

9-1-1989

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T. Mallory

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Recommended Citation

T. Mallory, *CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS Limited Partnerships: Amend Georgia Revised Uniform Limited Partnership Act*, 6 GA. ST. U. L. REV. (1989).

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CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Limited Partnerships: Amend Georgia Revised Uniform Limited Partnership Act

CODE SECTIONS: O.C.G.A. §§ 10-1-492 (amended), 14-9-102 to -104 (amended), 14-9-206.1 to -206.5 (amended), 14-9-206.6 (repealed), 14-9-302 (amended), 14-9-405 (amended), 14-9-601 to -602 (amended), 14-9-801 (amended), 14-9-803 (amended), 14-9-902.1 (amended), 14-9-1101 (amended), 15-6-77 (amended)

BILL NUMBER: HB 334

ACT NUMBER: 566

SUMMARY: The Act amends the limitations on names available to limited partnerships, provides for the merger of a limited partnership with a corporation, permits a general partner to maintain the confidentiality of reasonable trade secrets, provides for interim redemption of partnership interests, and alters public notice requirements as they affect the personal liability of a withdrawing general partner.

EFFECTIVE DATE: July 1, 1989

History

After several years of consideration, the 1988 session of the Georgia General Assembly adopted the Revised Uniform Limited Partnership Act (RULPA),¹ substantially altering the pre-existing laws governing limited partnerships.² In the wake of this major change in the statutory requirements affecting a popular business form and investment vehicle, HB 334 was introduced in the 1989 General Assembly to conform the filing requirements and other technical aspects of Georgia's RULPA with corresponding provisions of the new Business Corporation Code (BCC).³ The BCC was adopted by the 1988 General Assembly and took effect July 1, 1989.⁴

1. 1988 Ga. Laws 1016.

2. Legislative Review, *Limited Partnerships: Revised Uniform Limited Partnership Act*, 5 GA. ST. U.L. REV. 272, 273 (1988).

3. Telephone interview with Valerie Hepburn, Director of Administration, Office of the Secretary of State (May 11, 1989).

4. See O.C.G.A. §§ 14-2-101 to -1706 (1989).

HB 334

The prior Code embodiment of RULPA restricted the circumstances in which a limited partner's name could appear in the name of the limited partnership.⁵ Following the lead of the less restrictive BCC, HB 334 repeals this restriction.⁶ Like the BCC,⁷ the Act also adds to the existing law a subsection to make explicit that "this chapter does not control the use of fictitious or trade names."⁸

The Act alters the procedure for selecting and reserving trade names. The prior law set forth the form and contents of an application to the Secretary of State for the reservation of a name for a limited partnership.⁹ The prior law also permitted a person who had reserved a proposed name to transfer the reservation to another party by signed notice to the Secretary.¹⁰ The Act deletes from O.C.G.A. § 14-9-103(a) any specification of the content of the reservation application, and further provides that the sixty-day reservation period specified is nonrenewable.¹¹

As introduced, HB 334 would have amended the provision permitting the transfer of reserved names by designating the reserving party and subsequent transferring party of such a name as the "owner of a reserved limited partnership name."¹² The House Committee on Judiciary amended HB 334 to delete the implication that a person reserving a name for the use of a limited partnership had acquired an ownership interest in the name so reserved.¹³

As adopted by the 1988 General Assembly, Georgia's RULPA provided for a domestic limited partnership to merge with one or more domestic or foreign limited partnerships.¹⁴ The Act expanded the provision for merger of limited partnerships by permitting the merger of such

5. 1988 Ga. Laws 1016. Under prior law, a limited partner's name could be included in the name of the limited partnership only if the name was also the name of a general partner, if it was the corporate name of a corporate general partner, or if the business of the limited partnership was carried on under that name prior to the admission of the limited partner. *Id.*

6. *See* O.C.G.A. § 14-9-102 (1989).

7. O.C.G.A. § 14-2-401(e) (1989).

8. O.C.G.A. § 14-9-102(c) (1989).

9. 1988 Ga. Laws 1016. Under prior law, a person reserved the exclusive right to use an available name by delivering to the Secretary of State an application stating the name and address of the applicant and the name proposed to be reserved. Upon the Secretary's finding that the name was available under law, the name was reserved for use by the applicant for 60 days, a period which could be extended for good cause. *Id.*

10. *Id.*

11. O.C.G.A. § 14-9-103(a) (1989).

12. HB 334, as introduced, 1989 Ga. Gen. Assem.

13. HB 334 (HCA), 1989 Ga. Gen. Assem. The bill was amended to designate the transferor of a reserved name as "[a] person who has in effect a name reservation under subsection (a) of this Code section." *Id.*

14. *See* 1988 Ga. Laws 1016.

partnerships with domestic or foreign corporations.¹⁵ The Act requires that “[i]f the surviving entity [after the merger] is a domestic or foreign corporation, it shall also comply with filing requirements of the laws of the state of its incorporation governing corporations as though each constituent limited partnership were a corporation.”¹⁶ The House Committee on Judiciary substantially narrowed the allowed character of the postmerger entity by amending the original bill to require “that in any merger of a domestic limited partnership with a corporation, the corporation *must* survive.”¹⁷ This proviso brought the RULPA merger requirements into conformity with amendments concurrently made to the BCC by HB 334.¹⁸

The prior Code required the annual registration of each domestic limited partnership, and each foreign limited partnership authorized to transact business in Georgia.¹⁹ The prior Code also specified the contents, filing dates, and procedure for amendment of the registration statement.²⁰ The Act delegates to the Secretary of State the power to establish filing dates by regulation.²¹ The Act also requires, however, that “[i]nformation in the annual registration must be current as of the date the annual registration is executed on behalf of the limited partnership.”²² The Act repeals penalties defined by the prior Code for a limited partnership’s failure to file an annual registration.²³

In accord with the Uniform Act, Georgia’s RULPA affords any limited partner the right to “[o]btain from the general partners from time to time upon reasonable request: [t]rue information to such extent and in such form as is reasonably related to such limited partner’s interest as a limited partner.”²⁴ The Act explicitly limits this right, however, when the limited partner seeks access to “any information which the general partner reasonably believes to be in the nature of trade secrets . . . or which the limited partnership is required by law or by agreement with a third party to keep confidential.”²⁵

Under Georgia’s RULPA, as under the Uniform Act, a limited partner is entitled to receive distributions from the limited partnership only under those circumstances and conditions specified in the partnership

15. HB 334, as introduced, 1989 Ga. Gen. Assem.

16. O.C.G.A. § 14-9-206.1(b) (1989) (emphasis added).

17. HB 334 (HCA), 1989 Ga. Gen. Assem. (emphasis added).

18. See O.C.G.A. § 14-2-1109 (1989).

19. 1988 Ga. Laws 1016.

20. *Id.*

21. O.C.G.A. § 14-9-206.5(c) (1989).

22. O.C.G.A. § 14-9-206.5(b) (1989).

23. O.C.G.A. § 14-9-206.6 (1989). The repealed sanctions included a \$25 fine and deprivation of a delinquent limited partnership’s right to maintain an action in any court in Georgia. 1988 Ga. Laws 1016.

24. O.C.G.A. § 14-9-305(a)(3)(A) (1989).

25. O.C.G.A. § 14-9-305(a)(3)(C) (1989).

agreement.²⁶ The Act permits interim distributions representing a redemption of partnership interest as follows: "A limited partnership *may* redeem all or any portion of the interest of any limited or general partner in accordance with the partnership agreement *or* as agreed between the general partners and the partner whose interest is to be redeemed."²⁷ The House Committee on Judiciary substantially increased the difficulty of authorizing such redemptions by amending the bill to require that the requisite agreement occur "among *all* of the persons who are partners at the time of redemption."²⁸

The 1988 General Assembly added subsections to the RULPA to define the liabilities of a withdrawing general partner to third parties.²⁹ The Act deleted the Code's provision that a withdrawing general partner can defeat a partnership creditor's personal claim against him, based on the creditor's good faith ignorance of the withdrawal, by publishing notice of his withdrawal in a general circulation newspaper.³⁰

As part of the comprehensive revision of Georgia's entire statutory scheme for the formation, operation, and regulation of business associations, the Act brings the State's version of the RULPA into substantial technical conformity with the new Business Corporation Code. This conformity eases the task of the Secretary of State in administering the new Code and simplifies the requirements imposed on business entities operating in Georgia.

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26. O.C.G.A. § 14-9-601 (1989).

27. HB 334, as introduced, 1989 Ga. Gen. Assem. (emphasis added).

28. HB 334 (HCA), 1989 Ga. Gen. Assem. (emphasis added). This change is reflected in the Act. *See* O.C.G.A. § 14-9-601(b) (1989).

29. 1988 Ga. Laws 1016. The withdrawing general partner was no longer personally liable for partnership debts unless a creditor of the partnership had a reasonable basis for believing that the partner continued as a general partner. The creditor's belief was statutorily deemed reasonable if the creditor was a current creditor or had extended credit to the partnership within two years of the withdrawal and had no knowledge or notice of the withdrawal. Further, the creditor's belief was deemed reasonable if, in the absence of the creditor's knowledge or notice of the withdrawal, the withdrawing partner had not published notice of his withdrawal in a newspaper of general circulation where the partnership business was regularly carried on. *Id.*

30. O.C.G.A. § 14-9-602(e) (1989).