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Registration and Operation of North Dakota and Minnesota Limited Liability Partnerships

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REGISTRATION AND OPERATION OF NORTH DAKOTA AND MINNESOTA LIMITED LIABILITY PARTNERSHIPS

BY MARY B. BADER* AND DAVID J. HAUFF**

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In the early 1990s, limited liability company (LLC) legislation swept the nation and expanded business entity choices.¹ Another wave of business entity legislation is now sweeping the nation: limited liability partnership (LLP) legislation.² North Dakota's LLP legislation became

1. See Mary B. Bader, *Organization, Operation, and Termination of North Dakota and Minnesota Limited Liability Companies*, 70 N.D. L. REV. 585, 586 n.1 (1994) (listing the 46 states (including the District of Columbia) that have enacted LLC legislation, the year the legislation was enacted and the statutory citation). Since that article was published, the 5 remaining states have enacted LLC legislation. These states, the year the legislation was enacted and the statutory citation are set forth below:

California	1994	CAL. CORP. CODE §§ 17000-17705 (West)
Hawaii	1996	1996 Haw. Sess. Laws 92 (effective 4/1/97)
Massachusetts	1995	MASS. GEN. LAWS ANN. ch. 156C, §§ 1-68 (West)
Pennsylvania	1994	15 PA. CONS. STAT. ANN. §§ 8901-8998
Vermont	1996	1996 Vt. Laws 179

2. As of this writing 47 states and the District of Columbia have enacted LLP legislation. Set forth below are the states that have enacted LLP legislation, the year the legislation was enacted, and the statutory citation:

Alabama	1996	ALA. CODE §§ 10-8a-101 to 1109 (effective 1/1/97)
Alaska	1996	1996 ALASKA SESS. LAWS 52 (effective 1/1/97)
Arizona	1994	ARIZ. REV. STAT. ANN. §§ 29-244 to -57
California	1995	CAL. CORP. CODE §§ 15047-15058 (West)
Colorado	1995	COLO. REV. STAT. §§ 7-60-144 to -154
Connecticut	1994	CONN. GEN. STAT. ANN. §§ 34-81a to -81z (West)
Delaware	1994	DEL. CODE ANN. tit. 6, §§ 1544-1553
District of Columbia	1993	D.C. CODE ANN. §§ 41-143 to -148
Florida	1995	FLA. STAT. ANN. §§ 620.78-.789 (West)
Georgia	1995	GA. CODE ANN. §§ 75-145 to -147 (Harrison)
Hawaii	1996	1996 Haw. Sess. Laws 93 (effective 4/1/97)
Idaho	1995	IDAHO CODE §§ 53-343A to -343C
Illinois	1994	ILL. ANN. STAT. ch. 805, para. 205/8.1-8.3 (Smith Hurd)
Indiana	1995	IND. CODE ANN. §§ 23-4-1-44 to -52 (Burns)
Iowa	1995	IOWA CODE ANN. §§ 486.44-.46 (West)
Kansas	1994	KAN. STAT. ANN. §§ 56-345 to -347
Kentucky	1994	KY. REV. STAT. ANN. §§ 362.555-.595 (Michie/Bobbs-Merrill)
Louisiana	1992	LA. REV. STAT. ANN. § 9:3431-.3435 (West)
Maine	1996	1996 Me. Legis. Serv. 633 (West)
Maryland	1994	MD. CODE ANN., CORPS. & ASS'NS §§ 9-801 to -912
Massachusetts	1995	MASS. GEN. LAWS ANN. ch. 108A, §§ 45-49 (West)
Michigan	1994	MICH. COMP. LAWS ANN. § 449.44-.48 (West)
Minnesota	1994	MINN. STAT. ANN. §§ 323.44-.47 (West)
	1995	MINN. STAT. ANN. §§ 323.48-.49 (West)
Mississippi	1995	MISS. CODE ANN. §§ 79-12-87 to -119
Missouri	1995	MO. ANN. STAT. §§ 358.440-.510 (Vernon)
Montana	1995	MONT. CODE ANN. §§ 35-10-701 to -710
Nebraska	1996	1995 Neb. Laws 681
Nevada	1995	NEV. REV. STAT. ANN. §§ 87.440 -.560 (Michie)
New Hampshire	1996	1995 N.H. Laws 212
New Jersey	1995	1995 N.J. Sess. Law Serv. ch. 96 (West)
New Mexico	1995	N.M. STAT. ANN. §§ 54-1-44 to -48 (Michie)
New York	1994	N.Y. PARTNERSHIP LAW §§ 121-1500 to -1504 (McKinney)
North Carolina	1993	N.C. GEN. STAT. §§ 59-84.2 to -84.3
North Dakota	1995	N.D. CENT. CODE §§ 45-22-01 to -27
Ohio	1994	OHIO REV. CODE ANN. §§ 1775.61-.63 (Anderson)
Oklahoma	1996	1996 Okla. Sess. Law Serv. 223 (West) (effective

effective on March 23, 1995.³ Minnesota's LLP legislation became effective on July 1, 1994.⁴ This article discusses LLP legislation generally, and then focuses specifically on the operation of an LLP under North Dakota and Minnesota law.

I. THE NEED FOR LLPS

Business owners frequently choose to do business as a general partnership.⁵ A general partnership is advantageous because it is easy to form, partners are allowed to participate in management, and the partnership tax rules are flexible.⁶ In addition, partnership income is taxed once at the partner level.⁷ The disadvantage of a general partnership is that partners have unlimited liability for entity debt.⁸

To protect themselves from unlimited liability, some business owners choose to do business as a limited partnership or an S corporation. Limited partners have limited liability for entity debts, but participation in management is prohibited.⁹ S corporation owners may participate in management and have limited liability, but the S corporation rules are inflexible and cumbersome.¹⁰

	11/1/96)
Oregon	1995 OR. REV. STAT. §§ 68.670-790
Pennsylvania	1994 15 PA. CONS. STAT. ANN. §§ 8201 to 8221
Rhode Island	1996 1996 R.I. Pub. Laws 270
South Carolina	1994 S.C. CODE ANN. §§ 33-41-1110 to -1220 (Law. Co-op.)
South Dakota	1995 S.D. CODIFIED LAWS ANN. §§ 48-7-108 to -111
Tennessee	1995 TENN. CODE ANN. §§ 61-1-143 to -147
Texas	1991 TEX. REV. CIV. STAT. ANN. art. 6132b-3.08 (West)
Utah	1994 UTAH CODE ANN. §§ 48-1-41 to -48
Virginia	1994 VA. CODE ANN. §§ 50-43.1 to -43.12 (Michie)
Washington	1995 WASH. REV. CODE ANN. §§ 25.04.700-.750 (West)
West Virginia	1996 W. VA. CODE §§ 47B-10-1 to 47B-10-5
Wisconsin	1995 1995 Wis. Legis. Serv. Act 97

3. N.D. CONST. art. IV, § 13 (providing effective dates for new laws); *see also* 1995 N.D. Sess. Laws ch. 55, § 31 (declaring Act to be an emergency measure).

4. MINN. STAT. ANN. § 645.02 (West Supp. 1996) (providing effective dates for new laws).

5. The North Dakota legislature repealed the Uniform Partnership Act (UPA) in 1995 and replaced it with the Revised Uniform Partnership Act (RUPA). *See* 1995 N.D. Sess. Laws ch. 430 (providing purpose of Act). A partnership formed before January 1, 1996, is governed under the UPA until January 1, 1997, unless it elects to be governed under RUPA. N.D. CENT. CODE § 45-12-02 (Supp. 1995). Hereinafter, North Dakota statutory citations include both the UPA and the RUPA.

6. *See* N.D. CENT. CODE §§ 45-05-05(1), -07-01(5) (repealed effective January 1, 1997) (Supp. 1995); N.D. CENT. CODE §§ 45-14-02(1), -16-01(6) (effective January 1, 1996) (Supp. 1995); MINN. STAT. ANN. §§ 323.02, subd. 8 and 323.17(5) (West 1995). *See also* Lloyd G. Kepple, *Limiting Liability: General Partners Seek Safeguards*, MINN. REAL EST. J., Sept. 19, 1994, at 22.

7. I.R.C. § 701 (West 1996).

8. *See* N.D. CENT. CODE §§ 45-06-07 (repealed effective January 1, 1997), 45-15-06 (effective January 1, 1996) (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 1 (West 1995). *See also* Kepple, *supra* note 6, at 22.

9. *See* N.D. CENT. CODE § 45-10.1-22(1) (1993); MINN. STAT. ANN. § 322A.26(a) (West 1995).

10. *See* Bader, *supra* note 1 at 588. For example, an S corporation cannot have more than 35 shareholders, only individuals, estates and certain trusts can be shareholders of an S corporation, a nonresident alien cannot be a shareholder of an S corporation, and an S corporation cannot have more than one class of stock. I.R.C. § 1361(b)(1) (West 1996). On August 20, 1996, The Small Business

Many business owners today choose to do business as an LLC. An LLC allows owners to participate in management, have limited liability, and avoid the restrictive S corporation rules.¹¹ One disadvantage of an LLC is the transaction cost of formation. The formation of an LLC is much like that of a corporation.¹² Articles of organization are prepared and filed with the secretary of state.¹³ In addition, governance documents (such as an operating agreement and a member control agreement) must be approved by the owners.¹⁴

Like an LLC, an LLP allows owners to participate in management and have limited liability.¹⁵ In contrast to an LLC, however, the transaction costs of forming an LLP are minimal. In North Dakota and Minnesota, an LLP is formed when a general partnership files a simple registration statement with the secretary of state.¹⁶ Partners of an LLP have a corporate-like liability shield in North Dakota and Minnesota, which protects them from liability for partnership debts arising in contract as well as tort.¹⁷ The advantages of an LLP are: (1) the registration process is simple; (2) the LLP operates with the flexibility of a general partnership; and (3) the partners have the limited liability protection of a corporation.

New business owners who are making a first-time entity choice will have a number of factors to consider in deciding whether to organize as

Job Protection Act of 1996 was signed into law by President Clinton. This Act is effective for taxable years beginning after December 31, 1996. It includes provisions that liberalize the tax treatment of S corporations. For example, under the Act: (1) the maximum number of shareholders is increased from 35 to 75; (2) charitable organizations, tax-exempt qualified retirement trusts and certain other types of trusts may be S corporation shareholders; (3) certain types of debt to financial institutions will not be treated as a second class of stock; (4) an S corporation can own 80% or more of the stock of a C corporation and/or 100% of the stock of another S corporation; (5) a C corporation can liquidate into a S corporation tax free; and (6) reelection of S status is permitted for recent terminations. Pub. L. No. 104-188, §§ 1301-1317, 110 Stat. 1755, 1776-1787 (1996).

11. See N.D. CENT. CODE §§ 10-32-29(1), -50 (1995); MINN. STAT. ANN. § 322B.303, subd. 1 (West, 1995); see also Bader, *supra* note 1, at 588.

12. William L. Guy III, *First LLC'S and now . . . LLP'S!*, THE GAVEL, April/May, 1995, at 8.

13. N.D. CENT. CODE § 10-32-08 (1995); MINN. STAT. ANN. § 322B.17 (West 1995); see also Guy, *supra* note 12, at 8.

14. Guy, *supra* note 12, at 8; see also Bader, *supra* note 1, at 593-600 (discussing organization of LLCs in Minnesota and North Dakota).

15. See N.D. CENT. CODE § 45-22-08 (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 2 (West 1995).

16. N.D. CENT. CODE § 45-22-03 (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 1 (West 1995).

17. N.D. CENT. CODE § 45-22-08 (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 2 (West 1995); see also Carter G. Bishop & Daniel S. Kleinberger, *Limited Liability Partnerships*, BENCH & B. MINN., Oct. 1994, at 23, 25 (discussing protection offered by Minnesota LLP statute).

an LLC or an LLP.¹⁸ An existing partnership would, however, probably choose to convert to an LLP rather than an LLC because of the simplicity of the LLP conversion process.¹⁹

When a partnership converts to an LLC, the existing partners are treated as contributing their interests to a new LLC, which liquidates the partnership and receives its assets in liquidation.²⁰ Under North Dakota and Minnesota law, a new LLC must be organized to receive the partnership assets; then the old partnership is liquidated. When a partnership converts to an LLP, the existing partnership simply files a registration statement with the secretary of state.²¹ No new entity must be created; no old entity must be liquidated.²² Many partners in existing North Dakota and Minnesota partnerships are finding LLPs attractive because of the simple registration process and the limited liability protection.

II. TAX TREATMENT OF LLPS

To be taxed as a partnership, LLPs must lack two of the following four corporate characteristics: (1) limited liability; (2) centralized management; (3) continuity of life; and (4) free transferability of interests.²³ North Dakota and Minnesota LLPs lack three of the four corporate characteristics.

North Dakota and Minnesota LLPs have the corporate characteristic of limited liability because LLP partners have limited liability for entity debt.²⁴ North Dakota and Minnesota LLPs lack the corporate characteristic of centralized management because of the mutual agency relationship which exists between partners of general partnerships and hence,

18. The transaction costs of organizing an LLC should be compared with the costs of organizing an LLP. The formation of an LLC requires the organizers to initially file articles of organization with the secretary of state. See *supra* note 13 and accompanying text. Once the LLC is properly organized, it must file an annual report in North Dakota and a biannual report in Minnesota with the secretary of state. N.D. CENT. CODE § 10-32-149 (1995); MINN. STAT. ANN. § 322B.960, subd. 1 (West Supp. 1996). The formation of an LLP requires a registration statement to be filed annually with the secretary of state. See *supra* note 16 and accompanying text. In addition to the transaction costs, new business owners should also consider whether the business will engage in interstate commerce, what formalities are associated with LLCs and LLPs, and business continuity issues. See Bishop & Kleinberger, *supra* note 17, at 25 (comparing LLCs and LLPs).

19. Bishop & Kleinberger, *supra* note 17, at 24.

20. Rev. Rul. 95-37, 1995-1 C.B. 130. See also Priv. Ltr. Ruls. 94-07-030 (February 18, 1994), 93-25-039 (June 25, 1993), 93-21-047 (May 28, 1993), 92-26-035 (June 26, 1992), 90-29-019 (Apr. 19, 1990).

21. See *supra* note 16.

22. N.D. CENT. CODE § 45-22-03(7) (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 8 (West Supp. 1996).

23. Treas. Reg. § 301.7701-2(a)(3) (1996); Rev. Rul. 88-76, 1988-2 C.B. 360; Rev. Rul. 95-55, 1995-35, I.R.B. 13. See Bader, *supra* note 1, at 589-90 (discussing characteristics in more detail).

24. See *supra* note 15 and accompanying text (discussing liability for partnership debt); see also Rev. Rul. 95-55, 1995-35 I.R.B. 13; Rev. Proc. 95-10, 1995-1 C.B. 501.

LLP partners.²⁵ North Dakota and Minnesota LLPs lack the corporate characteristic of continuity of life because under general partnership law, general partnerships (and LLPs) are dissolved upon the happening of a variety of events.²⁶ North Dakota and Minnesota LLPs lack the corporate characteristic of free transferability of interests because general partners (and LLP partners) cannot confer all the attributes of ownership in the partnership upon one who is not a partner without the consent of the remaining partners.²⁷ Thus, North Dakota and Minnesota LLPs should be taxed as partnerships for federal income tax purposes.²⁸

III. BUSINESSES LIKELY TO CONVERT TO LLPs

Any business that is currently operating as a general partnership is a good candidate to convert to an LLP.²⁹ Historically, commercial real estate investors,³⁰ professionals, and farmers have often operated using general partnerships.³¹ These types of businesses are finding LLPs particularly useful.³²

LLPs offer real estate investors a method of operation they are already familiar with (the general partnership), the benefits of flow-through taxation, and the protection of the limited liability shield.³³ To

25. N.D. CENT. CODE §§ 45-06-01(1) (repealed effective January 1, 1997), 45-15-01(1) (effective January 1, 1996) (Supp. 1995); MINN. STAT. ANN. § 323.08 (West 1995); see also Rev. Rul. 95-55, 1995-35 I.R.B. 13; Rev. Proc. 95-10, 1995-1 C.B. 501.

26. Rev. Rul. 95-55, 1995-35 I.R.B. 13; Rev. Proc. 95-10, 1995-1 C.B. 501. Under the UPA in North Dakota, a dissociation of any partner causes a dissolution. N.D. CENT. CODE § 45-09-01 (repealed effective January 1, 1997) (Supp. 1995); see also MINN. STAT. ANN. § 323.28 (West 1995). Under the RUPA in North Dakota, a dissociation of a partner does not necessarily cause a dissolution. N.D. CENT. CODE § 45-20-01 (Supp. 1995). Under RUPA, the following events cause a partnership dissolution: (1) a partnership at will is dissolved when the partnership receives notice of a partner's desire to withdraw; (2) a partnership for a term is dissolved upon: (a) the bankruptcy, death, or termination of a partner, unless the remaining partners agree to continue within 90 days; (b) the agreement of all partners; (c) the term of the partnership expires; (3) an event agreed to in the partnership agreement occurs; (4) an event occurs which makes it unlawful for the business of the partnership to continue; (5) the partnership is dissolved by judicial decree. *Id.*

27. N.D. CENT. CODE §§ 45-08-04(1) (repealed effective January 1, 1997), 45-17-03(1) (effective January 1, 1996) (Supp. 1995); MINN. STAT. ANN. § 323.26 (West 1995); see also Rev. Rul. 95-55, 1995-35 I.R.B. 13; Rev. Proc. 95-10, 1995-1 C.B. 501.

28. Alan Bernick & Kathleen Smith Ruhland, *Limited Liability Partnerships: The Entity of Choice for the Next Generation?*, FOOTNOTE, Sept. 1994, at 7. It should be noted that the Internal Revenue Service has proposed an elective procedure known as "Check the Box" whereby taxpayers would simply select the tax treatment of the entity much like an "S" election is made today. See I.R.S. Notice 95-14, 1995-1 C.B. 297. Moreover, the Department of the Treasury also incorporated this elective regime in proposed regulations issued May 13, 1996. See Prop. Treas. Reg. § 301.7701-1 to -3, 61 Fed. Reg. 21989 (1996).

29. Bishop & Kleinberger, *supra* note 17, at 23.

30. Kepple, *supra* note 6, at 22.

31. Bernick & Ruhland, *supra* note 28, at 7-8.

32. See generally Bernick & Ruhland, *supra* note 28, at 7-9 (discussing advantages of LLPs); Kepple, *supra* note 6, at 22 (discussing advantages of LLPs).

33. Kepple, *supra* note 6, at 22.

day, more than ever, liability for real estate investors and owners is a primary concern, particularly in the areas of tort and environmental law.³⁴ The broad liability shield in North Dakota and Minnesota protects real estate investors and owners from entity debts arising in both contract and tort.³⁵ The LLP registration process is simple and inexpensive compared to the costs of converting to an LLC.³⁶

Professionals, such as accountants, attorneys, and physicians, have also often operated using general partnerships. These professionals will find the LLP liability shield useful to protect their personal assets from claims of clients or patients arising from another partner's negligent conduct.³⁷ The simplicity of the LLP registration process and the fact that the basic operating structure of the firm remains unchanged are also very appealing factors to professionals. In North Dakota, professional firms which register as LLPs must also meet the requirements of the Professional Organizations Act;³⁸ in Minnesota, such firms must also meet the requirements of the Professional Corporations Act.³⁹

Farmers in North Dakota and Minnesota may find LLPs particularly attractive. In North Dakota, general partnerships engaged in farming operations will probably register as LLPs rather than converting to LLCs. An LLP registration is easier and less expensive than converting to an LLC.⁴⁰ In addition, while farming LLCs must meet the corporate farming requirements, farming LLPs do not.⁴¹ The corporate farming rules only apply to corporations and LLCs; they do not apply to general partnerships.

34. *Id.*

35. See *supra* note 17 and accompanying text (discussing liability for partnership debt).

36. Kepple, *supra* note 6, at 22.

37. Bernick & Ruhland, *supra* note 28, at 7; see also Paul Clolery, *LLPs/LLCs: Bulletproofing Your Firm*, PRAC. ACCT., Sept. 1994, at 24.

38. N.D. CENT. CODE §§ 10-31-01 to -14 (1995). See Bishop & Kleinberger, *supra* note 17, at 23. See also *infra* part V.A (discussing issues applicable to professional LLPs).

39. MINN. STAT. ANN. §§ 319A.01-22 (West 1996).

40. See *supra* notes 19-22 and accompanying text (discussing ease of converting to LLP).

41. See N.D. CENT. CODE §10-06.1-02 (1995) (stating limitation on corporate farming). In general, to engage in the business of farming in North Dakota, a corporation or an LLC must meet the following requirements: (1) the corporation or LLC must have no more than 15 shareholders or members; (2) each shareholder or member must be related to each of the other shareholders or members; (3) each shareholder or member must be an individual, a trust, or an estate which meets certain criteria and has no more than 15 beneficiaries; (4) each individual shareholder or member must be a United States citizen or a permanent resident alien of the United States; (5) the officers and directors of the corporation and the governors and managers of the LLC must actively be engaged in operating the farm; (6) at least one shareholder or member must be an individual residing on or operating the farm; (7) at least 65% of the average annual gross income of the corporation or LLC over the previous five years must be derived from farming; and (8) the non-farm income of the corporation or LLC cannot exceed 20% of the gross income of the entity. *Id.* §10-06.1-12.

In Minnesota, farmers cannot conduct farming operations as an LLC.⁴² In Minnesota, there is no prohibition against farmers organizing a general partnership to conduct farming operations and then registering the general partnership as an LLP. By registering as an LLP, Minnesota farmers can avoid the LLC farming prohibition, limit their personal liability and take advantage of the flexible partnership tax provisions.⁴³

IV. NORTH DAKOTA AND MINNESOTA LLP LEGISLATION

A. IN GENERAL

When looking at the North Dakota and Minnesota LLP legislation, it is important to realize that the drafters in each state used a different approach. Each approach should be kept in mind when reading these statutes for the first time.

The North Dakota LLP legislation is found in Chapter 45-22 of the North Dakota Century Code.⁴⁴ Chapter 45-22 was drafted without many references to the corporate and LLC statutes. The drafters of Chapter 45-22 did not want readers to have to refer to other chapters of the North Dakota Century Code to become familiar with the North Dakota LLP registration process. Because of this approach, the North Dakota LLP statute is longer than the LLP statutes in most other states. First-time readers will appreciate the convenience of having the LLP statute set forth in its entirety in one chapter.⁴⁵

The Minnesota LLP legislation is found in Chapter 323 of Minnesota Statutes Annotated.⁴⁶ The Minnesota LLP statute was grafted onto Chapter 323, which is Minnesota's version of the Uniform Partnership Act.⁴⁷ The Minnesota LLP statute is much shorter than its North Dakota counterpart. It incorporates by reference certain provisions of the Minnesota Business Corporation and Limited Liability Company Acts.⁴⁸ This approach is advantageous for readers already familiar with existing Minnesota statutes.⁴⁹

42. MINN. STAT. ANN. § 500.24, subd. 3 (West Supp. 1996).

43. Bernick & Ruhland, *supra* note 28, at 8.

44. N.D. CENT. CODE §§ 45-22-01 to -27 (Supp. 1995).

45. Compare N.D. CENT. CODE § 45-22-04 (1995) (North Dakota name requirements for LLPs) and § 45-22-21 (1995) (definition of transacting business in North Dakota) with MINN. STAT. ANN. § 323.45 (West 1995 & Supp. 1996) (Minnesota name requirements for LLPs) and § 323.49, subd. 1 (West Supp. 1996) (definition of transacting business in Minnesota).

46. MINN. STAT. ANN. § 323.01-.49 (West 1995 & Supp. 1996). Unlike North Dakota, Minnesota has not (as of this writing) enacted the Revised Uniform Partnership Act.

47. See MINN. STAT. ANN. §§ 323.02, subds. 7(a)-9, 323.06(5), 323.14, subds. 2-6, 323.44-.49 (West 1995 & Supp. 1996).

48. See MINN. STAT. ANN. §§ 323.45 (West 1995 & Supp. 1996) (Minnesota name requirements for LLPs), 323.49, subd. 1 (West Supp. 1996) (definition of transacting business in Minnesota).

49. See *supra* note 45 (comparing North Dakota and Minnesota LLP legislation).

B. SCOPE OF THE LIMITED LIABILITY SHIELD

The North Dakota LLP statute provides that:

[a] partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership . . . , or for any other debts or obligations of the limited liability partnership, if the charge, debt, or obligation arose or accrued while the partnership had a registration . . . in effect.⁵⁰

Further, the corresponding Minnesota LLP statute is practically identical.⁵¹ North Dakota's and Minnesota's liability shields are typical of all states in that LLP partners are protected from personal liability arising from the torts of other partners or employees in the ordinary course of business.⁵² However, the liability shield in North Dakota and Minnesota

50. N.D. CENT. CODE § 45-22-08 (Supp. 1995).

51. See MINN. STAT. ANN. § 323.14, subd. 2 (West 1995).

52. At the present time, the liability shield in about two thirds of the states only protects LLP partners from tort claims. These states and the statutory citation to the liability shield are set forth below:

Alaska	1996 Alaska Sess. Laws 52 § 4
Arizona	ARIZ. REV. STAT. ANN. § 29-215(B) (Supp. 1995)
Connecticut	CONN. GEN. STAT. ANN. § 34-53(2) (West Supp. 1996)
Delaware	DEL. CODE ANN. tit. 6, § 1515(b) (Supp. 1994)
District of Columbia	D.C. CODE ANN. § 41-146(a) (Supp. 1996)
Florida	FLA. STAT. ANN. § 620.782(1) (West Supp. 1996)
Hawaii	1996 Haw. Sess. Laws 93 § 1
Illinois	ILL. ANN. STAT. ch. 805, para. 205/15 (Smith-Hurd Supp. 1996)
Iowa	IOWA CODE ANN. § 486.15(2) (West Supp. 1996)
Louisiana	LA. REV. STAT. ANN. § 9:3431(A) (West Supp. 1996)
Kansas	KAN. STAT. ANN. § 56-315(b) (1994)
Kentucky	KY. REV. STAT. ANN. § 362.220(2) (Michie/Bobbs-Merrill Supp. 1994)
Maine	1996 Me. Legis. Serv. 633 § A-4
Michigan	MICH. COMP. LAWS ANN. § 449.46(1) (West Supp. 1995)
Mississippi	MISS. CODE ANN. § 79-12-29 (1996)
Nebraska	1995 Neb. Laws 681 § 8
New Hampshire	1996 N.H. Laws 212 § 5
Nevada	NEV. REV. STAT. ANN. § 87.150(2) (Michie Supp. 1995)
New Jersey	N.J. STAT. ANN. § 42:1-15 (West Supp. 1996)
New Mexico	N.M. STAT. ANN. § 54-1-15(B) (Michie 1996)
North Carolina	N.C. GEN. STAT. § 59-45 (Supp. 1995)
Ohio	OHIO REV. CODE ANN. § 1775.14(A)(2) (Anderson Supp. 1995)
Oklahoma	1996 Okla. Sess. Law Serv. 223 § 6 (West)
Pennsylvania	15 PA. CONS. STAT. ANN. § 8204(a) (1995)
Rhode Island	1996 R.I. Pub. Laws 270 § 1
South Carolina	S.C. CODE ANN. § 33-41-370(B) (Law. Co-op Supp. 1995)
Tennessee	TENN. CODE ANN. § 61-1-114 (Supp. 1995)
Texas	TEX. REV. CIV. STAT. ANN. art. 6132b-3.08(a)(1) (West Supp. 1996)
Utah	UTAH CODE ANN. § 48-1-12(2) (Supp. 1995)
Virginia	VA. CODE ANN. § 50-15 (Michie 1996)
Washington	WASH. REV. CODE ANN. § 25.04.730(2) (West Supp. 1996)

is broader than many other states because it also protects LLP partners from personal liability arising from partnership contractual debts and obligations.⁵³

While the liability shield in North Dakota and Minnesota is extremely broad, the protection it offers is by no means unlimited. First, the liability shield only protects partners from liabilities which arise during the time the partnership had a valid LLP registration in effect.⁵⁴ Partners are not shielded from liabilities which arise prior to the effective date of an LLP registration, or which arise after an LLP registration has expired. It is critical for the partners of a North Dakota or Minnesota LLP to timely file an LLP renewal registration because the LLP liability shield will not protect the partners from any claim that arises in the gap between a lapsed registration and a new registration.⁵⁵

Second, the LLP liability shield does not protect a partner from liability arising from his or her wrongful actions.⁵⁶ Like general partners and corporate shareholders, LLP partners are liable to third parties for their own tortious conduct.⁵⁷ Under North Dakota and Minnesota law, however, the partnership may be required to indemnify a partner for payments made or personal liabilities incurred by a partner in the ordinary course of business, unless the partnership agreement provides

West Virginia	W. VA. CODE § 47B-3-6 (Supp. 1996)
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53. At the present time, the liability shield in about one third of the states protects LLP partners from tort and contract claims. These states and the statutory citation to the liability shield are set forth below:

Alabama	ALA. CODE § 10-8A-306 (Supp. 1996)
California	CA. CORP. CODE § 15015(b) (West Supp. 1996)
Colorado	COL. REV. STAT. § 7-60-115(2)(a) (Supp. 1995)
Georgia	GA. CODE ANN. § 75-116(b) (Harrison Supp. 1995)
Idaho	IDAHO CODE § 53-315 (Supp. 1996)
Indiana	IND. CODE ANN. § 23-4-1-15(2) (Burns Supp. 1996)
Maryland	MD. CODE ANN. CORPS. & ASS'NS § 9-307(b) (Supp. 1995)
Massachusetts	MASS. GEN. LAWS ANN. ch. 108A, § 15(2) (West Supp. 1996)
Minnesota	MINN. STAT. ANN. § 323.14, subd. 2 (West 1995)
Missouri	MO. ANN. STAT. § 358.150(2) (Vernon Supp. 1996)
Montana	MONT. CODE ANN. § 35-10-307 (1995)
New York	N.Y. PARTNERSHIP LAW § 26(b) (McKinney Supp. 1996)
North Dakota	N.D. CENT. CODE § 45-22-08 (Supp. 1995)
Oregon	OR. REV. STAT. § 68.270 (1995)
South Dakota	S.D. CODIFIED LAWS ANN. § 48-2-15 (Supp. 1996)
Wisconsin	1995 Wis. Legis. Serv. Act 97 § 9

54. N.D. CENT. CODE § 45-22-08 (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 2 (West 1995).

55. Bishop & Kleinberger, *supra* note 17, at 24. See *infra* notes 79-80 and accompanying text (discussing registration and renewal).

56. Kepple, *supra* note 6, at 22.

57. *Id.*

to the contrary.⁵⁸ Many partnership agreements require a partnership to indemnify a partner in such situations and also provide such a partner with the right of contribution from the other partners.⁵⁹ These types of provisions should not be included in any new LLP partnership agreement, and should be deleted from any existing general partnership agreement at the time the general partnership registers as an LLP.⁶⁰ Failure to eliminate these types of provisions could contractually defeat the LLP liability shield in North Dakota and Minnesota.⁶¹

Third, the LLP liability shield does not protect LLP partners from any actions brought by one partner (or the partnership) against another partner based on breach of duty to the partnership or breach of the partnership agreement.⁶² In North Dakota and Minnesota, an LLP partner still has unlimited personal liability for any such claims made by the partnership or the other partners.⁶³

Fourth, in North Dakota and Minnesota, the LLP liability shield may be pierced, much like a the veil of a corporation or an LLC can be pierced.⁶⁴ In contrast to corporations and LLCs, however, the liability shield of an LLP will not be pierced if the entity operates using informal rather than formal management procedures.⁶⁵

Fifth, partners in an LLP who receive an illegal distribution from the LLP are liable to the LLP, its receiver or any other person winding up the LLP's affairs, for the amount that the distribution received by the partner exceeded the amount that properly could have been paid by the LLP.⁶⁶ This liability provision is identical to a shareholder's liability for illegal distributions he or she receives from a corporation.⁶⁷

Finally, the partners of a North Dakota or Minnesota LLP engaging in multistate operations may not have the broad protection of the North

58. N.D. CENT. CODE §§ 45-07-01(2) (repealed effective January 1, 1997), 45-16-01(3) (effective January 1, 1996) (Supp. 1995); MINN. STAT. ANN. § 323.17(2) (West 1995).

59. Guy, *supra* note 12, at 8.

60. *Id.*

61. *Id.*

62. N.D. CENT. CODE § 45-22-08 (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 2 (West 1995).

63. N.D. CENT. CODE § 45-22-08; MINN. STAT. ANN. § 323.14, subd. 2. LLP partners in North Dakota and Minnesota still have unlimited liability for breach of their fiduciary obligations and their capital contribution obligations.

64. N.D. CENT. CODE § 45-22-09(1) (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 3(a) (West 1995). The doctrine of piercing the corporate veil is used by the courts when the privilege of operating in the corporate form is abused. For example, when a corporation is thinly capitalized, shareholder and corporate assets are commingled and corporate formalities are ignored, courts may hold the shareholders personally liable for corporate obligations. See *Hilzendager v. Skwarok*, 335 N.W.2d 768, 774 (N.D. 1983); *White v. Jorgenson*, 322 N.W.2d 607, 608 (Minn. 1981).

65. N.D. CENT. CODE § 45-22-09(2) (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 3(b) (West 1995).

66. N.D. CENT. CODE § 45-22-10 (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 5 (West 1995).

67. See N.D. CENT. CODE § 10-19.1-94 (1995); MINN. STAT. ANN. § 302A.557 (West 1985).

Dakota and Minnesota liability shield in other states where the LLP conducts business.⁶⁸ In states that have LLP legislation, the liability shield may only protect North Dakota or Minnesota LLP partners from tort (but not contract) claims.⁶⁹ In states that do not have LLP legislation, partners in a North Dakota or Minnesota LLP may have no liability shield at all; they may be treated as general partners.⁷⁰ Before transacting business in other states, North Dakota and Minnesota LLP partners should carefully determine what liability exposure exists for them in such states.

C. TREATMENT OF DOMESTIC LLPs

To register as a domestic LLP in North Dakota or Minnesota, a general partnership must first be in existence.⁷¹ A decision to file an LLP registration may be made by a majority of the partners.⁷² The general partnership must file a registration with the secretary of state.⁷³ The registration filed by the general partnership must contain the information required by the North Dakota and Minnesota statutes.⁷⁴ The

68. Guy, *supra* note 12, at 8; Bishop & Kleinberger, *supra* note 17, at 25.

69. See *supra* note 52 (noting states where LLP legislation only protects against tort claims).

70. See Bishop & Kleinberger, *supra* note 17, at 25 (noting that "partners in a Minnesota LLP will fare no worse than if they stayed mere general partners").

71. N.D. CENT. CODE § 45-22-01(2) (1995); MINN. STAT. ANN. § 323.44, subd. 1 (West 1995). In North Dakota and Minnesota, a general partnership is defined as "an association of two or more persons to carry on as coowners" a business for profit. N.D. CENT. CODE § 45-22-01(5) (Supp. 1995); MINN. STAT. ANN. § 323.02, subd. 8 (West 1995). There are no restrictions in North Dakota or Minnesota regarding what type of individuals or entities can be partners in an LLP, unless the LLP is a professional LLP. See N.D. CENT. CODE §§ 45-05-01 (repealed effective January 1, 1997), 45-13-01(8) (effective January 1, 1996) (Supp. 1995) (defining term person); MINN. STAT. ANN. § 323.02, subd. 4 (West 1995) (defining term person). See also *infra* notes 137-153 and accompanying text (discussing professional LLPs).

72. N.D. CENT. CODE § 45-22-03(6)(a) (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 4 (West Supp. 1996) (noting that the decision whether to "file a registration is an ordinary matter" under section 323.17(8) of Minnesota Statutes Annotated).

73. N.D. CENT. CODE § 45-22-03(2) (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 1 (West 1995).

74. In North Dakota, a domestic LLP's registration must contain:

- (1) The name of the domestic limited liability partnership.
- (2) The nature of the business to be transacted in this state.
- (3) The address of the principal executive office of the domestic limited liability partnership.
- (4) The address of the registered office of the domestic limited liability partnership and the name of its registered agent at that address.
- (5) The name and address of each managing partner.
- (6) An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.
- (7) An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.

N.D. CENT. CODE § 45-22-03(3)(a) (Supp. 1995). In Minnesota, a domestic LLP's registration must contain the following:

registration must also be accompanied by payment of the appropriate fee.⁷⁵ In North Dakota, a domestic LLP must designate a registered agent in its registration.⁷⁶ In Minnesota, only a domestic LLP that does not have its principal place of business in Minnesota must appoint a registered agent.⁷⁷ Proof of the registered agent's consent to serve in that capacity along with the \$10 filing fee must also be included in the North Dakota LLP registration.⁷⁸ Minnesota has no comparable requirement.

A domestic LLP registration is effective for one year from the date of filing in North Dakota and Minnesota.⁷⁹ To continuously preserve the limited liability shield, an LLP must renew its LLP registration annually.⁸⁰ In North Dakota and Minnesota, the renewal registration may be filed no earlier than 60 days before the expiration of the one-year period.⁸¹ A renewal registration extends the partnership's status as an LLP for another year, measured from the end of the previous one-year period.⁸² An LLP registration may be renewed for an unlimited number of one-year periods in either state.⁸³ A decision to withdraw or not renew a domestic LLP registration must be consented to by all

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- (1) the name of the partnership;
 - (2) a statement that the partnership applies to obtain status as a limited liability partnership or to renew that status;
 - (3) an acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration;
 - (4) the street address of the partnership's principal place of business;
 - (5) if the partnership's principal place of business is not located in this state, the name and street address of a person located in this state that the partnership authorizes to act as the partnership's agent for service of process; and
 - (6) the signature of a partner.

MINN. STAT. ANN. § 323.44, subd. 2 (West Supp. 1996). The secretary of state's offices in North Dakota and Minnesota provide LLP registration forms.

75. In North Dakota, the fee for filing a domestic LLP registration is \$25. N.D. CENT. CODE §45-22-22(1)(a) (Supp. 1995). If there are more than two managing partners, an additional \$3 must be paid for each additional managing partner, not to exceed \$250. *Id.* In Minnesota, the fee for filing a domestic LLP registration is \$135. MINN. STAT. ANN. §§ 323.44, subd. 3 (West 1995).

76. N.D. CENT. CODE § 45-22-11(2) (Supp. 1995).

77. MINN. STAT. ANN. § 323.44, subd. 2(5) (West Supp. 1996).

78. N.D. CENT. CODE §§ 45-22-11(2)(c), -22(1)(k) (Supp. 1995).

79. N.D. CENT. CODE § 45-22-03(2)(a)(1) (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 1(a) (West 1995).

80. N.D. CENT. CODE §§ 45-22-03(2)(a), -16(1)(a)(4) (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 1(a) (West 1995).

81. N.D. CENT. CODE § 45-22-03(2)(b) (Supp. 1995); MINN. STAT. ANN. § 323.44, subd. 1(b) (West 1995).

82. N.D. CENT. CODE § 45-22-03(2)(b)(2); MINN. STAT. ANN. § 323.44, subd. 1(b).

83. N.D. CENT. CODE § 45-22-03(2)(b)(1); MINN. STAT. ANN. § 323.44, subd. 1(b).

partners in North Dakota.⁸⁴ In Minnesota, the decision to withdraw or not renew an LLP registration must be consented to by all partners, unless the partners have otherwise agreed.⁸⁵

If any statement in the registration or renewal registration is false when it was made or becomes inaccurate after the registration or renewal registration is filed, the LLP's obligation is different in North Dakota than it is in Minnesota. In North Dakota, the LLP must promptly file with the secretary of state an amended or corrected registration or renewal registration.⁸⁶ Failure to amend the registration in North Dakota is grounds for the secretary of state to revoke the LLP's registration.⁸⁷ In Minnesota, "[t]he statute is silent as to the effect of a[n LLP] filing that is inaccurate when filed."⁸⁸ If the information in a registration becomes inaccurate after the registration is filed, the LLP must provide accurate information in any subsequently filed renewal registration.⁸⁹ In Minnesota, "[t]he inaccuracy has no effect on the partnership's status as a limited liability partnership."⁹⁰

The name of a North Dakota and Minnesota LLP must contain the words "limited liability partnership" or the abbreviation "LLP."⁹¹ A

84. N.D. CENT. CODE § 45-22-03(6)(b) (Supp. 1995). In North Dakota, "[t]he withdrawal statement must contain: (1) [t]he name of the domestic limited liability partnership[,] (2) [a] statement that the domestic limited liability partnership is withdrawing its current registration[, and] (3) [a]n acknowledgment by the domestic limited liability partnership that the withdrawal ends its limited liability partnership status." N.D. CENT. CODE § 45-22-13(2)(a) (Supp. 1995). In North Dakota, the question becomes what happens if the decision to withdraw (or not renew) an LLP registration is not unanimous? Since the withdrawal statement does not require the signature of all the partners, it is unlikely that the secretary of state's office would be aware that unanimous consent was not obtained. Is the withdrawal statement ineffective? Does the liability shield continue as to third parties? Or does the non consenting partner have a cause of action against the consenting partners if he or she is harmed by the filing of the withdrawal statement without his or her consent? At the present time, the answer is not clear.

85. MINN. STAT. ANN. § 323.44, subd. 4 (West Supp. 1996) (referring to section 323.17(8) of Minnesota Statutes Annotated which requires unanimous consent for acts in "contravention" of a partnership agreement).

86. N.D. CENT. CODE § 45-22-03(4)(b)(1) (Supp. 1995).

87. N.D. CENT. CODE § 45-22-16(1)(a)(3) (Supp. 1995). Other grounds for the North Dakota secretary of state to revoke an LLP's registration include its failure to "appoint and maintain a registered agent," failure to "file a report upon any change in the name or business address of the registered agent," failure to file a renewal registration, or if the LLP has made any material misrepresentation or mistake in "any registration, report, affidavit, or other document submitted by the limited liability partnership." *Id.* § 45-22-16(1). The secretary of state must give the LLP 60 days notice of the pending revocation. *Id.* § 45-22-16(2)(a). During the 60-day period, the LLP has the opportunity to cure the defect. *Id.* § 45-22-16(2)(b). If the defect is not cured during the 60-day period, the secretary of state must note the revocation in its records and give notice to the LLP of the revocation. *Id.* § 45-22-16(3).

88. MINN. STAT. ANN. § 323.44, subd. 5 reporters' notes (West 1995). The reporters' notes state that "[t]here seems no good reason, however, why an inaccuracy made in good faith should produce draconian consequences, such as imperiling the shield." *Id.*

89. MINN. STAT. ANN. § 323.44, subd. 5 (West Supp. 1996).

90. *Id.*

91. N.D. CENT. CODE § 45-22-04(1)(b) (Supp. 1995); MINN. STAT. ANN. § 323.45, subd. 1 (West Supp. 1996). In North Dakota the abbreviation "L.L.P." is also permissible. N.D. CENT. CODE §

North Dakota professional LLP must include the words "professional limited liability partnership" or the abbreviation "P.L.L.P." or "PLL.P."⁹² In Minnesota, the name of a professional LLP must end with the words "Professional Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviations "P.L.L.P." or "LLP."⁹³ A general partnership which registers as an LLP must amend its partnership agreement to reflect its name change.⁹⁴ The name of a North Dakota and Minnesota LLP cannot be deceptively similar to any other entity (corporation, limited partnership, LLC or LLP) authorized to do business in the state.⁹⁵ In North Dakota, an LLP can reserve a name for twelve months by filing a reservation request with the secretary of state.⁹⁶ Minnesota has no comparable provision.

If a person acting on behalf of an LLP enters into a contract or other undertaking with a third party, and fails to disclose the "limited liability partnership" or "LLP" portion of the partnership name, "that person is personally liable on the contract or undertaking," unless he or she can establish that the third "party did not rely on the partnership being an ordinary general partnership."⁹⁷ In addition, any LLP partner who consents to such a nondisclosure "is also personally liable on the contract or undertaking, unless" he or she can prove that the third party did not rely on the nondisclosure.⁹⁸ The liability shield itself is not affected by such a nondisclosure.⁹⁹ In North Dakota, any person that "assumes to act as a limited liability partnership without a valid registration or renewal registration in effect is jointly and severally liable for all debts and liabilities incurred" as a result of such person's actions.¹⁰⁰ Minnesota has no comparable provision.¹⁰¹

45-22-04(1)(b).

92. N.D. CENT. CODE § 10-31-05(1)(c) (Supp. 1995).

93. MINN. STAT. ANN. § 319A.07 (West 1996).

94. Guy, *supra* note 12, at 8.

95. N.D. CENT. CODE § 45-22-04(1)(d); MINN. STAT. ANN. §§ 302A.115, subd. 1(d), 323.45, subd. 1 (West Supp. 1996). In addition, an LLP name must be in the English language and cannot contain a word or phrase that indicates that the entity is organized for an illegal purpose. N.D. CENT. CODE § 45-22-04(1)(d); MINN. STAT. ANN. §§ 302A.115, subd. 1, 323.45, subd. 1.

96. N.D. CENT. CODE § 45-22-05 (Supp. 1995).

97. N.D. CENT. CODE § 45-22-06 (Supp. 1995); MINN. STAT. ANN. § 323.45, subd. 5.

98. N.D. CENT. CODE § 45-22-06; MINN. STAT. ANN. § 323.45 subd. 5.

99. Bishop & Kleinberger, *supra* note 17, at 24.

100. N.D. CENT. CODE § 45-22-07 (Supp. 1995).

101. Although Minnesota has no comparable statute, the result in Minnesota is naturally the same. The partners of a Minnesota general partnership that transacts business without an LLP registration will be liable as general partners. The result is different for the partners of a foreign LLP that transacts business in Minnesota without filing a statement of qualification. See *infra* notes 120-125 and accompanying text.

D. TREATMENT OF FOREIGN LLPs

In North Dakota and Minnesota, a foreign LLP is defined as an LLP organized in another state that has LLP status in its jurisdiction of origin or its home jurisdiction.¹⁰² In North Dakota, a foreign LLP must register with the secretary of state before it transacts business.¹⁰³ In Minnesota, a foreign LLP must file a "statement of qualification" with the secretary of state before it transacts business.¹⁰⁴ North Dakota and Minnesota both provide a safe harbor for foreign LLPs by defining what transactions do not constitute transacting business in each state.¹⁰⁵

102. N.D. CENT. CODE § 45-22-01(4) (Supp. 1995); MINN. STAT. ANN. § 323.02, subd. 9 (West Supp. 1996).

103. N.D. CENT. CODE § 45-22-19 (Supp. 1995). In North Dakota, a foreign LLP's registration must contain:

- (1) The name of the foreign limited liability partnership and, if different, the name under which it proposes to transact business in this state.
- (2) The jurisdiction of its original registration.
- (3) The date on which the foreign limited liability partnership expires in the jurisdiction of its origin.
- (4) The nature of the business to be transacted in this state.
- (5) The address of the principal executive office of the foreign limited liability partnership.
- (6) The address of the registered office of the foreign limited liability partnership and the name of its registered agent at that address.
- (7) The name and address of each managing partner.
- (8) An acknowledgment that the status of limited liability partnership in North Dakota will automatically expire:
 - (a) Unless the foreign limited liability partnership files a proper renewal registration; and
 - (b) Unless the foreign limited liability partnership continuously maintains its limited liability partnership status in its jurisdiction of origin.

N.D. CENT. CODE § 45-22-03(3)(b) (Supp. 1995).

104. MINN. STAT. ANN. § 323.49, subd. 1 (West Supp. 1996). In Minnesota, the statement of qualification must contain:

- (1) the name of the partnership, including the limited liability partnership designation used in the home jurisdiction;
- (2) the address of the partnership's principal place of business;
- (3) the name and street address of a person located in this state that the partnership has authorized to act as the partnership's agent for service of process;
- (4) the jurisdiction of organization; and
- (5) the signature of a partner.

Id. § 323.49, subd. 3.

105. *See, e.g.*, N.D. CENT. CODE § 45-22-21(1) (Supp. 1995) (outlining activities that do not constitute "transacting business"). The statute provides:

The following activities of a foreign limited liability partnership, among others, do not constitute transacting business within the meaning of this chapter:

- a. Maintaining, defending, or settling any proceeding.
- b. Holding meetings of its partners or carrying on any other activities concerning its internal affairs.
- c. Maintaining bank accounts.
- d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability partnership's own partnership interests or maintaining

A North Dakota registration and a Minnesota statement of qualification filed by a foreign LLP must be accompanied by a certificate of good standing (or a similar document) authenticated by the registering officer of the state where the foreign LLP was originally registered.¹⁰⁶ The respective filing fees in North Dakota and Minnesota are the same for foreign LLPs as they are for domestic LLPs.¹⁰⁷ In North Dakota and Minnesota, a foreign LLP must designate a registered agent.¹⁰⁸ Proof of the registered agent's consent to serve in that capacity along with the \$10 filing fee must also be included in the North Dakota foreign LLP registration.¹⁰⁹ Minnesota has no comparable requirement.

A foreign LLP's registration or statement of qualification is effective for one year from the date of filing.¹¹⁰ In North Dakota and Minnesota, the renewal requirements are the same for foreign LLPs as they are for domestic LLPs.¹¹¹ A foreign LLP may end its status as an LLP in North Dakota and Minnesota by filing a withdrawal statement which

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- e. trustees or depositories with respect to those partnership interests.
 - e. Selling through independent contractors.
 - f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
 - g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - h. Securing or collecting debts or enforcing mortgages, and security interests in property securing the debts.
 - i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired.
 - j. Selling or transferring title to property in this state to any person.
 - k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

Id. See also MINN. STAT. ANN. § 323.49, subd. 1 (West Supp. 1996) (incorporating by reference section 322B.945 of Minnesota Statutes Annotated, a practically identical list).

106. N.D. CENT. CODE § 45-22-03(3)(c) (Supp. 1995); MINN. STAT. ANN. § 323.49, subd. 3 (West Supp. 1996).

107. N.D. CENT. CODE § 45-22-22(1)(a) (Supp. 1995); MINN. STAT. ANN. § 323.49, subd. 3. See *supra* note 75 (discussing registration fees for domestic LLPs).

108. N.D. CENT. CODE § 45-22-03(3)(b)(6); MINN. STAT. ANN. § 323.49, subd. 3(3).

109. N.D. CENT. CODE § 45-22-11(2)(c), -22(1)(k) (Supp. 1995).

110. N.D. CENT. CODE § 45-22-03(2)(a); MINN. STAT. ANN. § 323.49, subd. 1 (West Supp. 1996).

111. N.D. CENT. CODE § 45-22-03(2); MINN. STAT. ANN. § 323.49, subd. 2 (West Supp. 1996).

See *supra* notes 80-83 and accompanying text (discussing renewal requirements).

contains the required information with the secretary of state.¹¹² In North Dakota and Minnesota, a foreign LLP has the same duty as a domestic LLP to correct an inaccurate registration or renewal.¹¹³

A foreign LLP has the same name restrictions as a domestic LLP in North Dakota and Minnesota.¹¹⁴ In North Dakota, a foreign LLP can reserve a name by using the same procedure as that used by a domestic LLP.¹¹⁵ Moreover, the partners of a foreign LLP have the same liability exposure as those in a domestic LLP if they fail to disclose (or consent to the failure to disclose) the LLP portion of the entity name in any contract or other undertaking.¹¹⁶

If a foreign LLP transacts business in North Dakota or Minnesota without filing a registration or a statement of qualification, the foreign LLP cannot commence a cause of action in North Dakota or Minnesota until the foreign LLP registers with the secretary of state.¹¹⁷ A foreign LLP's failure to file a registration or a statement of qualification does

112. In North Dakota, the withdrawal statement must contain:

- (1) The name of the foreign limited liability partnership.
- (2) The jurisdiction of its original registration.
- (3) A statement that the foreign limited liability partnership is not transacting business in this state.
- (4) A statement that the foreign limited liability partnership surrenders its authority to transact business in this state and is withdrawing its current registration.
- (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends its foreign limited liability partnership status in this state.
- (6) A statement that the foreign limited liability partnership revokes the authority of its registered agent in this state to accept service of process and consents that service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state may be made on the foreign limited liability partnership by service upon the secretary of state.
- (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.

N.D. CENT. CODE § 45-22-13(2)(b) (Supp. 1995). In Minnesota, the withdrawal statement must contain: "(1) the name of the partnership; (2) a statement that the partnership is withdrawing its current statement of qualification; (3) an acknowledgment that the withdrawal ends the partnership's qualification as a foreign limited liability partnership in Minnesota; and (4) the signature of a partner." MINN. STAT. ANN. § 323.49, subd. 6 (West Supp. 1996).

113. N.D. CENT. CODE § 45-22-03(4)(b) (Supp. 1995); MINN. STAT. ANN. § 323.49, subd. 5 (West Supp. 1996). See *supra* notes 86-90 and accompanying text (discussing falsities or inaccuracies in registrations).

114. See *supra* notes 91-95 and accompanying text (discussing name requirements). In addition, in North Dakota, a foreign LLP name may contain "any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original registration." N.D. CENT. CODE § 45-22-04(1)(b) (Supp. 1995). See also N.D. CENT. CODE § 45-22-04(5)(a) (Supp. 1995) (allowing foreign LLP to register under any name available to a domestic LLP); MINN. STAT. ANN. § 323.49, subd. 4 (West Supp. 1996) (incorporating by reference MINN. STAT. ANN. § 323.45 (West 1995 & Supp. 1996), the name guidelines).

115. See *supra* note 96 and accompanying text (discussing reservation of name).

116. See *supra* notes 97-99 and accompanying text (discussing partner liability).

117. N.D. CENT. CODE § 45-22-20(1) (Supp. 1995); MINN. STAT. ANN. § 323.49, subd. 7(a) (West Supp. 1996).

not, however, "impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending" any claim against it in a North Dakota or Minnesota court.¹¹⁸ By transacting business in North Dakota or Minnesota without registering or filing a statement of qualification, the foreign LLP appoints the secretary of state as its agent for service of process.¹¹⁹

The partners of a foreign LLP which transacts business without registering or filing a statement of qualification are treated differently in North Dakota than in Minnesota. In North Dakota, all persons who assume to act as a foreign LLP without registration are jointly and severally liable for all debts and liabilities incurred in the state.¹²⁰ In Minnesota, a partner of a foreign LLP is not liable for the debts and obligations of the foreign LLP solely because the foreign LLP transacted business in Minnesota without a valid statement of qualification.¹²¹ An example illustrates the difference.

Assume Smith, Barney & Jones, LLP is a South Dakota general partnership which has filed an LLP registration in South Dakota. The partnership wants to expand its operations into North Dakota and Minnesota. Partner Smith moves to North Dakota and opens a partnership office. Partner Jones moves to Minnesota and opens a partnership office. Partner Barney remains in South Dakota and continues to conduct partnership business there. The LLP fails to register as a foreign LLP in North Dakota; it also fails to file a statement of qualification in Minnesota. The consequences to the partnership of not registering and filing a statement of qualification are the same in North Dakota and Minnesota.¹²² The consequences to the partners may be different in each state.

Partner Smith, who moved to North Dakota and transacted business on behalf of the partnership without registering it as a foreign LLP, has assumed to act as a foreign LLP without registration. Accordingly, he is jointly and severally liable for all debts and liabilities incurred in North Dakota.¹²³ Partners Barney and Jones have not assumed to act as a foreign LLP because they have not transacted business in North Dakota on behalf of the partnership. Therefore, partners Barney and Jones

118. N.D. CENT. CODE § 45-22-20(2) (Supp. 1995); MINN. STAT. ANN. § 323.49, subd. 7(b) (West Supp. 1996).

119. N.D. CENT. CODE § 45-22-20(3) (Supp. 1995); MINN. STAT. ANN. § 323.49, subd. 7(c) (West Supp. 1996).

120. N.D. CENT. CODE § 45-22-20(4) (Supp. 1995).

121. MINN. STAT. ANN. § 323.49, subd. 7(d) (West Supp. 1996).

122. See *supra* notes 117-19 and accompanying text (discussing foreign LLP filing requirements).

123. See *supra* note 120 and accompanying text (discussing liability of individuals acting on behalf of LLP which is not registered in North Dakota).

would not be personally liable for partnership obligations in North Dakota. In sum, partner Smith would be personally liable for partnership debts and liabilities incurred in North Dakota, but partners Barney and Jones would not.

Contrast North Dakota's treatment of partner Smith with Minnesota's treatment of partner Jones. Partner Jones moved to Minnesota and transacted business on behalf of the partnership. Unlike North Dakota, Minnesota will not subject partner Jones to personal liability for partnership debts and obligations based solely on the fact that business was transacted without a valid statement of qualification.¹²⁴ Partners Smith and Barney (who did not transact business on behalf of the partnership in Minnesota) also will not be personally liable for partnership debts and obligations solely because business was transacted in Minnesota.¹²⁵ In sum, none of the partners would be personally liable for partnership debts and obligations in Minnesota solely because business was transacted without filing a statement of qualification.

V. PRACTICAL ISSUES IN NORTH DAKOTA AND MINNESOTA

A. PROFESSIONAL LLPS

A professional general partnership may have to deal with some unique issues if it decides to file an LLP registration.¹²⁶ In North Dakota, professional LLPs are governed by two chapters, 10-31 (Professional Organizations Act) and 45-22 (Limited Liability Partnerships).¹²⁷ In the event of any conflict between the two chapters, Chapter 10-31 (Professional Organizations Act) takes precedence over Chapter 45-22 (Limited Liability Partnerships).¹²⁸ This statutory hierarchy may affect a foreign or domestic general partnership filing a professional LLP registration in North Dakota.

When a foreign professional LLP registers to do business in North Dakota, its name may be an issue. Minnesota allows a professional LLP to use either the words "Professional Limited Liability Partnership" or "Limited Liability Partnership," or the abbreviations "P.L.L.P." or

124. See *supra* note 121 and accompanying text (discussing effect of LLP transacting business in Minnesota without statement of qualification in effect).

125. *Id.*

126. In North Dakota, a professional organization is defined as a professional corporation, a professional LLC or a professional LLP which renders personal service to the public that requires a license as a condition precedent to the rendering of such service. N.D. CENT. CODE § 10-31-01(5)-(9) (1995). In Minnesota, a professional corporation includes both an LLC and an LLP rendering personal services pursuant to a license or certificate issued by the state of Minnesota. MINN. STAT. ANN. § 319A.02, subds. 2, 7 (West 1996).

127. N.D. CENT. CODE § 10-31-03.2 (1995).

128. *Id.*

"LLP" in its name.¹²⁹ North Dakota, however, allows a professional LLP to use only the words "professional limited liability partnership" or the abbreviations "P.L.L.P." or "PLLP" in its name.¹³⁰

An example illustrates the issue. Assume that Smith and Jones are two professionals who form a Minnesota general partnership using the name Smith & Jones. The general partnership decides to register in Minnesota as a professional LLP. Accordingly, the firm name is changed to "Smith & Jones, LLP." If Smith & Jones, LLP, decides to open an office in North Dakota, it must register in the state as a foreign LLP.¹³¹ Because the firm is a professional organization, the firm name must have the words "professional limited liability partnership" or the abbreviations "P.L.L.P." or "PLLP" under North Dakota law.¹³² The North Dakota Professional Organizations Act presents a dilemma for Smith & Jones, LLP. The firm cannot use the name it registered under in Minnesota because it does not contain the proper words or abbreviation. If the firm registers in North Dakota using the name Smith & Jones, PLLP, the firm must file a fictitious name certificate.¹³³ This presents an unnecessary inconvenience for Smith & Jones, LLP. The North Dakota Professional Organizations Act should be amended to eliminate this problem.¹³⁴ A professional LLP in North Dakota should

129. See *supra* note 93 and accompanying text (discussing name requirements).

130. See *supra* note 92 and accompanying text (discussing name requirements). The requirement that a North Dakota professional LLP use only the words "professional limited liability partnership" or the abbreviations "P.L.L.P." or "PLLP" differs from the name requirements set forth for all other North Dakota LLPs. All other LLPs (except professional LLPs) may use "any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original jurisdiction." N.D. CENT. CODE § 45-22-04(1)(b) (Supp. 1995).

131. A foreign LLP may register under any name that is available to a domestic LLP. N.D. CENT. CODE § 45-22-04(5)(a) (Supp. 1995).

132. See *supra* note 92 and accompanying text (discussing name requirements).

133. In North Dakota, if an LLP registers under a name other than the name as authorized in the jurisdiction of original registration, it must file fictitious name certificate. N.D. CENT. CODE § 45-22-04(5)(b) (Supp. 1995).

134. Language similar to that found in section 45-22-04(1)(b) of the North Dakota Century Code could be added to section 10-31-05(1)(c) of the code. For example, North Dakota Century Code section 10-31-05 could be amended to read:

1. The name of a professional organization:

-
- c. In the form of a limited liability partnership registered under this chapter shall contain:
- (1) The words "professional limited liability partnership" or "limited liability partnership"; or
 - (2) The abbreviations "P.L.L.P.", "PLLP", "L.L.P.", or "LLP", any of which can be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or
 - (3) Any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original

be allowed to use the words professional limited liability partnership, limited liability partnership, or any other words in its name, or the abbreviations PLLP, LLP or any other abbreviation authorized by its home jurisdiction.

In North Dakota and Minnesota, there is a subtle cost to the limited liability shield protection that accompanies a professional LLP registration. A professional LLP is governed by the same rules that apply to professional corporations and other professional organizations.¹³⁵ The fact that a professional LLP is treated as a professional organization has consequences to the partners and the partnership.

In North Dakota and Minnesota, each owner of a professional organization (such as a corporation or an LLC) is required to be licensed to practice the profession of the entity.¹³⁶ The same is true of a professional LLP; each partner must be licensed to practice the profession of the LLP.¹³⁷ Before registering as a professional LLP in North Dakota or Minnesota, a professional general partnership should be sure that all of its partners meet the licensure requirement.¹³⁸ Along with its registration in North Dakota, a professional LLP must file a certificate from the regulating board of the partnership's profession certifying that each partner of the partnership is licensed to practice the profession.¹³⁹ In Minnesota, a professional LLP must file a copy of the LLP registration with the professional board that has jurisdiction over the partnership's service type.¹⁴⁰

In North Dakota, registration and ownership of a professional LLP is restricted to individuals.¹⁴¹ Two or more individuals may register a professional organization as a professional LLP.¹⁴² With limited exceptions, only individuals licensed to render the same specific professional services as the partnership may be partners in a North Dakota profession-

registration.

135. N.D. CENT. CODE § 10-31-01(8) (1995); MINN. STAT. ANN. § 319A.02, subd. 7 (West 1996).

136. N.D. CENT. CODE § 10-31-02(2) (1995) (applying rule to professional corporation shareholders); N.D. CENT. CODE § 10-31-02.1(2) (1995) (applying rule to professional LLC members); MINN. STAT. ANN. § 319A.03(3) (West 1996) (applying rule to professional corporation shareholders and professional LLC members).

137. N.D. CENT. CODE § 10-31-02.2(2) (applying rule to professional LLP partners); MINN. STAT. ANN. § 319A.03(3) (applying rule to professional LLP partners).

138. This is particularly true of a professional LLP that is registering as a foreign LLP. There may be some partners who are not licensed to practice the profession in that state. These professional general partnerships may be precluded from registering as a foreign professional LLP.

139. N.D. CENT. CODE § 10-31-02.2.

140. MINN. STAT. ANN. § 319A.08 (West 1996).

141. An individual is defined as a human being. N.D. CENT. CODE § 1-01-49(3) (Supp. 1995).

142. N.D. CENT. CODE § 10-31-02.2. In addition to meeting the requirements set forth in chapter 45-22, the registration must also contain "[t]he profession to be practiced through the professional limited liability partnership" and "[t]he names and residence addresses of all of the original partners of the professional limited liability partnership." *Id.*

al LLP.¹⁴³ Corporations, LLCs, LLPs, general partnerships, and limited partnerships cannot be partners in a North Dakota professional LLP.¹⁴⁴ In addition, a partner in a North Dakota professional LLP may only transfer his or her partnership interest to the professional LLP or to a licensed individual owning or eligible to own a partnership interest.¹⁴⁵ Moreover, before a professional LLP can record a transfer of one partner's interest to a new individual on its books, the professional LLP must receive a certificate from the regulating board stating that the new individual is licensed to render the same specific professional services as the professional LLP.¹⁴⁶ These restrictions effectively prevent North Dakota professional LLPs from using any creative entity planning to achieve desired economic results for their owners.

In Minnesota, registration (but not ownership) of a professional LLP is also restricted to individuals. "One or more natural professional persons" may register a professional general partnership as a Minnesota professional LLP.¹⁴⁷ The "partners in a [professional] limited liability partnership may only be professional persons licensed to render" the same professional services as the professional LLP.¹⁴⁸ A Minnesota professional LLP may issue a partnership interest to licensed natural persons, partnerships, or professional corporations rendering the same kind of professional service.¹⁴⁹ Similarly, a partnership interest in a Minnesota professional LLP may be transferred to any licensed natural person, partnership, or professional corporation that could have been issued an interest originally.¹⁵⁰ Unlike North Dakota, Minnesota does not require the regulatory board to certify the licensure of a transferee before a partnership interest is transferred on the books of a professional LLP. The Minnesota statute is more flexible than the North Dakota

143. N.D. CENT. CODE § 10-31-07.3 (1995). *See also* N.D. CENT. CODE § 10-31-04(1) (1995) (allowing surveyors and architects to practice together, as well as allowing physical and occupational therapists to practice together).

144. In North Dakota, "person" is defined as "an individual, organization, government, political subdivision, or government agency or instrumentality." N.D. CENT. CODE § 1-01-49(8) (Supp. 1995). By using the word "individual" rather than the word "person," in chapter 10-31, it seems clear that other business entities such as corporations, partnerships, LLCs and LLPs are precluded from owning a professional LLP.

145. N.D. CENT. CODE § 10-31-07.3 (1995).

146. *Id.*

147. MINN. STAT. ANN. § 319A.03 (West 1996). In addition to meeting the requirements set forth in chapter 323, the registration must contain the following information: (1) the name of the professional LLP; (2) the purpose of the professional LLP; and (3) an acknowledgment that the partners in a LLP may only be professional persons licensed to render the kind of professional services that fit the purpose of the LLP. *Id.*

148. *Id.* "Person" is defined as "a natural person and an organization." MINN. STAT. ANN. §302A.011, subd. 22 (West 1985).

149. § 319A.11, subd. 1(a) (West Supp. 1996).

150. § 319A.13 (West 1996).

statute in that it allows Minnesota professionals to use other business entities in structuring their ownership of professional LLPs.

Restricting North Dakota professional LLP ownership to individuals seems inflexible. There is no reason why professional business owners in North Dakota should not have the same business entity choices available to business owners who are not professionals.¹⁵¹ Moreover, foreign professional LLPs may choose not to practice in North Dakota because of this limitation.¹⁵² The North Dakota Professional Organizations Act should be amended to allow licensed partnerships, corporations, LLCs and LLPs to be owners in professional organizations.¹⁵³ This could be accomplished simply by changing the word "individual" back to "person" where appropriate in the North Dakota Professional Organizations Act.

B. EXISTING CONTRACTS ON THE DATE OF CONVERSION

Another issue facing a general partnership which registers as an LLP is the effect an LLP registration has on its existing contracts, debts, and obligations. In North Dakota and Minnesota, an LLP partner is not personally liable for any debts or obligations that arose or accrued while the partnership had a registration in effect.¹⁵⁴ Thus, a critical question is when a debt or obligation arises or accrues.

In Minnesota, "[a]ll partnership debts and obligations under or relating to a . . . contract . . . arise and accrue when the . . . contract . . . is entered into."¹⁵⁵ Moreover, any "amendment, modification, extension or renewal of a . . . contract . . . does not affect the time at which a partnership debt or obligation . . . arises and accrues . . ."¹⁵⁶ At the present time, North Dakota has no comparable provision. An example highlights the issue.

Assume that Smith and Jones do business as a general partnership, Smith & Jones. On August 1, 1996, the partnership files an LLP registration. On the date the LLP registration was filed, the partnership had

151. It should be noted that in North Dakota, only individuals can own shares in a professional corporation. N.D. CENT. CODE § 10-31-07 (1995). Similarly, only individuals can own a membership interest in a professional LLC. § 10-31-07.2.

152. See N.D. CENT. CODE § 10-31-13.1 (1995) (applying the practice restrictions of the Professional Organizations Act to foreign professional organizations).

153. Prior to the 1995 amendments, a licensed "person" could own shares of stock in a professional corporation and a licensed "person" could own a membership interest in a professional LLC. See 1995 N.D. Laws ch. 55 §§ 15-16 (changing "person" to "individual" in sections 10-31-07 and 10-31-07.2 of the North Dakota Century Code).

154. N.D. CENT. CODE § 45-22-08 (Supp. 1995); MINN. STAT. ANN. § 323.14, subd. 2 (West 1995).

155. MINN. STAT. ANN. § 323.14, subd. 6(a) (West Supp. 1996).

156. *Id.*

three existing contracts, a bank loan, a utility contract, and a supplier contract.

Suppose that on September 1, 1995, Smith & Jones had signed a promissory note with the bank for \$100,000. The note matures on September 1, 1996. On that date, the bank agreed to renew the promissory note for another year. Since the promissory note was entered into before the LLP registration became effective, Smith and Jones are personally liable on the note.¹⁵⁷ In Minnesota, it is clear that a renewal of a note by the bank, after the LLP registration is effective, does not reset the arise/accrue date.¹⁵⁸ If the partners want the protection of the limited liability shield, they should ask the bank to agree to a novation or to a nonrecourse clause.¹⁵⁹ In North Dakota, the effect of an amendment, modification, extension, or renewal of an existing contract is not clear. A conservative approach for LLPs in North Dakota is to assume that the North Dakota courts will favor the Minnesota approach. A request for a novation or a nonrecourse clause by a North Dakota LLP appears to be a prudent approach in this situation.

Assume that Smith & Jones also had a contract with a utility company to provide services. The contract was entered into on January 1, 1996. Smith & Jones pay the utility company monthly. In Minnesota, the arise/accrue date is January 1, 1996, which is before the LLP registration was filed.¹⁶⁰ Because the arise/accrue date is the date the contract is entered into, Smith and Jones are personally liable on the utility contract. The continual providing of services by the utility company and payment by the partnership does not reset the arise/accrue date even though these events continue to occur after the LLP registration is in effect.¹⁶¹ In Minnesota, partners who want the protection of the LLP liability shield should either ask the service provider for a novation or terminate service and begin new service in the name of the LLP.¹⁶² Although the law is not clear in North Dakota, caution dictates the same approach.

Assume that Smith & Jones' third contract was with a supplier to provide raw materials on October 1, 1996. Assume the contract was entered into on June 1, 1996. Smith & Jones periodically enter into such supply contracts with a number of vendors. In Minnesota, Smith and Jones are personally liable on this contract, because the arise/accrue

157. See *supra* note 155 and accompanying text (discussing when debts or obligations accrue).

158. *Id.*

159. See MINN. STAT. ANN. § 323.14, subd. 6 reporters' notes (West Supp. 1996).

160. See *supra* note 155 and accompanying text (discussing when debts or obligations accrue).

161. MINN. STAT. ANN. §323.14, subd. 6 reporters' notes (rationalizing this result by stating that the parties "do not expect that one party's unilateral act or omission (i.e. filing a LLP registration or allowing the registration to lapse) will fundamentally alter that liability status").

162. See *supra* note 159 and accompanying text (discussing how to set liability protection).

date is June 1, 1996.¹⁶³ Once the terms of this contract have been fulfilled, future contracts with suppliers should be entered into by Smith & Jones LLP. Any new contract should clearly designate the LLP (rather than the partnership) as the party to the contract. Although the law is not clear in North Dakota, the same approach is prudent. Because the LLP registration is in effect, the LLP liability shield will protect Smith and Jones from personal liability on these contracts in North Dakota and Minnesota.

After the LLP registration is filed, Smith & Jones LLP should notify all third parties with whom it has previously dealt. Firm letterhead, business cards, invoices, brochures, and similar items should be changed to clearly indicate that the partnership is an LLP. Failure to disclose the LLP portion of the partnership name to a third person with whom the LLP enters into a contract may result in personal liability to Smith and Jones in North Dakota and Minnesota.¹⁶⁴

A North Dakota or Minnesota general partnership which converts to an LLP should be aware of how the conversion will affect the personal liability of its partners. An LLP registration alone may not trigger the protection of the LLP shield with respect to existing partnership contracts. If the arise/accrue date of the contract is prior to the effective date of the LLP registration, the LLP partners continue to be personally liable on that contract.

C. REAL PROPERTY TRANSFERS

A final practical issue involves the transfer of real estate when there has been a change by a partnership from or to an LLP. Although a partnership which converts to or from an LLP continues to be the same entity,¹⁶⁵ it is unclear if any other steps or additional documentation is needed to transfer property if the partnership either obtains, or loses, LLP status.¹⁶⁶ Again, a hypothetical helps to frame the issue.

Assume that our partners, Smith and Jones, form a general partnership called Smith & Jones. In 1994, they purchase a tract of land. The grantee in the deed is identified as "Smith and Jones, a general partnership." In 1996, Smith & Jones decides to convert the existing partnership to an LLP, and files the appropriate registration identifying the entity as "Smith & Jones, LLP." Subsequently, the partnership sells the

163. See *supra* note 155 and accompanying text (discussing when debts or obligations accrue).

164. See *supra* notes 97-98 and accompanying text (discussing liability where LLP name is not disclosed).

165. See *supra* note 22 and accompanying text (discussing entity status).

166. See Kevin J. Dunlevy, *Major Bills Affecting Real Estate Introduced in 1995 Legislature*, REAL PROP. L. SURV., June 1995, at 11, 13-14 (discussing legislation affecting LLPs and real estate transactions).

same tract of land and identifies itself as "Smith & Jones, LLP" in the grantor portion of the deed. Because the name of the grantee on the deed to the partnership differs from the name of the grantor on the deed from the partnership, a title examiner may require an explanation for the change in name.

In 1995, the Minnesota legislature specifically addressed this question.¹⁶⁷ In Minnesota, a partnership remains the same entity whether it obtains the status of an LLP, or whether that status terminates.¹⁶⁸ In addition, the reference, or lack of reference, to a general partnership as being an LLP is not material for conveying an interest in property.¹⁶⁹

Based on this new subdivision, the Title Standards Committee of the Section of Real Property Law of the Minnesota State Bar Association amended Title Standard No. 82 to require that when examining title to property owned by a general partnership, complete searches should be made against the general partnership, "including a limited liability partnership."¹⁷⁰ The explanation to the amendment makes it clear that a reference to, or omission in a reference to, a general partnership as being an LLP does not render the name defective for title purposes.¹⁷¹

As of the date of this writing, North Dakota has not passed any comparable legislation. Similarly, the North Dakota Title Standards have not yet addressed the issue. The North Dakota Legislature and the Title Standards Committee of the Section of Real Property, Probate and Trust Law of the State Bar Association of North Dakota should follow Minnesota's lead and promulgate similar legislation and standards.

VI. CONCLUSION

In North Dakota and Minnesota, business owners have yet another business entity choice. An LLP is an ideal choice for business owners who are currently operating as a general partnership. An LLP registration is easy and inexpensive. It allows general partners to obtain the protection of the limited liability shield and at the same time keep their operating structure intact. While the North Dakota and Minnesota limited liability shield protects business owners from debts arising in

167. 1995 Minn. Laws ch. 58, § 8 (codified as amended at MINN. STAT. ANN. § 323.44, subd. 8 (West Supp. 1996)).

168. MINN. STAT. ANN. § 323.44, subd. 8(1)-(2).

169. *Id.* § 323.44, subd. 8(3).

170. SECTION OF REAL PROPERTY LAW OF MINN. STATE BAR ASS'N, MINNESOTA TITLE STANDARDS No. 82, ¶ 5 (amended June 23, 1995).

171. SECTION OF REAL PROPERTY LAW OF MINN. STATE BAR ASS'N, 1995 REPORT OF THE TITLE STANDARDS COMMITTEE 6 (1995). The reason the amendment requires searches in both the general partnership and LLP name is because a general partnership qualifies as an LLP only for a one-year period. In view of the fact that the partnership's status could change from year to year, it would be difficult for title examiners to determine if, in fact, a partnership had retained its LLP status.

contract as well as tort, business owners should proceed cautiously before transacting business in other states. The scope of the liability shield may not be as broad in other states as it is in North Dakota and Minnesota. Special care should be taken in advising professionals who are interested in registering as a professional LLP. Particular attention should be given to the differences between the North Dakota Professional Organizations Act and the Minnesota Professional Corporations Act. The law in this area is constantly evolving. It is essential for any practitioner who advises clients on business entity choices to keep up with the changes.