

Title 31: PARTNERSHIPS AND ASSOCIATIONS

Chapter 19: UNIFORM LIMITED PARTNERSHIP ACT

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Maine Revised Statutes
Title 31: PARTNERSHIPS AND ASSOCIATIONS
Chapter 19: UNIFORM LIMITED PARTNERSHIP ACT

Subchapter 1: GENERAL PROVISIONS

§1301. SHORT TITLE

This chapter may be known and cited as "the Uniform Limited Partnership Act of 2007." [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1302. DEFINITIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 543, Pt. C, §2 (NEW).]

1. Certificate of limited partnership. "Certificate of limited partnership" means the certificate required by section 1321. The term includes the certificate as amended or restated.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Contribution. "Contribution," except in the phrase "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Debtor in bankruptcy. "Debtor in bankruptcy" means a person that is the subject of:

A. An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or [2005, c. 543, Pt. C, §2 (NEW).]

B. A comparable order under federal, state or foreign law governing insolvency. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Designated office.

[2007, c. 323, Pt. F, §1 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

5. Distribution. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Foreign limited liability limited partnership. "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section 1354, subsection 3.

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Foreign limited partnership. "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this State and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

8. General partner. "General partner" means:

A. With respect to a limited partnership, a person that:

- (1) Becomes a general partner under section 1351; or
- (2) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 1453, subsection 1 or 2; and [2005, c. 543, Pt. C, §2 (NEW) .]

B. With respect to a foreign limited partnership, a person that has rights, powers and obligations similar to those of a general partner in a limited partnership. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

9. Limited liability limited partnership. "Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

10. Limited partner. "Limited partner" means:

A. With respect to a limited partnership, a person that:

- (1) Becomes a limited partner under section 1341; or
- (2) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 1453, subsection 1 or 2; and [2005, c. 543, Pt. C, §2 (NEW) .]

B. With respect to a foreign limited partnership, a person that has rights, powers and obligations similar to those of a limited partner in a limited partnership. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

11. Limited partnership. "Limited partnership," except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," means an entity having one or more general partners and one or more limited partners that is formed under this chapter by 2 or more persons or becomes subject to this chapter under subchapter 11 or section 1453, subsection 1 or 2. The term includes a limited liability limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

12. Partner. "Partner" means a limited partner or general partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

13. Partnership agreement. "Partnership agreement" means the partners' agreement, whether oral, implied, in a record or in any combination, concerning the limited partnership. The term includes the agreement as amended.

[2005, c. 543, Pt. C, §2 (NEW) .]

14. Person. "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

[2005, c. 543, Pt. C, §2 (NEW) .]

15. Person dissociated as general partner. "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

16. Principal office. "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this State.

[2005, c. 543, Pt. C, §2 (NEW) .]

17. Record. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2005, c. 543, Pt. C, §2 (NEW) .]

18. Required information. "Required information" means the information that a limited partnership is required to maintain under section 1311.

[2005, c. 543, Pt. C, §2 (NEW) .]

19. Sign. "Sign" means:

A. To execute or adopt a tangible symbol with the present intent to authenticate a record; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. To attach or logically associate an electronic symbol, sound or process to or with a record with the present intent to authenticate the record. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

20. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2005, c. 543, Pt. C, §2 (NEW) .]

21. Transfer. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift and transfer by operation of law.

[2005, c. 543, Pt. C, §2 (NEW) .]

22. Transferable interest. "Transferable interest" means a partner's right to receive distributions.

[2005, c. 543, Pt. C, §2 (NEW) .]

23. Transferee. "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §1 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1303. KNOWLEDGE AND NOTICE

1. Knowledge. A person knows a fact if the person has actual knowledge of it.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Notice. A person has notice of a fact if the person:

A. Knows of it; [2005, c. 543, Pt. C, §2 (NEW).]

B. Has received a notification of it; [2005, c. 543, Pt. C, §2 (NEW).]

C. Has reason to know it exists from all of the facts known to the person at the time in question; or [2005, c. 543, Pt. C, §2 (NEW).]

D. Has notice of it under subsection 3 or 4. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Certificate of limited partnership. A certificate of limited partnership on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection 4, the certificate is not notice of any other fact.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Notice of certain events. A person has notice of:

A. Another person's dissociation as a general partner 90 days after the effective date of an amendment to the certificate of limited partnership that states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first; [2005, c. 543, Pt. C, §2 (NEW).]

B. A limited partnership's dissolution 90 days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved; [2005, c. 543, Pt. C, §2 (NEW).]

C. A limited partnership's termination 90 days after the effective date of a statement of termination; [2005, c. 543, Pt. C, §2 (NEW).]

D. A limited partnership's conversion under subchapter 11 90 days after the effective date of the articles of conversion; or [2005, c. 543, Pt. C, §2 (NEW).]

E. A merger under subchapter 11 90 days after the effective date of the articles of merger. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Receives notification. A person receives a notification when the notification:

A. Comes to the person's attention; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Person other than individual; reasonable diligence. Except as otherwise provided in subsection 8, a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

[2005, c. 543, Pt. C, §2 (NEW) .]

8. General partner. A general partner's knowledge, notice or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to or receipt of a notification by the limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1304. NATURE, PURPOSE AND DURATION OF ENTITY

1. Nature. A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Purpose. A limited partnership may be organized under this chapter for any lawful purpose.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Duration. A limited partnership has a perpetual duration.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1305. POWERS

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1306. GOVERNING LAW

The law of this State governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1307. SUPPLEMENTAL PRINCIPLES OF LAW; RATE OF INTEREST

1. Principles of law and equity supplement. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Default interest rate. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Title 14, section 1602-B.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1308. LIMITED PARTNERSHIP NAME; ASSUMED NAME

1. Requirements for real name. This subsection governs the real name of a limited partnership.

A. A limited partnership name:

(1) May contain the name of any partner;

(2) Must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP," unless the limited partnership is filing an assumed name under subsection 2 or a registration of name under section 1309, subsection 2. If the phrase "Limited Partnership" is used, a limited partnership may also use the abbreviation "L.P." or "LP" without filing an assumed name under subsection 2; and

(3) May not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." unless it has been designed as a limited liability limited partnership. If so designated, the name must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "L.P." or "LP." [2005, c. 543, Pt. C, §2 (NEW).]

B. Except as authorized by paragraphs C and D, a limited partnership name must be distinguishable on the records of the Secretary of State from:

- (1) The name of a corporation, nonprofit corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State;
- (2) Assumed, fictitious, reserved and registered name filings for all entities; and
- (3) Marks registered under Title 10, chapter 301-A, unless the registered owner or holder of the mark is the same person or entity as the limited partnership seeking to use a name that is not distinguishable on the records of the Secretary of State and files proof of ownership with the Secretary of State. [2005, c. 543, Pt. C, §2 (NEW).]

C. The Secretary of State, in the Secretary of State's discretion, may refuse to file a name that:

- (1) Consists of or comprises language that is obscene;
- (2) Inappropriately promotes abusive or unlawful activity;
- (3) Falsely suggests an association with public institutions; or
- (4) Violates any other provision of the law of this State with respect to names. [2005, c. 543, Pt. C, §2 (NEW).]

D. A limited partnership may apply to the Secretary of State for authorization to use a name that is not distinguishable on the records of the Secretary of State from one or more of the names described in paragraph B. The Secretary of State shall authorize use of the name applied for if:

- (1) The entity in possession of the name applied for consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from the name of the applicant; or
- (2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State. [2005, c. 543, Pt. C, §2 (NEW).]

E. A limited partnership may use the name, including the assumed or fictitious name, of another domestic or foreign limited partnership that is used in this State if the other limited partnership is organized or authorized to transact business in this State and the limited partnership proposing to use the name:

- (1) Has merged with the other limited partnership;
- (2) Has been converted into another limited partnership; or
- (3) Has transferred substantially all of its assets including the conflicting name to the limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

F. In determining whether names are distinguishable on the records, the Secretary of State shall disregard the following:

- (1) Words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";
- (2) The presence or absence of the words or symbols of the words "and" and "the"; and

(3) Differences in the use of punctuation, capitalization or special characters. [2005, c. 543, Pt. C, §2 (NEW).]

G. If a foreign limited partnership authorized to transact business in this State changes its name to one that does not satisfy the requirements of this section, it may not transact business in this State under the proposed new name until it adopts a name satisfying the requirements of this section and files an amended application for authority under section 1412, subsection 2 that is accompanied by a statement of use of a fictitious name under section 1415. [2005, c. 543, Pt. C, §2 (NEW).]

H. Notwithstanding subsection 2, the name of a limited partnership may not be distinguishable on the records of the Secretary of State if the limited partnership was organized under the laws of this State prior to January 1, 1992 or the foreign limited partnership was authorized to do business in this State prior to January 1, 1992 and had the right to use the name as its legal name prior to January 1, 1992. [2005, c. 543, Pt. C, §2 (NEW).]

I. Subsection 2 does not apply to the name of any limited partnership, the certificate of which is suspended, on and after the 3rd anniversary of the suspension. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW).]

2. Requirements for use of assumed name. This subsection governs the use of an assumed name by a limited partnership.

A. As used in this subsection, "assumed name" means a trade name or any name other than the real name of a limited partnership except a fictitious name. [2005, c. 543, Pt. C, §2 (NEW).]

B. Upon complying with this subsection, a domestic limited partnership or foreign limited partnership authorized to transact business in this State may transact its business in this State under one or more assumed names. [2005, c. 543, Pt. C, §2 (NEW).]

C. Prior to transacting business in this State under an assumed name, a limited partnership shall execute and deliver to the Secretary of State for filing a statement setting forth:

- (1) The limited partnership name;
- (2) That the limited partnership intends to transact business under an assumed name;
- (3) The assumed name that the limited partnership proposes to use;
- (4) If the assumed name is not to be used at all of the limited partnership's places of business in this State, the locations where it will be used; and
- (5) If a foreign limited partnership:
 - (a) The jurisdiction of organization and its date of organization; and
 - (b) The date on which it was authorized to transact business in this State. [2005, c. 543, Pt. C, §2 (NEW).]

D. A separate statement must be executed and delivered for filing with respect to each assumed name that the limited partnership proposes to use. [2005, c. 543, Pt. C, §2 (NEW).]

E. Each assumed name must comply with the requirements of subsection 1. [2005, c. 543, Pt. C, §2 (NEW).]

F. If a limited partnership uses an assumed name without complying with the requirements of this subsection, the continued use of the assumed name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the assumed name. [2005, c. 543, Pt. C, §2 (NEW).]

G. Notwithstanding its compliance with the requirements of this section, the use of an assumed name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

(1) The assumed name did not, at the time the statement required by this subsection was filed, comply with the requirements of subsection 1; or

(2) The assumed name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law. [2005, c. 543, Pt. C, §2 (NEW).]

H. The mere filing of a statement under this subsection does not constitute actual use of the assumed name set out in that statement for purposes of determining priority of rights. [2005, c. 543, Pt. C, §2 (NEW).]

I. A limited partnership may terminate an assumed name by executing and delivering a statement setting forth:

(1) The name of the limited partnership;

(2) That the limited partnership no longer intends to transact business under the assumed name; and

(3) The assumed name the limited partnership intends to terminate. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1309. RESERVED NAME; REGISTERED NAME OF FOREIGN LIMITED PARTNERSHIP

1. Reserve use of name. A person may reserve the exclusive use of a limited partnership name, including an assumed or fictitious name, by executing and delivering for filing an application to the Secretary of State.

A. The application to reserve a name must set forth:

(1) The name and address of the applicant; and

(2) The name proposed to be reserved. [2005, c. 543, Pt. C, §2 (NEW).]

B. If the Secretary of State finds that the limited partnership name applied for is distinguishable on the records of the Secretary of State pursuant to section 1308, the Secretary of State shall reserve the name for the applicant's exclusive use for a period of 120 days. The reservation may not be renewed, but after the expiration of the reservation, the same name may be reserved by the same or another applicant. [2013, c. 99, §4 (AMD).]

C. The owner of a reserved limited partnership name under this subsection may transfer the reservation to another person by executing and delivering for filing to the Secretary of State a notice of the transfer, signed by the transferor, that states the name and address of the transferee. [2005, c. 543, Pt. C, §2 (NEW).]

[2013, c. 99, §4 (AMD) .]

2. Register limited partnership name. A foreign limited partnership may register its limited partnership name by executing and delivering for filing an application to the Secretary of State.

A. The application to register a limited partnership name must set forth:

(1) The name of the limited partnership;

(2) The jurisdiction of its organization and the date of its organization;

- (3) The address of its principal office wherever located;
- (4) A brief description of the nature of the business in which it is engaged; and
- (5) Is accompanied by a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law the foreign limited partnership is organized. The certificate of existence must have been made not more than 90 days prior to the delivery of the application for filing. [2005, c. 543, Pt. C, §2 (NEW).]

B. If the Secretary of State finds that the limited partnership name applied for is distinguishable on the records of the Secretary of State pursuant to section 1308, the Secretary of State shall register the name for the foreign limited partnership's exclusive use upon the effective date of the application until the end of the calendar year in which the application was filed. [2005, c. 543, Pt. C, §2 (NEW).]

C. A foreign limited partnership whose registration is effective may renew it for a successive year by delivering for filing to the Secretary of State a renewal application that complies with the requirements of this subsection between October 1st and December 31st. The renewal application, when filed, renews the registration for the following calendar year. [2005, c. 543, Pt. C, §2 (NEW).]

D. After its registration is effective, a foreign limited partnership may qualify as a foreign limited partnership under the registered name or may consent in writing to the use of that name by a limited partnership organized under this chapter or by another foreign limited partnership authorized to transact business in this State. The registration terminates when the domestic limited partnership is organized or the foreign limited partnership qualifies or consents to the qualification of another foreign limited partnership under the registered name. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2013, c. 99, §4 (AMD).

§1310. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE PROVISIONS

1. Agreement governs; default. Except as otherwise provided in subsection 2, the partnership agreement governs relations among the partners and between the partners and the partnership. It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of partnership agreements. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Nonwaivable provisions. A partnership agreement may not:

- A. Vary a limited partnership's power under section 1305 to sue, be sued and defend in its own name; [2005, c. 543, Pt. C, §2 (NEW).]
- B. Vary the law applicable to a limited partnership under section 1306; [2005, c. 543, Pt. C, §2 (NEW).]
- C. Vary the requirements of section 1324; [2005, c. 543, Pt. C, §2 (NEW).]
- D. Vary the information required under section 1311 or unreasonably restrict the right to information under section 1344 or 1357, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use; [2005, c. 543, Pt. C, §2 (NEW).]

E. Vary the power of a person to dissociate as a general partner under section 1374, subsection 1 except to require that the notice under section 1373, subsection 1 be in a record; [2005, c. 543, Pt. C, §2 (NEW).]

F. Vary the power of a court to decree dissolution in the circumstances specified in section 1392; [2005, c. 543, Pt. C, §2 (NEW).]

G. Vary the requirement to wind up the partnership's business as specified in section 1393; [2005, c. 543, Pt. C, §2 (NEW).]

H. Unreasonably restrict the right to maintain an action under subchapter 10; [2005, c. 543, Pt. C, §2 (NEW).]

I. Restrict the right of a partner under section 1440, subsection 1 to approve a conversion or merger or the right of a general partner under section 1440, subsection 2 to consent to an amendment to the certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership; or [2005, c. 543, Pt. C, §2 (NEW).]

J. Restrict rights under this chapter of a person other than a partner or a transferee. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Implied covenant of good faith and fair dealing. Notwithstanding any other provision of this chapter, there exists, for purposes of this chapter, an implied contractual covenant of good faith and fair dealing in every partnership agreement which may not be eliminated by the terms of the partnership agreement.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1311. REQUIRED INFORMATION

A limited partnership shall maintain at its principal office the following information: [2007, c. 323, Pt. F, §2 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

1. List of partners. A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Certificate, amendments, restatements, powers of attorney. A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment or restatement has been signed;

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Conversion or merger. A copy of any filed articles of conversion or merger;

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Income tax returns and reports. A copy of the limited partnership's federal, state and local income tax returns and reports, if any, for the 3 most recent years;

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Partnership agreement, amendments. A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Financial statement. A copy of any financial statement of the limited partnership for the 3 most recent years;

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Annual reports. A copy of the 3 most recent annual reports delivered by the limited partnership to the Secretary of State pursuant to section 1330;

[2005, c. 543, Pt. C, §2 (NEW) .]

8. Record of consent. A copy of any record made by the limited partnership during the past 3 years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

[2005, c. 543, Pt. C, §2 (NEW) .]

9. Record of contributions, transferable interests, events causing dissolution. Unless contained in a partnership agreement made in a record, a record stating:

A. The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner; [2005, c. 543, Pt. C, §2 (NEW) .]

B. 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; [2005, c. 543, Pt. C, §2 (NEW) .]

C. For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and [2005, c. 543, Pt. C, §2 (NEW) .]

D. Events upon the happening of which the limited partnership is to be dissolved and its activities wound up. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §2 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1312. BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP

A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner. [2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1313. DUAL CAPACITY

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations,

duties and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties and restrictions under this chapter and the partnership agreement for limited partners. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1314. REGISTERED OFFICE; REGISTERED AGENT

(REPEALED)

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §3 (RP). 2007, c. 323, Pt. G, §4 (AFF).

§1314-A. REGISTERED AGENT OF DOMESTIC OR FOREIGN LIMITED PARTNERSHIP

Each limited partnership must have and shall continuously maintain a registered agent in this State as defined in Title 5, chapter 6-A. [2007, c. 535, Pt. B, §10 (NEW).]

SECTION HISTORY

2007, c. 535, Pt. B, §10 (NEW).

§1315. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT

(REPEALED)

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §4 (RP). 2007, c. 323, Pt. G, §4 (AFF).

§1316. RESIGNATION OF REGISTERED AGENT

(REPEALED)

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §5 (RP). 2007, c. 323, Pt. G, §4 (AFF).

§1317. SERVICE OF PROCESS

(REPEALED)

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §6 (RP). 2007, c. 323, Pt. G, §4 (AFF).

§1317-A. SERVICE OF PROCESS ON DOMESTIC OR FOREIGN LIMITED PARTNERSHIP

Service of process, notice or demand required or permitted by law on a domestic or foreign limited partnership authorized to transact business in this State is governed by Title 5, section 113. [2007, c. 323, Pt. F, §7 (NEW); 2007, c. 323, Pt. G, §4 (AFF).]

SECTION HISTORY

2007, c. 323, Pt. F, §7 (NEW). 2007, c. 323, Pt. G, §4 (AFF).

§1318. CONSENT AND PROXIES OF PARTNERS

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 2: FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

§1321. FORMATION OF LIMITED PARTNERSHIP; CERTIFICATE OF LIMITED PARTNERSHIP

1. Certificate of limited partnership. In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the Secretary of State for filing. The certificate must state:

- A. The name of the limited partnership, which must comply with section 1308; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The information required by Title 5, section 105, subsection 1; [2007, c. 323, Pt. F, §8 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]
- C. The name and the street and mailing address of each general partner; [2005, c. 543, Pt. C, §2 (NEW).]
- D. Whether the limited partnership is a limited liability limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]
- E. Any additional information required by subchapter 11. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §8 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Other matters. A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in section 1310, subsection 2 in a manner inconsistent with that section.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Formed when filed. If there has been substantial compliance with subsection 1, subject to section 1326, subsection 3 a limited partnership is formed when the Secretary of State files the certificate of limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Inconsistencies between agreement and filed document. Subject to subsection 2, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination or change or filed articles of conversion or merger:

- A. The partnership agreement prevails as to partners and transferees; and [2005, c. 543, Pt. C, §2 (NEW).]

B. The filed certificate of limited partnership, statement of dissociation, termination or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §8 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1322. AMENDMENT OR RESTATEMENT OF CERTIFICATE

1. Amendment of certificate. In order to amend its certificate of limited partnership, a limited partnership must deliver to the Secretary of State for filing an amendment or, pursuant to subchapter 11, articles of merger stating:

- A. The name of the limited partnership; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The date of filing of its initial certificate; and [2005, c. 543, Pt. C, §2 (NEW).]
- C. The changes the amendment makes to the certificate as most recently amended or restated. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Changes requiring prompt delivery of amendment. A limited partnership shall promptly deliver to the Secretary of State for filing an amendment to a certificate of limited partnership to reflect:

- A. The admission of a new general partner; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The dissociation of a person as a general partner; [2005, c. 543, Pt. C, §2 (NEW).]
- C. The appointment of a person to wind up the limited partnership's activities under section 1393, subsection 3 or 4; [2007, c. 323, Pt. F, §9 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]
- D. The change in name or street address of one or more of its general partners; or [2007, c. 323, Pt. F, §10 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]
- E. A change in the registered agent except as provided in Title 5, section 109 or 110 for a change in the current name, address or identity of the registered agent or as provided in Title 5, section 111 for the resignation of the registered agent. [2007, c. 323, Pt. F, §11 (NEW); 2007, c. 323, Pt. G, §4 (AFF).]

[2007, c. 323, Pt. F, §§9-11 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

3. Responsibility of general partner. A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

- A. Cause the certificate to be amended; or [2005, c. 543, Pt. C, §2 (NEW).]
- B. If appropriate, deliver to the Secretary of State for filing a statement of correction pursuant to section 1327. [2007, c. 323, Pt. F, §12 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

[2007, c. 323, Pt. F, §12 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

4. Amendment at any time. A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Delivery of restated certificate. A restated certificate of limited partnership may be delivered to the Secretary of State for filing in the same manner as an amendment.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Effective when filed. Subject to section 1326, subsection 3, an amendment or restated certificate is effective when filed by the Secretary of State.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §§9-12 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1323. STATEMENT OF TERMINATION

A dissolved limited partnership that has completed winding up may deliver to the Secretary of State for filing a statement of termination that states: [2005, c. 543, Pt. C, §2 (NEW) .]

1. Name. The name of the limited partnership;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Date of initial certificate. The date of filing of its initial certificate of limited partnership; and

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Other information. Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 1393, subsection 3 or 4.

[2005, c. 543, Pt. C, §2 (NEW) .]

At the time of filing the statement under this section, the Secretary of State may require the limited partnership to file the annual report required to be filed under section 1330, subsection 1 and pay any fees or penalties owed to the Secretary of State under section 1399. [2007, c. 231, §36 (NEW); 2007, c. 231, §40 (AFF) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 231, §36 (AMD). 2007, c. 231, §40 (AFF) .

§1324. SIGNING OF RECORDS

1. Required signatures. Each record delivered to the Secretary of State for filing pursuant to this chapter must be signed in the following manner.

A. An initial certificate of limited partnership must be signed by all general partners listed in the certificate. [2005, c. 543, Pt. C, §2 (NEW) .]

B. An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate. [2005, c. 543, Pt. C, §2 (NEW).]

C. An amendment designating as general partner a person admitted under section 1391, subsection 3, paragraph B following the dissociation of a limited partnership's last general partner must be signed by that person. [2005, c. 543, Pt. C, §2 (NEW).]

D. An amendment required by section 1393, subsection 3 following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person. [2005, c. 543, Pt. C, §2 (NEW).]

E. Any other amendment must be signed by:

- (1) At least one general partner listed in the certificate;
- (2) Each other person designated in the amendment as a new general partner; and
- (3) Each person that the amendment indicates has dissociated as a general partner, unless:
 - (i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
 - (ii) The person has previously delivered to the Secretary of State for filing a statement of dissociation. [2005, c. 543, Pt. C, §2 (NEW).]

F. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate must be signed in a manner that satisfies that paragraph. [2005, c. 543, Pt. C, §2 (NEW).]

G. A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section 1393, subsection 3 or 4 to wind up the dissolved limited partnership's activities. [2005, c. 543, Pt. C, §2 (NEW).]

H. Articles of conversion must be signed by each general partner listed in the certificate of limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

I. Articles of merger must be signed as provided in section 1438, subsection 1. [2005, c. 543, Pt. C, §2 (NEW).]

J. Any other record delivered on behalf of a limited partnership to the Secretary of State for filing must be signed by at least one general partner listed in the certificate. [2005, c. 543, Pt. C, §2 (NEW).]

K. A statement by a person pursuant to section 1375, subsection 1, paragraph D stating that the person has dissociated as a general partner must be signed by that person. [2005, c. 543, Pt. C, §2 (NEW).]

L. A statement of withdrawal by a person pursuant to section 1346 must be signed by that person. [2005, c. 543, Pt. C, §2 (NEW).]

M. A record delivered on behalf of a foreign limited partnership to the Secretary of State for filing must be signed by at least one general partner of the foreign limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

N. Any other record delivered on behalf of any person to the Secretary of State for filing must be signed by that person. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Attorney-in-fact. Any person may sign by an attorney-in-fact any record to be filed pursuant to this chapter.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1325. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER

1. Court order. If a person required by this chapter to sign a record or deliver a record to the Secretary of State for filing does not do so, any other person that is aggrieved may petition the Superior Court to order:

- A. The person to sign the record; [2005, c. 543, Pt. C, §2 (NEW) .]
- B. The person to deliver the record to the Secretary of State for filing; or [2005, c. 543, Pt. C, §2 (NEW) .]
- C. The Secretary of State to file the record unsigned. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Party to action. If the person aggrieved under subsection 1 is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in the same action in combination or in the alternative.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Effective without signature. A record filed unsigned pursuant to this section is effective without being signed.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1326. DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE; EFFECTIVE TIME AND DATE

1. Requirements for filing. A record authorized or required to be delivered to the Secretary of State for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the Secretary of State and be delivered to the Secretary of State. Unless the Secretary of State determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the Secretary of State shall file the record and:

- A. For a statement of dissociation, send:
 - (1) A copy of the filed statement and a receipt for the fees to the person the statement indicates has dissociated as a general partner; and
 - (2) A copy of the filed statement and receipt to the limited partnership; [2005, c. 543, Pt. C, §2 (NEW) .]
- B. For a statement of withdrawal, send:
 - (1) A copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed; and

(2) If the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]

C. For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Certified copy upon request. Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Effective date; specified; default. Except as otherwise provided in section 1327, a record delivered to the Secretary of State for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the Secretary of State is effective:

A. If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary of State endorsement of the date and time on the record; [2005, c. 543, Pt. C, §2 (NEW).]

B. If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record; [2005, c. 543, Pt. C, §2 (NEW).]

C. If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(1) The specified date; and

(2) The 90th day after the record is filed; or [2005, c. 543, Pt. C, §2 (NEW).]

D. If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(1) The specified date; and

(2) The 90th day after the record is filed. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §13 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §13 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1327. CORRECTING FILED RECORD

1. Statement of correction. A limited partnership or foreign limited partnership may deliver to the Secretary of State for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the Secretary of State and filed by the Secretary of State, if at the time of filing the record contained false or erroneous information or was defectively signed.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Contents of statement. A statement of correction may not state a delayed effective date and must:

A. Describe the record to be corrected, including its filing date; [2005, c. 543, Pt. C, §2 (NEW).]

B. Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and [2005, c. 543, Pt. C, §2 (NEW).]

C. Correct the incorrect information or defective signature. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Effective date of correction. When filed by the Secretary of State, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

A. For the purposes of section 1303, subsections 3 and 4; and [2005, c. 543, Pt. C, §2 (NEW).]

B. As to persons relying on the uncorrected record and adversely affected by the correction. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1328. LIABILITY FOR FALSE INFORMATION IN FILED RECORD

1. Damages for record containing false information. If a record delivered to the Secretary of State for filing under this chapter and filed by the Secretary of State contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

A. A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and [2005, c. 543, Pt. C, §2 (NEW).]

B. A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 1322, file a petition pursuant to section 1325 or deliver to the Secretary of State for filing a change of registered agent as required by Title 5, section 108 or a statement of correction as required by section 1327. [2007, c. 323, Pt. F, §14 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

[2007, c. 323, Pt. F, §14 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Signing constitutes affirmation. Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §14 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1329. CERTIFICATE OF EXISTENCE; CERTIFICATE OF AUTHORITY; CERTIFICATE OF FACT

1. Application. Any person may apply to the Secretary of State for a certificate of existence for a domestic limited partnership or a certificate of authority for a foreign limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Contents. A certificate of existence or certificate of authority sets forth:

- A. The limited partnership's name used in this State; [2005, c. 543, Pt. C, §2 (NEW).]
- B. That, if a domestic limited partnership, the limited partnership is duly formed under the laws of this State and the date of its formation; [2005, c. 543, Pt. C, §2 (NEW).]
- C. That, if a foreign limited partnership, the foreign limited partnership is authorized to transact business in this State, the date on which the limited partnership was authorized to transact business in this State and its jurisdiction of organization; [2005, c. 543, Pt. C, §2 (NEW).]
- D. That all fees and penalties owed to this State have been paid if:
 - (1) Payment is reflected in the records of the Secretary of State; and
 - (2) Nonpayment affects the existence or authorization of the domestic or foreign limited partnership; [2005, c. 543, Pt. C, §2 (NEW).]
- E. That the limited partnership's most recent annual report required by section 1330 has been delivered to the Secretary of State; and [2005, c. 543, Pt. C, §2 (NEW).]
- F. Any facts of record in the office of the Secretary of State that may be requested by the applicant under subsection 1. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Evidence of existence or authority. Subject to any qualification stated in the certificate, a certificate of existence or certificate of authority issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign limited partnership is in existence or is authorized to transact business in this State.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Certificate of fact. In addition to the certificate authorized under subsection 2, the Secretary of State may issue a certificate attesting to any fact of record in the office of the Secretary of State that may be requested by the applicant under subsection 1.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1330. ANNUAL REPORT AND AMENDED ANNUAL REPORT OF DOMESTIC AND FOREIGN LIMITED PARTNERSHIPS; FAILURE TO FILE ANNUAL REPORT; PENALTY

1. Annual report. Each domestic limited partnership and each foreign limited partnership authorized to do business in this State shall file, within the time prescribed by this chapter, an annual report.

A. The annual report must set forth:

- (1) The name of the domestic or foreign limited partnership;
- (1-A) The jurisdiction of organization of the limited partnership;
- (2) The information required by Title 5, section 105, subsection 1;
- (3) A brief statement of the character of the business in which the limited partnership is actually engaged in this State, if any;
- (4) The name and business or residence address of each general partner, including the street or rural route number, town or city and state; and

(5) The address of its principal office, wherever located. [2007, c. 323, Pt. F, §15 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

B. The Secretary of State shall specify by rule the period of time to which the annual report applies as provided in paragraph C. The information contained in the annual report must be current as of the date the report is signed. [2005, c. 543, Pt. C, §2 (NEW).]

C. The annual report must be executed and signed by a general partner or any other duly authorized individual. Subject to rules adopted under section 1456, the report must be delivered to the Secretary of State or a designee for filing. Proof to the satisfaction of the Secretary of State that, prior to the date that penalties become effective for late delivery of annual reports as established by the Secretary of State by rule, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, or delivered by electronic means as provided by the Secretary of State, is deemed a compliance with this requirement. One copy of the report, together with the filing fee required by this chapter, must be delivered for filing to the Secretary of State, who shall file the report if the Secretary of State finds that it conforms to the requirements of this chapter. If the Secretary of State finds that the report does not so conform, the Secretary of State shall promptly mail or otherwise return the report to the limited partnership for any necessary corrections. The penalties prescribed by this chapter for failure to file the report within the time provided in this section do not apply if the report is corrected to conform to the requirements of this chapter and returned to the Secretary of State within 30 days from the date on which it was so mailed or otherwise returned to the limited partnership by the Secretary of State. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §15 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Amended annual report; period for filing. If the information contained in an annual report filed under subsection 1 has changed, a domestic or foreign limited partnership may, if it determines it to be necessary, deliver to the Secretary of State for filing an amended annual report to change the information on file. The amended annual report must be executed as provided in subsection 1, paragraph C.

A. An amended annual report must set forth:

- (1) The name of the domestic or foreign limited partnership, the jurisdiction of its formation and its date of formation;
- (2) The date on which the original annual report was filed; and
- (3) The information that has changed and the date on which it changed. [2005, c. 543, Pt. C, §2 (NEW).]

B. An amended annual report may be filed by the domestic or foreign limited partnership after the date of the original filing and until December 31st of that filing year. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Failure to file annual report; penalty. A domestic or foreign limited partnership that is required to deliver an annual report for filing as provided in subsection 1 that fails to deliver its properly completed annual report to the Secretary of State shall pay, in addition to the regular annual report fee, the late filing penalty described in section 1460, subsection 19, as long as the report is received by the Secretary of State prior to revocation or administrative dissolution. Upon a limited partnership's failure to file the annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 5 and Title 5, chapter 375, shall revoke a foreign limited partnership's authority to do business in this State and administratively dissolve a domestic limited partnership. The Secretary of State shall use the procedures set forth in section 1399 to administratively dissolve a domestic limited partnership and the procedure set forth in section 1416 to revoke a foreign limited partnership's authority to transact business in this State. A domestic limited partnership that has been administratively dissolved under section 1399 must follow the requirements set forth in section 1400 to reinstate.

A. If the Secretary of State finds that any annual report of a domestic or foreign limited partnership delivered for filing does not conform with the requirements of subsection 1, the report must be returned for correction. [2005, c. 543, Pt. C, §2 (NEW).]

B. If the annual report of a domestic or foreign limited partnership is not delivered for filing within the time specified in subsection 1, the limited partnership is excused from the liability provided in this section and from any other penalty for failure to file timely the report if it establishes, to the satisfaction of the Secretary of State, that failure to file was the result of excusable neglect and it furnishes the Secretary of State a copy of the report within 30 days after it learns that the Secretary of State failed to receive the original report. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §15 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

Subchapter 3: LIMITED PARTNERS

§1341. BECOMING LIMITED PARTNER

A person becomes a limited partner: [2005, c. 543, Pt. C, §2 (NEW).]

1. Partnership agreement. As provided in the partnership agreement;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Conversion or merger. As the result of a conversion or merger under subchapter 11; or

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Consent. With the consent of all the partners.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1342. NO RIGHT OR POWER AS LIMITED PARTNER TO BIND LIMITED PARTNERSHIP

A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1343. NO LIABILITY AS LIMITED PARTNER FOR LIMITED PARTNERSHIP OBLIGATIONS

An obligation of a limited partnership, whether arising in contract, tort or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1344. RIGHT OF LIMITED PARTNER AND FORMER LIMITED PARTNER TO INFORMATION

1. Right to inspect and copy. On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

[2007, c. 323, Pt. F, §16 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

2. Right to information about activities and financial condition. During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

- A. The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and [2005, c. 543, Pt. C, §2 (NEW).]
- C. The information sought is directly connected to the limited partner's purpose. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW).]

3. Response to demand for information about activities and financial condition. Within 10 days after receiving a demand pursuant to subsection 2, the limited partnership in a record shall inform the limited partner that made the demand:

- A. What information the limited partnership will provide in response to the demand; [2005, c. 543, Pt. C, §2 (NEW).]
- B. When and where the limited partnership will provide the information; and [2005, c. 543, Pt. C, §2 (NEW).]
- C. If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW).]

4. Right of dissociated limited partner. Subject to subsection 6, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office if:

A. The information pertains to the period during which the person was a limited partner; [2005, c. 543, Pt. C, §2 (NEW).]

B. The person seeks the information in good faith; and [2005, c. 543, Pt. C, §2 (NEW).]

C. The person meets the requirements of subsection 2. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §17 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

5. Response to demand by dissociated limited partner. The limited partnership shall respond to a demand made pursuant to subsection 4 in the same manner as provided in subsection 3.

[2005, c. 543, Pt. C, §2 (NEW).]

6. Death of limited partner. If a limited partner dies, section 1384 applies.

[2005, c. 543, Pt. C, §2 (NEW).]

7. Reasonable restrictions on use of information. The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

[2005, c. 543, Pt. C, §2 (NEW).]

8. Reasonable costs of copying. A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

[2005, c. 543, Pt. C, §2 (NEW).]

9. Information provided without demand. Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

[2005, c. 543, Pt. C, §2 (NEW).]

10. Exercise of rights. A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 7 or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

[2005, c. 543, Pt. C, §2 (NEW).]

11. Transferee; individual under legal disability. The rights stated in this section do not extend to a person as transferee but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

[2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §§16, 17 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1345. LIMITED DUTIES OF LIMITED PARTNERS

1. No fiduciary duty. A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Good faith and fair dealing. A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Limited partner's own interest. A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1346. PERSON ERRONEOUSLY BELIEVING SELF TO BE LIMITED PARTNER

1. Not liable for enterprise's obligations. Except as otherwise provided in subsection 2, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

A. Causes an appropriate certificate of limited partnership, amendment or statement of correction to be signed and delivered to the Secretary of State for filing; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. Withdraws from future participation as an owner in the enterprise by signing and delivering to the Secretary of State for filing a statement of withdrawal under this section. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Liable to 3rd party. A person that makes an investment described in subsection 1 is liable to the same extent as a general partner to any 3rd party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the Secretary of State files a statement of withdrawal, certificate of limited partnership, amendment or statement of correction to show that the person is not a general partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Right to withdraw without breach. If a person makes a diligent effort in good faith to comply with subsection 1, paragraph A and is unable to cause the appropriate certificate of limited partnership, amendment or statement of correction to be signed and delivered to the Secretary of State for filing, the person has the right to withdraw from the enterprise pursuant to subsection 1, paragraph B even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 4: GENERAL PARTNERS

§1351. BECOMING GENERAL PARTNER

A person becomes a general partner: [2005, c. 543, Pt. C, §2 (NEW) .]

1. Partnership agreement. As provided in the partnership agreement;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Admitted general partner. Under section 1391, subsection 3, paragraph B following the dissociation of a limited partnership's last general partner;

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Conversion or merger. As the result of a conversion or merger under subchapter 11; or

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Consent. With the consent of all the partners.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1352. GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP

1. Agent if carrying on in the ordinary course of activities. Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification or had notice under section 1303, subsection 4 that the general partner lacked authority.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Agent only if actually authorized. An act of a general partner that is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1353. LIMITED PARTNERSHIP LIABLE FOR GENERAL PARTNER'S ACTIONABLE CONDUCT

1. General partner acting in ordinary course or with authority. A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Misapplication of money or property by general partner. If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1354. GENERAL PARTNER'S LIABILITY

1. Joint and several liability. Except as otherwise provided in subsections 2 and 3, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Pre-existing obligation. A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Obligation of limited liability limited partnership. Subject to the provisions of subsection 4, an obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section 1356, subsection 2, paragraph B.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Professional limited liability limited partnership exception. A partner of a professional limited liability limited partnership is jointly and severally liable for claims arising from the rendering of a professional service by such a professional limited liability partnership if that partner:

A. Personally and directly participated in rendering that portion of the professional service that was performed negligently or in breach of any other legal duty; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. Directly supervised and controlled that portion of the professional service rendered by another person that was performed negligently or in breach of any other legal duty. [2005, c. 543, Pt. C, §2 (NEW) .]

For purposes of this subsection, a "professional limited liability limited partnership" means a limited liability limited partnership that, by virtue of the business conducted by it, would be required to incorporate under the Maine Professional Service Corporation Act if that limited partnership were a corporation.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW) .

§1355. ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS

1. General partner as party. To the extent not inconsistent with section 1354, a general partner may be joined in an action against the limited partnership or named in a separate action.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Judgment against limited partnership. A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Judgment creditor of general partner. A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership unless the partner is personally liable for the claim under section 1354 and:

A. A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part; [2005, c. 543, Pt. C, §2 (NEW) .]

B. The limited partnership is a debtor in bankruptcy; [2005, c. 543, Pt. C, §2 (NEW) .]

C. The general partner has agreed that the creditor need not exhaust limited partnership assets; [2005, c. 543, Pt. C, §2 (NEW) .]

D. A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome or that the grant of permission is an appropriate exercise of the court's equitable powers; or [2005, c. 543, Pt. C, §2 (NEW) .]

E. Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1356. MANAGEMENT RIGHTS OF GENERAL PARTNER

1. General partner or partners. Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Consent required. The consent of each partner is necessary to:

A. Amend the partnership agreement; [2005, c. 543, Pt. C, §2 (NEW).]

B. Amend the certificate of limited partnership to add or, subject to section 1440, delete a statement that the limited partnership is a limited liability limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]

C. Sell, lease, exchange or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Payments by and liabilities of general partner. A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Advances by general partner. A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Payment or advance constitutes loan. A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection 3 or 4 constitutes a loan to the limited partnership that accrues interest from the date of the payment or advance.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. No remuneration. A general partner is not entitled to remuneration for services performed for the partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1357. RIGHT OF GENERAL PARTNER AND FORMER GENERAL PARTNER TO INFORMATION

1. Right to inspect and copy. A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

A. In the limited partnership's principal office, required information; and [2007, c. 323, Pt. F, §18 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

B. At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §18 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Information furnished to general partner. Each general partner and the limited partnership shall furnish to a general partner:

A. Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and [2005, c. 543, Pt. C, §2 (NEW).]

B. On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Right of dissociated general partner. Subject to subsection 5, on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection 1 at the location specified in subsection 1 if:

A. The information or record pertains to the period during which the person was a general partner; [2005, c. 543, Pt. C, §2 (NEW).]

B. The person seeks the information or record in good faith; and [2005, c. 543, Pt. C, §2 (NEW).]

C. The person satisfies the requirements imposed on a limited partner by section 1344, subsection 2. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Response to demand. The limited partnership shall respond to a demand made pursuant to subsection 3 in the same manner as provided in section 1344, subsection 3.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Death of general partner. If a general partner dies, section 1384 applies.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Reasonable restrictions on use of information. The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Reasonable costs of copying. A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

[2005, c. 543, Pt. C, §2 (NEW) .]

8. Exercise of rights. A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 6 or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

9. Transferee; individual under legal disability. The rights under this section do not extend to a person as transferee, but the rights under subsection 3 of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section 1373, subsection 7, paragraph B or C.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §18 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1358. GENERAL STANDARDS OF GENERAL PARTNER'S CONDUCT

1. Fiduciary duties. The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections 2 and 3.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Duty of loyalty. A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

A. To account to the limited partnership and hold as trustee for it any property, profit or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity; [2005, c. 543, Pt. C, §2 (NEW).]

B. To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]

C. To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Duty of care. A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Good faith and fair dealing. A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. General partner's own interest. A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 5: CONTRIBUTIONS AND DISTRIBUTIONS

§1361. FORM OF CONTRIBUTION

A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property and contracts for services to be performed. [2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1362. LIABILITY FOR CONTRIBUTION

1. Obligation not excused by death, disability or other inability. A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability or other inability to perform personally.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Obligation to contribute money equal to promised nonmonetary contribution. If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution that has not been made.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Obligation in violation of chapter; enforcement by creditor. The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership that extends credit or otherwise acts in reliance on an obligation described in subsection 1, without notice of any compromise under this subsection, may enforce the original obligation.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1363. SHARING OF DISTRIBUTIONS

A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner. [2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1364. INTERIM DISTRIBUTIONS

A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1365. NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION

A person does not have a right to receive a distribution on account of dissociation. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1366. DISTRIBUTION IN KIND

A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 1402, subsection 2, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1367. RIGHT TO DISTRIBUTION

When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1368. LIMITATIONS ON DISTRIBUTION

1. In violation of partnership agreement. A limited partnership may not make a distribution in violation of the partnership agreement.

[2005, c. 543, Pt. C, §2 (NEW).]

2. Unable to pay debts or satisfy superior preferential rights. A limited partnership may not make a distribution if after the distribution:

A. The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or [2005, c. 543, Pt. C, §2 (NEW).]

B. The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of partners whose preferential rights are superior to those of persons receiving the distribution. [2005 , c. 543 , Pt. C , §2 (NEW) .]

[2005 , c. 543 , Pt. C , §2 (NEW) .]

3. Basis for determination that distribution not prohibited. A limited partnership may base a determination that a distribution is not prohibited under subsection 2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

[2005 , c. 543 , Pt. C , §2 (NEW) .]

4. Measuring effect of distribution. Except as otherwise provided in subsection 7, the effect of a distribution under subsection 2 is measured:

A. In the case of distribution by purchase, redemption or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and [2005 , c. 543 , Pt. C , §2 (NEW) .]

B. In all other cases, as of the date:

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

(2) The payment is made, if payment occurs more than 120 days after the distribution is authorized. [2005 , c. 543 , Pt. C , §2 (NEW) .]

[2005 , c. 543 , Pt. C , §2 (NEW) .]

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

[2005 , c. 543 , Pt. C , §2 (NEW) .]

6. Indebtedness not considered liability. A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

[2005 , c. 543 , Pt. C , §2 (NEW) .]

7. Indebtedness issued as distribution; date payment made. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

[2005 , c. 543 , Pt. C , §2 (NEW) .]

SECTION HISTORY

2005 , c. 543 , §C2 (NEW) .

§1369. LIABILITY FOR IMPROPER DISTRIBUTIONS

1. General partner liable if consent to distribution not in compliance. A general partner that consents to a distribution made in violation of section 1368 is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 1358.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Partner or transferee liable for excess amount received. A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 1368 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 1368.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. General partner may implead, compel contribution. A general partner against which an action is commenced under subsection 1 may:

A. Implead in the action any other person that is liable under subsection 1 and compel contribution from the person; and [2005, c. 543, Pt. C, §2 (NEW).]

B. Implead in the action any person that received a distribution in violation of subsection 2 and compel contribution from the person in the amount the person received in violation of subsection 2. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Action within 2 years. An action under this section is barred if it is not commenced within 2 years after the distribution.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 6: DISSOCIATION

§1371. DISSOCIATION AS LIMITED PARTNER

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

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Dissociation upon occurrence of event. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

A. The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person; [2005, c. 543, Pt. C, §2 (NEW).]

B. An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner; [2005, c. 543, Pt. C, §2 (NEW).]

C. The person's expulsion as a limited partner pursuant to the partnership agreement; [2005, c. 543, Pt. C, §2 (NEW).]

D. The person's expulsion as a limited partner by the unanimous consent of the other partners if:

- (1) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;
- (2) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;
- (3) The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
- (4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up; [2005, c. 543, Pt. C, §2 (NEW).]

E. On application by the limited partnership, the person's expulsion as a limited partner by judicial determination because:

- (1) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;
- (2) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 1345, subsection 2; or
- (3) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as limited partner; [2005, c. 543, Pt. C, §2 (NEW).]

F. In the case of a person who is an individual, the person's death; [2005, c. 543, Pt. C, §2 (NEW).]

G. In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee; [2005, c. 543, Pt. C, §2 (NEW).]

H. In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative; [2005, c. 543, Pt. C, §2 (NEW).]

I. Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust or estate; or [2005, c. 543, Pt. C, §2 (NEW).]

J. The limited partnership's participation in a conversion or merger under subchapter 11, if the limited partnership:

- (1) Is not the converted or surviving entity; or
- (2) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1372. EFFECT OF DISSOCIATION AS LIMITED PARTNER

1. Rights; obligations; interests. Upon a person's dissociation as a limited partner:

A. Subject to section 1384, the person does not have further rights as a limited partner; [2005, c. 543, Pt. C, §2 (NEW).]

B. The person's obligation of good faith and fair dealing as a limited partner under section 1345, subsection 2 continues only as to matters arising and events occurring before the dissociation; and [2005, c. 543, Pt. C, §2 (NEW).]

C. Subject to section 1384 and subchapter 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Obligations to partnership and partners. A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a limited partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1373. DISSOCIATION AS GENERAL PARTNER

A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events: [2005, c. 543, Pt. C, §2 (NEW).]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Event in partnership agreement. An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Expulsion pursuant to partnership agreement. The person's expulsion as a general partner pursuant to the partnership agreement;

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Expulsion by unanimous consent. The person's expulsion as a general partner by the unanimous consent of the other partners if:

A. It is unlawful to carry on the limited partnership's activities with the person as a general partner; [2005, c. 543, Pt. C, §2 (NEW).]

B. There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed; [2005, c. 543, Pt. C, §2 (NEW).]

C. The person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or [2005, c. 543, Pt. C, §2 (NEW).]

D. The person is a limited liability company or partnership that has been dissolved and whose business is being wound up; [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Expulsion upon judicial determination. On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

A. The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities; [2005, c. 543, Pt. C, §2 (NEW).]

B. The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 1358; or [2005, c. 543, Pt. C, §2 (NEW).]

C. The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner; [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Bankruptcy; execution of assignment; appointment of trustee, receiver or liquidator. The person's:

A. Becoming a debtor in bankruptcy; [2005, c. 543, Pt. C, §2 (NEW).]

B. Execution of an assignment for the benefit of creditors; [2005, c. 543, Pt. C, §2 (NEW).]

C. Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all of the person's property; or [2005, c. 543, Pt. C, §2 (NEW).]

D. Failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated; [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Death; appointment of guardian or conservator; judicial determination. In the case of a person who is an individual:

A. The person's death; [2005, c. 543, Pt. C, §2 (NEW).]

B. The appointment of a guardian or general conservator for the person; or [2005, c. 543, Pt. C, §2 (NEW).]

C. A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement; [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

11. Conversion or merger. The limited partnership's participation in a conversion or merger under subchapter 11, if the limited partnership:

A. Is not the converted or surviving entity; or [2005, c. 543, Pt. C, §2 (NEW).]

B. Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1374. PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER; WRONGFUL DISSOCIATION

1. Dissociate by express will. A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 1373, subsection 1.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Wrongful dissociation. A person's dissociation as a general partner is wrongful only if:

A. It is in breach of an express provision of the partnership agreement; or [2005, c. 543, Pt. C, §2 (NEW).]

B. It occurs before the termination of the limited partnership and:

(1) The person withdraws as a general partner by express will;

(2) The person is expelled as a general partner by judicial determination under section 1373, subsection 5;

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

(4) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Liability when dissociation wrongful. A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 1421, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1375. EFFECT OF DISSOCIATION AS GENERAL PARTNER

1. Rights; duties; statement of dissociation; interests. Upon a person's dissociation as a general partner:

A. The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates; [2005, c. 543, Pt. C, §2 (NEW).]

B. The person's duty of loyalty as a general partner under section 1358, subsection 2, paragraph C terminates; [2005, c. 543, Pt. C, §2 (NEW).]

C. The person's duty of loyalty as a general partner under section 1358, subsection 2, paragraphs A and B and duty of care under section 1358, subsection 3 continue only with regard to matters arising and events occurring before the person's dissociation as a general partner; [2005, c. 543, Pt. C, §2 (NEW).]

D. The person may sign and deliver to the Secretary of State for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and [2005, c. 543, Pt. C, §2 (NEW).]

E. Subject to section 1384 and subchapter 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Obligations to partnership and partners. A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1376. POWER TO BIND AND LIABILITY TO LIMITED PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON DISSOCIATED AS GENERAL PARTNER

1. Bound by act of dissociated general partner. After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under subchapter 11 or merged out of existence under subchapter 11, the limited partnership is bound by an act of the person only if:

A. The act would have bound the limited partnership under section 1352 before the dissociation; and [2005, c. 543, Pt. C, §2 (NEW).]

B. At the time the other party enters into the transaction:

- (1) Less than 2 years has passed since the dissociation; and
- (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Liability of dissociated general partner. If a limited partnership is bound under subsection 1, the person dissociated as a general partner that caused the limited partnership to be bound is liable:

- A. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1377. LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED AS GENERAL PARTNER

1. Liability of dissociated general partner. A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections 2 and 3, the person is not liable for a limited partnership's obligation incurred after dissociation.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Liability when dissociation resulted in dissolution. A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 1354 on an obligation incurred by the limited partnership under section 1394.

[2005, c. 543, Pt. C, §2 (NEW) .]

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

- A. A general partner would be liable on the transaction; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. At the time the other party enters into the transaction:
 - (1) Less than 2 years has passed since the dissociation; and
 - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 7: TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

§1381. PARTNER'S TRANSFERABLE INTEREST

The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1382. TRANSFER OF PARTNER'S TRANSFERABLE INTEREST

1. Transfer. A transfer, in whole or in part, of a partner's transferable interest:

A. Is permissible; [2005, c. 543, Pt. C, §2 (NEW).]

B. Does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and [2005, c. 543, Pt. C, §2 (NEW).]

C. Does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection 3 or to inspect or copy the required information or the limited partnership's other records. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Transferee's right to receive. A transferee has a right to receive, in accordance with the transfer:

A. Distributions to which the transferor would otherwise be entitled; and [2005, c. 543, Pt. C, §2 (NEW).]

B. Upon the dissolution and winding up of the limited partnership's activities, the net amount otherwise distributable to the transferor. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Transferee's liability for transferor's obligations. A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under sections 1361 and 1369. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1383. RIGHTS OF JUDGMENT CREDITOR OF PARTNER OR TRANSFEEE

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Redemption before foreclosure. At any time before foreclosure, an interest charged may be redeemed:

A. By the judgment debtor; [2005, c. 543, Pt. C, §2 (NEW) .]

B. With property other than limited partnership property, by one or more of the other partners; or [2005, c. 543, Pt. C, §2 (NEW) .]

C. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Exemption laws applicable. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1384. POWER OF ESTATE OF DECEASED PARTNER

If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 1382 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 1344. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW).

Subchapter 8: DISSOLUTION

§1391. NONJUDICIAL DISSOLUTION

Except as otherwise provided in section 1392, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following: [2005, c. 543, Pt. C, §2 (NEW).]

1. Event specified in partnership agreement. The happening of an event specified in the partnership agreement;

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Dissociation of general partner. After the dissociation of a person as a general partner:

A. If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or [2005, c. 543, Pt. C, §2 (NEW).]

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

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

(2) At least one person is admitted as a general partner in accordance with the consent; [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Declaration of dissolution. The signing and filing of a declaration of dissolution by the Secretary of State under section 1399, subsection 3.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1392. JUDICIAL DISSOLUTION

On application by a partner, the Superior Court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1393. WINDING UP

1. Purpose after dissolution. A limited partnership continues after dissolution only for the purpose of winding up its activities.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Winding up limited partnership. In winding up its activities, the limited partnership:

A. May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 1323 and perform other necessary acts; and [2005, c. 543, Pt. C, §2 (NEW) .]

B. Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities and marshal and distribute the assets of the partnership. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

A. Has the powers of a general partner under section 1394; and [2005, c. 543, Pt. C, §2 (NEW) .]

B. Shall promptly amend the certificate of limited partnership to state:

(1) That the limited partnership does not have a general partner;

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

(3) The street and mailing address of the person. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Judicial supervision. On the application of any partner, the Superior Court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

A. The limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection 3; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. The applicant establishes other good cause. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1394. POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION

1. General partner's act after dissolution. A limited partnership is bound by a general partner's act after dissolution that:

A. Is appropriate for winding up the limited partnership's activities; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. Would have bound the limited partnership under section 1352 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Dissociated general partner's act after dissolution. A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

A. At the time the other party enters into the transaction:

(1) Less than 2 years has passed since the dissociation; and

(2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and [2005, c. 543, Pt. C, §2 (NEW) .]

B. The act:

(1) Is appropriate for winding up the limited partnership's activities; or

(2) Would have bound the limited partnership under section 1352 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1395. LIABILITY AFTER DISSOLUTION OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNER

1. General partner liable for inappropriate act after dissolution. If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 1394, subsection 1 by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

- A. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Dissociated general partner liable for incurring obligation. If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 1394, subsection 2, the person is liable:

- A. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1396. KNOWN CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP

1. Dispose of known claims. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.

[2005, c. 543, Pt. C, §2 (NEW) .]

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

- A. Specify the information required to be included in a claim; [2005, c. 543, Pt. C, §2 (NEW).]
- B. Provide a mailing address to which the claim is to be sent; [2005, c. 543, Pt. C, §2 (NEW).]
- C. State the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; [2005, c. 543, Pt. C, §2 (NEW).]
- D. State that the claim will be barred if not received by the deadline; and [2005, c. 543, Pt. C, §2 (NEW).]

E. Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 1354. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Claim barred. A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and:

A. The claim is not received by the specified deadline; or [2005, c. 543, Pt. C, §2 (NEW).]

B. In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within 90 days after the receipt of the notice of the rejection. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1397. OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP

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

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Notice requirements. The notice must:

A. Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this State, in Kennebec County; [2007, c. 323, Pt. F, §19 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

B. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; [2005, c. 543, Pt. C, §2 (NEW).]

C. State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within 5 years after publication of the notice; and [2005, c. 543, Pt. C, §2 (NEW).]

D. Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 1354. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §19 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

3. Claimants barred. If a dissolved limited partnership publishes a notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within 5 years after the publication date of the notice:

- A. A claimant that did not receive notice in a record under section 1396; [2005, c. 543, Pt. C, §2 (NEW).]
- B. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and [2005, c. 543, Pt. C, §2 (NEW).]
- C. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Enforcement of claims. A claim not barred under this section may be enforced:

- A. Against the dissolved limited partnership, to the extent of its undistributed assets; [2005, c. 543, Pt. C, §2 (NEW).]
- B. If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or [2005, c. 543, Pt. C, §2 (NEW).]
- C. Against any person liable on the claim under section 1354. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §19 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1398. LIABILITY OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED PARTNERSHIP BARRED

If a claim against a dissolved limited partnership is barred under section 1396 or 1397, any corresponding claim under section 1354 is also barred. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1399. ADMINISTRATIVE DISSOLUTION OF DOMESTIC LIMITED PARTNERSHIP

1. Grounds for administrative dissolution. Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under subsection 2 to administratively dissolve a domestic limited partnership if:

- A. The domestic limited partnership does not pay when they are due any fees or penalties imposed by this chapter or other law; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The domestic limited partnership does not deliver its annual report to the Secretary of State as required by section 1330, subsection 1; [2005, c. 543, Pt. C, §2 (NEW).]

C. The domestic limited partnership does not pay the annual report late filing penalty as required by section 1330, subsection 3; [2005, c. 543, Pt. C, §2 (NEW).]

D. The domestic limited partnership is without a registered agent in this State as required by Title 5, section 105, subsection 1; [2007, c. 323, Pt. F, §20 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

E. The domestic limited partnership does not notify the Secretary of State that its registered agent has changed as required by Title 5, section 108, subsection 1 or the address of its registered agent has been changed as required by Title 5, section 109 or 110 or that its registered agent has resigned as required by Title 5, section 111; or [2007, c. 323, Pt. F, §21 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

F. A general partner, limited partner or agent of the domestic limited partnership signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §§20, 21 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Procedure for administrative dissolution of domestic limited partnership. If the Secretary of State determines that one or more grounds exist under subsection 1 for dissolving a domestic limited partnership, the Secretary of State shall serve the limited partnership with a written notice of that determination as required by subsection 10.

[2007, c. 323, Pt. F, §22 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

3. Administrative dissolution. The domestic limited partnership is administratively dissolved if within 60 days after the notice under subsection 2 was issued and is perfected under subsection 10 the Secretary of State determines that the limited partnership has failed to correct the ground or grounds for the dissolution. The Secretary of State shall send notice to the limited partnership as required by subsection 10 that recites the ground or grounds for dissolution and the effective date of dissolution.

[2007, c. 323, Pt. F, §23 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

4. Effect of administrative dissolution; prohibition. A domestic limited partnership administratively dissolved under this section continues its existence but may not transact any business in this State except as necessary to wind up the affairs of the limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Liability of limited partners. A limited partner of a domestic limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership's having been administratively dissolved under this section.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Validity of contracts; right to be sued; right to defend suit. The administrative dissolution of a domestic limited partnership under this section does not impair:

A. The validity of any contract or act of the domestic limited partnership; [2005, c. 543, Pt. C, §2 (NEW).]

B. The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or [2005, c. 543, Pt. C, §2 (NEW).]

C. The right of the domestic limited partnership to defend any action, suit or proceeding in any court of this State. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Authority of registered agent. The administrative dissolution of a domestic limited partnership under this section does not terminate the authority of its registered agent.

[2005, c. 543, Pt. C, §2 (NEW) .]

8. Protecting domestic limited partnership name after administrative dissolution. The name of a domestic limited partnership remains in the Secretary of State's record of limited partnership names and is protected for a period of 3 years following administrative dissolution under this section.

[2005, c. 543, Pt. C, §2 (NEW) .]

9. Notice to Superintendent of Financial Institutions in case of financial institution or credit union.

In the case of a financial institution authorized to do business in this State or a credit union authorized to do business in this State, as defined in Title 9-B, the Secretary of State shall notify the Superintendent of Financial Institutions within a reasonable time prior to administratively dissolving the financial institution or credit union under this section.

[2005, c. 543, Pt. C, §2 (NEW) .]

10. Delivery of notice. The Secretary of State shall send notice of its determination under subsection 1 by regular mail and the service upon the domestic limited partnership is perfected 5 days after the Secretary of State deposits its determination in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed to the registered agent of the limited partnership.

[2007, c. 323, Pt. F, §24 (NEW); 2007, c. 323, Pt. G, §4 (AFF) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §§20-24 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1400. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION OR SUSPENSION OF DOMESTIC LIMITED PARTNERSHIP

1. Reinstatement following administrative dissolution. A domestic limited partnership administratively dissolved under section 1399 may apply to the Secretary of State for reinstatement within 6 years after the effective date of dissolution.

A. The application for reinstatement must:

- (1) State the name of the domestic limited partnership and the effective date of its administrative dissolution;
 - (2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
 - (3) State that the domestic limited partnership's name satisfies the requirements of section 1308.
- [2005, c. 543, Pt. C, §2 (NEW).]

B. If the Secretary of State determines that the application contains the information required under this subsection and is accompanied by the reinstatement fee set forth in section 1460, subsection 6, and that the information is correct, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The

Secretary of State shall use the procedures set forth in section 1399, subsection 10 to deliver the notice to the domestic limited partnership. [2007, c. 323, Pt. F, §25 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

C. When the reinstatement is effective under this subsection, it relates back to and takes effect as of the effective date of the administrative dissolution, and the domestic limited partnership resumes business as if the administrative dissolution had not occurred. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §25 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Reinstatement after suspension. A domestic limited partnership that was suspended before July 1, 2004 may apply to the Secretary of State for reinstatement.

A. The reinstatement may be granted if:

(1) The Secretary of State determines that the application contains the information required under subsection 1;

(2) The application for reinstatement is accompanied by the reinstatement fee set forth in section 1460, subsection 6; and

(3) The application for reinstatement is received by the Secretary of State by June 30, 2010. [2005, c. 543, Pt. C, §2 (NEW).]

B. A domestic limited partnership that fails to meet the requirements of this subsection is administratively dissolved and may not reinstate. [2005, c. 543, Pt. C, §2 (NEW).]

C. The name of a domestic limited partnership that is suspended remains in the Secretary of State's record of limited partnership names and is protected for a period of 3 years following suspension. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §25 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1401. APPEAL FROM DENIAL OF REINSTATEMENT OF DOMESTIC LIMITED PARTNERSHIP

1. Denial of reinstatement. If the Secretary of State denies a domestic limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited partnership as required by section 1399, subsection 10 with a written notice that explains the reason or reasons for denial.

[2007, c. 323, Pt. F, §26 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Appeal. A domestic limited partnership may appeal a denial of reinstatement under subsection 1 to the Superior Court of the county where the limited partnership's principal office is located or, if there is no principal office in this State, in Kennebec County within 30 days after the date of the notice of denial. The limited partnership appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's notice of administrative dissolution, the limited partnership's application for reinstatement and the Secretary of State's notice of denial.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Court action. The court may summarily order the Secretary of State to reinstate an administratively dissolved domestic limited partnership or may take other action the court considers appropriate.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Final decision. The court's final decision in an appeal under this section may be appealed as in other civil proceedings.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §26 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1401-A. REVIVAL OF DOMESTIC LIMITED PARTNERSHIP AFTER DISSOLUTION

1. Determination of need to revive partnership. If the Secretary of State finds that a domestic limited partnership has dissolved in any manner under this subchapter and that the domestic limited partnership should be revived for any specified purpose or purposes for a specific period of time, the Secretary of State may upon application by an interested party file a certificate of revival in a form or format prescribed by the Secretary of State for reviving the domestic limited partnership.

[2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF) .]

2. Certificate of revival. The certificate of revival must include:

A. The name of the domestic limited partnership and its original date of organization; [2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF).]

B. The name of the domestic limited partnership's registered agent and the address of its registered agent at the time of dissolution; [2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF).]

C. The name and address of the party or parties requesting the revival; [2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF).]

D. The purpose or purposes for which revival is requested; and [2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF).]

E. The time period needed to complete the purpose or purposes specified under paragraph D. [2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF).]

[2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF) .]

3. Notice of revival. The Secretary of State shall issue a notice to the domestic limited partnership to the address provided in subsection 2, paragraph C stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival filed under this subsection.

[2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF) .]

4. Termination of revival. When the time period specified in subsection 2, paragraph E has expired, the Secretary of State shall issue a notice to the domestic limited partnership at the address provided in subsection 2, paragraph C that the status of the limited partnership has returned to the status prior to filing the certificate of revival under this section.

[2007, c. 231, §37 (NEW); 2007, c. 231, §40 (AFF) .]

SECTION HISTORY

2007, c. 231, §37 (NEW). 2007, c. 231, §40 (AFF).

§1402. DISPOSITION OF ASSETS; WHEN CONTRIBUTIONS REQUIRED

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

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Surplus paid in cash distribution. Any surplus remaining after the limited partnership complies with subsection 1 must be paid in cash as a distribution.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Insufficient assets to satisfy all obligations. If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection 1, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply.

A. Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 1377 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred. [2005, c. 543, Pt. C, §2 (NEW) .]

B. If a person does not contribute the full amount required under paragraph A with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph A on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred. [2005, c. 543, Pt. C, §2 (NEW) .]

C. If a person does not make the additional contribution required by paragraph B, further additional contributions are determined and due in the same manner as provided in that paragraph. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Additional contribution recoverable. A person that makes an additional contribution under subsection 3, paragraph B or C may recover from any person whose failure to contribute under subsection 3, paragraph A or B necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Estate of deceased liable for obligations. The estate of a deceased individual is liable for the individual's obligations under this section.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Assignee, court appointee may enforce. An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection 3.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1403. LATE REINSTATEMENT OF DOMESTIC LIMITED PARTNERSHIP AFTER ADMINISTRATIVE DISSOLUTION

1. Application to reinstate domestic limited partnership. A domestic limited partnership that has been administratively dissolved for more than 6 years may apply to the Secretary of State for reinstatement. The application must:

- A. Provide the name of the domestic limited partnership and the effective date of its administrative dissolution; [2015, c. 254, §4 (NEW) .]
- B. Provide a statement together with supporting documentation that the general partner signing the application is duly authorized to act for the domestic limited partnership; [2015, c. 254, §4 (NEW) .]
- C. Establish that the grounds for dissolution either did not exist or have been eliminated; [2015, c. 254, §4 (NEW) .]
- D. Demonstrate that the domestic limited partnership's name satisfies the requirements of section 1308 or that the domestic limited partnership is filing an amendment to change the name to satisfy the requirements of section 1308; [2015, c. 254, §4 (NEW) .]
- E. Attest that no lawsuits are pending against the domestic limited partnership; and [2015, c. 254, §4 (NEW) .]
- F. Explain the reason or reasons that reinstatement is being requested. [2015, c. 254, §4 (NEW) .]

[2015, c. 254, §4 (NEW) .]

2. Determination of need to reinstate domestic limited partnership. If the Secretary of State determines that the application satisfies the provisions of subsection 1 and is accompanied by the reinstatement fee set forth in section 1460, subsection 6, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The Secretary of State may deny reinstatement if there are material misstatements provided in the application. The Secretary of State shall use the procedures set forth in section 1399, subsection 10 to deliver the notice to the domestic limited partnership.

[2015, c. 254, §4 (NEW) .]

3. Effect of reinstatement. When the reinstatement is effective under subsection 2, it relates back to and takes effect as of the effective date of the administrative dissolution, and the domestic limited partnership resumes activities as if the administrative dissolution had not occurred.

[2015, c. 254, §4 (NEW) .]

SECTION HISTORY

2015, c. 254, §4 (NEW).

Subchapter 9: FOREIGN LIMITED PARTNERSHIPS

§1411. GOVERNING LAW

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Certificate of authority. A certificate of authority under this subchapter does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this State.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1412. APPLICATION FOR CERTIFICATE OF AUTHORITY

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

A. The name of the foreign limited partnership and, if the name does not comply with section 1308, the name under which it proposes to apply for authority to do business pursuant to section 1415, subsection 1; [2005, c. 543, Pt. C, §2 (NEW).]

B. The name of the State or other jurisdiction under whose law the foreign limited partnership is organized and its date of formation; [2005, c. 543, Pt. C, §2 (NEW).]

C. The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office; [2005, c. 543, Pt. C, §2 (NEW).]

D. The information required by Title 5, section 105, subsection 1; [2007, c. 323, Pt. F, §27 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

E. The name and street and mailing address of each of the foreign limited partnership's general partners; and [2005, c. 543, Pt. C, §2 (NEW).]

F. Whether the foreign limited partnership is a foreign limited liability limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §27 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Certificate of existence or similar record. A foreign limited partnership shall deliver with the completed application under subsection 1 a certificate of existence or a record of similar import signed by the Secretary of State or other official having custody of the limited partnership's publicly filed records in the State or other jurisdiction under whose law the foreign limited partnership is organized. The certificate of existence must have been made not more than 90 days prior to delivery of the application for filing.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §27 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1412-A. AMENDMENTS TO APPLICATION

1. Amendments to application. If any statement in the application for authority to do business of a foreign limited partnership requires change as a result of subsequent events, the foreign limited partnership shall promptly file with the Secretary of State a certificate, executed by a general partner, amending the statement. The statement must include:

A. The name of the foreign limited partnership; [2005, c. 543, Pt. C, §2 (NEW).]

B. The jurisdiction of organization and the date of its organization; [2005, c. 543, Pt. C, §2 (NEW).]

C. The date the foreign limited partnership was granted authority to transact business in this State; and [2005, c. 543, Pt. C, §2 (NEW).]

D. The information that is causing the amendment to be filed. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Changes requiring prompt delivery of amendment. A foreign limited partnership shall promptly deliver to the Secretary of State for filing an amended application for authority to reflect:

A. The admission of a new general partner; [2005, c. 543, Pt. C, §2 (NEW).]

B. The dissociation of a person as a general partner; [2005, c. 543, Pt. C, §2 (NEW).]

C. The change in the address of one or more of the general partners from that appearing on the record of the office of the Secretary of State. The application must be amended to set forth the new business, residence or mailing address of each partner; or [2005, c. 543, Pt. C, §2 (NEW).]

D. The address of the registered or principal office of the limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Responsibility of general partner. A general partner that knows that any information in a filed application of authority was false when the certificate was filed or has become false due to changed circumstances shall promptly:

A. Cause the application to be amended; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. If appropriate, deliver to the Secretary of State for filing a statement of change pursuant to section 1315 or a statement of correction pursuant to section 1327. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Amendment at any time. An application for authority may be amended at any time for any other proper purpose as determined by the foreign limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Effective when filed. Subject to section 1326, subsection 3, an amended application for authority is effective when filed by the Secretary of State.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW) .

§1413. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS

1. Activities not constituting transacting business. Activities of a foreign limited partnership that do not constitute transacting business in this State within the meaning of this subchapter include:

A. Maintaining, defending and settling an action or proceeding; [2005, c. 543, Pt. C, §2 (NEW) .]

B. Holding meetings of its partners or carrying on any other activity concerning its internal affairs; [2005, c. 543, Pt. C, §2 (NEW) .]

C. Maintaining accounts in financial institutions; [2005, c. 543, Pt. C, §2 (NEW) .]

D. Maintaining offices or agencies for the transfer, exchange and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities; [2005, c. 543, Pt. C, §2 (NEW) .]

E. Selling through independent contractors; [2005, c. 543, Pt. C, §2 (NEW) .]

F. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts; [2005, c. 543, Pt. C, §2 (NEW) .]

G. Creating or acquiring indebtedness, mortgages or security interests in real or personal property; [2005, c. 543, Pt. C, §2 (NEW) .]

H. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired; [2005, c. 543, Pt. C, §2 (NEW) .]

I. Conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and [2005, c. 543, Pt. C, §2 (NEW) .]

J. Transacting business in interstate commerce. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Ownership of property. For purposes of this subchapter, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this State.

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1414. FILING OF CERTIFICATE OF AUTHORITY

Unless the Secretary of State determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the Secretary of State, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this State and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1415. FICTITIOUS NAME OF FOREIGN LIMITED PARTNERSHIP

1. Requirements for use of fictitious name. As used in this section, "fictitious name" means a name adopted by a foreign limited partnership authorized to transact business in this State because its real name is unavailable pursuant to section 1308, subsection 1.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Authorized to transact business. Upon complying with this section, a foreign limited partnership authorized to transact business in this State may transact its business in this State under its fictitious name.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. File statement indicating use of fictitious name. Prior to transacting business in this State under a fictitious name, a foreign limited partnership shall execute and deliver to the Secretary of State for filing a statement setting forth:

- A. The foreign limited partnership name; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The foreign limited partnership's jurisdiction of organization and date of organization; [2005, c. 543, Pt. C, §2 (NEW).]
- C. That the foreign limited partnership intends to transact business under a fictitious name; and [2005, c. 543, Pt. C, §2 (NEW).]
- D. The fictitious name that the foreign limited partnership proposes to use. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Compliance required. A fictitious name must comply with the requirements of section 1308, subsection 1.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Enjoin use of fictitious name. If a foreign limited partnership uses a fictitious name without complying with the requirements of this section, the continued use of the fictitious name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the fictitious name.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Enjoin use despite compliance. Notwithstanding its compliance with the requirements of this section, the use of a fictitious name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

A. The fictitious name did not, at the time the statement required by subsection 3 was filed, comply with the requirements of section 1308, subsection 1; or [2005, c. 543, Pt. C, §2 (NEW) .]

B. The fictitious name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law. [2005, c. 543, Pt. C, §2 (NEW) .]

The mere filing of a statement pursuant to subsection 3 does not constitute actual use of the fictitious name set out in that statement for purposes of determining priority of rights.

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Terminate use of fictitious name. A foreign limited partnership may terminate a fictitious name by executing and delivering a statement setting forth:

A. The name of the foreign limited partnership; [2005, c. 543, Pt. C, §2 (NEW) .]

B. The foreign limited partnership's jurisdiction of organization and date of organization; [2005, c. 543, Pt. C, §2 (NEW) .]

C. The date on which the foreign limited partnership was authorized to transact business in this State; [2005, c. 543, Pt. C, §2 (NEW) .]

D. That the foreign limited partnership no longer intends to transact business under the fictitious name; and [2005, c. 543, Pt. C, §2 (NEW) .]

E. The fictitious name the foreign limited partnership intends to terminate. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1416. REVOCATION OF AUTHORITY

1. Grounds for revocation of authority. Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under subsection 2 to revoke the authority of a foreign limited partnership authorized to transact business in this State if:

A. The foreign limited partnership does not pay when they are due any fees or penalties imposed by this chapter or other law; [2005, c. 543, Pt. C, §2 (NEW) .]

B. The foreign limited partnership does not deliver its annual report to the Secretary of State as required by section 1330, subsection 1; [2005, c. 543, Pt. C, §2 (NEW).]

C. The foreign limited partnership does not pay the annual report late filing penalty as required by section 1330, subsection 3; [2005, c. 543, Pt. C, §2 (NEW).]

D. The foreign limited partnership is without a registered agent in this State as required by Title 5, section 105, subsection 1; [2007, c. 323, Pt. F, §28 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

E. The foreign limited partnership does not notify the Secretary of State that its registered agent has changed as required by Title 5, section 108 or the address of its registered agent has been changed as required by Title 5, section 109 or 110 or that its registered agent has resigned as required by Title 5, section 111; or [2007, c. 323, Pt. F, §29 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

F. A general partner, limited partner or agent of the foreign limited partnership signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §§28, 29 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Procedure for revocation of foreign limited partnership. If the Secretary of State determines that one or more grounds exist under subsection 1 for the revocation of authority of the foreign limited partnership, the Secretary of State shall serve the foreign limited partnership with a written notice of that determination as required by subsection 7.

[2007, c. 323, Pt. F, §30 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

3. Revocation of authority. The foreign limited partnership's authority is revoked if within 60 days after the notice under subsection 2 was issued and is perfected under subsection 7 the Secretary of State determines that the foreign limited partnership has failed to correct the ground or grounds for the revocation. The Secretary of State shall send notice to the foreign limited partnership as required by subsection 7 that recites the ground or grounds for revocation and the effective date of revocation.

[2007, c. 323, Pt. F, §31 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

4. Authority to transact business ceases. The authority of a foreign limited partnership to transact business in this State ceases on the effective date of revocation of its authority.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Registered agent; not terminated. Revocation of a foreign limited partnership's authority to transact business in this State does not terminate the authority of the registered agent of the foreign limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Authorization after revocation. A foreign limited partnership whose authority to transact business in this State has been revoked under this section and that wishes to transact business again in this State must be authorized as provided in this chapter.

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Delivery of notice. The Secretary of State shall send notice of its determination under subsection 1 by regular mail and the service upon the foreign limited partnership is perfected 5 days after the Secretary of State deposits its determination in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed to the registered agent in this State and the registered or principal office, wherever located, of the foreign limited partnership.

[2007, c. 323, Pt. F, §32 (NEW); 2007, c. 323, Pt. G, §4 (AFF) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §§28-32 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1417. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT OF FAILURE TO HAVE CERTIFICATE

1. Notice of cancellation. In order to cancel its certificate of authority to transact business in this State, a foreign limited partnership must deliver to the Secretary of State for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 1326.

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Liability based solely on transaction without certificate of authority. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without a certificate of authority.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Secretary of State appointed as agent. If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it appoints the Secretary of State as its agent for service of process for rights of action arising out of the transaction of business in this State.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1418. ACTION BY ATTORNEY GENERAL

The Attorney General may maintain an action to restrain a foreign limited partnership from transacting business in this State in violation of this subchapter. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW).

Subchapter 10: ACTIONS BY PARTNERS

§1421. DIRECT ACTION BY PARTNER

1. Action against limited partnership or partner. Subject to subsection 2, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1422. DERIVATIVE ACTION

A partner may maintain a derivative action to enforce a right of a limited partnership if: [2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Demand futile. A demand would be futile.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1423. PROPER PLAINTIFF

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and: [2005, c. 543, Pt. C, §2 (NEW) .]

1. Partner when conduct occurred. That was a partner when the conduct giving rise to the action occurred; or

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1424. PLEADING

In a derivative action, the complaint must state with particularity: [2005, c. 543, Pt. C, §2 (NEW) .]

1. Date and content of demand; response. The date and content of the plaintiff's demand and the general partners' response to the demand; or

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Demand excused. Why the demand should be excused as futile.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1425. PROCEEDS AND EXPENSES

1. Proceeds. Except as otherwise provided in subsection 2:

A. Any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the limited partnership and not to the derivative plaintiff; and [2005, c. 543, Pt. C, §2 (NEW) .]

B. If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership. [2005, c. 543, Pt. C, §2 (NEW) .]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 11: CONVERSION AND MERGER

§1431. DEFINITIONS

As used in this subchapter, the following terms have the following meanings. [2005, c. 543, Pt. C, §2 (NEW).]

1. Constituent limited partnership. "Constituent limited partnership" means a constituent organization that is a limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Constituent organization. "Constituent organization" means an organization that is party to a merger.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Converted organization. "Converted organization" means the organization into which a converting organization converts pursuant to sections 1432 to 1435.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Converting limited partnership. "Converting limited partnership" means a converting organization that is a limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Converting organization. "Converting organization" means an organization that converts into another organization pursuant to section 1432.

[2005, c. 543, Pt. C, §2 (NEW) .]

6. General partner. "General partner" means a general partner of a limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

7. Governing statute. "Governing statute" of an organization means the statute that governs the organization's internal affairs.

[2005, c. 543, Pt. C, §2 (NEW) .]

8. Organization. "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. "Organization" includes domestic and foreign organizations whether or not organized for profit.

[2005, c. 543, Pt. C, §2 (NEW) .]

9. Organizational documents. "Organizational documents" means:

A. For a domestic or foreign general partnership, its partnership agreement; [2005, c. 543, Pt. C, §2 (NEW).]

B. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement; [2005, c. 543, Pt. C, §2 (NEW).]

C. For a limited liability company or foreign limited liability company, its articles of organization and operating agreement, or comparable records as provided in its governing statute; [2011, c. 113, Pt. B, §2 (AMD).]

D. For a business trust, its agreement of trust and declaration of trust; [2005, c. 543, Pt. C, §2 (NEW).]

E. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute; and [2005, c. 543, Pt. C, §2 (NEW).]

F. For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it or are members of it. [2005, c. 543, Pt. C, §2 (NEW).]

[2011, c. 113, Pt. B, §2 (AMD).]

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

A. By the organization's governing statute solely by reason of the person co-owning, having an interest in or being a member of the organization; or [2005, c. 543, Pt. C, §2 (NEW).]

B. By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in or being a member of the organization. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW).]

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

[2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2011, c. 113, Pt. B, §2 (AMD).

§1432. CONVERSION

1. Conversion to or from limited partnership. An organization other than a limited partnership may convert to a limited partnership and a limited partnership may convert to another organization pursuant to this section and sections 1433 to 1435 and a plan of conversion if:

A. The other organization's governing statute authorizes the conversion; [2005, c. 543, Pt. C, §2 (NEW).]

B. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and [2005, c. 543, Pt. C, §2 (NEW).]

C. The other organization complies with its governing statute in effecting the conversion. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW).]

2. Plan of conversion. A plan of conversion must be in a record and must include:

A. The name and form of the organization before conversion; [2005, c. 543, Pt. C, §2 (NEW).]

B. The name and form of the organization after conversion; [2005, c. 543, Pt. C, §2 (NEW).]

C. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization and other consideration; and [2005, c. 543, Pt. C, §2 (NEW).]

D. The organizational documents of the converted organization. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1433. ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP

1. Consent. Subject to section 1440, a plan of conversion must be consented to by all the partners of a converting limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Amend plan or abandon planned conversion. Subject to section 1440 and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 1434, a converting limited partnership may amend the plan or abandon the planned conversion:

A. As provided in the plan; and [2005, c. 543, Pt. C, §2 (NEW).]

B. Except as prohibited by the plan, by the same consent as was required to approve the plan. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1434. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE

1. Deliver to Secretary of State articles of conversion; certificate of limited partnership. After a plan of conversion is approved:

A. A converting limited partnership shall deliver to the Secretary of State for filing articles of conversion, which must include:

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

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

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

(4) A statement that the conversion was approved as required by this chapter;

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

(6) If the converted organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office that may be used for service of process under section 1435, subsection 3; and [2007, c. 323, Pt. F, §33 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

B. If the converting organization is not a converting limited partnership, the converting organization shall deliver to the Secretary of State for filing a certificate of limited partnership, which must include, in addition to the information required by section 1321:

- (1) A statement that the limited partnership was converted from another organization;
- (2) The name and form of the organization and the jurisdiction of its governing statute; and
- (3) A statement that the conversion was approved in a manner that complied with the organization's governing statute. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §33 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

2. Conversion effective. A conversion becomes effective:

A. If the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and [2005, c. 543, Pt. C, §2 (NEW).]

B. If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §33 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1435. EFFECT OF CONVERSION

1. Same entity. An organization that has been converted pursuant to this subchapter is for all purposes the same entity that existed before the conversion.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Effect of conversion. When a conversion takes effect:

A. All property owned by the converting organization remains vested in the converted organization; [2005, c. 543, Pt. C, §2 (NEW).]

B. All debts, liabilities and other obligations of the converting organization continue as obligations of the converted organization; [2005, c. 543, Pt. C, §2 (NEW).]

C. An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred; [2005, c. 543, Pt. C, §2 (NEW).]

D. Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting organization remain vested in the converted organization; [2005, c. 543, Pt. C, §2 (NEW).]

E. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and [2005, c. 543, Pt. C, §2 (NEW).]

F. Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of subchapter 8. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Foreign organization; Secretary of State as agent. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by the converting organization, if before the conversion the converting organization was subject to suit in this State

on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this State may be served with process at the address required in the articles of conversion under section 1434, subsection 1, paragraph A, subparagraph (6).

[2007, c. 323, Pt. F, §34 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §34 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1436. MERGER

1. Merger requirements. A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 1437 through 1439 and a plan of merger if:

- A. The governing statute of each of the other organizations authorizes the merger; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and [2005, c. 543, Pt. C, §2 (NEW).]
- C. Each of the other organizations complies with its governing statute in effecting the merger. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Plan of merger. A plan of merger must be in a record and must include:

- A. The name and form of each constituent organization; [2005, c. 543, Pt. C, §2 (NEW).]
- B. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect; [2005, c. 543, Pt. C, §2 (NEW).]
- C. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization and other consideration; [2005, c. 543, Pt. C, §2 (NEW).]
- D. If the surviving organization is to be created by the merger, the surviving organization's organizational documents; and [2005, c. 543, Pt. C, §2 (NEW).]
- E. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1437. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED PARTNERSHIP

1. Consent. Subject to section 1440, a plan of merger must be consented to by all the partners of a constituent limited partnership.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Amend plan or abandon planned merger. Subject to section 1440 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 1438, a constituent limited partnership may amend the plan or abandon the planned merger:

A. As provided in the plan; and [2005, c. 543, Pt. C, §2 (NEW).]

B. Except as prohibited by the plan, with the same consent as was required to approve the plan. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1438. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE

1. Articles of merger; signed. After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

A. Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]

B. Each other preexisting constituent organization, by an authorized representative. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Articles of merger; contents. The articles of merger must include:

A. The name and form of each constituent organization and the jurisdiction of its governing statute; [2005, c. 543, Pt. C, §2 (NEW).]

B. The name and form of the surviving organization, the jurisdiction of its governing statute and, if the surviving organization is created by the merger, a statement to that effect; [2005, c. 543, Pt. C, §2 (NEW).]

C. The date the merger is effective under the governing statute of the surviving organization; [2005, c. 543, Pt. C, §2 (NEW).]

D. If the surviving organization is to be created by the merger:

(1) If the surviving organization will be a limited partnership, the limited partnership's certificate of limited partnership; or

(2) If the surviving organization will be an organization other than a limited partnership, the organizational document that creates the organization; [2005, c. 543, Pt. C, §2 (NEW).]

E. If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization; [2005, c. 543, Pt. C, §2 (NEW).]

F. A statement as to each constituent organization that the merger was approved as required by the organization's governing statute; [2005, c. 543, Pt. C, §2 (NEW).]

G. If the surviving organization is a foreign organization not authorized to transact business in this State, the street and mailing address of an office that may be used for service of process under section 1439, subsection 2; and [2007, c. 323, Pt. F, §35 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

H. Any additional information required by the governing statute of any constituent organization. [2005, c. 543, Pt. C, §2 (NEW).]

[2007, c. 323, Pt. F, §35 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

3. Deliver to Secretary of State. Each constituent limited partnership shall deliver the articles of merger for filing in the office of the Secretary of State.

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Merger effective. A merger becomes effective under this subchapter:

A. If the surviving organization is a limited partnership, upon the later of:

(1) Compliance with subsection 3; and

(2) Subject to section 1326, subsection 3, as specified in the articles of merger; or [2005, c. 543, Pt. C, §2 (NEW).]

B. If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 323, Pt. F, §35 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1439. EFFECT OF MERGER

1. Effect of merger. When a merger becomes effective:

A. The surviving organization continues or comes into existence; [2005, c. 543, Pt. C, §2 (NEW).]

B. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity; [2005, c. 543, Pt. C, §2 (NEW).]

C. All property owned by each constituent organization that ceases to exist vests in the surviving organization; [2005, c. 543, Pt. C, §2 (NEW).]

D. All debts, liabilities and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization; [2005, c. 543, Pt. C, §2 (NEW).]

E. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred; [2005, c. 543, Pt. C, §2 (NEW).]

F. Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist vest in the surviving organization; [2005, c. 543, Pt. C, §2 (NEW).]

G. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; [2005, c. 543, Pt. C, §2 (NEW).]

H. Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of subchapter 8; [2005, c. 543, Pt. C, §2 (NEW).]

I. If the surviving organization is created by the merger:

(1) If the surviving organization is a limited partnership, the certificate of limited partnership becomes effective; or

(2) If the surviving organization is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and [2005, c. 543, Pt. C, §2 (NEW).]

J. If the surviving organization preexists the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Foreign organization. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this State on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this State may be served with process at the address required in the articles of merger under section 1438, subsection 2, paragraph G.

[2007, c. 323, Pt. F, §36 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

SECTION HISTORY

2005, c. 543, §2 (NEW). 2007, c. 323, Pt. F, §36 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

§1440. RESTRICTIONS ON APPROVAL OF CONVERSIONS AND MERGERS AND ON RELINQUISHING LIMITED LIABILITY LIMITED PARTNERSHIP STATUS

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

- A. The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. The partner has consented to the provision of the partnership agreement. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Consent required for amendment to certificate; exception. An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

- A. The limited partnership's partnership agreement provides for the amendment with the consent of fewer than all the general partners; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Insufficient consent. A partner does not give the consent required by subsection 1 or 2 merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW).

§1441. LIABILITY OF GENERAL PARTNER AFTER CONVERSION OR MERGER

1. Liability not discharged. A conversion or merger under this subchapter does not discharge any liability under sections 1354 and 1377 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

A. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability; [2005, c. 543, Pt. C, §2 (NEW).]

B. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]

C. If a person is required to pay any amount under this subsection:

(1) The person has a right of contribution from each other person that was liable as a general partner under section 1354 when the obligation was incurred and has not been released from the obligation under section 1377; and

(2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Additional liability. In addition to any other liability provided by law:

A. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a 3rd party after the conversion or merger becomes effective if, at the time the 3rd party enters into the transaction, the 3rd party:

(1) Does not have notice of the conversion or merger; and

(2) Reasonably believes that:

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

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

(iii) The person is a general partner in the converting or constituent limited partnership; and [2005, c. 543, Pt. C, §2 (NEW).]

B. A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a 3rd party after the conversion or merger becomes effective if:

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

(2) At the time the 3rd party enters into the transaction less than 2 years have passed since the person dissociated as a general partner and the 3rd party:

(i) Does not have notice of the dissociation;

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

(iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership and the person is a general partner in the converting or constituent limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1442. POWER OF GENERAL PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER CONVERSION OR MERGER

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

- A. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 1352; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. At the time the 3rd party enters into the transaction, the 3rd party:
 - (1) Does not have notice of the conversion or merger; and
 - (2) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

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

- A. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 1352 if the person had been a general partner; and [2005, c. 543, Pt. C, §2 (NEW).]
- B. At the time the 3rd party enters into the transaction, less than 2 years have passed since the person dissociated as a general partner and the 3rd party:
 - (1) Does not have notice of the dissociation;
 - (2) Does not have notice of the conversion or merger; and
 - (3) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Liable for damage. If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection 1 or 2, the person is liable:

- A. To the converted or surviving organization for any damage caused to the organization arising from the obligation; and [2005, c. 543, Pt. C, §2 (NEW).]

B. If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1443. SUBCHAPTER NOT EXCLUSIVE

This subchapter does not preclude an entity from being converted or merged under other law. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

Subchapter 12: MISCELLANEOUS PROVISIONS

§1451. UNIFORMITY OF APPLICATION AND CONSTRUCTION

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1452. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

This chapter modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but this chapter does not modify, limit or supersede Section 101(c) of that Act or authorize electronic delivery of any of the notices described in Section 103(b) of that Act. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1453. APPLICATION TO EXISTING RELATIONSHIPS

1. Before July 1, 2008. Before July 1, 2008, this chapter governs only:

A. A limited partnership formed on or after July 1, 2007; and [2005, c. 543, Pt. C, §2 (NEW).]

B. Except as otherwise provided in subsections 3 and 4, a limited partnership formed before July 1, 2007 that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

2. On or after July 1, 2008. Except as otherwise provided in subsection 3, on and after July 1, 2008, this chapter governs all limited partnerships.

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Existing limited partnerships. With respect to a limited partnership formed before July 1, 2007, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement.

A. Section 1304, subsection 3 does not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2007. [2005, c. 543, Pt. C, §2 (NEW).]

B. The limited partnership is not required to amend its certificate of limited partnership to comply with section 1321, subsection 1, paragraph D. [2005, c. 543, Pt. C, §2 (NEW).]

C. Sections 1371 and 1372 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before July 1, 2007. [2005, c. 543, Pt. C, §2 (NEW).]

D. Section 1373, subsection 4 does not apply. [2005, c. 543, Pt. C, §2 (NEW).]

E. Section 1373, subsection 5 does not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2007. [2005, c. 543, Pt. C, §2 (NEW).]

F. Section 1391, subsection 3 does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2007. [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Limited partnership that elects to be subject. With respect to a limited partnership that elects pursuant to subsection 1, paragraph B to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to 3rd parties apply:

A. Before July 1, 2008, to:

(1) A 3rd party that had not done business with the limited partnership in the year before the election took effect; and

(2) A 3rd party that had done business with the limited partnership in the year before the election took effect only if the 3rd party knows or has received a notification of the election; and [2005, c. 543, Pt. C, §2 (NEW).]

B. On and after July 1, 2008, to all 3rd parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph A, subparagraph (2). [2005, c. 543, Pt. C, §2 (NEW).]

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Effect of nonelection by limited partnership formed before July 1, 2007. A limited partnership formed before July 1, 2007 that does not elect pursuant to subsection 1, paragraph B to be subject to this chapter continues to be governed by the provisions of former chapter 11 until July 1, 2008.

[2007, c. 502, §1 (NEW); 2007, c. 502, §2 (AFF) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 502, §1 (AMD). 2007, c. 502, §2 (AFF).

§1454. SAVINGS CLAUSE

This chapter does not affect an action commenced, proceeding brought or right accrued before this chapter takes effect. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1455. DUTY OF SECRETARY OF STATE

The Secretary of State's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not: [2005, c. 543, Pt. C, §2 (NEW).]

1. Validity of documents. Affect the validity or invalidity of the document in whole or in part;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Correctness of information. Relate to the correctness or incorrectness of information contained in the document; or

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Presumption of validity or correctness. Create a presumption that the document is valid or invalid or that the information in the document is correct or incorrect.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1456. RULES

The Secretary of State may adopt rules not inconsistent with this chapter pertaining to the filing of documents with the Secretary of State. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. These may include, but are not limited to, rules to: [2005, c. 543, Pt. C, §2 (NEW) .]

1. Forms. Prescribe forms for any or all documents required or permitted to be delivered for filing under this chapter and to refuse to file documents not utilizing these prescribed forms;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Approve filing. Refuse to file any document that is not clearly legible or that may not be clearly reproducible photographically;

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Appoint designee. Appoint a designee or other agent to receive documents for filing and to file documents on behalf of the Secretary of State;

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Electronic filings; facsimile signatures. Permit the filing of documents by electronic transmission and permit facsimile signatures on documents to be filed;

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Effective dates of filings. Unless specifically stated in this chapter, set forth the effective dates of filings required by this chapter; and

[2005, c. 543, Pt. C, §2 (NEW) .]

6. Annual report filing date. Provide alternative dates for filing annual reports and for determining the dates covered by those reports.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1457. EXPEDITED SERVICE

The Secretary of State may provide an expedited service for the processing of documents in accordance with this chapter. If the service is provided, the Secretary of State shall establish by rule a fee schedule and governing procedures in accordance with the Maine Administrative Procedure Act. All fees collected for expedited service must be deposited into a fund for use by the Secretary of State in providing an improved filing service. [2005, c. 543, Pt. C, §2 (NEW).]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1458. ACCESS TO DATA BASE

The Secretary of State may provide public access to the data base through a dial-in modem, through public terminals and through electronic duplicates of the data base. If access to the data base is provided to the public, the Secretary of State may adopt rules in accordance with the Maine Administrative Procedure Act to establish a fee schedule and governing procedures. [2005, c. 543, Pt. C, §2 (NEW).]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

§1459. PUBLICATIONS

1. Fee schedule. The Secretary of State may establish by rule in accordance with the Maine Administrative Procedure Act a fee schedule to cover the cost of printing and distribution of publications and to set the procedures for the sale of these publications.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Deposit in fund. All fees collected pursuant to this section must be deposited in a fund for use by the Secretary of State for the purpose of replacing and updating publications offered in accordance with this chapter and for funding new publications.

[2005, c. 543, Pt. C, §2 (NEW) .]

SECTION HISTORY

2005, c. 543, §2 (NEW) .

§1460. FEES; PENALTIES

A document required to be filed under this chapter is not effective until the applicable fee required by this section is paid. The following fees or penalties must be paid to and collected by the Secretary of State:

[2005, c. 543, Pt. C, §2 (NEW) .]

1. Reservation. For filing of an application for reservation of name or a notice of transfer or cancellation of reservation pursuant to section 1309, subsection 1, a fee of \$20 for each limited partnership affected;

[2005, c. 543, Pt. C, §2 (NEW) .]

2. Assumed or fictitious name. For filing of an application for an assumed name under section 1308, subsection 2, a fee in the amount of \$125, and for filing of an application for a fictitious name under section 1415, a fee of \$40;

[2005, c. 543, Pt. C, §2 (NEW) .]

3. Termination of assumed or fictitious name. For a termination of an assumed name under section 1308, subsection 2, a fee of \$20; for a termination of a fictitious name under section 1415, a fee of \$20;

[2005, c. 543, Pt. C, §2 (NEW) .]

4. Registered name. For filing of an application for a registered name of a foreign limited partnership under section 1309, subsection 2, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing. For filing an application to renew the registration of a registered name, a fee of \$200;

[2005, c. 543, Pt. C, §2 (NEW) .]

5. Change of registered agent and registered office or registered office for domestic limited partnerships.

[2007, c. 323, Pt. F, §37 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

6. Reinstatement fee after administrative dissolution. For failure to file an annual report, a fee of \$150, to a maximum fee of \$600, regardless of the number of delinquent reports or the period of delinquency; for failure to pay the annual report late filing penalty, a fee of \$150; for failure to appoint or maintain a registered agent, a fee of \$150; for failure to notify the Secretary of State that its registered agent or the address of its registered agent has been changed or that its registered agent has resigned, a fee of \$150; for failure to file an amended application, a fee of \$150; and for filing false information, a fee of \$150;

[2007, c. 323, Pt. F, §38 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

7. Certificate of limited partnership, amendment or cancellation. For filing of a certificate of limited partnership under section 1321, a fee of \$175; for a certificate of amendment under section 1322, a fee of \$50; and for a statement of termination under section 1323, a fee of \$75. For filing of a certificate of amendment under section 1322, subsection 2, paragraph D, a fee of \$20, and for filing a restated certificate of limited partnership under section 1322, a fee of \$80;

[2005, c. 543, Pt. C, §2 (NEW) .]

8. Certificate of correction. For filing of a certificate of correction under section 1327, a fee of \$50;

[2005, c. 543, Pt. C, §2 (NEW) .]

9. Foreign limited partnerships. For filing of an application for authority to do business as a foreign limited partnership under section 1412, a fee of \$250. For a certificate of amendment under section 1412-A to change the legal name of the foreign limited partnership, for a certificate of amendment under section 1412-A, subsection 2, paragraph A or B to admit a new general partner or to dissociate a general partner, respectively, or for a certificate of cancellation under section 1417, a fee of \$90. For filing a certificate of amendment under section 1412-A, subsection 2, paragraph C or D to change the address of a general partner or to change the address of the registered or principal office, a fee of \$35;

[2007, c. 535, Pt. A, §6 (AMD); 2007, c. 535, Pt. A, §7 (AFF) .]

10. Photocopies. For all photocopies, whether certified or not, a fee of \$2 per page. The Secretary of State may issue photocopies of instruments on file as well as other copies;

[2005, c. 543, Pt. C, §2 (NEW) .]

11. Certified copies. For providing certified copies of any instrument on file as provided for by this chapter, a fee of \$5 for each copy certified in addition to any fee due under subsection 10;

[2005, c. 543, Pt. C, §2 (NEW) .]

12. Issuing certificate. For issuing a certificate of existence, certificate of authority or certificate of fact as provided by section 1329, a fee of \$30;

[2005, c. 543, Pt. C, §2 (NEW) .]

13. Preclearance of document. For preclearance of any document for filing, a fee of \$100;

[2005, c. 543, Pt. C, §2 (NEW) .]

14. All other filings. For receiving and filing any certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$35;

[2005, c. 543, Pt. C, §2 (NEW) .]

15. Annual report. For filing of an annual report under section 1330 for a domestic limited partnership, a fee of \$85; for filing of an annual report under section 1330 for a foreign limited partnership, a fee of \$150;

[2005, c. 543, Pt. C, §2 (NEW) .]

16. Amended annual report. For filing an amended annual report for a domestic limited partnership under section 1330, subsection 2, a fee of \$85; for filing an amended annual report for a foreign limited partnership under section 1330, subsection 2, a fee of \$150;

[2005, c. 543, Pt. C, §2 (NEW) .]

17. Service of process on Secretary of State as agent. For accepting service of process under section 1317, a fee of \$35;

[2005, c. 543, Pt. C, §2 (NEW) .]

18. Articles of merger or conversion. Articles of merger or conversion of a limited partnership with or to another type of business entity as provided by subchapter 11, a fee of \$150;

[2005, c. 543, Pt. C, §2 (NEW) .]

19. Late filing penalty. For failing to deliver an annual report by its due date, in addition to the annual report filing fee, a fee of \$50; and

[2007, c. 231, §38 (AMD) .]

20. Certificate of revival after dissolution. Certificate of revival after dissolution for a domestic limited partnership, as provided in section 1401-A, a fee of \$150.

[2007, c. 231, §39 (NEW); 2007, c. 231, §40 (AFF) .]

All fees collected as provided by this chapter must be remitted to the Treasurer of State for the use of the State with the exception of those fees established by rule and collected for expedited service. Fees for expedited service are deposited into a fund for use by the Secretary of State in providing an improved filing service. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW). 2007, c. 231, §§38, 39 (AMD). 2007, c. 231, §40 (AFF). 2007, c. 323, Pt. F, §§37, 38 (AMD). 2007, c. 323, Pt. G, §4 (AFF). 2007, c. 535, Pt. A, §6 (AMD). 2007, c. 535, Pt. A, §7 (AFF).

§1461. EFFECTIVE DATE

This chapter takes effect July 1, 2007. [2005, c. 543, Pt. C, §2 (NEW).]

SECTION HISTORY

2005, c. 543, §C2 (NEW).

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