

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SECOND REGULAR SESSION, 2006

H. B. NO. 15-178

A BILL FOR AN ACT

To amend Division 4 of Title 4 of the Code by adding a new Part entitled Business Partnerships; to adopt the Uniform Partnership Act (1997) as drafted by the National Conference of Commissioners on Uniform State Laws; and for other purposes.

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings.** The Legislature finds that nearly every state except Louisiana has
2 adopted some version of the Uniform Partnership Act drafted by the National Conference of
3 Commissioners on Uniform State Laws. The Conference first considered a uniform law of
4 partnership in 1902. The resulting Uniform Partnership Act ("UPA") was finally approved by the
5 Conference in 1914. The UPA governs general partnerships, and also governs limited
6 partnerships except where the limited partnership statute is inconsistent. The National
7 Conference has noted over the past 80 years, the 49 states that adopted the UPA made
8 remarkably few amendments.

9 In January of 1986, an American Bar Association subcommittee issued a detailed report
10 that recommended extensive revisions to the UPA. The ABA Report recommended that the
11 "entity theory "of partnership law should be incorporated into any revision of the UPA whenever
12 possible. Following a series of revisions in 1992 and 1993, the Revised Uniform Partnership Act
13 (1992) [RUPA] was adopted unanimously by a vote of the States on August 6, 1992, adopted
14 unanimously by the Conference in 1994, and approved by the American Bar Association House
15 of Delegates in August, 1994. The RUPA gives supremacy to the partnership agreement in
16 almost all situations.

17 In 1995, the Conference appointed a Drafting Committee to add provisions to RUPA
18 authorizing the creation of a new form of general partnership called a limited liability partnership
19 (LLP). At the time RUPA was first approved in 1992, only two states had adopted limited

1 liability partnership legislation. By the time the LLP amendments to RUPA were approved by
2 the Conference at the 1996 Annual Meeting, however, over forty states had adopted limited
3 liability partnership provisions to their general partnership statutes.

4 The LLP amendments to RUPA deal with four major issues: (1) scope of a partner's
5 liability shield; (2) the voting requirement to become an LLP; (3) the effect of becoming an
6 LLP on the partnership agreement; and (4) the annual filing requirement. The revised uniform
7 law, incorporating the LLP amendments is known as the Uniform Partnership Act (1997).

8 The legislature finds that the Uniform Partnership Act (1997) is an appropriate and long
9 overdue law in the Commonwealth. It brings the Commonwealth into the mainstream of
10 American partnership law but adopts the modern trend among the various states in dealing with
11 increasingly complex partnership issues. Before this Act, the Commonwealth relied solely on the
12 common law for resolution of partnership issues. This Act incorporates much of the existing
13 common law and also provides maximum flexibility and protection to partnerships and their
14 individual members. It also establishes a vital role for the Commonwealth Government, through
15 its Registrar of Corporations, by giving it certain well-defined powers over domestic and foreign
16 LLP's in the Commonwealth.

17 **Section 2. Amendment.** Division 4 of Title 4 of the Commonwealth Code is hereby
18 amended by adding a new Part entitled "Business Partnerships" that adopts the Uniform
19 Partnership Act (1997) as drafted by the National Conference of Commissioners on Uniform
20 State Laws and as modified to incorporate the relevant law of the Commonwealth as set forth
21 below.

22 "ARTICLE 1

23 GENERAL PROVISIONS

24 **Section 101. Definitions.** In this Act:

25 (1) "Business" includes every trade, occupation, and profession.

26 (2) "Debtor in bankruptcy" means a person who is the subject of:

27 (i) an order for relief under Title 11 of the United States Code or a
28 comparable order under a successor statute of general application; or

1 (ii) a comparable order under federal, state, or foreign law governing
2 insolvency.

3 (3) "Distribution" means a transfer of money or other property from a partnership
4 to a partner in the partner's capacity as a partner or to the partner's transferee.

5 (4) "Foreign limited liability partnership" means a partnership that:

6 (i) is formed under laws other than the laws of this State; and

7 (ii) has the status of a limited liability partnership under those laws.

8 (5) "Limited liability partnership" means a partnership that has filed a statement
9 of qualification under Section 1001 and does not have a similar statement in effect in any
10 other jurisdiction.

11 (6) "Partnership" means an association of two or more persons to carry on as co-
12 owners a business for profit formed under Section 202, predecessor law, or comparable
13 law of another jurisdiction.

14 (7) "Partnership agreement" means the agreement, whether written, oral, or
15 implied, among the partners concerning the partnership, including amendments to the
16 partnership agreement.

17 (8) "Partnership at will" means a partnership in which the partners have not
18 agreed to remain partners until the expiration of a definite term or the completion of a
19 particular undertaking.

20 (9) "Partnership interest" or "partner's interest in the partnership" means all of a
21 partner's interests in the partnership, including the partner's transferable interest and all
22 management and other rights.

23 (10) "Person" means an individual, corporation, business trust, estate, trust,
24 partnership, association, joint venture, government, governmental subdivision, agency, or
25 instrumentality, or any other legal or commercial entity.

26 (11) "Property" means all property, real, personal, or mixed, tangible or
27 intangible, or any interest therein.

1 (12) "State" means a state of the United States, the Commonwealth of the
2 Northern Mariana Islands, District of Columbia, the Commonwealth of Puerto Rico, or
3 any territory or insular possession subject to the jurisdiction of the United States.

4 (13) "Statement" means a statement of partnership authority under Section 303, a
5 statement of denial under Section 304, a statement of dissociation under Section 704, a
6 statement of dissolution under Section 805, a statement of merger under Section 907, a
7 statement of qualification under Section 1001, a statement of foreign qualification under
8 Section 1102, or an amendment or cancellation of any of the foregoing.

9 (14) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and
10 encumbrance.

11 **Section 102. Knowledge and Notice.**

12 (a) A person knows a fact if the person has actual knowledge of it.

13 (b) A person has notice of a fact if the person:

14 (1) knows of it;

15 (2) has received a notification of it; or

16 (3) has reason to know it exists from all of the facts known to the person
17 at the time in question.

18 (c) A person notifies or gives a notification to another by taking steps reasonably
19 required to inform the other person in ordinary course, whether or not the other person
20 learns of it.

21 (d) A person receives a notification when the notification:

22 (1) comes to the person's attention; or

23 (2) is duly delivered at the person's place of business or at any other place
24 held out by the person as a place for receiving communications.

25 (e) Except as otherwise provided in subsection (f), a person other than an
26 individual knows, has notice, or receives a notification of a fact for purposes of a
27 particular transaction when the individual conducting the transaction knows, has notice,
28 or receives a notification of the fact, or in any event when the fact would have been

1 brought to the individual's attention if the person had exercised reasonable diligence. The
2 person exercises reasonable diligence if it maintains reasonable routines for
3 communicating significant information to the individual conducting the transaction and
4 there is reasonable compliance with the routines. Reasonable diligence does not require
5 an individual acting for the person to communicate information unless the
6 communication is part of the individual's regular duties or the individual has reason to
7 know of the transaction and that the transaction would be materially affected by the
8 information.

9 (f) A partner's knowledge, notice, or receipt of a notification of a fact relating to
10 the partnership is effective immediately as knowledge by, notice to, or receipt of a
11 notification by the partnership, except in the case of a fraud on the partnership committed
12 by or with the consent of that partner.

13 **Section 103. Effect Of Partnership Agreement; Nonwaivable Provisions.**

14 (a) Except as otherwise provided in subsection (b), relations among the partners
15 and between the partners and the partnership are governed by the partnership agreement.
16 To the extent the partnership agreement does not otherwise provide, this Act governs
17 relations among the partners and between the partners and the partnership.

18 (b) The partnership agreement may not:

19 (1) vary the rights and duties under Section 105 except to eliminate the
20 duty to provide copies of statements to all of the partners;

21 (2) unreasonably restrict the right of access to books and records under
22 Section 403(b);

23 (3) eliminate the duty of loyalty under Section 404(b) or 603(b)(3), but:

24 (i) the partnership agreement may identify specific types or
25 categories of activities that do not violate the duty of loyalty, if not
26 manifestly unreasonable; or

27 (ii) all of the partners or a number or percentage specified in the
28 partnership agreement may authorize or ratify, after full disclosure of all

1 material facts, a specific act or transaction that otherwise would violate the
2 duty of loyalty;

3 (4) unreasonably reduce the duty of care under Section 404(c) or 603(b)(3);

4 (5) eliminate the obligation of good faith and fair dealing under Section 404(d),
5 but the partnership agreement may prescribe the standards by which the performance of
6 the obligation is to be measured, if the standards are not manifestly unreasonable;

7 (6) vary the power to dissociate as a partner under Section 602(a), except to
8 require the notice under Section 601(1) to be in writing;

9 (7) vary the right of a court to expel a partner in the events specified in Section
10 601(5);

11 (8) vary the requirement to wind up the partnership business in cases specified in
12 Section 801(4), (5), or (6);

13 (9) vary the law applicable to a limited liability partnership under Section 106(b);
14 or

15 (10) restrict rights of third parties under this Act.

16 **Section 104. Supplemental Principles Of Law.**

17 (a) Unless displaced by particular provisions of this Act, the principles of law and
18 equity supplement this Act.

19 (b) If an obligation to pay interest arises under this Act and the rate is not
20 specified, the prevailing rate is that specified for judgments for the payment of money,
21 currently codified at 7 CMC § 4101.

22 **Section 105. Execution, Filing, And Recording Of Statements.**

23 (a) A statement may be filed in the office of the Registrar of Corporations. A
24 certified copy of a statement that is filed in an office in another State may be filed in the
25 office of the Registrar of Corporations. Either filing has the effect provided in this Act
26 with respect to partnership property located in or transactions that occur in this State.

27 (b) A certified copy of a statement that has been filed in the office of the
28 Registrar of Corporations and recorded in the Commonwealth Recorder's Office for

1 recording transfers of real property has the effect provided for recorded statements in this
2 Act. A recorded statement that is not a certified copy of a statement filed in the office of
3 the Registrar of Corporations does not have the effect provided for recorded statements in
4 this Act.

5 (c) A statement filed by a partnership must be executed by at least two partners.
6 Other statements must be executed by a partner or other person authorized by this Act.
7 An individual who executes a statement as, or on behalf of, a partner or other person
8 named as a partner in a statement shall personally declare under penalty of perjury that
9 the contents of the statement are accurate.

10 (d) A person authorized by this Act to file a statement may amend or cancel the
11 statement by filing an amendment or cancellation that names the partnership, identifies
12 the statement, and states the substance of the amendment or cancellation.

13 (e) A person who files a statement pursuant to this section shall promptly send a
14 copy of the statement to every nonfiling partner and to any other person named as a
15 partner in the statement. Failure to send a copy of a statement to a partner or other person
16 does not limit the effectiveness of the statement as to a person not a partner.

17 (f) The Registrar of Corporations may collect a fee for filing or providing a
18 certified copy of a statement. The Commonwealth Recorder's office may collect a fee for
19 recording a statement.

20 **Section 106. Governing Law.**

21 (a) Except as otherwise provided in subsection (b), the law of the jurisdiction in
22 which a partnership has its chief executive office governs relations among the partners
23 and between the partners and the partnership.

24 (b) The law of this State governs relations among the partners and between the
25 partners and the partnership and the liability of partners for an obligation of a limited
26 liability partnership.

27 **Section 107. Partnership Subject To Amendment Or Repeal Of Act.** A partnership
28 governed by this Act is subject to any amendment to or repeal of this Act.

1 ARTICLE 2

2 NATURE OF PARTNERSHIP

3 **Section 201. Partnership As Entity.**

4 (a) A partnership is an entity distinct from its partners.

5 (b) A limited liability partnership continues to be the same entity that existed
6 before the filing of a statement of qualification under Section 1001.

7 **Section 202. Formation Of Partnership.**

8 (a) Except as otherwise provided in subsection (b), the association of two or more
9 persons to carry on as co-owners a business for profit forms a partnership, whether or not
10 the persons intend to form a partnership.

11 (b) An association formed under a statute other than this Act, a predecessor
12 statute, or a comparable statute of another jurisdiction is not a partnership under this Act.

13 (c) In determining whether a partnership is formed, the following rules apply:

14 (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint
15 property, common property, or part ownership does not by itself establish a
16 partnership, even if the co-owners share profits made by the use of the property.

17 (2) The sharing of gross returns does not by itself establish a partnership,
18 even if the persons sharing them have a joint or common right or interest in
19 property from which the returns are derived.

20 (3) A person who receives a share of the profits of a business is presumed
21 to be a partner in the business, unless the profits were received in payment:

22 (i) of a debt by installments or otherwise;

23 (ii) for services as an independent contractor or of wages or other
24 compensation to an employee;

25 (iii) of rent;

26 (iv) of an annuity or other retirement or health benefit to a beneficiary,
27 representative, or designee of a deceased or retired partner;

1 (v) of interest or other charge on a loan, even if the amount of payment
2 varies with the profits of the business, including a direct or indirect present or
3 future ownership of the collateral, or rights to income, proceeds, or increase in
4 value derived from the collateral; or

5 (vi) for the sale of the goodwill of a business or other property by
6 installments or otherwise.

7 **Section 203. Partnership Property.** Property acquired by a partnership is property of
8 the partnership and not of the partners individually.

9 **Section 204. When Property Is Partnership Property.**

10 (a) Property is partnership property if acquired in the name of:

11 (1) the partnership; or

12 (2) one or more partners with an indication in the instrument transferring
13 title to the property of the person's capacity as a partner or of the existence of a
14 partnership but without an indication of the name of the partnership.

15 (b) Property is acquired in the name of the partnership by a transfer to:

16 (1) the partnership in its name; or

17 (2) one or more partners in their capacity as partners in the partnership, if
18 the name of the partnership is indicated in the instrument transferring title to the
19 property.

20 (c) Property is presumed to be partnership property if purchased with partnership
21 assets, even if not acquired in the name of the partnership or of one or more partners with
22 an indication in the instrument transferring title to the property of the person's capacity as
23 a partner or of the existence of a partnership.

24 (d) Property acquired in the name of one or more of the partners, without an
25 indication in the instrument transferring title to the property of the person's capacity as a
26 partner or of the existence of a partnership and without use of partnership assets, is
27 presumed to be separate property, even if used for partnership purposes.

28 **ARTICLE 3**

1 RELATIONS OF PARTNERS TO
2 PERSONS DEALING WITH PARTNERSHIP

3 **Section 301. Partner Agent Of Partnership.** Subject to the effect of a statement of
4 partnership authority under Section 303:

5 (1) Each partner is an agent of the partnership for the purpose of its business. An
6 act of a partner, including the execution of an instrument in the partnership name, for
7 apparently carrying on in the ordinary course the partnership business or business of the
8 kind carried on by the partnership binds the partnership, unless the partner had no
9 authority to act for the partnership in the particular matter and the person with whom the
10 partner was dealing knew or had received a notification that the partner lacked authority.

11 (2) An act of a partner which is not apparently for carrying on in the ordinary
12 course the partnership business or business of the kind carried on by the partnership binds
13 the partnership only if the act was authorized by the other partners.

14 **Section 302. Transfer Of Partnership Property.**

15 (a) Partnership property may be transferred as follows:

16 (1) Subject to the effect of a statement of partnership authority under
17 Section 303, partnership property held in the name of the partnership may be
18 transferred by an instrument of transfer executed by a partner in the partnership
19 name.

20 (2) Partnership property held in the name of one or more partners with an
21 indication in the instrument transferring the property to them of their capacity as
22 partners or of the existence of a partnership, but without an indication of the name
23 of the partnership, may be transferred by an instrument of transfer executed by the
24 persons in whose name the property is held.

25 (3) Partnership property held in the name of one or more persons other
26 than the partnership, without an indication in the instrument transferring the
27 property to them of their capacity as partners or of the existence of a partnership,

1 may be transferred by an instrument of transfer executed by the persons in whose
2 name the property is held.

3 (b) A partnership may recover partnership property from a transferee only if it
4 proves that execution of the instrument of initial transfer did not bind the partnership
5 under Section 301 and:

6 (1) as to a subsequent transferee who gave value for property transferred
7 under subsection (a)(1) and (2), proves that the subsequent transferee knew or
8 had received a notification that the person who executed the instrument of initial
9 transfer lacked authority to bind the partnership; or

10 (2) as to a transferee who gave value for property transferred under
11 subsection (a)(3), proves that the transferee knew or had received a notification
12 that the property was partnership property and that the person who executed the
13 instrument of initial transfer lacked authority to bind the partnership.

14 (c) A partnership may not recover partnership property from a subsequent
15 transferee if the partnership would not have been entitled to recover the property, under
16 subsection (b), from any earlier transferee of the property.

17 (d) If a person holds all of the partners' interests in the partnership, all of the
18 partnership property vests in that person. The person may execute a document in the
19 name of the partnership to evidence vesting of the property in that person and may file or
20 record the document.

21 **Section 303. Statement Of Partnership Authority.**

22 (a) A partnership may file a statement of partnership authority, which:

23 (1) must include:

24 (i) the name of the partnership;

25 (ii) the street address of its chief executive office and of one office
26 in this State, if there is one;

1 (iii) the names and mailing addresses of all of the partners or of an
2 agent appointed and maintained by the partnership for the purpose of
3 subsection (b); and

4 (iv) the names of the partners authorized to execute an instrument
5 transferring real property held in the name of the partnership; and

6 (2) may state the authority, or limitations on the authority, of some or all
7 of the partners to enter into other transactions on behalf of the partnership and any
8 other matter.

9 (b) If a statement of partnership authority names an agent, the agent shall
10 maintain a list of the names and mailing addresses of all of the partners and make it
11 available to any person on request for good cause shown.

12 (c) If a filed statement of partnership authority is executed pursuant to Section
13 105(c) and states the name of the partnership but does not contain all of the other
14 information required by subsection (a), the statement nevertheless operates with respect
15 to a person not a partner as provided in subsections (d) and (e).

16 (d) Except as otherwise provided in subsection (g), a filed statement of
17 partnership authority supplements the authority of a partner to enter into transactions on
18 behalf of the partnership as follows:

19 (1) Except for transfers of real property, a grant of authority contained in
20 a filed statement of partnership authority is conclusive in favor of a person who
21 gives value without knowledge to the contrary, so long as and to the extent that a
22 limitation on that authority is not then contained in another filed statement. A
23 filed cancellation of a limitation on authority revives the previous grant of
24 authority.

25 (2) A grant of authority to transfer real property held in the name of the
26 partnership contained in a certified copy of a filed statement of partnership
27 authority recorded in the office for recording transfers of that real property is
28 conclusive in favor of a person who gives value without knowledge to the

1 contrary, so long as and to the extent that a certified copy of a filed statement
2 containing a limitation on that authority is not then of record in the office for
3 recording transfers of that real property. The recording in the office for recording
4 transfers of that real property of a certified copy of a filed cancellation of a
5 limitation on authority revives the previous grant of authority.

6 (e) A person not a partner is deemed to know of a limitation on the authority of a
7 partner to transfer real property held in the name of the partnership if a certified copy of
8 the filed statement containing the limitation on authority is of record in the office for
9 recording transfers of that real property.

10 (f) Except as otherwise provided in subsections (d) and (e) and Sections 704 and
11 805, a person not a partner is not deemed to know of a limitation on the authority of a
12 partner merely because the limitation is contained in a filed statement.

13 (g) Unless earlier canceled, a filed statement of partnership authority is canceled
14 by operation of law five years after the date on which the statement, or the most recent
15 amendment, was filed with the Registrar of Corporations.

16 **Section 304. Statement Of Denial.** A partner or other person named as a partner in a
17 filed statement of partnership authority or in a list maintained by an agent pursuant to Section
18 303(b) may file a statement of denial stating the name of the partnership and the fact that is
19 being denied, which may include denial of a person's authority or status as a partner. A statement
20 of denial is a limitation on authority as provided in Section 303(d) and (e).

21 **Section 305. Partnership Liable For Partner's Actionable Conduct.**

22 (a) A partnership is liable for loss or injury caused to a person, or for a penalty
23 incurred, as a result of a wrongful act or omission, or other actionable conduct, of a
24 partner acting in the ordinary course of business of the partnership or with authority of
25 the partnership.

26 (b) If, in the course of the partnership's business or while acting with authority of
27 the partnership, a partner receives or causes the partnership to receive money or property

1 of a person not a partner, and the money or property is misapplied by a partner, the
2 partnership is liable for the loss.

3 **Section 306. Partner's Liability.**

4 (a) Except as otherwise provided in subsections (b) and (c), all partners are liable
5 jointly and severally for all obligations of the partnership unless otherwise agreed by the
6 claimant or provided by law.

7 (b) A person admitted as a partner into an existing partnership is not personally
8 liable for any partnership obligation incurred before the person's admission as a partner.

9 (c) An obligation of a partnership incurred while the partnership is a limited
10 liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation
11 of the partnership. A partner is not personally liable, directly or indirectly, by way of
12 contribution or otherwise, for such an obligation solely by reason of being or so acting as
13 a partner. This subsection applies notwithstanding anything inconsistent in the
14 partnership agreement that existed immediately before the vote required to become a
15 limited liability partnership under Section 1001(b).

16 **Section 307. Actions By And Against Partnership And Partners.**

17 (a) A partnership may sue and be sued in the name of the partnership.

18 (b) An action may be brought against the partnership and, to the extent not
19 inconsistent with Section 306, any or all of the partners in the same action or in separate
20 actions.

21 (c) A judgment against a partnership is not by itself a judgment against a partner.
22 A judgment against a partnership may not be satisfied from a partner's assets unless there
23 is also a judgment against the partner.

24 (d) A judgment creditor of a partner may not levy execution against the assets of
25 the partner to satisfy a judgment based on a claim against the partnership unless the
26 partner is personally liable for the claim under Section 306 and:

1 (1) a judgment based on the same claim has been obtained against the
2 partnership and a writ of execution on the judgment has been returned unsatisfied
3 in whole or in part;

4 (2) the partnership is a debtor in bankruptcy;

5 (3) the partner has agreed that the creditor need not exhaust partnership
6 assets;

7 (4) a court grants permission to the judgment creditor to levy execution
8 against the assets of a partner based on a finding that partnership assets subject to
9 execution are clearly insufficient to satisfy the judgment, that exhaustion of
10 partnership assets is excessively burdensome, or that the grant of permission is an
11 appropriate exercise of the court's equitable powers; or

12 (5) liability is imposed on the partner by law or contract independent of
13 the existence of the partnership.

14 (e) This section applies to any partnership liability or obligation resulting from a
15 representation by a partner or purported partner under Section 308.

16 **Section 308. Liability Of Purported Partner.**

17 (a) If a person, by words or conduct, purports to be a partner, or consents to being
18 represented by another as a partner, in a partnership or with one or more persons not
19 partners, the purported partner is liable to a person to whom the representation is made, if
20 that person, relying on the representation, enters into a transaction with the actual or
21 purported partnership. If the representation, either by the purported partner or by a person
22 with the purported partner's consent, is made in a public manner, the purported partner is
23 liable to a person who relies upon the purported partnership even if the purported partner
24 is not aware of being held out as a partner to the claimant. If partnership liability results,
25 the purported partner is liable with respect to that liability as if the purported partner were
26 a partner. If no partnership liability results, the purported partner is liable with respect to
27 that liability jointly and severally with any other person consenting to the representation.

1 (b) If a person is thus represented to be a partner in an existing partnership, or
2 with one or more persons not partners, the purported partner is an agent of persons
3 consenting to the representation to bind them to the same extent and in the same manner
4 as if the purported partner were a partner, with respect to persons who enter into
5 transactions in reliance upon the representation. If all of the partners of the existing
6 partnership consent to the representation, a partnership act or obligation results. If fewer
7 than all of the partners of the existing partnership consent to the representation, the
8 person acting and the partners consenting to the representation are jointly and severally
9 liable.

10 (c) A person is not liable as a partner merely because the person is named by
11 another in a statement of partnership authority.

12 (d) A person does not continue to be liable as a partner merely because of a
13 failure to file a statement of dissociation or to amend a statement of partnership authority
14 to indicate the partner's dissociation from the partnership.

15 (e) Except as otherwise provided in subsections (a) and (b), persons who are not
16 partners as to each other are not liable as partners to other persons.

17 ARTICLE 4

18 RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

19 **Section 401. Partner's Rights And Duties.**

20 (a) Each partner is deemed to have an account that is:

21 (1) credited with an amount equal to the money plus the value of any
22 other property, net of the amount of any liabilities, the partner contributes to the
23 partnership and the partner's share of the partnership profits; and

24 (2) charged with an amount equal to the money plus the value of any
25 other property, net of the amount of any liabilities, distributed by the partnership
26 to the partner and the partner's share of the partnership losses.

1 (b) Each partner is entitled to an equal share of the partnership profits and is
2 chargeable with a share of the partnership losses in proportion to the partner's share of the
3 profits.

4 (c) A partnership shall reimburse a partner for payments made and indemnify a
5 partner for liabilities incurred by the partner in the ordinary course of the business of the
6 partnership or for the preservation of its business or property.

7 (d) A partnership shall reimburse a partner for an advance to the partnership
8 beyond the amount of capital the partner agreed to contribute.

9 (e) A payment or advance made by a partner which gives rise to a partnership
10 obligation under subsection (c) or (d) constitutes a loan to the partnership which accrues
11 interest from the date of the payment or advance.

12 (f) Each partner has equal rights in the management and conduct of the
13 partnership business.

14 (g) A partner may use or possess partnership property only on behalf of the
15 partnership.

16 (h) A partner is not entitled to remuneration for services performed for the
17 partnership, except for reasonable compensation for services rendered in winding up the
18 business of the partnership.

19 (i) A person may become a partner only with the consent of all of the partners.

20 (j) A difference arising as to a matter in the ordinary course of business of a
21 partnership may be decided by a majority of the partners. An act outside the ordinary
22 course of business of a partnership and an amendment to the partnership agreement may
23 be undertaken only with the consent of all of the partners.

24 (k) This section does not affect the obligations of a partnership to other persons
25 under Section 301.

26 **Section 402. Distributions In Kind.** A partner has no right to receive, and may not be
27 required to accept, a distribution in kind.

28 **Section 403. Partner's Rights And Duties With Respect To Information.**

1 (a) A partnership shall keep its books and records, if any, at its chief executive
2 office.

3 (b) A partnership shall provide partners and their agents and attorneys access to
4 its books and records. It shall provide former partners and their agents and attorneys
5 access to books and records pertaining to the period during which they were partners. The
6 right of access provides the opportunity to inspect and copy books and records during
7 ordinary business hours. A partnership may impose a reasonable charge, covering the
8 costs of labor and material, for copies of documents furnished.

9 (c) Each partner and the partnership shall furnish to a partner, and to the legal
10 representative of a deceased partner or partner under legal disability:

11 (1) without demand, any information concerning the partnership's
12 business and affairs reasonably required for the proper exercise of the partner's
13 rights and duties under the partnership agreement or this Act; and

14 (2) on demand, any other information concerning the partnership's
15 business and affairs, except to the extent the demand or the information demanded
16 is unreasonable or otherwise improper under the circumstances.

17 **Section 404. General Standards Of Partner's Conduct.**

18 (a) The only fiduciary duties a partner owes to the partnership and the other
19 partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

20 (b) A partner's duty of loyalty to the partnership and the other partners is limited
21 to the following:

22 (1) to account to the partnership and hold as trustee for it any property,
23 profit, or benefit derived by the partner in the conduct and winding up of the
24 partnership business or derived from a use by the partner of partnership property,
25 including the appropriation of a partnership opportunity;

26 (2) to refrain from dealing with the partnership in the conduct or winding
27 up of the partnership business as or on behalf of a party having an interest adverse
28 to the partnership; and

1 (3) to refrain from competing with the partnership in the conduct of the
2 partnership business before the dissolution of the partnership.

3 (c) A partner's duty of care to the partnership and the other partners in the
4 conduct and winding up of the partnership business is limited to refraining from engaging
5 in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation
6 of law.

7 (d) A partner shall discharge the duties to the partnership and the other partners
8 under this Act or under the partnership agreement and exercise any rights consistently
9 with the obligation of good faith and fair dealing.

10 (e) A partner does not violate a duty or obligation under this Act or under the
11 partnership agreement merely because the partner's conduct furthers the partner's own
12 interest.

13 (f) A partner may lend money to and transact other business with the partnership,
14 and as to each loan or transaction the rights and obligations of the partner are the same as
15 those of a person who is not a partner, subject to other applicable law.

16 (g) This section applies to a person winding up the partnership business as the
17 personal or legal representative of the last surviving partner as if the person were a
18 partner.

19 **Section 405. Actions By Partnership And Partners.**

20 (a) A partnership may maintain an action against a partner for a breach of the
21 partnership agreement, or for the violation of a duty to the partnership, causing harm to
22 the partnership.

23 (b) A partner may maintain an action against the partnership or another partner
24 for legal or equitable relief, with or without an accounting as to partnership business, to:

25 (1) enforce the partner's rights under the partnership agreement;

26 (2) enforce the partner's rights under this Act, including:

27 (i) the partner's rights under Sections 401, 403, or 404;

1 (ii) the partner's right on dissociation to have the partner's interest
2 in the partnership purchased pursuant to Section 701 or enforce any other
3 right under Article 6 or 7; or

4 (iii) the partner's right to compel a dissolution and winding up of
5 the partnership business under Section 801 or enforce any other right
6 under Article 8; or

7 (3) enforce the rights and otherwise protect the interests of the partner,
8 including rights and interests arising independently of the partnership relationship.

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

12 **Section 406. Continuation Of Partnership Beyond Definite Term Or Particular**
13 **Undertaking.**

14 (a) If a partnership for a definite term or particular undertaking is continued,
15 without an express agreement, after the expiration of the term or completion of the
16 undertaking, the rights and duties of the partners remain the same as they were at the
17 expiration or completion, so far as is consistent with a partnership at will.

18 (b) If the partners, or those of them who habitually acted in the business during
19 the term or undertaking, continue the business without any settlement or liquidation of
20 the partnership, they are presumed to have agreed that the partnership will continue.

21 ARTICLE 5

22 TRANSFEREES AND CREDITORS OF PARTNER

23 **Section 501. Partner Not Co-Owner Of Partnership Property.** A partner is not a co-
24 owner of partnership property and has no interest in partnership property which can be
25 transferred, either voluntarily or involuntarily.

26 **Section 502. Partner's Transferable Interest In Partnership.** The only transferable
27 interest of a partner in the partnership is the partner's share of the profits and losses of the
28 partnership and the partner's right to receive distributions. The interest is personal property.

1 **Section 503. Transfer Of Partner's Transferable Interest.**

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

4 (1) is permissible;

5 (2) does not by itself cause the partner's dissociation or a dissolution and
6 winding up of the partnership business; and

7 (3) does not, as against the other partners or the partnership, entitle the
8 transferee, during the continuance of the partnership, to participate in the
9 management or conduct of the partnership business, to require access to
10 information concerning partnership transactions, or to inspect or copy the
11 partnership books or records.

12 (b) A transferee of a partner's transferable interest in the partnership has a right:

13 (1) to receive, in accordance with the transfer, distributions to which the
14 transferor would otherwise be entitled;

15 (2) to receive upon the dissolution and winding up of the partnership
16 business, in accordance with the transfer, the net amount otherwise distributable
17 to the transferor; and

18 (3) to seek under Section 801(6) a judicial determination that it is
19 equitable to wind up the partnership business.

20 (c) In a dissolution and winding up, a transferee is entitled to an account of
21 partnership transactions only from the date of the latest account agreed to by all of the
22 partners.

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

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

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

4 **Section 504. Partner's Transferable Interest Subject To Charging Order.**

5 (a) On application by a judgment creditor of a partner or of a partner's transferee,
6 a court having jurisdiction may charge the transferable interest of the judgment debtor to
7 satisfy the judgment. The court may appoint a receiver of the share of the distributions
8 due or to become due to the judgment debtor in respect of the partnership and make all
9 other orders, directions, accounts, and inquiries the judgment debtor might have made or
10 which the circumstances of the case may require.

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

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

16 (1) by the judgment debtor;

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

19 (3) with partnership property, by one or more of the other partners with
20 the consent of all of the partners whose interests are not so charged.

21 (d) This Act does not deprive a partner of a right under exemption laws with
22 respect to the partner's interest in the partnership.

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

26 ARTICLE 6

27 PARTNER'S DISSOCIATION

1 **Section 601. Events Causing Partner's Dissociation.** A partner is dissociated from a
2 partnership upon the occurrence of any of the following events:

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

5 (2) an event agreed to in the partnership agreement as causing the partner's
6 dissociation;

7 (3) the partner's expulsion pursuant to the partnership agreement;

8 (4) the partner's expulsion by the unanimous vote of the other partners if:

9 (i) it is unlawful to carry on the partnership business with that partner;

10 (ii) there has been a transfer of all or substantially all of that partner's
11 transferable interest in the partnership, other than a transfer for security purposes,
12 or a court order charging the partner's interest, which has not been foreclosed;

13 (iii) within 90 days after the partnership notifies a corporate partner that it
14 will be expelled because it has filed a certificate of dissolution or the equivalent,
15 its charter has been revoked, or its right to conduct business has been suspended
16 by the jurisdiction of its incorporation, there is no revocation of the certificate of
17 dissolution or no reinstatement of its charter or its right to conduct business; or

18 (iv) a partnership that is a partner has been dissolved and its business is
19 being wound up;

20 (5) on application by the partnership or another partner, the partner's expulsion
21 by judicial determination because:

22 (i) the partner engaged in wrongful conduct that adversely and materially
23 affected the partnership business;

24 (ii) the partner willfully or persistently committed a material breach of the
25 partnership agreement or of a duty owed to the partnership or the other partners
26 under Section 404; or

1 (iii) the partner engaged in conduct relating to the partnership business
2 which makes it not reasonably practicable to carry on the business in partnership
3 with the partner;

4 (6) the partner's:

5 (i) becoming a debtor in bankruptcy;

6 (ii) executing an assignment for the benefit of creditors;

7 (iii) seeking, consenting to, or acquiescing in the appointment of a trustee,
8 receiver, or liquidator of that partner or of all or substantially all of that partner's
9 property; or

10 (iv) failing, within 90 days after the appointment, to have vacated or
11 stayed the appointment of a trustee, receiver, or liquidator of the partner or of all
12 or substantially all of the partner's property obtained without the partner's consent
13 or acquiescence, or failing within 90 days after the expiration of a stay to have the
14 appointment vacated;

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

16 (i) the partner's death;

17 (ii) the appointment of a guardian or general conservator for the partner;

18 or

19 (iii) a judicial determination that the partner has otherwise become
20 incapable of performing the partner's duties under the partnership agreement;

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

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

1 (10) termination of a partner who is not an individual, partnership, corporation,
2 trust, or estate.

3 **Section 602. Partner's Power To Dissociate; Wrongful Dissociation.**

4 (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by
5 express will pursuant to Section 601(1).

6 (b) A partner's dissociation is wrongful only if:

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

8 (2) in the case of a partnership for a definite term or particular
9 undertaking, before the expiration of the term or the completion of the
10 undertaking:

11 (i) the partner withdraws by express will, unless the withdrawal follows
12 within 90 days after another partner's dissociation by death or otherwise under
13 Section 601(6) through (10) or wrongful dissociation under this subsection;

14 (ii) the partner is expelled by judicial determination under Section 601(5);

15 (iii) the partner is dissociated by becoming a debtor in bankruptcy; or

16 (iv) in the case of a partner who is not an individual, trust other than a
17 business trust, or estate, the partner is expelled or otherwise dissociated because it
18 willfully dissolved or terminated.

19 (c) A partner who wrongfully dissociates is liable to the partnership and to the
20 other partners for damages caused by the dissociation. The liability is in addition to any
21 other obligation of the partner to the partnership or to the other partners.

22 **Section 603. Effect Of Partner's Dissociation.**

23 (a) If a partner's dissociation results in a dissolution and winding up of the
24 partnership business, Article 8 applies; otherwise, Article 7 applies.

25 (b) Upon a partner's dissociation:

26 (1) the partner's right to participate in the management and conduct of the
27 partnership business terminates, except as otherwise provided in Section 803;

28 (2) the partner's duty of loyalty under Section 404(b)(3) terminates; and

1 (3) the partner's duty of loyalty under Section 404(b)(1) and (2) and duty
2 of care under Section 404(c) continue only with regard to matters arising and
3 events occurring before the partner's dissociation, unless the partner participates
4 in winding up the partnership's business pursuant to Section 803.

5 ARTICLE 7

6 PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

7 **Section 701. Purchase Of Dissociated Partner's Interest.**

8 (a) If a partner is dissociated from a partnership without resulting in a dissolution
9 and winding up of the partnership business under Section 801, the partnership shall cause
10 the dissociated partner's interest in the partnership to be purchased for a buyout price
11 determined pursuant to subsection (b).

12 (b) The buyout price of a dissociated partner's interest is the amount that would
13 have been distributable to the dissociating partner under Section 807(b) if, on the date of
14 dissociation, the assets of the partnership were sold at a price equal to the greater of the
15 liquidation value or the value based on a sale of the entire business as a going concern
16 without the dissociated partner and the partnership were wound up as of that date. Interest
17 must be paid from the date of dissociation to the date of payment.

18 (c) Damages for wrongful dissociation under Section 602(b), and all other
19 amounts owing, whether or not presently due, from the dissociated partner to the
20 partnership, must be offset against the buyout price. Interest must be paid from the date
21 the amount owed becomes due to the date of payment.

22 (d) A partnership shall indemnify a dissociated partner whose interest is being
23 purchased against all partnership liabilities, whether incurred before or after the
24 dissociation, except liabilities incurred by an act of the dissociated partner under Section
25 702.

26 (e) If no agreement for the purchase of a dissociated partner's interest is reached
27 within 120 days after a written demand for payment, the partnership shall pay, or cause to
28 be paid, in cash to the dissociated partner the amount the partnership estimates to be the

1 buyout price and accrued interest, reduced by any offsets and accrued interest under
2 subsection (c).

3 (f) If a deferred payment is authorized under subsection (h), the partnership may
4 tender a written offer to pay the amount it estimates to be the buyout price and accrued
5 interest, reduced by any offsets under subsection (c), stating the time of payment, the
6 amount and type of security for payment, and the other terms and conditions of the
7 obligation.

8 (g) The payment or tender required by subsection (e) or (f) must be
9 accompanied by the following:

10 (1) a statement of partnership assets and liabilities as of the date of
11 dissociation;

12 (2) the latest available partnership balance sheet and income statement, if
13 any;

14 (3) an explanation of how the estimated amount of the payment was
15 calculated; and

16 (4) written notice that the payment is in full satisfaction of the obligation
17 to purchase unless, within 120 days after the written notice, the dissociated
18 partner commences an action to determine the buyout price, any offsets under
19 subsection (c), or other terms of the obligation to purchase.

20 (h) A partner who wrongfully dissociates before the expiration of a definite term
21 or the completion of a particular undertaking is not entitled to payment of any portion of
22 the buyout price until the expiration of the term or completion of the undertaking, unless
23 the partner establishes to the satisfaction of the court that earlier payment will not cause
24 undue hardship to the business of the partnership. A deferred payment must be
25 adequately secured and bear interest.

26 (i) A dissociated partner may maintain an action against the partnership, pursuant
27 to Section 405(b)(2)(ii), to determine the buyout price of that partner's interest, any
28 offsets under subsection (c), or other terms of the obligation to purchase. The action must

1 be commenced within 120 days after the partnership has tendered payment or an offer to
2 pay or within one year after written demand for payment if no payment or offer to pay is
3 tendered. The court shall determine the buyout price of the dissociated partner's interest,
4 any offset due under subsection (c), and accrued interest, and enter judgment for any
5 additional payment or refund. If deferred payment is authorized under subsection (h), the
6 court shall also determine the security for payment and other terms of the obligation to
7 purchase. The court may assess reasonable attorney's fees and the fees and expenses of
8 appraisers or other experts for a party to the action, in amounts the court finds equitable,
9 against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The
10 finding may be based on the partnership's failure to tender payment or an offer to pay or
11 to comply with subsection (g).

12 **Section 702. Dissociated Partner's Power To Bind And Liability To Partnership.**

13 (a) For two years after a partner dissociates without resulting in a dissolution and
14 winding up of the partnership business, the partnership, including a surviving partnership
15 under Article 9, is bound by an act of the dissociated partner which would have bound the
16 partnership under Section 301 before dissociation only if at the time of entering into the
17 transaction the other party:

18 (1) reasonably believed that the dissociated partner was then a partner;

19 (2) did not have notice of the partner's dissociation; and

20 (3) is not deemed to have had knowledge under Section 303(e) or notice
21 under Section 704(c).

22 (b) A dissociated partner is liable to the partnership for any damage caused to the
23 partnership arising from an obligation incurred by the dissociated partner after
24 dissociation for which the partnership is liable under subsection (a) was still a partner,
25 did not have notice of the partner's dissociation, and is not deemed to have had
26 knowledge of the dissociation under Section 303(e) or notice thereof under Section
27 704(c).

28 **Section 703. Dissociated Partner's Liability To Other Persons.**

1 (a) A partner's dissociation does not of itself discharge the partner's liability for a
2 partnership obligation incurred before dissociation. A dissociated partner is not liable for
3 a partnership obligation incurred after dissociation, except as otherwise provided in
4 subsection (b).

5 (b) A partner who dissociates without resulting in a dissolution and winding up of
6 the partnership business is liable as a partner to the other party in a transaction entered
7 into by the partnership, or a surviving partnership under Article 9, within two years after
8 the partner's dissociation, only if the partner is liable for the obligation under Section 306
9 and at the time of entering into the transaction the other party:

10 (1) reasonably believed that the dissociated partner was then a partner;

11 (2) did not have notice of the partner's dissociation; and

12 (3) is not deemed to have had knowledge under Section 303(e) or notice
13 under Section 704(c).

14 (c) By agreement with the partnership creditor and the partners continuing the
15 business, a dissociated partner may be released from liability for a partnership obligation.

16 (d) A dissociated partner is released from liability for a partnership obligation if a
17 partnership creditor, with notice of the partner's dissociation but without the partner's
18 consent, agrees to a material alteration in the nature or time of payment of a partnership
19 obligation.

20 **Section 704. Statement Of Dissociation.**

21 (a) A dissociated partner or the partnership may file a statement of dissociation
22 stating the name of the partnership and that the partner is dissociated from the
23 partnership.

24 (b) A statement of dissociation is a limitation on the authority of a dissociated
25 partner for the purposes of Section 303(d) and (e).

26 (c) For the purposes of Sections 702(a)(3) and 703(b)(3), a person not a partner
27 is deemed to have notice of the dissociation 90 days after the statement of dissociation is
28 filed.

1 (5) on application by a partner, a judicial determination that:

2 (i) the economic purpose of the partnership is likely to be unreasonably
3 frustrated;

4 (ii) another partner has engaged in conduct relating to the partnership
5 business which makes it not reasonably practicable to carry on the business in
6 partnership with that partner; or

7 (iii) it is not otherwise reasonably practicable to carry on the partnership
8 business in conformity with the partnership agreement; or

9 (6) on application by a transferee of a partner's transferable interest, a judicial
10 determination that it is equitable to wind up the partnership business:

11 (i) after the expiration of the term or completion of the undertaking, if the
12 partnership was for a definite term or particular undertaking at the time of the
13 transfer or entry of the charging order that gave rise to the transfer; or

14 (ii) at any time, if the partnership was a partnership at will at the time of
15 the transfer or entry of the charging order that gave rise to the transfer.

16 **Section 802. Partnership Continues After Dissolution.**

17 (a) Subject to subsection (b), a partnership continues after dissolution only for the
18 purpose of winding up its business. The partnership is terminated when the winding up of
19 its business is completed.

20 (b) At any time after the dissolution of a partnership and before the winding up of
21 its business is completed, all of the partners, including any dissociating partner other than
22 a wrongfully dissociating partner, may waive the right to have the partnership's business
23 wound up and the partnership terminated. In that event:

24 (1) the partnership resumes carrying on its business as if dissolution had
25 never occurred, and any liability incurred by the partnership or a partner after the
26 dissolution and before the waiver is determined as if dissolution had never
27 occurred; and

1 (2) the rights of a third party accruing under Section 804(1) or arising out
2 of conduct in reliance on the dissolution before the third party knew or received a
3 notification of the waiver may not be adversely affected.

4 **Section 803. Right To Wind Up Partnership Business.**

5 (a) After dissolution, a partner who has not wrongfully dissociated may
6 participate in winding up the partnership's business, but on application of any partner,
7 partner's legal representative, or transferee, the Commonwealth Superior Court, for good
8 cause shown, may order judicial supervision of the winding up.

9 (b) The legal representative of the last surviving partner may wind up a
10 partnership's business.

11 (c) A person winding up a partnership's business may preserve the partnership
12 business or property as a going concern for a reasonable time, prosecute and defend
13 actions and proceedings, whether civil, criminal, or administrative, settle and close the
14 partnership's business, dispose of and transfer the partnership's property, discharge the
15 partnership's liabilities, distribute the assets of the partnership pursuant to Section 807,
16 settle disputes by mediation or arbitration, and perform other necessary acts.

17 **Section 804. Partner's Power To Bind Partnership After Dissolution.** Subject to
18 Section 805, a partnership is bound by a partner's act after dissolution that:

19 (1) is appropriate for winding up the partnership business; or

20 (2) would have bound the partnership under Section 301 before dissolution, if the
21 other party to the transaction did not have notice of the dissolution.

22 **Section 805. Statement Of Dissolution.**

23 (a) After dissolution, a partner who has not wrongfully dissociated may file a
24 statement of dissolution stating the name of the partnership and that the partnership has
25 dissolved and is winding up its business.

26 (b) A statement of dissolution cancels a filed statement of partnership authority
27 for the purposes of Section 303(d) and is a limitation on authority for the purposes of
28 Section 303(e).

1 (c) For the purposes of Sections 301 and 804, a person not a partner is deemed to
2 have notice of the dissolution and the limitation on the partners' authority as a result of
3 the statement of dissolution 90 days after it is filed.

4 (d) After filing and, if appropriate, recording a statement of dissolution, a
5 dissolved partnership may file and, if appropriate, record a statement of partnership
6 authority which will operate with respect to a person not a partner as provided in Section
7 303(d) and (e) in any transaction, whether or not the transaction is appropriate for
8 winding up the partnership business.

9 **Section 806. Partner's Liability To Other Partners After Dissolution.**

10 (a) Except as otherwise provided in subsection (b) and Section 306, after
11 dissolution a partner is liable to the other partners for the partner's share of any
12 partnership liability incurred under Section 804.

13 (b) A partner who, with knowledge of the dissolution, incurs a partnership
14 liability under Section 804(2) by an act that is not appropriate for winding up the
15 partnership business is liable to the partnership for any damage caused to the partnership
16 arising from the liability.

17 **Section 807. Settlement Of Accounts And Contributions Among Partners.**

18 (a) In winding up a partnership's business, the assets of the partnership, including
19 the contributions of the partners required by this section, must be applied to discharge its
20 obligations to creditors, including, to the extent permitted by law, partners who are
21 creditors. Any surplus must be applied to pay in cash the net amount distributable to
22 partners in accordance with their right to distributions under subsection (b).

23 (b) Each partner is entitled to a settlement of all partnership accounts upon
24 winding up the partnership business. In settling accounts among the partners, profits and
25 losses that result from the liquidation of the partnership assets must be credited and
26 charged to the partners' accounts. The partnership shall make a distribution to a partner in
27 an amount equal to any excess of the credits over the charges in the partner's account. A
28 partner shall contribute to the partnership an amount equal to any excess of the charges

1 over the credits in the partner's account but excluding from the calculation charges
2 attributable to an obligation for which the partner is not personally liable under Section
3 306.

4 (c) If a partner fails to contribute the full amount required under subsection (b),
5 all of the other partners shall contribute, in the proportions in which those partners share
6 partnership losses, the additional amount necessary to satisfy the partnership obligations
7 for which they are personally liable under Section 306. A partner or partner's legal
8 representative may recover from the other partners any contributions the partner makes to
9 the extent the amount contributed exceeds that partner's share of the partnership
10 obligations for which the partner is personally liable under Section 306.

11 (d) After the settlement of accounts, each partner shall contribute, in the
12 proportion in which the partner shares partnership losses, the amount necessary to satisfy
13 partnership obligations that were not known at the time of the settlement and for which
14 the partner is personally liable under Section 306.

15 (e) The estate of a deceased partner is liable for the partner's obligation to
16 contribute to the partnership.

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

20 ARTICLE 9

21 CONVERSIONS AND MERGERS

22 **Section 901. Definitions.** In this article:

23 (1) "General partner" means a partner in a partnership and a general partner in a
24 limited partnership.

25 (2) "Limited partner" means a limited partner in a limited partnership.

26 (3) "Limited partnership" means a limited partnership created under the law of
27 the Commonwealth, predecessor law, or comparable law of another jurisdiction.

28 (4) "Partner" includes both a general partner and a limited partner.

1 **Section 902. Conversion Of Partnership To Limited Partnership.**

2 (a) A partnership may be converted to a limited partnership pursuant to this
3 section.

4 (b) The terms and conditions of a conversion of a partnership to a limited
5 partnership must be approved by all of the partners or by a number or percentage
6 specified for conversion in the partnership agreement.

7 (c) After the conversion is approved by the partners, the partnership shall file a
8 certificate of limited partnership in the jurisdiction in which the limited partnership is to
9 be formed. The certificate must include:

10 (1) a statement that the partnership was converted to a limited partnership
11 from a partnership;

12 (2) its former name; and

13 (3) a statement of the number of votes cast by the partners for and against
14 the conversion and, if the vote is less than unanimous, the number or percentage
15 required to approve the conversion under the partnership agreement.

16 (d) The conversion takes effect when the certificate of limited partnership is filed
17 or at any later date specified in the certificate.

18 (e) A general partner who becomes a limited partner as a result of the conversion
19 remains liable as a general partner for an obligation incurred by the partnership before the
20 conversion takes effect. If the other party to a transaction with the limited partnership
21 reasonably believes when entering the transaction that the limited partner is a general
22 partner, the limited partner is liable for an obligation incurred by the limited partnership
23 within 90 days after the conversion takes effect. The limited partner's liability for all
24 other obligations of the limited partnership incurred after the conversion takes effect is
25 that of a limited partner as provided in the law of the Commonwealth.

26 **Section 903. Conversion Of Limited Partnership To Partnership.**

27 (a) A limited partnership may be converted to a partnership pursuant to this
28 section.

1 (b) Notwithstanding a provision to the contrary in a limited partnership
2 agreement, the terms and conditions of a conversion of a limited partnership to a
3 partnership must be approved by all of the partners.

4 (c) After the conversion is approved by the partners, the limited partnership shall
5 cancel its certificate of limited partnership.

6 (d) The conversion takes effect when the certificate of limited partnership is
7 canceled.

8 (e) A limited partner who becomes a general partner as a result of the conversion
9 remains liable only as a limited partner for an obligation incurred by the limited
10 partnership before the conversion takes effect. Except as otherwise provided in Section
11 306, the partner is liable as a general partner for an obligation of the partnership incurred
12 after the conversion takes effect.

13 **Section 904. Effect Of Conversion; Entity Unchanged.**

14 (a) A partnership or limited partnership that has been converted pursuant to this
15 Article is for all purposes the same entity that existed before the conversion.

16 (b) When a conversion takes effect:

17 (1) all property owned by the converting partnership or limited
18 partnership remains vested in the converted entity;

19 (2) all obligations of the converting partnership or limited partnership
20 continue as obligations of the converted entity; and

21 (3) an action or proceeding pending against the converting partnership or
22 limited partnership may be continued as if the conversion had not occurred.

23 **Section 905. Merger Of Partnerships.**

24 (a) Pursuant to a plan of merger approved as provided in subsection (c), a
25 partnership may be merged with one or more partnerships or limited partnerships.

26 (b) The plan of merger must set forth:

27 (1) the name of each partnership or limited partnership that is a party to
28 the merger;

1 (2) the name of the surviving entity into which the other partnerships or
2 limited partnerships will merge;

3 (3) whether the surviving entity is a partnership or a limited partnership
4 and the status of each partner;

5 (4) the terms and conditions of the merger;

6 (5) the manner and basis of converting the interests of each party to the
7 merger into interests or obligations of the surviving entity, or into money or other
8 property in whole or part; and

9 (6) the street address of the surviving entity's chief executive office.

10 (c) The plan of merger must be approved:

11 (1) in the case of a partnership that is a party to the merger, by all of the
12 partners, or a number or percentage specified for merger in the partnership
13 agreement; and

14 (2) in the case of a limited partnership that is a party to the merger, by the
15 vote required for approval of a merger by the law of the State or foreign
16 jurisdiction in which the limited partnership is organized and, in the absence of
17 such a specifically applicable law, by all of the partners, notwithstanding a
18 provision to the contrary in the partnership agreement.

19 (d) After a plan of merger is approved and before the merger takes effect, the
20 plan may be amended or abandoned as provided in the plan.

21 (e) The merger takes effect on the later of:

22 (1) the approval of the plan of merger by all parties to the merger, as
23 provided in subsection (c);

24 (2) the filing of all documents required by law to be filed as a condition to
25 the effectiveness of the merger; or

26 (3) any effective date specified in the plan of merger.

27 **Section 906. Effect Of Merger.**

28 (a) When a merger takes effect:

1 (1) the separate existence of every partnership or limited partnership that
2 is a party to the merger, other than the surviving entity, ceases;

3 (2) all property owned by each of the merged partnerships or limited
4 partnerships vests in the surviving entity;

5 (3) all obligations of every partnership or limited partnership that is a
6 party to the merger become the obligations of the surviving entity; and

7 (4) an action or proceeding pending against a partnership or limited
8 partnership that is a party to the merger may be continued as if the merger had not
9 occurred, or the surviving entity may be substituted as a party to the action or
10 proceeding.

11 (b) The Registrar of Corporations of this State is the agent for service of process
12 in an action or proceeding against a surviving foreign partnership or limited partnership
13 to enforce an obligation of a domestic partnership or limited partnership that is a party to
14 a merger. The surviving entity shall promptly notify the Registrar of Corporations of the
15 mailing address of its chief executive office and of any change of address. Upon receipt
16 of process, the Registrar of Corporations shall mail a copy of the process to the surviving
17 foreign partnership or limited partnership.

18 (c) A partner of the surviving partnership or limited partnership is liable for:

19 (1) all obligations of a party to the merger for which the partner was
20 personally liable before the merger;

21 (2) all other obligations of the surviving entity incurred before the merger
22 by a party to the merger, but those obligations may be satisfied only out of
23 property of the entity; and

24 (3) except as otherwise provided in Section 306, all obligations of the
25 surviving entity incurred after the merger takes effect, but those obligations may
26 be satisfied only out of property of the entity if the partner is a limited partner.

27 (d) If the obligations incurred before the merger by a party to the merger are not
28 satisfied out of the property of the surviving partnership or limited partnership, the

1 general partners of that party immediately before the effective date of the merger shall
2 contribute the amount necessary to satisfy that party's obligations to the surviving entity,
3 in the manner provided in Section 807 or in the Limited Partnership Act of the
4 jurisdiction in which the party was formed, as the case may be, as if the merged party
5 were dissolved.

6 (e) A partner of a party to a merger who does not become a partner of the
7 surviving partnership or limited partnership is dissociated from the entity, of which that
8 partner was a partner, as of the date the merger takes effect. The surviving entity shall
9 cause the partner's interest in the entity to be purchased under Section 701 or another
10 statute specifically applicable to that partner's interest with respect to a merger. The
11 surviving entity is bound under Section 702 by an act of a general partner dissociated
12 under this subsection, and the partner is liable under Section 703 for transactions entered
13 into by the surviving entity after the merger takes effect.

14 **Section 907. Statement Of Merger.**

15 (a) After a merger, the surviving partnership or limited partnership may file a
16 statement that one or more partnerships or limited partnerships have merged into the
17 surviving entity.

18 (b) A statement of merger must contain:

19 (1) the name of each partnership or limited partnership that is a party to
20 the merger;

21 (2) the name of the surviving entity into which the other partnerships or
22 limited partnership were merged;

23 (3) the street address of the surviving entity's chief executive office and of
24 an office in this State, if any; and

25 (4) whether the surviving entity is a partnership or a limited partnership.

26 (c) Except as otherwise provided in subsection (d), for the purposes of Section
27 302, property of the surviving partnership or limited partnership which before the merger

1 was held in the name of another party to the merger is property held in the name of the
2 surviving entity upon filing a statement of merger.

3 (d) For the purposes of Section 302, real property of the surviving partnership or
4 limited partnership which before the merger was held in the name of another party to the
5 merger is property held in the name of the surviving entity upon recording a certified
6 copy of the statement of merger in the office for recording transfers of that real property.

7 (e) A filed and, if appropriate, recorded statement of merger, executed and
8 declared to be accurate pursuant to Section 105(c), stating the name of a partnership or
9 limited partnership that is a party to the merger in whose name property was held before
10 the merger and the name of the surviving entity, but not containing all of the other
11 information required by subsection (b), operates with respect to the partnerships or
12 limited partnerships named to the extent provided in subsections (c) and (d).

13 **Section 908. Nonexclusive.** This Article is not exclusive. Partnerships or limited
14 partnerships may be converted or merged in any other manner provided by law.

15 ARTICLE 10

16 LIMITED LIABILITY PARTNERSHIP

17 **Section 1001. Statement Of Qualification.**

18 (a) A partnership may become a limited liability partnership pursuant to this
19 section.

20 (b) The terms and conditions on which a partnership becomes a limited liability
21 partnership must be approved by the vote necessary to amend the partnership agreement
22 except, in the case of a partnership agreement that expressly considers obligations to
23 contribute to the partnership, the vote necessary to amend those provisions.

24 (c) After the approval required by subsection (b), a partnership may become a
25 limited liability partnership by filing a statement of qualification. The statement must
26 contain:

- 27 (1) the name of the partnership;

1 (2) the street address of the partnership's chief executive office and, if
2 different, the street address of an office in this State, if any;

3 (3) if the partnership does not have an office in this State, the name and
4 street address of the partnership's agent for service of process;

5 (4) a statement that the partnership elects to be a limited liability
6 partnership; and

7 (5) a deferred effective date, if any.

8 (d) The agent of a limited liability partnership for service of process must be an
9 individual who is a resident of this State or other person authorized to do business in this
10 State.

11 (e) The status of a partnership as a limited liability partnership is effective on the
12 later of the filing of the statement or a date specified in the statement. The status remains
13 effective, regardless of changes in the partnership, until it is canceled pursuant to Section
14 105(d) or revoked pursuant to Section 1003.

15 (f) The status of a partnership as a limited liability partnership and the liability of
16 its partners is not affected by errors or later changes in the information required to be
17 contained in the statement of qualification under subsection (c).

18 (g) The filing of a statement of qualification establishes that a partnership has
19 satisfied all conditions precedent to the qualification of the partnership as a limited
20 liability partnership.

21 (h) An amendment or cancellation of a statement of qualification is effective
22 when it is filed or on a deferred effective date specified in the amendment or cancellation.

23 **Section 1002. Name.** The name of a limited liability partnership must end with
24 "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.",
25 "RLLP," or "LLP".

26 **Section 1003. Annual Report.**

1 (a) A limited liability partnership, and a foreign limited liability partnership
2 authorized to transact business in this State, shall file an annual report in the office of the
3 which contains:

4 (1) the name of the limited liability partnership and the State or other
5 jurisdiction under whose laws the foreign limited liability partnership is formed;

6 (2) the street address of the partnership's chief executive office and, if
7 different, the street address of an office of the partnership in this State, if any; and

8 (3) if the partnership does not have an office in this State, the name and
9 street address of the partnership's current agent for service of process.

10 (b) An annual report must be filed in accordance with the provisions governing
11 corporations in 4 CMC § 4693 (c) of each year following the calendar year in which a
12 partnership files a statement of qualification or a foreign partnership becomes authorized
13 to transact business in this State.

14 (c) The Registrar of Corporations may revoke the statement of qualification of a
15 partnership that fails to file an annual report when due or pay the required filing fee. To
16 do so, the Registrar of Corporations shall provide the partnership at least 60 days' written
17 notice of intent to revoke the statement. The notice must be mailed to the partnership at
18 its chief executive office set forth in the last filed statement of qualification or annual
19 report. The notice must specify the annual report that has not been filed, the fee that has
20 not been paid, and the effective date of the revocation. The revocation is not effective if
21 the annual report is filed and the fee is paid before the effective date of the revocation.

22 (d) A revocation under subsection (c) only affects a partnership's status as a
23 limited liability partnership and is not an event of dissolution of the partnership.

24 (e) A partnership whose statement of qualification has been revoked may
25 apply to the Registrar of Corporations for reinstatement within two years after the
26 effective date of the revocation. The application must state:

27 (1) the name of the partnership and the effective date of the revocation;
28 and

1 (2) that the ground for revocation either did not exist or has been
2 corrected.

3 (f) A reinstatement under subsection (e) relates back to and takes effect as of the
4 effective date of the revocation, and the partnership's status as a limited liability
5 partnership continues as if the revocation had never occurred.

6 ARTICLE 11

7 FOREIGN LIMITED LIABILITY PARTNERSHIP

8 **Section 1101. Law Governing Foreign Limited Liability Partnership.**

9 (a) The law under which a foreign limited liability partnership is formed governs
10 relations among the partners and between the partners and the partnership and the
11 liability of partners for obligations of the partnership.

12 (b) A foreign limited liability partnership may not be denied a statement of
13 foreign qualification by reason of any difference between the law under which the
14 partnership was formed and the law of this State.

15 (c) A statement of foreign qualification does not authorize a foreign limited
16 liability partnership to engage in any business or exercise any power that a partnership
17 may not engage in or exercise in this State as a limited liability partnership.

18 **Section 1102. Statement Of Foreign Qualification.**

19 (a) Before transacting business in this State, a foreign limited liability partnership
20 must file a statement of foreign qualification. The statement must contain:

21 (1) the name of the foreign limited liability partnership which satisfies the
22 requirements of the State or other jurisdiction under whose law it is formed and
23 ends with "Registered Limited Liability Partnership", "Limited Liability
24 Partnership", "R.L.L.P.", "L.L.P.", "RLLP," or "LLP";

25 (2) the street address of the partnership's chief executive office and, if
26 different, the street address of an office of the partnership in this State, if any;

27 (3) if there is no office of the partnership in this State, the name and street
28 address of the partnership's agent for service of process; and

1 (4) a deferred effective date, if any.

2 (b) The agent of a foreign limited liability company for service of process must
3 be an individual who is a resident of this State or other person authorized to do business
4 in this State.

5 (c) The status of a partnership as a foreign limited liability partnership is effective
6 on the later of the filing of the statement of foreign qualification or a date specified in the
7 statement. The status remains effective, regardless of changes in the partnership, until it is
8 canceled pursuant to Section 105(d) or revoked pursuant to Section 1003.

9 (d) An amendment or cancellation of a statement of foreign qualification is
10 effective when it is filed or on a deferred effective date specified in the amendment or
11 cancellation.

12 **Section 1103. Effect Of Failure To Qualify.**

13 (a) A foreign limited liability partnership transacting business in this State may
14 not maintain an action or proceeding in this State unless it has in effect a statement of
15 foreign qualification.

16 (b) The failure of a foreign limited liability partnership to have in effect a
17 statement of foreign qualification does not impair the validity of a contract or act of the
18 foreign limited liability partnership or preclude it from defending an action or proceeding
19 in this State.

20 (c) A limitation on personal liability of a partner is not waived solely by
21 transacting business in this State without a statement of foreign qualification.

22 (d) If a foreign limited liability partnership transacts business in this State
23 without a statement of foreign qualification, the Registrar of Corporations is its agent for
24 service of process with respect to a right of action arising out of the transaction of
25 business in this State.

26 **Section 1104. Activities Not Constituting Transacting Business.**

27 (a) Activities of a foreign limited liability partnership which do not constitute
28 transacting business for the purpose of this Article include:

- 1 (1) maintaining, defending, or settling an action or proceeding;
- 2 (2) holding meetings of its partners or carrying on any other activity
- 3 concerning its internal affairs;
- 4 (3) maintaining bank accounts;
- 5 (4) maintaining offices or agencies for the transfer, exchange, and
- 6 registration of the partnership's own securities or maintaining trustees or
- 7 depositories with respect to those securities;
- 8 (5) selling through independent contractors;
- 9 (6) soliciting or obtaining orders, whether by mail or through employees
- 10 or agents or otherwise, if the orders require acceptance outside this State before
- 11 they become contracts;
- 12 (7) creating or acquiring indebtedness, with or without a mortgage, or
- 13 other security interest in property;
- 14 (8) collecting debts or foreclosing mortgages or other security interests in
- 15 property securing the debts, and holding, protecting, and maintaining property so
- 16 acquired;
- 17 (9) conducting an isolated transaction that is completed within 30 days
- 18 and is not one in the course of similar transactions; and
- 19 (10) transacting business in interstate commerce.

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

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

26 **Section 1105. Action By Attorney General.** The Attorney General may maintain an
27 action to restrain a foreign limited liability partnership from transacting business in this State in
28 violation of this Article.

1 ARTICLE 12

2 MISCELLANEOUS PROVISIONS

3 **Section 1201. Uniformity Of Application And Construction.** This Act shall be applied
4 and construed to effectuate its general purpose to make uniform the law with respect to the
5 subject of this Act among States enacting it.

6 **Section 1202. Applicability.**

7 (a) Before January 1, 2003, this Act governs only a partnership formed:

8 (1) after the effective date of this Act; and

9 (2) before the effective date of this Act, that elects, as provided by
10 subsection (c), to be governed by this Act.

11 (b) On and after January 1, 2003, this Act governs all partnerships.

12 (c) Before January 1, 2003, a partnership voluntarily may elect, in the manner
13 provided in its partnership agreement or by law for amending the partnership agreement,
14 to be governed by this Act. The provisions of this Act relating to the liability of the
15 partnership's partners to third parties apply to limit those partners' liability to a third party
16 who had done business with the partnership within one year before the partnership's
17 election to be governed by this Act only if the third party knows or has received a
18 notification of the partnership's election to be governed by this Act.”

19 **Section 2. Short Title.** This Act may be cited as the “Uniform Partnership Act.”

20 **Section 3. Severability Clause.** If any provision of this Act or the application of any
21 such provision to any person or circumstance should be held invalid by a court of competent
22 jurisdiction, the remainder of this Act or the application of its provisions to persons or
23 circumstances other than those to which it is held invalid shall not be affected thereby.

24 **Section 4. Savings Clause.** This Act and any repealer contained herein shall not be
25 construed as affecting any existing right acquired under contract or acquired under statutes
26 repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in
27 this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment

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1 of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil
2 or criminal, which shall already be in existence at the date this Act becomes effective.”

3 **Section 5. Effective Date.** This Act shall take effect upon its approval by the Governor,
4 or its becoming law without such approval.

Date: October 10, 2006

Introduced By: /s/ Rep. Oscar M. Babauta

Reviewed for Legal Sufficiency by:

/s/ Jose A. Bermudes
House Legal Counsel