Proposed Revised Uniform Limited Partnership Act for the District of Columbia

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DISTRICT OF COLUMBIA

Revised Uniform Limited Partnership Act

SUMMARY

The Uniform Limited Partnership Act was first promulgated by the National Conference of Commissioners on Uniform State Laws in 1916 and was subsequently adopted by the District of Columbia on September 28, 1962. Since 1962, the District of Columbia has made no significant changes in the Act. The Revised Uniform Limited Partnership Act was adopted by the National Conference of Commissioners on Uniform State Laws in August 1976, in an attempt to respond to the many ambiguities and omissions in the prior uniform law. The revised act adds more detailed language and mechanics, including some important substantive changes and additions. The proposed District of Columbia Revised Uniform Limited Partnership Act is an adaptation of the revised uniform act that was prepared by the Committee on Corporations, Partnerships, and Unincorporated Associations of Division 3 of the District of Columbia Bar Association. It slightly modifies the revised uniform act to respond to the demonstrated shortcomings of the previous law while retaining the basic character of the revised uniform act in the interest of the greatest possible uniformity among the District of Columbia and other jurisditions. Substantial guidance has been drawn from the experience of Maryland in adopting and operating under the revised act.

Subtitles 1 and 2 of the proposed act define the terms used throughout the act and collect in one place all provisions dealing with the execution and filing of certificates of limited partnership and amendments thereto, the use of limited partnership names, and the formal requirements for an office and agent for service of process. These provisions parallel similar provisions governing corporations.

Subtitles 3 and 4 define in much greater detail than the previous law the powers and potential liabilities of limited partners. The greatest change from the previous law is an enumeration of activities in which a limited partner may engage without being held to have so participated in the control of the business that he assumes the liability of a general partner. Furthermore, if a limited partner's participation in the control of the partnrship is not substantially the same as the exercise of the powers of a general partner, he is liable only to the person who transacts business with the limited partnership with actual

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knowledge of his participation in control. The rights and powers of a general partner are also set forth in greater detail than in the previous law.

Subtitle 5 provides that the contribution of a partner may be in the form of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services. Those who fail to perform promised services are required, in the absence of an agreement to the contrary, to pay the value of the services stated in the certificate of limited partnerhsip. The previous law only permitted the contribution to be in the form of cash or property.

Subtitle 6 deals with distributions and withdrawals from the limited partnership, and creates a statute of limitations on the rights of a limited partnership to recover all or part of a contribution that has been returned to a limited partner.

Subtitle 7 deals with the assignability of partnership interests. Subtitle 8 contains provisions relating to dissolution, including a more detailed standard for seeking judicial dissolution of a limited partnership.

Subtitle 9 would correct a large omission in the present law, describing the treatment to be afforded a limited partnership organized under the laws of jurisdictions other than the District of Columbia. Neither existing case law nor administrative practice makes it clear which jurisdiction's law should govern the partnership or whether the limited partners of such foreign limited partnership continue to possess their limited liability. Subtitle 9 provides for the registration of foreign limited partnerships and specifies choice-of-law rules.

Subtitle 10 of the proposed act authorizes derivative actions which may be brought by limited partners under certain circumstances. Subtitle 11 provides an effective date for the act and contains transitional provisions concerning the applicability of the revised act to existing limited partnerships.

M E M O R A N D U M

FROM: D.C. Partnership Committee

DATE: April 27, 1984

RE: PROPOSED AMENDMENTS TO THE DISTRICT OF COLUMBIA CODE RELATING TO PARTNERSHIPS

PRESENT LAW

Rule 17(b) of the Superior Court of D.C. states the following:

> The capacity of an individual, other than one acting in a representative capacity, to sue or to be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the District of Columbia, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of the District of Columbia, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the U.S., and (2) that the capacity of a receiver appointed by a court of the U.S. to sue or be sued is governed by Title 28 U.S.C. §§754 and 959(a).

Numerous cases have held that in the District of Columbia a suit by or against a partnership may not be maintained against the firm as a legal entity in its own name but must be brought in the name of the individual partners. See Matson v. Mackubin 57 F.2d 941 (D.C. App. 1932); Fennell v. Bache, 123 F.2d 905 (D.C. App. 1941); Mayflower Hotel etc. v. Mayflower Hotel Corporation 73 F.Supp. 721 (1947); Day v.

Avery, 548 F.2d 1018 (D.C. App. 1976). Under present law, service of process must be made individually on all the partners in accordance with Superior Court Rules 4(d)(1) and 4(d)(3):

> (d) Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:
>
> (1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process
>
> (3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant

PROPOSED CHANGES

The purpose of the proposed changes is to facilitate the bringing of a suit by or against a partnership in the District of Columbia.

First, the proposed amendments to the District of Columbia Code grant the right to partnerships in D.C. to sue and to be sued, in the firm name, as a legal entity separate from the individual partners.

Second, the proposed amendments provide a mechanism for service of process on partnerships doing business in the District of Columbia. This new section allows service of process on any general partner of the partnership in the District of Columbia and such service will qualify as valid service of process upon the partnership and upon each general partner in his capacity as a general partner. One need only know the name of one general partner in order to serve the partnership and all its general partners. At the same time, by providing that service be made on a general partner, the provision ensures that service is made at the appropriate level to provide proper delivery of service.

Third, new §§15-324(a) and (b) prevent general partners in a partnership which is being sued as an entity from effectively making the partnership judgment-proof by terminating or liquidating the partnership and distributing the assets to partners who were not named as parties to the suit. A judgment in an action against a partnership shall be binding on all general partners who were general partners of the partnership at the time the action was commenced, whether or not they were served or named as parties to the action. A

general partner may, however, avoid being bound by a judgment if he proves in an appropriate form that he was not a general partner at the time the action commenced. A judgment executed upon a partnership will support execution upon the partnership's property and the individual property of any of its general partners, provided that prior to execution upon a general partner's individual property, the partnership's property has been exhausted.

NEW SECTION TO BE ADDED AT THE END OF TITLE 13, CHAPTER 3, SUBCHAPTER II: SERVICE OF PROCESS; LEGAL REPRESENTATIVES.

§13-342 Service Upon Partnerships.

Service of Process upon any general partner within the District of Columbia shall be deemed service upon the partnership entity and upon each general partner in his capacity as a general partner.

NEW SECTION TO BE ADDED AT THE END OF TITLE 15, CHAPTER 3, ENFORCEMENT OF JUDGMENTS AND DECREES.

§15-324 Enforcement of Judgment Against Partnership.

(a) A judgment entered against a partnership sued in its firm name shall be binding on all persons who were general partners of the partnership at the time the action was commenced, whether or not such general partners were served or named as parties to the action; provided that any person shall have the right to prove in an appropriate forum that he was not a general partner at the time the action was commenced.

(b) A judgment entered against a partnership sued solely in its firm name shall support execution upon the partnership property and upon the property of any general partner, whether or not such general partner is named as a party to the suit; provided that, prior to execution upon the property of any general partner not named as a party, the property of the partnership has been exhausted.

NEW SECTION TO BE ADDED AT THE END OF TITLE 41, CHAPTER 3. DISSOLUTION AND PAYMENT OF DEBTS.

§41-305 Right of Partnership To Sue and Be Sued in the Partnership Name.

Any partnership organized or qualified to do business under the laws of the District of Columbia and any general partnership doing business in the District of Columbia shall have the right to bring suit in the name of the partnership, and an action against such a partnership may be prosecuted against one or more persons trading as such partnership or against the partnership entity in its firm name.

(b) A judgment against general partners of a partnership shall only be the firm name shall support execution on the partnership property and upon the property of any general partner, whether or not such general partner is named as a party to the suit, provided that, prior to execution upon the property of any general partner not named as a party, the property of the partnership has been exhausted.

NEW SECTION TO BE ADDED AT THE END OF TITLE 41, CHAPTER 3
DISSOLUTION AND PAYMENT OF DEBTS

541-30b Rights of partnership to sue and be sued in the partnership name

Any partnership organized or qualified to do business under the laws of the District of Columbia and any general partnership doing business in the District of Columbia shall have the right to bring suit in the name of the partnership, and an action against such a partnership may be prosecuted against one or more persons trading as such partnership or against the partnership entity in its firm name.

Revised Uniform Limited Partnership Act

Subtitle 1. General Provisions

§41-201. Definitions.

(a) In general. In this title, unless the context requires otherwise, the following words have the meanings indicated.

(b) Certificate. "Certificate" means the certificate referred to in §41-209, the certificate as amended, and the certificate of cancellation.

(c) Consent. "Consent" means a writing consenting to a specified act or event.

(d) Contribution. "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 as capital to a limited partnership in that person's capacity as a partner.

(e) Department. "Department" means the Corporations Division -- Department of Consumer and Regulatory Affairs.

(f) Event of withdrawal of a general partner. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in §41-222.

THE VIEWS EXPRESSED HEREIN REPRESENT ONLY THOSE OF DIVISION 3, CORPORATION, FINANCE, AND SECURITIES LAW OF THE DISTRICT OF COLUMBIA BAR AND NOT THOSE OF THE D.C. BAR OR OF ITS BOARD OF GOVERNORS.

(g) Foreign limited partnership. "Foreign limited partnership" means a partnership formed under the laws of any State other than the District of Columbia or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners.

(h) General partner. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and has been named as a general partner in the certificate or similar instrument of the State or foreign country under which the limited partnership is organized if so required.

(i) Limited partner. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and has been named as a limited partner in the certificate or similar instrument of the State or foreign country under which the limited partnership is organized if so required.

(j) Limited partnership. "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of the District of Columbia and having one or more general partners and one or more limited partners.

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

(l) Partnership agreement. "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.

(m) Partnership interest. "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.

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

(o) Principal office. "Principal office" means the place in the District of Columbia recorded with the Department as the principal office of the partnership pursuant to Section 41-204.

(p) State. "State" means a state, territory, possession, or district of the United States.

COMMENT

The definitions in this section clarify a number of uncertainties in existing law and make certain changes.

"Contribution": This definition specifies the permissible forms of contribution including a promise to make a future payment of cash, contribution of property or performance of services. §41-204 of the previous Limited Partnership Act (¶3 of the prior uniform law) did not permit a limited partner's contribution to be in the form of services.

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"General partner and limited partner": These definitions recognize the separate significance of the partnership agreement and the certificate in that they require a general partner and a limited partner to be named as such in both.

"Limited partnership": This definition is similar to the one set forth in §41-201 of the previous Limited Partnership Act.

"Partnership agreement": The previous Limited Partnership Act and the prior uniform law did not refer to the partnership agreement at all. Under modern practice it has become common for the partners to enter into a comprehensive partnership agreement, although the definition indicates that "any valid agreement written or oral", will suffice.

"Partnership interest": This definition was intended to specify the components of a partner's interest in the partnership.

§41-202. Name.

(a) Restrictions on limited partnership name. The name of each limited partnership as set forth in its certificate:

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

(2) May not contain the name of a limited partner unless:

(i) It is also the name of a general partner; or

(ii) The business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) May not be the same as or misleadingly similar to:

(i) The name of any corporation or limited partnership organized under the laws of the District of Columbia;

(ii) The name of any foreign corporation or foreign limited partnership registered or qualified to do business in the District of Columbia; or

(iii) Any name which is reserved or registered under §§29-309, 29-590 or 41-203 of the District of Columbia Code.

(b) Filing affirmation. Every 5 years following the year in which the limited partnership is formed, each limited partnership shall file by September 15 a statement on a form provided by the Department affirming that the limited partnership is actively engaged in the business for which it was formed. A failure to file the affirmation on time shall result in forfeiture of the right to use the name set forth in the certificate but shall not otherwise affect the status rights or obligations of the limited partnership or any of its partners under this title.

COMMENT

This section is new. It is intended to make the requirements for a limited partnership's name similar to those for a corporation. The requirement in Subsection (a)(1) of

incorporating the words "limited partnership" in the name is adopted for the sake of uniformity in recognizing limited partnerships formed under the Revised Uniform Limited Partnership Act. In determining whether the standards of Subsection (a)(3) are met with regard to the same or misleading names, it is intended that the Department will consider all relevant circumstances, and will give weight to written consents from other corporations and partnerships to the use of similar names, and particularly, for the use of similar names for partnerships and corporations with the same sponsorship or ownership. Subsection (b) provides a means by which unused names may be made available for use by others, as is the case when a corporation forfeits its charter. The fee for the filing required by Subsection (b) is set forth in §41-266.

§41-203. Reservation of name.

(a) Who may reserve. The exclusive right to use a specified name for a domestic or foreign limited partnership may be reserved by:

(1) A person who intends to organize a domestic limited partnership;

(2) A domestic limited partnership which proposes to change its name;

(3) A foreign limited partnership which intends to register to do business in the District of Columbia; or

(4) A foreign limited partnership registered to do business in the District of Columbia which proposes to change its name.

(b) Procedure.

(1) A person may reserve a specified name by filing a signed application with the Department.

(2) If the Department finds that the name is available for use by a limited partnership, the Department shall reserve the name for 60 days for the exclusive use of the applicant.

(c) Transferability. The exclusive right to use a reserved name may be transferred to another person by filing with the Department a notice of the transfer which specifies the name and address of the transferee and is signed by the applicant for whom the name was reserved.

COMMENT

This section did not appear in either the previous Limited Partnership Act or the prior uniform law, and is intended to make the procedure for registering a limited partnership's name analogous to that used for corporations. The fees for the filings called for by this section are set forth in §41-265.

§41-204. Principal Office and Resident Agent.

Each limited partnership shall continuously maintain in the District of Columbia:

(1) An office, which may but need not be a place of its business in the District of Columbia, at which shall be kept the records required by Section 41-205 to be maintained; and

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

COMMENT

This section is new. It requires that a limited partnership have certain minimum contacts with the jurisdiction in which it has been organized, that is, an office at which the basic documents and financial information are kept and a resident agent for service of process. Section 41-342 has been amended to provide for the manner of service upon a resident agent of a domestic limited partnership organized or qualified to do business pursuant to this Act.

§41-205. Records to be kept.

Each limited partnership shall keep at its principal office the following records, which are subject to inspection and copying at the reasonable request, and, except as otherwise provided in this title, at the expense of any partner during ordinary business hours:

(1) A current list of the full name and last known home or business address of each partner set forth in alphabetical order;

(2) A copy of the certificate together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

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(3) Copies of the limited partnership's federal, State, and local income tax returns and reports, if any, for the 3 most recent years; and

(4) Copies of then effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years.

§41-206. Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on.

COMMENT

This section is identical to §41-203 of the previous Limited Partnership Act (§3 of the prior uniform law).

§41-207. Business transactions of partner with partnership.

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

COMMENT

§41-207 makes a number of important changes in §41-213 of the previous Limited Partnersip Act (§13 of the prior uniform law). Those sections, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. On several occasions, the courts have been required to interpret the intent

of those sections and clarify their ambiguities. §41-207 eliminates the provisions of those sections relating to fraudulent conveyances leaving that area to the District of Columbia fraudulent conveyance law found at §§28-2109, 28-3101 - 28-3103 of the District of Columbia Code. In addition, §41-207 is expanded to cover both limited and general partners and eliminates the prohibition in those former sections against a general partner (as opposed to a limited partner) sharing pro rata with general creditors in the assets of the limited partnership in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

§41-208. Applicability of Uniform Partnership Act.

In any case not provided for in this Act, the provisions of the District of Columbia Uniform Partnership Act (District of Columbia Code §§41-101 et. seq.) shall govern.

COMMENT

This section is consistent with §41-105 of the District of Columbia Uniform Partnership Act and is nearly identical to §1105 of the Revised Uniform Limited Partnership Act.

Subtitle 2. Formation: Certificate of Limited Partnership

§41-209. Certificate of limited partnership.

(a) In order to form a limited partnership two or more persons must execute a certificate. The certificate shall be filed with the Department and set forth:

(1) The name of the limited partnership;

(2) The purposes for which the partnership is formed;

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(3) The address of the principal office and the name and address of the resident agent;

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

(5) The amount of cash and a description and statement of the agreed value of the other property or services (other than past services) contributed by each limited partner and which each limited partner has agreed to contribute in the future, including any terms and conditions permitted by §41-228.;

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

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

(8) If agreed upon, the time at which or the events on the happening of which a partner may withdraw from the limited partnership; the amount of, or the method of determining, the distribution to which the partner may be entitled respecting his partnership

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interest, and the terms and conditions of the withdrawal and distribution; and any provisions required to be in the certificate under §41-222(3) or (4) of this article;

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

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

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

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

(13) Any other matters the partners determine to include.

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

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COMMENT

The matters required to be set forth in the certificate are not different in kind from those required by §41-202 of the previous Limited Partnership Act (§2 of the prior uniform law), although certain additions and deletions have been made and the description has been revised to conform with the rest of the chapter. In general, the certificate is intended to serve two functions: first, to place creditors on notice of the facts concerning the capital of the partnership and the rules regarding additional contributions to and withdrawals from the partnership; second, to specify and make a matter of public record certain basic information concerning the partnership. It should be noted that the concept of consideration is broader here than the one describing consideration for the issuance of stock. Furthermore, capital contributions of general partners are omitted from the certificate since general partners are subject to unlimited liability. Section 41-209(b), based on §41-202(b) of the previous Limited Partnership Act makes it clear that the existence of the limited partnership depends only upon compliance with this section, and not upon compliance with other provisions of this title.

§41.210. Amendment to Certificate.

(a) A certificate is amended by filing a certificate of amendment with the Department. The certificate of amendment shall set forth:

(1) The name of the limited partnership; and

(2) The amendment to the certificate.

(b) (1) A general partner who becomes aware that any statement in a certificate was false when made or that any arrangements or other facts

described have changed, making the certificate inaccurate in any material respect, shall promptly amend the certificate, but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

(2) A certificate may be amended at any time for any other proper purpose.

(c) Except as provided in §41-216(b), a certificate of amendment (or judicial decree of amendment) shall be effective when accepted for filing by the Department or at any later time specified in the certificate of amendment (or judicial decree of amendment).

COMMENT

This section makes a significant change in §41-224(b) of the previous Limited Partnership Act (§24 of the prior uniform law) by omitting the list of specific events which require an amendment to the certificate but stating in Subsection (b) that the certificate is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it was executed. (Note, however, that previous §10-123(b)(7), subdivision (2)(g) of §24 of the prior uniform law did require an amendment when the certificate contained a "false or erroneous statement." Subsection (c) is much like previous §41-225(e), except that it provides for an effective date later than the date of filing if so desired.

§41-211. Cancellation of certificate.

(a) Contents. A certificate shall be cancelled on the dissolution and the commencement of winding up of the partnership, or at any other time that there are no limited partners. A certificate of cancellation shall be filed with the Department and set forth:

(1) The name of the limited partnership;

(2) The date of the filing of the initial certificate;

(3) The reason for filing the certificate of cancellation;

(4) The effective date (which shall be a date certain) of cancellation if it is not to be effective on the filing of the certificate of cancellation, and provided that any effective date other than the date of filing the certificate of cancellation must be a date subsequent to the filing; and

(5) Any other information the general partners determine.

(b) Effectiveness. Unless otherwise provided in this title or in the certificate, a certificate of cancellation (or a judicial decree of cancellation) is effective when accepted for filing by the Department.

COMMENT

This section changes §41-224 (a) of the previous Limited Partnership Act (§24 of the prior uniform law) by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. §41-224 (a) of the previous Limited Partnership Act provided for cancellation "when the partnership is dissolved or all limited partners cease to be such." Subsection (b) is similar to §41-225(e) of the previous Limited Partnership Act (subdivision (5) of §25 of the prior uniform law), except that it provides for an effective date other than the date of filing if so desired.

§41-212. Execution of certificates.

(a) Signatories. Each certificate required by this subtitle to be filed with the Department shall be executed in the following manner:

(1) The certificate under §41-209 must be signed by all partners named in the certificate;

(2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate of amendment as a new partner or whose contribution is described as having been increased; and

(3) A certificate of cancellation must be signed by all general partners or, if there is no general partner, by a majority of the limited partners.

(b) Power of attorney. Any person may sign a certificate by an attorney in fact.

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

COMMENT

This section collects in one place the formal requirements for the execution of certificates which were set forth in §§41-202 and 41-225 of the previous Limited Partnership Act (§§2 and 25, respectively, of the prior uniform law). Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. This section insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. This section permits signatures by powers of attorney which represents a change in District of Columbia practice. The former requirement that all certificates be sworn, has been confined here to an affirmation by a general partner, recognizing that the limited partner's role is a limited one. There is no longer any requirement that signatures be notarized. Note that "certificate" is defined in subparagraph (b) of §41-201 to include both certificates of amendment and certificates of cancellation.

§41-213. Amendment or cancellation by judicial act.

If a person required by §41-212 of this subtitle to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a

partnership interest, who is adversely affected by the failure or refusal, may petition the Superior Court of the District of Columbia to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, the court shall order the Department to record an appropriate certificate of amendment or cancellation.

COMMENT

This section changes §41-225(c) and (d) of the previous Limited Partnership Act (subdivisions (3) and (4), respectively, of §25 of the prior uniform law) by confining the persons who have standing to seek judicial intervention to partners and to those assignees who are adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation.

§41-214 Filing with the Department.

(a) In general. An executed copy of each certificate required by this subtitle (or of any judicial decree of amendment or cancellation) shall be filed with the Department. The Department, however, may not accept for record any certificate or decree that does not meet the requirements of §§41-209, 41-210, 41-211, 41-212 and 41-213. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. The Department may not accept for record or filing any certificate, decree, qualification, registration, change of

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resident agent or principal office, report, service of process or notice, or other document until all required fees have been paid to the Department.

(b) Duties of the Department. When the Department accepts for record any certificate, the Department shall:

(1) Endorse on the document the date and time of its acceptance for record;

(2) Record promptly the document; and

(3) Issue a certificate which states:

(i) That the document was accepted for record by the Department; and

(ii) The date and time of acceptance for record.

COMMENT

This section is new and replaces references in §§41-202 and 41-225(e) of the previous Limited Partnership Act to filings "in the office of the Recorder of Deeds of the District of Columbia." The third sentence of Subsection (a) does away with the requirement that persons who have executed certificates under a power of attorney exhibit executed copies of the power of attorney itself. Section 209 of the Revised Uniform Limited Partnership Act, which would have required delivery of certificates to limited partners has been omitted.

§41-215. Liability for false statement in certificate.

(a) Reliance on false statement. If any certificate contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

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

(2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any material respect, if that general partner had sufficient time to amend or cancel the certificate or to file a petition under §41-213 before the statement was relied upon.

(b) No liability if timely correction. A person is not liable for failing to cause the amendment or cancellation of a certificate or failing to file a petition under §41-213 pursuant to Subsection (a) of this section if the certificate of amendment, certificate of cancellation, or petition is filed within 30 days of when that person knew or should have known that the statement in the certificate was inaccurate in any material respect.

COMMENT

This section changes §41-206(a) of the previous Limited Partnership Act (§6 of the prior uniform law) by providing explicitly for the liability of persons who sign a

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certificate as agent under a power of attorney and by confining the obligation to amend a certificate in light of future events to general partners. Subsection (b) provides a "safe harbor" against claims of creditors or others who assert that they have been misled by the failure to amend the certificate when required; if the certificate is amended within 30 days of when an amendment is required, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of §41-219 below. Section 208 of the new uniform law, which states that the filing of a certificate is constructive notice only of the limited liability of the limited partners and not of any other fact, has been omitted.

Subtitle 3. Limited Partners

§41-216. Admission of additional limited partners.

(a) Conditions for admission. After the filing of the initial certificate, a person may be admitted as an additional limited partner.

(1) In the case of a person acquiring a partnership interest directly from the limited partnership;

(i) On compliance with the partnership agreement; or

(ii) With the consent of all partners; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, under §41-240 of this title, to grant the assignee the

right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(b) Effectiveness of admission. In each case under Subsection (a) of this section, the person acquiring the partnership interest becomes a limited partner when the certificate is amended to reflect that fact. Such amendment shall, if filed within 30 days after admission of a new partner in accordance with Subsection (a), be effective as of the date of such admission as specified in the amendment.

COMMENT

Paragraph (1) of Subsection (a) adds to §41-208 of the previous Limited Partnership Act (§8 of the prior uniform law) an explicit recognition of the fact that the unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Paragraph (2) is derived from §41-219 (d) of the previous Limited Partnership Act (§19 of the prior uniform law) but abandons the former terminology of "substituted limited partner". Subsection (b) is derived from §§41-208 and 41-219(e) of the previous Limited Partnership Act.

§41-217. Voting.

Subject to §41-218 of this title, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) on any matter.

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COMMENT

This section is new, and must be read together with paragraph (1)(v) of §41-218. Although neither the previous Limited Partnership Act nor the prior uniform law spoke specifically of the voting powers of limited partners, it is not uncommon for partnership agreements to grant such powers to limited partners. This section is designed only to make it clear that the partnership agreement may grant such powers to limited partners. If such powers are granted to limited partners beyond the "safe harbor" of §41-218(b) (5), a court may hold that, under the circumstances, the limited partners have participated in "control of the business" within the meaning of §41-218(a). Section 41-218(b)(2) simply means that the exercise of powers beyond the ambit of §41-218(b)(1) is not ipso facto to be construed as taking part in the control of the business.

§41-218 Liability to third parties.

(a) In general. Except as provided in §41-215(a) of this title and Subsection (c) of this section, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of his right and power as a limited partner, he takes part in the control of the business. If the limited partner's participation in the control of the business, however, is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) Acts not constituting participation in the control of the business. (1) A limited partner does not participate in the control of the business within the meaning of Subsection (a) solely by doing one or more of the following:

(i) Being a contractor for or an agent or employee of the limited partnership or of a general partner;

(ii) Consulting with or advising a general partner with respect to the business of the limited partnership;

(iii) Acting as surety for the limited partnership;

(iv) Approving or disapproving an amendment to the partnership agreement; or

(v) Voting on one or more of the following matters:

1. The dissolution and winding up of the limited partnership;

2. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all the assets of the limited partnership;

3. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its businesss;

4. A change in the nature of its business;

5. The removal of a general partner; or

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6. The admission of a general or limited partner.

(2) The enumeration in Subsection (b)(1) of this Subsection does not necessarily mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.

(c) Permission to use name. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by §41-202 (a)(2) of this title, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

COMMENT

This section makes several important changes in §41-207 of the previous Limited Partnership Act (§7 of the prior uniform law). The first sentence of §41-218(a) carries over the basic test from §41-207 of the previous Limited Parntership Act (§7 of the prior uniform law) -- whether the limited partner "takes part in the control of the business" -- in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. The second sentence of §41-218(a) reflects a wholly new concept. Due to the difficulty of determining when the "control" line has been overstepped, it was thought unfair to impose general partner's liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order

to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the "is not substantially the same as" test was introduced. Subsection (b) is intended to provide a "safe harbor" by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. Subsection (c) is derived from §41-205(b)(2) of the previous Limited Partnership Act (§5(2) of the prior uniform law), but adds as a condition to the limited partner's liability the fact that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

§41-219. Person erroneously believing himself limited partner.

(a) Acts to avoid liability. Except as provided in Subsection (b) of this section, a person who makes a contribution to a partnership and erroneously but in good faith believes that he has become a limited partner in the partnership is not a general partner in the partnership and is not bound by its obligations by reason of making the contribution, receiving distributions from the partnership, or exercising any rights of a limited partner, if, on ascertaining the mistake:

(1) In the case of a person who wishes to be a limited partner, he causes an appropriate certificate to be executed and filed; or

(2) In the case of a person who wishes to withdraw as a partner from the partnership, he executes and files a document with the Department declaring that he withdraw under this section.

(b) Liability imposed. A person who makes a contribution under the circumstances described in Subsection (a) is liable as a general partner to any third party who transacts business with the partnership prior to the occurrence of either of the events described in either Subsection (a)(1) or (a)(2) of this section:

(1) If that person knew or reasonably should have known either that no certificate has been filed or that the certificate inaccurately refers to him as a general partner; and

(2) If the third party reasonably relied upon the fact that the person was a general partner at the time of the transaction.

COMMENT

This section is derived from §41-211 of the previous Limited Partnership Act (§11 of the prior uniform law). The "good faith" requirement has been added in the first sentence of §41-219(a). The prior law had also called upon the person making a contribution as described in this section to renounce his interest in the profits of the business or other compensation upon ascertaining his mistaken status in order to avoid liability, but other corrective action is allowed here.

§41-220. Information.

(a) Each limited partner has the right to obtain from the general partners upon reasonable demand and at partnership expense:

(1) True and full information regarding the state of the business and financial condition of the limited partnership;

(2) Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and

(3) Other information regarding the affairs of the limited partnership as is just and reasonable.

(b) Any limited partner or group of limited partners owning 10% or more of the limited partnership's interests of a limited partnership shall, upon written request to the general partners, have the right at their own expense and during ordinary business hours to inspect the books and records of the limited partnership.

COMMENT

Subsection (a) of this Section restates the rights of limited partners to information about the partnership formerly provided by §41-210(a)(2) of the previous Limited Partnership Act (§10 of the prior uniform law). Subsection (b) is new.

Subtitle 4. General Partners

§41-221. Admission of additional general partners.

Except as otherwise provided in the partnership agreement, after the filing of the initial certificate, additional general partners may be admitted with the consent of

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all general partners and a majority in interest of limited partners (determined on the basis of the sharing of profits and losses).

COMMENT

This section is new. It differs from both §41-209 (5) of the previous Limited Partnership Act (§9(1)(e) of the prior uniform law) and from §401 of the current uniform law by permitting the admission of additional general partners with the approval of all of the general partners but only a majority in interest of the limited partners.

§41-222. Ceasing to be a general partner.

A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The person's withdrawal from the limited partnership as provided in §41-231;

(2) The person's removal as a general partner in accordance with the partnership agreement;

(3) Unless otherwise provided in the certificate or with the consent of all partners, the person's:

(i) Making an assignment for the benefit of creditors;

(ii) Filing a voluntary petition in bankruptcy;

(iii) Being adjudged insolvent or having entered against him an order for relief in any bankruptcy proceeding or any order of relief in an insolvency proceeding;

(iv) Filing a petition or answer seeking for himself any reorganization, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation;

(v) Filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(vi) Seeking, consenting to, or acquiescing in, the appointment of a trustee, receiver, or liquidation of the general partner or of all or any substantial part of his properties;

(4) Unless otherwise provided in the certificate or with the consent of all partners, the continuation of any proceeding against him seeking reorganization, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, for 120 days after the commencement thereof or the appointment of a trustee, receiver, or liquidator for the general partner or all or any substantial part of his properties without his agreement or acquiescence, which appointment is not vacated or stayed for 120 days

or, if the appointment is stayed, for 120 days after the expiration of the stay during which period the appointment is not vacated;

(5) In the case of a general partner who is an individual, the individual's:

(i) Death; or

(ii) Adjudication by a court of competent jurisdiction as incompetent to manage his person or his property;

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

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

(8) In the case of a general partner that is a corporation, the dissolution of the corporation or the revocation of its charter; or

(9) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

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COMMENT

This section expands and modifies considerably the provisions of §41-220 of the previous limited partnership law (§20 of the prior uniform law), which provided for dissolution in the event of the retirement, death or insanity of a general partner. Paragraphs (1) and (2) recognize that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivision (2) of the Revised Uniform Limited Partnership Act, which referred to §702 therein (the assignment of a general partner's interest) was deleted from this title, since the assignment of all of a general partner's interest would constitute withdrawal under §41-231, and thus the additional reference was repetitious and unnecessary. Paragraphs (3) and (4) reflect a judgment that unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the Federal Bankruptcy Code or similar provisions of law. Paragraphs (6) through (9) simply elaborate on the dissolution of a general partner who is not an individual.

§41-223. Powers and liabilities.

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

(b) Restrictions on limiting liability. A general partner's liability may not be limited in the partnership agreement to persons other than his partners or the partnership.

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COMMENT

This Section is derived from §41-209 of the previous Limited Partnership Act (§9(1) of the prior uniform law). This section does not contain the list of prohibited acts contained in previous §41-209. The exercise of the general partners' powers pursuant to §41-222(a) shall be subject to the same fiduciary obligations as under the Uniform Partnership Act (see §41-120) and existing case law. See Day v. Sidley & Austin, 394 F. Supp. 986 (D.D.C. 1975), aff'd 548 F.2d 1018 (D.C. Cir. 1976), cert denied, 431 U.S. 908 (1977); Riss & Co., Inc. v. Feldman, 79 A.2d 566 (D.C. Mun. App. 1951). See also, Herring v. Offit, 295 A.2d 876 (Md. 1972); Allen v. Steinberg, 222 A.2d 240 (Md. 1966). Subsection (b) is not intended to prohibit a limited partnership from contracting with a third party for limited liability such as in the case of a nonrecourse mortgage.

§41-224. Contributions by general partner.

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

COMMENT

This section is derived from §41-212 of the previous Limited Partnership Act (§12 of the prior uniform law) and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of a limited partner.

§41-225. Voting.

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

COMMENT

This section is new.

Subtitle 5. Finance

§41-226. Form of contribution.

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

COMMENT

This section expands upon §41-204 of the previous Limited Partnership Act (§4 of the prior uniform law) by granting explicit permission to make contributions of services. See the Comment to §41-201 of this title.

§41-227. Liability for contribution.

(a) (1) Except as provided in the certificate, a limited partner is obligated to the limited partnership to perform any promise set forth in

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the certificate to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason;

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

(b) (1) The obligation of a limited partner to make a contribution or return money or other property paid or distributed in violation of this title may be compromised only upon compliance with the certificate or, if the certificate does not so provide, with the consent of all partners;

(2) Any compromise does not affect the rights to enforce the original obligation of any creditor of a limited partnership who extends credit, or whose claim arises, after the filing of the certificate which reflects the obligation, but before the filing of the certificate of amendment or certificate of cancellation which reflects the compromise.

COMMENT

This section applies only to the contributions of limited partners since the general partners' contributions are not required to be stated in the certificate. The provisions in this Section for liability of limited partners is not intended to imply that a general partner would not be held liable for contributions that he is required to make under the Certificate of Limited Partnership. Although the section from which Subsection (a) above is derived, §41-217(a) of the previous Limited Partnership Act (§17(1) of the prior uniform law), required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the certificate provides otherwise. Subsection (b) is derived from §41-217(c) and (d) of the previous Limited Partnership Act (§17 (3) of the prior uniform law). The term "creditor" is intended to include any creditor, whether the creditor's claim is liquidated or not. The concept of previous §41-217(b) that a limited partner holds property stated in the certificate as contributed by him only as a "trustee" for the partnership is eliminated. See also the Comment to §41-236 of this title.

§41-228. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value of the contributions of each partner.

COMMENT

This section is new. The prior uniform law did not provide for the basis on which partners share profits and losses in the absence of agreement, except that §41-214 of the previous Limited Partnership Act provided for all limited partners to "stand upon equal footing" in the absence of such agreement. It should be noted that the second sentence of §41-228 still does not solve the problem that may arise regarding the value of a general partner's contribution which is not stated in the certificate or the value of contributions in the form of past services where no stated value was placed on the past services in the certificate.

§41-229. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. Unless otherwise provided in the partnership agreement, distributions shall be made on the basis of the sharing of profits and losses.

COMMENT

This section is new. The prior uniform law did not provide for the basis on which partners share in distributions in the absence of agreement, except that §41-214 of the previous Limited Prtnership Act provided for all limited partners to "stand upon equal footing" in the absence of such agreement. This section also recognizes that partners may choose to share in distributions on a different basis than they share in profits and losses.

Subtitle 6. Distributions and Withdrawal

§41-230. Interim distributions.

Except as otherwise provided in this subtitle:

(1) To the extent set forth in the partnership agreement, a partner is entitled to receive distributions from a limited partnership before his withdrawal and before the dissolution and winding up of the limited partnership; and

(2) To the extent set forth in the certificate, a limited partner is entitled to receive distributions which constituted a return of any part of that limited partner's contribution before his withdrawal and before the winding up of the limited partnership.

COMMENT

Section 41-215 of the prior Limited Partnership Act (§15 of the prior uniform law) provided that a limited partner may receive the share of profits or compensation by way of income stipulated in the certificate, provided that after such payment is made, the partnership assets were in excess of all liabilities (except liabilities to (a) limited partners on account of their contributions, and (b) general partners). Although this restriction is now lifted, the limitation on return of contributions contained in §41-226 of this title may be applicable. The definition of a return of contribution is set forth in §41-237(b).

§41-231. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal notice violates the partnership agreement, the limited partnership may recover from the

withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to the withdrawing general partner.

COMMENT

This section is new but is generally derived from §41-137 of this article, which is part of the District of Columbia Uniform Partnership Act and which provides for damages in the case of a wrongful withdrawal by a general partner.

§41-232. Withdrawal of limited partner.

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

COMMENT

This section is derived from §41-216(b) of the previous Limited Partnership Act (§16 of the prior uniform law), although the notice need now only be delivered to the general partners instead of to "all other members". If the certificate does not specify a definite time for withdrawal, the right of a limited partner to withdraw after 6 months' notice may create practical problems of partnership administration (e.g. how does

the partnership obtain funds to repay the limited partners' contributions).

§41-233. Distribution upon withdrawal.

Except as otherwise provided in this subtitle, on withdrawal (other than a withdrawal pursuant to an assignment by which the assignee becomes a partner) any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his partnership interest in the limited partnership as of the date of withdrawal.

COMMENT

The prior law cited in the Comment to §41-231 of this title is applicable here as well. This section fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners. The prior law was silent on this point, except for §41-214 (§14 of the prior uniform law) which put all limited partners on an equal footing in the absence of an agreement. It is recognized that the determination of the fair value of the withdrawing partner's interest may be difficult.

§41-234. Distribution in kind.

Unless otherwise provided in the certificate, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash.

COMMENT

This section is derived from §41-216(c) of the previous Limited Partnership Act (§16(3) of the prior uniform law). Other states' enactment of the Revised Uniform Limited Partnership Act may include a second sentence to this section which is new and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of a particular asset. The drafters of this title felt that this provision did not add to the fiduciary duties of the general partner and raised various problems of interpretation; accordingly, the provision has been deleted.

§41-235. Status as creditor.

Except to the extent limited by §41-236 or §41-246, at the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

COMMENT

This section is new and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of §41-216(d) of the previous Limited Partnership Act which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

§41-236. Limitations on return of contributions.

A partner may not receive a return of his contribution to a limited partnership to the extent that, after giving effect to the return of his contribution, all liabilities of the limited partnership, other than liabilities to partners for the return of their contributions, exceed the fair market value of the partnership assets.

COMMENT

A distribution to a partner is not subject to §41-236 unless it is characterized as a return of his contribution under §41-237(b).

§41-237. Liability upon return of contribution.

(a) Return of contribution. (1) If a limited partner has received the return of any part of his contribution without violation of the certificate, partnership agreement, or this title, he is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

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

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(b) Definition of return. A limited partner receives a return of his contribution to the extent that, after a distribution to him, his share of the fair value of the net assets of the limited partnership is less than the value of his total contribution as reflected in the certificate minus all distributions in return of his contribution made prior to the distribution.

COMMENT

Paragraph (a)(1) is derived from §41-217(d) of the previous Limited Partnership Act (§17(4) of the prior uniform law), but the 1-year statute of limitations has been added. Paragraph (a)(2) is derived from §41-217(b) of the previous Limited Partnership Act (§17(2) of the prior uniform law) but, again, a statute of limitations has been added. Subsection (b) is new. The provisions of §41-217(b) of the previous Limited Partnership Act (§17(2) of the prior uniform law), which stated that a partner holds as "trustee" any money or specific property wrongfully returned to him, has been eliminated.

Subtitle 7. Assignment of Partnership Interests

§41-238. Nature of partnership interest.

A partnership interest is personal property.

COMMENT

This section restates §41-218 of the previous Limited Partnership Act except that it is no longer limited to a limited partner's interest. Section 18 of the prior uniform law had defined a partner's interest in the partnership as "his share of the profits and surplus..." and stated that "the same is personal property," language which in part appears in §41-201(1) of this title.

§41-239. Assignment of partnership interest.

Unless otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or, unless otherwise provided in the partnership agreement, exercise any rights of a partner. Unless otherwise provided in the partnership agreement, an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled.

COMMENT

Section 41-219(a) of the previous Limited Partnership Act (§19(1) of the prior uniform law) provided simply that a "limited partner's interest is assignable," raising a question as to whether any limitations on the right of assignment were permitted. While the first sentence of §41-238 recognizes that the power to assign may be restricted in the partnership agreement, there was no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of §41-239 which were derived from §41-219(c) of the previous Limited Partnership Act (§19(3) of the prior uniform law), expand upon prior law by enabling a partnership to provide in its partnership agreement, that an assignment of a partnership interest transfers to the assignee not only the right to receive distributions but also other specified rights of the assigned partner.

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§41-240. Right of assignee to become limited partner.

(a) In general. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(1) The assignor gives the assignee that right in accordance with authority described in the certificate; or

(2) All other partners consent.

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

(c) Assignor's liability for contribution. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under §41-227 and §41-237.

COMMENT

This section is derived from §41-219(d), (f), and (g) of the previous Limited Partnership Act (subdivisions (4), (6), and (7), respectively, of §19 of the prior uniform law), but Subsection (b) defines more narrowly than previous law the obligations of the assignor that are automatically assumed by the assignee. It is intended that both the assignor and the assignee will be liable for the obligations of the assignor to make his capital contribution. As noted in the Comment to §41-217 of this title, the previous terminology of "substituted limited partner" is eliminated.

§41-241. Death, incompetency, insolvency, or termination of a general partner.

(a) Becomes a limited partner.—Unless otherwise provided in the partnership agreement:

(1) If a general partner who is an individual dies or a court of competent jurisdiction adjudges the individual to be incompetent to manage his person or his property, the partner's executor, personal representative, administrator, guardian, conservator, or other legal representative shall automatically become a limited partner;

(2) If a general partner is a corporation, estate, trust, partnership, or other entity and is dissolved or terminated, its legal representative or successor shall automatically become a limited partner;

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(3) If a general partner ceases to be a general partner under §41-222(3) or permits an act specified in §41-222(4), that partner shall automatically become a limited partner.

(b) Allocable share.--Unless otherwise provided in the partnership agreement, the allocable share of the profits, losses and distributions of a general partner who becomes a limited partner under this section is the same as it was prior to the event specified in Subsection (a) of this section.

COMMENT

This section is derived from §41-220 of the previous Limited Partnership Act (§20 of the prior uniform law), but the concept of giving the successor in interest to a general partner the status of a limited partner under the circumstances described in this section is new. Nothing in this section is intended to affect any liability a former general partner may have in respect of the period in which he was a general partner. The presumption of §41-220 of the previous Limited Partnership Act (§20 of the prior uniform law) that dissolution would occur in the event of a general partner's withdrawal unless a certificate provided otherwise or other plans were consented to by all the partners is found in §41-243. Section 705 of the Revised Uniform Limited Partnership Act was deleted as superfluous.

§41-242. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of judgment with interest. To the extent so

charged, the judgment creditor has only the rights of an assignee of the partnership interest. This title does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

COMMENT

This section is derived from §41-222(a) and (d) of the previous Limited Partnership Act (§22 of the prior uniform law), but has not carried over some provisions that were thought to be superfluous. For example, references in §41-222(a), (b), and (c) of the previous Limited Partnership Act (subdivisions (1), (2) and (3) of §22 of the prior uniform law) to specific remedies have been omitted, as has a prohibition against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

Subtitle 8. Dissolution

§41-243. Events of dissolution.

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

(1) At the time or on the happening of events specified in the certificate;

(2) A consent to dissolution by all partners;

(3) An event of withdrawal of a general partner unless:

(i) At the time there is at least one other general partner and the business is continued by a remaining general partner

under a right to do so stated in the certificate; or

(ii) If, within 90 days after the date a general partner ceases to be a general partner, all partners agree in writing to continue the business of the limited partnership and to the appointment, effective as of such date, of one or more additional general partners if necessary or desired; or

(4) The entry of a decree of judicial dissolution under §41-244 of this subtitle.

COMMENT

This section merely collects in one place all of the events causing dissolution. Paragraph (3) is derived from §§41-209(7) and 41-220 of the previous Limited Partnership Act (§§9(1)(g) and 20 of the prior uniform law), but adds the 90-day grace period.

§41-244. Judicial dissolution.

On application by or for a partner, the Superior Court of the District of Columbia may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

COMMENT

This section is derived from §41-131(a)(4) of the District of Columbia Code, which is part of the District of Columbia Uniform Partnership Act. It is not intended to modify existing law. Section 41-210(a)(3)

of the previous Limited Partnership Act (§10 of the prior uniform law) also granted a similar right.

§41-245. Winding up.

Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partner's affairs; but the Superior Court for the District of Columbia, on cause shown, may wind up the limited partnership's affairs on application of any partner or assignee.

COMMENT

This section is derived in part from §41-136 of this article, which is part of the District of Columbia Uniform Partnership Act, as well as from previous §41-210(a)(3) as noted in the Comment to §41-244 of this title.

§41-246. Distribution of assets.

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

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under §41-230 or §41-233 of this title;

(2) Unless otherwise provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under §41-230 or §41-233 of this title; and

(3) Unless otherwise provided in the partnership agreement, to partners first for the return of their contributions and second respecting their partnership interests, in the proportions in which the partners share in distributions.

COMMENT

This section revises §41-223 of the previous Limited Partnership Act (§23 of the prior uniform law), by providing that (1) to the extent partners are also creditors, other than in respect to their interests in the partnership, they share with other creditors, (2) once the partnership's obligation to make a distribution accrues, it must be paid before any other distributions of an "equity nature" are made, and (3) general and limited partners rank on the same level except as otherwise provided in the partnership agreement.

Subtitle 9. Foreign Limited Partnerships

§41-247. Law governing foreign limited partnerships.

(a) Law of organizational state.--Subject to the District of Columbia Charter:

(1) The laws of the state or county under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and

(2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of the District of Columbia.

(b) Doing business.--A foreign limited partership may not do any business in the District of Columbia which the laws of the District of Columbia prohibit a domestic limited partership from doing.

COMMENT

This section is new, but the last sentence is derived from §29-399.1 of the District of Columbia Code. Previous District of Columbia law made no provision for foreign limited partnerships and §41-247 - 41-257 are attempts to treat them in a way comparable to the treatment afforded foreign corporations, by integrating these provisions with §29-399 et seq. of the District of Columbia Code.

§41-248. Certificate of authority.

Before doing any interstate, intrastate, or foreign business in the District of Columbia, a foreign limited partnership shall obtain a certificate of authority from the Department. In order to obtain a certificate of authority, a foreign limited partnership shall submit to the Department an application of the foreign limited partnership for a certificate of authority, executed by a general partner. The application shall be executed by a general partner in accordance with, and the execution shall constitute an affirmation under, §41-212 of the District of Columbia Code. The application shall set forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to do business in the District of Columbia;

(2) The state or country under whose laws it was formed and the date of its formation;

(3) The general character of the business it proposes to transact in the District of Columbia;

(4) The name and address of its resident agent in the District of Columbia;

(5) A statement that the Department is appointed the resident agent of the foreign limited partnership if no resident agent has been appointed under subparagraph (4), or, if appointed, the resident agent's authority has been revoked, or if the agent cannot be found or served with the exercise of reasonable diligence;

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

(7) If the certificate or similar instrument of the state or foreign country under which the limited partnership is organized is not filed in

a public record in that jurisdiction, or, if filed, is not required to include the names and business addresses of the partners, a list of the names and home or business addresses.

COMMENT

This section is new. It was thought that requiring a full copy of the certificate and all amendments thereto to be filed in each jurisdiction in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information to be placed on file was sufficient to tell interested persons where they could write to obtain copies of those basic documents.

§41-249. Issuance of certificate of authority.

If the Department finds that an application for a certificate of authority meets the requirements of this title and all required fees have been paid, it shall:

(1) Endorse on the application the date and time of its acceptance for record;

(2) Record promptly the document;

(3) Issue a certificate of authority to do business in the District of Columbia;

(4) Return the certificate of authority to the person who filed the application or his representative.

COMMENT

This section is new.

§41-250. Name.

A foreign limited partnership may obtain a certificate of authority from the Department under any name (whether or not it is the name under which it does business in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

COMMENT

This section is new. It should be noted that all the requirements of §41-202 are applicable to a name selected by a foreign limited partnership.

§41-251. Changes and amendments.

If any statement in the application for a certificate of authority of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file with the Department a certificate, executed by a general partner, correcting the statement. The provisions of §41-215 of this title are applicable to foreign limited partnerships as if they were domestic limited partnerships.

COMMENT

This section is new.

§41-252. Cancellation of certificate of authority.

A foreign limited partnership may cancel its certificate of authority by filing with the Department a certificate of withdrawal executed by a general partner. A

certificate of withdrawal does not terminate the authority of the Department to accept service of process on the foreign limited partnership with respect to causes of action arising out of doing business in the District of Columbia.

COMMENT

This section is new but is similar to §§29-399.14 and 29.399.15 of the District of Columbia Code.

§41-253. Doing business without a certificate of authority.

(a) Barred from maintaining suit.--If a foreign limited partnership is doing or has done any intrastate, interstate, or foreign business in the District of Columbia without complying with the requirements of §§41-247 through 41-257 of this title, neither the foreign limited partnership nor any person claiming under it may maintain a suit in any court of the District of Columbia unless it shows to the satisfaction of the court that:

(1) The foreign limited partnership or the person claiming under it has paid the penalty specified in Subsection (e)(1) of this section; and

(2) Either:

(i) The foreign limited partnership or a foreign limited partnership successor to it has complied with the requirements of this subtitle; or

(ii) The foreign limited partnership and any foreign limited partnership successor to it are no longer doing intrastate, interstate, or foreign business in the District of Columbia.

(b) No bar to valid acts or defense of suit.--The failure of a foreign limited partnership to register in the District of Columbia does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of the District of Columbia.

(c) No general partner liability for limited partner.--A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the partnership's having done business in the District of Columbia without obtaining a certificate of authority.

(d) Department as agent for service of process.--A foreign limited partnership, by doing business in the District of Columbia without obtaining a certificate of authority, appoints the Department as its agent for service of process with respect to causes of action arising out of doing business in the District of Columbia.

(e) Fines.--(1) If a foreign limited partnership does any intrastate, interstate, or foreign business in the District of Columbia without obtaining a certificate of

authority, the Department shall impose a penalty of $200 on the partnership. In addition, such foreign limited partnership shall be liable to the District of Columbia for an amount equal to all fees and other charges which would have been imposed upon such foreign limited partnrship had it duly applied for and received a certificate of authority.

(2) Each general partner of a foreign limited partnership which does intrastate, interstate, or foreign business in the District of Columbia, and each agent of the foreign limited partnership who transacts intrastate, interstate, or foreign business in the District of Columbia for it is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $500.

COMMENT

This section is new. Subsection (a) is derived from §29-399.20(a) of the District of Columbia Code; Subsection (b) is similar to §29-399.20(b) thereof; Subsection (d) is derived from §29-399(e)(2); and Subsection (e) is derived from §§29-399(e)(4) and 29-399.20(c).

§41-254. Action by Corporation Counsel.

The Corporation Counsel may bring an action to restrain a foreign limited partnership from doing business in the District of Columbia in violation of this subtitle.

COMMENT

This section is new and is derived from §29-399.20 of the District of Columbia Code.

§41-255. Doing business.

(a) Activities not considered doing business.--In addition to any other activities which may not constitute doing business in the District of Columbia, for the purposes of this title, the following activities of a foreign limited partnership do not constitute doing business in the District of Columbia:

(1) Maintaining, defending, or settling an action, suit, claim, dispute, or administrative or arbitration proceeding;

(2) Holding meetings of its partners or carrying on other activities which concern its internal affairs;

(3) Maintaining bank accounts;

(4) Collecting debts owed to it or taking security for the same; and

(5) Appointing an agent for the solicitation of business not to be transacted in the District of Columbia or for the sale of personal property to the United States within the District of Columbia unless a contract for such sale is accepted by the seller within the District of Columbia or such property is delivered from stock of the seller within the District of Columbia for use within the District of Columbia.

(b) Activities involving investment in real property.--No foreign limited partnership having income from loans secured by real estate, and which does not maintain any office, agent, representative or employees for the purpose of making, maintaining, or liquidating such investments in the District of Columbia, shall be required to obtain a certificate of authority, provided that any such foreign limited partnership shall be deemed to have waived any immunity to service of process and suit in the courts of the District of Columbia and shall appoint and maintain in the District of Columbia an agent for service of process and shall register with the Department the address of its principal office and the name and address of its agent for service of process in the District of Columbia, including any changes in such addresses.

(c) Activities considered doing business.--In addition to any other activities which may constitute doing business in the District of Columbia, for the purposes of this title, any foreign limited partnership which owns income-producing real or tangible personal property in the District of Columbia other than property exempted by Subsection (b) of this section, will be considered to be doing business in the District of Columbia.

COMMENT

This section is new and is derived from §29-399 of the District of Columbia Code.

§41-256. Assent to laws of District of Columbia.

By doing business in the District of Columbia, a foreign limited partnership assents to the laws of the District of Columbia.

COMMENT

This section is new.

§41-257. Compliance with subtitle is not consent to suit.

With respect to any cause of action on which a foreign limited partnership would not otherwise be subject to suit in the District of Columbia, compliance with this subtitle:

(1) Does not of itself render a foreign limited partnership subject to suit in the District of Columbia; and

(2) Is not considered as consent by it to be sued in the District of Columbia.

COMMENT

This section is new.

Subtitle 10. Derivative Actions

§41-258. Right of action.

A limited partner may bring a derivative action to enforce a right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the limited partners in enforcing the right of the partnership.

COMMENT

This section is new.

§41-259. Proper plaintiff.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and:

(1) Have been a partner at the time of the transaction of which he complains; or

(2) Have had his status as a partner devolve on him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

COMMENT

This section is new.

§41-260. Pleading.

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

COMMENT

This section is new.

§41-261. Expenses.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses,

including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

COMMENT

This section is new.

Subtitle 11. Miscellaneous

§41-262. Construction and application.

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

§41-263. Short title.

This title may be cited as the District of Columbia Revised Uniform Limited Partnership Act.

§41-264. Severability.

If any provision of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the title which can be given effect without the invalid provisions or applications, and to this end the provisions of this title are severable.

§41-265. Fees.

The fee for filing any document required to be filed pursuant to this Act shall be $50.

COMMENT

This section is new.

§41-266. Effective date and repeal of prior law.

(a) This Act shall take effect on the later of July 1, 1984 or after a 30-day period of Congressional review following approval by the Mayor (or in event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)). As of the effective date of this Act, former §§41-201 through 41-229 (the District of Columbia Uniform Limited Partnership Act) are repealed.

(b) All limited partnerships formed on or after the effective date shall be governed by the provisions of the District of Columbia Revised Uniform Limited Partnership Act.

(c) All existing limited partnerships which have been formed under the provisions of the District of Columbia Uniform Limited Partnership Act shall, from and after the effective date provided for in subparagraph (a) of this section, be governed by the provisions of the District of Columbia Revised Uniform Limited Partnership Act, provided that any existing limited partnership will not be required to add the term "limited partnership" to its present name.

(d) Each existing limited partnership formed under the District of Columbia Uniform Limited Partnership Act may, but will not be required to, make any amendments to its

existing certificate of limited partnership on file with the Department to conform to the District of Columbia Revised Uniform Limited Partnership Act, provided that

(1) If an existing limited partnership does not file an amended certificate of limited partnership designating a resident agent as provided in §41-204, service of process may be made upon any general partner or upon the Department;

(2) If the principal place of business of an existing limited partnership is in the District of Columbia, such principal place of business will be deemed the principal office of the limited partnership pursuant to §41-204; and

(3) If the principal place of business of any existing limited partnership is not in the District of Columbia, the existing limited partnership will be required to file an amendment to its existing certificate of limited partnership on or before the effective date hereof designating a principal office in the District of Columbia.

COMMENT

This section was included to minimize the filing of amendments to certificates of limited partnerships by existing limited partnerships endeavoring to conform to the revised title.