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THE NEED FOR LIMITED PARTNERSHIP REFORM: A REVISED UNIFORM ACT*

RONALD M. SHAPIRO**

The genealogy of the limited partnership form of doing business reaches back to the twelfth century *commendata* of Italy.¹ In the United States the form first received statutory recognition with the passage of an act relative to partnerships by New York in 1822.² Yet the limited partnership did not become prevalent in this country until after the approval of the Uniform Limited Partnership Act [hereinafter referred to as the Uniform Act] by the Commissioners on Uniform State Laws³ in 1916. Subsequently it was adopted by forty-nine states, the District of Columbia and the Virgin Islands.⁴

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1. Lewis, *The Uniform Limited Partnership Act*, 65 U. PA. L. REV. 715, 716 (1917).

2. Ch. 244, 1822 N.Y. Laws 259.

3. The Commissioners on Uniform State Laws is a body of commissioners which meets annually. The purpose of the annual meeting is to consider and discuss acts that have been drafted by the various committees throughout the year. By providing model acts to the states, the Commissioners encourage uniformity in those areas of the law where uniformity is necessary or desirable.

4. See ALA. CODE tit. 43, §§ 27(1)-(31) (Cum. Supp. 1973); ALASKA STAT. § 32.10 (1962); ARIZ. REV. STAT. §§ 29-301 to 329 (1956); CAL. CORP. CODE §§ 15501-15532 (West 1977); COLO. REV. STAT. §§ 7-61-101 to 130 (1974); CONN. GEN. STAT. ANN. §§ 34-9 to 38 (West 1969); DEL. CODE tit. 6, §§ 1701-1733 (1975 & Cum. Supp. 1977); D.C. CODE ENCYCL. §§ 41-401 to 429 (West 1968); FLA. STAT. ANN. §§ 620.01-.32 (West 1977); GA. CODE ANN. §§ 75-401 to 431 (1964); HAW. REV. STAT. §§ 425-21 to 52 (1976); IDAHO CODE §§ 53-201 to 232 (1957); ILL. ANN. STAT. ch. 106½, §§ 44-73 (Smith-Hurd 1952 & Cum. Supp. 1978); IND. CODE ANN. §§ 23-4-2-1 to 30 (Burns 1972); IOWA CODE ANN. §§ 545.1-.59 (West 1950 & Cum. Supp. 1977); KAN. STAT. §§ 56-101 to 151 (1976); KY. REV. STAT. ANN. §§ 362.010-.130 (Baldwin 1969); ME. REV. STAT. tit. 31, §§ 151-181 (1978); MD. CORP. & ASS'NS. CODE ANN. §§ 10-101 to 129 (1975 & Cum. Supp. 1976); MASS. GEN. LAWS ANN. ch. 109 §§ 1-31 (West 1958); MICH. COMP. LAWS ANN. §§ 449.201-.231 (1967 & Cum. Supp. 1977); MINN. STAT. ANN. §§ 322.01-.31 (West 1966 & Cum. Supp. 1977); MISS. CODE ANN. §§ 79-13-1 to 57 (1973); MO. ANN. STAT. §§ 359.010-.290 (Vernon 1968); MONT. REV. CODES ANN. §§ 63-701 to 911 (1970 & Cum. Supp. 1977); NEB. REV. STAT. §§ 67-201 to 342 (1971); NEV. REV. STAT. §§ 88.010-.310 (1973); N.H. REV. STAT. ANN. §§ 305:1-30 (1955 & Cum. Supp. 1975); N.J. STAT. ANN. §§ 42:1-1 to :2-30 (West 1940 & Cum. Supp. 1977); N.M. STAT. ANN. §§ 66-2-1 to 30 (1972 & Cum. Supp. 1975); N.Y. PARTNERSHIP LAW §§ 90-119 (McKinney 1948 & Cum. Supp. 1977); N.C. GEN. STAT. §§ 59-1 to 30 (1975); N.D. CENT. CODE §§ 45-10-01 to 26 (1960 & Cum. Supp. 1977); OHIO REV. CODE ANN. §§ 1781.01-.27 (Page 1964 & Cum. Supp. 1978); OKLA. STAT. ANN. tit. 54, §§ 201-244 (West 1969); OR. REV. STAT.

A limited partnership is a partnership formed by two or more persons under a limited partnership statute,⁵ having as members one or more "general partners" and one or more "limited partners."⁶ The status of the general partners is substantially the same as that of general partners in a general partnership.⁷ Thus, they control the operation of the partnership on a day to day basis and are subject to personal liability for partnership obligations and liabilities.⁸ In marked contrast, the limited partners are passive investors whose liability is usually limited to the extent of their contributions to the limited partnership.⁹ It is therefore evident that the limited

§§ 69.150-530 (1975); PA. CONS. STAT. ANN. tit. 59, §§ 501-545 (Purdon 1978); R.I. GEN. LAWS §§ 7-13-1 to 31 (1970 & Cum. Supp. 1977); S.C. CODE §§ 52-101 to 130 (1962); S.D. COMPILED LAWS ANN. §§ 48-6-1 to 64 (1967); TENN. CODE ANN. §§ 61-201 to 230 (1976); TEX. REV. CIV. STAT. ANN. art. 6132a (Vernon 1970 & Cum. Supp. 1978); UTAH CODE ANN. §§ 48-2-1 to 27 (1970 & Cum. Supp. 1977); VT. STAT. ANN. tit. 11, §§ 1391-1419 (1973); V.I. CODE ANN. tit. 26, §§ 201-228 (1970); VA. CODE §§ 50-44 to 73 (1974); WASH. REV. CODE ANN. §§ 25.08.010-.310 (1969 & Cum. Supp. 1977); W. VA. CODE §§ 47-9-1 to 30 (1976); WIS. STAT. ANN. §§ 179.01-.31 (West 1974); WYO. STAT. §§ 17-263 to 293 (Cum. Supp. 1975).

5. As discussed *infra passim*, the current Maryland Uniform Limited Partnership Act is found in MD. CORP. & ASS'NS. CODE ANN. §§ 10-101 to 129 (1975 & Cum. Supp. 1977) [hereinafter referred to as the Act and cited as C & A].

6. *Id.* at § 10-101.

7. A general partner has all the rights and powers of a partner in a limited partnership without limited partners, except that without the written consent or ratification of all limited partners, one or all of the general partners have no authority to:

- (a) Do any act in contravention of the limited partnership certificate;
- (b) Do any act which would make it impossible to carry on the ordinary business of the partnership;
- (c) Confess a judgment against the partnership;
- (d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose;
- (e) Admit a person as a general partner;
- (f) Admit a person as a limited partner, unless the right to do so is given in the certificate; or
- (g) Continue the business with partnership property, on the death, retirement, or insanity of a general partner, unless the right to do so is given in the certificate.

Id. at § 10-108.

8. General partners are jointly and severally liable for any loss or injury caused to a non-partner due to the wrongful act or omission of any partner within the ordinary course of the partnership's business, or with the authority of his co-partners. *Id.* at § 9-305. Similar liability is imposed upon general partners when one partner, acting within the scope of his apparent authority, receives money or property of a third person and misapplies it, or when the partnership, in the course of its business, receives from a third person money or property which is misapplied while in the custody of the partnership. *Id.* at § 9-306. Additionally, general partners are jointly liable for all other debts of the partnership. *Id.* at § 9-307.

9. A limited partner is liable to the partnership:

- (1) For the difference between his contribution as actually made and that stated in the certificate as having been made; and

partnership satisfies the needs of potential passive investors by providing them with limited liability in a business form that is operated by persons who, by virtue of their general liability, are considerably more accountable than their corporate director counterparts.¹⁰

In addition to these initial attractions, the development of the limited partnership in this country was given added impetus by the increasing emphasis on tax planning, which reached its peak during the past two decades. Not only did the limited partnership greatly insulate the passive investor from liability, but it allowed that investor to take certain tax losses not available in the alternate limited liability business form, the corporation.¹¹

The corporation, as the preferred limited liability business form, may reign supreme, but there can be little doubt that during the tax shelter era of the mid-1950's through the mid-1970's the limited partnership became tremendously popular.¹² It is, therefore, surprising that, while corporate law has been reformed so as to keep pace

(2) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(b) A limited partner holds as trustee for the partnership:

(1) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned; and

(2) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(c) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership, who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(d) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of the return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before the return.

Id. at § 10-116.

10. The director is a fiduciary and liable for breach of fiduciary responsibility. As to a director's standard of care, see MD. CORP. & ASS'NS. CODE ANN. § 2-405.1 (Cum. Supp. 1977). The general partner is usually liable for all partnership obligations, see MD. CORP. & ASS'NS. CODE ANN. § 9-307 (1975), as well as being subject to fiduciary duties. *Id.* at § 9-404.

11. A subchapter S corporation, see I.R.C. §§ 1371-1379, may at times be thought of as having the same tax characteristics as a partnership. Such a claim, however, is an overstatement and misleading. See Z. CAVITCH, TAX PLANNING FOR CORPORATIONS AND SHAREHOLDERS § 3.01.

12. "In recent years, many taxpayers seeking to reduce their federal income tax liabilities have utilized tax shelters, and the most popular business form for these has been the limited partnership." *Tax Shelters: The Decline of the Limited Partnership*, 28 CORP. J. 99 (March-May, 1978). However, the Tax Reform Act of 1976, Pub. L. No. 94-455, 90 Stat. 1520, reduced certain special tax advantages of limited partnerships as tax shelters. 28 CORP. J. at 99.

with modern business practices and needs,¹³ the limited partnership laws have remained generally unchanged for over half a century. For any practitioner of business law who has worked with both corporate and limited partnership codes, the need to modernize the latter is obvious.

In 1976, the National Conference of Commissioners on Uniform State Laws recognized this need, and drafted a Revised Uniform Limited Partnership Act [hereinafter referred to as the Draft].¹⁴ The Draft "was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations."¹⁵ This article will focus on the Draft by describing the Commissioners' revisions and comparing them to the existing provisions, or the lack thereof, in the present Uniform Act.¹⁶ The Maryland version of the Uniform Limited Partnership Act [hereinafter referred to as the Act] will serve as a model for discussion.¹⁷ In undertaking such an analysis, this article will seek not only to state the case for statutory reform in the limited partnership area, but also to apprise the practitioner of problems with the existing Act that may not be readily apparent.

An Overview

The organization of the Draft is strikingly similar to the organization of the recently modified General Corporations Law of Maryland.¹⁸ The Commissioners, like the modifiers of the Maryland corporate law, have sought to provide the practitioner with a law broken down into a series of interrelated and logically sequential subtitles. The sequence of the subtitles, starting with definitional and organizational matters and ending with dissolution and miscellaneous matters, should not only facilitate locating a desired

13. See generally Shapiro, *Statutory Incorporation Flexibility in Maryland: Drafting Corporate Documents For The Privately-Held Enterprise*, 6 U. BALT. L. REV. 1 (1976).

14. REVISED UNIFORM LIMITED PARTNERSHIP ACT (1976) [hereinafter referred to as the "Draft" and cited as ULPA]. The Commissioners have sought a revenue ruling to the effect that compliance with the Draft will not cause a limited partnership to be construed as an association taxable as a corporation. As of this writing said ruling has not yet been issued. Hence, prior to adoption of the entire Draft as a substitute for existing limited partnership legislation, the Commissioners should be consulted as to whether such ruling has been issued, and consideration could be given to adoption of provisions of the Draft that could not affect the tax status of a limited partnership. The entire Draft is set forth as the appendix to this article.

15. *Id.* Commissioners' Prefatory Note (1976).

16. UNIFORM LIMITED PARTNERSHIP ACT (1916).

17. C&A §§ 10-101 to 129; see note 5 *supra*.

18. MD. CORP. & ASS'NS. CODE ANN. §§ 1-101 to 3-520 (1975 & Cum. Supp. 1977).

provision but should also make it possible to read through all of the provisions in order to understand the legal basis of the limited partnership from its birth to its death.

The Draft borrows several concepts from corporate law that are long overdue in limited partnership law, without in any way detracting from the basic distinctions between the corporation and the limited partnership. For example, the Draft provides for the central filing of partnership certificates, the recognition of services as a legitimate form of capital contribution, the registration of foreign partnerships, and partnership derivative actions. Moreover, the Draft makes important substantive changes in the Uniform Act by clarifying the relationship between the partnership agreement and the certificate, and establishing guidelines respecting the crucial limited liability issue of a limited partner's participation in control. These changes, alone, make it clear that a modern limited partnership law is needed. An analysis of each of the Draft's articles follows.

Article One — General Provisions

Article one includes a series of new provisions including a list of definitions of significant terms that appear in the Draft.¹⁹ The Act, in contrast, provides a minimum of definitional material.²⁰ The Commissioners, in formulating the Draft's definitions, have met one of their basic goals, namely, elimination from the law of limited partnership of ambiguities and uncertainties which bedevil practice under the Act and which result from the lack of basic statutorily-defined terminology.

At the outset the Draft modifies the definition of limited partnership.²¹ Under the Act the limited partnership is defined as "a partnership formed by two or more persons under the provisions of §10-102 of this title, having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership."²² The Draft eliminates this last sentence. Apparently this deletion was made so that the new definitional provisions respecting "limited partner" and the operative provisions respecting such partner's status may speak for themselves. Merely to state, as does the Act,

19. ULP § 101 (1976).

20. C&A § 10-101 (1975). It should be noted that the Act does incorporate by reference certain provisions of the Uniform Partnership Act affecting general partnerships.

21. *Id.* § 101(7).

22. C&A § 10-101 (1975).

that the limited partners are not bound by the obligations of the partnership "as such" is misleading on the issue of potential liability and falls short of providing an adequate guideline.

The Draft defines the character of the partner as either "general" or "limited" in terms of the appropriate entry on the certificate of limited partnership and the terms of the partnership agreement. The general partner is "a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner."²³ The limited partner is defined as "a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner."²⁴ The Commissioners have explained that this latter definition emphasizes that a prerequisite of limited partner status under the Draft is being named in the certificate of limited partnership. The failure to file will not, however, result in the forfeiture of that protected status if an amendment to the certificate is filed.²⁵

The definitional section not only presents the basic building blocks of the law by defining such obvious terms as "limited partnership" and the different species of partners, but also incorporates definitions which reflect a change in the underlying philosophy of the law. The emphasis of the Act is on the protection of unwary creditors, whereas the emphasis of the Draft is less paternalistic and more concerned with assuring that information with respect to the partnership is available for those who are or should be interested.

This philosophical change is reflected in that part of the new definitional section of the Draft respecting partner "contributions."²⁶ The Act restricts a limited partner's contribution to either cash or property;²⁷ contributions in the form of services are expressly prohibited.²⁸ The Draft has taken the opposite position; it expressly defines a "contribution" to include "services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services"²⁹ The Draft thus extends the

23. ULPA § 101(5) (1976).

24. *Id.* § 101(6).

25. *Id.* § 202(e).

26. *Id.* § 101(2). A partner's contributions must be disclosed in the certificate. *Id.* § 201(a)(5).

27. C&A § 10-104 (1975).

28. *Id.*

29. ULPA § 101(2) (1976).

permissible concept of contribution by a partner, so long as it is clearly spelled out in the certificate,³⁰ even beyond what has been accepted in Maryland as a valid type of payment to a corporation in exchange for stock.³¹

The Draft, unlike the Act, also contains a definition of "partnership agreement." That term is defined as "any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business."³² The inclusion of this definition clearly elevates and emphasizes the role of the partnership agreement as the comprehensive legal basis for the partners' relationship. The certificate of limited partnership is given a more circumscribed role, namely to provide information with respect to the identity, admission, and withdrawal of partners, as well as the capital of the partnership. By analogy to a corporation, the certificate of limited partnership gives public notice of the authorized capital structure of the partnership similar to information provided by articles of incorporation and also provides additional information respecting the identity and contributions of the partners.³³ The partnership agreement also covers control matters normally not included in articles of incorporation and thus serves as the by-laws, buy-sell, and succession (to control) agreements.³⁴

The term "partnership interest" has for the first time been expressly defined in the Draft.³⁵ It refers, in much the same manner as the definition in the Uniform Partnership Act controlling general partnerships,³⁶ to the partner's³⁷ share of profits and losses of the partnership and the right to receive distributions of the partnership assets. The Commissioners have included this definition to delineate exactly what is transferred if and when a partnership interest is assigned.³⁸ Such a clarification should eliminate the confusion that frequently arises by virtue of a common misunderstanding that somehow voting rights or specific rights in partnership property are incorporated within the concept of a partnership interest. The only question that might be asked of the Commissioners in this regard is why they have not also included a specific definition of "partnership

30. C&A § 2-206 (1975).

31. See MD. CORP. & ASS'NS. CODE ANN. § 2-206 (1975 & Cum. Supp. 1977).

32. ULPA § 101(9) (1976).

33. *Id.* § 201, Comm'rs' Comment.

34. *Id.* § 101, Comm'rs' Comment.

35. *Id.* § 101(10).

36. UNIFORM PARTNERSHIP ACT § 26 (1914).

37. ULPA § 101(8) (1976).

38. *Id.* § 101, Comm'rs' Comment.

property" so as to avoid the necessity of cross reference to the law of general partnerships.

A foreign limited partnership is defined in the Draft as "a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners."³⁹ The inclusion of this term affords the law of limited partnerships a concept similar to foreign corporation qualification.⁴⁰ Recognizing foreign limited partnerships reflects the multijurisdictional nature of business transacted by limited partnerships. A standardized procedure for their registration should resolve doubts presently existing with respect to the treatment of partnerships doing business in more than one state.

The definitional section also includes a number of self-defining terms such as "partner,"⁴¹ "event of withdrawal of a general partner,"⁴² and "person."⁴³ These illuminate an area which had previously been darkened by undefined terms by eliminating uncertainty as to any other possible meanings.

The balance of article one of the Draft contains sections which regulate the name of the limited partnership;⁴⁴ provide for the reservation of that name;⁴⁵ prescribe the maintenance of an office and an agent for service of process;⁴⁶ mandate the records which must be maintained at the office mentioned above;⁴⁷ prescribe the nature of the business permitted;⁴⁸ and list the types of allowable business transactions between the partner and the partnership.⁴⁹

The name provisions in the Draft⁵⁰ are more extensive than those in the Act.⁵¹ The only present requirement is that the surname of a limited partner cannot be used in the partnership name unless it is also the surname of a general partner or the business had previously used the surname.⁵² The Draft draws heavily upon corporate law by proscribing the use of a name which is the same as or similar to the name of any other corporation or limited

39. *Id.* § 101(4).

40. *See* MD. CORP. & ASS'NS. CODE ANN. § 7-203 (1975).

41. *Id.* § 101(8).

42. *Id.* § 101(3).

43. *Id.* § 101(11).

44. *Id.* § 102.

45. *Id.* § 103.

46. *Id.* § 104.

47. *Id.* § 105.

48. *Id.* § 106.

49. *Id.* § 107.

50. *Id.* § 102.

51. C&A § 10-105 (1975).

52. *Id.*

partnership organized or registered in the particular state.⁵³ This proscription "reflects the intention to integrate the registration of limited partnership names with that of corporate names" in order to avoid duplication in these names and public confusion as to the identity of businesses.⁵⁴ Further, as the corporate law requires the use of a name indicating the limited liability character of the entity, the Draft requires that the partnership name include the words "limited partnership," unabbreviated,⁵⁵ so as to put anyone dealing with the limited partnership on notice as to the status of the business.

Anyone familiar with the advantages of reserving a corporate name prior to incorporation or doing business in a foreign jurisdiction will recognize the rationale and procedures for the Draft's reservation-of-name provisions.⁵⁶ Their inclusion in the law should avoid the necessity of filing a full scale certificate merely to protect a business name.

Those sections dealing with the designation of a specific office and agent for service of process,⁵⁷ and requiring that certain records be maintained at that office⁵⁸ may create certain additional burdens for general partners. Yet the benefit to the public and government agencies of having a designated office for business records and an agent for service of process has long been recognized in the case of corporations. Moreover, requiring that specified records be maintained at the principal office and granting all partners the right to inspect those records may actually benefit a general partner by eliminating a significant ambiguity respecting record maintenance and inspection rights under the Act. The Act provides that a limited partner is entitled to inspect the partnership "books" and to "have on demand true and full information of all things affecting the partnership."⁵⁹ By contrast the Draft itemizes specific records required to be kept at the partnership office for inspection by "any partner."⁶⁰ A list of partners' names and addresses, a copy of the certificate and any amendments thereto together with power(s) of attorney pursuant to which they were executed, partnership income tax returns and financial reports for the three most recent years, and copies of partnership agreements and financial statements for the

53. ULPA § 102(4) (1976).

54. *Id.* § 102, Comm'rs' Comment.

55. *Id.* § 102(1).

56. *Id.* § 103.

57. *Id.* § 104.

58. *Id.* § 105.

59. C&A § 10-109(a)(1) & (2) (1975).

60. ULPA § 105 (1976).

three most recent years all must be so maintained and made available.⁶¹ Such specificity in the Draft eliminates potential disputes that could arise under the Act between limited partners and general partners based on allegations that the principal office does not contain "all things affecting the partnership."⁶²

The Act contains what could be characterized as a mini fraudulent conveyance act. It declares that there is a fraud on creditors whenever a limited partner receives or holds partnership property as collateral or is the recipient of a conveyance or release from a general partner, if "at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners."⁶³ The application of this provision is not always clear. Could it be construed so as to negate a transaction with a limited partner if the conveyance or release were given for a valid consideration? Recognizing that the Act does not furnish a clear answer to this question, and also that state law,⁶⁴ as well as federal bankruptcy law,⁶⁵ offers well-established doctrines regulating fraudulent conveyances, the Commissioners wisely chose to eliminate this special limited partnership fraudulent conveyance prohibition.⁶⁶ While a complete deletion appears to be a prudent course, limited third-party-creditor protection could be provided, without ambiguity, by prohibiting dividend-like distributions or redemptions of partnership interests or capital accounts at a time when the partnership is insolvent or would be rendered so by such an act. A similar provision limits distributions of profits and compensation by way of income to limited partners under the Act.⁶⁷ Such a restriction has worked well in the corporate context in conjunction with general fraudulent conveyance and insolvency laws.

Absent the violation of laws proscribing fraudulent conveyances, the Draft would permit general partners to have the same rights as limited partners and third-party creditors with respect to unsecured loans they make to the business. Certainly a fully disclosed loan by a general partner on fair terms should not be subordinated any more than such a loan by a stockholder, director or officer of a corporation. Otherwise, legitimate loans from general

61. *Id.*

62. C&A § 10-109(a)(2) (1975).

63. C&A § 10-112 (1975 & Cum. Supp. 1977).

64. MD. COM. LAW CODE ANN. § 15-208 (1975).

65. 11 U.S.C. § 107 (1952).

66. *See* UNIFORM LIMITED PARTNERSHIP ACT § 13 (1916).

67. C&A § 10-114 (1975).

partners would be discouraged. Of course, should the partnership become insolvent, the general liability of the general partners may make this modification more apparent than real.

Article Two — Formation: Certificate of Limited Partnership

Article two of the Draft does not make sweeping substantive changes, but it does gather into one article provisions strewn throughout the Act that relate to the certificate of limited partnership and its relationship to the formation of, and material changes in, the partnership. All provisions respecting the execution and filing of certificates of limited partnership and certificates of amendment and cancellation are now collected in one place. These provisions also clarify provisions of the Act which are presently vague. And just as article one emphasized the paramount nature of the partnership agreement, article two underscores that the certificate is "not constitutive," except to the extent it is a prerequisite to a *de jure* limited partnership, and merely reflects matters to which creditors should be put on notice.⁶⁸ These matters include information regarding the initial capital of the partnership and agreements respecting additional contributions and withdrawals,⁶⁹ as well as a clear delineation of the time when persons become general partners and limited partners. Except for the elimination of certain ambiguities, this does not represent a significant departure from existing certificate requirements.⁷⁰

One of the most practical differences between the Draft and the Act is in the provision concerning the office in which the certificate of limited partnership and the other related documents are to be filed. The Act requires the filing of the certificate "with the clerk of the court . . ." ⁷¹ It was assumed by the framers of the Uniform Act that such a provision would provide some degree of uniformity. Unfortunately, it resulted in the opposite — massive uncertainty as to which of the many court clerks the provision referred. A recent opinion of the Attorney General sought to end the confusion in Maryland.⁷² The opinion explained that the filing of the certificate in the Circuit Court of any county or in the Superior Court of Baltimore City would comply with the statutory filing requirements.⁷³ Nevertheless, the opinion cautioned that "the filing in the county of the

68. *Id.* § 201, Comm'rs' Comment (1976).

69. *Id.* § 201(a)(5)&(6) (1976).

70. C&A § 10-102 (1975).

71. *Id.*

72. 58 OP. MD. ATT'Y GEN. 500 (1973).

73. *Id.* at 502.

principal place of business, while not required, would appear to be the most logical procedure."⁷⁴

In response to a need felt by most practitioners, the Commissioners provided in the Draft for the establishment of a central depository for all documents of the limited partnerships doing business in the state.⁷⁵ There is no reason why a division of the Department of Assessments and Taxation should not be the source of central registration of limited partnerships. Not only will this ease the burden of filing and locating information pertaining to limited partnerships, but it should also facilitate administration of the statutory provisions aimed at avoiding confusion between names of limited liability business entities.⁷⁶

The Draft significantly alters the provisions of the Act respecting amendments to the certificate. Beneficial substantive changes are implemented both with regard to the events which require an amendment and the time for filing amendments. While events requiring amendment under the Draft are fewer in number than those itemized in the Act, they are more comprehensive in scope. Distinctions between general and limited partner additions and withdrawals are eliminated. Rather, under the Draft, a certificate amendment is now required only on the admission of a new partner and the withdrawal of a partner.⁷⁷ In addition, filing must be made if the business is continued pursuant to the Draft's non-judicial dissolution provisions after the withdrawal of a general partner.⁷⁸ The Draft also requires amendment if any partner's obligation or rights respecting his or her capital contribution are altered.⁷⁹

The foregoing events are deemed so central to the partnership's function that they mandate the filing of an amendment of the certificate. Under the Draft, an amendment is also required respecting any item in the certificate (except the address of a limited partner) which a general partner is aware is false or inaccurate.⁸⁰ Not only does the Draft protect the general partner by requiring a

74. *Id.*

75. ULPA § 201(a) (1976). It is interesting to note that the Revisor's Note to C&A § 10-102 also suggested this change.

76. A division for registration of limited partnership names could easily coordinate its information respecting such names with another division of the Department of Assessments and Taxation charged with the registration of corporate names. In this manner, choosing a name for a limited partnership or corporation that does not conflict with that of other such businesses could be easily achieved.

77. ULPA § 202(b)(2) & (3) (1976).

78. *Id.* § 202(b)(4).

79. *Id.* § 202(b)(1).

80. *Id.* § 202(c).

showing of his or her knowledge of the inaccuracy for liability, but it also includes a safe-harbor filing period.⁸¹ The general partner is no longer confronted with the uncertainty of the deadline for filing.⁸² He⁸³ is now informed that an amendment filed within thirty days of the event requiring it, regardless of the general partner's knowledge, will protect him from liability to a creditor or other party on the grounds that the amendment was not timely filed.⁸⁴ Setting such a specified period for filing amendments is consistent with the Commissioners' objective of taking the guesswork out of properly conducting a limited partnership.

The certificate of limited partnership, under the Act, is deemed cancelled when the partnership is dissolved.⁸⁵ It is unclear at what point, if ever, this cancellation is to be recorded. The Draft illuminates this area by providing for filing of a certificate of cancellation upon the commencement of the winding up of the partnership and for cancellation upon its effective date.⁸⁶ Hence, if a partnership's affairs are to be continued rather than wound up after dissolution, then a certificate of cancellation need not be filed.

Certificates of amendment, like certificates of limited partnership and cancellation, must be executed in a prescribed manner. Under the Act the process can be cumbersome if new partners are admitted with any frequency. An amendment as well as the original certificate must be signed by every partner, general and limited.⁸⁷ The Draft, in the case of the amendment, requires only the signatures of one general partner and each partner designated in the certificate as a new partner or whose contribution has been described as increased.⁸⁸ In this manner the need for the general partner to possess blanket powers of attorney of the limited partners is eliminated since the limited partners are required to execute a certificate only upon their entering the partnership. The Draft also requires that any certificate change respecting the admission or increased contribution of a partner may be signed on behalf of a partner by an attorney-in-fact only if the power of attorney authorizing such execution includes special reference to the increase

81. *Id.* § 202(e).

82. See C&A § 10-106(a)(1) & (2) (1975) which is ambiguous in its provision for a filing deadline.

83. Throughout this article, the masculine will include the feminine.

84. ULPA § 202(e) (1976).

85. C&A § 10-123(a) (1975).

86. ULPA § 203 (1976). The Draft does remain ambiguous as to the "Effective Date." Is it the date of filing, or a date specified in the certificate?

87. C&A § 10-124(a)(2) (1975).

88. ULPA § 204(a)(2) (1976).

or admission.⁸⁹ Thus, the use of the blanket power of attorney is further limited.

In addition to the above revisions and minor changes respecting the standing of persons to have the certificate amended or cancelled by judicial act,⁹⁰ and the clearer delineation of the persons liable for false statements in the certificate,⁹¹ the Draft adds two significant new provisions. First, it specifies the notice communicated by the certificate, *i.e.*, the fact that the partnership *is* a limited partnership and that the persons designated as limited partners are, in fact, such.⁹² Third parties are not held to have notice of any other facts;⁹³ they will not be deemed to have notice of special provisions set forth in the certificate.⁹⁴ Second, limited partners are provided an additional protection, in that, in the absence of an agreement to the contrary, each limited partner is required to receive a copy of any certificate (after filing) from the general partner(s).⁹⁵

In summary, article two of the Draft vastly improves upon the scattered and vague provisions of the Act affecting the certificate of limited partnership. From its execution and filing to its amendment and cancellation the certificate is now covered by specific provisions that assist the general partner in more effectively fulfilling his duties to his limited partners and the partnership creditors.

Article Three — Limited partners

Article three of the Draft clarifies matters respecting powers and potential liabilities of the limited partner. Perhaps the most perplexing issue under the Act confronting counsel to a limited partner is the determination of the point at which his client has taken "part in the control of the business"⁹⁶ of the partnership so as to have his cloak of limited liability pierced. In drawing the line as to a limited partner's exposure to liability as a general partner, guidance under the Act is scant and counsel's job can best be described as fraught with uncertainty.⁹⁷ Further, very few cases offer guidance in resolving the problem.⁹⁸

89. *Id.* § 204(b).

90. *Id.* § 205.

91. *Id.* § 207.

92. *Id.* § 208.

93. *Id.*

94. *Id.*, Comm'rs' Comment.

95. *Id.* § 209.

96. C&A § 10-106(b)(1) (1975). An analysis of this problem may be found in Feld, *The "Control" Test for Limited Partnerships*, 82 HARV. L. REV. 1471 (1969).

97. Feld, *The "Control" Test for Limited Partnerships*, 82 HARV. L. REV. 1471 (1969).

98. *See, e.g.*, Grainger v. Antoyan, 48 Cal. 2d 805, 313 P.2d 848 (1957); Silvola v. Rowlett, 129 Colo. 522, 272 P.2d 287 (1954); Frigidaire Sales Corp. v. Union Props.,

The Draft seeks to clarify this area by listing a number of activities in which a limited partner may engage without being found to have taken part in control of the partnership.⁹⁹ They include: (i) being a contractor, agent or employee of the partnership or a general partner; (ii) consulting with and advising a general partner on partnership business; (iii) being a surety for the partnership; (iv) voting on an amendment to the partnership agreement; and (v) voting on matters including dissolution of the partnership, transfer of substantially all of the partnership's assets, the partnership's incurring indebtedness other than in the ordinary course of business, change in the nature of the partnership business, or removal of a general partner. The matters so enumerated are substantially similar to transactions normally engaged in by stockholders as well as extraordinary action requiring stockholder approval under corporate law.¹⁰⁰ There would seem to be no policy consideration warranting a distinction between the acts of stockholders that do not cause them to lose limited liability through the piercing of the corporate veil, and the enumerated non-control activities of limited partners.

The Commissioners wisely added another provision to the Draft to avoid confusion that could arise due to negative inferences drawn from the enumerated activities.¹⁰¹ This provision makes it clear that the enumeration of the above powers does not mean that other powers possessed or exercised by limited partners necessarily constitute participation in the partnership business. Rather, the possession or exercise of such non-enumerated powers must *in fact* be shown to constitute an act of partnership control.¹⁰² And even if such participation is shown, the Draft still limits the overall liability of a limited partner. If a limited partner does not participate in control to such an extent as to exercise substantially the same powers as the general partner, then such limited partner will be liable only to persons who transact business with the limited partnership *with actual knowledge of his participation in control*.¹⁰³ This qualification incorporates an element of reliance in the control test thereby reducing it from a punitive to a compensatory provision. While the taking-part-in-control problem is not completely eliminated, its uncertainties are minimized by the Draft.

Inc., 88 Wash. 2d 400, 562 P.2d 244 (1977); Rathke v. Griffith, 36 Wash. 2d 394, 218 P.2d 757 (1950).

99. ULP A § 303(b) (1976).

100. See generally C&A §§ 3-401 to 419 (1975 & Cum. Supp. 1977).

101. ULP A § 303(c) (1976).

102. *Id.* § 303(a) (emphasis added).

103. *Id.* § 303(a).

The Draft clarifies an additional liability problem which is currently somewhat obscured by the Act. Frequently, counsel is confronted by a client who has discovered that his belief that he was a limited partner was erroneous. The client has just learned that the general partner failed to file the partnership certificate, and he seeks advice as to how to protect himself from general liability. Under the Act, counsel must direct such a client promptly to renounce "his interest in the profits of the business, or other compensation by way of income."¹⁰⁴ The client then may ask what constitutes such renunciation: must he give up all interest he has in profits earned to the date of his renunciation, or just future profits? The language of the Act furnishes no clear answer. By contrast, the Draft clearly requires only a renunciation of "future equity participation in the enterprise."¹⁰⁵ Hence, in order to protect himself from liability, the partner need not renounce any of his current interest in the business, but need only disclaim any future equity participation.¹⁰⁶ And if the partner desires to continue participating in the partnership, the Draft gives him an alternative course of action for obtaining his limited partner status; upon learning of the mistake as to his status, he may cause a certificate of amendment to be executed and filed¹⁰⁷ setting forth his limited partner status.

If either course of action is followed, the exposure to liability of the mistaken partner is limited to the period prior to such renunciation or filing. And even then, such partner is only generally liable to a third party if such person actually believes in good faith that such partner was a general partner during the pre-filing or pre-renunciation period.¹⁰⁸ Again, the Draft hinges liability on justifiable reliance of a third party, and not merely on the erroneous beliefs of a partner.

A classic drafting problem for partnership counsel has concerned the matter of voting rights of limited partners. Aside from the control issue,¹⁰⁹ counsel is confronted by the absence from the Act of any suggestion that such a right may exist. Yet partnership agreements frequently have accorded the right to limited partners to vote on specified matters. The Draft insulates limited partners from general liability for voting upon the enumerated safe-harbor activities.¹¹⁰ It also gives counsel drafting a partnership agreement

104. C&A § 10-110 (1975).

105. ULPA § 304(a)(2) (1976).

106. *Id.* § 304, Comm'rs' Comment.

107. *Id.* § 304(a)(1).

108. *Id.* § 304(b).

109. *Id.* § 303(b)(5).

110. *Id.*

further guidance by permitting the partnership agreement to "grant all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."¹¹¹ The Draft, therefore, extends to the drafter of an agreement flexibility in according limited partners voting rights akin to that allowed in connection with providing for such rights of stockholders in Articles of Incorporation.¹¹²

Other provisions of article three specifically define aspects of limited partner rights where the Act provides, at best, ambiguous direction. The Draft explicitly requires, in the absence of a provision to the contrary in the partnership agreement, the unanimous consent of all limited partners to the addition of new limited partners.¹¹³ The Act lacks any express direction (or, is silent) on this point.¹¹⁴ Further, the Draft itemizes¹¹⁵ certain partnership information to which a limited partner is entitled under the Act.¹¹⁶ These provisions reinforce the entire thrust of article three, which is to clarify the powers and potential liabilities of limited partners and thus enable counsel to advise such clients with greater assurance and authority.

Article Four — General Partners

All but two of the provisions in article four are derived from sections of the Act which remain substantially unchanged except for language clarifications affecting admission of general partners,¹¹⁷ powers and liabilities of general partners,¹¹⁸ and contributions of general partners.¹¹⁹ One of the other two provisions supplements the section of article three respecting voting by limited partners.¹²⁰ The Draft expressly permits the partnership agreement to grant general partners the right to vote on any specified basis, "separately or with all or any class of the limited partners, on any matter."¹²¹ Hence, the Draft eliminates any inference that the limited partners are required to have the right to vote on matters as a separate class.¹²²

111. *Id.* § 302.

112. C&A § 2-507 (1975).

113. ULPA § 301(a)(1) (1976).

114. C&A § 10-107 (1975).

115. ULPA § 305 (1976), in conjunction with the requirements of § 105.

116. C&A § 10-109 (1975).

117. ULPA § 401 (1976).

118. *Id.* § 403.

119. *Id.* § 404.

120. *Id.* § 302.

121. *Id.* § 405.

122. *Id.* at Comm'rs' Comment.

Perhaps the most significant departure of article four from provisions of the Act affecting general partners, is the expansion of the "Events of Withdrawal"¹²³ of a general partner that may lead to dissolution of the partnership. Under the Act, a general partner's death, insanity, or retirement leads to a dissolution of the partnership unless the business is continued under certain circumstances.¹²⁴ The Act's death-retirement-insanity events are premised upon the personal agency relationship of the general partner and partnership. This agency principle is extended in the Draft so as to include among the dissolution-triggering events the voluntary withdrawal by a general partner (even if such withdrawal violates the terms of the partnership agreement and thus subjects the withdrawing general partner to damages);¹²⁵ the assignment by a general partner of his interest in the partnership;¹²⁶ and the removal of the general partner pursuant to the partnership agreement.¹²⁷ Although limited partnership agreements may have heretofore incorporated such events of withdrawal, their express recognition by the Draft eliminates uncertainty as to the validity of such provisions.

Recognizing that bankruptcy is just one event that may indicate extremely weak financial circumstances of the general partner, the Commissioners have included in the Draft other events which under the federal bankruptcy law or similar laws justify the limited partners in requiring the general partner to withdraw from the partnership.¹²⁸ Among these other events are an assignment for the benefit of creditors, appointment of a trustee or receiver, and the failure of the general partner to have petitions seeking reorganization, liquidation or the appointment of a trustee or receiver for the general partner dismissed within a specified period. All of these constitute events of withdrawal.¹²⁹ Lastly, the Draft also takes into account the characteristics of general partners which are not natural persons, such as corporations or partnerships, and makes the cessation of their existence an event of withdrawal.¹³⁰

Article four of the Draft illuminates the wide range of circumstances affecting a general partner that should lead to his withdrawal from the partnership. These provisions assist the drafter

123. ULP § 402 (1976).

124. C&A § 10-119 (1975).

125. ULP § 402(1) (1976).

126. *Id.* § 402(2).

127. *Id.* § 402(3).

128. *Id.* § 402(4) & (5) and Comm'rs' Comment.

129. *Id.* § 402(4) & (5).

130. *Id.* § 402(9).

of a Limited Partnership agreement by suggesting areas requiring coverage in the agreement and by specifically sanctioning this expanded catalogue of events as a basis for partnership dissolution.

Article Five — Finance

Article five modernizes the treatment of partnership financial matters by expanding the list of acceptable forms of partner contributions and providing coverage of allocation of profits, losses, and distributions. The Act specifically excludes "services" as a form of limited partner contribution.¹³¹ In addition, although the Act recognizes "cash or other property" as a contribution, it does not explicitly sanction promissory notes or other obligations to make future payments. Yet past services has long been a legitimate contribution for corporate stock, and the corporate law also authorizes future services and obligations to pay in the future as valid contributions by stockholders under certain circumstances.¹³² Unless a viable reason can be adduced for distinguishing between the form of a limited partner contribution and the form of a stockholder contribution, the Draft must be viewed as taking a significant stride forward in authorizing a partner's contribution in the form of "cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services."¹³³ In addition to legitimizing services as a form of contribution, the Draft provides that the cash value of such services must be contributed if they are not performed due to a partner's death or disability.¹³⁴

While the partnership agreement could provide for allocation of partnership profits, losses, and distributions under the Act,¹³⁵ the Act offered no direction as to such allocation absent an applicable agreement provision. The Draft, however, provides that such allocations may be made on the "basis of the value (as stated in the certificate . . .) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned."¹³⁶ The Draft thus fills in a significant omission in the Act. Nevertheless, the solution adopted may give rise to new problems. Does a contribution "received" include an obligation to make future

131. C&A § 10-104 (1975).

132. *Id.* § 2-206.

133. ULPA § 501 (1976).

134. *Id.* § 502(a).

135. C&A § 10-114 (1975).

136. ULPA § 503, 504 (1976).

payment or provide future personal services, both legitimate partner contributions? Logically the problem should be resolved by having the obligation for payment or services serve as an offset against distribution. Under this approach the contribution of an obligation is "received" when agreed upon and should not affect allocations of profits and losses, but a distribution should not be made unless it is first offset by an amount equal to the value of a payment still to be made or services yet to be rendered. A revision to the Draft respecting this question may be best implemented in the next article which covers distributions.

Article Six — Distributions and Withdrawal

Article six of the Draft implements several new provisions, and revises others, dealing with distributions and the withdrawal of partners from the partnership. One new provision specifically authorizes, subject to the limitations heretofore imposed upon distributions to partners,¹³⁷ interim distributions to a partner prior to his withdrawal or the partnership's dissolution, at the times or upon the happening of the events specified in the partnership agreement.¹³⁸ The absence of such a provision in the Act makes planning a distribution prior to dissolution unnecessarily uncertain. Adoption of this provision of the Draft would give such transactions an unambiguous stamp of statutory approval. Prior to such adoption, however, it would be wise to ascertain the intent of the Commissioners with respect to one qualification they impose upon such a distribution,¹³⁹ the purpose and application of which is difficult to ascertain.

In addition to expanding the legal authority for distributions, the Draft expands upon the Act in defining the form that distributions to partners may take. The Draft, like the Act, provides that a partner has no right to demand and receive distributions in any form other than cash.¹⁴⁰ The Draft, however, goes further by providing that a partner may not be compelled to accept a distribution of assets in kind in excess of "a percentage of that asset which is equal to the percentage in which he shares in [partnership] distributions . . ."¹⁴¹ This provision has been added by the

137. C&A §10-122 (1975).

138. ULPA §601 (1976).

139. *Id.* §601(2).

140. C&A §10-115(c) (1975); ULPA §605 (1976).

141. ULPA §605 (1976).

Commissioners to protect limited partners against disproportionate distributions of cash and property.¹⁴²

The Act provides that a limited partner may effect the dissolution of the limited partnership and have its affairs wound up if he rightfully but unsuccessfully demands the return of his contribution to the capital of the partnership.¹⁴³ That the power to take such a drastic step is accorded to one limited partner could have devastating implications for other limited partners.¹⁴⁴ While the Draft continues to recognize that a limited partner should not be subjected to the equity risks of an enterprise, it does eliminate the extraordinary remedy of forced dissolution and substitutes a provision that accords such an aggrieved limited partner merely the status of, and entitlement to, the remedies available to a creditor of the limited partnership with respect to the amount of any distribution he has demanded and not received.¹⁴⁵ The Commissioners, by permitting such a partner to take precedence over his co-partners, but only to the extent of a creditor of the partnership, have thus avoided the possible abuse of power sanctioned by the Act in favor of an equitable balancing of interests.

As under the Act, the Draft makes a limited partner liable to the partnership in an amount equal to the amount of any contribution to the partnership's capital returned to such partner not in violation of the Act or the partnership agreement.¹⁴⁶ Such liability continues to be limited to the extent necessary to discharge the partnership's liabilities to "creditors who extended credit to the limited partnership during the period the contribution was held by the partnership."¹⁴⁷ A one year statute of limitations, however, has been added in the Draft to limit the period of exposure to such liability.¹⁴⁸

The Draft also incorporates a statute of limitations for the return of a contribution to a partner where the return was in violation of the partnership agreement. In such case, the period of limitations is six years.¹⁴⁹ The adoption of this limitation period for wrongfully returned partner contributions made it possible to drop provisions of the Act that ambiguously designated the recipients of such

142. *Id.* at Comm'rs' Comment.

143. C&A §10-115(d) (1975).

144. Aside from prematurely terminating the partnership's business, an unwanted dissolution could have adverse tax effects. See A. WILLIS, PARTNERSHIP TAXATION, §31.01-.16 (2d ed. 1976).

145. ULPA §606 (1976).

146. C&A §10-116(a) (1975); ULPA §608(a) (1976).

147. ULPA §608(a) (1976).

148. *Id.*

149. *Id.* §608(b).

distributions as "trustees" during an indefinite period for the amounts so distributed to them.¹⁵⁰

The Draft also illuminates what is meant by "a return of contribution" to a partner. A partner receives a return of his contribution to the extent that any distribution to him reduces his share of the "fair value of the net assets" of the partnership below the value of his contribution (as set forth in the certificate of limited partnership) which has not been distributed to him.¹⁵¹ While such language might more logically appear in the definitional section of the Draft, its inclusion in article six reinforces the Commissioners' dedication to elucidating the parameters of compliance with the Draft.

The other provisions of article six govern the withdrawal by a partner from the partnership. A new section¹⁵² allows a general partner to withdraw from a limited partnership at any time by giving written notice to all other partners.¹⁵³ If the withdrawal violates the partnership agreement, the partnership may recover from the withdrawing general partner the amount of any damages caused by such partner's breach and may offset damages due to such breach against amounts distributable to the withdrawing general partner.¹⁵⁴ A limited partner may withdraw from the partnership at the time or upon the happening of any event specified in the certificate of limited partnership and in accordance with the partnership agreement.¹⁵⁵ In the absence of a provision in the certificate of limited partnership, a limited partner may withdraw from the partnership upon not less than six months' prior written notice to each general partner.¹⁵⁶ These conditions are derived from the Act.¹⁵⁷ The Draft, however, augments the Act by expressly entitling a withdrawing partner to receive any distribution to which he is entitled under the partnership agreement.¹⁵⁸ If no provision is made in the partnership agreement, such partner is entitled to receive, within a reasonable period of time, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partner-

150. *Id.* § 608, Comm'rs' Comment.

151. *Id.* § 608(c).

152. *Id.* § 602.

153. *Id.*

154. *Id.*

155. *Id.* § 603.

156. *Id.*

157. C&A § 10-115(c) (1975).

158. ULPA § 604 (1976).

ship.¹⁵⁹ Thus, in the absence of an agreement among the partners, the Draft specifies the distributive share of a withdrawing partner.¹⁶⁰

Article Seven — Assignment of Partnership Interests

Except for clarifying language, or the elimination of surplusage, the Commissioners have kept the statute affecting assignment of partnership interests substantially intact. Like the Act,¹⁶¹ the Draft provides that a partnership interest in a limited partnership is personal property.¹⁶² Also as in the Act,¹⁶³ the Draft provides that a limited partner's interest in a partnership is assignable;¹⁶⁴ the Draft departs from this only to add that a partnership interest is assignable, in whole or in part, unless provided otherwise in the partnership agreement.¹⁶⁵ The Commissioners' commentary to this provision states that this explicit recognition of restrictions upon the assignability of a limited partnership interest is meant merely as a matter of clarification and is not intended to affect the usual rules regarding restraints on the alienation of personal property.¹⁶⁶ The Draft also adds a provision that, unless otherwise provided in the partnership agreement, a partner ceases to be a partner upon the assignment of all of his partnership interest.¹⁶⁷

The Draft does not include certain provisions of the Act with respect to the rights of creditors of limited partners.¹⁶⁸ For example, the specific remedies of a creditor enumerated in the Act have been deleted.¹⁶⁹ This would appear to be desirable, since the usual rules governing the remedies available to a creditor should be sufficient, whereas the enumerated remedies could create unduly restrictive negative inferences to the effect that the Act intends to limit the availability of other laws affecting creditor rights. Further, the Draft eliminates the provision in the Act that a lien against the partnership interest of a limited partner may be discharged with the separate property of a general partner but may not be redeemed with partnership property.¹⁷⁰ Such a provision presumes conflict of

159. *Id.*

160. *Id.*, Comm'rs' Comment.

161. C&A § 10-117 (1975).

162. ULPA § 701 (1976).

163. C&A § 10-118(a) (1975).

164. ULPA § 702 (1976).

165. *Id.*

166. *Id.*, Comm'rs' Comment.

167. *Id.* § 702.

168. *Id.* § 703; C&A § 10-121 (1975).

169. *Id.* § 10-121(a).

170. C&A § 10-121(b) (1975).

interest on the part of general partners in such transactions and forces them to pay a high personal price in dealing with judgment creditors of individual limited partners. The Commissioners have chosen a more flexible course that nevertheless subjects such transactions to scrutiny by leaving such matters to the ordinary rules governing the fiduciary obligations of general partners.¹⁷¹

While the Draft essentially adopts the approach of the Act with respect to the right of an assignee of the partnership interest of a limited partner to become a limited partner, it incorporates certain modifications in this area.¹⁷² First, the Draft provides that the liability of an assignee, who has become a limited partner, to make and return contributions to the capital of the partnership is limited as provided in article seven.¹⁷³ The Draft therefore accords to an assignee limitations on liability that have been included in the Act for the benefit of limited partners.

The section of the Act providing that the estate of a deceased limited partner is liable for his liabilities as a limited partner¹⁷⁴ is deleted from the Draft as this is already provided by law. The Commissioners' intent was not to change the liability of the estate in such circumstances, but only to eliminate surplusage from the Draft.¹⁷⁵ Hence article seven makes no significant departure from existing law, but it does further implement the Commissioners' objective of expressing requirements with more clarity and precision.

Article Eight — Dissolution

It requires no more than a single encounter with the Act's illogical treatment of distribution of assets upon dissolution of a limited partnership¹⁷⁶ to convince the practitioner of the need for statutory reform. First, in regard to the drafting of partnership dissolution provisions, the Act conspicuously fails to provide the traditional drafting latitude accorded by "except as otherwise provided" statutory qualifications.¹⁷⁷ Absent such qualifying language, it is doubtful whether the priorities of dissolution distribution established by the Act can be varied by an agreement of the partners.¹⁷⁸ Second, the priorities set forth in the Act may not

171. ULPA § 703, Comm'rs' Comment (1976).

172. ULPA § 704 (1976); C&A § 10-118(d) (1975).

173. ULPA § 704 (1976).

174. C&A § 10-120(b) (1975).

175. ULPA § 705, Comm'rs' Comment (1976).

176. C&A § 10-122 (1975).

177. *Id.*

178. *Dycus v. Belco Indus., Inc.*, 569 P.2d 553, 556 (Okla. App. 1977).

comport with the business expectations of the partners; they may expect, as is the case with general partnerships,¹⁷⁹ a return of the capital prior to profit distributions. The Act not only requires that capital contributions be returned after profits are distributed, but it also creates a dichotomy between distributions to general partners and to limited partners.¹⁸⁰

The Commissioners have eliminated these shortcomings from the Draft and have made additional improvements. Distribution priorities have been altered to provide for payment to creditors, then to partners for accrued but unpaid distributions due on an interim basis and upon withdrawal, then to partners for a return of their contributions, and lastly in payment of partnership interests.¹⁸¹ Hence the financial principle of repaying partners' advances and contributions upon dissolution, prior to making non-equity distributions, is implemented.

In a move which at once modernizes and brings limited partnership practice into line with corporate practice, the Draft also eliminates distribution distinctions between general and limited partners.¹⁸² Corporate law has long recognized the concept that a stockholder should not be denied distributions otherwise due him because he also happens to be a corporate director or officer.¹⁸³ There would seem to be no more reason for a general partner to be subordinated by virtue of his control status, especially in view of the constraints upon self-dealing imposed by the fiduciary duties applicable to general partners.¹⁸⁴ Moreover, as with corporate law, the Draft also does not subordinate a creditor who is a partner to a non-partner creditor.¹⁸⁵ Again, assuming no improprieties, such a distinction would appear to be unwarranted, especially as it might serve to deter a partner from making funds available to the partnership in excess of his capital contributions.

The Draft also permits variation of its distribution provisions; it expressly sanctions alterations of its priorities to the extent "provided in the partnership agreement."¹⁸⁶ The agreement is thus explicitly acknowledged as being the basis of the bargain among all

179. C&A §9-611 (1975).

180. *Id.* §10-122.

181. ULP §804 (1976).

182. *See Id.* & Comm'rs' Comment.

183. The corporate law makes no distinction as to stockholders with respect to distributions to be made to them upon dissolution. *See* C&A §3-410(b) & 3-412 (1975).

184. *See* *Allen v. Steinberg*, 244 Md. 119, 127-28, 223 A.2d 240, 246 (1966); C&A §10-108 (1975).

185. ULP §804(1) (1976).

186. *Id.* §804(2) & (3).

partners as to dissolution as well as to other areas that have already been subject to self-determination.

Perhaps the most novel feature of the dissolution article is the establishment of a broad, even ambiguous new standard for judicial dissolution.¹⁸⁷ Upon application of a partner or his representative a court may decree a dissolution "whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement."¹⁸⁸ Such a provision may expand the courses of action available to a partner dissatisfied with partnership operations.¹⁸⁹ For example, a general partner could seek judicial dissolution by pointing to a set of facts that may support these ambiguous grounds in order to avoid otherwise dissolving the partnership in breach of the agreement. And a limited partner could allege breaches of the agreement in the operation of the partnership as a basis for its dissolution. Even if a dissolution is not achieved, the limited partner is given a weapon to seek redress of his grievances without being deemed thereby to be taking part in control.¹⁹⁰ Nevertheless, the ambiguous standard for dissolution could be construed very strictly so as to diminish its utility. Perhaps the best course would be to adopt language similar to that of the general partnership law which sets forth special criteria for judicial dissolution.¹⁹¹

The Draft does not significantly alter existing law as to nonjudicial dissolution.¹⁹² It does, however, assemble in one section a variety of provisions affecting nonjudicial dissolution so as to facilitate comprehension of the subject. Moreover, a ninety-day grace period is added to the law as the time period within which the partners may appoint a replacement general partner in order to avoid a dissolution caused by an event of withdrawal.¹⁹³ This inclusion of a specific time period fills another gap in the provisions of the Act.

Article Nine — Foreign Limited Partnerships

Noticeably absent from the Act has been any material respecting the operation of a limited partnership in a state other than that of its organization. The Draft fills this void with foreign

187. ULP A § 802 (1976).

188. *Id.*

189. C&A § 9-603 (1975).

190. By virtue of the fact that a specific right is granted to a limited partner under the Draft, the exercise of such right should not be construed as taking part in control.

191. C&A § 9-603 (1975).

192. ULP A § 801 (1976).

193. *Id.* § 801(3).

partnership provisions that not only provide for registration of foreign partnerships, but also resolve choice of law problems.

The registration requirements of the Draft¹⁹⁴ are strikingly similar in procedure and documentary requirements to laws mandating registration of foreign corporations.¹⁹⁵ In addition to requiring the filing of specified information about a foreign partnership, they include conditions for the naming of an agent for service of process.¹⁹⁶ The registration of foreign partnerships, as provided in the Draft, should serve the salutary informational objectives of identifying foreign partnerships and making them more responsive to their legal obligations in foreign jurisdictions. At the same time they impose no more burdensome tasks or sanctions on partnerships than do the analogous corporate law provisions on corporations.

Article Ten — Derivative Actions

Stockholders of a corporation may, under certain circumstances, maintain a derivative action in order to vindicate a right of the corporation.¹⁹⁷ A serious question has existed as to whether a limited partner has a right to maintain derivative action under statutes like the Act. In *McCully v. Radack*,¹⁹⁸ the Maryland Court of Special Appeals recognized both a paucity and division of authority on the question.¹⁹⁹ The court, adopting a view similar to that of the courts of New York,²⁰⁰ chose to permit a suit similar to a derivative action by a limited partner under a very restricted set of circumstances.²⁰¹

The court recognized the resemblance of the position of the limited partner to that of the stockholder,²⁰² and its view persuasively suggests that the limited partner's right to bring a derivative action should be co-extensive with that of the stockholder. Unless such a view is to become the incomplete product of case-by-case development and qualification, it should be given an unambiguous statutory birth. The Draft accomplishes this by creating the right,²⁰³

194. *Id.* §902.

195. C&A §7-101 (1975).

196. ULPA §902(4) (1976).

197. *See Parish v. Milk Producers Ass'n*, 250 Md. 24, 242 A.2d 512 (1968), *appeal after remand*, 261 Md. 618, 277 A.2d 19, *cert. denied*, 404 U.S. 940 (1971).

198. *McCully v. Radack*, 27 Md. App. 350, 340 A.2d 374 (1975).

199. *Id.* at 354-55, 340 A.2d at 377.

200. *Klebanow v. New York Produce Exch.*, 344 F.2d 294 (2d Cir. 1965); *Riviera Congress Assoc. v. Yassky*, 18 N.Y.2d 540, 223 N.E.2d 876, 277 N.Y.S.2d 386 (1966).

201. *McCully v. Radack*, 27 Md. App. 350, 360, 340 A.2d 374, 380 (1975).

202. *Id.* at 357-58, 340 A.2d at 378-79, *quoting Klebanow v. New York Produce Exch.*, 344 F.2d 294, 297 (2d Cir. 1965).

203. ULPA §1001 (1976).

establishing standing and pleading conditions²⁰⁴ similar to those which might be satisfied in order to bring a stockholder's suit,²⁰⁵ and according reasonable expenses to a plaintiff²⁰⁶ in a successful derivative action. Hence, the entirely new article of the Draft on derivative actions should eliminate case law conflict and bring to the law of limited partnerships a long overdue device for the protection of interests of such partnerships.

CONCLUSION

Over six decades ago, the Act was approved by the Commissioners. Since that time it has governed the formation, operation, and dissolution of limited partnerships in forty-nine states. Yet increased use of the limited partnership format has exposed the shortcomings and inadequacies of the Act, especially by comparison with modernized statutes that generally govern corporations.

The Draft is the fruit of the Commissioners' efforts to remedy the deficiencies of the Act. While they have largely achieved their goal of clarifying ambiguities, and filling in the interstices of the Act through more precise language and mechanics, they have not altered the basic character of the limited partnership form. Rather the reforms made by the Draft reflect and underscore the importance of offering to the drafters of limited partnership agreements, as well as to the general and limited partners themselves, not only flexibility in defining their relationships, but also a comprehensive and clear set of rules for regulating their affairs.

If the Draft is adopted, as it should be, then the state of the art of limited partnership regulation will have been advanced in a manner consistent with business practices and to a state reached by most corporate laws. It is difficult to justify retention of the Act when such a thoughtful and progressive revision as the Draft is available. Advancing the cause of limited partnership reform is now the responsibility of state legislatures.

204. *Id.* §§ 1002, 1003.

205. *Parish v. Milk Producers Ass'n*, 250 Md. 24, 242 A.2d 512 (1968), *appeal after remand*, 261 Md. 618, 277 A.2d 19, *cert. denied*, 404 U.S. 940 (1971).

206. ULPA § 1004 (1976).

APPENDIX
REVISED UNIFORM LIMITED PARTNERSHIP ACT

ARTICLE 1

GENERAL PROVISIONS

§ 101. [Definitions]

As used in this Act, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 201, and the certificate as amended.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 402.

(4) "Foreign limited partnership" means a partnership formed under the laws of any State other than this State and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by 2 or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(8) "Partner" means a limited or general partner.

(9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

§ 102. [Name]

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain without abbreviation the words "limited partnership";

(2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership;

(4) may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this State or licensed or registered as a foreign corporation or limited partnership in this State; and

(5) may not contain the following words [here insert prohibited words].

§ 103. [Reservation of Name]

(a) The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited partnership under this Act and to adopt that name;

(2) any domestic limited partnership or any foreign limited partnership registered in this State which, in either case, intends to adopt that name;

(3) any foreign limited partnership intending to register in this State and adopt that name; and

(4) any person intending to organize a foreign limited partnership and intending to have it register in this State and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same

applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

§ 104. [Specified Office and Agent]

Each limited partnership shall continuously maintain in this State:

(1) an office, which may but need not be a place of its business in this State, at which shall be kept the records required by Section 105 to be maintained; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this State, a domestic corporation, or a foreign corporation authorized to do business in this State.

§ 105. [Records to be Kept]

Each limited partnership shall keep at the office referred to in Section 104(1) the following: (1) a current list of the full name and last known business address of each partner set forth in alphabetical order, (2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed, (3) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years, and (4) copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years. Those records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

§ 106. [Nature of Business]

A limited partnership may carry on any business that a partnership without limited partners may carry on except [here designate prohibited activities].

§ 107. [Business Transactions of Partner with the Partnership]

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited

partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

ARTICLE 2

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

§201. [Certificate of Limited Partnership]

(a) In order to form a limited partnership two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

- (1) the name of the limited partnership;
- (2) the general character of its business;
- (3) the address of the office and the name and address of the agent for service of process required to be maintained by Section 104;

- (4) the name and the business address of each partner (specifying separately the general partners and limited partners);

- (5) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

- (6) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

- (7) any power of a limited partner to grant the right to become a limited partner to an assignee of any part of his partnership interest, and the terms and conditions of the power;

- (8) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of, or the method of determining, the distribution to which he may be entitled respecting his partnership interest, and the terms and conditions of the termination and distribution;

- (9) any right of a partner to receive distributions of property, including cash from the limited partnership;

- (10) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution;

- (11) any time at which or events upon the happening of which the limited partnership is to be dissolved and its affairs wound up;

- (12) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner; and

(13) any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

§ 202. [Amendment to Certificate]

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of the certificate; and
- (3) the amendment to the certificate.

(b) Within 30 days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (1) a change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution;
- (2) the admission of a new partner;
- (3) the withdrawal of a partner; or
- (4) the continuation of the business under Section 801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this Section if the amendment is filed within the 30-day period specified in subsection (b).

§ 203. [Cancellation of Certificate]

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

- (1) the name of the limited partnership;
- (2) the date of filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) any other information the general partners filing the certificate determine.

§ 204. [Execution of Certificates]

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

- (1) an original certificate of limited partnership must be signed by all partners named therein;
- (2) a certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new partner or whose contribution is described as having been increased; and
- (3) a certificate of cancellation must be signed by all general partners;

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission, or increased contribution, of a partner must specifically describe the admission or increase.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

§ 205. [Amendment or Cancellation by Judicial Act]

If a person required by Section 204 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, who is adversely affected by the failure or refusal, may petition the [here designate

the proper court] to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

§ 206. [Filing in Office of Secretary of State]

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

- (1) endorse on each duplicate original the word "Filed" and the day, month, and year of the filing thereof;
- (2) file one duplicate original in his office; and
- (3) return the other duplicate original to the person who filed it or his representative.

(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the Secretary of State, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

§ 207. [Liability for False Statement in Certificate]

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend

the certificate, or to file a petition for its cancellation or amendment under Section 205.

§ 208. [Notice]

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as limited partners are limited partners, but it is not notice of any other fact.

§ 209. [Delivery of Certificates to Limited Partners]

Upon the return by the Secretary of State pursuant to Section 206 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate to each limited partner unless the partnership agreement provides otherwise.

ARTICLE 3

LIMITED PARTNERS

§ 301. [Admission of Additional Limited Partners]

(a) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(b) In each case under subsection (a), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

§ 302. [Voting]

Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

§ 303. [Liability to Third Parties]

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

- (1) being a contractor for, or an agent or employee of, the limited partnership or of a general partner;
- (2) consulting with and advising a general partner with respect to the business of the limited partnership;
- (3) acting as surety for the limited partnership;
- (4) approving or disapproving an amendment to the partnership agreement; or
- (5) voting on one or more of the following matters:
 - (i) the dissolution and winding up of the limited partnership;
 - (ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;
 - (iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;
 - (iv) a change in the nature of the business; or
 - (v) the removal of a general partner.

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 102(2)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

§ 304. [Person Erroneously Believing Himself Limited Partner]

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good

faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

- (1) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or
- (2) withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under Section 202, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

§ 305. [Information]

Each limited partner has the right to:

- (1) inspect and copy any of the partnership records required to be maintained by Section 105; and
- (2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

ARTICLE 4

GENERAL PARTNERS

§ 401. [Admission of Additional General Partners]

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner.

§ 402. [Events of Withdrawal]

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a

limited partnership upon the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in Section 602;

(2) the general partner ceases to be a member of the limited partnership as provided in Section 702;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in the certificate of limited partnership, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

(5) unless otherwise provided in the certificate of limited partnership, [120] days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within [90] days after the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within [90] days after the expiration of any such stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person,

(i) his death; or

(ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

(7) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

§ 403. [General Powers and Liabilities]

Except as provided in this Act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

§ 404. [Contributions by a General Partner]

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

§ 405. [Voting]

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

ARTICLE 5

FINANCE

§ 501. [Form of Contribution]

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

§ 502. [Liability for Contributions]

(a) Except as provided in the certificate of limited partnership, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of

property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the certificate of limited partnership) of the stated contribution that has not been made.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this Act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the filing of the certificate of limited partnership or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

§ 503. [Sharing of Profits and Losses]

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

§ 504. [Sharing of Distributions]

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value (as stated in the certificate of limited partnership) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWAL

§ 601. [Interim Distributions]

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or upon the happening of the events specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution under Section 608(b), to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.

§ 602. [Withdrawal of General Partner]

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

§ 603. [Withdrawal of Limited Partner]

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with the partnership agreement. If the certificate does not specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this State.

§ 604. [Distribution Upon Withdrawal]

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

§ 605. [Distribution in Kind]

Except as provided in the certificate of limited partnership, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution

of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

§ 606. [Right to Distribution]

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

§ 607. [Limitations on Distribution]

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

§ 608. [Liability Upon Return of Contribution]

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this Act, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this Act, he is liable to the limited partnership for a period of 6 years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the certificate of limited partnership) of his contribution which has not been distributed to him.

ARTICLE 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

§ 701. [Nature of Partnership Interest]

A partnership interest is personal property.

§ 702. [Assignment of Partnership Interest]

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

§ 703. [Rights of Creditor]

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This Act does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

§ 704. [Right of Assignee to Become Limited Partner]

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Article 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 207 and 502.

§ 705. [Power of Estate of Deceased or Incompetent Partner]

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or

his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

ARTICLE 8

DISSOLUTION

§ 801. [Nonjudicial Dissolution]

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) at the time or upon the happening of events specified in the certificate of limited partnership;
- (2) written consent of all partners;
- (3) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or
- (4) entry of a decree of judicial dissolution under Section 802.

§ 802. [Judicial Dissolution]

On application by or for a partner the [here designate the proper court] court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

§ 803. [Winding Up]

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs: but the [here designate the proper court] court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

§ 804. [Distribution of Assets]

Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 601 or 604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 601 or 604; and

(3) except as provided in the partnership agreement, to partners *first* for the return of their contributions and *secondly* respecting their partnership interests, in the proportions in which the partners share in distributions.

ARTICLE 9**FOREIGN LIMITED PARTNERSHIPS****§ 901. [Law Governing]**

Subject to the Constitution of this State, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

§ 902. [Registration]

Before transacting business in this State, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;

(2) the state and date of its formation;

(3) the general character of the business it proposes to transact in this State;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this

State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in this State;

(5) a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (4) or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the State of its organization by the laws of that State or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.

§ 903. [Issuance of Registration]

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(1) endorse on the application the word "Filed", and the month, day, and year of the filing thereof;

(2) file in his office a duplicate original of the application; and

(3) issue a certificate of registration to transact business in this State.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

§ 904. [Name]

A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

§ 905. [Changes and Amendments]

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application

inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

§ 906. [Cancellation of Registration]

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to [claims for relief] [causes of action] arising out of the transactions of business in this State.

§ 907. [Transaction of Business Without Registration]

(a) A foreign limited partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited partnership to register in this State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this State without registration.

(d) A foreign limited partnership, by transacting business in this State without registration, appoints the Secretary of State as its agent for service of process with respect to [claims for relief] [causes of action] arising out of the transaction of business in this State.

§ 908. [Action by [Appropriate Official]]

The [appropriate official] may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article.

ARTICLE 10

DERIVATIVE ACTIONS

§ 1001. [Right of Action]

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners

with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

§ 1002. [Proper Plaintiff]

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

§ 1003. [Pleading]

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

§ 1004. [Expenses]

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

ARTICLE 11

MISCELLANEOUS

§ 1101. [Construction and Application]

This Act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 1102. [Short Title]

This Act may be cited as the Uniform Limited Partnership Act.

§ 1103. [Severability]

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect

without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 1104. [Effective Date, Extended Effective Date and Repeal]

Except as set forth below, the effective date of this Act is _____ and the following Acts [list prior limited partnership acts] are hereby repealed:

(1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until [specify time required to create central filing system], the extended effective date, and Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended effective date.

(2) Section 402, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date.

(3) Sections 501, 502 and 608 apply only to contributions and distributions made after the effective date of this Act.

(4) Section 704 applies only to assignments made after the effective date of this Act.

(5) Article 9, dealing with registration of foreign limited partnerships, is not effective until the extended effective date.

§ 1105. [Rules for Cases Not Provided for in This Act]

In any case not provided for in this Act the provisions of the Uniform Partnership Act govern.