wound up;

39 e. On application by the partnership or another partner, the
40 partner's expulsion by judicial determination because:

41 (1) the partner engaged in wrongful conduct that adversely and
42 materially affected the partnership business;

43 (2) the partner willfully or persistently committed a material breach
44 of the partnership agreement or of a duty owed to the partnership or
45 the other partners under section 24 of this act; or

46 (3) the partner engaged in conduct relating to the partnership

- 1 business which makes it not reasonably practicable to carry on the
2 business in partnership with the partner;
- 3 f. The partner's:
- 4 (1) becoming a debtor in bankruptcy;
- 5 (2) executing an assignment for the benefit of creditors;
- 6 (3) seeking, consenting to, or acquiescing in the appointment of a
7 trustee, receiver, or liquidator of that partner or of all or substantially
8 all of that partner's property; or
- 9 (4) failing, within 90 days after the appointment, to have vacated
10 or stayed the appointment of a trustee, receiver, or liquidator of the
11 partner or of all or substantially all of the partner's property obtained
12 without the partner's consent or acquiescence, or failing within 90
13 days after the expiration of a stay to have the appointment vacated;
- 14 g. In the case of a partner who is an individual:
- 15 (1) the partner's death;
- 16 (2) the appointment of a guardian or general conservator for the
17 partner; or
- 18 (3) a judicial determination that the partner has otherwise become
19 incapable of performing the partner's duties under the partnership
20 agreement;
- 21 h. In the case of a partner that is a trust or is acting as a partner by
22 virtue of being a trustee of a trust, distribution of the trust's entire
23 transferable interest in the partnership, but not merely by reason of the
24 substitution of a successor trustee;
- 25 i. In the case of a partner that is an estate or is acting as a partner
26 by virtue of being a personal representative of an estate, distribution
27 of the estate's entire transferable interest in the partnership, but not
28 merely by reason of the substitution of a successor personal
29 representative; or
- 30 j. Termination of a partner who is not an individual, partnership,
31 corporation, trust, or estate.
- 32
- 33 32. a. A partner has the power to dissociate at any time, rightfully
34 or wrongfully, by express will pursuant to subsection a. of section 31
35 of this act.
- 36 b. A partner's dissociation is wrongful only if:
- 37 (1) it is in breach of an express provision of the partnership
38 agreement; or
- 39 (2) in the case of a partnership for a definite term or particular
40 undertaking, before the expiration of the term or the completion of the
41 undertaking:
- 42 (a) the partner withdraws by express will, unless the withdrawal
43 follows within 90 days after another partner's dissociation by death or
44 otherwise under subsections f. through j. of section 31 of this act or
45 wrongful dissociation under this subsection;
- 46 (b) the partner is expelled by judicial determination under

1 subsection e. of section 31 of this act;

2 (c) the partner is dissociated by becoming a debtor in bankruptcy;

3 or

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

7 c. A partner who wrongfully dissociates is liable to the partnership
8 and to the other partners for damages caused by the dissociation. The
9 liability is in addition to any other obligation of the partner to the
10 partnership or to the other partners.

11

12 33. a. If a partner's dissociation results in a dissolution and
13 winding up of the partnership business, Article 8 of this act applies;
14 otherwise, Article 7 of this act applies.

15 b. Upon a partner's dissociation:

16 (1) the partner's right to participate in the management and
17 conduct of the partnership business terminates, except as otherwise
18 provided in section 41 of this act;

19 (2) the partner's duty of loyalty under paragraph (3) of subsection
20 b. of section 24 of this act terminates; and

21 (3) the partner's duty of loyalty under paragraphs (1) and (2) of
22 subsection b. and duty of care under subsection c. of section 24 of this
23 act continue only with regard to matters arising and events occurring
24 before the partner's dissociation, unless the partner participates in
25 winding up the partnership's business pursuant to section 41 of this
26 act.

27

28 ARTICLE 7. PARTNER'S DISSOCIATION WHEN
29 BUSINESS NOT WOUND UP

30

31 34. a. If a partner is dissociated from a partnership without
32 resulting in a dissolution and winding up of the partnership business
33 under section 39 of this act, except as otherwise provided in the
34 partnership agreement, the partnership shall cause the dissociated
35 partner's interest in the partnership to be purchased for its adjusted
36 fair value as determined pursuant to subsection b. of this section.

37 b. As used in subsection a. of this section, "adjusted fair value"
38 means the fair value as of the date of withdrawal based upon the right
39 to share in distributions from the partnership, less all applicable
40 valuation discounts, unless the partnership agreement provides for
41 another adjusted fair value formula. For purposes of computing
42 adjusted fair value, "all applicable valuation discounts" shall include
43 discounts for lack of liquidity, relative size of holding, absence of any
44 trading market and comparable factors.

45 c. Damages for wrongful dissociation under subsection b. of
46 section 32 of this act, and all other amounts owing, whether or not

1 presently due, from the dissociated partner to the partnership, shall be
2 offset against the buyout price. Interest shall be paid from the date the
3 amount owed becomes due to the date of payment.

4 d. A partnership shall indemnify a dissociated partner whose
5 interest is being purchased against all partnership liabilities, whether
6 incurred before or after the dissociation, except liabilities incurred by
7 an act of the dissociated partner under section 35 of this act.

8 e. If no agreement for the purchase of a dissociated partner's
9 interest is reached within 120 days after a written demand for payment,
10 the partnership shall pay, or cause to be paid, in cash to the dissociated
11 partner the amount the partnership estimates to be the buy out price
12 and accrued interest, reduced by any offsets and accrued interest under
13 subsection c. of this section.

14 f. If a deferred payment is authorized under subsection h. of this
15 section, the partnership may tender a written offer to pay the amount
16 it estimates to be the buy out price and accrued interest, reduced by
17 any offsets under subsection c. of this section, stating the time of
18 payment, the amount and type of security for payment, and the other
19 terms and conditions of the obligation.

20 g. The payment or tender required by subsection e. or f. of this
21 section shall be accompanied by the following:

22 (1) a statement of partnership assets and liabilities as of the date of
23 dissociation;

24 (2) the latest available partnership balance sheet and income
25 statement, if any;

26 (3) an explanation of how the estimated amount of the payment
27 was calculated; and

28 (4) written notice that the payment is in full satisfaction of the
29 obligation to purchase unless, within 120 days after the written notice,
30 the dissociated partner commences an action to determine the buy out
31 price, any offsets under subsection c. of this section, or other terms of
32 the obligation to purchase.

33 h. A partner who wrongfully dissociates before the expiration of a
34 definite term or the completion of a particular undertaking is not
35 entitled to payment of any portion of the buy out price until the
36 expiration of the term or completion of the undertaking, unless the
37 partner establishes to the satisfaction of the court that earlier payment
38 will not cause undue hardship to the business of the partnership. A
39 deferred payment shall be adequately secured and bear interest.

40 i. A dissociated partner may maintain an action against the
41 partnership, pursuant to subparagraph (b) of paragraph (2) of
42 subsection b. of section 25 of this act, to determine the buy out price
43 of that partner's interest, any offsets under subsection c. of this
44 section, or other terms of the obligation to purchase. The action shall
45 be commenced within 120 days after the partnership has tendered
46 payment or an offer to pay or within one year after written demand for

1 payment if no payment or offer to pay is tendered. The court shall
2 determine the buy out price of the dissociated partner's interest, any
3 offset due under subsection c. of this section, and accrued interest, and
4 enter judgment for any additional payment or refund. If deferred
5 payment is authorized under subsection h. of this section, the court
6 shall also determine the security for payment and other terms of the
7 obligation to purchase. The court may assess reasonable attorney's
8 fees and the fees and expenses of appraisers or other experts for a
9 party to the action, in amounts the court finds equitable, against a
10 party that the court finds acted arbitrarily, vexatiously, or not in good
11 faith. The finding shall be based on the partnership's failure to tender
12 payment or an offer to pay or to comply with subsection g. of this
13 section.

14

15 35. a. For two years after a partner dissociates without resulting
16 in a dissolution and winding up of the partnership business, the
17 partnership, including a surviving partnership under Article 9 of this
18 act, is bound by an act of the dissociated partner which would have
19 bound the partnership under section 13 of this act before dissociation
20 only if at the time of entering into the transaction the other party:

21 (1) reasonably believed that the dissociated partner was then a
22 partner;

23 (2) did not have notice of the partner's dissociation; and

24 (3) is not deemed to have had knowledge under subsection e. of
25 section 15 or notice under subsection c. of section 37 of this act.

26 b. A dissociated partner is liable to the partnership for any damage
27 caused to the partnership arising from an obligation incurred by the
28 dissociated partner after dissociation for which the partnership is liable
29 under subsection a. of this section.

30

31 36. a. A partner's dissociation does not of itself discharge the
32 partner's liability for a partnership obligation incurred before
33 dissociation. A dissociated partner is not liable for a partnership
34 obligation incurred after dissociation, except as otherwise provided in
35 subsection b. of this section.

36 b. A partner who dissociates without resulting in a dissolution and
37 winding up of the partnership business is liable as a partner to the
38 other party in a transaction entered into by the partnership, or a
39 surviving partnership under Article 9 of this act, within two years after
40 the partner's dissociation, only if the partner is liable for the obligation
41 under section 18 of this act and at the time of entering into the
42 transaction the other party:

43 (1) reasonably believed that the dissociated partner was then a
44 partner;

45 (2) did not have notice of the partner's dissociation; and

46 (3) is not deemed to have had knowledge under subsection e. of

1 section 15 or notice under section subsection c. of section 37 of this
2 act.

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

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

10
11 37. a. A dissociated partner or the partnership may file a statement
12 of dissociation stating the name of the partnership and that the partner
13 is dissociated from the partnership.

14 b. A statement of dissociation is a limitation on the authority of a
15 dissociated partner for the purposes of subsections d. and e. of section
16 15 of this act.

17 c. For the purposes of paragraph (3) of subsection a. of section 35
18 and paragraph (3) of subsection b. of section 36 of this act, a person
19 not a partner is deemed to have notice of the dissociation 90 days after
20 the statement of dissociation is filed.

21
22 38. Continued use of a partnership name, or a dissociated partner's
23 name as part thereof, by partners continuing the business does not of
24 itself make the dissociated partner liable for an obligation of the
25 partners or the partnership continuing the business.

26
27 **ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS**

28
29 39. A partnership is dissolved, and its business shall be wound up,
30 only upon the occurrence of any of the following events:

31 a. In a partnership at will, the partnership's having notice from a
32 partner, other than a partner who is dissociated under subsections b.
33 through j. of section 31 of this act, of that partner's express will to
34 withdraw as a partner, or on a later date specified by the partner,
35 unless the partnership agreement provides that no dissolution occurs
36 until 90 days after the partnership having received notice of a partner's
37 express will to withdraw as a partner, a majority in interest of the
38 remaining parties, including partners who have rightfully dissociated
39 pursuant to subparagraph (a) of paragraph (2) of subsection b. of
40 section 32 of this act, agree to continue the partnership;

41 b. In a partnership for a definite term or particular undertaking:
42 (1) the expiration of 90 days after a partner's dissociation by death
43 or otherwise under subsections f. through j. of section 31 of this act
44 or wrongful dissociation under subsection b. of section 32 of this act,
45 unless before that time a majority in interest of the remaining partners,
46 including partners who have rightfully dissociated pursuant to

1 subparagraph (a) of paragraph (2) of subsection b. of section 32 of this
2 act, agree to continue the partnership;
3 (2) the express will of all of the partners to wind up the partnership
4 business; or
5 (3) the expiration of the term or the completion of the undertaking;
6 c. An event agreed to in the partnership agreement resulting in the
7 winding up of the partnership business;
8 d. An event that makes it unlawful for all or substantially all of the
9 business of the partnership to be continued, but a cure of illegality
10 within 90 days after notice to the partnership of the event is effective
11 retroactively to the date of the event for purposes of this section;
12 e. On application by a partner, a judicial determination that:
13 (1) the economic purpose of the partnership is likely to be
14 unreasonably frustrated;
15 (2) another partner has engaged in conduct relating to the
16 partnership business which makes it not reasonably practicable to carry
17 on the business in partnership with that partner; or
18 (3) it is not otherwise reasonably practicable to carry on the
19 partnership business in conformity with the partnership agreement; or
20 f. On application by a transferee of a partner's transferable interest,
21 a judicial determination that it is equitable to wind up the partnership
22 business:
23 (1) after the expiration of the term or completion of the
24 undertaking, if the partnership was for a definite term or particular
25 undertaking at the time of the transfer or entry of the charging order
26 that gave rise to the transfer; or
27 (2) at any time, if the partnership was a partnership at will at the
28 time of the transfer or entry of the charging order that gave rise to the
29 transfer.
30
31 40. a. Subject to subsection b. of this section, a partnership
32 continues after dissolution only for the purpose of winding up its
33 business. The partnership is terminated when the winding up of its
34 business is completed.
35 b. At any time after the dissolution of a partnership and before the
36 winding up of its business is completed, all of the partners, including
37 any dissociating partner other than a wrongfully dissociating partner,
38 may waive the right to have the partnership's business wound up and
39 the partnership terminated. In that event:
40 (1) the partnership resumes carrying on its business as if
41 dissolution had never occurred, and any liability incurred by the
42 partnership or a partner after the dissolution and before the waiver is
43 determined as if dissolution had never occurred; and
44 (2) the rights of a third party accruing under subsection a. of
45 section 42 of this act or arising out of conduct in reliance on the
46 dissolution before the third party knew or received a notification of the

1 waiver shall not be adversely affected.

2

3 41. a. After dissolution, a partner who has not wrongfully
4 dissociated may participate in winding up the partnership's business,
5 but on application of any partner, partner's legal representative, or
6 transferee, a court of competent jurisdiction, for good cause shown,
7 may order judicial supervision of the winding up.

8 b. The legal representative of the last surviving partner may wind
9 up a partnership's business.

10 c. A person winding up a partnership's business shall preserve the
11 partnership business or property as a going concern for a reasonable
12 time, prosecute and defend actions and proceedings, whether civil,
13 criminal, or administrative, settle and close the partnership's business,
14 dispose of and transfer the partnership's property, discharge the
15 partnership's liabilities, distribute the assets of the partnership
16 pursuant to section 45 of this act, settle disputes by mediation or
17 arbitration, and perform other necessary acts.

18

19 42. Subject to section 43 of this act, a partnership is bound by a
20 partner's act after dissolution that:

21 a. Is appropriate for winding up the partnership business; or

22 b. Would have bound the partnership under section 13 of this act
23 before dissolution, if the other party to the transaction did not have
24 notice of the dissolution.

25

26 43. a. After dissolution, a partner who has not wrongfully
27 dissociated may file a statement of dissolution stating the name of the
28 partnership and that the partnership has dissolved and is winding up its
29 business.

30 b. A statement of dissolution cancels a filed statement of
31 partnership authority for the purposes of subsection d. of section 15
32 of this act and is a limitation on authority for the purposes of
33 subsection e. of section 15 of this act.

34 c. For the purposes of sections 13 and 42 of this act, a person not
35 a partner is deemed to have notice of the dissolution and the limitation
36 on the partners' authority as a result of the statement of dissolution 90
37 days after it is filed.

38 d. After filing and, if appropriate, recording a statement of
39 dissolution, a dissolved partnership may file and, if appropriate, record
40 a statement of partnership authority which will operate with respect to
41 a person not a partner as provided in subsections e. and f. of section
42 15 of this act in any transaction, whether or not the transaction is
43 appropriate for winding up the partnership business.

44

45 44. a. Except as otherwise provided in subsection b. of this section
46 and section 18 of this act, after dissolution a partner is liable to the

1 other partners for the partner's share of any partnership liability
2 incurred under section 42 of this act.

3 b. A partner who, with knowledge of the dissolution, incurs a
4 partnership liability under subsection b. of section 42 of this act by an
5 act that is not appropriate for winding up the partnership business is
6 liable to the partnership for any damage caused to the partnership
7 arising from the liability.

8

9 45. a. In winding up a partnership's business, the assets of the
10 partnership, including the contributions of the partners required by this
11 section, shall be applied to discharge its obligations to creditors,
12 including, to the extent permitted by law, partners who are creditors.
13 Any surplus shall be applied to pay in cash the net amount distributable
14 to partners in accordance with their right to distributions under
15 subsection b. of this section.

16 b. Each partner is entitled to a settlement of all partnership
17 accounts upon winding up the partnership business. In settling
18 accounts among the partners, profits and losses that result from the
19 liquidation of the partnership assets shall be credited and charged to
20 the partners' accounts. The partnership shall make a distribution to a
21 partner in an amount equal to any excess of the credits over the
22 charges in the partner's account. A partner shall contribute to the
23 partnership an amount equal to any excess of the charges over the
24 credits in the partner's account but excluding from the calculation
25 charges attributable to an obligation for which the partner is not
26 personally liable under section 18 of this act.

27 c. If a partner fails to contribute the full amount required under
28 subsection b. of this section, all of the other partners shall contribute,
29 in the proportions in which those partners share partnership losses, the
30 additional amount necessary to satisfy the partnership obligations for
31 which they are personally liable under section 18 of this act. A partner
32 or partner's legal representative may recover from the other partners
33 any contributions the partner makes to the extent the amount
34 contributed exceeds that partner's share of the partnership obligations
35 for which the partner is personally liable under section 18 of this act.

36 d. After the settlement of accounts, each partner shall contribute,
37 in the proportion in which the partner shares partnership losses, the
38 amount necessary to satisfy partnership obligations that were not
39 known at the time of the settlement and for which the partner is
40 personally liable under section 18 of this act.

41 e. The estate of a deceased partner is liable for the partner's
42 obligation to contribute to the partnership.

43 f. An assignee for the benefit of creditors of a partnership or a
44 partner, or a person appointed by a court to represent creditors of a
45 partnership or a partner, may enforce a partner's obligation to
46 contribute to the partnership.

1 ARTICLE 9. CONVERSIONS AND MERGERS

2
3 46. a. As used in this section, "other business entity" means a
4 business corporation, partnership, or a limited liability company.

5 b. (1) Pursuant to an agreement of merger or consolidation, a
6 partnership may merge or consolidate with or into one or more
7 partnerships or other business entities formed or organized under the
8 laws of this State or any other state or the United States or any foreign
9 country or other foreign jurisdiction, with such partnership or other
10 business entity as the agreement shall provide being the surviving or
11 resulting partnership or other business entity. Unless otherwise
12 provided in the partnership agreement, a merger or consolidation shall
13 be approved by all partners of each partnership which is to merge or
14 consolidate. In connection with a merger or consolidation hereunder,
15 rights or securities of, or interests in, a partnership or other business
16 entity which is a constituent party to the merger or consolidation may
17 be exchanged for or converted into cash, property, rights or securities
18 of, or interests in, the surviving or resulting partnership or other
19 business entity or, in addition to or in lieu thereof, may be exchanged
20 for or converted into cash, property, rights or securities of, or interests
21 in, a partnership or other business entity which is not the surviving or
22 resulting partnership or other business entity in the merger or
23 consolidation. Notwithstanding prior approval, an agreement of
24 merger or consolidation may be terminated or amended pursuant to a
25 provision for such termination or amendment contained in the
26 agreement of merger or consolidation.

27 (2) A partnership may not merge or consolidate with any other
28 business entity if authority for such merger or consolidation is not
29 granted by the laws of the jurisdiction under which the other business
30 entity is organized.

31 (3) With respect to the merger or consolidation of partnerships,
32 each partnership shall comply with the provisions of this section and
33 each other business entity shall comply with the applicable provisions
34 of the laws of the jurisdiction under which it is organized.

35 c. If a partnership merges or consolidates under this section, the
36 partnership or other business entity surviving or resulting in, or from,
37 the merger or consolidation, shall file a certificate of merger or
38 consolidation in the office of the Division of Commercial Recording
39 in the Department of Treasury. The Director of the Division of
40 Commercial Recording shall, upon filing, forward a copy of the
41 certificate of merger or consolidation to the Director of the Division
42 of Taxation. The certificate of merger or consolidation shall state:

43 (1) The name and jurisdiction of formation or organization of each
44 of the partnerships or other business entities which is to merge or
45 consolidate;

46 (2) That an agreement of merger or consolidation has been

1 approved and executed by each of the partnerships or other business
2 entities which is to merge or consolidate;

3 (3) The name of the surviving or resulting partnership or other
4 business entity;

5 (4) The future effective date or time (which shall be a date or time
6 certain) of the merger or consolidation if it is not to be effective upon
7 the filing of the certificate of merger or consolidation;

8 (5) That the agreement of merger or consolidation is on file at a
9 place of business of the surviving or resulting partnership or other
10 business entity, and shall state the address thereof;

11 (6) That a copy of the agreement of merger or consolidation shall
12 be furnished by the surviving or resulting partnership or other business
13 entity, on request and without cost, to any member of any partnership
14 or any person holding an interest in any other business entity which is
15 to merge or consolidate; and

16 (7) If the surviving or resulting entity is not a partnership or other
17 business entity organized under the laws of this State, a statement that
18 such surviving or resulting other business entity agrees that it may be
19 served with process in this State in any action, suit or proceeding for
20 the enforcement of any obligation of any partnership which is to merge
21 or consolidate, irrevocably appointing the State Treasurer as its agent
22 to accept service of process in any such action, suit or proceeding and
23 specifying the address to which a copy of such process shall be mailed
24 to it by the State Treasurer.

25 d. Unless a future effective date or time is provided in a certificate
26 of merger or consolidation, in which event a merger or consolidation
27 shall be effective at any such future effective date or time, a merger or
28 consolidation shall be effective upon the filing in the office of the
29 Division of Commercial Recording of a certificate of merger or
30 consolidation.

31 e. A certificate of merger or consolidation shall act as a certificate
32 of cancellation for a partnership which is not the surviving or resulting
33 entity in the merger or consolidation.

34 f. An agreement of merger or consolidation approved in
35 accordance with subsection b. of this section may (1) effect any
36 amendment to the partnership agreement or (2) effect the adoption of
37 a new partnership agreement for a partnership if it is the surviving or
38 resulting partnership in the merger or consolidation. Any amendment
39 to a partnership agreement or adoption of a new partnership
40 agreement made pursuant to this subsection shall be effective at the
41 time or date of the merger or consolidation. The provisions of this
42 subsection shall not be construed to limit the accomplishment of a
43 merger or of any of the matters referred to herein by any other means
44 provided for in a partnership agreement or other agreement or as
45 otherwise permitted by law, including that the partnership agreement
46 of any constituent partnership to the merger or consolidation

1 (including a partnership formed for the purpose of consummating a
2 merger or consolidation) shall be the partnership agreement of the
3 surviving or resulting partnership.

4 g. When any merger or consolidation becomes effective under this
5 section, for all purposes of the laws of this State, all of the rights,
6 privileges and powers of each of the partnerships and other business
7 entities that have merged or consolidated, and all property, real,
8 personal and mixed, and all debts due to any of those partnerships and
9 other business entities, as well as all other things and causes of action
10 belonging to each of those partnerships and other business entities,
11 shall be vested in the surviving or resulting partnership or other
12 business entity, and shall thereafter be the property of the surviving or
13 resulting partnership or other business entity as they were of each of
14 the partnerships and other business entities that have merged or
15 consolidated, and the title to any real property vested by deed or
16 otherwise, under the laws of this State, in any of those partnerships
17 and other business entities, shall not revert or in any way be impaired
18 by reason of this act; but all rights of creditors and all liens upon any
19 property of any of those partnerships and other business entities shall
20 be preserved unimpaired, and all debts, liabilities and duties of each of
21 those partnerships and other business entities that have merged or
22 consolidated shall attach to the surviving or resulting partnership or
23 other business entity, and may be enforced against it to the same
24 extent as if the debts, liabilities and duties had been incurred or
25 contracted by it. Unless otherwise agreed, a merger or consolidation
26 of a partnership, including a partnership which is not the surviving or
27 resulting entity in the merger or consolidation, shall not require the
28 dissolution of the partnership pursuant to section 39 of this act or
29 require the partnership to pay its liabilities and distribute its assets
30 pursuant to section 45 of this act.

31

32 ARTICLE 10. LIMITED LIABILITY PARTNERSHIP

33

34 47. a. A partnership may become a limited liability partnership
35 pursuant to this section.

36 b. The terms and conditions on which a partnership becomes a
37 limited liability partnership shall be approved by the vote necessary to
38 amend the partnership agreement except, in the case of a partnership
39 agreement that expressly considers obligations to contribute to the
40 partnership, the vote necessary to amend those provisions.

41 c. After the approval required by subsection b. of this section, a
42 partnership may become a limited liability partnership by filing a
43 statement of qualification. The statement shall contain:

44 (1) the name of the partnership;

45 (2) the street address of the partnership's chief executive office
46 and, if different, the street address of an office in this State, if any;

1 (3) if the partnership does not have an office in this State, the name
2 and street address of the partnership's agent for service of process;

3 (4) a statement that the partnership elects to be a limited liability
4 partnership; and

5 (5) a deferred effective date, if any.

6 d. The agent of a limited liability partnership for service of process
7 shall be an individual who is a resident of this State or other person
8 authorized to do business in this State.

9 e. The status of a partnership as a limited liability partnership is
10 effective on the later of the filing of the statement or a date specified
11 in the statement. The status remains effective, regardless of changes
12 in the partnership, until it is canceled pursuant to subsection d. of
13 section 6 of this act or revoked pursuant to section 49 of this act.

14 f. The status of a partnership as a limited liability partnership and
15 the liability of its partners is not affected by errors or later changes in
16 the information required to be contained in the statement of
17 qualification under subsection c. of this section.

18 g. The filing of a statement of qualification establishes that a
19 partnership has satisfied all conditions precedent to the qualification
20 of the partnership as a limited liability partnership.

21 h. An amendment or cancellation of a statement of qualification is
22 effective when it is filed or on a deferred effective date specified in the
23 amendment or cancellation.

24
25 48. The name of a limited liability partnership shall end with
26 "Registered Limited Liability Partnership", "Limited Liability
27 Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".

28
29 49. a. A limited liability partnership, and a foreign limited liability
30 partnership authorized to transact business in this State, shall file an
31 annual report in the office of the Division of Commercial Recording in
32 the Department of the Treasury which contains:

33 (1) the name of the limited liability partnership and the state or
34 other jurisdiction under whose laws the foreign limited liability
35 partnership is formed;

36 (2) the street address of the partnership's chief executive office
37 and, if different, the street address of an office of the partnership in
38 this State, if any; and

39 (3) if the partnership does not have an office in this State, the name
40 and street address of the partnership's current agent for service of
41 process.

42 b. An annual report shall be filed each year following the calendar
43 year in which a partnership files a statement of qualification or a
44 foreign partnership becomes authorized to transact business in this
45 State.

46 c. The State Treasurer may revoke the statement of qualification

1 of a partnership that fails to file an annual report when due or pay the
2 required filing fee. To do so, the State Treasurer shall provide the
3 partnership at least 60 days' written notice of intent to revoke the
4 statement. The notice shall be mailed to the partnership at its chief
5 executive office set forth in the last filed statement of qualification or
6 annual report. The notice shall specify the annual report that has not
7 been filed, the fee that has not been paid, and the effective date of the
8 revocation. The revocation is not effective if the annual report is filed
9 and the fee is paid before the effective date of the revocation.

10 d. A revocation under subsection c. of this section only affects a
11 partnership's status as a limited liability partnership and is not an event
12 of dissolution of the partnership.

13 e. A partnership whose statement of qualification has been revoked
14 may apply to the Division of Commercial Recording in the Department
15 of the Treasury for reinstatement within two years after the effective
16 date of the revocation. The application shall state:

17 (1) the name of the partnership and the effective date of the
18 revocation; and

19 (2) that the ground for revocation either did not exist or has been
20 corrected.

21 f. A reinstatement under subsection e. of this section relates back
22 to and takes effect as of the effective date of the revocation, and the
23 partnership's status as a limited liability partnership continues as if the
24 revocation had never occurred.

25
26 ARTICLE 11. FOREIGN LIMITED LIABILITY
27 PARTNERSHIP

28
29 50. a. The law under which a foreign limited liability partnership
30 is formed governs relations among the partners and between the
31 partners and the partnership and the liability of partners for obligations
32 of the partnership.

33 b. A foreign limited liability partnership shall not be denied a
34 statement of foreign qualification by reason of any difference between
35 the law under which the partnership was formed and the law of this
36 State.

37 c. A statement of foreign qualification does not authorize a foreign
38 limited liability partnership to engage in any business or exercise any
39 power that a partnership may not engage in or exercise in this State as
40 a limited liability partnership.

41
42 51. a. Before transacting business in this State, a foreign limited
43 liability partnership shall file a statement of foreign qualification. The
44 statement shall contain:

45 (1) the name of the foreign limited liability partnership which
46 satisfies the requirements of the state or other jurisdiction under whose

1 law it is formed and ends with “Registered Limited Liability
2 Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”,
3 “RLLP,” or “LLP”;

4 (2) the street address of the partnership’s chief executive office
5 and, if different, the street address of an office of the partnership in
6 this State, if any;

7 (3) if there is no office of the partnership in this State, the name
8 and street address of the partnership’s agent for service of process;
9 and

10 (4) a deferred effective date, if any.

11 b. The agent of a foreign limited liability company for service of
12 process shall be an individual who is a resident of this State or other
13 person authorized to do business in this State.

14 c. The status of a partnership as a foreign limited liability
15 partnership is effective on the later of the filing of the statement of
16 foreign qualification or a date specified in the statement. The status
17 remains effective, regardless of changes in the partnership, until it is
18 canceled pursuant to subsection d. of section 6 of this act or revoked
19 pursuant to section 49 of this act.

20 d. An amendment or cancellation of a statement of foreign
21 qualification is effective when it is filed or on a deferred effective date
22 specified in the amendment or cancellation.

23

24 52. a. A foreign limited liability partnership transacting business
25 in this State shall not maintain an action or proceeding in this State
26 unless it has in effect a statement of foreign qualification.

27 b. The failure of a foreign limited liability partnership to have in
28 effect a statement of foreign qualification shall not impair the validity
29 of a contract or act of the foreign limited liability partnership or
30 preclude it from defending an action or proceeding in this State.

31 c. A limitation on personal liability of a partner shall not be waived
32 solely by transacting business in this State without a statement of
33 foreign qualification.

34 d. If a foreign limited liability partnership transacts business in this
35 State without a statement of foreign qualification, the State Treasurer
36 shall be its agent for service of process with respect to a right of action
37 arising out of the transaction of business in this State.

38

39 53. a. Activities of a foreign limited liability partnership which do
40 not constitute transacting business for the purpose of this sections 50
41 through 53 of this act include:

42 (1) maintaining, defending, or settling an action or proceeding;

43 (2) holding meetings of its partners or carrying on any other
44 activity concerning its internal affairs;

45 (3) maintaining bank accounts;

46 (4) maintaining offices or agencies for the transfer, exchange and

1 registration of the partnership's own securities or maintaining trustees
2 or depositories with respect to those securities;

3 (5) selling through independent contractors;

4 (6) soliciting or obtaining orders, whether by mail or through
5 employees or agents or otherwise, if the orders require acceptance
6 outside this State before they become contracts;

7 (7) creating or acquiring indebtedness, with or without a mortgage,
8 or other security interest in property;

9 (8) collecting debts or foreclosing mortgages or other security
10 interests in property securing the debts, and holding, protecting, and
11 maintaining property so acquired;

12 (9) conducting an isolated transaction that is completed within 30
13 days and is not one in the course of similar transactions; and

14 (10) transacting business in interstate commerce.

15 b. For purposes of sections 50 through 53 of this act, the
16 ownership in this State of income-producing real property or tangible
17 personal property, other than property excluded under subsection a.
18 of this section, constitutes transacting business in this State.

19 c. This section does not apply in determining the contacts or
20 activities that may subject a foreign limited liability partnership to
21 service of process, taxation, or regulation under any other law of this
22 State.

23

24 54. The Attorney General may maintain an action to restrain a
25 foreign limited liability partnership from transacting business in this
26 State in violation of sections 50 through 53 of this act.

27

28 55. Sections 1 through 56 of this act shall be applied and construed
29 to effectuate its general purpose to make uniform the law with respect
30 to the subject of this act among States enacting it.

31

32 56. Sections 1 through 56 of this act do not affect an action or
33 proceeding commenced or right accrued before this act takes effect,
34 including the right of any partner in a limited liability partnership
35 formed prior to the effective date of this act.

36

37 57. Section 5 of P.L.1983, c.489 (C.42:2A-5) is amended to read
38 as follows:

39 5. Definitions. As used in this chapter, unless the context
40 otherwise requires:

41 a. "Certificate of limited partnership" and "partnership certificate"
42 mean the certificate referred to in section 13 of P.L.1983, c.489
43 (C.42:2A-14) as it may be corrected pursuant to section 48 of
44 P.L.1988, c.130 (C.42:2A-16.1) or amended or restated from time to
45 time.

46 b. "Contribution" means any cash, property, services rendered, or

1 a promissory note or other binding obligation to contribute cash or
2 property or to perform services, which a partner contributes to a
3 limited partnership in his capacity as a partner.

4 c. "Event of withdrawal of a general partner" means an event that
5 causes a person to cease to be a general partner as provided in this
6 chapter, or in the partnership agreement.

7 d. "Foreign limited partnership" means a partnership formed under
8 the laws of any state other than this State and having as partners one
9 or more general partners and one or more limited partners.

10 e. "General partner" means a person who has been admitted to a
11 limited partnership as a general partner in accordance with the
12 partnership agreement and named in the certificate of limited
13 partnership as a general partner.

14 f. "Limited partner" means a person who has been admitted to a
15 limited partnership as a limited partner in accordance with the
16 partnership agreement.

17 g. "Limited partnership" and "domestic limited partnership" mean
18 a partnership formed by two or more persons under the laws of this
19 State and having one or more general partners and one or more limited
20 partners.

21 h. "Partner" means a limited or general partner.

22 i. "Partnership agreement" means any valid agreement, written or
23 oral, of the partners as to the affairs of a limited partnership and the
24 conduct of its business.

25 j. "Partnership interest" means a partner's share of the profits and
26 losses of a limited partnership and the right to receive distributions of
27 partnership assets.

28 k. "Person" means a natural person, partnership, limited
29 partnership (domestic or foreign), limited liability company or other
30 limited liability entity, trust, estate, association, or corporation.

31 l. "State" means a state, territory, or possession of the United
32 States, the District of Columbia, or the Commonwealth of Puerto
33 Rico.

34 m. Unless otherwise provided in the partnership certificate or in the
35 partnership agreement, "in interest" shall mean a vote or percentage of
36 a limited partner (in a class of limited partners) equal to the portion
37 that partner's share in contributions to the partnership bears to the
38 share in contributions to the partnership of all limited partners (of that
39 class).

40 n. "Principal office" means the place designated in the partnership
41 agreement or the place of business of the limited partnership where the
42 chief or principal affairs and business of the partnership are transacted.
43 (cf: P.L.1988, c.130, s.2)

44

45 58. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read
46 as follows:

1 2. As used in this act unless the context otherwise requires:

2 "Bankruptcy" means an event that causes a person to become
3 dissociated from a limited liability company as provided in section 24
4 of this act.

5 "Certificate of formation" means the certificate referred to in
6 section 11 of this act, and the certificate as amended.

7 "Contribution" means any cash, property, services rendered or a
8 promissory note or other obligation to contribute cash or property or
9 to perform services, which a person contributes to a limited liability
10 company in his capacity as a member; provided however, that services
11 rendered and obligations to perform services are contributions only to
12 the extent designated as contributions in the operating agreement.

13 "Foreign limited liability company" means a limited liability
14 company formed under the laws of any state or under the laws of any
15 foreign country or other foreign jurisdiction and denominated as such
16 under the laws of such state or foreign country or other foreign
17 jurisdiction.

18 "Limited liability company" and "domestic limited liability
19 company" means a limited liability company formed under the laws of
20 this State and having one or more members.

21 "Limited liability company interest" means a member's share of the
22 profits and losses of a limited liability company and a member's right
23 to receive distributions of the limited liability company's assets.

24 "Liquidating trustee" means a person carrying out the winding up
25 of a limited liability company.

26 "Manager" means a person who is named as a manager of a limited
27 liability company in, or designated as a manager of a limited liability
28 company pursuant to, an operating agreement or similar instrument
29 under which the limited liability company is formed.

30 "Member" means a person who has been admitted to a limited
31 liability company as a member as provided in section 21 of this act or,
32 in the case of a foreign limited liability company, in accordance with
33 the laws of the state or foreign country or other foreign jurisdiction
34 under which the foreign limited liability company is organized.

35 "Operating agreement" means a written agreement among the
36 members, or in the case of a limited liability company with only one
37 member, the declaration by that one member of the terms of the
38 operating agreement which shall be deemed an agreement between the
39 member and the limited liability company, as to the affairs of a limited
40 liability company and the conduct of its business.

41 "Person" means a natural person, partnership (whether general or
42 limited and whether domestic or foreign), limited liability company,
43 foreign limited liability company, trust, estate, association,
44 corporation, custodian, nominee or any other individual or entity in its
45 own or any representative capacity.

46 "State" means the District of Columbia or the Commonwealth of

1 Puerto Rico or any state, territory, possession, or other jurisdiction of
2 the United States other than this State.

3 (cf: P.L.1998, c.79, s.1)

4

5 59. Section 69 of P.L.1993, c.210 (C.42:2B-69) is amended to
6 read as follows:

7 69. a. For all purposes of taxation under the laws of this State, a
8 limited liability company formed under this act or qualified to do
9 business in this State as a foreign limited liability company with two or
10 more members shall be classified as a partnership unless classified
11 otherwise for federal income tax purposes, in which case the limited
12 liability company shall be classified in the same manner as it is
13 classified for federal income tax purposes. For all purposes of taxation
14 under the laws of this State, a member or an assignee of a member of
15 a limited liability company formed under this act or qualified to do
16 business in this State as a foreign limited liability company shall be
17 treated as a partner in a partnership unless the limited liability company
18 is classified otherwise for federal income tax purposes, in which case
19 the member or assignee of a member shall have the same status as the
20 member or assignee of a member has for federal income tax purposes.

21 b. For [all] purposes of taxation on gross income under the laws
22 of this State and only for those purposes, a limited liability company
23 formed under P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do
24 business in this State as a foreign limited liability company with one
25 member is disregarded as an entity separate from its owner, unless
26 classified otherwise for federal tax purposes, in which case the limited
27 liability company will be classified in the same manner as it is classified
28 for federal income tax purposes. For [all] purposes of taxation on
29 gross income under the laws of this State and only for those purposes,
30 the sole member or an assignee of all of the limited liability company
31 interest of the sole member of a limited liability company formed under
32 P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do business in this
33 State as a foreign limited liability company is treated as the direct
34 owner of the underlying assets of the limited liability company and of
35 its operations, unless the limited liability company is classified
36 otherwise for federal income tax purposes, in which case the member
37 or assignee of a member will have the same status as the member or
38 assignee of a member has for federal income tax purposes.

39 (cf: P.L.1998, c.79, s.13)

40

41 60. The following are repealed:

42 R.S.42:1-1 to 42:1-43;

43 Sections 8-12 of P.L.1995, c.96 (C.42:1-44 to 42:1-48); and

44 Section 1 of P.L.1995, c.223(C.42:1-49).

45

46 61. This act shall take effect on the first business day following
47 enactment.

STATEMENT

1

2

3 This bill enacts the revised "Uniform Partnership Act (1996)" as
4 developed by the National Conference of Commissioners on Uniform
5 State Laws and approved by the American Bar Association House of
6 Delegates, sometimes referred to as "RUPA."

7 The bill gives supremacy to the partnership agreement in almost all
8 situations, and as such, is largely a series of "default rules" that govern
9 the relations among partners in situations they have not addressed in
10 a partnership agreement.

11 This bill enhances the entity treatment of partnership agreements to
12 achieve simplicity for State law purposes, particularly in matters
13 concerning title to partnership property.

14 The bill provides stability for partnerships that have continuation
15 agreements so that, in contrast to existing law, there are many
16 departures or "dissociations" that do not result in a dissolution of a
17 partnership.

18 This bill also includes a more extensive treatment of the fiduciary
19 duties of partners. While the bill continues the traditional rule that a
20 partner is a fiduciary, it also makes clear that a partner is not required
21 to be a disinterested trustee. Provision is made under the bill for the
22 legitimate pursuit of self-interest, with a counterbalancing irreducible
23 core of fiduciary duties.

24 The bill requires the public filing of statements containing the basic
25 information about a partnership, such as the agency authority of its
26 partners.

27 Changes to the Uniform Act recommended by the review committee
28 of the New Jersey Bar Association adopted in this bill are as follows:
29 the definition of "person" is revised to include a partnership, a limited
30 liability partnership or a limited liability company; the five year
31 expiration date for statements of authority is deleted; a portion of the
32 fiduciary duty provision is expanded to clarify that a partner who lends
33 money to a partnership has the same right to enforce the obligation as
34 any unrelated party; a new provision is added to treat all dissociating
35 partners within 90 days of the dissolution of the partnership as if they
36 had not left early; RUPA's provision concerning the dissolution of at-
37 will partnerships is revised to allow the partnership to continue, unless
38 at least half of the remaining partners decide to dissolve and wind up
39 the partnership and provide that the withdrawing partner is treated as
40 a creditor, with recourse to the courts as such, but without the ability
41 to obtain a court order to dissolve the partnership; and the provision
42 concerning a charging order is amended to clarify that a charging order
43 is the sole remedy available to a creditor of a partner.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1140

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 2000

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1140.

This bill enacts the revised "Uniform Partnership Act (1996)" as developed by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association House of Delegates, sometimes referred to as "RUPA."

The bill gives supremacy to the partnership agreement in almost all situations, and as such, is largely a series of "default rules" that govern the relations among partners in situations they have not addressed in a partnership agreement. This bill enhances the entity treatment of partnership agreements to achieve simplicity for State law purposes, particularly in matters concerning title to partnership property.

The bill provides stability for partnerships that have continuation agreements so that, in contrast to existing law, there are many departures or "dissociations" that do not result in a dissolution of a partnership. This bill also includes a more extensive treatment of the fiduciary duties of partners. While the bill continues the traditional rule that a partner is a fiduciary, it also makes clear that a partner is not required to be a disinterested trustee. Provision is made under the bill for the legitimate pursuit of self-interest, with a counterbalancing irreducible core of fiduciary duties.

The bill allows for the public filing of statements containing the basic information about a partnership, such as the agency authority of its partners. The filing of these statements is permissive and not mandatory.

The makes certain changes to the Uniform Act which were recommended by the review committee of the New Jersey Bar Association as follows: the definition of "person" is revised to include a partnership, a limited liability partnership or a limited liability company; the five year expiration date for statements of authority is deleted; a portion of the fiduciary duty provision is expanded to clarify that a partner who lends money to a partnership has the same right to enforce the obligation as any unrelated party; a new provision is added to treat all dissociating partners within 90 days of the dissolution of

the partnership as if they had not left early; RUPA's provision concerning the dissolution of at-will partnerships is revised to allow the partnership to continue, unless at least half of the remaining partners decide to dissolve and wind up the partnership and provide that the withdrawing partner is treated as a creditor, with recourse to the courts as such, but without the ability to obtain a court order to dissolve the partnership; and the provision concerning a charging order is amended to clarify that a charging order is the sole remedy available to a creditor of a partner.

The committee amended the definition of "person" under the bill to include limited partnerships.

The committee amended section 34 of the bill concerning the purchase of a dissociated partner's interest to clarify that this interest shall be purchased for a buyout price which is the fair value as of the date of withdrawal based upon the right to share in distributions from the partnership provided the partnership agreement does not provide for another fair value formula.

The committee also amended section 46 of the bill to included within the definition of "other business entity" a "limited partnership". By amending this section which concerns mergers and conversions, the committee is making it clear that a general partnership may merge with or into a limited partnership.

In addition, the committee amended sections 47 and 51 to clarify that a limited liability partnership's statement of qualification (section 47) and a foreign limited liability partnership's statement of foreign qualification (section 51) must be filed in the office of the Division of Commercial Recording in the Department of Treasury.

This bill was prefiled for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

[First Reprint]

ASSEMBLY, No. 1140

STATE OF NEW JERSEY
209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

Sponsored by:

Assemblyman DAVID C. RUSSO

District 40 (Bergen and Passaic)

Assemblyman WILFREDO CARABALLO

District 28 (Essex)

Co-Sponsored by:

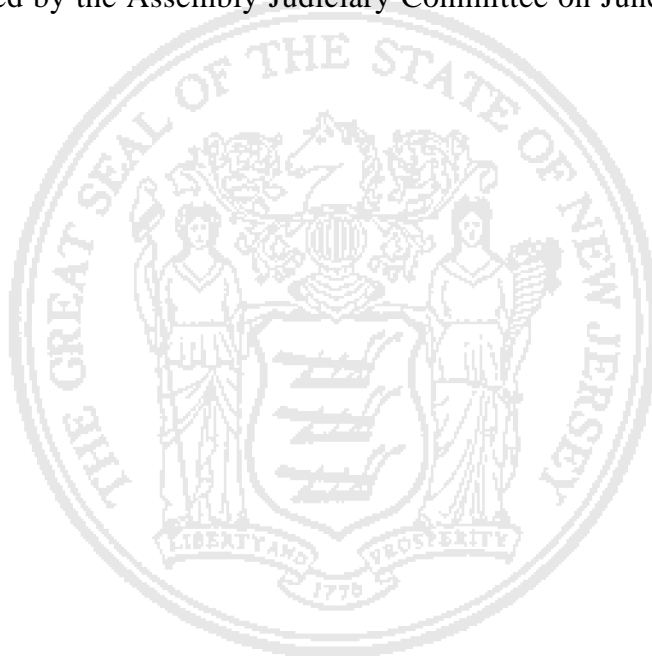
Assemblyman Corodemus

SYNOPSIS

Enacts the "Uniform Partnership Act (1996)."

CURRENT VERSION OF TEXT

As reported by the Assembly Judiciary Committee on June 8, 2000, with amendments.



(Sponsorship Updated As Of: 6/27/2000)

1 AN ACT concerning partnerships and certain other business entities
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Sections 1 through 56 and ¹[60] 59¹ of this act shall be known
8 and may be cited as the "Uniform Partnership Act (1996)."

9
10 ARTICLE 1. GENERAL PROVISIONS

11
12 2. As used in this act:

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

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

15 (1) an order for relief under Title 11 of the United States Code or
16 a comparable order under a successor statute of general application;

17 or

18 (2) a comparable order under federal, state, or foreign law
19 governing insolvency.

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

23 "Foreign limited liability partnership" means a partnership that:

24 (1) is formed under laws other than the laws of this State; and

25 (2) has the status of a limited liability partnership under those laws.

26 "Limited liability partnership" means a partnership that has filed a
27 statement of qualification under section 47 of this act and does not
28 have a similar statement in effect in any other jurisdiction.

29 "Partnership" means an association of two or more persons to carry
30 on as co-owners a business for profit formed under section 10 of this
31 act, predecessor law, or comparable law of another jurisdiction.

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

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

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

41 "Person" means an individual, corporation, business trust, estate,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 8, 2000.

1 trust, partnership, ¹limited partnerships,¹ limited liability company, or
2 other limited liability entity, association, joint venture, government,
3 governmental subdivision, agency, or instrumentality, or any other
4 legal or commercial entity.

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

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

10 "Statement" means a statement of partnership authority under
11 section 15, a statement of denial under section 16, a statement of
12 dissociation under section 37, a statement of dissolution under section
13 43, a statement of qualification under section 47 of this act, or a
14 statement of foreign qualification under section 51 of this act, or an
15 amendment or cancellation of any of the foregoing.

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

18

19 3. a. A person knows a fact if the person has actual knowledge of
20 it.

21 b. A person has notice of a fact if the person:

22 (1) knows of it;

23 (2) has received a notification of it; or

24 (3) has reason to know it exists from all of the facts known to the
25 person at the time in question.

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

29 d. A person receives a notification when the notification:

30 (1) comes to the person's attention; or

31 (2) is duly delivered at the person's place of business or at any
32 other place held out by the person as a place for receiving
33 communications.

34 e. Except as otherwise provided in subsection f. of this section, a
35 person other than an individual knows, has notice, or receives a
36 notification of a fact for purposes of a particular transaction when the
37 individual conducting the transaction knows, has notice, or receives a
38 notification of the fact, or in any event when the fact would have been
39 brought to the individual's attention if that person had exercised
40 reasonable diligence. The person exercises reasonable diligence if it
41 maintains reasonable routines for communicating significant
42 information to the individual conducting the transaction and there is
43 reasonable compliance with the routines. Reasonable diligence does
44 not require an individual acting for the person to communicate
45 information unless the communication is part of the individual's regular
46 duties or the individual has reason to know of the transaction and that

1 the transaction would be materially affected by the information.

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

7

8 4. a. Except as otherwise provided in subsection b. of this section,
9 relations among the partners and between the partners and the
10 partnership are governed by the partnership agreement. To the extent
11 the partnership agreement does not otherwise provide, this act governs
12 relations among the partners and between the partners and the
13 partnership.

14 b. The partnership agreement shall not:

15 (1) unreasonably restrict the right of access to books and records
16 under subsection b. of section 23 of this act;

17 (2) reduce the duty of loyalty under subsection b. of section 24 or
18 subsection b. of section 33 of this act so as to permit a partner to
19 engage in conduct which is intentionally injurious to the partnership;

20 (3) unreasonably reduce the duty of care under subsection c. of
21 section 24 or paragraph (3) of subsection b. of section 33 of this act;

22 (4) vary the right of a court to expel a partner in the events
23 specified in subsection e. of section 31 of this act;

24 (5) vary the requirement to wind up the partnership business in
25 cases specified in subsection d., e. or f. of section 39 of this act;

26 (6) vary the law applicable to a limited liability partnership under
27 subsection b. of section 7 of this act; or

28 (7) restrict rights of third parties under this act.

29

30 5. a. Unless displaced by particular provisions of this act, the
31 principles of law and equity supplement this act.

32 b. If an obligation to pay interest arises under this act and the rate
33 is not specified, the rate of interest shall be at the rates provided by the
34 Rules Governing the Courts of the State of New Jersey for the
35 applicable period of time.

36

37 6. a. A statement may be filed in the office of the Division of
38 Commercial Recording in the Department of the Treasury. A certified
39 copy of a statement that is filed in an office in another state may be
40 filed in the office of the Division of Commercial Recording in the
41 Department of the Treasury. This statement may indicate the authority
42 of one or more particular partners with respect to any matter or class
43 of matters. In addition, either filing has the effect provided in this act
44 with respect to partnership property located in or transactions that
45 occur in this State.

46 b. A certified copy of a statement that has been filed in the office

1 of the Division of Commercial Recording in the Department of the
2 Treasury and recorded in the office of the county recording officer has
3 the effect provided for recorded statements in this act. A recorded
4 statement that is not a certified copy of a statement filed in the office
5 of the Division of Commercial Recording in the Department of the
6 Treasury does not have the effect provided for recorded statements in
7 this act.

8 c. A statement filed by a partnership shall be executed by at least
9 two partners. Other statements shall be executed by a partner or other
10 person authorized by this act. An individual who executes a statement
11 as, or on behalf of, a partner or other person named as a partner in a
12 statement shall personally declare under penalty of perjury that the
13 contents of the statement are accurate.

14 d. A person authorized by this act to file a statement may amend
15 or cancel the statement by filing an amendment or cancellation that
16 names the partnership, identifies the statement, and states the
17 substance of the amendment or cancellation.

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

23 f. The Division of Commercial Recording in the Department of the
24 Treasury may collect a fee for filing or providing a certified copy of a
25 statement. The county recording officer may collect a fee for
26 recording a statement.

27
28 7. a. Except as otherwise provided in subsection b. of this section,
29 the law of the jurisdiction in which a partnership has its chief executive
30 office governs relations among the partners and between the partners
31 and the partnership.

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

35
36 8. A partnership governed by the provisions of this act is subject
37 to any amendment to or repeal of this act.

38
39 **ARTICLE 2. NATURE OF PARTNERSHIP**

40
41 9. a. A partnership is an entity distinct from its partners.

42 b. A limited liability partnership continues to be the same entity
43 that existed before the filing of a statement of qualification under
44 section 47 of this act.

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

5 b. An association formed under a statute other than this act, a
6 predecessor statute, or a comparable statute of another jurisdiction is
7 not a partnership under this act.

8 c. In determining whether a partnership is formed, the following
9 rules apply:

10 (1) Joint tenancy, tenancy in common, tenancy by the entireties,
11 joint property, common property, or part ownership does not by itself
12 establish a partnership, even if the co-owners share profits made by the
13 use of the property.

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

17 (3) A person who receives a share of the profits of a business is
18 presumed to be a partner in the business, unless the profits were
19 received in payment:

20 (a) of a debt by installments or otherwise;

21 (b) for services as an independent contractor or of wages or other
22 compensation to an employee;

23 (c) of rent;

24 (d) of an annuity or other retirement or health benefit to a
25 beneficiary, representative, or designee of a deceased or retired
26 partner;

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

31 (f) for the sale of the goodwill of a business or other property by
32 installments or otherwise.

33
34 11. Property acquired by a partnership is property of the
35 partnership and not of the partners individually.

36
37 12. a. Property is partnership property if acquired in the name of:

38 (1) the partnership; or

39 (2) one or more partners with an indication in the instrument
40 transferring title to the property of the person's capacity as a partner
41 or of the existence of a partnership but without an indication of the
42 name of the partnership.

43 b. Property is acquired in the name of the partnership by a transfer
44 to:

45 (1) the partnership in its name; or

46 (2) one or more partners in their capacity as partners in the

1 partnership, if the name of the partnership is indicated in the
2 instrument transferring title to the property.

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

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

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ARTICLE 3. RELATIONS OF PARTNERS TO
PERSONS DEALING WITH PARTNERSHIP

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13. Subject to the effect of a statement of partnership authority
under section 15 of this act:

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

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

14. a. Partnership property may be transferred as follows:

(1) subject to the effect of a statement of partnership authority
under section 15 of this act, partnership property held in the name of
the partnership may be transferred by an instrument of transfer
executed by a partner in the partnership name.

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

(3) partnership property held in the name of one or more persons
other than the partnership, without an indication in the instrument
transferring the property to them of their capacity as partners or of the
existence of a partnership, may be transferred by an instrument of

1 transfer executed by the persons in whose name the property is held.

2 b. A partnership may recover partnership property from a
3 transferee only if it proves that execution of the instrument of initial
4 transfer did not bind the partnership under section 13 of this act and:

5 (1) as to a subsequent transferee who gave value for property
6 transferred under paragraphs (1) and (2) of subsection a. of this
7 section, proves that the subsequent transferee knew or had received a
8 notification that the person who executed the instrument of initial
9 transfer lacked authority to bind the partnership; or

10 (2) as to a transferee who gave value for property transferred
11 under paragraph (3) of subsection a. of this section, proves that the
12 transferee knew or had received a notification that the property was
13 partnership property and that the person who executed the instrument
14 of initial transfer lacked authority to bind the partnership.

15 c. A partnership may not recover partnership property from a
16 subsequent transferee if the partnership would not have been entitled
17 to recover the property, under subsection b. of this section, from any
18 earlier transferee of the property.

19 d. If a person holds all of the partners' interests in the partnership,
20 all of the partnership property vests in that person. The person may
21 execute a document in the name of the partnership to evidence vesting
22 of the property in that person and may file or record the document.

23

24 15. a. A partnership may file a statement of partnership authority,
25 which:

26 (1) shall include:

27 (a) the name of the partnership;

28 (b) the street address of its chief executive office and of one office
29 in this State, if there is one;

30 (c) the names and mailing addresses of all of the partners or of an
31 agent appointed and maintained by the partnership for the purpose of
32 subsection b. of this section; and

33 (d) the names of the partners authorized to execute an instrument
34 transferring real property held in the name of the partnership; and

35 (2) may state the authority, or limitations on the authority, of some
36 or all of the partners to enter into other transactions on behalf of the
37 partnership and any other matter.

38 b. If a statement of partnership authority names an agent, the agent
39 shall maintain a list of the names and mailing addresses of all of the
40 partners and make it available to any person on request for good cause
41 shown.

42 c. If a filed statement of partnership authority is executed pursuant
43 to subsection c. of section 6 of this act, and states the name of the
44 partnership, but does not contain all of the other information required
45 by subsection a. of this section, the statement nevertheless operates
46 with respect to a person not a partner as provided in subsections d.

1 and e. of this section.

2 d. A filed statement of partnership authority supplements the
3 authority of a partner to enter into transactions on behalf of the
4 partnership as follows:

5 (1) except for transfers of real property, a grant of authority
6 contained in a filed statement of partnership authority is conclusive in
7 favor of a person who gives value without knowledge to the contrary,
8 so long as and to the extent that a limitation on that authority is not
9 then contained in another filed statement. A filed cancellation of a
10 limitation on authority revives the previous grant of authority.

11 (2) a grant of authority to transfer real property held in the name
12 of the partnership contained in a certified copy of a filed statement of
13 partnership authority recorded in the office of the county recording
14 officer is conclusive in favor of a person who gives value without
15 knowledge to the contrary, so long as and to the extent that a certified
16 copy of a filed statement containing a limitation on that authority is
17 not then of record in the office of the county recording officer. The
18 recording in the office of the county recording officer of a certified
19 copy of a filed cancellation of a limitation on authority revives the
20 previous grant of authority.

21 e. A person not a partner is deemed to know of a limitation on the
22 authority of a partner to transfer real property held in the name of the
23 partnership if a certified copy of the filed statement containing the
24 limitation on authority is of record in the office of the county
25 recording officer.

26 f. Except as otherwise provided in subsections d. and e. of this
27 section and sections 37 and 43 of this act, a person not a partner is not
28 deemed to know of a limitation on the authority of a partner merely
29 because the limitation is contained in a filed statement.

30

31 16. A partner or other person named as a partner in a filed
32 statement of partnership authority or in a list maintained by an agent
33 pursuant to subsection b. of section 15 of this act may file a statement
34 of denial stating the name of the partnership and the fact that is being
35 denied, which may include denial of a person's authority or status as
36 a partner. A statement of denial is a limitation on authority as
37 provided in subsections d. and e. of section 15 of this act.

38

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

43 b. If, in the course of the partnership's business or while acting
44 with the authority of the partnership, a partner receives or causes the
45 partnership to receive money or property of a person not a partner,
46 and the money or property is misapplied by a partner, the partnership
47 is liable for the loss.

1 18. a. Except as otherwise provided in subsections b. and c. of this
2 section, all partners are liable jointly and severally for all obligations
3 of the partnership unless otherwise agreed by the claimant or provided
4 by law.

5 b. A person admitted as a partner into an existing partnership is not
6 personally liable for any partnership obligation incurred before the
7 person's admission as a partner.

8 c. An obligation of a partnership incurred while the partnership is
9 a limited liability partnership, whether arising in contract, tort, or
10 otherwise, is solely the obligation of the partnership. A partner is not
11 personally liable, directly or indirectly, by way of contribution or
12 otherwise, for such an obligation solely by reason of being or so acting
13 as a partner. This subsection applies notwithstanding anything
14 inconsistent in the partnership agreement that existed immediately
15 before the vote required to become a limited liability partnership under
16 subsection b. of section 47 of this act.

17

18 19. a. A partnership may sue and be sued in the name of the
19 partnership.

20 b. An action may be brought against the partnership and, to the
21 extent not inconsistent with section 18 of this act, any or all of the
22 partners in the same action or in separate actions.

23 c. A judgment against a partnership is not by itself a judgment
24 against a partner. A judgment against a partnership shall not be
25 satisfied from a partner's assets unless there is also a judgment against
26 the partner.

27 d. A judgment creditor of a partner shall not levy execution against
28 the assets of the partner to satisfy a judgment based on a claim against
29 the partnership unless the partner is personally liable for the claim
30 under section 18 of this act and:

31 (1) a judgment based on the same claim has been obtained against
32 the partnership and a writ of execution on the judgment has been
33 returned unsatisfied in whole or in part;

34 (2) the partnership is a debtor in bankruptcy;

35 (3) the partner has agreed that the creditor need not exhaust
36 partnership assets;

37 (4) a court grants permission to the judgment creditor to levy
38 execution against the assets of a partner based on a finding that
39 partnership assets subject to execution are clearly insufficient to satisfy
40 the judgment, that exhaustion of partnership assets is excessively
41 burdensome, or that the grant of permission is an appropriate exercise
42 of the court's equitable powers; or

43 (5) liability is imposed on the partner by law or contract
44 independent of the existence of the partnership.

45 e. This section applies to any partnership liability or obligation
46 resulting from a representation by a partner or purported partner under
47 section 20 of this act.

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

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

27 c. A person is not liable as a partner merely because the person is
28 named by another in a statement of partnership authority.

29 d. A person does not continue to be liable as a partner merely
30 because of a failure to file a statement of dissociation or to amend a
31 statement of partnership authority to indicate the partner's dissociation
32 from the partnership.

33 e. Except as otherwise provided in subsections a. and b. of this
34 section, persons who are not partners as to each other are not liable as
35 partners to other persons.

36

37 ARTICLE 4. RELATIONS OF PARTNERS
38 TO EACH OTHER AND TO PARTNERSHIP

39

40 21. a. Each partner is deemed to have an account that is:

41 (1) credited with an amount equal to the money plus the value of
42 any other property, net of the amount of any liabilities, the partner
43 contributes to the partnership and the partner's share of the partnership
44 profits; and

45 (2) charged with an amount equal to the money plus the value of
46 any other property, net of the amount of any liabilities, distributed by

1 the partnership to the partner and the partner's share of the partnership
2 losses.

3 b. Each partner is entitled to an equal share of the partnership
4 profits and is chargeable with a share of the partnership losses in
5 proportion to the partner's share of the profits.

6 c. A partnership shall reimburse a partner for payments made and
7 indemnify a partner for liabilities incurred by the partner in the
8 ordinary course of the business of the partnership or for the
9 preservation of its business or property.

10 d. A partnership shall reimburse a partner for an advance to the
11 partnership beyond the amount of capital the partner agreed to
12 contribute.

13 e. A payment or advance made by a partner which gives rise to a
14 partnership obligation under subsection c. or d. of this section
15 constitutes a loan to the partnership which accrues interest from the
16 date of the payment or advance.

17 f. Each partner has equal rights in the management and conduct of
18 the partnership business.

19 g. A partner shall use or possess partnership property only on
20 behalf of the partnership.

21 h. A partner is not entitled to remuneration for services performed
22 for the partnership, except for reasonable compensation for services
23 rendered in winding up the business of the partnership.

24 i. A person shall become a partner only with the consent of all of
25 the partners.

26 j. A difference arising as to a matter in the ordinary course of
27 business of a partnership shall be decided by a majority of the partners.
28 An act outside the ordinary course of business of a partnership and an
29 amendment to the partnership agreement shall be undertaken only with
30 the consent of all of the partners.

31 k. This section shall not affect the obligations of a partnership to
32 other persons under section 13 of this act.

33

34 22. A partner has no right to receive, and shall not be required to
35 accept, a distribution in kind.

36

37 23. a. A partnership shall keep its books and records, if any, at its
38 chief executive office.

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

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

4 (1) without demand, any information concerning the partnership's
5 business and affairs reasonably required for the proper exercise of the
6 partner's rights and duties under the partnership agreement or this act;
7 and

8 (2) on demand, any other information concerning the partnership's
9 business and affairs, except to the extent the demand or the
10 information demanded is unreasonable or otherwise improper under
11 the circumstances.

12
13 24. a. The only fiduciary duties a partner owes to the partnership
14 and the other partners are the duty of loyalty and the duty of care set
15 forth in subsections b. and c. of this section, as those duties may be
16 clarified or limited in the partnership agreement, subject to subsection
17 b. of section 4 of this act.

18 b. A partner's duty of loyalty to the partnership and the other
19 partners is limited to the following:

20 (1) to account to the partnership and hold as trustee for it any
21 property, profit, or benefit derived by the partner in the conduct and
22 winding up of the partnership business or derived from a use by the
23 partner of partnership property, including the appropriation of a
24 partnership opportunity;

25 (2) to refrain from knowingly dealing with the partnership in the
26 conduct or winding up of the partnership business as or on behalf of
27 a party having an interest materially adverse to the partnership; and

28 (3) to refrain from actions intended to cause material injury to the
29 partnership in the conduct of the partnership business before the
30 dissolution of the partnership.

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

35 d. A partner does not violate a duty or obligation under this act or
36 under the partnership agreement merely because the partner's conduct
37 furthers the partner's own interest.

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

42 f. This section applies to a person winding up the partnership
43 business as the personal or legal representative of the last surviving
44 partner as if the person were a partner.

45
46 25. a. A partnership may maintain an action against a partner for
47 a breach of the partnership agreement, or for the violation of a duty to

1 the partnership, causing harm to the partnership.

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

5 (1) enforce the partner's rights under the partnership agreement;

6 (2) enforce the partner's rights under this act, including:

7 (a) the partner's rights under sections 21, 23 or 24 of this act;

8 (b) the partner's right on dissociation to have the partner's interest
9 in the partnership purchased pursuant to section 34 of this act or
10 enforce any other right under Article 6 or 7 of this act; or

11 (c) the partner's right to compel a dissolution and winding up of
12 the partnership business under section 39 of this act or enforce any
13 other right under Article 8 of this act; or

14 (3) enforce the rights and otherwise protect the interests of the
15 partner, including rights and interests arising independently of the
16 partnership relationship.

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

21

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

27 b. If the partners, or those of them who habitually acted in the
28 business during the term or undertaking, continue the business without
29 any settlement or liquidation of the partnership, they are presumed to
30 have agreed that the partnership will continue.

31

32 ARTICLE 5. TRANSFEREES AND CREDITORS
33 OF PARTNER

34

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

38

39 28. The only transferable interest of a partner in the partnership is
40 the partner's share of the profits and losses of the partnership and the
41 partner's right to receive distributions. The interest is personal
42 property.

43

44 29. a. A transfer, in whole or in part, of a partner's transferable
45 interest in the partnership:

46 (1) is permissible;

47 (2) does not by itself cause the partner's dissociation or a

1 dissolution and winding up of the partnership business; and

2 (3) does not, as against the other partners or the partnership,
3 entitle the transferee, during the continuance of the partnership, to
4 participate in the management or conduct of the partnership business,
5 to require access to information concerning partnership transactions,
6 or to inspect or copy the partnership books or records.

7 b. A transferee of a partner's transferable interest in the partnership
8 has a right:

9 (1) to receive, in accordance with the transfer, distributions to
10 which the transferor would otherwise be entitled;

11 (2) to receive upon the dissolution and winding up of the
12 partnership business, in accordance with the transfer, the net amount
13 otherwise distributable to the transferor; and

14 (3) to seek, under subsection f. of section 39 of this act, a judicial
15 determination that it is equitable to wind up the partnership business.

16 c. In a dissolution and winding up, a transferee is entitled to an
17 account of partnership transactions only from the date of the latest
18 account agreed to by all of the partners.

19 d. Upon transfer, the transferor retains the rights and duties of a
20 partner other than the interest in distributions transferred.

21 e. A partnership need not give effect to a transferee's rights under
22 this section until it has notice of the transfer.

23 f. A transfer of a partner's transferable interest in the partnership
24 in violation of a restriction on transfer contained in the partnership
25 agreement is ineffective as to a person having notice of the restriction
26 at the time of transfer.

27

28 30. a. On application by a judgment creditor of a partner or of a
29 partner's transferee, a court having jurisdiction may charge the
30 transferable interest of the judgment debtor to satisfy the judgment.
31 The court order charging the transferable interest of a partner or of a
32 partner's transferee shall be the sole remedy of a judgment creditor,
33 who shall have no right under this act or any other State law to
34 interfere with the management or to force dissolution of the
35 partnership or to seek an order of the court requiring a foreclosure
36 sale of the transferable interest. The court may appoint a receiver of
37 the share of the distributions due or to become due to the judgment
38 debtor in respect of the partnership and make all other orders,
39 directions, accounts, and inquiries the judgment debtor might have
40 made or which the circumstances of the case may require.

41 b. A charging order constitutes a right to receive distributions
42 made with respect to the judgment debtor's transferable interest in the
43 partnership.

44 c. At any time before foreclosure, an interest charged may be
45 redeemed:

- 1 (1) by the judgment debtor;
- 2 (2) with property other than partnership property, by one or more
3 of the other partners; or
- 4 (3) with partnership property, by one or more of the other partners
5 with the consent of all of the partners whose interests are not so
6 charged.
- 7 d. This act does not deprive a partner of a right under exemption
8 laws with respect to the partner's interest in the partnership.
- 9 e. This section provides the exclusive remedy by which a judgment
10 creditor of a partner or partner's transferee may satisfy a judgment out
11 of the judgment debtor's transferable interest in the partnership.

12
13 ARTICLE 6. PARTNER'S DISSOCIATION
14

- 15 31. A partner is dissociated from a partnership upon the occurrence
16 of any of the following events:
- 17 a. The partnership's having notice of the partner's express will to
18 withdraw as a partner or on a later date specified by the partner;
- 19 b. An event agreed to in the partnership agreement as causing the
20 partner's dissociation;
- 21 c. The partner's expulsion pursuant to the partnership agreement;
- 22 d. The partner's expulsion by the unanimous vote of the other
23 partners if:
- 24 (1) it is unlawful to carry on the partnership business with that
25 partner;
- 26 (2) there has been a transfer of all or substantially all of that
27 partner's transferable interest in the partnership, other than a transfer
28 for security purposes, or a court order charging the partner's interest,
29 which has not been foreclosed;
- 30 (3) within 90 days after the partnership notifies a corporate partner
31 that it will be expelled because it has filed a certificate of dissolution
32 or the equivalent, its charter has been revoked, or its right to conduct
33 business has been suspended by the jurisdiction of its incorporation,
34 there is no revocation of the certificate of dissolution or no
35 reinstatement of its charter or its right to conduct business; or
- 36 (4) a partnership that is a partner has been dissolved and its
37 business is being wound up;
- 38 e. On application by the partnership or another partner, the
39 partner's expulsion by judicial determination because:
- 40 (1) the partner engaged in wrongful conduct that adversely and
41 materially affected the partnership business;
- 42 (2) the partner willfully or persistently committed a material breach
43 of the partnership agreement or of a duty owed to the partnership or
44 the other partners under section 24 of this act; or
- 45 (3) the partner engaged in conduct relating to the partnership
46 business which makes it not reasonably practicable to carry on the
47 business in partnership with the partner;

- 1 f. The partner's:
- 2 (1) becoming a debtor in bankruptcy;
- 3 (2) executing an assignment for the benefit of creditors;
- 4 (3) seeking, consenting to, or acquiescing in the appointment of a
- 5 trustee, receiver, or liquidator of that partner or of all or substantially
- 6 all of that partner's property; or
- 7 (4) failing, within 90 days after the appointment, to have vacated
- 8 or stayed the appointment of a trustee, receiver, or liquidator of the
- 9 partner or of all or substantially all of the partner's property obtained
- 10 without the partner's consent or acquiescence, or failing within 90
- 11 days after the expiration of a stay to have the appointment vacated;
- 12 g. In the case of a partner who is an individual:
- 13 (1) the partner's death;
- 14 (2) the appointment of a guardian or general conservator for the
- 15 partner; or
- 16 (3) a judicial determination that the partner has otherwise become
- 17 incapable of performing the partner's duties under the partnership
- 18 agreement;
- 19 h. In the case of a partner that is a trust or is acting as a partner by
- 20 virtue of being a trustee of a trust, distribution of the trust's entire
- 21 transferable interest in the partnership, but not merely by reason of the
- 22 substitution of a successor trustee;
- 23 i. In the case of a partner that is an estate or is acting as a partner
- 24 by virtue of being a personal representative of an estate, distribution
- 25 of the estate's entire transferable interest in the partnership, but not
- 26 merely by reason of the substitution of a successor personal
- 27 representative; or
- 28 j. Termination of a partner who is not an individual, partnership,
- 29 corporation, trust, or estate.
- 30
- 31 32. a. A partner has the power to dissociate at any time, rightfully
- 32 or wrongfully, by express will pursuant to subsection a. of section 31
- 33 of this act.
- 34 b. A partner's dissociation is wrongful only if:
- 35 (1) it is in breach of an express provision of the partnership
- 36 agreement; or
- 37 (2) in the case of a partnership for a definite term or particular
- 38 undertaking, before the expiration of the term or the completion of the
- 39 undertaking:
- 40 (a) the partner withdraws by express will, unless the withdrawal
- 41 follows within 90 days after another partner's dissociation by death or
- 42 otherwise under subsections f. through j. of section 31 of this act or
- 43 wrongful dissociation under this subsection;
- 44 (b) the partner is expelled by judicial determination under
- 45 subsection e. of section 31 of this act;
- 46 (c) the partner is dissociated by becoming a debtor in bankruptcy;
- 47 or

1 (d) in the case of a partner who is not an individual, trust other
2 than a business trust, or estate, the partner is expelled or otherwise
3 dissociated because it willfully dissolved or terminated.

4 c. A partner who wrongfully dissociates is liable to the partnership
5 and to the other partners for damages caused by the dissociation. The
6 liability is in addition to any other obligation of the partner to the
7 partnership or to the other partners.

8
9 33. a. If a partner's dissociation results in a dissolution and
10 winding up of the partnership business, Article 8 of this act applies;
11 otherwise, Article 7 of this act applies.

12 b. Upon a partner's dissociation:

13 (1) the partner's right to participate in the management and
14 conduct of the partnership business terminates, except as otherwise
15 provided in section 41 of this act;

16 (2) the partner's duty of loyalty under paragraph (3) of subsection
17 b. of section 24 of this act terminates; and

18 (3) the partner's duty of loyalty under paragraphs (1) and (2) of
19 subsection b. and duty of care under subsection c. of section 24 of this
20 act continue only with regard to matters arising and events occurring
21 before the partner's dissociation, unless the partner participates in
22 winding up the partnership's business pursuant to section 41 of this
23 act.

24
25 ARTICLE 7. PARTNER'S DISSOCIATION WHEN
26 BUSINESS NOT WOUND UP
27

28
29 34. a. If a partner is dissociated from a partnership without
30 resulting in a dissolution and winding up of the partnership business
31 under section 39 of this act, except as otherwise provided in the
32 partnership agreement, the partnership shall cause the dissociated
33 partner's interest in the partnership to be purchased for ¹[its adjusted
34 fair value] a buyout price¹ as determined pursuant to subsection b. of
35 this section.

36 b. As used in subsection a. of this section, ¹["adjusted fair value"]
37 "buyout price"¹ means the fair value as of the date of withdrawal based
38 upon the right to share in distributions from the partnership¹[, less all
39 applicable valuation discounts,]¹ unless the partnership agreement
40 provides for another ¹[adjusted]¹ fair value formula. ¹[For purposes
41 of computing adjusted fair value, "all applicable valuation discounts"
42 shall include discounts for lack of liquidity, relative size of holding,
43 absence of any trading market and comparable factors.]¹

44 c. Damages for wrongful dissociation under subsection b. of
45 section 32 of this act, and all other amounts owing, whether or not
46 presently due, from the dissociated partner to the partnership, shall be

1 offset against the buyout price. Interest shall be paid from the date the
2 amount owed becomes due to the date of payment.

3 d. A partnership shall indemnify a dissociated partner whose
4 interest is being purchased against all partnership liabilities, whether
5 incurred before or after the dissociation, except liabilities incurred by
6 an act of the dissociated partner under section 35 of this act.

7 e. If no agreement for the purchase of a dissociated partner's
8 interest is reached within 120 days after a written demand for payment,
9 the partnership shall pay, or cause to be paid, in cash to the dissociated
10 partner the amount the partnership estimates to be the buy out price
11 and accrued interest, reduced by any offsets and accrued interest under
12 subsection c. of this section.

13 f. If a deferred payment is authorized under subsection h. of this
14 section, the partnership may tender a written offer to pay the amount
15 it estimates to be the buy out price and accrued interest, reduced by
16 any offsets under subsection c. of this section, stating the time of
17 payment, the amount and type of security for payment, and the other
18 terms and conditions of the obligation.

19 g. The payment or tender required by subsection e. or f. of this
20 section shall be accompanied by the following:

21 (1) a statement of partnership assets and liabilities as of the date of
22 dissociation;

23 (2) the latest available partnership balance sheet and income
24 statement, if any;

25 (3) an explanation of how the estimated amount of the payment
26 was calculated; and

27 (4) written notice that the payment is in full satisfaction of the
28 obligation to purchase unless, within 120 days after the written notice,
29 the dissociated partner commences an action to determine the buy out
30 price, any offsets under subsection c. of this section, or other terms of
31 the obligation to purchase.

32 h. A partner who wrongfully dissociates before the expiration of a
33 definite term or the completion of a particular undertaking is not
34 entitled to payment of any portion of the buy out price until the
35 expiration of the term or completion of the undertaking, unless the
36 partner establishes to the satisfaction of the court that earlier payment
37 will not cause undue hardship to the business of the partnership. A
38 deferred payment shall be adequately secured and bear interest.

39 i. A dissociated partner may maintain an action against the
40 partnership, pursuant to subparagraph (b) of paragraph (2) of
41 subsection b. of section 25 of this act, to determine the buy out price
42 of that partner's interest, any offsets under subsection c. of this
43 section, or other terms of the obligation to purchase. The action shall
44 be commenced within 120 days after the partnership has tendered
45 payment or an offer to pay or within one year after written demand for
46 payment if no payment or offer to pay is tendered. The court shall

1 determine the buy out price of the dissociated partner's interest, any
2 offset due under subsection c. of this section, and accrued interest, and
3 enter judgment for any additional payment or refund. If deferred
4 payment is authorized under subsection h. of this section, the court
5 shall also determine the security for payment and other terms of the
6 obligation to purchase. The court may assess reasonable attorney's
7 fees and the fees and expenses of appraisers or other experts for a
8 party to the action, in amounts the court finds equitable, against a
9 party that the court finds acted arbitrarily, vexatiously, or not in good
10 faith. The finding shall be based on the partnership's failure to tender
11 payment or an offer to pay or to comply with subsection g. of this
12 section.

13

14 35. a. For two years after a partner dissociates without resulting
15 in a dissolution and winding up of the partnership business, the
16 partnership, including a surviving partnership under Article 9 of this
17 act, is bound by an act of the dissociated partner which would have
18 bound the partnership under section 13 of this act before dissociation
19 only if at the time of entering into the transaction the other party:

20 (1) reasonably believed that the dissociated partner was then a
21 partner;

22 (2) did not have notice of the partner's dissociation; and

23 (3) is not deemed to have had knowledge under subsection e. of
24 section 15 or notice under subsection c. of section 37 of this act.

25 b. A dissociated partner is liable to the partnership for any damage
26 caused to the partnership arising from an obligation incurred by the
27 dissociated partner after dissociation for which the partnership is liable
28 under subsection a. of this section.

29

30 36. a. A partner's dissociation does not of itself discharge the
31 partner's liability for a partnership obligation incurred before
32 dissociation. A dissociated partner is not liable for a partnership
33 obligation incurred after dissociation, except as otherwise provided in
34 subsection b. of this section.

35 b. A partner who dissociates without resulting in a dissolution and
36 winding up of the partnership business is liable as a partner to the
37 other party in a transaction entered into by the partnership, or a
38 surviving partnership under Article 9 of this act, within two years after
39 the partner's dissociation, only if the partner is liable for the obligation
40 under section 18 of this act and at the time of entering into the
41 transaction the other party:

42 (1) reasonably believed that the dissociated partner was then a
43 partner;

44 (2) did not have notice of the partner's dissociation; and

45 (3) is not deemed to have had knowledge under subsection e. of
46 section 15 or notice under subsection c. of section 37 of this

1 act.

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

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

9

10 37. a. A dissociated partner or the partnership may file a statement
11 of dissociation stating the name of the partnership and that the partner
12 is dissociated from the partnership.

13 b. A statement of dissociation is a limitation on the authority of a
14 dissociated partner for the purposes of subsections d. and e. of section
15 15 of this act.

16 c. For the purposes of paragraph (3) of subsection a. of section 35
17 and paragraph (3) of subsection b. of section 36 of this act, a person
18 not a partner is deemed to have notice of the dissociation 90 days after
19 the statement of dissociation is filed.

20

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

25

26 **ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS**

27

28 39. A partnership is dissolved, and its business shall be wound up,
29 only upon the occurrence of any of the following events:

30 a. In a partnership at will, the partnership's having notice from a
31 partner, other than a partner who is dissociated under subsections b.
32 through j. of section 31 of this act, of that partner's express will to
33 withdraw as a partner, or on a later date specified by the partner,
34 unless the partnership agreement provides that no dissolution occurs
35 until 90 days after the partnership having received notice of a partner's
36 express will to withdraw as a partner, a majority in interest of the
37 remaining parties, including partners who have rightfully dissociated
38 pursuant to subparagraph (a) of paragraph (2) of subsection b. of
39 section 32 of this act, agree to continue the partnership;

40 b. In a partnership for a definite term or particular undertaking:

41 (1) the expiration of 90 days after a partner's dissociation by death
42 or otherwise under subsections f. through j. of section 31 of this act
43 or wrongful dissociation under subsection b. of section 32 of this act,
44 unless before that time a majority in interest of the remaining partners,
45 including partners who have rightfully dissociated pursuant to
46 subparagraph (a) of paragraph (2) of subsection b. of section 32 of this

1 act, agree to continue the partnership;
2 (2) the express will of all of the partners to wind up the partnership
3 business; or
4 (3) the expiration of the term or the completion of the undertaking;
5 c. An event agreed to in the partnership agreement resulting in the
6 winding up of the partnership business;
7 d. An event that makes it unlawful for all or substantially all of the
8 business of the partnership to be continued, but a cure of illegality
9 within 90 days after notice to the partnership of the event is effective
10 retroactively to the date of the event for purposes of this section;
11 e. On application by a partner, a judicial determination that:
12 (1) the economic purpose of the partnership is likely to be
13 unreasonably frustrated;
14 (2) another partner has engaged in conduct relating to the
15 partnership business which makes it not reasonably practicable to carry
16 on the business in partnership with that partner; or
17 (3) it is not otherwise reasonably practicable to carry on the
18 partnership business in conformity with the partnership agreement; or
19 f. On application by a transferee of a partner's transferable interest,
20 a judicial determination that it is equitable to wind up the partnership
21 business:
22 (1) after the expiration of the term or completion of the
23 undertaking, if the partnership was for a definite term or particular
24 undertaking at the time of the transfer or entry of the charging order
25 that gave rise to the transfer; or
26 (2) at any time, if the partnership was a partnership at will at the
27 time of the transfer or entry of the charging order that gave rise to the
28 transfer.
29
30 40. a. Subject to subsection b. of this section, a partnership
31 continues after dissolution only for the purpose of winding up its
32 business. The partnership is terminated when the winding up of its
33 business is completed.
34 b. At any time after the dissolution of a partnership and before the
35 winding up of its business is completed, all of the partners, including
36 any dissociating partner other than a wrongfully dissociating partner,
37 may waive the right to have the partnership's business wound up and
38 the partnership terminated. In that event:
39 (1) the partnership resumes carrying on its business as if
40 dissolution had never occurred, and any liability incurred by the
41 partnership or a partner after the dissolution and before the waiver is
42 determined as if dissolution had never occurred; and
43 (2) the rights of a third party accruing under subsection a. of
44 section 42 of this act or arising out of conduct in reliance on the
45 dissolution before the third party knew or received a notification of the
46 waiver shall not be adversely affected.

1 41. a. After dissolution, a partner who has not wrongfully
2 dissociated may participate in winding up the partnership's business,
3 but on application of any partner, partner's legal representative, or
4 transferee, a court of competent jurisdiction, for good cause shown,
5 may order judicial supervision of the winding up.

6 b. The legal representative of the last surviving partner may wind
7 up a partnership's business.

8 c. A person winding up a partnership's business shall preserve the
9 partnership business or property as a going concern for a reasonable
10 time, prosecute and defend actions and proceedings, whether civil,
11 criminal, or administrative, settle and close the partnership's business,
12 dispose of and transfer the partnership's property, discharge the
13 partnership's liabilities, distribute the assets of the partnership
14 pursuant to section 45 of this act, settle disputes by mediation or
15 arbitration, and perform other necessary acts.

16
17 42. Subject to section 43 of this act, a partnership is bound by a
18 partner's act after dissolution that:

19 a. Is appropriate for winding up the partnership business; or

20 b. Would have bound the partnership under section 13 of this act
21 before dissolution, if the other party to the transaction did not have
22 notice of the dissolution.

23
24 43. a. After dissolution, a partner who has not wrongfully
25 dissociated may file a statement of dissolution stating the name of the
26 partnership and that the partnership has dissolved and is winding up its
27 business.

28 b. A statement of dissolution cancels a filed statement of
29 partnership authority for the purposes of subsection d. of section 15
30 of this act and is a limitation on authority for the purposes of
31 subsection e. of section 15 of this act.

32 c. For the purposes of sections 13 and 42 of this act, a person not
33 a partner is deemed to have notice of the dissolution and the limitation
34 on the partners' authority as a result of the statement of dissolution 90
35 days after it is filed.

36 d. After filing and, if appropriate, recording a statement of
37 dissolution, a dissolved partnership may file and, if appropriate, record
38 a statement of partnership authority which will operate with respect to
39 a person not a partner as provided in subsections e. and f. of section
40 15 of this act in any transaction, whether or not the transaction is
41 appropriate for winding up the partnership business.

42
43 44. a. Except as otherwise provided in subsection b. of this section
44 and section 18 of this act, after dissolution a partner is liable to the
45 other partners for the partner's share of any partnership liability
46 incurred under section 42 of this act.

1 b. A partner who, with knowledge of the dissolution, incurs a
2 partnership liability under subsection b. of section 42 of this act by an
3 act that is not appropriate for winding up the partnership business is
4 liable to the partnership for any damage caused to the partnership
5 arising from the liability.

6
7 45. a. In winding up a partnership's business, the assets of the
8 partnership, including the contributions of the partners required by this
9 section, shall be applied to discharge its obligations to creditors,
10 including, to the extent permitted by law, partners who are creditors.
11 Any surplus shall be applied to pay in cash the net amount distributable
12 to partners in accordance with their right to distributions under
13 subsection b. of this section.

14 b. Each partner is entitled to a settlement of all partnership
15 accounts upon winding up the partnership business. In settling
16 accounts among the partners, profits and losses that result from the
17 liquidation of the partnership assets shall be credited and charged to
18 the partners' accounts. The partnership shall make a distribution to a
19 partner in an amount equal to any excess of the credits over the
20 charges in the partner's account. A partner shall contribute to the
21 partnership an amount equal to any excess of the charges over the
22 credits in the partner's account but excluding from the calculation
23 charges attributable to an obligation for which the partner is not
24 personally liable under section 18 of this act.

25 c. If a partner fails to contribute the full amount required under
26 subsection b. of this section, all of the other partners shall contribute,
27 in the proportions in which those partners share partnership losses, the
28 additional amount necessary to satisfy the partnership obligations for
29 which they are personally liable under section 18 of this act. A partner
30 or partner's legal representative may recover from the other partners
31 any contributions the partner makes to the extent the amount
32 contributed exceeds that partner's share of the partnership obligations
33 for which the partner is personally liable under section 18 of this act.

34 d. After the settlement of accounts, each partner shall contribute,
35 in the proportion in which the partner shares partnership losses, the
36 amount necessary to satisfy partnership obligations that were not
37 known at the time of the settlement and for which the partner is
38 personally liable under section 18 of this act.

39 e. The estate of a deceased partner is liable for the partner's
40 obligation to contribute to the partnership.

41 f. An assignee for the benefit of creditors of a partnership or a
42 partner, or a person appointed by a court to represent creditors of a
43 partnership or a partner, may enforce a partner's obligation to
44 contribute to the partnership.

1 ARTICLE 9. CONVERSIONS AND MERGERS

2
3 46. a. As used in this section, "other business entity" means a
4 business corporation, partnership, ¹limited partnership¹ or a limited
5 liability company.

6 b. (1) Pursuant to an agreement of merger or consolidation, a
7 partnership may merge or consolidate with or into one or more
8 partnerships or other business entities formed or organized under the
9 laws of this State or any other state or the United States or any foreign
10 country or other foreign jurisdiction, with such partnership or other
11 business entity as the agreement shall provide being the surviving or
12 resulting partnership or other business entity. Unless otherwise
13 provided in the partnership agreement, a merger or consolidation shall
14 be approved by all partners of each partnership which is to merge or
15 consolidate. In connection with a merger or consolidation hereunder,
16 rights or securities of, or interests in, a partnership or other business
17 entity which is a constituent party to the merger or consolidation may
18 be exchanged for or converted into cash, property, rights or securities
19 of, or interests in, the surviving or resulting partnership or other
20 business entity or, in addition to or in lieu thereof, may be exchanged
21 for or converted into cash, property, rights or securities of, or interests
22 in, a partnership or other business entity which is not the surviving or
23 resulting partnership or other business entity in the merger or
24 consolidation. Notwithstanding prior approval, an agreement of
25 merger or consolidation may be terminated or amended pursuant to a
26 provision for such termination or amendment contained in the
27 agreement of merger or consolidation.

28 (2) A partnership may not merge or consolidate with any other
29 business entity if authority for such merger or consolidation is not
30 granted by the laws of the jurisdiction under which the other business
31 entity is organized.

32 (3) With respect to the merger or consolidation of partnerships,
33 each partnership shall comply with the provisions of this section and
34 each other business entity shall comply with the applicable provisions
35 of the laws of the jurisdiction under which it is organized.

36 c. If a partnership merges or consolidates under this section, the
37 partnership or other business entity surviving or resulting in, or from,
38 the merger or consolidation, shall file a certificate of merger or
39 consolidation in the office of the Division of Commercial Recording
40 in the Department of Treasury. The Director of the Division of
41 Commercial Recording shall, upon filing, forward a copy of the
42 certificate of merger or consolidation to the Director of the Division
43 of Taxation. The certificate of merger or consolidation shall state:

44 (1) The name and jurisdiction of formation or organization of each
45 of the partnerships or other business entities which is to merge or
46 consolidate;

1 (2) That an agreement of merger or consolidation has been
2 approved and executed by each of the partnerships or other business
3 entities which is to merge or consolidate;

4 (3) The name of the surviving or resulting partnership or other
5 business entity;

6 (4) The future effective date or time (which shall be a date or time
7 certain) of the merger or consolidation if it is not to be effective upon
8 the filing of the certificate of merger or consolidation;

9 (5) That the agreement of merger or consolidation is on file at a
10 place of business of the surviving or resulting partnership or other
11 business entity, and shall state the address thereof;

12 (6) That a copy of the agreement of merger or consolidation shall
13 be furnished by the surviving or resulting partnership or other business
14 entity, on request and without cost, to any member of any partnership
15 or any person holding an interest in any other business entity which is
16 to merge or consolidate; and

17 (7) If the surviving or resulting entity is not a partnership or other
18 business entity organized under the laws of this State, a statement that
19 such surviving or resulting other business entity agrees that it may be
20 served with process in this State in any action, suit or proceeding for
21 the enforcement of any obligation of any partnership which is to merge
22 or consolidate, irrevocably appointing the State Treasurer as its agent
23 to accept service of process in any such action, suit or proceeding and
24 specifying the address to which a copy of such process shall be mailed
25 to it by the State Treasurer.

26 d. Unless a future effective date or time is provided in a certificate
27 of merger or consolidation, in which event a merger or consolidation
28 shall be effective at any such future effective date or time, a merger or
29 consolidation shall be effective upon the filing in the office of the
30 Division of Commercial Recording of a certificate of merger or
31 consolidation.

32 e. A certificate of merger or consolidation shall act as a certificate
33 of cancellation for a partnership which is not the surviving or resulting
34 entity in the merger or consolidation.

35 f. An agreement of merger or consolidation approved in
36 accordance with subsection b. of this section may (1) effect any
37 amendment to the partnership agreement or (2) effect the adoption of
38 a new partnership agreement for a partnership if it is the surviving or
39 resulting partnership in the merger or consolidation. Any amendment
40 to a partnership agreement or adoption of a new partnership
41 agreement made pursuant to this subsection shall be effective at the
42 time or date of the merger or consolidation. The provisions of this
43 subsection shall not be construed to limit the accomplishment of a
44 merger or of any of the matters referred to herein by any other means
45 provided for in a partnership agreement or other agreement or as
46 otherwise permitted by law, including that the partnership agreement

1 of any constituent partnership to the merger or consolidation
2 (including a partnership formed for the purpose of consummating a
3 merger or consolidation) shall be the partnership agreement of the
4 surviving or resulting partnership.

5 g. When any merger or consolidation becomes effective under this
6 section, for all purposes of the laws of this State, all of the rights,
7 privileges and powers of each of the partnerships and other business
8 entities that have merged or consolidated, and all property, real,
9 personal and mixed, and all debts due to any of those partnerships and
10 other business entities, as well as all other things and causes of action
11 belonging to each of those partnerships and other business entities,
12 shall be vested in the surviving or resulting partnership or other
13 business entity, and shall thereafter be the property of the surviving or
14 resulting partnership or other business entity as they were of each of
15 the partnerships and other business entities that have merged or
16 consolidated, and the title to any real property vested by deed or
17 otherwise, under the laws of this State, in any of those partnerships
18 and other business entities, shall not revert or in any way be impaired
19 by reason of this act; but all rights of creditors and all liens upon any
20 property of any of those partnerships and other business entities shall
21 be preserved unimpaired, and all debts, liabilities and duties of each of
22 those partnerships and other business entities that have merged or
23 consolidated shall attach to the surviving or resulting partnership or
24 other business entity, and may be enforced against it to the same
25 extent as if the debts, liabilities and duties had been incurred or
26 contracted by it. Unless otherwise agreed, a merger or consolidation
27 of a partnership, including a partnership which is not the surviving or
28 resulting entity in the merger or consolidation, shall not require the
29 dissolution of the partnership pursuant to section 39 of this act or
30 require the partnership to pay its liabilities and distribute its assets
31 pursuant to section 45 of this act.

32 33 ARTICLE 10. LIMITED LIABILITY PARTNERSHIP

34
35 47. a. A partnership may become a limited liability partnership
36 pursuant to this section.

37 b. The terms and conditions on which a partnership becomes a
38 limited liability partnership shall be approved by the vote necessary to
39 amend the partnership agreement except, in the case of a partnership
40 agreement that expressly considers obligations to contribute to the
41 partnership, the vote necessary to amend those provisions.

42 c. After the approval required by subsection b. of this section, a
43 partnership may become a limited liability partnership by filing a
44 statement of qualification ¹in the office of the Division of Commercial
45 Recording in the Department of Treasury¹. The statement shall
46 contain:

- 1 (1) the name of the partnership;
- 2 (2) the street address of the partnership's chief executive office
- 3 and, if different, the street address of an office in this State, if any;
- 4 (3) if the partnership does not have an office in this State, the name
- 5 and street address of the partnership's agent for service of process;
- 6 (4) a statement that the partnership elects to be a limited liability
- 7 partnership; and

8 (5) a deferred effective date, if any.

9 d. The agent of a limited liability partnership for service of process

10 shall be an individual who is a resident of this State or other person

11 authorized to do business in this State.

12 e. The status of a partnership as a limited liability partnership is

13 effective on the later of the filing of the statement or a date specified

14 in the statement. The status remains effective, regardless of changes

15 in the partnership, until it is canceled pursuant to subsection d. of

16 section 6 of this act or revoked pursuant to section 49 of this act.

17 f. The status of a partnership as a limited liability partnership and

18 the liability of its partners is not affected by errors or later changes in

19 the information required to be contained in the statement of

20 qualification under subsection c. of this section.

21 g. The filing of a statement of qualification establishes that a

22 partnership has satisfied all conditions precedent to the qualification

23 of the partnership as a limited liability partnership.

24 h. An amendment or cancellation of a statement of qualification is

25 effective when it is filed or on a deferred effective date specified in the

26 amendment or cancellation.

27

28 48. The name of a limited liability partnership shall end with

29 "Registered Limited Liability Partnership", "Limited Liability

30 Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".

31

32 49. a. A limited liability partnership, and a foreign limited liability

33 partnership authorized to transact business in this State, shall file an

34 annual report in the office of the Division of Commercial Recording in

35 the Department of the Treasury which contains:

36 (1) the name of the limited liability partnership and the state or

37 other jurisdiction under whose laws the foreign limited liability

38 partnership is formed;

39 (2) the street address of the partnership's chief executive office

40 and, if different, the street address of an office of the partnership in

41 this State, if any; and

42 (3) if the partnership does not have an office in this State, the name

43 and street address of the partnership's current agent for service of

44 process.

45 b. An annual report shall be filed each year following the calendar

46 year in which a partnership files a statement of qualification or a

1 foreign partnership becomes authorized to transact business in this
2 State.

3 c. The State Treasurer may revoke the statement of qualification
4 of a partnership that fails to file an annual report when due or pay the
5 required filing fee. To do so, the State Treasurer shall provide the
6 partnership at least 60 days' written notice of intent to revoke the
7 statement. The notice shall be mailed to the partnership at its chief
8 executive office set forth in the last filed statement of qualification or
9 annual report. The notice shall specify the annual report that has not
10 been filed, the fee that has not been paid, and the effective date of the
11 revocation. The revocation is not effective if the annual report is filed
12 and the fee is paid before the effective date of the revocation.

13 d. A revocation under subsection c. of this section only affects a
14 partnership's status as a limited liability partnership and is not an event
15 of dissolution of the partnership.

16 e. A partnership whose statement of qualification has been revoked
17 may apply to the Division of Commercial Recording in the Department
18 of the Treasury for reinstatement within two years after the effective
19 date of the revocation. The application shall state:

20 (1) the name of the partnership and the effective date of the
21 revocation; and

22 (2) that the ground for revocation either did not exist or has been
23 corrected.

24 f. A reinstatement under subsection e. of this section relates back
25 to and takes effect as of the effective date of the revocation, and the
26 partnership's status as a limited liability partnership continues as if the
27 revocation had never occurred.

28

29 ARTICLE 11. FOREIGN LIMITED LIABILITY
30 PARTNERSHIP

31

32 50. a. The law under which a foreign limited liability partnership
33 is formed governs relations among the partners and between the
34 partners and the partnership and the liability of partners for obligations
35 of the partnership.

36 b. A foreign limited liability partnership shall not be denied a
37 statement of foreign qualification by reason of any difference between
38 the law under which the partnership was formed and the law of this
39 State.

40 c. A statement of foreign qualification does not authorize a foreign
41 limited liability partnership to engage in any business or exercise any
42 power that a partnership may not engage in or exercise in this State as
43 a limited liability partnership.

44

45 51. a. Before transacting business in this State, a foreign limited
46 liability partnership shall file a statement of foreign qualification ¹in the
47 office of the Division of Commercial Recording in the Department of

- 1 Treasury¹. The statement shall contain:
- 2 (1) the name of the foreign limited liability partnership which
3 satisfies the requirements of the state or other jurisdiction under whose
4 law it is formed and ends with “Registered Limited Liability
5 Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”,
6 “RLLP,” or “LLP”;
- 7 (2) the street address of the partnership’s chief executive office
8 and, if different, the street address of an office of the partnership in
9 this State, if any;
- 10 (3) if there is no office of the partnership in this State, the name
11 and street address of the partnership’s agent for service of process;
12 and
- 13 (4) a deferred effective date, if any.
- 14 b. The agent of a foreign limited liability company for service of
15 process shall be an individual who is a resident of this State or other
16 person authorized to do business in this State.
- 17 c. The status of a partnership as a foreign limited liability
18 partnership is effective on the later of the filing of the statement of
19 foreign qualification or a date specified in the statement. The status
20 remains effective, regardless of changes in the partnership, until it is
21 canceled pursuant to subsection d. of section 6 of this act or revoked
22 pursuant to section 49 of this act.
- 23 d. An amendment or cancellation of a statement of foreign
24 qualification is effective when it is filed or on a deferred effective date
25 specified in the amendment or cancellation.
- 26
- 27 52. a. A foreign limited liability partnership transacting business
28 in this State shall not maintain an action or proceeding in this State
29 unless it has in effect a statement of foreign qualification.
- 30 b. The failure of a foreign limited liability partnership to have in
31 effect a statement of foreign qualification shall not impair the validity
32 of a contract or act of the foreign limited liability partnership or
33 preclude it from defending an action or proceeding in this State.
- 34 c. A limitation on personal liability of a partner shall not be waived
35 solely by transacting business in this State without a statement of
36 foreign qualification.
- 37 d. If a foreign limited liability partnership transacts business in this
38 State without a statement of foreign qualification, the State Treasurer
39 shall be its agent for service of process with respect to a right of action
40 arising out of the transaction of business in this State.
- 41
- 42 53. a. Activities of a foreign limited liability partnership which do
43 not constitute transacting business for the purpose of this sections 50
44 through 53 of this act include:
- 45 (1) maintaining, defending, or settling an action or proceeding;
46 (2) holding meetings of its partners or carrying on any other
47 activity concerning its internal affairs;

- 1 (3) maintaining bank accounts;
- 2 (4) maintaining offices or agencies for the transfer, exchange and
- 3 registration of the partnership's own securities or maintaining trustees
- 4 or depositories with respect to those securities;
- 5 (5) selling through independent contractors;
- 6 (6) soliciting or obtaining orders, whether by mail or through
- 7 employees or agents or otherwise, if the orders require acceptance
- 8 outside this State before they become contracts;
- 9 (7) creating or acquiring indebtedness, with or without a mortgage,
- 10 or other security interest in property;
- 11 (8) collecting debts or foreclosing mortgages or other security
- 12 interests in property securing the debts, and holding, protecting, and
- 13 maintaining property so acquired;
- 14 (9) conducting an isolated transaction that is completed within 30
- 15 days and is not one in the course of similar transactions; and
- 16 (10) transacting business in interstate commerce.

17 b. For purposes of sections 50 through 53 of this act, the
18 ownership in this State of income-producing real property or tangible
19 personal property, other than property excluded under subsection a.
20 of this section, constitutes transacting business in this State.

21 c. This section does not apply in determining the contacts or
22 activities that may subject a foreign limited liability partnership to
23 service of process, taxation, or regulation under any other law of this
24 State.

25
26 54. The Attorney General may maintain an action to restrain a
27 foreign limited liability partnership from transacting business in this
28 State in violation of sections 50 through 53 of this act.

29
30 55. Sections 1 through 56 of this act shall be applied and construed
31 to effectuate its general purpose to make uniform the law with respect
32 to the subject of this act among States enacting it.

33
34 56. Sections 1 through 56 of this act do not affect an action or
35 proceeding commenced or right accrued before this act takes effect,
36 including the right of any partner in a limited liability partnership
37 formed prior to the effective date of this act.

38
39 57. Section 5 of P.L.1983, c.489 (C.42:2A-5) is amended to read
40 as follows:

41 5. Definitions. As used in this chapter, unless the context
42 otherwise requires:

43 a. "Certificate of limited partnership" and "partnership certificate"
44 mean the certificate referred to in section 13 of P.L.1983, c.489
45 (C.42:2A-14) as it may be corrected pursuant to section 48 of
46 P.L.1988, c.130 (C.42:2A-16.1) or amended or restated from time to
47 time.

- 1 b. "Contribution" means any cash, property, services rendered, or
2 a promissory note or other binding obligation to contribute cash or
3 property or to perform services, which a partner contributes to a
4 limited partnership in his capacity as a partner.
- 5 c. "Event of withdrawal of a general partner" means an event that
6 causes a person to cease to be a general partner as provided in this
7 chapter, or in the partnership agreement.
- 8 d. "Foreign limited partnership" means a partnership formed under
9 the laws of any state other than this State and having as partners one
10 or more general partners and one or more limited partners.
- 11 e. "General partner" means a person who has been admitted to a
12 limited partnership as a general partner in accordance with the
13 partnership agreement and named in the certificate of limited
14 partnership as a general partner.
- 15 f. "Limited partner" means a person who has been admitted to a
16 limited partnership as a limited partner in accordance with the
17 partnership agreement.
- 18 g. "Limited partnership" and "domestic limited partnership" mean
19 a partnership formed by two or more persons under the laws of this
20 State and having one or more general partners and one or more limited
21 partners.
- 22 h. "Partner" means a limited or general partner.
- 23 i. "Partnership agreement" means any valid agreement, written or
24 oral, of the partners as to the affairs of a limited partnership and the
25 conduct of its business.
- 26 j. "Partnership interest" means a partner's share of the profits and
27 losses of a limited partnership and the right to receive distributions of
28 partnership assets.
- 29 k. "Person" means a natural person, partnership, limited
30 partnership (domestic or foreign), limited liability company or other
31 limited liability entity, trust, estate, association, or corporation.
- 32 l. "State" means a state, territory, or possession of the United
33 States, the District of Columbia, or the Commonwealth of Puerto
34 Rico.
- 35 m. Unless otherwise provided in the partnership certificate or in the
36 partnership agreement, "in interest" shall mean a vote or percentage of
37 a limited partner (in a class of limited partners) equal to the portion
38 that partner's share in contributions to the partnership bears to the
39 share in contributions to the partnership of all limited partners (of that
40 class).
- 41 n. "Principal office" means the place designated in the partnership
42 agreement or the place of business of the limited partnership where the
43 chief or principal affairs and business of the partnership are transacted.
44 (cf: P.L.1988, c.130, s.2)
- 45
- 46 58. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read
47 as follows:

1 2. As used in this act unless the context otherwise requires:

2 "Bankruptcy" means an event that causes a person to become
3 dissociated from a limited liability company as provided in section 24
4 of this act.

5 "Certificate of formation" means the certificate referred to in
6 section 11 of this act, and the certificate as amended.

7 "Contribution" means any cash, property, services rendered or a
8 promissory note or other obligation to contribute cash or property or
9 to perform services, which a person contributes to a limited liability
10 company in his capacity as a member; provided however, that services
11 rendered and obligations to perform services are contributions only to
12 the extent designated as contributions in the operating agreement.

13 "Foreign limited liability company" means a limited liability
14 company formed under the laws of any state or under the laws of any
15 foreign country or other foreign jurisdiction and denominated as such
16 under the laws of such state or foreign country or other foreign
17 jurisdiction.

18 "Limited liability company" and "domestic limited liability
19 company" means a limited liability company formed under the laws of
20 this State and having one or more members.

21 "Limited liability company interest" means a member's share of the
22 profits and losses of a limited liability company and a member's right
23 to receive distributions of the limited liability company's assets.

24 "Liquidating trustee" means a person carrying out the winding up
25 of a limited liability company.

26 "Manager" means a person who is named as a manager of a limited
27 liability company in, or designated as a manager of a limited liability
28 company pursuant to, an operating agreement or similar instrument
29 under which the limited liability company is formed.

30 "Member" means a person who has been admitted to a limited
31 liability company as a member as provided in section 21 of this act or,
32 in the case of a foreign limited liability company, in accordance with
33 the laws of the state or foreign country or other foreign jurisdiction
34 under which the foreign limited liability company is organized.

35 "Operating agreement" means a written agreement among the
36 members, or in the case of a limited liability company with only one
37 member, the declaration by that one member of the terms of the
38 operating agreement which shall be deemed an agreement between the
39 member and the limited liability company, as to the affairs of a limited
40 liability company and the conduct of its business.

41 "Person" means a natural person, partnership (whether general or
42 limited and whether domestic or foreign), limited liability company,
43 foreign limited liability company, trust, estate, association,
44 corporation, custodian, nominee or any other individual or entity in its
45 own or any representative capacity.

46 "State" means the District of Columbia or the Commonwealth of
47 Puerto Rico or any state, territory, possession, or other jurisdiction of

1 the United States other than this State.

2 (cf: P.L.1998, c.79, s.1)

3

4 ¹[59. Section 69 of P.L.1993, c.210 (C.42:2B-69) is amended to
5 read as follows:

6 69. a. For all purposes of taxation under the laws of this State, a
7 limited liability company formed under this act or qualified to do
8 business in this State as a foreign limited liability company with two or
9 more members shall be classified as a partnership unless classified
10 otherwise for federal income tax purposes, in which case the limited
11 liability company shall be classified in the same manner as it is
12 classified for federal income tax purposes. For all purposes of taxation
13 under the laws of this State, a member or an assignee of a member of
14 a limited liability company formed under this act or qualified to do
15 business in this State as a foreign limited liability company shall be
16 treated as a partner in a partnership unless the limited liability company
17 is classified otherwise for federal income tax purposes, in which case
18 the member or assignee of a member shall have the same status as the
19 member or assignee of a member has for federal income tax purposes.

20 b. For **[all]** purposes of taxation on gross income under the laws
21 of this State and only for those purposes, a limited liability company
22 formed under P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do
23 business in this State as a foreign limited liability company with one
24 member is disregarded as an entity separate from its owner, unless
25 classified otherwise for federal tax purposes, in which case the limited
26 liability company will be classified in the same manner as it is classified
27 for federal income tax purposes. For **[all]** purposes of taxation on
28 gross income under the laws of this State and only for those purposes,
29 the sole member or an assignee of all of the limited liability company
30 interest of the sole member of a limited liability company formed under
31 P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do business in this
32 State as a foreign limited liability company is treated as the direct
33 owner of the underlying assets of the limited liability company and of
34 its operations, unless the limited liability company is classified
35 otherwise for federal income tax purposes, in which case the member
36 or assignee of a member will have the same status as the member or
37 assignee of a member has for federal income tax purposes.

38 (cf: P.L.1998, c.79, s.13)]¹

39

40 ¹[60.] 59.¹ The following are repealed:

41 R.S.42:1-1 to 42:1-43;

42 Sections 8-12 of P.L.1995, c.96 (C.42:1-44 to 42:1-48); and

43 Section 1 of P.L.1995, c.223(C.42:1-49).

44

45 ¹[61.] 60.¹ This act shall take effect on the first business day
46 following enactment.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1140

STATE OF NEW JERSEY

DATED: SEPTEMBER 14, 2000

The Senate Judiciary Committee reports favorably Assembly Bill No. 1140 (1R).

A1140 proposes the enactment of the revised "Uniform Partnership Act (1996)" (sometimes referred to as "RUPA") as developed by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association House of Delegates.

RUPA gives supremacy to the provisions of the partnership agreement in almost all situations, and as such, is largely a series of "default rules" that govern the relations among partners in situations they have not addressed in a partnership agreement. RUPA enhances the entity treatment of partnership agreements to achieve simplicity for State law purposes, particularly in matters concerning title to partnership property.

RUPA provides stability for partnerships that have continuation agreements so that, in contrast to existing law, there are many departures or "dissociations" that do not result in a dissolution of a partnership. RUPA also includes a more extensive treatment of the fiduciary duties of partners. While RUPA continues the traditional rule that a partner is a fiduciary, it also makes clear that a partner is not required to be a disinterested trustee. Provision is made under RUPA for the legitimate pursuit of self-interest, with a counterbalancing irreducible core of fiduciary duties.

RUPA allows for the public filing of statements containing the basic information about a partnership, such as the agency authority of its partners. The filing of these statements is permissive and not mandatory. A1140 (1R) contains certain changes to the RUPA which were recommended by the review committee of the New Jersey Bar Association as follows: the definition of "person" is revised to include a partnership, a limited liability partnership or a limited liability company; the five year expiration date for statements of authority is deleted; a portion of the fiduciary duty provision is expanded to clarify that a partner who lends money to a partnership has the same right to enforce the obligation as any unrelated party; a new provision is added to treat all dissociating partners within 90 days of the dissolution of

the partnership as if they had not left early; RUPA's provision concerning the dissolution of at-will partnerships is revised to allow the partnership to continue, unless at least half of the remaining partners decide to dissolve and wind up the partnership and provide that the withdrawing partner is treated as a creditor, with recourse to the courts as such, but without the ability to obtain a court order to dissolve the partnership; and the provision concerning a charging order is amended to clarify that a charging order is the sole remedy available to a creditor of a partner.

Title 42.
Chapter 1A. (New)
Uniform Partnership
Act (1996).
§§1-56
C.42:1A-1 to
42:1A-56
§59 - Repealer
§60 - Note to §§1-59

P.L. 2000, CHAPTER 161, *approved December 7, 2000*
Assembly, No. 1140 (*First Reprint*)

1 AN ACT concerning partnerships and certain other business entities
2 and revising various parts of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Sections 1 through 56 and ¹[60] 59¹ of this act shall be known
8 and may be cited as the "Uniform Partnership Act (1996)."

9
10 ARTICLE 1. GENERAL PROVISIONS

11
12 2. As used in this act:

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

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

15 (1) an order for relief under Title 11 of the United States Code or
16 a comparable order under a successor statute of general application;
17 or

18 (2) a comparable order under federal, state, or foreign law
19 governing insolvency.

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

23 "Foreign limited liability partnership" means a partnership that:

24 (1) is formed under laws other than the laws of this State; and

25 (2) has the status of a limited liability partnership under those laws.

26 "Limited liability partnership" means a partnership that has filed a
27 statement of qualification under section 47 of this act and does not
28 have a similar statement in effect in any other jurisdiction.

29 "Partnership" means an association of two or more persons to carry
30 on as co-owners a business for profit formed under section 10 of this
31 act, predecessor law, or comparable law of another jurisdiction.

32 "Partnership agreement" means the agreement, whether written,
33 oral, or implied, among the partners concerning the partnership,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 8, 2000.

1 including amendments to the partnership agreement.

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

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

8 "Person" means an individual, corporation, business trust, estate,
9 trust, partnership, ¹limited partnerships, ¹ limited liability company, or
10 other limited liability entity, association, joint venture, government,
11 governmental subdivision, agency, or instrumentality, or any other
12 legal or commercial entity.

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

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

18 "Statement" means a statement of partnership authority under
19 section 15, a statement of denial under section 16, a statement of
20 dissociation under section 37, a statement of dissolution under section
21 43, a statement of qualification under section 47 of this act, or a
22 statement of foreign qualification under section 51 of this act, or an
23 amendment or cancellation of any of the foregoing.

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

26

27 3. a. A person knows a fact if the person has actual knowledge of
28 it.

29 b. A person has notice of a fact if the person:

30 (1) knows of it;

31 (2) has received a notification of it; or

32 (3) has reason to know it exists from all of the facts known to the
33 person at the time in question.

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

37 d. A person receives a notification when the notification:

38 (1) comes to the person's attention; or

39 (2) is duly delivered at the person's place of business or at any
40 other place held out by the person as a place for receiving
41 communications.

42 e. Except as otherwise provided in subsection f. of this section, a
43 person other than an individual knows, has notice, or receives a
44 notification of a fact for purposes of a particular transaction when the
45 individual conducting the transaction knows, has notice, or receives a
46 notification of the fact, or in any event when the fact would have been

1 brought to the individual's attention if that person had exercised
2 reasonable diligence. The person exercises reasonable diligence if it
3 maintains reasonable routines for communicating significant
4 information to the individual conducting the transaction and there is
5 reasonable compliance with the routines. Reasonable diligence does
6 not require an individual acting for the person to communicate
7 information unless the communication is part of the individual's regular
8 duties or the individual has reason to know of the transaction and that
9 the transaction would be materially affected by the information.

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

15

16 4. a. Except as otherwise provided in subsection b. of this section,
17 relations among the partners and between the partners and the
18 partnership are governed by the partnership agreement. To the extent
19 the partnership agreement does not otherwise provide, this act governs
20 relations among the partners and between the partners and the
21 partnership.

22 b. The partnership agreement shall not:

23 (1) unreasonably restrict the right of access to books and records
24 under subsection b. of section 23 of this act;

25 (2) reduce the duty of loyalty under subsection b. of section 24 or
26 subsection b. of section 33 of this act so as to permit a partner to
27 engage in conduct which is intentionally injurious to the partnership;

28 (3) unreasonably reduce the duty of care under subsection c. of
29 section 24 or paragraph (3) of subsection b. of section 33 of this act;

30 (4) vary the right of a court to expel a partner in the events
31 specified in subsection e. of section 31 of this act;

32 (5) vary the requirement to wind up the partnership business in
33 cases specified in subsection d., e. or f. of section 39 of this act;

34 (6) vary the law applicable to a limited liability partnership under
35 subsection b. of section 7 of this act; or

36 (7) restrict rights of third parties under this act.

37

38 5. a. Unless displaced by particular provisions of this act, the
39 principles of law and equity supplement this act.

40 b. If an obligation to pay interest arises under this act and the rate
41 is not specified, the rate of interest shall be at the rates provided by the
42 Rules Governing the Courts of the State of New Jersey for the
43 applicable period of time.

44

45 6. a. A statement may be filed in the office of the Division of
46 Commercial Recording in the Department of the Treasury. A certified

1 copy of a statement that is filed in an office in another state may be
2 filed in the office of the Division of Commercial Recording in the
3 Department of the Treasury. This statement may indicate the authority
4 of one or more particular partners with respect to any matter or class
5 of matters. In addition, either filing has the effect provided in this act
6 with respect to partnership property located in or transactions that
7 occur in this State.

8 b. A certified copy of a statement that has been filed in the office
9 of the Division of Commercial Recording in the Department of the
10 Treasury and recorded in the office of the county recording officer has
11 the effect provided for recorded statements in this act. A recorded
12 statement that is not a certified copy of a statement filed in the office
13 of the Division of Commercial Recording in the Department of the
14 Treasury does not have the effect provided for recorded statements in
15 this act.

16 c. A statement filed by a partnership shall be executed by at least
17 two partners. Other statements shall be executed by a partner or other
18 person authorized by this act. An individual who executes a statement
19 as, or on behalf of, a partner or other person named as a partner in a
20 statement shall personally declare under penalty of perjury that the
21 contents of the statement are accurate.

22 d. A person authorized by this act to file a statement may amend
23 or cancel the statement by filing an amendment or cancellation that
24 names the partnership, identifies the statement, and states the
25 substance of the amendment or cancellation.

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

31 f. The Division of Commercial Recording in the Department of the
32 Treasury may collect a fee for filing or providing a certified copy of a
33 statement. The county recording officer may collect a fee for
34 recording a statement.

35

36 7. a. Except as otherwise provided in subsection b. of this section,
37 the law of the jurisdiction in which a partnership has its chief executive
38 office governs relations among the partners and between the partners
39 and the partnership.

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

43

44 8. A partnership governed by the provisions of this act is subject
45 to any amendment to or repeal of this act.

1 ARTICLE 2. NATURE OF PARTNERSHIP

2
3 9. a. A partnership is an entity distinct from its partners.

4 b. A limited liability partnership continues to be the same entity
5 that existed before the filing of a statement of qualification under
6 section 47 of this act.

7
8 10. a. Except as otherwise provided in subsection b. of this
9 section, the association of two or more persons to carry on as
10 co-owners a business for profit forms a partnership, whether or not the
11 persons intend to form a partnership.

12 b. An association formed under a statute other than this act, a
13 predecessor statute, or a comparable statute of another jurisdiction is
14 not a partnership under this act.

15 c. In determining whether a partnership is formed, the following
16 rules apply:

17 (1) Joint tenancy, tenancy in common, tenancy by the entireties,
18 joint property, common property, or part ownership does not by itself
19 establish a partnership, even if the co-owners share profits made by the
20 use of the property.

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

24 (3) A person who receives a share of the profits of a business is
25 presumed to be a partner in the business, unless the profits were
26 received in payment:

27 (a) of a debt by installments or otherwise;

28 (b) for services as an independent contractor or of wages or other
29 compensation to an employee;

30 (c) of rent;

31 (d) of an annuity or other retirement or health benefit to a
32 beneficiary, representative, or designee of a deceased or retired
33 partner;

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

38 (f) for the sale of the goodwill of a business or other property by
39 installments or otherwise.

40
41 11. Property acquired by a partnership is property of the
42 partnership and not of the partners individually.

43
44 12. a. Property is partnership property if acquired in the name of:

45 (1) the partnership; or

46 (2) one or more partners with an indication in the instrument

1 transferring title to the property of the person's capacity as a partner
2 or of the existence of a partnership but without an indication of the
3 name of the partnership.

4 b. Property is acquired in the name of the partnership by a transfer
5 to:

6 (1) the partnership in its name; or

7 (2) one or more partners in their capacity as partners in the
8 partnership, if the name of the partnership is indicated in the
9 instrument transferring title to the property.

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

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

20

21 ARTICLE 3. RELATIONS OF PARTNERS TO
22 PERSONS DEALING WITH PARTNERSHIP

23

24 13. Subject to the effect of a statement of partnership authority
25 under section 15 of this act:

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

34 b. An act of a partner which is not apparently for carrying on in the
35 ordinary course the partnership business or business of the kind carried
36 on by the partnership binds the partnership only if the act was
37 authorized by the other partners.

38

39 14. a. Partnership property may be transferred as follows:

40 (1) subject to the effect of a statement of partnership authority
41 under section 15 of this act, partnership property held in the name of
42 the partnership may be transferred by an instrument of transfer
43 executed by a partner in the partnership name.

44 (2) partnership property held in the name of one or more partners
45 with an indication in the instrument transferring the property to them
46 of their capacity as partners or of the existence of a partnership, but

1 without an indication of the name of the partnership, may be
2 transferred by an instrument of transfer executed by the persons in
3 whose name the property is held.

4 (3) partnership property held in the name of one or more persons
5 other than the partnership, without an indication in the instrument
6 transferring the property to them of their capacity as partners or of the
7 existence of a partnership, may be transferred by an instrument of
8 transfer executed by the persons in whose name the property is held.

9 b. A partnership may recover partnership property from a
10 transferee only if it proves that execution of the instrument of initial
11 transfer did not bind the partnership under section 13 of this act and:

12 (1) as to a subsequent transferee who gave value for property
13 transferred under paragraphs (1) and (2) of subsection a. of this
14 section, proves that the subsequent transferee knew or had received a
15 notification that the person who executed the instrument of initial
16 transfer lacked authority to bind the partnership; or

17 (2) as to a transferee who gave value for property transferred
18 under paragraph (3) of subsection a. of this section, proves that the
19 transferee knew or had received a notification that the property was
20 partnership property and that the person who executed the instrument
21 of initial transfer lacked authority to bind the partnership.

22 c. A partnership may not recover partnership property from a
23 subsequent transferee if the partnership would not have been entitled
24 to recover the property, under subsection b. of this section, from any
25 earlier transferee of the property.

26 d. If a person holds all of the partners' interests in the partnership,
27 all of the partnership property vests in that person. The person may
28 execute a document in the name of the partnership to evidence vesting
29 of the property in that person and may file or record the document.

30

31 15. a. A partnership may file a statement of partnership authority,
32 which:

33 (1) shall include:

34 (a) the name of the partnership;

35 (b) the street address of its chief executive office and of one office
36 in this State, if there is one;

37 (c) the names and mailing addresses of all of the partners or of an
38 agent appointed and maintained by the partnership for the purpose of
39 subsection b. of this section; and

40 (d) the names of the partners authorized to execute an instrument
41 transferring real property held in the name of the partnership; and

42 (2) may state the authority, or limitations on the authority, of some
43 or all of the partners to enter into other transactions on behalf of the
44 partnership and any other matter.

45 b. If a statement of partnership authority names an agent, the agent
46 shall maintain a list of the names and mailing addresses of all of the

1 partners and make it available to any person on request for good cause
2 shown.

3 c. If a filed statement of partnership authority is executed pursuant
4 to subsection c. of section 6 of this act, and states the name of the
5 partnership, but does not contain all of the other information required
6 by subsection a. of this section, the statement nevertheless operates
7 with respect to a person not a partner as provided in subsections d.
8 and e. of this section.

9 d. A filed statement of partnership authority supplements the
10 authority of a partner to enter into transactions on behalf of the
11 partnership as follows:

12 (1) except for transfers of real property, a grant of authority
13 contained in a filed statement of partnership authority is conclusive in
14 favor of a person who gives value without knowledge to the contrary,
15 so long as and to the extent that a limitation on that authority is not
16 then contained in another filed statement. A filed cancellation of a
17 limitation on authority revives the previous grant of authority.

18 (2) a grant of authority to transfer real property held in the name
19 of the partnership contained in a certified copy of a filed statement of
20 partnership authority recorded in the office of the county recording
21 officer is conclusive in favor of a person who gives value without
22 knowledge to the contrary, so long as and to the extent that a certified
23 copy of a filed statement containing a limitation on that authority is
24 not then of record in the office of the county recording officer. The
25 recording in the office of the county recording officer of a certified
26 copy of a filed cancellation of a limitation on authority revives the
27 previous grant of authority.

28 e. A person not a partner is deemed to know of a limitation on the
29 authority of a partner to transfer real property held in the name of the
30 partnership if a certified copy of the filed statement containing the
31 limitation on authority is of record in the office of the county
32 recording officer.

33 f. Except as otherwise provided in subsections d. and e. of this
34 section and sections 37 and 43 of this act, a person not a partner is not
35 deemed to know of a limitation on the authority of a partner merely
36 because the limitation is contained in a filed statement.

37
38 16. A partner or other person named as a partner in a filed
39 statement of partnership authority or in a list maintained by an agent
40 pursuant to subsection b. of section 15 of this act may file a statement
41 of denial stating the name of the partnership and the fact that is being
42 denied, which may include denial of a person's authority or status as
43 a partner. A statement of denial is a limitation on authority as
44 provided in subsections d. and e. of section 15 of this act.

45

46 17. a. A partnership is liable for loss or injury caused to a person,

1 or for a penalty incurred, as a result of a wrongful act or omission, or
2 other actionable conduct, of a partner acting in the ordinary course of
3 business of the partnership or with the authority of the partnership.

4 b. If, in the course of the partnership's business or while acting
5 with the authority of the partnership, a partner receives or causes the
6 partnership to receive money or property of a person not a partner,
7 and the money or property is misapplied by a partner, the partnership
8 is liable for the loss.

9

10 18. a. Except as otherwise provided in subsections b. and c. of this
11 section, all partners are liable jointly and severally for all obligations
12 of the partnership unless otherwise agreed by the claimant or provided
13 by law.

14 b. A person admitted as a partner into an existing partnership is not
15 personally liable for any partnership obligation incurred before the
16 person's admission as a partner.

17 c. An obligation of a partnership incurred while the partnership is
18 a limited liability partnership, whether arising in contract, tort, or
19 otherwise, is solely the obligation of the partnership. A partner is not
20 personally liable, directly or indirectly, by way of contribution or
21 otherwise, for such an obligation solely by reason of being or so acting
22 as a partner. This subsection applies notwithstanding anything
23 inconsistent in the partnership agreement that existed immediately
24 before the vote required to become a limited liability partnership under
25 subsection b. of section 47 of this act.

26

27 19. a. A partnership may sue and be sued in the name of the
28 partnership.

29 b. An action may be brought against the partnership and, to the
30 extent not inconsistent with section 18 of this act, any or all of the
31 partners in the same action or in separate actions.

32 c. A judgment against a partnership is not by itself a judgment
33 against a partner. A judgment against a partnership shall not be
34 satisfied from a partner's assets unless there is also a judgment against
35 the partner.

36 d. A judgment creditor of a partner shall not levy execution against
37 the assets of the partner to satisfy a judgment based on a claim against
38 the partnership unless the partner is personally liable for the claim
39 under section 18 of this act and:

40 (1) a judgment based on the same claim has been obtained against
41 the partnership and a writ of execution on the judgment has been
42 returned unsatisfied in whole or in part;

43 (2) the partnership is a debtor in bankruptcy;

44 (3) the partner has agreed that the creditor need not exhaust
45 partnership assets;

46 (4) a court grants permission to the judgment creditor to levy

1 execution against the assets of a partner based on a finding that
2 partnership assets subject to execution are clearly insufficient to satisfy
3 the judgment, that exhaustion of partnership assets is excessively
4 burdensome, or that the grant of permission is an appropriate exercise
5 of the court's equitable powers; or

6 (5) liability is imposed on the partner by law or contract
7 independent of the existence of the partnership.

8 e. This section applies to any partnership liability or obligation
9 resulting from a representation by a partner or purported partner under
10 section 20 of this act.

11

12 20. a. If a person, by words or conduct, purports to be a partner,
13 or consents to being represented by another as a partner, in a
14 partnership or with one or more persons not partners, the purported
15 partner is liable to a person to whom the representation is made, if that
16 person, relying on the representation, enters into a transaction with the
17 actual or purported partnership. If the representation, either by the
18 purported partner or by a person with the purported partner's consent,
19 is made in a public manner, the purported partner is liable to a person
20 who relies upon the purported partnership even if the purported
21 partner is not aware of being held out as a partner to the claimant. If
22 partnership liability results, the purported partner is liable with respect
23 to that liability as if the purported partner were a partner. If no
24 partnership liability results, the purported partner is liable with respect
25 to that liability jointly and severally with any other person consenting
26 to the representation.

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

38 c. A person is not liable as a partner merely because the person is
39 named by another in a statement of partnership authority.

40 d. A person does not continue to be liable as a partner merely
41 because of a failure to file a statement of dissociation or to amend a
42 statement of partnership authority to indicate the partner's dissociation
43 from the partnership.

44 e. Except as otherwise provided in subsections a. and b. of this
45 section, persons who are not partners as to each other are not liable as
46 partners to other persons.

1 ARTICLE 4. RELATIONS OF PARTNERS
2 TO EACH OTHER AND TO PARTNERSHIP

3
4 21. a. Each partner is deemed to have an account that is:

5 (1) credited with an amount equal to the money plus the value of
6 any other property, net of the amount of any liabilities, the partner
7 contributes to the partnership and the partner's share of the partnership
8 profits; and

9 (2) charged with an amount equal to the money plus the value of
10 any other property, net of the amount of any liabilities, distributed by
11 the partnership to the partner and the partner's share of the partnership
12 losses.

13 b. Each partner is entitled to an equal share of the partnership
14 profits and is chargeable with a share of the partnership losses in
15 proportion to the partner's share of the profits.

16 c. A partnership shall reimburse a partner for payments made and
17 indemnify a partner for liabilities incurred by the partner in the
18 ordinary course of the business of the partnership or for the
19 preservation of its business or property.

20 d. A partnership shall reimburse a partner for an advance to the
21 partnership beyond the amount of capital the partner agreed to
22 contribute.

23 e. A payment or advance made by a partner which gives rise to a
24 partnership obligation under subsection c. or d. of this section
25 constitutes a loan to the partnership which accrues interest from the
26 date of the payment or advance.

27 f. Each partner has equal rights in the management and conduct of
28 the partnership business.

29 g. A partner shall use or possess partnership property only on
30 behalf of the partnership.

31 h. A partner is not entitled to remuneration for services performed
32 for the partnership, except for reasonable compensation for services
33 rendered in winding up the business of the partnership.

34 i. A person shall become a partner only with the consent of all of
35 the partners.

36 j. A difference arising as to a matter in the ordinary course of
37 business of a partnership shall be decided by a majority of the partners.
38 An act outside the ordinary course of business of a partnership and an
39 amendment to the partnership agreement shall be undertaken only with
40 the consent of all of the partners.

41 k. This section shall not affect the obligations of a partnership to
42 other persons under section 13 of this act.

43
44 22. A partner has no right to receive, and shall not be required to
45 accept, a distribution in kind.

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

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

11 c. Each partner and the partnership shall furnish to a partner, and
12 to the legal representative of a deceased partner or partner under legal
13 disability:

14 (1) without demand, any information concerning the partnership's
15 business and affairs reasonably required for the proper exercise of the
16 partner's rights and duties under the partnership agreement or this act;
17 and

18 (2) on demand, any other information concerning the partnership's
19 business and affairs, except to the extent the demand or the
20 information demanded is unreasonable or otherwise improper under
21 the circumstances.

22

23 24. a. The only fiduciary duties a partner owes to the partnership
24 and the other partners are the duty of loyalty and the duty of care set
25 forth in subsections b. and c. of this section, as those duties may be
26 clarified or limited in the partnership agreement, subject to subsection
27 b. of section 4 of this act.

28 b. A partner's duty of loyalty to the partnership and the other
29 partners is limited to the following:

30 (1) to account to the partnership and hold as trustee for it any
31 property, profit, or benefit derived by the partner in the conduct and
32 winding up of the partnership business or derived from a use by the
33 partner of partnership property, including the appropriation of a
34 partnership opportunity;

35 (2) to refrain from knowingly dealing with the partnership in the
36 conduct or winding up of the partnership business as or on behalf of
37 a party having an interest materially adverse to the partnership; and

38 (3) to refrain from actions intended to cause material injury to the
39 partnership in the conduct of the partnership business before the
40 dissolution of the partnership.

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

45 d. A partner does not violate a duty or obligation under this act or
46 under the partnership agreement merely because the partner's conduct

1 furthers the partner's own interest.

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

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

9

10 25. a. A partnership may maintain an action against a partner for
11 a breach of the partnership agreement, or for the violation of a duty to
12 the partnership, causing harm to the partnership.

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

16 (1) enforce the partner's rights under the partnership agreement;

17 (2) enforce the partner's rights under this act, including:

18 (a) the partner's rights under sections 21, 23 or 24 of this act;

19 (b) the partner's right on dissociation to have the partner's interest
20 in the partnership purchased pursuant to section 34 of this act or
21 enforce any other right under Article 6 or 7 of this act; or

22 (c) the partner's right to compel a dissolution and winding up of
23 the partnership business under section 39 of this act or enforce any
24 other right under Article 8 of this act; or

25 (3) enforce the rights and otherwise protect the interests of the
26 partner, including rights and interests arising independently of the
27 partnership relationship.

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

32

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

38 b. If the partners, or those of them who habitually acted in the
39 business during the term or undertaking, continue the business without
40 any settlement or liquidation of the partnership, they are presumed to
41 have agreed that the partnership will continue.

42

43 ARTICLE 5. TRANSFEREES AND CREDITORS
44 OF PARTNER

45

46 27. A partner is not a co-owner of partnership property and has no

1 interest in partnership property which can be transferred, either
2 voluntarily or involuntarily.

3 28. The only transferable interest of a partner in the partnership is
4 the partner's share of the profits and losses of the partnership and the
5 partner's right to receive distributions. The interest is personal
6 property.

7

8 29. a. A transfer, in whole or in part, of a partner's transferable
9 interest in the partnership:

10 (1) is permissible;

11 (2) does not by itself cause the partner's dissociation or a
12 dissolution and winding up of the partnership business; and

13 (3) does not, as against the other partners or the partnership,
14 entitle the transferee, during the continuance of the partnership, to
15 participate in the management or conduct of the partnership business,
16 to require access to information concerning partnership transactions,
17 or to inspect or copy the partnership books or records.

18 b. A transferee of a partner's transferable interest in the partnership
19 has a right:

20 (1) to receive, in accordance with the transfer, distributions to
21 which the transferor would otherwise be entitled;

22 (2) to receive upon the dissolution and winding up of the
23 partnership business, in accordance with the transfer, the net amount
24 otherwise distributable to the transferor; and

25 (3) to seek, under subsection f. of section 39 of this act, a judicial
26 determination that it is equitable to wind up the partnership business.

27 c. In a dissolution and winding up, a transferee is entitled to an
28 account of partnership transactions only from the date of the latest
29 account agreed to by all of the partners.

30 d. Upon transfer, the transferor retains the rights and duties of a
31 partner other than the interest in distributions transferred.

32 e. A partnership need not give effect to a transferee's rights under
33 this section until it has notice of the transfer.

34 f. A transfer of a partner's transferable interest in the partnership
35 in violation of a restriction on transfer contained in the partnership
36 agreement is ineffective as to a person having notice of the restriction
37 at the time of transfer.

38

39 30. a. On application by a judgment creditor of a partner or of a
40 partner's transferee, a court having jurisdiction may charge the
41 transferable interest of the judgment debtor to satisfy the judgment.
42 The court order charging the transferable interest of a partner or of a
43 partner's transferee shall be the sole remedy of a judgment creditor,
44 who shall have no right under this act or any other State law to
45 interfere with the management or to force dissolution of the
46 partnership or to seek an order of the court requiring a foreclosure

1 sale of the transferable interest. The court may appoint a receiver of
2 the share of the distributions due or to become due to the judgment
3 debtor in respect of the partnership and make all other orders,
4 directions, accounts, and inquiries the judgment debtor might have
5 made or which the circumstances of the case may require.

6 b. A charging order constitutes a right to receive distributions
7 made with respect to the judgment debtor's transferable interest in the
8 partnership.

9 c. At any time before foreclosure, an interest charged may be
10 redeemed:

11 (1) by the judgment debtor;

12 (2) with property other than partnership property, by one or more
13 of the other partners; or

14 (3) with partnership property, by one or more of the other partners
15 with the consent of all of the partners whose interests are not so
16 charged.

17 d. This act does not deprive a partner of a right under exemption
18 laws with respect to the partner's interest in the partnership.

19 e. This section provides the exclusive remedy by which a judgment
20 creditor of a partner or partner's transferee may satisfy a judgment out
21 of the judgment debtor's transferable interest in the partnership.

22

23 ARTICLE 6. PARTNER'S DISSOCIATION

24

25 31. A partner is dissociated from a partnership upon the occurrence
26 of any of the following events:

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

29 b. An event agreed to in the partnership agreement as causing the
30 partner's dissociation;

31 c. The partner's expulsion pursuant to the partnership agreement;

32 d. The partner's expulsion by the unanimous vote of the other
33 partners if:

34 (1) it is unlawful to carry on the partnership business with that
35 partner;

36 (2) there has been a transfer of all or substantially all of that
37 partner's transferable interest in the partnership, other than a transfer
38 for security purposes, or a court order charging the partner's interest,
39 which has not been foreclosed;

40 (3) within 90 days after the partnership notifies a corporate partner
41 that it will be expelled because it has filed a certificate of dissolution
42 or the equivalent, its charter has been revoked, or its right to conduct
43 business has been suspended by the jurisdiction of its incorporation,
44 there is no revocation of the certificate of dissolution or no
45 reinstatement of its charter or its right to conduct business; or

46 (4) a partnership that is a partner has been dissolved and its
47 business is being wound up;

- 1 e. On application by the partnership or another partner, the
2 partner's expulsion by judicial determination because:
- 3 (1) the partner engaged in wrongful conduct that adversely and
4 materially affected the partnership business;
- 5 (2) the partner willfully or persistently committed a material breach
6 of the partnership agreement or of a duty owed to the partnership or
7 the other partners under section 24 of this act; or
- 8 (3) the partner engaged in conduct relating to the partnership
9 business which makes it not reasonably practicable to carry on the
10 business in partnership with the partner;
- 11 f. The partner's:
- 12 (1) becoming a debtor in bankruptcy;
- 13 (2) executing an assignment for the benefit of creditors;
- 14 (3) seeking, consenting to, or acquiescing in the appointment of a
15 trustee, receiver, or liquidator of that partner or of all or substantially
16 all of that partner's property; or
- 17 (4) failing, within 90 days after the appointment, to have vacated
18 or stayed the appointment of a trustee, receiver, or liquidator of the
19 partner or of all or substantially all of the partner's property obtained
20 without the partner's consent or acquiescence, or failing within 90
21 days after the expiration of a stay to have the appointment vacated;
- 22 g. In the case of a partner who is an individual:
- 23 (1) the partner's death;
- 24 (2) the appointment of a guardian or general conservator for the
25 partner; or
- 26 (3) a judicial determination that the partner has otherwise become
27 incapable of performing the partner's duties under the partnership
28 agreement;
- 29 h. In the case of a partner that is a trust or is acting as a partner by
30 virtue of being a trustee of a trust, distribution of the trust's entire
31 transferable interest in the partnership, but not merely by reason of the
32 substitution of a successor trustee;
- 33 i. In the case of a partner that is an estate or is acting as a partner
34 by virtue of being a personal representative of an estate, distribution
35 of the estate's entire transferable interest in the partnership, but not
36 merely by reason of the substitution of a successor personal
37 representative; or
- 38 j. Termination of a partner who is not an individual, partnership,
39 corporation, trust, or estate.
- 40
- 41 32. a. A partner has the power to dissociate at any time, rightfully
42 or wrongfully, by express will pursuant to subsection a. of section 31
43 of this act.
- 44 b. A partner's dissociation is wrongful only if:
- 45 (1) it is in breach of an express provision of the partnership
46 agreement; or
- 47 (2) in the case of a partnership for a definite term or particular

1 undertaking, before the expiration of the term or the completion of the
2 undertaking:

3 (a) the partner withdraws by express will, unless the withdrawal
4 follows within 90 days after another partner's dissociation by death or
5 otherwise under subsections f. through j. of section 31 of this act or
6 wrongful dissociation under this subsection;

7 (b) the partner is expelled by judicial determination under
8 subsection e. of section 31 of this act;

9 (c) the partner is dissociated by becoming a debtor in bankruptcy;
10 or

11 (d) in the case of a partner who is not an individual, trust other
12 than a business trust, or estate, the partner is expelled or otherwise
13 dissociated because it willfully dissolved or terminated.

14 c. A partner who wrongfully dissociates is liable to the partnership
15 and to the other partners for damages caused by the dissociation. The
16 liability is in addition to any other obligation of the partner to the
17 partnership or to the other partners.

18

19 33. a. If a partner's dissociation results in a dissolution and
20 winding up of the partnership business, Article 8 of this act applies;
21 otherwise, Article 7 of this act applies.

22 b. Upon a partner's dissociation:

23 (1) the partner's right to participate in the management and
24 conduct of the partnership business terminates, except as otherwise
25 provided in section 41 of this act;

26 (2) the partner's duty of loyalty under paragraph (3) of subsection
27 b. of section 24 of this act terminates; and

28 (3) the partner's duty of loyalty under paragraphs (1) and (2) of
29 subsection b. and duty of care under subsection c. of section 24 of this
30 act continue only with regard to matters arising and events occurring
31 before the partner's dissociation, unless the partner participates in
32 winding up the partnership's business pursuant to section 41 of this
33 act.

34

35 ARTICLE 7. PARTNER'S DISSOCIATION WHEN
36 BUSINESS NOT WOUND UP

37

38

39 34. a. If a partner is dissociated from a partnership without
40 resulting in a dissolution and winding up of the partnership business
41 under section 39 of this act, except as otherwise provided in the
42 partnership agreement, the partnership shall cause the dissociated
43 partner's interest in the partnership to be purchased for ¹[its adjusted
44 fair value] a buyout price¹ as determined pursuant to subsection b. of
45 this section.

46 b. As used in subsection a. of this section, ¹["adjusted fair value"]
47 "buyout price"¹ means the fair value as of the date of withdrawal based

1 upon the right to share in distributions from the partnership¹ [, less all
2 applicable valuation discounts,]¹ unless the partnership agreement
3 provides for another ¹[adjusted]¹ fair value formula. ¹[For purposes
4 of computing adjusted fair value, "all applicable valuation discounts"
5 shall include discounts for lack of liquidity, relative size of holding,
6 absence of any trading market and comparable factors.]¹

7 c. Damages for wrongful dissociation under subsection b. of
8 section 32 of this act, and all other amounts owing, whether or not
9 presently due, from the dissociated partner to the partnership, shall be
10 offset against the buyout price. Interest shall be paid from the date the
11 amount owed becomes due to the date of payment.

12 d. A partnership shall indemnify a dissociated partner whose
13 interest is being purchased against all partnership liabilities, whether
14 incurred before or after the dissociation, except liabilities incurred by
15 an act of the dissociated partner under section 35 of this act.

16 e. If no agreement for the purchase of a dissociated partner's
17 interest is reached within 120 days after a written demand for payment,
18 the partnership shall pay, or cause to be paid, in cash to the dissociated
19 partner the amount the partnership estimates to be the buy out price
20 and accrued interest, reduced by any offsets and accrued interest under
21 subsection c. of this section.

22 f. If a deferred payment is authorized under subsection h. of this
23 section, the partnership may tender a written offer to pay the amount
24 it estimates to be the buy out price and accrued interest, reduced by
25 any offsets under subsection c. of this section, stating the time of
26 payment, the amount and type of security for payment, and the other
27 terms and conditions of the obligation.

28 g. The payment or tender required by subsection e. or f. of this
29 section shall be accompanied by the following:

30 (1) a statement of partnership assets and liabilities as of the date of
31 dissociation;

32 (2) the latest available partnership balance sheet and income
33 statement, if any;

34 (3) an explanation of how the estimated amount of the payment
35 was calculated; and

36 (4) written notice that the payment is in full satisfaction of the
37 obligation to purchase unless, within 120 days after the written notice,
38 the dissociated partner commences an action to determine the buy out
39 price, any offsets under subsection c. of this section, or other terms of
40 the obligation to purchase.

41 h. A partner who wrongfully dissociates before the expiration of a
42 definite term or the completion of a particular undertaking is not
43 entitled to payment of any portion of the buy out price until the
44 expiration of the term or completion of the undertaking, unless the
45 partner establishes to the satisfaction of the court that earlier payment
46 will not cause undue hardship to the business of the partnership. A
47 deferred payment shall be adequately secured and bear interest.

1 i. A dissociated partner may maintain an action against the
2 partnership, pursuant to subparagraph (b) of paragraph (2) of
3 subsection b. of section 25 of this act, to determine the buy out price
4 of that partner's interest, any offsets under subsection c. of this
5 section, or other terms of the obligation to purchase. The action shall
6 be commenced within 120 days after the partnership has tendered
7 payment or an offer to pay or within one year after written demand for
8 payment if no payment or offer to pay is tendered. The court shall
9 determine the buy out price of the dissociated partner's interest, any
10 offset due under subsection c. of this section, and accrued interest, and
11 enter judgment for any additional payment or refund. If deferred
12 payment is authorized under subsection h. of this section, the court
13 shall also determine the security for payment and other terms of the
14 obligation to purchase. The court may assess reasonable attorney's
15 fees and the fees and expenses of appraisers or other experts for a
16 party to the action, in amounts the court finds equitable, against a
17 party that the court finds acted arbitrarily, vexatiously, or not in good
18 faith. The finding shall be based on the partnership's failure to tender
19 payment or an offer to pay or to comply with subsection g. of this
20 section.

21

22 35. a. For two years after a partner dissociates without resulting
23 in a dissolution and winding up of the partnership business, the
24 partnership, including a surviving partnership under Article 9 of this
25 act, is bound by an act of the dissociated partner which would have
26 bound the partnership under section 13 of this act before dissociation
27 only if at the time of entering into the transaction the other party:

28 (1) reasonably believed that the dissociated partner was then a
29 partner;

30 (2) did not have notice of the partner's dissociation; and

31 (3) is not deemed to have had knowledge under subsection e. of
32 section 15 or notice under subsection c. of section 37 of this act.

33 b. A dissociated partner is liable to the partnership for any damage
34 caused to the partnership arising from an obligation incurred by the
35 dissociated partner after dissociation for which the partnership is liable
36 under subsection a. of this section.

37

38 36. a. A partner's dissociation does not of itself discharge the
39 partner's liability for a partnership obligation incurred before
40 dissociation. A dissociated partner is not liable for a partnership
41 obligation incurred after dissociation, except as otherwise provided in
42 subsection b. of this section.

43 b. A partner who dissociates without resulting in a dissolution and
44 winding up of the partnership business is liable as a partner to the
45 other party in a transaction entered into by the partnership, or a
46 surviving partnership under Article 9 of this act, within two years after
47 the partner's dissociation, only if the partner is liable for the obligation

1 under section 18 of this act and at the time of entering into the
2 transaction the other party:

3 (1) reasonably believed that the dissociated partner was then a
4 partner;

5 (2) did not have notice of the partner's dissociation; and

6 (3) is not deemed to have had knowledge under subsection e. of
7 section 15 or notice under section subsection c. of section 37 of this
8 act.

9 c. By agreement with the partnership creditor and the partners
10 continuing the business, a dissociated partner may be released from
11 liability for a partnership obligation.

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

16
17 37. a. A dissociated partner or the partnership may file a statement
18 of dissociation stating the name of the partnership and that the partner
19 is dissociated from the partnership.

20 b. A statement of dissociation is a limitation on the authority of a
21 dissociated partner for the purposes of subsections d. and e. of section
22 15 of this act.

23 c. For the purposes of paragraph (3) of subsection a. of section 35
24 and paragraph (3) of subsection b. of section 36 of this act, a person
25 not a partner is deemed to have notice of the dissociation 90 days after
26 the statement of dissociation is filed.

27

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

32

33 ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS

34

35 39. A partnership is dissolved, and its business shall be wound up,
36 only upon the occurrence of any of the following events:

37 a. In a partnership at will, the partnership's having notice from a
38 partner, other than a partner who is dissociated under subsections b.
39 through j. of section 31 of this act, of that partner's express will to
40 withdraw as a partner, or on a later date specified by the partner,
41 unless the partnership agreement provides that no dissolution occurs
42 until 90 days after the partnership having received notice of a partner's
43 express will to withdraw as a partner, a majority in interest of the
44 remaining parties, including partners who have rightfully dissociated
45 pursuant to subparagraph (a) of paragraph (2) of subsection b. of
46 section 32 of this act, agree to continue the partnership;

47 b. In a partnership for a definite term or particular undertaking:

- 1 (1) the expiration of 90 days after a partner's dissociation by death
2 or otherwise under subsections f. through j. of section 31 of this act
3 or wrongful dissociation under subsection b. of section 32 of this act,
4 unless before that time a majority in interest of the remaining partners,
5 including partners who have rightfully dissociated pursuant to
6 subparagraph (a) of paragraph (2) of subsection b. of section 32 of this
7 act, agree to continue the partnership;
- 8 (2) the express will of all of the partners to wind up the partnership
9 business; or
- 10 (3) the expiration of the term or the completion of the undertaking;
- 11 c. An event agreed to in the partnership agreement resulting in the
12 winding up of the partnership business;
- 13 d. An event that makes it unlawful for all or substantially all of the
14 business of the partnership to be continued, but a cure of illegality
15 within 90 days after notice to the partnership of the event is effective
16 retroactively to the date of the event for purposes of this section;
- 17 e. On application by a partner, a judicial determination that:
- 18 (1) the economic purpose of the partnership is likely to be
19 unreasonably frustrated;
- 20 (2) another partner has engaged in conduct relating to the
21 partnership business which makes it not reasonably practicable to carry
22 on the business in partnership with that partner; or
- 23 (3) it is not otherwise reasonably practicable to carry on the
24 partnership business in conformity with the partnership agreement; or
- 25 f. On application by a transferee of a partner's transferable interest,
26 a judicial determination that it is equitable to wind up the partnership
27 business:
- 28 (1) after the expiration of the term or completion of the
29 undertaking, if the partnership was for a definite term or particular
30 undertaking at the time of the transfer or entry of the charging order
31 that gave rise to the transfer; or
- 32 (2) at any time, if the partnership was a partnership at will at the
33 time of the transfer or entry of the charging order that gave rise to the
34 transfer.
- 35
- 36 40. a. Subject to subsection b. of this section, a partnership
37 continues after dissolution only for the purpose of winding up its
38 business. The partnership is terminated when the winding up of its
39 business is completed.
- 40 b. At any time after the dissolution of a partnership and before the
41 winding up of its business is completed, all of the partners, including
42 any dissociating partner other than a wrongfully dissociating partner,
43 may waive the right to have the partnership's business wound up and
44 the partnership terminated. In that event:
- 45 (1) the partnership resumes carrying on its business as if
46 dissolution had never occurred, and any liability incurred by the
47 partnership or a partner after the dissolution and before the waiver is

1 determined as if dissolution had never occurred; and

2 (2) the rights of a third party accruing under subsection a. of
3 section 42 of this act or arising out of conduct in reliance on the
4 dissolution before the third party knew or received a notification of the
5 waiver shall not be adversely affected.

6

7 41. a. After dissolution, a partner who has not wrongfully
8 dissociated may participate in winding up the partnership's business,
9 but on application of any partner, partner's legal representative, or
10 transferee, a court of competent jurisdiction, for good cause shown,
11 may order judicial supervision of the winding up.

12 b. The legal representative of the last surviving partner may wind
13 up a partnership's business.

14 c. A person winding up a partnership's business shall preserve the
15 partnership business or property as a going concern for a reasonable
16 time, prosecute and defend actions and proceedings, whether civil,
17 criminal, or administrative, settle and close the partnership's business,
18 dispose of and transfer the partnership's property, discharge the
19 partnership's liabilities, distribute the assets of the partnership
20 pursuant to section 45 of this act, settle disputes by mediation or
21 arbitration, and perform other necessary acts.

22

23 42. Subject to section 43 of this act, a partnership is bound by a
24 partner's act after dissolution that:

25 a. Is appropriate for winding up the partnership business; or

26 b. Would have bound the partnership under section 13 of this act
27 before dissolution, if the other party to the transaction did not have
28 notice of the dissolution.

29

30 43. a. After dissolution, a partner who has not wrongfully
31 dissociated may file a statement of dissolution stating the name of the
32 partnership and that the partnership has dissolved and is winding up its
33 business.

34 b. A statement of dissolution cancels a filed statement of
35 partnership authority for the purposes of subsection d. of section 15
36 of this act and is a limitation on authority for the purposes of
37 subsection e. of section 15 of this act.

38 c. For the purposes of sections 13 and 42 of this act, a person not
39 a partner is deemed to have notice of the dissolution and the limitation
40 on the partners' authority as a result of the statement of dissolution 90
41 days after it is filed.

42 d. After filing and, if appropriate, recording a statement of
43 dissolution, a dissolved partnership may file and, if appropriate, record
44 a statement of partnership authority which will operate with respect to
45 a person not a partner as provided in subsections e. and f. of section
46 15 of this act in any transaction, whether or not the transaction is
47 appropriate for winding up the partnership business.

1 44. a. Except as otherwise provided in subsection b. of this section
2 and section 18 of this act, after dissolution a partner is liable to the
3 other partners for the partner's share of any partnership liability
4 incurred under section 42 of this act.

5 b. A partner who, with knowledge of the dissolution, incurs a
6 partnership liability under subsection b. of section 42 of this act by an
7 act that is not appropriate for winding up the partnership business is
8 liable to the partnership for any damage caused to the partnership
9 arising from the liability.

10
11 45. a. In winding up a partnership's business, the assets of the
12 partnership, including the contributions of the partners required by this
13 section, shall be applied to discharge its obligations to creditors,
14 including, to the extent permitted by law, partners who are creditors.
15 Any surplus shall be applied to pay in cash the net amount distributable
16 to partners in accordance with their right to distributions under
17 subsection b. of this section.

18 b. Each partner is entitled to a settlement of all partnership
19 accounts upon winding up the partnership business. In settling
20 accounts among the partners, profits and losses that result from the
21 liquidation of the partnership assets shall be credited and charged to
22 the partners' accounts. The partnership shall make a distribution to a
23 partner in an amount equal to any excess of the credits over the
24 charges in the partner's account. A partner shall contribute to the
25 partnership an amount equal to any excess of the charges over the
26 credits in the partner's account but excluding from the calculation
27 charges attributable to an obligation for which the partner is not
28 personally liable under section 18 of this act.

29 c. If a partner fails to contribute the full amount required under
30 subsection b. of this section, all of the other partners shall contribute,
31 in the proportions in which those partners share partnership losses, the
32 additional amount necessary to satisfy the partnership obligations for
33 which they are personally liable under section 18 of this act. A partner
34 or partner's legal representative may recover from the other partners
35 any contributions the partner makes to the extent the amount
36 contributed exceeds that partner's share of the partnership obligations
37 for which the partner is personally liable under section 18 of this act.

38 d. After the settlement of accounts, each partner shall contribute,
39 in the proportion in which the partner shares partnership losses, the
40 amount necessary to satisfy partnership obligations that were not
41 known at the time of the settlement and for which the partner is
42 personally liable under section 18 of this act.

43 e. The estate of a deceased partner is liable for the partner's
44 obligation to contribute to the partnership.

45 f. An assignee for the benefit of creditors of a partnership or a
46 partner, or a person appointed by a court to represent creditors of a
47 partnership or a partner, may enforce a partner's obligation to

1 contribute to the partnership.

2

3

ARTICLE 9. CONVERSIONS AND MERGERS

4

5 46. a. As used in this section, "other business entity" means a
6 business corporation, partnership, ¹limited partnership¹ or a limited
7 liability company.

8 b. (1) Pursuant to an agreement of merger or consolidation, a
9 partnership may merge or consolidate with or into one or more
10 partnerships or other business entities formed or organized under the
11 laws of this State or any other state or the United States or any foreign
12 country or other foreign jurisdiction, with such partnership or other
13 business entity as the agreement shall provide being the surviving or
14 resulting partnership or other business entity. Unless otherwise
15 provided in the partnership agreement, a merger or consolidation shall
16 be approved by all partners of each partnership which is to merge or
17 consolidate. In connection with a merger or consolidation hereunder,
18 rights or securities of, or interests in, a partnership or other business
19 entity which is a constituent party to the merger or consolidation may
20 be exchanged for or converted into cash, property, rights or securities
21 of, or interests in, the surviving or resulting partnership or other
22 business entity or, in addition to or in lieu thereof, may be exchanged
23 for or converted into cash, property, rights or securities of, or interests
24 in, a partnership or other business entity which is not the surviving or
25 resulting partnership or other business entity in the merger or
26 consolidation. Notwithstanding prior approval, an agreement of
27 merger or consolidation may be terminated or amended pursuant to a
28 provision for such termination or amendment contained in the
29 agreement of merger or consolidation.

30 (2) A partnership may not merge or consolidate with any other
31 business entity if authority for such merger or consolidation is not
32 granted by the laws of the jurisdiction under which the other business
33 entity is organized.

34 (3) With respect to the merger or consolidation of partnerships,
35 each partnership shall comply with the provisions of this section and
36 each other business entity shall comply with the applicable provisions
37 of the laws of the jurisdiction under which it is organized.

38 c. If a partnership merges or consolidates under this section, the
39 partnership or other business entity surviving or resulting in, or from,
40 the merger or consolidation, shall file a certificate of merger or
41 consolidation in the office of the Division of Commercial Recording
42 in the Department of Treasury. The Director of the Division of
43 Commercial Recording shall, upon filing, forward a copy of the
44 certificate of merger or consolidation to the Director of the Division
45 of Taxation. The certificate of merger or consolidation shall state:

46 (1) The name and jurisdiction of formation or organization of each
47 of the partnerships or other business entities which is to merge or

1 consolidate;

2 (2) That an agreement of merger or consolidation has been
3 approved and executed by each of the partnerships or other business
4 entities which is to merge or consolidate;

5 (3) The name of the surviving or resulting partnership or other
6 business entity;

7 (4) The future effective date or time (which shall be a date or time
8 certain) of the merger or consolidation if it is not to be effective upon
9 the filing of the certificate of merger or consolidation;

10 (5) That the agreement of merger or consolidation is on file at a
11 place of business of the surviving or resulting partnership or other
12 business entity, and shall state the address thereof;

13 (6) That a copy of the agreement of merger or consolidation shall
14 be furnished by the surviving or resulting partnership or other business
15 entity, on request and without cost, to any member of any partnership
16 or any person holding an interest in any other business entity which is
17 to merge or consolidate; and

18 (7) If the surviving or resulting entity is not a partnership or other
19 business entity organized under the laws of this State, a statement that
20 such surviving or resulting other business entity agrees that it may be
21 served with process in this State in any action, suit or proceeding for
22 the enforcement of any obligation of any partnership which is to merge
23 or consolidate, irrevocably appointing the State Treasurer as its agent
24 to accept service of process in any such action, suit or proceeding and
25 specifying the address to which a copy of such process shall be mailed
26 to it by the State Treasurer.

27 d. Unless a future effective date or time is provided in a certificate
28 of merger or consolidation, in which event a merger or consolidation
29 shall be effective at any such future effective date or time, a merger or
30 consolidation shall be effective upon the filing in the office of the
31 Division of Commercial Recording of a certificate of merger or
32 consolidation.

33 e. A certificate of merger or consolidation shall act as a certificate
34 of cancellation for a partnership which is not the surviving or resulting
35 entity in the merger or consolidation.

36 f. An agreement of merger or consolidation approved in
37 accordance with subsection b. of this section may (1) effect any
38 amendment to the partnership agreement or (2) effect the adoption of
39 a new partnership agreement for a partnership if it is the surviving or
40 resulting partnership in the merger or consolidation. Any amendment
41 to a partnership agreement or adoption of a new partnership
42 agreement made pursuant to this subsection shall be effective at the
43 time or date of the merger or consolidation. The provisions of this
44 subsection shall not be construed to limit the accomplishment of a
45 merger or of any of the matters referred to herein by any other means
46 provided for in a partnership agreement or other agreement or as
47 otherwise permitted by law, including that the partnership agreement

1 of any constituent partnership to the merger or consolidation
2 (including a partnership formed for the purpose of consummating a
3 merger or consolidation) shall be the partnership agreement of the
4 surviving or resulting partnership.

5 g. When any merger or consolidation becomes effective under this
6 section, for all purposes of the laws of this State, all of the rights,
7 privileges and powers of each of the partnerships and other business
8 entities that have merged or consolidated, and all property, real,
9 personal and mixed, and all debts due to any of those partnerships and
10 other business entities, as well as all other things and causes of action
11 belonging to each of those partnerships and other business entities,
12 shall be vested in the surviving or resulting partnership or other
13 business entity, and shall thereafter be the property of the surviving or
14 resulting partnership or other business entity as they were of each of
15 the partnerships and other business entities that have merged or
16 consolidated, and the title to any real property vested by deed or
17 otherwise, under the laws of this State, in any of those partnerships
18 and other business entities, shall not revert or in any way be impaired
19 by reason of this act; but all rights of creditors and all liens upon any
20 property of any of those partnerships and other business entities shall
21 be preserved unimpaired, and all debts, liabilities and duties of each of
22 those partnerships and other business entities that have merged or
23 consolidated shall attach to the surviving or resulting partnership or
24 other business entity, and may be enforced against it to the same
25 extent as if the debts, liabilities and duties had been incurred or
26 contracted by it. Unless otherwise agreed, a merger or consolidation
27 of a partnership, including a partnership which is not the surviving or
28 resulting entity in the merger or consolidation, shall not require the
29 dissolution of the partnership pursuant to section 39 of this act or
30 require the partnership to pay its liabilities and distribute its assets
31 pursuant to section 45 of this act.

32
33 **ARTICLE 10. LIMITED LIABILITY PARTNERSHIP**

34
35 47. a. A partnership may become a limited liability partnership
36 pursuant to this section.

37 b. The terms and conditions on which a partnership becomes a
38 limited liability partnership shall be approved by the vote necessary to
39 amend the partnership agreement except, in the case of a partnership
40 agreement that expressly considers obligations to contribute to the
41 partnership, the vote necessary to amend those provisions.

42 c. After the approval required by subsection b. of this section, a
43 partnership may become a limited liability partnership by filing a
44 statement of qualification ¹in the office of the Division of Commercial
45 Recording in the Department of Treasury¹. The statement shall
46 contain:

47 (1) the name of the partnership;

- 1 (2) the street address of the partnership's chief executive office
2 and, if different, the street address of an office in this State, if any;
- 3 (3) if the partnership does not have an office in this State, the name
4 and street address of the partnership's agent for service of process;
- 5 (4) a statement that the partnership elects to be a limited liability
6 partnership; and
- 7 (5) a deferred effective date, if any.
- 8 d. The agent of a limited liability partnership for service of process
9 shall be an individual who is a resident of this State or other person
10 authorized to do business in this State.
- 11 e. The status of a partnership as a limited liability partnership is
12 effective on the later of the filing of the statement or a date specified
13 in the statement. The status remains effective, regardless of changes
14 in the partnership, until it is canceled pursuant to subsection d. of
15 section 6 of this act or revoked pursuant to section 49 of this act.
- 16 f. The status of a partnership as a limited liability partnership and
17 the liability of its partners is not affected by errors or later changes in
18 the information required to be contained in the statement of
19 qualification under subsection c. of this section.
- 20 g. The filing of a statement of qualification establishes that a
21 partnership has satisfied all conditions precedent to the qualification
22 of the partnership as a limited liability partnership.
- 23 h. An amendment or cancellation of a statement of qualification is
24 effective when it is filed or on a deferred effective date specified in the
25 amendment or cancellation.
- 26
- 27 48. The name of a limited liability partnership shall end with
28 "Registered Limited Liability Partnership", "Limited Liability
29 Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP".
- 30
- 31 49. a. A limited liability partnership, and a foreign limited liability
32 partnership authorized to transact business in this State, shall file an
33 annual report in the office of the Division of Commercial Recording in
34 the Department of the Treasury which contains:
- 35 (1) the name of the limited liability partnership and the state or
36 other jurisdiction under whose laws the foreign limited liability
37 partnership is formed;
- 38 (2) the street address of the partnership's chief executive office
39 and, if different, the street address of an office of the partnership in
40 this State, if any; and
- 41 (3) if the partnership does not have an office in this State, the name
42 and street address of the partnership's current agent for service of
43 process.
- 44 b. An annual report shall be filed each year following the calendar
45 year in which a partnership files a statement of qualification or a
46 foreign partnership becomes authorized to transact business in this
47 State.

1 c. The State Treasurer may revoke the statement of qualification
2 of a partnership that fails to file an annual report when due or pay the
3 required filing fee. To do so, the State Treasurer shall provide the
4 partnership at least 60 days' written notice of intent to revoke the
5 statement. The notice shall be mailed to the partnership at its chief
6 executive office set forth in the last filed statement of qualification or
7 annual report. The notice shall specify the annual report that has not
8 been filed, the fee that has not been paid, and the effective date of the
9 revocation. The revocation is not effective if the annual report is filed
10 and the fee is paid before the effective date of the revocation.

11 d. A revocation under subsection c. of this section only affects a
12 partnership's status as a limited liability partnership and is not an event
13 of dissolution of the partnership.

14 e. A partnership whose statement of qualification has been revoked
15 may apply to the Division of Commercial Recording in the Department
16 of the Treasury for reinstatement within two years after the effective
17 date of the revocation. The application shall state:

18 (1) the name of the partnership and the effective date of the
19 revocation; and

20 (2) that the ground for revocation either did not exist or has been
21 corrected.

22 f. A reinstatement under subsection e. of this section relates back
23 to and takes effect as of the effective date of the revocation, and the
24 partnership's status as a limited liability partnership continues as if the
25 revocation had never occurred.

26

27 ARTICLE 11. FOREIGN LIMITED LIABILITY
28 PARTNERSHIP

29

30 50. a. The law under which a foreign limited liability partnership
31 is formed governs relations among the partners and between the
32 partners and the partnership and the liability of partners for obligations
33 of the partnership.

34 b. A foreign limited liability partnership shall not be denied a
35 statement of foreign qualification by reason of any difference between
36 the law under which the partnership was formed and the law of this
37 State.

38 c. A statement of foreign qualification does not authorize a foreign
39 limited liability partnership to engage in any business or exercise any
40 power that a partnership may not engage in or exercise in this State as
41 a limited liability partnership.

42

43 51. a. Before transacting business in this State, a foreign limited
44 liability partnership shall file a statement of foreign qualification ¹in the
45 office of the Division of Commercial Recording in the Department of
46 Treasury¹. The statement shall contain:

47 (1) the name of the foreign limited liability partnership which

1 satisfies the requirements of the state or other jurisdiction under whose
2 law it is formed and ends with “Registered Limited Liability
3 Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”,
4 “RLLP,” or “LLP”;

5 (2) the street address of the partnership’s chief executive office
6 and, if different, the street address of an office of the partnership in
7 this State, if any;

8 (3) if there is no office of the partnership in this State, the name
9 and street address of the partnership’s agent for service of process;
10 and

11 (4) a deferred effective date, if any.

12 b. The agent of a foreign limited liability company for service of
13 process shall be an individual who is a resident of this State or other
14 person authorized to do business in this State.

15 c. The status of a partnership as a foreign limited liability
16 partnership is effective on the later of the filing of the statement of
17 foreign qualification or a date specified in the statement. The status
18 remains effective, regardless of changes in the partnership, until it is
19 canceled pursuant to subsection d. of section 6 of this act or revoked
20 pursuant to section 49 of this act.

21 d. An amendment or cancellation of a statement of foreign
22 qualification is effective when it is filed or on a deferred effective date
23 specified in the amendment or cancellation.

24

25 52. a. A foreign limited liability partnership transacting business
26 in this State shall not maintain an action or proceeding in this State
27 unless it has in effect a statement of foreign qualification.

28 b. The failure of a foreign limited liability partnership to have in
29 effect a statement of foreign qualification shall not impair the validity
30 of a contract or act of the foreign limited liability partnership or
31 preclude it from defending an action or proceeding in this State.

32 c. A limitation on personal liability of a partner shall not be waived
33 solely by transacting business in this State without a statement of
34 foreign qualification.

35 d. If a foreign limited liability partnership transacts business in this
36 State without a statement of foreign qualification, the State Treasurer
37 shall be its agent for service of process with respect to a right of action
38 arising out of the transaction of business in this State.

39

40 53. a. Activities of a foreign limited liability partnership which do
41 not constitute transacting business for the purpose of this sections 50
42 through 53 of this act include:

43 (1) maintaining, defending, or settling an action or proceeding;

44 (2) holding meetings of its partners or carrying on any other
45 activity concerning its internal affairs;

46 (3) maintaining bank accounts;

47 (4) maintaining offices or agencies for the transfer, exchange and

- 1 registration of the partnership's own securities or maintaining trustees
2 or depositories with respect to those securities;
- 3 (5) selling through independent contractors;
- 4 (6) soliciting or obtaining orders, whether by mail or through
5 employees or agents or otherwise, if the orders require acceptance
6 outside this State before they become contracts;
- 7 (7) creating or acquiring indebtedness, with or without a mortgage,
8 or other security interest in property;
- 9 (8) collecting debts or foreclosing mortgages or other security
10 interests in property securing the debts, and holding, protecting, and
11 maintaining property so acquired;
- 12 (9) conducting an isolated transaction that is completed within 30
13 days and is not one in the course of similar transactions; and
- 14 (10) transacting business in interstate commerce.

15 b. For purposes of sections 50 through 53 of this act, the
16 ownership in this State of income-producing real property or tangible
17 personal property, other than property excluded under subsection a.
18 of this section, constitutes transacting business in this State.

19 c. This section does not apply in determining the contacts or
20 activities that may subject a foreign limited liability partnership to
21 service of process, taxation, or regulation under any other law of this
22 State.

23

24 54. The Attorney General may maintain an action to restrain a
25 foreign limited liability partnership from transacting business in this
26 State in violation of sections 50 through 53 of this act.

27

28 55. Sections 1 through 56 of this act shall be applied and construed
29 to effectuate its general purpose to make uniform the law with respect
30 to the subject of this act among States enacting it.

31

32 56. Sections 1 through 56 of this act do not affect an action or
33 proceeding commenced or right accrued before this act takes effect,
34 including the right of any partner in a limited liability partnership
35 formed prior to the effective date of this act.

36

37 57. Section 5 of P.L.1983, c.489 (C.42:2A-5) is amended to read
38 as follows:

39 5. Definitions. As used in this chapter, unless the context
40 otherwise requires:

41 a. "Certificate of limited partnership" and "partnership certificate"
42 mean the certificate referred to in section 13 of P.L.1983, c.489
43 (C.42:2A-14) as it may be corrected pursuant to section 48 of
44 P.L.1988, c.130 (C.42:2A-16.1) or amended or restated from time to
45 time.

46 b. "Contribution" means any cash, property, services rendered, or
47 a promissory note or other binding obligation to contribute cash or

- 1 property or to perform services, which a partner contributes to a
2 limited partnership in his capacity as a partner.
- 3 c. "Event of withdrawal of a general partner" means an event that
4 causes a person to cease to be a general partner as provided in this
5 chapter, or in the partnership agreement.
- 6 d. "Foreign limited partnership" means a partnership formed under
7 the laws of any state other than this State and having as partners one
8 or more general partners and one or more limited partners.
- 9 e. "General partner" means a person who has been admitted to a
10 limited partnership as a general partner in accordance with the
11 partnership agreement and named in the certificate of limited
12 partnership as a general partner.
- 13 f. "Limited partner" means a person who has been admitted to a
14 limited partnership as a limited partner in accordance with the
15 partnership agreement.
- 16 g. "Limited partnership" and "domestic limited partnership" mean
17 a partnership formed by two or more persons under the laws of this
18 State and having one or more general partners and one or more limited
19 partners.
- 20 h. "Partner" means a limited or general partner.
- 21 i. "Partnership agreement" means any valid agreement, written or
22 oral, of the partners as to the affairs of a limited partnership and the
23 conduct of its business.
- 24 j. "Partnership interest" means a partner's share of the profits and
25 losses of a limited partnership and the right to receive distributions of
26 partnership assets.
- 27 k. "Person" means a natural person, partnership, limited
28 partnership (domestic or foreign), limited liability company or other
29 limited liability entity, trust, estate, association, or corporation.
- 30 l. "State" means a state, territory, or possession of the United
31 States, the District of Columbia, or the Commonwealth of Puerto
32 Rico.
- 33 m. Unless otherwise provided in the partnership certificate or in the
34 partnership agreement, "in interest" shall mean a vote or percentage of
35 a limited partner (in a class of limited partners) equal to the portion
36 that partner's share in contributions to the partnership bears to the
37 share in contributions to the partnership of all limited partners (of that
38 class).
- 39 n. "Principal office" means the place designated in the partnership
40 agreement or the place of business of the limited partnership where the
41 chief or principal affairs and business of the partnership are transacted.
42 (cf: P.L.1988, c.130, s.2)
- 43
- 44 58. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read
45 as follows:
- 46 2. As used in this act unless the context otherwise requires:
47 "Bankruptcy" means an event that causes a person to become

1 dissociated from a limited liability company as provided in section 24
2 of this act.

3 "Certificate of formation" means the certificate referred to in
4 section 11 of this act, and the certificate as amended.

5 "Contribution" means any cash, property, services rendered or a
6 promissory note or other obligation to contribute cash or property or
7 to perform services, which a person contributes to a limited liability
8 company in his capacity as a member; provided however, that services
9 rendered and obligations to perform services are contributions only to
10 the extent designated as contributions in the operating agreement.

11 "Foreign limited liability company" means a limited liability
12 company formed under the laws of any state or under the laws of any
13 foreign country or other foreign jurisdiction and denominated as such
14 under the laws of such state or foreign country or other foreign
15 jurisdiction.

16 "Limited liability company" and "domestic limited liability
17 company" means a limited liability company formed under the laws of
18 this State and having one or more members.

19 "Limited liability company interest" means a member's share of the
20 profits and losses of a limited liability company and a member's right
21 to receive distributions of the limited liability company's assets.

22 "Liquidating trustee" means a person carrying out the winding up
23 of a limited liability company.

24 "Manager" means a person who is named as a manager of a limited
25 liability company in, or designated as a manager of a limited liability
26 company pursuant to, an operating agreement or similar instrument
27 under which the limited liability company is formed.

28 "Member" means a person who has been admitted to a limited
29 liability company as a member as provided in section 21 of this act or,
30 in the case of a foreign limited liability company, in accordance with
31 the laws of the state or foreign country or other foreign jurisdiction
32 under which the foreign limited liability company is organized.

33 "Operating agreement" means a written agreement among the
34 members, or in the case of a limited liability company with only one
35 member, the declaration by that one member of the terms of the
36 operating agreement which shall be deemed an agreement between the
37 member and the limited liability company, as to the affairs of a limited
38 liability company and the conduct of its business.

39 "Person" means a natural person, partnership (whether general or
40 limited and whether domestic or foreign), limited liability company,
41 foreign limited liability company, trust, estate, association,
42 corporation, custodian, nominee or any other individual or entity in its
43 own or any representative capacity.

44 "State" means the District of Columbia or the Commonwealth of
45 Puerto Rico or any state, territory, possession, or other jurisdiction of
46 the United States other than this State.

47 (cf: P.L.1998, c.79, s.1)

1 ¹[59. Section 69 of P.L.1993, c.210 (C.42:2B-69) is amended to
2 read as follows:

3 69. a. For all purposes of taxation under the laws of this State, a
4 limited liability company formed under this act or qualified to do
5 business in this State as a foreign limited liability company with two or
6 more members shall be classified as a partnership unless classified
7 otherwise for federal income tax purposes, in which case the limited
8 liability company shall be classified in the same manner as it is
9 classified for federal income tax purposes. For all purposes of taxation
10 under the laws of this State, a member or an assignee of a member of
11 a limited liability company formed under this act or qualified to do
12 business in this State as a foreign limited liability company shall be
13 treated as a partner in a partnership unless the limited liability company
14 is classified otherwise for federal income tax purposes, in which case
15 the member or assignee of a member shall have the same status as the
16 member or assignee of a member has for federal income tax purposes.

17 b. For **[all]** purposes of taxation on gross income under the laws
18 of this State and only for those purposes, a limited liability company
19 formed under P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do
20 business in this State as a foreign limited liability company with one
21 member is disregarded as an entity separate from its owner, unless
22 classified otherwise for federal tax purposes, in which case the limited
23 liability company will be classified in the same manner as it is classified
24 for federal income tax purposes. For **[all]** purposes of taxation on
25 gross income under the laws of this State and only for those purposes,
26 the sole member or an assignee of all of the limited liability company
27 interest of the sole member of a limited liability company formed under
28 P.L.1993, c.210 (C.42:2B-1 et seq.) or qualified to do business in this
29 State as a foreign limited liability company is treated as the direct
30 owner of the underlying assets of the limited liability company and of
31 its operations, unless the limited liability company is classified
32 otherwise for federal income tax purposes, in which case the member
33 or assignee of a member will have the same status as the member or
34 assignee of a member has for federal income tax purposes.

35 (cf: P.L.1998, c.79, s.13)]¹

1 ¹[60.] 59.¹ The following are repealed:
2 R.S.42:1-1 to 42:1-43;
3 Sections 8-12 of P.L.1995, c.96 (C.42:1-44 to 42:1-48); and
4 Section 1 of P.L.1995, c.223(C.42:1-49).

5

6 ¹[61.] 60.¹ This act shall take effect on the first business day
7 following enactment.

8

9

10

11

12 Enacts the "Uniform Partnership Act (1996)."

CHAPTER 161

AN ACT concerning partnerships and certain other business entities and revising various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.42:1A-1 Short title.

1. Sections 1 through 56 and 59 of this act shall be known and may be cited as the "Uniform Partnership Act (1996)."

ARTICLE 1. GENERAL PROVISIONS

C.42:1A-2 Definitions relative to partnerships.

2. As used in this act:

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

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

(1) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(2) a comparable order under federal, state, or foreign law governing insolvency.

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

"Foreign limited liability partnership" means a partnership that:

(1) is formed under laws other than the laws of this State; and

(2) has the status of a limited liability partnership under those laws.

"Limited liability partnership" means a partnership that has filed a statement of qualification under section 47 of this act and does not have a similar statement in effect in any other jurisdiction.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section 10 of this act, predecessor law, or comparable law of another jurisdiction.

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

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

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

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

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

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

"Statement" means a statement of partnership authority under section 15, a statement of denial under section 16, a statement of dissociation under section 37, a statement of dissolution under section 43, a statement of qualification under section 47 of this act, or a statement of foreign qualification under section 51 of this act, or an amendment or cancellation of any of the foregoing.

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

C.42:1A-3 Explanation of knowledge, notice; giving, receiving notice.

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

b. A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it; or

(3) has reason to know it exists from all of the facts known to the person at the time in question.

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

d. A person receives a notification when the notification:

(1) comes to the person's attention; or

(2) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

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

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

C.42:1A-4 Agreement governing partners, partnership; prohibited terms.

4. a. Except as otherwise provided in subsection b. of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among the partners and between the partners and the partnership.

b. The partnership agreement shall not:

(1) unreasonably restrict the right of access to books and records under subsection b. of section 23 of this act;

(2) reduce the duty of loyalty under subsection b. of section 24 or subsection b. of section 33 of this act so as to permit a partner to engage in conduct which is intentionally injurious to the partnership;

(3) unreasonably reduce the duty of care under subsection c. of section 24 or paragraph (3) of subsection b. of section 33 of this act;

(4) vary the right of a court to expel a partner in the events specified in subsection e. of section 31 of this act;

(5) vary the requirement to wind up the partnership business in cases specified in subsection d., e. or f. of section 39 of this act;

(6) vary the law applicable to a limited liability partnership under subsection b. of section 7 of this act; or

(7) restrict rights of third parties under this act.

C.42:1A-5 Principles of law and equity applicable; rate of interest determined.

5. a. Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

b. If an obligation to pay interest arises under this act and the rate is not specified, the rate of interest shall be at the rates provided by the Rules Governing the Courts of the State of New Jersey for the applicable period of time.

C.42:1A-6 Statements filed in the Division of Commercial Recording; effects, fees.

6. a. A statement may be filed in the office of the Division of Commercial Recording in the Department of the Treasury. A certified copy of a statement that is filed in an office in another

state may be filed in the office of the Division of Commercial Recording in the Department of the Treasury. This statement may indicate the authority of one or more particular partners with respect to any matter or class of matters. In addition, either filing has the effect provided in this act with respect to partnership property located in or transactions that occur in this State.

b. A certified copy of a statement that has been filed in the office of the Division of Commercial Recording in the Department of the Treasury and recorded in the office of the county recording officer has the effect provided for recorded statements in this act. A recorded statement that is not a certified copy of a statement filed in the office of the Division of Commercial Recording in the Department of the Treasury does not have the effect provided for recorded statements in this act.

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

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

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

f. The Division of Commercial Recording in the Department of the Treasury may collect a fee for filing or providing a certified copy of a statement. The county recording officer may collect a fee for recording a statement.

C.42:1A-7 Law governing relations among partners, between partners and partnership.

7. a. Except as otherwise provided in subsection b. of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

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

C.42:1A-8 Partnership governed by this act and its amendments.

8. A partnership governed by the provisions of this act is subject to any amendment to or repeal of this act.

ARTICLE 2. NATURE OF PARTNERSHIP

C.42:1A-9 Entity as partnership; limited partnership.

9. a. A partnership is an entity distinct from its partners.

b. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 47 of this act.

C.42:1A-10 Formation of partnership; rules for determining formation.

10. a. Except as otherwise provided in subsection b. of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

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

c. In determining whether a partnership is formed, the following rules apply:

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

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons

sharing them have a joint or common right or interest in property from which the returns are derived.

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

- (a) of a debt by installments or otherwise;
- (b) for services as an independent contractor or of wages or other compensation to an employee;
- (c) of rent;
- (d) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
- (e) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
- (f) for the sale of the goodwill of a business or other property by installments or otherwise.

C.42:1A-11 Property of the partnership.

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

C.42:1A-12 Acquisition of partnership property; presumptions.

12. a. Property is partnership property if acquired in the name of:
- (1) the partnership; or
 - (2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
- b. Property is acquired in the name of the partnership by a transfer to:
- (1) the partnership in its name; or
 - (2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- c. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- d. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

C.42:1A-13 Partner considered agent of partnership; limitation.

13. Subject to the effect of a statement of partnership authority under section 15 of this act:
- a. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
 - b. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

C.42:1A-14 Transfer of partnership property.

14. a. Partnership property may be transferred as follows:

(1) subject to the effect of a statement of partnership authority under section 15 of this act, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

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

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

b. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 13 of this act and:

(1) as to a subsequent transferee who gave value for property transferred under paragraphs (1) and (2) of subsection a. of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(2) as to a transferee who gave value for property transferred under paragraph (3) of subsection a. of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

c. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection b. of this section, from any earlier transferee of the property.

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

C.42:1A-15 Statement of partnership authority; filing.

15. a. A partnership may file a statement of partnership authority, which:

(1) shall include:

(a) the name of the partnership;

(b) the street address of its chief executive office and of one office in this State, if there is one;

(c) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection b. of this section; and

(d) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

b. If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

c. If a filed statement of partnership authority is executed pursuant to subsection c. of section 6 of this act, and states the name of the partnership, but does not contain all of the other information required by subsection a. of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections d. and e. of this section.

d. A filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the

previous grant of authority.

(2) a grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office of the county recording officer is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the county recording officer. The recording in the office of the county recording officer of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

e. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office of the county recording officer.

f. Except as otherwise provided in subsections d. and e. of this section and sections 37 and 43 of this act, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

C.42:1A-16 Statement of denial; limitation on authority.

16. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection b. of section 15 of this act may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections d. and e. of section 15 of this act.

C.42:1A-17 Partnership liable for loss, injury.

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

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

C.42:1A-18 Partnership obligations; liability of partners.

18. a. Except as otherwise provided in subsections b. and c. of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

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

c. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection b. of section 47 of this act.

C.42:1A-19 Suits, actions by or against partnership; satisfaction of judgments.

19. a. A partnership may sue and be sued in the name of the partnership.

b. An action may be brought against the partnership and, to the extent not inconsistent with section 18 of this act, any or all of the partners in the same action or in separate actions.

c. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

d. A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 18 of this act and:

- (1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
 - (2) the partnership is a debtor in bankruptcy;
 - (3) the partner has agreed that the creditor need not exhaust partnership assets;
 - (4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
 - (5) liability is imposed on the partner by law or contract independent of the existence of the partnership.
- e. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 20 of this act.

C.42:1A-20 Partnership by representation; liability.

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

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

c. A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

d. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

e. Except as otherwise provided in subsections a. and b. of this section, persons who are not partners as to each other are not liable as partners to other persons.

ARTICLE 4. RELATIONS OF PARTNERS
TO EACH OTHER AND TO PARTNERSHIP

C.42:1A-21 Rights and duties of partners.

21. a. Each partner is deemed to have an account that is:

(1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

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

c. A partnership shall reimburse a partner for payments made and indemnify a partner for

liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

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

e. A payment or advance made by a partner which gives rise to a partnership obligation under subsection c. or d. of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

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

g. A partner shall use or possess partnership property only on behalf of the partnership.

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

i. A person shall become a partner only with the consent of all of the partners.

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

k. This section shall not affect the obligations of a partnership to other persons under section 13 of this act.

C.42:1A-22 Distributions in kind.

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

C.42:1A-23 Books, records; rendering of information.

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

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

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

(1) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this act; and

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

C.42:1A-24 Fiduciary duties.

24. a. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections b. and c. of this section, as those duties may be clarified or limited in the partnership agreement, subject to subsection b. of section 4 of this act.

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

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

(2) to refrain from knowingly dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest materially adverse to the partnership; and

(3) to refrain from actions intended to cause material injury to the partnership in the conduct of the partnership business before the dissolution of the partnership.

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

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

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

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

C.42:1A-25 Legal actions.

25. a. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

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

(1) enforce the partner's rights under the partnership agreement;

(2) enforce the partner's rights under this act, including:

(a) the partner's rights under sections 21, 23 or 24 of this act;

(b) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 34 of this act or enforce any other right under Article 6 or 7 of this act; or

(c) the partner's right to compel a dissolution and winding up of the partnership business under section 39 of this act or enforce any other right under Article 8 of this act; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

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

C.42:1A-26 Partner not co-owner.

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

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

ARTICLE 5. TRANSFEREES AND CREDITORS OF PARTNER

C.42:1A-27 Partner not co-owner.

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

C.42:1A-28 Transferable interest of partner.

28. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

C.42:1A-29 Transfer of partner's interest.

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

- (1) is permissible;
 - (2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
 - (3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.
- b. A transferee of a partner's transferable interest in the partnership has a right:
 - (1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
 - (2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
 - (3) to seek, under subsection f. of section 39 of this act, a judicial determination that it is equitable to wind up the partnership business.
 - c. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.
 - d. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.
 - e. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.
 - f. A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

C.42:1A-30 Orders charging transferable interests; effects.

30. a. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court order charging the transferable interest of a partner or of a partner's transferee shall be the sole remedy of a judgment creditor, who shall have no right under this act or any other State law to interfere with the management or to force dissolution of the partnership or to seek an order of the court requiring a foreclosure sale of the transferable interest. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.
- b. A charging order constitutes a right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership.
- c. At any time before foreclosure, an interest charged may be redeemed: (1) by the judgment debtor;
 - (2) with property other than partnership property, by one or more of the other partners; or
 - (3) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.
- d. This act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
- e. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

ARTICLE 6. PARTNER'S DISSOCIATION

C.42:1A-31 Dissociation from partnership; events causing.

31. A partner is dissociated from a partnership upon the occurrence of any of the following events:
 - a. The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

- b. An event agreed to in the partnership agreement as causing the partner's dissociation;
- c. The partner's expulsion pursuant to the partnership agreement;
- d. The partner's expulsion by the unanimous vote of the other partners if:
 - (1) it is unlawful to carry on the partnership business with that partner;
 - (2) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
 - (3) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
 - (4) a partnership that is a partner has been dissolved and its business is being wound up;
- e. On application by the partnership or another partner, the partner's expulsion by judicial determination because:
 - (1) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;
 - (2) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 24 of this act; or
 - (3) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- f. The partner's:
 - (1) becoming a debtor in bankruptcy;
 - (2) executing an assignment for the benefit of creditors;
 - (3) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
 - (4) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;
- g. In the case of a partner who is an individual:
 - (1) the partner's death;
 - (2) the appointment of a guardian or general conservator for the partner; or
 - (3) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- h. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
- i. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or
- j. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

C.42:1A-32 Dissociation of partners; wrongful conditions.

- 32. a. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subsection a. of section 31 of this act.
- b. A partner's dissociation is wrongful only if:
 - (1) it is in breach of an express provision of the partnership agreement; or
 - (2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
 - (a) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under subsections f. through j. of section

31 of this act or wrongful dissociation under this subsection;

(b) the partner is expelled by judicial determination under subsection e. of section 31 of this act;

(c) the partner is dissociated by becoming a debtor in bankruptcy; or

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

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

C.42:1A-33 Dissociation; effects on partnership, partner.

33. a. If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 of this act applies; otherwise, Article 7 of this act applies.

b. Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 41 of this act;

(2) the partner's duty of loyalty under paragraph (3) of subsection b. of section 24 of this act terminates; and

(3) the partner's duty of loyalty under paragraphs (1) and (2) of subsection b. and duty of care under subsection c. of section 24 of this act continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 41 of this act.

ARTICLE 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

C.42:1A-34 Dissociation not resulting in dissolution; buyout; damages.

34. a. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 39 of this act, except as otherwise provided in the partnership agreement, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price as determined pursuant to subsection b. of this section.

b. As used in subsection a. of this section, "buyout price" means the fair value as of the date of withdrawal based upon the right to share in distributions from the partnership unless the partnership agreement provides for another fair value formula.

c. Damages for wrongful dissociation under subsection b. of section 32 of this act, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

d. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 35 of this act.

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

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

g. The payment or tender required by subsection e. or f. of this section shall be accompanied by the following:

(1) a statement of partnership assets and liabilities as of the date of dissociation;

(2) the latest available partnership balance sheet and income statement, if any;
(3) an explanation of how the estimated amount of the payment was calculated; and
(4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection c. of this section, or other terms of the obligation to purchase.

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

i. A dissociated partner may maintain an action against the partnership, pursuant to subparagraph (b) of paragraph (2) of subsection b. of section 25 of this act, to determine the buyout price of that partner's interest, any offsets under subsection c. of this section, or other terms of the obligation to purchase. The action shall be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection c. of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection h. of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding shall be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection g. of this section.

C.42:1A-35 Partnership bound by act of dissociated partner; conditions; liability.

35. a. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9 of this act, is bound by an act of the dissociated partner which would have bound the partnership under section 13 of this act before dissociation only if at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge under subsection e. of section 15 or notice under subsection c. of section 37 of this act.

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

C.42:1A-36 Dissociated partner's liability.

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

b. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9 of this act, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 18 of this act and at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge under subsection e. of section 15 or notice under section subsection c. of section 37 of this act.

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

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

C.42:1A-37 Statement of dissociation.

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

b. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections d. and e. of section 15 of this act.

c. For the purposes of paragraph (3) of subsection a. of section 35 and paragraph (3) of subsection b. of section 36 of this act, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

C.42:1A-38 Continued use of name relative to liability.

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

ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS

C.42:1A-39 Dissolution of partnership; winding up, event causing.

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

a. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subsections b. through j. of section 31 of this act, of that partner's express will to withdraw as a partner, or on a later date specified by the partner, unless the partnership agreement provides that no dissolution occurs until 90 days after the partnership having received notice of a partner's express will to withdraw as a partner, a majority in interest of the remaining parties, including partners who have rightfully dissociated pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 32 of this act, agree to continue the partnership;

b. In a partnership for a definite term or particular undertaking:

(1) the expiration of 90 days after a partner's dissociation by death or otherwise under subsections f. through j. of section 31 of this act or wrongful dissociation under subsection b. of section 32 of this act, unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 32 of this act, agree to continue the partnership;

(2) the express will of all of the partners to wind up the partnership business; or

(3) the expiration of the term or the completion of the undertaking;

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

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

e. On application by a partner, a judicial determination that:

(1) the economic purpose of the partnership is likely to be unreasonably frustrated;

(2) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(3) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

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

(1) after the expiration of the term or completion of the undertaking, if the partnership was

for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

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

C.42:1A-40 Dissolution, continuation for purpose of winding up.

40. a. Subject to subsection b. of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

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

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

(2) the rights of a third party accruing under subsection a. of section 42 of this act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

C.42:1A-41 Postdissolution, rights, duties on winding up.

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

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

c. A person winding up a partnership's business shall preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 45 of this act, settle disputes by mediation or arbitration, and perform other necessary acts.

C.42:1A-42 Partner's act after dissolution.

42. Subject to section 43 of this act, a partnership is bound by a partner's act after dissolution that:

a. Is appropriate for winding up the partnership business; or

b. Would have bound the partnership under section 13 of this act before dissolution, if the other party to the transaction did not have notice of the dissolution.

C.42:1A-43 Statement of dissolution, effects of filing.

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

b. A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection d. of section 15 of this act and is a limitation on authority for the purposes of subsection e. of section 15 of this act.

c. For the purposes of sections 13 and 42 of this act, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

d. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections e. and f. of section 15 of this act in any transaction, whether or not the transaction is appropriate for winding up the

partnership business.

C.42:1A-44 Liability after dissolution.

44. a. Except as otherwise provided in subsection b. of this section and section 18 of this act, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 42 of this act.

b. A partner who, with knowledge of the dissolution, incurs a partnership liability under subsection b. of section 42 of this act by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

C.42:1A-45 Rights of partners to application of partnership assets; settlements of accounts.

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

b. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 18 of this act.

c. If a partner fails to contribute the full amount required under subsection b. of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 18 of this act. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 18 of this act.

d. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 18 of this act.

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

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

ARTICLE 9. CONVERSIONS AND MERGERS

C.42:1A-46 Other business entity; merger or consolidation; effect of certificate.

46. a. As used in this section, "other business entity" means a business corporation, partnership, limited partnership or a limited liability company.

b. (1) Pursuant to an agreement of merger or consolidation, a partnership may merge or consolidate with or into one or more partnerships or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction, with such partnership or other business entity as the agreement shall provide being the surviving or resulting partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by all partners of each partnership which is to merge or consolidate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a partnership or other business

entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a partnership or other business entity which is not the surviving or resulting partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(2) A partnership may not merge or consolidate with any other business entity if authority for such merger or consolidation is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the merger or consolidation of partnerships, each partnership shall comply with the provisions of this section and each other business entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. If a partnership merges or consolidates under this section, the partnership or other business entity surviving or resulting in, or from, the merger or consolidation, shall file a certificate of merger or consolidation in the office of the Division of Commercial Recording in the Department of the Treasury. The Director of the Division of Commercial Recording shall, upon filing, forward a copy of the certificate of merger or consolidation to the Director of the Division of Taxation. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the partnerships or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the partnerships or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting partnership or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting partnership or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting partnership or other business entity, on request and without cost, to any member of any partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a partnership or other business entity organized under the laws of this State, a statement that such surviving or resulting other business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of any partnership which is to merge or consolidate, irrevocably appointing the State Treasurer as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the State Treasurer.

d. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Division of Commercial Recording of a certificate of merger or consolidation.

e. A certificate of merger or consolidation shall act as a certificate of cancellation for a partnership which is not the surviving or resulting entity in the merger or consolidation.

f. An agreement of merger or consolidation approved in accordance with subsection b. of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a partnership if it is the surviving or resulting partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective at the time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise

permitted by law, including that the partnership agreement of any constituent partnership to the merger or consolidation (including a partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting partnership.

g. When any merger or consolidation becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges and powers of each of the partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those partnerships and other business entities, as well as all other things and causes of action belonging to each of those partnerships and other business entities, shall be vested in the surviving or resulting partnership or other business entity, and shall thereafter be the property of the surviving or resulting partnership or other business entity as they were of each of the partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this State, in any of those partnerships and other business entities, shall not revert or in any way be impaired by reason of this act; but all rights of creditors and all liens upon any property of any of those partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of those partnerships and other business entities that have merged or consolidated shall attach to the surviving or resulting partnership or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a partnership, including a partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require the dissolution of the partnership pursuant to section 39 of this act or require the partnership to pay its liabilities and distribute its assets pursuant to section 45 of this act.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIP

C.42:1A-47 Limited liability partnership; qualifications as.

47. a. A partnership may become a limited liability partnership pursuant to this section.

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

c. After the approval required by subsection b. of this section, a partnership may become a limited liability partnership by filing a statement of qualification in the office of the Division of Commercial Recording in the Department of the Treasury. The statement shall contain:

- (1) the name of the partnership;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office in this State, if any;
- (3) if the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process;
- (4) a statement that the partnership elects to be a limited liability partnership; and
- (5) a deferred effective date, if any.

d. The agent of a limited liability partnership for service of process shall be an individual who is a resident of this State or other person authorized to do business in this State.

e. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection d. of section 6 of this act or revoked pursuant to section 49 of this act.

f. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection c. of this section.

g. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

h. An amendment or cancellation of a statement of qualification is effective when it is filed

or on a deferred effective date specified in the amendment or cancellation.

C.42:1A-48 Name of limited liability partnership.

48. The name of a limited liability partnership shall end with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP,” or “LLP”.

C.42:1A-49 Annual report; filing.

49. a. A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the Division of Commercial Recording in the Department of the Treasury which contains:

(1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(2) the street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this State, if any; and

(3) if the partnership does not have an office in this State, the name and street address of the partnership’s current agent for service of process.

b. An annual report shall be filed each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this State.

c. The State Treasurer may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the State Treasurer shall provide the partnership at least 60 days’ written notice of intent to revoke the statement. The notice shall be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice shall specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

d. A revocation under subsection c. of this section only affects a partnership’s status as a limited liability partnership and is not an event of dissolution of the partnership.

e. A partnership whose statement of qualification has been revoked may apply to the Division of Commercial Recording in the Department of the Treasury for reinstatement within two years after the effective date of the revocation. The application shall state:

(1) the name of the partnership and the effective date of the revocation; and

(2) that the ground for revocation either did not exist or has been corrected.

f. A reinstatement under subsection e. of this section relates back to and takes effect as of the effective date of the revocation, and the partnership’s status as a limited liability partnership continues as if the revocation had never occurred.

ARTICLE 11. FOREIGN LIMITED LIABILITY PARTNERSHIP

C.42:1A-50 Foreign limited liability partnership; law governing, effect in this State.

50. a. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

b. A foreign limited liability partnership shall not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this State.

c. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a limited liability partnership.

C.42:1A-51 Statement of foreign qualifications; filing.

51. a. Before transacting business in this State, a foreign limited liability partnership shall file a statement of foreign qualification in the office of the Division of Commercial Recording

in the Department of the Treasury. The statement shall contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP,” or “LLP”;

(2) the street address of the partnership’s chief executive office and, if different, the street address of an office of the partnership in this State, if any;

(3) if there is no office of the partnership in this State, the name and street address of the partnership’s agent for service of process; and

(4) a deferred effective date, if any.

b. The agent of a foreign limited liability company for service of process shall be an individual who is a resident of this State or other person authorized to do business in this State.

c. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection d. of section 6 of this act or revoked pursuant to section 49 of this act.

d. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

C.42:1A-52 Foreign qualification required; effect of failure.

52. a. A foreign limited liability partnership transacting business in this State shall not maintain an action or proceeding in this State unless it has in effect a statement of foreign qualification.

b. The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification shall not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

c. A limitation on personal liability of a partner shall not be waived solely by transacting business in this State without a statement of foreign qualification.

d. If a foreign limited liability partnership transacts business in this State without a statement of foreign qualification, the State Treasurer shall be its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

C.42:1A-53 Activities not considered transacting business.

53. a. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this sections 50 through 53 of this act include:

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange and registration of the partnership’s own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

(7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(10) transacting business in interstate commerce.

b. For purposes of sections 50 through 53 of this act, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection a. of this section, constitutes transacting business in this State.

c. This section does not apply in determining the contacts or activities that may subject a

foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

C.42:1A-54 Restraint of foreign limited liability partnership.

54. The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of sections 50 through 53 of this act.

C.42:1A-55 Applicability, construction of act.

55. Sections 1 through 56 of this act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among States enacting it.

C.42:1A-56 No retroactive effects.

56. Sections 1 through 56 of this act do not affect an action or proceeding commenced or right accrued before this act takes effect, including the right of any partner in a limited liability partnership formed prior to the effective date of this act.

57. Section 5 of P.L.1983, c.489 (C.42:2A-5) is amended to read as follows:

C.42:2A-5 Definitions relative to limited partnerships.

5. Definitions. As used in this chapter, unless the context otherwise requires:

a. "Certificate of limited partnership" and "partnership certificate" mean the certificate referred to in section 13 of P.L.1983, c.489 (C.42:2A-14) as it may be corrected pursuant to section 48 of P.L.1988, c.130 (C.42:2A-16.1) or amended or restated from time to time.

b. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

c. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in this chapter, or in the partnership agreement.

d. "Foreign limited partnership" means a partnership formed under the laws of any state other than this State and having as partners one or more general partners and one or more limited partners.

e. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

f. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

g. "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

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

i. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

j. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

k. "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company or other limited liability entity, trust, estate, association, or corporation.

l. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

m. Unless otherwise provided in the partnership certificate or in the partnership agreement, "in interest" shall mean a vote or percentage of a limited partner (in a class of limited partners) equal to the portion that partner's share in contributions to the partnership bears to the share in contributions to the partnership of all limited partners (of that class).

n. "Principal office" means the place designated in the partnership agreement or the place of business of the limited partnership where the chief or principal affairs and business of the partnership are transacted.

58. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read as follows:

C.42:2B-2 Definitions relative to limited liability companies.

2. As used in this act unless the context otherwise requires:

"Bankruptcy" means an event that causes a person to become dissociated from a limited liability company as provided in section 24 of this act.

"Certificate of formation" means the certificate referred to in section 11 of this act, and the certificate as amended.

"Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member; provided however, that services rendered and obligations to perform services are contributions only to the extent designated as contributions in the operating agreement.

"Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

"Limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of this State and having one or more members.

"Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

"Liquidating trustee" means a person carrying out the winding up of a limited liability company.

"Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, an operating agreement or similar instrument under which the limited liability company is formed.

"Member" means a person who has been admitted to a limited liability company as a member as provided in section 21 of this act or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

"Operating agreement" means a written agreement among the members, or in the case of a limited liability company with only one member, the declaration by that one member of the terms of the operating agreement which shall be deemed an agreement between the member and the limited liability company, as to the affairs of a limited liability company and the conduct of its business.

"Person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

"State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than this State.

Repealer.

59. The following are repealed:

R.S.42:1-1 to 42:1-43;

Sections 8-12 of P.L.1995, c.96 (C.42:1-44 to 42:1-48); and

Section 1 of P.L.1995, c.223 (C.42:1-49).

60. This act shall take effect on the first business day following enactment.

Approved December 7, 2000.

PO BOX 004
TRENTON, NJ 08625

Office of the Governor
NEWS RELEASE

CONTACT: Jayne O'Connor
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RELEASE: December 7, 2000

Governor Christie Whitman Today Signed the Following Legislation:

A-1184, sponsored by Assembly Members Arnone (R-Monmouth) and Farragher (R-Monmouth), prohibits leaving animal unattended under inhumane conditions in a vehicle.

A-1140, sponsored by Assembly Members Russo (R-Bergen/Passaic) and Caraballo (D-Essex), enacts the Uniform Partnership Act (1996). This bill enacts the Revised Uniform Partnership Act (RUPA) that was developed by the National Conference of Commissioners on Uniform State Laws and has been approved by the American Bar Association. RUPA restructures the fundamentals of partnership law to reflect modern business practices.

A-1410, sponsored by Assembly Member DeCroce (R-Essex/Morris/Passaic), establishes the "Tony Pompelio Scholarship Fund" for the children of crime victims to attend New Jersey public colleges.