

**Comment**

**Source** – RULPA Section 605.

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

**Comment**

**Source** – RULPA Section 606.

This section's first sentence refers to distributions generally. Contrast Section 508(e), which refers to indebtedness issued as a distribution.

The reference in the second sentence to "dissociated partner" encompasses circumstances in which the partner is gone and the dissociated partner's transferable interest is all that remains.

**SECTION 508. LIMITATIONS ON DISTRIBUTION.**

- (a) A limited partnership may not make a distribution in violation of the partnership agreement.
- (b) A limited partnership may not make a distribution if after the distribution:
  - (1) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

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

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

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

(1) in the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and

(2) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs within 120 days after that date; or

(B) the payment is made, if payment occurs more than 120 days after the distribution is authorized.

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

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

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

#### **Comment**

**Source** – ULLCA Section 406. See also RMBCA Section 6.40.

**Subsection (c)** – This subsection appears to impose a standard of ordinary care, in contrast with the general duty of care stated in Section 408(c). For a reconciliation of these two provisions, see Comment to Section 509(a).

#### **SECTION 509. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

(a) A general partner that consents to a distribution made in violation of Section 508 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is

established that in consenting to the distribution the general partner failed to comply with Section 408.

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

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

(1) implead in the action any other person that is liable under subsection (a) and compel contribution from the person; and

(2) implead in the action any person that received a distribution in violation of subsection (b) and compel contribution from the person in the amount the person received in violation of subsection (b).

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

#### **Comment**

**Source** – ULLCA Section 407. See also RMBCA Section 8.33.

In substance and effect this section protects the interests of creditors of the limited partnership. Therefore, according to Section 110(b)(13), the partnership agreement may not change this section in a way that restricts the rights of those creditors. As for a limited partnership's power to compromise a claim under this section, see Section 502(c).

**Subsection (a)** – This subsection refers both to Section 508, which includes in its subsection (c) a standard of ordinary care (“reasonable in the circumstances”), and to Section 408, which includes in its subsection (c) a general duty of care that is limited to “refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.”

A limited partnership’s failure to meet the standard of Section 508(c) cannot by itself cause a general partner to be liable under Section 509(a). *Both* of the following would have to occur before a failure to satisfy Section 508(c) could occasion personal liability for a general partner under Section 509(a):

- the limited partnership “base[s] a determination that a distribution is not prohibited . . . on financial statements prepared on the basis of accounting practices and principles that are [not] reasonable in the circumstances or on a [not] fair valuation or other method that is [not] reasonable in the circumstances” [Section 508(c)]

*AND*

- the general partner’s decision to rely on the improper methodology in consenting to the distribution constitutes “grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law” [Section 408(c)] or breaches some other duty under Section 408.

To serve the protective purpose of Sections 508 and 509, in this subsection “consent” must be understood as encompassing any form of approval, assent or acquiescence, whether formal or informal, express or tacit.

**Subsection (d)** – The subsection’s limitation applies to the commencement of an action under subsection (a) or (b) and not to subsection (c), under which a general partner may implead other persons.

**[ARTICLE] 6  
DISSOCIATION**

**SECTION 601. DISSOCIATION AS LIMITED PARTNER.**

(a) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

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

(1) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(3) the person's expulsion as a limited partner pursuant to the partnership agreement;

(4) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(A) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(B) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to 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

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(B) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under Section 305(b); or

(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

(6) in the case of a person who is an individual, the person's death;

(7) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(8) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(9) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(10) the limited partnership's participation in a conversion or merger under [Article] 11, if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

#### Comment

Source – RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim, except for provisions inappropriate to limited partners. For example, this section does not provide for the dissociation of a person as a limited partner on account of bankruptcy, insolvency or incompetency.

This Act refers to *a person's dissociation as a limited partner* rather than to the *dissociation of a limited partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.



**Subsection (a)** – This section varies substantially from predecessor law. See Comment to Section 505.

**Subsection (b)(1)** – This provision gives a person the power to dissociate as a limited partner even though the dissociation is wrongful under subsection (a). See, however, Section 110(b)(8) (prohibiting the partnership agreement from eliminating the power of a person to dissociate as a *general* partner but imposing no comparable restriction with regard to a person's dissociation as a *limited* partner).

**Subsection (b)(5)** – In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

## **SECTION 602. EFFECT OF DISSOCIATION AS LIMITED PARTNER.**

(a) Upon a person's dissociation as a limited partner:

(1) subject to Section 704, the person does not have further rights as a limited partner;

(2) the person's obligation of good faith and fair dealing as a limited partner under Section 305(b) continues only as to matters arising and events occurring before the dissociation; and

(3) subject to Section 704 and [Article] 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

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

## Comment

**Source** – RUPA Section 603(b).

**Subsection (a)(1)** – In general, when a person dissociates as a limited partner, the person's rights as a limited partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. However, Section 704 provides some special rights when dissociation is caused by an individual's death.

**Subsection (a)(3)** – For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a limited partner and may override the rule stated in this paragraph.

**SECTION 603. DISSOCIATION AS GENERAL PARTNER.** A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

- (1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;
- (2) an event agreed to in the partnership agreement as causing the person's dissociation as a general partner;
- (3) the person's expulsion as a general partner pursuant to the partnership agreement;
- (4) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(A) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(B) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(C) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to 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

(D) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(A) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(B) the person 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 408; or

(C) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(A) becoming a debtor in bankruptcy;

(B) execution of an assignment for the benefit of creditors;

(C) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

or

(D) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a person who is an individual:

(A) the person's death;

(B) the appointment of a guardian or general conservator for the person; or

(C) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) the limited partnership's participation in a conversion or merger under [Article] 11, if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

#### Comment

Source – RUPA Section 601.

This section adopts RUPA's dissociation provision essentially verbatim. This Act refers to *a person's dissociation as a general partner* rather than to the *dissociation of a general partner*, because the same person may be both a general and a limited partner. See Section 113 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

**Paragraph (1)** – The partnership agreement may not eliminate this power to dissociate. See Section 110(b)(8).

**Paragraph (5)** – In contrast to RUPA, this provision may be varied or even eliminated by the partnership agreement.

**SECTION 604. PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER; WRONGFUL DISSOCIATION.**

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to Section 603(1).

(b) A person's dissociation as a general partner is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) it occurs before the termination of the limited partnership, and:

(A) the person withdraws as a general partner by express will;

(B) the person is expelled as a general partner by judicial determination under Section 603(5);

(C) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 1001, to the other partners for damages caused

by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

#### **Comment**

**Source** – RUPA Section 602.

**Subsection (a)** – The partnership agreement may not eliminate this power. See Section 110(b)(8).

**Subsection (b)(1)** – The reference to “an express provision of the partnership agreement” means that a person’s dissociation as a general partner in breach of the obligation of good faith and fair dealing is not wrongful dissociation for the purposes of this section. The breach might be actionable on other grounds.

**Subsection (b)(2)** – The reference to “before the termination of the limited partnership” reflects the expectation that each general partner will shepherd the limited partnership through winding up. See Comment to Section 406(f). A person’s obligation to remain as general partner through winding up continues even if another general partner dissociates and even if that dissociation leads to the limited partnership’s premature dissolution under Section 801(3)(A).

**Subsection (c)** – The language “subject to Section 1001” is intended to preserve the distinction between direct and derivative claims.

### **SECTION 605. EFFECT OF DISSOCIATION AS GENERAL PARTNER.**

(a) Upon a person’s dissociation as a general partner:

(1) the person’s right to participate as a general partner in the management and conduct of the partnership’s activities terminates;

(2) the person’s duty of loyalty as a general partner under Section 408(b)(3) terminates;

(3) the person's duty of loyalty as a general partner under Section 408(b)(1) and (2) and duty of care under Section 408(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(4) the person may sign and deliver to the [Secretary of State] for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and

(5) subject to Section 704 and [Article] 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

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

#### **Comment**

**Source** – RUPA Section 603(b).

**Subsection (a)(1)** – Once a person dissociates as a general partner, the person loses all management rights as a general partner regardless of what happens to the limited partnership. This rule contrasts with RUPA Section 603(b)(1), which permits a dissociated general partner to participate in winding up in some circumstances.

**Subsection (a)(4)** – Both records covered by this paragraph have the same effect under Section 103(d) – namely, to give constructive notice that the person has dissociated as a general partner. The notice benefits the person by curtailing any further personal liability under Sections 607, 805, and 1111. The notice benefits the limited partnership by curtailing any lingering power to bind under Sections 606, 804, and 1112.



The limited partnership is in any event obligated to amend its certificate of limited partnership to reflect the dissociation of a person as general partner. See Section 202(b)(2). In most circumstances, the amendment requires the signature of the person that has dissociated. Section 204(a)(5)(C). If that signature is required and the person refuses or fails to sign, the limited partnership may invoke Section 205 (Signing and Filing Pursuant to Judicial Order).

**Subsection (a)(5)** – In general, when a person dissociates as a general partner, the person's rights as a general partner disappear and, subject to Section 113 (Dual Status), the person's status degrades to that of a mere transferee. For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 111(9)(C).

Section 704 provides some special rights when an individual dissociates by dying. Article 11 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a general partner and may override the rule stated in this paragraph.

**SECTION 606. POWER TO BIND AND LIABILITY TO LIMITED  
PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON  
DISSOCIATED AS GENERAL PARTNER.**

(a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under [Article] 11, or merged out of existence under [Article 11], the limited partnership is bound by an act of the person only if:

(1) the act would have bound the limited partnership under Section 402 before the dissociation; and

(2) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

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

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (a); and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

#### **Comment**

**Source** – RUPA Section 702.

This Act contains three sections pertaining to the lingering power to bind of a person dissociated as a general partner:

- this section, which applies until the limited partnership dissolves, converts to another form of organization under Article 11, or is merged out of existence under Article 11;
- Section 804(b), which applies after a limited partnership dissolves; and
- Section 1112(b), which applies after a conversion or merger.

**Subsection (a)(2)(B)** – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)** – The liability provided by this subsection is not exhaustive. For example, if a person dissociated as a general partner causes a limited partnership to be bound under subsection (a) and, due to a guaranty, some other person is liable on the resulting obligation, that other person may have a claim under other law against the person dissociated as a general partner.

**SECTION 607. LIABILITY TO OTHER PERSONS OF PERSON  
DISSOCIATED AS GENERAL PARTNER.**

(a) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person is not liable for a limited partnership's obligation incurred after dissociation.

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

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

(1) a general partner would be liable on the transaction; and

(2) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably

believes that the person is a general partner.

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

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

#### **Comment**

**Source** – RUPA Section 703.

A person's dissociation as a general partner does not categorically prevent the person from being liable as a general partner for subsequently incurred obligations of the limited partnership. If the dissociation results in dissolution, subsection (b) applies and the person will be liable as a general partner on any partnership obligation incurred under Section 804. In these circumstances, neither filing a statement of dissociation nor amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering exposure to liability.

If the dissociation does not result in dissolution, subsection (c) applies. In this context, filing a statement of dissociation or amending the certificate of limited partnership to state that the person has dissociated as a general partner will curtail the person's lingering liability. See subsection (c)(2)(B).

If the limited partnership subsequently dissolves as the result of some other occurrence (i.e., not a result of the person's dissociation as a general partner), subsection (c) continues to apply. In that situation, Section 804 will determine whether, for the purposes of subsection (c), the limited partnership has entered into a transaction after dissolution.

If the limited partnership is a limited liability limited partnership, these liability rules are moot.

**Subsection (a)** – The phrase “liability as a general partner for an obligation of the limited partnership” refers to liability under Section 404. Following RUPA and the UPA,

this Act leaves to other law the question of when a limited partnership obligation is incurred.

**Subsection (c)(2)(B)** -- A person might have notice under Section 103(d)(1) as well as under Section 103(b).

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

**SECTION 701. PARTNER'S TRANSFERABLE INTEREST.** The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

**Comment**

**Source** – RUPA Section 502.

Like all other partnership statutes, this Act dichotomizes each partner's rights into economic rights and other rights. The former are freely transferable, as provided in Section 702. The latter are not transferable at all, unless the partnership agreement so provides.

Although a partner or transferee owns a transferable interest as a present right, that right only entitles the owner to distributions if and when made. See Sections 504 (subject to any contrary provision in the partnership agreement, no right to interim distribution unless the limited partnership decides to make an interim distribution) and the Comment to Section 812 (subject to any contrary provision in the partnership agreement, no partner obligated to contribute for the purpose of equalizing or otherwise allocating capital losses).

**SECTION 702. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST.**

(a) A transfer, in whole or in part, of a partner's transferable interest:

(1) is permissible;

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

winding up of the limited partnership's activities; and

(3) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c), or to inspect or copy the required information or the limited partnership's other records.

(b) A transferee has a right to receive, in accordance with the transfer:

(1) distributions to which the transferor would otherwise be entitled; and

(2) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

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

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

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

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

(g) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 502 and 509. However, the

transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

#### **Comment**

**Source** – RUPA Section 503, except for subsection (g), which derives from RULPA Section 704(b). Following RUPA, this Act uses the words “transfer” and “transferee” rather than the words “assignment” and “assignee.” See RUPA Section 503.

**Subsection (a)(2)** – The phrase “by itself” is significant. A transfer of all of a person’s transferable interest could lead to dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

**Subsection (a)(3)** – Mere transferees have no right to intrude as the partners carry on their activities as partners. Moreover, a partner’s obligation of good faith and fair dealing under Sections 305(b) and 408(d) is framed in reference to “the limited partnership and the other partners.” See also Comment to Section 1102(b)(3) and Comment to Section 1106(b)(3).

#### **SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFEEE.**

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



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

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

(1) by the judgment debtor;

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

(3) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(d) This [Act] does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

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

#### **Comment**

**Source** – RUPA Section 504 and ULLCA Section 504.

This section balances the needs of a judgment creditor of a partner or transferee with the needs of the limited partnership and non-debtor partners and transferees. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited partnership.

Under this section, the judgment creditor of a partner or transferee is entitled to a charging order against the relevant transferable interest. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the partner or transferee whose interest is subject to the order. The creditor has no say in the timing or amount of those distributions. The charging order does not entitle the creditor

to accelerate any distributions or to otherwise interfere with the management and activities of the limited partnership.

Foreclosure of a charging order effects a permanent transfer of the charged transferable interest to the purchaser. The foreclosure does not, however, create any rights to participate in the management and conduct of the limited partnership's activities. The purchaser obtains nothing more than the status of a transferee.

**Subsection (a)** – The court's power to appoint a receiver and "make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require" must be understood in the context of the balance described above. In particular, the court's power to make orders "which the circumstances may require" is limited to "giv[ing] effect to the charging order."

**Example:** A judgment creditor with a charging order believes that the limited partnership should invest less of its surplus in operations, leaving more funds for distributions. The creditor moves the court for an order directing the general partners to restrict re-investment. This section does not authorize the court to grant the motion.

**Example:** A judgment creditor with a judgment for \$10,000 against a partner obtains a charging order against the partner's transferable interest. The limited partnership is duly served with the order. However, the limited partnership subsequently fails to comply with the order and makes a \$3000 distribution to the partner. The court has the power to order the limited partnership to turn over \$3000 to the judgment creditor to "give effect to the charging order."

The court also has the power to decide whether a particular payment is a distribution, because this decision determines whether the payment is part of a transferable interest subject to a charging order. (To the extent a payment is not a distribution, it is not part of the transferable interest and is not subject to subsection (e). The payment is therefore subject to whatever other creditor remedies may apply.)

**Subsection (c)(3)** – This provision requires the consent of all the limited as well as general partners.

**SECTION 704. POWER OF ESTATE OF DECEASED PARTNER.** If a partner dies, the deceased partner's personal representative or other legal representative may

exercise the rights of a transferee as provided in Section 702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 304.

#### **Comment**

Section 702 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 702(c).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate. For those purposes, the legal representative may exercise the informational rights of a current limited partner under Section 304. Those rights are of course subject to the limitations and obligations stated in that section – *e.g.*, Section 304 (g) (restrictions on use) and (h) (charges for copies) – as well as any generally applicable limitations stated in the partnership agreement.

**[ARTICLE] 8  
DISSOLUTION**

**SECTION 801. NONJUDICIAL DISSOLUTION.** Except as otherwise provided in Section 802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

(1) the happening of an event specified in the partnership agreement;

(2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) after the dissociation of a person as a general partner:

(A) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(B) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent;

(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

(5) the signing and filing of a declaration of dissolution by the [Secretary of State] under Section 809(c).

### Comment

This Act does not require that any of the consents referred to in this section be given in the form of a signed record. The partnership agreement has the power to impose that requirement. See Comment to Section 110.

In several provisions, this section provides for consent in terms of rights to receive distributions. Distribution rights of non-partner transferees are not relevant. Mere transferees have no consent rights, and their distribution rights are not counted in determining whether majority consent has been obtained.

**Paragraph (1)** – There is no requirement that the relevant provision of the partnership agreement be made in a record, unless the partnership agreement creates that requirement. However, if the relevant provision is not “contained in a partnership agreement made in a record,” Section 111(9)(D) includes among the limited partnership’s required information “a record stating . . . any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.”

**Paragraph (2)** – Rights to receive distributions owned by a person that is both a general and a limited partner figure into the limited partner determination only to the extent those rights are owned in the person’s capacity as a limited partner. See Section 111(9)(C).

**Example:** XYZ is a limited partnership with three general partners, each of whom is also a limited partner, and 5 other limited partners. Rights to receive distributions are allocated as follows:

Partner #1 as general partner – 3%  
Partner #2 as general partner – 2%  
Partner #3 as general partner – 1%  
Partner #1 as limited partner – 7%  
Partner #2 as limited partner – 3%  
Partner #3 as limited partner – 4%  
Partner #4 as limited partner – 5%

Partner #5 as limited partner – 5%  
Partner #6 as limited partner – 5%  
Partner #7 as limited partner – 5%  
Partner #8 as limited partner – 5%  
Several non-partner transferees, in the aggregate – 55%

Distribution rights owned by persons as limited partners amount to 39% of total distribution rights. A majority is therefore anything greater than 19.5%. If only Partners 1, 2, 3 and 4 consent to dissolve, the limited partnership is not dissolved. Together these partners own as limited partners 19% of the distribution rights owned by persons as limited partners – just short of the necessary majority. For purposes of this calculation, distribution rights owned by non-partner transferees are irrelevant. So, too, are distribution rights owned by persons as general partners. (However, dissolution under this provision requires “the consent of all general partners.”)

**Paragraph (3)(A)** – Unlike paragraph (2), this paragraph makes no distinction between distribution rights owned by persons as general partners and distribution rights owned by persons as limited partners. Distribution rights owned by non-partner transferees are irrelevant.

**SECTION 802. JUDICIAL DISSOLUTION.** On application by a partner the [appropriate court] may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

**Comment**

**Source** – RULPA Section 802.

Section 110(b)(9) limits the power of the partnership agreement with regard to this section.

**SECTION 803. WINDING UP.**

(a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

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

(1) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in Section 203, and perform other necessary acts; and

(2) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

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

(1) has the powers of a general partner under Section 804; and

(2) shall promptly amend the certificate of limited partnership to state:

(A) that the limited partnership does not have a general partner;

(B) the name of the person that has been appointed to wind up the limited partnership; and

(C) the street and mailing address of the person.

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

(1) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or

(2) the applicant establishes other good cause.

#### **Comment**

Source – RUPA Sections 802 and 803.

**Subsection (b)(2)** – A limited partnership may satisfy its duty to “discharge” a liability either by paying or by making an alternative arrangement satisfactory to the creditor.

**Subsection (c)** – The method for determining majority consent is analogous to the method applicable under Section 801(2). See the Comment to that paragraph.

A person appointed under this subsection is **not** a general partner and therefore is not subject to Section 408.

### **SECTION 804. POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION.**

(a) A limited partnership is bound by a general partner’s act after dissolution which:

(1) is appropriate for winding up the limited partnership’s activities; or

(2) would have bound the limited partnership under Section 402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.



(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) at the time the other party enters into the transaction:

(A) less than two years has passed since the dissociation; and

(B) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) the act:

(A) is appropriate for winding up the limited partnership's activities; or

(B) would have bound the limited partnership under Section 402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

#### **Comment**

**Subsection (a)** – Source: RUPA Section 804.

**Subsection (a)(2)** – A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

**Subsection (b)** – This subsection deals with the post-dissolution power to bind of a person dissociated as a general partner. Paragraph (1) replicates the provisions of Section 606, pertaining to the pre-dissolution power to bind of a person dissociated as a general partner. Paragraph (2) replicates the provisions of subsection (a), which state the post-dissolution power to bind of a general partner. For a person dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraph (1) and paragraph (2).

**Subsection (b)(1)(B)** – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)(2)(B)** – A person might have notice under Section 103(d)(2) (amendment of certificate of limited partnership to indicate dissolution) as well as under Section 103(b).

**SECTION 805. LIABILITY AFTER DISSOLUTION OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS, AND PERSONS DISSOCIATED AS GENERAL PARTNER.**

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Section 804(a) by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Section 804(b), the person is liable:

(1) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**Comment**

**Source** – RUPA Section 806.

It is possible for more than one person to be liable under this section on account of the same limited partnership obligation. This Act does not provide any rule for apportioning liability in that circumstance.

**Subsection (a)(2)** – If the limited partnership is not a limited liability limited partnership, the liability created by this paragraph includes liability under Sections 404(a), 607(b), and 607(c). The paragraph also applies when a partner or person dissociated as a general partner suffers damage due to a contract of guaranty.

## **SECTION 806. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**

### **PARTNERSHIP.**

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

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

- (1) specify the information required to be included in a claim;
- (2) provide a mailing address to which the claim is to be sent;
- (3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant;
- (4) state that the claim will be barred if not received by the deadline; and
- (5) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 404.

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

(1) the claim is not received by the specified deadline; or

(2) in the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection.

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

#### **Comment**

**Source** – ULLCA Section 807. See also RMBCA Section 14.06.

**Paragraph (b)(5)** – If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

### **SECTION 807. OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP.**

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

(b) The notice must:

(1) be published at least once in a newspaper of general circulation in the [county] in which the dissolved limited partnership's principal office is located or, if it

has none in this State, in the [county] in which the limited partnership's designated office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(3) state that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice; and

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

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

(1) a claimant that did not receive notice in a record under Section 806;

(2) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(3) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

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

(1) against the dissolved limited partnership, to the extent of its undistributed assets;

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

(3) against any person liable on the claim under Section 404.

**Comment**

**Source** – ULLCA Section 808. See also RMBCA Section 14.07.

**Paragraph (b)(4)** – If the limited partnership has always been a limited liability limited partnership, there can be no liability under Section 404 for any general partner or person dissociated as a general partner.

**SECTION 808. LIABILITY OF GENERAL PARTNER AND PERSON**

**DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED**

**PARTNERSHIP BARRED.** If a claim against a dissolved limited partnership is barred under Section 806 or 807, any corresponding claim under Section 404 is also barred.

**Comment**

The liability under Section 404 of a general partner or person dissociated as a general partner is merely liability for the obligations of the limited partnership.

**SECTION 809. ADMINISTRATIVE DISSOLUTION.**

(a) The [Secretary of State] may dissolve a limited partnership administratively if the limited partnership does not, within 60 days after the due date:

(1) pay any fee, tax, or penalty due to the [Secretary of State] under this [Act] or other law; or

(2) deliver its annual report to the [Secretary of State].

(b) If the [Secretary of State] determines that a ground exists for administratively dissolving a limited partnership, the [Secretary of State] shall file a record of the determination and serve the limited partnership with a copy of the filed record.

(c) If within 60 days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of State] shall administratively dissolve the limited partnership by preparing, signing and filing a declaration of dissolution that states the grounds for dissolution. The [Secretary of State] shall serve the limited partnership with a copy of the filed declaration.

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

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

#### **Comment**

**Source** – ULLCA Sections 809 and 810. See also RMBCA Sections 14.20 and 14.21.

**Subsection (a)(1)** – This provision refers solely to money due the specified filing officer and does not apply to other money due to the State.

**Subsection (c)** – The filing of a declaration of dissolution does not provide notice under Section 103(d).

**SECTION 810. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.**

(a) A limited partnership that has been administratively dissolved may apply to the [Secretary of State] for reinstatement within two years after the effective date of dissolution. The application must be delivered to the [Secretary of State] for filing and state:

(1) the name of the limited partnership and the effective date of its administrative dissolution;

(2) that the grounds for dissolution either did not exist or have been eliminated; and

(3) that the limited partnership's name satisfies the requirements of Section 108.

(b) If the [Secretary of State] determines that an application contains the information required by subsection (a) and that the information is correct, the [Secretary of State] shall prepare a declaration of reinstatement that states this determination, sign, and file the original of the declaration of reinstatement, and serve the limited partnership with a copy.



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

**Comment**

**Source** – ULLCA Section 811. See also RMBCA Section 14.22.

**SECTION 811. APPEAL FROM DENIAL OF REINSTATEMENT.**

(a) If the [Secretary of State] denies a limited partnership's application for reinstatement following administrative dissolution, the [Secretary of State] shall prepare, sign and file a notice that explains the reason or reasons for denial and serve the limited partnership with a copy of the notice.

(b) Within 30 days after service of the notice of denial, the limited partnership may appeal from the denial of reinstatement by petitioning the [appropriate court] to set aside the dissolution. The petition must be served on the [Secretary of State] and contain a copy of the [Secretary of State's] declaration of dissolution, the limited partnership's application for reinstatement, and the [Secretary of State's] notice of denial.

(c) The court may summarily order the [Secretary of State] to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

**Comment**

**Source** – ULLCA Section 812.

**SECTION 812. DISPOSITION OF ASSETS; WHEN CONTRIBUTIONS  
REQUIRED.**

(a) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

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

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

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in

the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

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

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

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

#### Comment

In some circumstances, this Act requires a partner to make payments to the limited partnership. See, e.g., Sections 502(b), 509(a), 509(b), and 812(c). In other circumstances, this Act requires a partner to make payments to other partners. See, e.g., Sections 509(c) and 812(d). In no circumstances does this Act require a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

**Example:** XYZ Limited Partnership ("XYZ") has one general partner and four limited partners. According to XYZ's required information, the value of each partner's contributions to XYZ are:

General partner – \$5,000

Limited partner #1 – \$10,000  
Limited partner #2 – \$15,000  
Limited partner #3 – \$20,000  
Limited partner #4 – \$25,000

XYZ is unsuccessful and eventually dissolves without ever having made a distribution to its partners. XYZ lacks any assets with which to return to the partners the value of their respective contributions. No partner is obliged to make any payment either to the limited partnership or to fellow partners to adjust these capital losses. These losses are not part of “the limited partnership’s obligations to creditors.” Section 812(a).

**Example:** Same facts, except that Limited Partner #4 loaned \$25,000 to XYZ when XYZ was not a limited liability limited partnership, and XYZ lacks the assets to repay the loan. The general partner must contribute to the limited partnership whatever funds are necessary to enable XYZ to satisfy the obligation owed to Limited Partner #4 on account of the loan. Section 812(a) and (c).

**Subsection (c)** – Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

**[ARTICLE] 9**  
**FOREIGN LIMITED PARTNERSHIPS**

**SECTION 901. GOVERNING LAW.**

(a) The laws of the State or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(b) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this State.

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

**Comment**

**Source** – ULLCA Section 1001 for subsections (b) and (c).

**Subsection (a)** – This subsection parallels and is analogous in scope and effect to Section 106 (choice of law for domestic limited partnerships).

**SECTION 902. APPLICATION FOR CERTIFICATE OF AUTHORITY.**

(a) A foreign limited partnership may apply for a certificate of authority to transact business in this State by delivering an application to the [Secretary of State] for filing. The application must state:

(1) the name of the foreign limited partnership and, if the name does not comply with Section 108, an alternate name adopted pursuant to Section 905(a).

(2) the name of the State or other jurisdiction under whose law the foreign limited partnership is organized;

(3) the street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(4) the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this State;

(5) the name and street and mailing address of each of the foreign limited partnership's general partners; and

(6) whether the foreign limited partnership is a foreign limited liability limited partnership.

(b) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the [Secretary of State] or other official having custody of the foreign limited partnership's publicly filed records in the State or other jurisdiction under whose law the foreign limited partnership is organized.

#### **Comment**

**Source** – ULLCA Section 1002.

A certificate of authority applied for under this section is different than a certificate of authorization furnished under Section 209.

## SECTION 903. ACTIVITIES NOT CONSTITUTING TRANSACTING

### BUSINESS.

(a) Activities of a foreign limited partnership which do not constitute transacting business in this State within the meaning of this [article] include:

- (1) maintaining, defending, and settling an action or proceeding;
- (2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

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

(10) transacting business in interstate commerce.

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

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

**Comment**

**Source** – ULLCA Section 1003.

**SECTION 904. FILING OF CERTIFICATE OF AUTHORITY.** Unless the [Secretary of State] determines that an application for a certificate of authority does not comply with the filing requirements of this [Act], the [Secretary of State], upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this State, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative.

**Comment**

**Source** – ULLCA Section 1004 and RULPA Section 903.

A certificate of authority filed under this section is different than a certificate of authorization furnished under Section 209.



## **SECTION 905. NONCOMPLYING NAME OF FOREIGN LIMITED**

### **PARTNERSHIP.**

(a) A foreign limited partnership whose name does not comply with Section 108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with Section 108. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with [fictitious name statute]. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under the name unless the foreign limited partnership is authorized under [fictitious name statute] to transact business in this State under another name.

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

#### **Comment**

**Source** – ULLCA Section 1005.

## **SECTION 906. REVOCATION OF CERTIFICATE OF AUTHORITY.**

(a) A certificate of authority of a foreign limited partnership to transact business in this State may be revoked by the [Secretary of State] in the manner provided in subsections (b) and (c) if the foreign limited partnership does not:

(1) pay, within 60 days after the due date, any fee, tax or penalty due to the [Secretary of State] under this [Act] or other law;

(2) deliver, within 60 days after the due date, its annual report required under Section 210;

(3) appoint and maintain an agent for service of process as required by Section 114(b); or

(4) deliver for filing a statement of a change under Section 115 within 30 days after a change has occurred in the name or address of the agent.

(b) In order to revoke a certificate of authority, the [Secretary of State] must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this State, or if the foreign limited partnership does not appoint and maintain a proper agent in this State, to the foreign limited partnership's designated office. The notice must state:

(1) the revocation's effective date, which must be at least 60 days after the date the [Secretary of State] sends the copy; and

(2) the foreign limited partnership's failures to comply with subsection (a) which are the reason for the revocation.

(c) The authority of the foreign limited partnership to transact business in this State ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (a) stated in the notice. If the foreign limited partnership cures the failures, the [Secretary of State] shall so indicate on the filed notice.

**Comment**

**Source** – ULLCA Section 1006.

**SECTION 907. CANCELLATION OF CERTIFICATE OF AUTHORITY;  
EFFECT OF FAILURE TO HAVE CERTIFICATE.**

(a) In order to cancel its certificate of authority to transact business in this State, a foreign limited partnership must deliver to the [Secretary of State] for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under Section 206.

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

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

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

(e) If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it appoints the [Secretary of

State] as its agent for service of process for rights of action arising out of the transaction of business in this State.

**Comment**

**Source** – RULPA Section 907(d); ULLCA Section 1008.

**SECTION 908. ACTION BY [ATTORNEY GENERAL].** The [Attorney General] may maintain an action to restrain a foreign limited partnership from transacting business in this State in violation of this [article].

**Comment**

**Source** – RULPA Section 908; ULLCA Section 1009.

**[ARTICLE] 10**  
**ACTIONS BY PARTNERS**

**SECTION 1001. DIRECT ACTION BY PARTNER.**

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

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

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

**Comment**

**Subsection (a)** – Source: RUPA Section 405(b).

**Subsection (b)** – In ordinary contractual situations it is axiomatic that each party to a contract has standing to sue for breach of that contract. Within a limited partnership, however, different circumstances may exist. A partner does not have a direct claim against another partner merely because the other partner has breached the partnership agreement. Likewise a partner's violation of this Act does not automatically create a direct claim for every other partner. To have standing in his, her, or its own right, a partner plaintiff must be able to show a harm that occurs independently of the harm caused or threatened to be caused to the limited partnership.

The reference to "threatened" harm is intended to encompass claims for injunctive relief and does not relax standards for proving injury.

**SECTION 1002. DERIVATIVE ACTION.** A partner may maintain a derivative action to enforce a right of a limited partnership if:

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

(2) a demand would be futile.

**Comment**

**Source** -- RULPA Section 1001.

**SECTION 1003. PROPER PLAINTIFF.** A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) that was a partner when the conduct giving rise to the action occurred; or

(2) whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

**Comment**

**Source** -- RULPA Section 1002.

**SECTION 1004. PLEADING.** In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the general partners' response to the demand; or

(2) why demand should be excused as futile.

**Comment**

**Source** – RULPA Section 1003.

**SECTION 1005. PROCEEDS AND EXPENSES.**

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(2) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

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

**Comment**

**Source** – RULPA Section 1004.

**[ARTICLE] 11  
CONVERSION AND MERGER**

**SECTION 1101. DEFINITIONS.** In this [article]:

- (1) "Constituent limited partnership" means a constituent organization that is a limited partnership.
- (2) "Constituent organization" means an organization that is party to a merger.
- (3) "Converted organization" means the organization into which a converting organization converts pursuant to Sections 1102 through 1105.
- (4) "Converting limited partnership" means a converting organization that is a limited partnership.
- (5) "Converting organization" means an organization that converts into another organization pursuant to Section 1102.
- (6) "General partner" means a general partner of a limited partnership.
- (7) "Governing statute" of an organization means the statute that governs the organization's internal affairs.
- (8) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.
- (9) "Organizational documents" means:
  - (A) for a domestic or foreign general partnership, its partnership agreement;



(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

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

(A) by the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

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

(11) "Surviving organization" means an organization into which one or more other organizations are merged. A surviving organization may preexist the merger or be created by the merger.

**Comment**

This section contains definitions specific to this Article.

**SECTION 1102. CONVERSION.**

(a) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization pursuant to this section and Sections 1103 through 1105 and a plan of conversion, if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) the name and form of the organization before conversion;

(2) the name and form of the organization after conversion; and

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization.

### Comment

In a statutory conversion an existing entity changes its form, the jurisdiction of its governing statute or both. For example, a limited partnership organized under the laws of one jurisdiction might convert to:

- a limited liability company (or other form of entity) organized under the laws of the same jurisdiction,
- a limited liability company (or other form of entity) organized under the laws of another jurisdiction, or
- a limited partnership organized under the laws of another jurisdiction (referred to in some statutes as “domestication”).

In contrast to a merger, which involves at least two entities, a conversion involves only one. The converting and converted organization are the same entity. See Section 1105(a). For this Act to apply to a conversion, either the converting or converted organization must be a limited partnership subject to this Act. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner’s obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

**Subsection (a)(2)** – Given the very broad definition of “organization,” Section 1101(8), this Act authorizes conversions involving non-profit organizations. This provision is intended as an additional safeguard for that context.

**Subsection (b)(3)** – A plan of conversion may provide that some persons with interests in the converting organization will receive interests in the converted organization while other persons with interests in the converting organization will receive some other form of consideration. Thus, a “squeeze out” conversion is possible. As noted above, if the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which a squeeze out conversion occurs.

If the converting organization is a limited partnership, the plan of conversion will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a converting limited partnership or its partners to mere transferees. That issue is a matter for other law.

**SECTION 1103. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP.**

(a) Subject to Section 1110, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(b) Subject to Section 1110 and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 1104, a converting limited partnership may amend the plan or abandon the planned conversion:

(1) as provided in the plan; and

(2) except as prohibited by the plan, by the same consent as was required to approve the plan.

**Comment**

Section 1110 imposes special consent requirements for transactions which might cause a partner to have "personal liability," as defined in Section 1101(10) for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

**Subsection (a)** -- Like many of the rules stated in this Act, this subsection's requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection's rule means that a partner might be subject to a conversion (including a "squeeze out" conversion) without consent and with no appraisal remedy. If the converting organization is a limited partnership subject to this Act, the partners of the converting organization are subject to the duties and obligations stated in this Act. Those duties would apply to the process and terms under which the conversion occurs. However, if the partnership agreement allows for a conversion with less than unanimous consent, the mere fact a partner objects to a conversion does not mean that the partners favoring, arranging, consenting to or effecting the conversation have breached a duty under this Act.

**SECTION 1104. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE**

**DATE.**

(a) After a plan of conversion is approved:

(1) a converting limited partnership shall deliver to the [Secretary of State] for filing articles of conversion, which must include:

(A) a statement that the limited partnership has been converted into another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute;

(C) the date the conversion is effective under the governing statute of the converted organization;

(D) a statement that the conversion was approved as required by this [Act];

(E) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(F) if the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1105(c); and

(2) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the [Secretary of State] for filing a certificate of limited partnership, which must include, in addition to the information required by Section 201:

(A) a statement that the limited partnership was converted from another organization;

(B) the name and form of the organization and the jurisdiction of its governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(2) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

#### **Comment**

**Subsection (b)** – The effective date of a conversion is determined under the governing statute of the converted organization.

#### **SECTION 1105. EFFECT OF CONVERSION.**

(a) An organization that has been converted pursuant to this [article] is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization;

(2) all debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(4) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(6) except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of [Article] 8.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this State on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this State appoints the [Secretary of State] as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the [Secretary of State] under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d).

#### **Comment**

**Subsection (a)** – A conversion changes an entity’s legal type, but does not create a new entity.

**Subsection (b)** – Unlike a merger, a conversion involves a single entity, and the conversion therefore does not transfer any of the entity’s rights or obligations.

## **SECTION 1106. MERGER.**

(a) A limited partnership may merge with one or more other constituent organizations pursuant to this section and Sections 1107 through 1109 and a plan of merger, if:

- (1) the governing statute of each the other organizations authorizes the merger;
- (2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
- (3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

- (1) the name and form of each constituent organization;
- (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
- (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
- (4) if the surviving organization is to be created by the merger, the surviving organization's organizational documents; and
- (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents.



### **Comment**

For this Act to apply to a merger, at least one of the constituent organizations must be a limited partnership subject to this Act. The partners of any such limited partnership are subject to the duties and obligations stated in this Act, including Sections 304 (informational rights of limited partners), 305(b) (limited partner's obligation of good faith and fair dealing), 407 (informational rights of general partners), and 408 (general partner duties).

**Subsection (a)(2)** – Given the very broad definition of “organization,” Section 1101(8), this Act authorizes mergers involving non-profit organizations. This provision is intended as an additional safeguard for that context.

**Subsection (b)(3)** – A plan of merger may provide that some persons with interests in a constituent organization will receive interests in the surviving organization, while other persons with interests in the same constituent organization will receive some other form of consideration. Thus, a “squeeze out” merger is possible. As noted above, the duties and obligations stated in this Act apply to the partners of a constituent organization that is a limited partnership subject to this Act. Those duties would apply to the process and terms under which a squeeze out merger occurs.

If a constituent organization is a limited partnership, the plan of merger will determine the fate of any interests held by mere transferees. This Act does not state any duty or obligation owed by a constituent limited partnership or its partners to mere transferees. That issue is a matter for other law.

### **SECTION 1107. ACTION ON PLAN OF MERGER BY CONSTITUENT**

#### **LIMITED PARTNERSHIP.**

(a) Subject to Section 1110, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(b) Subject to Section 1110 and any contractual rights, after a merger is approved, and at any time before a filing is made under Section 1108, a constituent limited partnership may amend the plan or abandon the planned merger:

(1) as provided in the plan; and

(2) except as prohibited by the plan, with the same consent as was required to approve the plan.

#### **Comment**

Section 1110 imposes special consent requirements for transactions which might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by Section 1110. See Section 110(b)(12).

**Subsection (a)** – Like many of the rules stated in this Act, this subsection’s requirement of unanimous consent is a default rule. Subject only to Section 1110, the partnership agreement may state a different quantum of consent or provide a completely different approval mechanism. Varying this subsection’s rule means that a partner might be subject to a merger (including a “squeeze out” merger) without consent and with no appraisal remedy. The partners of a constituent limited partnership are subject to the duties and obligations stated in this Act, and those duties would apply to the process and terms under which the merger occurs. However, if the partnership agreement allows for a merger with less than unanimous consent, the mere fact a partner objects to a merger does not mean that the partners favoring, arranging, consenting to or effecting the merger have breached a duty under this Act.

#### **SECTION 1108. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.**

(a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(2) each other preexisting constituent organization, by an authorized representative.

(b) The articles of merger must include:

(1) the name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(B) if it will be an organization other than a limited partnership, the organizational document that creates the organization;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization;

(6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(7) if the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office which the [Secretary of State] may use for the purposes of Section 1109(b); and

(8) any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited partnership shall deliver the articles of merger for filing in the [office of the Secretary of State].

(d) A merger becomes effective under this [article]:

(1) if the surviving organization is a limited partnership, upon the later of:

- (i) compliance with subsection (c); or
- (ii) subject to Section 206(c), as specified in the articles of merger; or

(2) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

**Comment**

**Subsection (b)** – The effective date of a merger is determined under the governing statute of the surviving organization.

**SECTION 1109. EFFECT OF MERGER.**

(a) When a merger becomes effective:

- (1) the surviving organization continues or comes into existence;
- (2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- (3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (4) all debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;
- (5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
- (6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of [Article] 8;

(9) if the surviving organization is created by the merger:

(A) if it is a limited partnership, the certificate of limited partnership becomes effective; or

(B) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this State appoints the [Secretary of State] as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the [Secretary of State] under this subsection is made in the same manner and with the same consequences as in Section 117(c) and (d).

**SECTION 1110. RESTRICTIONS ON APPROVAL OF CONVERSIONS AND MERGERS AND ON RELINQUISHING LLLP STATUS.**

(a) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

(1) the limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(2) the partner has consented to the provision of the partnership agreement.

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

(1) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(2) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

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

**Comment**

This section imposes special consent requirements for transactions that might make a partner personally liable for entity debts. The partnership agreement may not restrict the rights provided by this section. See Section 110(b)(12).

**Subsection (c)** – This subsection prevents circumvention of the consent requirements of subsections (a) and (b).

**Example:** As initially consented to, the partnership agreement of a limited partnership leaves in place the Act's rule requiring unanimous consent for a conversion or merger. The partnership agreement does provide, however, that the agreement may be amended with the affirmative vote of general partners owning 2/3 of the rights to receive distributions as general partners and of limited partners owning 2/3 of the rights to receive distributions as limited partners. The required vote is obtained for an amendment that permits approval of a conversion or merger by the same vote necessary to amend the partnership agreement. Partner X votes for the amendment. Partner Y votes against. Partner Z does not vote.

Subsequently the limited partnership proposes to convert to a limited partnership (not an LLLP) organized under the laws of another state, with Partners X, Y and Z each receiving interests as general partners. Under the amended partnership agreement, approval of the conversion does not require unanimous consent. However, since after the conversion, Partners X, Y and Z will each have "personal liability with respect to [the] converted . . . organization," Section 1110(a) applies.

As a result, the approval of the plan of conversion will require the consent of Partner Y and Partner Z. They did not consent to the amendment that provided for non-unanimous approval of a conversion or merger. Their initial consent to the partnership agreement, with its provision permitting non-unanimous consent for amendments, does not satisfy the consent requirement of Subsection 1110(a)(2).

In contrast, Partner X's consent is not required. Partner X lost its Section 1110(a) veto right by consenting directly to the amendment to the partnership agreement which permitted non-unanimous consent to a conversion or merger.

## **SECTION 1111. LIABILITY OF GENERAL PARTNER AFTER CONVERSION OR MERGER.**

(a) A conversion or merger under this [article] does not discharge any liability under Sections 404 and 607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

(1) the provisions of this [Act] pertaining to the collection or discharge of the liability continue to apply to the liability;

(2) for the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(3) if a person is required to pay any amount under this subsection:

(A) the person has a right of contribution from each other person that was liable as a general partner under Section 404 when the obligation was incurred and has not been released from the obligation under Section 607; and

(B) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

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

(1) a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that:

(i) the converted or surviving business is the converting or constituent limited partnership;

(ii) the converting or constituent limited partnership is not a limited liability limited partnership; and



(iii) the person is a general partner in the converting or constituent limited partnership; and

(2) a person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(A) immediately before the conversion or merger became effective the converting or surviving limited partnership was a not a limited liability limited partnership; and

(B) at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

#### **Comment**

This section extrapolates the approach of Section 607 into the context of a conversion or merger involving a limited partnership.

**Subsection (a)** – This subsection pertains to general partner liability for obligations which a limited partnership incurred before a conversion or merger. Following RUPA and the UPA, this Act leaves to other law the question of when a limited partnership obligation is incurred.

If the converting or constituent limited partnership was a limited liability limited partnership at all times before the conversion or merger, this subsection will not apply because no person will have any liability under Section 404 or 607.

**Subsection (b)** – This subsection pertains to entity obligations incurred after a conversion or merger and creates lingering exposure to personal liability for general partners and persons previously dissociated as general partners. In contrast to subsection (a)(3), this subsection does not provide for contribution among persons personally liable under this section for the same entity obligation. That issue is left for other law.

**Subsection (b)(1)** – If the converting or constituent limited partnership was a limited liability limited partnership immediately before the conversion or merger, there is no lingering exposure to personal liability under this subsection.

**Subsection (b)(1)(A)** – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

**Subsection (b)(2)(B)(i)** – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)(2)(B)(ii)** – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

**SECTION 1112. POWER OF GENERAL PARTNERS AND PERSONS  
DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER  
CONVERSION OR MERGER.**

(a) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 402; and

(2) at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 402 if the person had been a general partner; and

(2) at the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

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

(1) to the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(2) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

**Comment**

This section extrapolates the approach of Section 606 into the context of a conversion or merger involving a limited partnership.

**Subsection (a)(2)(A)** – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

**Subsection (b)(2)(A)** – A person might have notice under Section 103(d)(1) as well as under Section 103(b).

**Subsection (b)(2)(B)** – A person might have notice under Section 103(d)(4) or (5) as well as under Section 103(b).

**SECTION 1113. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an entity from being converted or merged under other law.

**[ARTICLE] 12**  
**MISCELLANEOUS PROVISIONS**

**SECTION 1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.**

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

**SECTION 1202. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**SECTION 1203. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [Act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this [Act] does not modify, limit, or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

**SECTION 1204. EFFECTIVE DATE.** This [Act] takes effect [effective date].

**Comment**

Section 1206 specifies how this Act affects domestic limited partnerships, with special provisions pertaining to domestic limited partnerships formed before the Act's effective date. Section 1206 contains no comparable provisions for foreign limited

partnerships. Therefore, once this Act is effective, it applies immediately to all foreign limited partnerships, whether formed before or after the Act's effective date.

**SECTION 1205. REPEALS.** Effective [all-inclusive date], the following acts and parts of acts are repealed: [the State Limited Partnership Act as amended and in effect immediately before the effective date of this [Act]].

**SECTION 1206. APPLICATION TO EXISTING RELATIONSHIPS.**

(a) Before [all-inclusive date], this [Act] governs only:

(1) a limited partnership formed on or after [the effective date of this [Act]]; and

and

(2) except as otherwise provided in subsections (c) and (d), a limited partnership formed before [the effective date of this [Act]] which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this [Act].

(b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this [Act] governs all limited partnerships.

(c) With respect to a limited partnership formed before [the effective date of this [Act]], the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Section 104(c) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before [the effective date of this [Act]].

(2) the limited partnership is not required to amend its certificate of limited partnership to comply with Section 201(a)(4).

(3) Sections 601 and 602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before [the effective date of this [Act]].

(4) Section 603(4) does not apply.

(5) Section 603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before [the effective date of this [Act]].

(6) Section 801(3) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before [the effective date of this [Act]].

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

(1) before [all-inclusive date], to:

(A) a third party that had not done business with the limited partnership in the year before the election took effect; and

(B) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(2) on and after [all-inclusive date], to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(B).

*Legislative Note: In a State that has previously amended its existing limited partnership statute to provide for limited liability limited partnerships (LLLPs), this Act should include transition provisions specifically applicable to preexisting limited liability limited partnerships. The precise wording of those provisions must depend on the wording of the State's previously enacted LLLP provisions. However, the following principles apply generally:*

*1. In Sections 806(b)(5) and 807(b)(4) (notice by dissolved limited partnership to claimants), the phrase "the limited partnership has been throughout its existence a limited liability limited partnership" should be revised to encompass a limited partnership that was a limited liability limited partnership under the State's previously enacted LLLP provisions.*

*2. Section 1206(d) should provide that, if a preexisting limited liability limited partnership elects to be subject to this Act, this Act's provisions relating to the liability of general partners to third parties apply immediately to all third parties, regardless of whether a third party has previously done business with the limited liability limited partnership.*

*3. A preexisting limited liability limited partnership that elects to be subject to this Act should have to comply with Sections 201(a)(4) (requiring the certificate of limited partnership to state whether the limited partnership is a limited liability limited partnership) and 108(c) (establishing name requirements for a limited liability limited partnership).*

*4. As for Section 1206(b) (providing that, after a transition period, this Act applies to all preexisting limited partnerships):*

*a. if a State's previously enacted LLLP provisions have requirements essentially the same as Sections 201(a)(4) and 108(c), preexisting limited liability limited partnerships should automatically retain LLLP status under this Act.*

*b. if a State's previously enacted LLLP provisions have name requirements essentially the same as Section 108(c) and provide that a public filing other than the certificate of limited partnership establishes a limited partnership's status as a limited liability limited partnership:*

*i. that filing can be deemed to an amendment to the certificate of limited partnership to comply with Section 201(a)(4), and*

*ii. preexisting limited liability limited partnerships should automatically retain LLLP status under this Act.*



*c. if a State's previously enacted LLLP provisions do not have name requirements essentially the same as Section 108(c), it will be impossible both to enforce Section 108(c) and provide for automatic transition to LLLP status under this Act.*

### Comment

**Source:** RUPA Section 1206.

This section pertains exclusively to domestic limited partnerships – i.e., to limited partnerships formed under this Act or a predecessor statute enacted by the same jurisdiction. For foreign limited partnerships, see the Comment to Section 1204.

This Act governs all limited partnerships formed on or after the Act's effective date. As for pre-existing limited partnerships, this section establishes an optional "elect in" period and a mandatory, all-inclusive date. The "elect in" period runs from the effective date, stated in Section 1204, until the all-inclusive date, stated in both subsection(a) and (b).

During the "elect in" period, a pre-existing limited partnership may elect to become subject to this Act. Subsection (d) states certain important consequences for a limited partnership that elects in. Beginning on the all-inclusive date, each pre-existing limited partnership that has not previously elected in becomes subject to this Act by operation of law.

**Subsection (c)** – This subsection specifies six provisions of this Act which never automatically apply to any pre-existing limited partnership. Except for subsection (c)(2), the list refers to provisions governing the relationship of the partners *inter se* and considered too different than predecessor law to be fairly applied to a preexisting limited partnership without the consent of its partners. Each of these *inter se* provisions is subject to change in the partnership agreement. However, many pre-existing limited partnerships may have taken for granted the analogous provisions of predecessor law and may therefore not have addressed the issues in their partnership agreements.

**Subsection (c)(1)** – Section 104(c) provides that a limited partnership has a perpetual duration.

**Subsection (c)(2)** – Section 201(a)(4) requires the certificate of limited partnership to state "whether the limited partnership is a limited liability limited partnership." The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP and therefore is inapposite to pre-existing limited partnerships. Moreover, applying the requirement to pre-existing limited partnerships would create a significant administrative burden both for limited partnerships and the filing officer and probably would result in many pre-existing limited partnerships being in violation of the requirement.

**Subsection (c)(3)** – Section 601 and 602 concern a person’s dissociation as a limited partner.

**Subsection (c)(4)** – Section 603(4) provides for the expulsion of a general partner by the unanimous consent of the other partners in specified circumstances.

**Subsection (c)(5)** – Section 603(5) provides for the expulsion of a general partner by a court in specified circumstances.

**Subsection (c)(6)** – Section 801(3) concerns the continuance or dissolution of a limited partnership following a person’s dissociation as a general partner.

**Subsection (d)** – Following RUPA Section 1206(c), this subsection limits the efficacy of the Act’s liability protections for partners of an “electing in” limited partnership. The limitation:

- applies only to the benefit of “a third party that had done business with the limited partnership in the year before the election took effect,” and
- ceases to apply when “the third party knows or has received a notification of the election” or on the “all-inclusive” date, whichever occurs first.

If the limitation causes a provision of this Act to be inapplicable with regard to a third party, the comparable provision of predecessor law applies.

**Example:** A pre-existing limited partnership elects to be governed by this Act before the “all-inclusive” date. Two months before the election, Third Party provided services to the limited partnership. Third Party neither knows nor has received a notification of the election. Until the “all inclusive” date, with regard to Third Party, Section 303’s full liability shield, does not apply to each limited partner. Instead, each limited partner has the liability shield applicable under predecessor law.

**Subsection (d)(2)** – To the extent subsection (d) causes a provision of this Act to be inapplicable when an obligation is incurred, the inapplicability continues as to that obligation even after the “all inclusive” date.

**SECTION 1207. SAVINGS CLAUSE.** This [Act] does not affect an action commenced, proceeding brought, or right accrued before this [Act] takes effect.