

## CHAPTER 161

AN ACT concerning partnerships and certain other business entities and revising various parts of the statutory law.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.42:1A-1 Short title.

1. Sections 1 through 56 and 59 of this act shall be known and may be cited as the "Uniform Partnership Act (1996)."

### ARTICLE 1. GENERAL PROVISIONS

C.42:1A-2 Definitions relative to partnerships.

2. As used in this act:

"Business" includes every trade, occupation, and profession.

"Debtor in bankruptcy" means a person who is the subject of:

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

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

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

"Foreign limited liability partnership" means a partnership that:

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

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

"Limited liability partnership" means a partnership that has filed a statement of qualification under section 47 of this act and does not have a similar statement in effect in any other jurisdiction.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under section 10 of this act, predecessor law, or comparable law of another jurisdiction.

"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

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

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

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

"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

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

"Statement" means a statement of partnership authority under section 15, a statement of denial under section 16, a statement of dissociation under section 37, a statement of dissolution under section 43, a statement of qualification under section 47 of this act, or a statement of foreign qualification under section 51 of this act, or an amendment or cancellation of any of the foregoing.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

C.42:1A-3 Explanation of knowledge, notice; giving, receiving notice.

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

b. A person has notice of a fact if the person:

(1) knows of it;

(2) has received a notification of it; or

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

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

d. A person receives a notification when the notification:

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

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

e. Except as otherwise provided in subsection f. of this section, 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 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 that person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction 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.

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

#### C.42:1A-4 Agreement governing partners, partnership; prohibited terms.

4. a. Except as otherwise provided in subsection b. of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this act governs relations among the partners and between the partners and the partnership.

b. The partnership agreement shall not:

(1) unreasonably restrict the right of access to books and records under subsection b. of section 23 of this act;

(2) reduce the duty of loyalty under subsection b. of section 24 or subsection b. of section 33 of this act so as to permit a partner to engage in conduct which is intentionally injurious to the partnership;

(3) unreasonably reduce the duty of care under subsection c. of section 24 or paragraph (3) of subsection b. of section 33 of this act;

(4) vary the right of a court to expel a partner in the events specified in subsection e. of section 31 of this act;

(5) vary the requirement to wind up the partnership business in cases specified in subsection d., e. or f. of section 39 of this act;

(6) vary the law applicable to a limited liability partnership under subsection b. of section 7 of this act; or

(7) restrict rights of third parties under this act.

#### C.42:1A-5 Principles of law and equity applicable; rate of interest determined.

5. a. Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

b. If an obligation to pay interest arises under this act and the rate is not specified, the rate of interest shall be at the rates provided by the Rules Governing the Courts of the State of New Jersey for the applicable period of time.

#### C.42:1A-6 Statements filed in the Division of Commercial Recording; effects, fees.

6. a. A statement may be filed in the office of the Division of Commercial Recording in the Department of the Treasury. A certified copy of a statement that is filed in an office in another

state may be filed in the office of the Division of Commercial Recording in the Department of the Treasury. This statement may indicate the authority of one or more particular partners with respect to any matter or class of matters. In addition, either filing has the effect provided in this act with respect to partnership property located in or transactions that occur in this State.

b. A certified copy of a statement that has been filed in the office of the Division of Commercial Recording in the Department of the Treasury and recorded in the office of the county recording officer has the effect provided for recorded statements in this act. A recorded statement that is not a certified copy of a statement filed in the office of the Division of Commercial Recording in the Department of the Treasury does not have the effect provided for recorded statements in this act.

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

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

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

f. The Division of Commercial Recording in the Department of the Treasury may collect a fee for filing or providing a certified copy of a statement. The county recording officer may collect a fee for recording a statement.

C.42:1A-7 Law governing relations among partners, between partners and partnership.

7. a. Except as otherwise provided in subsection b. of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

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

C.42:1A-8 Partnership governed by this act and its amendments.

8. A partnership governed by the provisions of this act is subject to any amendment to or repeal of this act.

## ARTICLE 2. NATURE OF PARTNERSHIP

C.42:1A-9 Entity as partnership; limited partnership.

9. a. A partnership is an entity distinct from its partners.

b. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 47 of this act.

C.42:1A-10 Formation of partnership; rules for determining formation.

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

b. An association formed under a statute other than this act, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this act.

c. In determining whether a partnership is formed, the following rules apply:

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

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons

sharing them have a joint or common right or interest in property from which the returns are derived.

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

- (a) of a debt by installments or otherwise;
- (b) for services as an independent contractor or of wages or other compensation to an employee;
- (c) of rent;
- (d) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
- (e) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
- (f) for the sale of the goodwill of a business or other property by installments or otherwise.

C.42:1A-11 Property of the partnership.

11. Property acquired by a partnership is property of the partnership and not of the partners individually.

C.42:1A-12 Acquisition of partnership property; presumptions.

12. a. Property is partnership property if acquired in the name of:
- (1) the partnership; or
  - (2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.
- b. Property is acquired in the name of the partnership by a transfer to:
- (1) the partnership in its name; or
  - (2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.
- c. Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.
- d. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

### ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

C.42:1A-13 Partner considered agent of partnership; limitation.

13. Subject to the effect of a statement of partnership authority under section 15 of this act:
- a. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
  - b. An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

C.42:1A-14 Transfer of partnership property.

14. a. Partnership property may be transferred as follows:

(1) subject to the effect of a statement of partnership authority under section 15 of this act, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

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

(3) partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

b. A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 13 of this act and:

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

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

c. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection b. of this section, from any earlier transferee of the property.

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

C.42:1A-15 Statement of partnership authority; filing.

15. a. A partnership may file a statement of partnership authority, which:

(1) shall include:

(a) the name of the partnership;

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

(c) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection b. of this section; and

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

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

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

c. If a filed statement of partnership authority is executed pursuant to subsection c. of section 6 of this act, and states the name of the partnership, but does not contain all of the other information required by subsection a. of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections d. and e. of this section.

d. A filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

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

previous grant of authority.

(2) a grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office of the county recording officer is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the county recording officer. The recording in the office of the county recording officer of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

e. A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office of the county recording officer.

f. Except as otherwise provided in subsections d. and e. of this section and sections 37 and 43 of this act, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

C.42:1A-16 Statement of denial; limitation on authority.

16. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection b. of section 15 of this act may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections d. and e. of section 15 of this act.

C.42:1A-17 Partnership liable for loss, injury.

17. a. A 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 partner acting in the ordinary course of business of the partnership or with the authority of the partnership.

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

C.42:1A-18 Partnership obligations; liability of partners.

18. a. Except as otherwise provided in subsections b. and c. of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

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

c. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection b. of section 47 of this act.

C.42:1A-19 Suits, actions by or against partnership; satisfaction of judgments.

19. a. A partnership may sue and be sued in the name of the partnership.

b. An action may be brought against the partnership and, to the extent not inconsistent with section 18 of this act, any or all of the partners in the same action or in separate actions.

c. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

d. A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 18 of this act and:

- (1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
  - (2) the partnership is a debtor in bankruptcy;
  - (3) the partner has agreed that the creditor need not exhaust partnership assets;
  - (4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
  - (5) liability is imposed on the partner by law or contract independent of the existence of the partnership.
- e. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 20 of this act.

C.42:1A-20 Partnership by representation; liability.

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

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

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

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

e. Except as otherwise provided in subsections a. and b. of this section, persons who are not partners as to each other are not liable as partners to other persons.

ARTICLE 4. RELATIONS OF PARTNERS  
TO EACH OTHER AND TO PARTNERSHIP

C.42:1A-21 Rights and duties of partners.

21. a. Each partner is deemed to have an account that is:

- (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
- (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

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

c. A partnership shall reimburse a partner for payments made and indemnify a partner for

liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

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

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

f. Each partner has equal rights in the management and conduct of the partnership business.

g. A partner shall use or possess partnership property only on behalf of the partnership.

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

i. A person shall become a partner only with the consent of all of the partners.

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

k. This section shall not affect the obligations of a partnership to other persons under section 13 of this act.

#### C.42:1A-22 Distributions in kind.

22. A partner has no right to receive, and shall not be required to accept, a distribution in kind.

#### C.42:1A-23 Books, records; rendering of information.

23. a. A partnership shall keep its books and records, if any, at its chief executive office.

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

c. Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

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

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

#### C.42:1A-24 Fiduciary duties.

24. a. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections b. and c. of this section, as those duties may be clarified or limited in the partnership agreement, subject to subsection b. of section 4 of this act.

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

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

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



(3) to refrain from actions intended to cause material injury to the partnership in the conduct of the partnership business before the dissolution of the partnership.

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

d. A partner does not violate a duty or obligation under this act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

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

f. This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

#### C.42:1A-25 Legal actions.

25. a. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

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

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

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

(a) the partner's rights under sections 21, 23 or 24 of this act;

(b) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 34 of this act or enforce any other right under Article 6 or 7 of this act; or

(c) the partner's right to compel a dissolution and winding up of the partnership business under section 39 of this act or enforce any other right under Article 8 of this act; or

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

c. 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.

#### C.42:1A-26 Partner not co-owner.

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

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

### ARTICLE 5. TRANSFEREES AND CREDITORS OF PARTNER

#### C.42:1A-27 Partner not co-owner.

27. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

#### C.42:1A-28 Transferable interest of partner.

28. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

#### C.42:1A-29 Transfer of partner's interest.

29. a. A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) is permissible;
  - (2) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
  - (3) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.
- b. A transferee of a partner's transferable interest in the partnership has a right:
    - (1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
    - (2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
    - (3) to seek, under subsection f. of section 39 of this act, a judicial determination that it is equitable to wind up the partnership business.
  - c. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.
  - d. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.
  - e. A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.
  - f. A transfer of a partner's transferable interest in the 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.

C.42:1A-30 Orders charging transferable interests; effects.

30. a. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court order charging the transferable interest of a partner or of a partner's transferee shall be the sole remedy of a judgment creditor, who shall have no right under this act or any other State law to interfere with the management or to force dissolution of the partnership or to seek an order of the court requiring a foreclosure sale of the transferable interest. 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 which the circumstances of the case may require.
- b. A charging order constitutes a right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership.
- c. At any time before foreclosure, an interest charged may be redeemed: (1) by the judgment debtor;
  - (2) with property other than partnership property, by one or more of the other partners; or
  - (3) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.
- d. This act does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
- e. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

ARTICLE 6. PARTNER'S DISSOCIATION

C.42:1A-31 Dissociation from partnership; events causing.

31. A partner is dissociated from a partnership upon the occurrence of any of the following events:
  - a. The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

- b. An event agreed to in the partnership agreement as causing the partner's dissociation;
- c. The partner's expulsion pursuant to the partnership agreement;
- d. The partner's expulsion by the unanimous vote of the other partners if:
  - (1) it is unlawful to carry on the partnership business with that partner;
  - (2) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
  - (3) within 90 days after the partnership notifies a corporate partner that it will be expelled 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) a partnership that is a partner has been dissolved and its business is being wound up;
- e. On application by the partnership or another partner, the partner's expulsion by judicial determination because:
  - (1) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;
  - (2) the partner 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 24 of this act; or
  - (3) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- f. The partner's:
  - (1) becoming a debtor in bankruptcy;
  - (2) executing an assignment for the benefit of creditors;
  - (3) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
  - (4) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;
- g. In the case of a partner who is an individual:
  - (1) the partner's death;
  - (2) the appointment of a guardian or general conservator for the partner; or
  - (3) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
- h. In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
- i. In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or
- j. Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

C.42:1A-32 Dissociation of partners; wrongful conditions.

- 32. a. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subsection a. of section 31 of this act.
- b. A partner's dissociation is wrongful only if:
  - (1) it is in breach of an express provision of the partnership agreement; or
  - (2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
    - (a) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under subsections f. through j. of section

31 of this act or wrongful dissociation under this subsection;

(b) the partner is expelled by judicial determination under subsection e. of section 31 of this act;

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

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

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

C.42:1A-33 Dissociation; effects on partnership, partner.

33. a. If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 of this act applies; otherwise, Article 7 of this act applies.

b. Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 41 of this act;

(2) the partner's duty of loyalty under paragraph (3) of subsection b. of section 24 of this act terminates; and

(3) the partner's duty of loyalty under paragraphs (1) and (2) of subsection b. and duty of care under subsection c. of section 24 of this act continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 41 of this act.

#### ARTICLE 7. PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

C.42:1A-34 Dissociation not resulting in dissolution; buyout; damages.

34. a. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 39 of this act, except as otherwise provided in the partnership agreement, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price as determined pursuant to subsection b. of this section.

b. As used in subsection a. of this section, "buyout price" means the fair value as of the date of withdrawal based upon the right to share in distributions from the partnership unless the partnership agreement provides for another fair value formula.

c. Damages for wrongful dissociation under subsection b. of section 32 of this act, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

d. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 35 of this act.

e. If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection c. of this section.

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

g. The payment or tender required by subsection e. or f. of this section shall be accompanied by the following:

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

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

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

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

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

i. A dissociated partner may maintain an action against the partnership, pursuant to subparagraph (b) of paragraph (2) of subsection b. of section 25 of this act, to determine the buyout price of that partner's interest, any offsets under subsection c. of this section, or other terms of the obligation to purchase. The action shall be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection c. of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection h. of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding shall be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection g. of this section.

#### C.42:1A-35 Partnership bound by act of dissociated partner; conditions; liability.

35. a. For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9 of this act, is bound by an act of the dissociated partner which would have bound the partnership under section 13 of this act before dissociation only if at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge under subsection e. of section 15 or notice under subsection c. of section 37 of this act.

b. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection a. of this section.

#### C.42:1A-36 Dissociated partner's liability.

36. a. A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection b. of this section.

b. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9 of this act, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 18 of this act and at the time of entering into the transaction the other party:

- (1) reasonably believed that the dissociated partner was then a partner;
- (2) did not have notice of the partner's dissociation; and
- (3) is not deemed to have had knowledge under subsection e. of section 15 or notice under section subsection c. of section 37 of this act.

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

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

C.42:1A-37 Statement of dissociation.

37. a. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

b. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections d. and e. of section 15 of this act.

c. For the purposes of paragraph (3) of subsection a. of section 35 and paragraph (3) of subsection b. of section 36 of this act, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

C.42:1A-38 Continued use of name relative to liability.

38. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

## ARTICLE 8. WINDING UP PARTNERSHIP BUSINESS

C.42:1A-39 Dissolution of partnership; winding up, event causing.

39. A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

a. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subsections b. through j. of section 31 of this act, of that partner's express will to withdraw as a partner, or on a later date specified by the partner, unless the partnership agreement provides that no dissolution occurs until 90 days after the partnership having received notice of a partner's express will to withdraw as a partner, a majority in interest of the remaining parties, including partners who have rightfully dissociated pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 32 of this act, agree to continue the partnership;

b. In a partnership for a definite term or particular undertaking:

(1) the expiration of 90 days after a partner's dissociation by death or otherwise under subsections f. through j. of section 31 of this act or wrongful dissociation under subsection b. of section 32 of this act, unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to subparagraph (a) of paragraph (2) of subsection b. of section 32 of this act, agree to continue the partnership;

(2) the express will of all of the partners to wind up the partnership business; or

(3) the expiration of the term or the completion of the undertaking;

c. An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

d. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

e. On application by a partner, a judicial determination that:

(1) the economic purpose of the partnership is likely to be unreasonably frustrated;

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

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

f. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(1) after the expiration of the term or completion of the undertaking, if the partnership was

for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

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

C.42:1A-40 Dissolution, continuation for purpose of winding up.

40. a. Subject to subsection b. of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

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

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

(2) the rights of a third party accruing under subsection a. of section 42 of this act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

C.42:1A-41 Postdissolution, rights, duties on winding up.

41. a. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, a court of competent jurisdiction, for good cause shown, may order judicial supervision of the winding up.

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

c. A person winding up a partnership's business shall preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 45 of this act, settle disputes by mediation or arbitration, and perform other necessary acts.

C.42:1A-42 Partner's act after dissolution.

42. Subject to section 43 of this act, a partnership is bound by a partner's act after dissolution that:

a. Is appropriate for winding up the partnership business; or

b. Would have bound the partnership under section 13 of this act before dissolution, if the other party to the transaction did not have notice of the dissolution.

C.42:1A-43 Statement of dissolution, effects of filing.

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

b. A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection d. of section 15 of this act and is a limitation on authority for the purposes of subsection e. of section 15 of this act.

c. For the purposes of sections 13 and 42 of this act, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

d. After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections e. and f. of section 15 of this act in any transaction, whether or not the transaction is appropriate for winding up the

partnership business.

C.42:1A-44 Liability after dissolution.

44. a. Except as otherwise provided in subsection b. of this section and section 18 of this act, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 42 of this act.

b. A partner who, with knowledge of the dissolution, incurs a partnership liability under subsection b. of section 42 of this act by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

C.42:1A-45 Rights of partners to application of partnership assets; settlements of accounts.

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

b. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 18 of this act.

c. If a partner fails to contribute the full amount required under subsection b. of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 18 of this act. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 18 of this act.

d. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 18 of this act.

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

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

ARTICLE 9. CONVERSIONS AND MERGERS

C.42:1A-46 Other business entity; merger or consolidation; effect of certificate.

46. a. As used in this section, "other business entity" means a business corporation, partnership, limited partnership or a limited liability company.

b. (1) Pursuant to an agreement of merger or consolidation, a partnership may merge or consolidate with or into one or more partnerships or other business entities formed or organized under the laws of this State or any other state or the United States or any foreign country or other foreign jurisdiction, with such partnership or other business entity as the agreement shall provide being the surviving or resulting partnership or other business entity. Unless otherwise provided in the partnership agreement, a merger or consolidation shall be approved by all partners of each partnership which is to merge or consolidate. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a partnership or other business



entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting partnership or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a partnership or other business entity which is not the surviving or resulting partnership or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(2) A partnership may not merge or consolidate with any other business entity if authority for such merger or consolidation is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the merger or consolidation of partnerships, each partnership shall comply with the provisions of this section and each other business entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. If a partnership merges or consolidates under this section, the partnership or other business entity surviving or resulting in, or from, the merger or consolidation, shall file a certificate of merger or consolidation in the office of the Division of Commercial Recording in the Department of the Treasury. The Director of the Division of Commercial Recording shall, upon filing, forward a copy of the certificate of merger or consolidation to the Director of the Division of Taxation. The certificate of merger or consolidation shall state:

(1) The name and jurisdiction of formation or organization of each of the partnerships or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the partnerships or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting partnership or other business entity;

(4) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(5) That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting partnership or other business entity, and shall state the address thereof;

(6) That a copy of the agreement of merger or consolidation shall be furnished by the surviving or resulting partnership or other business entity, on request and without cost, to any member of any partnership or any person holding an interest in any other business entity which is to merge or consolidate; and

(7) If the surviving or resulting entity is not a partnership or other business entity organized under the laws of this State, a statement that such surviving or resulting other business entity agrees that it may be served with process in this State in any action, suit or proceeding for the enforcement of any obligation of any partnership which is to merge or consolidate, irrevocably appointing the State Treasurer as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the State Treasurer.

d. Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Division of Commercial Recording of a certificate of merger or consolidation.

e. A certificate of merger or consolidation shall act as a certificate of cancellation for a partnership which is not the surviving or resulting entity in the merger or consolidation.

f. An agreement of merger or consolidation approved in accordance with subsection b. of this section may (1) effect any amendment to the partnership agreement or (2) effect the adoption of a new partnership agreement for a partnership if it is the surviving or resulting partnership in the merger or consolidation. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective at the time or date of the merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to herein by any other means provided for in a partnership agreement or other agreement or as otherwise

permitted by law, including that the partnership agreement of any constituent partnership to the merger or consolidation (including a partnership formed for the purpose of consummating a merger or consolidation) shall be the partnership agreement of the surviving or resulting partnership.

g. When any merger or consolidation becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges and powers of each of the partnerships and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those partnerships and other business entities, as well as all other things and causes of action belonging to each of those partnerships and other business entities, shall be vested in the surviving or resulting partnership or other business entity, and shall thereafter be the property of the surviving or resulting partnership or other business entity as they were of each of the partnerships and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this State, in any of those partnerships and other business entities, shall not revert or in any way be impaired by reason of this act; but all rights of creditors and all liens upon any property of any of those partnerships and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of those partnerships and other business entities that have merged or consolidated shall attach to the surviving or resulting partnership or other business entity, and may be enforced against it to the same extent as if the debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a partnership, including a partnership which is not the surviving or resulting entity in the merger or consolidation, shall not require the dissolution of the partnership pursuant to section 39 of this act or require the partnership to pay its liabilities and distribute its assets pursuant to section 45 of this act.

#### ARTICLE 10. LIMITED LIABILITY PARTNERSHIP

C.42:1A-47 Limited liability partnership; qualifications as.

47. a. A partnership may become a limited liability partnership pursuant to this section.

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

c. After the approval required by subsection b. of this section, a partnership may become a limited liability partnership by filing a statement of qualification in the office of the Division of Commercial Recording in the Department of the Treasury. The statement shall contain:

- (1) the name of the partnership;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office in this State, if any;
- (3) if the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process;
- (4) a statement that the partnership elects to be a limited liability partnership; and
- (5) a deferred effective date, if any.

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

e. The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection d. of section 6 of this act or revoked pursuant to section 49 of this act.

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

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

h. An amendment or cancellation of a statement of qualification is effective when it is filed

or on a deferred effective date specified in the amendment or cancellation.

C.42:1A-48 Name of limited liability partnership.

48. The name of a limited liability partnership shall end with “Registered Limited Liability Partnership”, “Limited Liability Partnership”, “R.L.L.P.”, “L.L.P.”, “RLLP,” or “LLP”.

C.42:1A-49 Annual report; filing.

49. a. A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this State, shall file an annual report in the office of the Division of Commercial Recording in the Department of the Treasury which contains:

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

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

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

b. An annual report shall be filed each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this State.

c. The State Treasurer may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the State Treasurer shall provide the partnership at least 60 days’ written notice of intent to revoke the statement. The notice shall be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice shall specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

d. A revocation under subsection c. of this section only affects a partnership’s status as a limited liability partnership and is not an event of dissolution of the partnership.

e. A partnership whose statement of qualification has been revoked may apply to the Division of Commercial Recording in the Department of the Treasury for reinstatement within two years after the effective date of the revocation. The application shall state:

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

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

f. A reinstatement under subsection e. of this section relates back to and takes effect as of the effective date of the revocation, and the partnership’s status as a limited liability partnership continues as if the revocation had never occurred.

#### ARTICLE 11. FOREIGN LIMITED LIABILITY PARTNERSHIP

C.42:1A-50 Foreign limited liability partnership; law governing, effect in this State.

50. a. The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

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

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

C.42:1A-51 Statement of foreign qualifications; filing.

51. a. Before transacting business in this State, a foreign limited liability partnership shall file a statement of foreign qualification in the office of the Division of Commercial Recording

in the Department of the Treasury. The statement shall contain:

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

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

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

(4) a deferred effective date, if any.

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

c. The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection d. of section 6 of this act or revoked pursuant to section 49 of this act.

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

#### C.42:1A-52 Foreign qualification required; effect of failure.

52. a. A foreign limited liability partnership transacting business in this State shall not maintain an action or proceeding in this State unless it has in effect a statement of foreign qualification.

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

c. A limitation on personal liability of a partner shall not be waived solely by transacting business in this State without a statement of foreign qualification.

d. If a foreign limited liability partnership transacts business in this State without a statement of foreign qualification, the State Treasurer shall be its agent for service of process with respect to a right of action arising out of the transaction of business in this State.

#### C.42:1A-53 Activities not considered transacting business.

53. a. Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this sections 50 through 53 of this act include:

(1) maintaining, defending, or settling an action or proceeding;

(2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

(7) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(10) transacting business in interstate commerce.

b. For purposes of sections 50 through 53 of this act, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection a. of this section, constitutes transacting business in this State.

c. This section does not apply in determining the contacts or activities that may subject a

foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

C.42:1A-54 Restraint of foreign limited liability partnership.

54. The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of sections 50 through 53 of this act.

C.42:1A-55 Applicability, construction of act.

55. Sections 1 through 56 of this act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among States enacting it.

C.42:1A-56 No retroactive effects.

56. Sections 1 through 56 of this act do not affect an action or proceeding commenced or right accrued before this act takes effect, including the right of any partner in a limited liability partnership formed prior to the effective date of this act.

57. Section 5 of P.L.1983, c.489 (C.42:2A-5) is amended to read as follows:

C.42:2A-5 Definitions relative to limited partnerships.

5. Definitions. As used in this chapter, unless the context otherwise requires:

a. "Certificate of limited partnership" and "partnership certificate" mean the certificate referred to in section 13 of P.L.1983, c.489 (C.42:2A-14) as it may be corrected pursuant to section 48 of P.L.1988, c.130 (C.42:2A-16.1) or amended or restated from time to time.

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

c. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in this chapter, or in the partnership agreement.

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

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

f. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

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

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

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

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

k. "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company or other limited liability entity, trust, estate, association, or corporation.

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

m. Unless otherwise provided in the partnership certificate or in the partnership agreement, "in interest" shall mean a vote or percentage of a limited partner (in a class of limited partners) equal to the portion that partner's share in contributions to the partnership bears to the share in contributions to the partnership of all limited partners (of that class).

n. "Principal office" means the place designated in the partnership agreement or the place of business of the limited partnership where the chief or principal affairs and business of the partnership are transacted.

58. Section 2 of P.L.1993, c.210 (C.42:2B-2) is amended to read as follows:

C.42:2B-2 Definitions relative to limited liability companies.

2. As used in this act unless the context otherwise requires:

"Bankruptcy" means an event that causes a person to become dissociated from a limited liability company as provided in section 24 of this act.

"Certificate of formation" means the certificate referred to in section 11 of this act, and the certificate as amended.

"Contribution" means any cash, property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member; provided however, that services rendered and obligations to perform services are contributions only to the extent designated as contributions in the operating agreement.

"Foreign limited liability company" means a limited liability company formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

"Limited liability company" and "domestic limited liability company" means a limited liability company formed under the laws of this State and having one or more members.

"Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

"Liquidating trustee" means a person carrying out the winding up of a limited liability company.

"Manager" means a person who is named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, an operating agreement or similar instrument under which the limited liability company is formed.

"Member" means a person who has been admitted to a limited liability company as a member as provided in section 21 of this act or, in the case of a foreign limited liability company, in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

"Operating agreement" means a written agreement among the members, or in the case of a limited liability company with only one member, the declaration by that one member of the terms of the operating agreement which shall be deemed an agreement between the member and the limited liability company, as to the affairs of a limited liability company and the conduct of its business.

"Person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity.

"State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than this State.

Repealer.

59. The following are repealed:

R.S.42:1-1 to 42:1-43;

Sections 8-12 of P.L.1995, c.96 (C.42:1-44 to 42:1-48); and

Section 1 of P.L.1995, c.223 (C.42:1-49).

60. This act shall take effect on the first business day following enactment.

Approved December 7, 2000.