

HOUSE BILL 484

By Travis

AN ACT to amend Tennessee Code Annotated, Title 61,  
relative to business entities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 61, is amended by adding the following language as a new chapter:

**Part 1. General Provisions.**

**61-3-101. Definitions.**

As used in this chapter:

(1) "Certificate of limited partnership":

(A) Means the certificate required by § 61-3-201; and

(B) Includes the certificate as amended or restated;

(2) "Contribution," except when used in the phrase "right of contribution", means property or a benefit described in § 61-3-501 that is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner;

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

(A) An order for relief under 11 U.S.C. § 101 et seq. or a comparable order under a successor statute of general application; or

(B) A comparable order under federal, state, or foreign law governing insolvency;

(4) "Distribution":

(A) Means a direct or indirect transfer of money or other property by a limited partnership, except for the issuance of its own partnership

interests, with or without consideration, or an incurrence or issuance of indebtedness, whether directly or indirectly, including through a guaranty to or for the benefit of any of its partners in respect of partnership interests;

(B) Includes interim distribution or a liquidation distribution; a purchase, redemption, or other acquisition of its partnership interests; of a distribution indebtedness, which includes the incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for the benefit of the limited partnership's partners; or any other transaction;

(C) Does not mean amounts paid to or for the benefit of partners as compensation or benefits for services rendered by the partners in their capacities as partners, agents, or independent contractors;

(5) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to § 61-3-404(c);

(6) "Foreign limited partnership":

(A) Means an unincorporated entity formed under the laws of a jurisdiction other than this state that would be a limited partnership if formed under the laws of this state; and

(B) Includes a foreign limited liability limited partnership;

(7) "General partner" means a person that:

(A) Has become a general partner under § 61-3-401 or was a general partner in a partnership when the partnership became subject to this chapter; and

(B) Has not dissociated as a general partner under § 61-3-603;

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country;

(9) "Jurisdiction of formation" means the jurisdiction whose laws govern the internal affairs of an entity;

(10) "Limited liability limited partnership," except when used in the phrase "foreign limited liability limited partnership" and in part 11 of this chapter, means a limited partnership whose certificate of limited partnership states that the partnership is a limited liability limited partnership;

(11) "Limited partner" means a person that:

(A) Has become a limited partner under § 61-3-301 or was a limited partner in the partnership when the partnership became subject to this chapter; and

(B) Has not been dissociated under § 61-3-601;

(12) "Limited partnership", except in the phrase "foreign limited partnership" and in part 11 of this chapter:

(A) Means an entity formed under this chapter or which becomes subject to this chapter under part 11 of this chapter or § 61-3-1207; and

(B) Includes a limited liability limited partnership;

(13) "Partner" means a limited partner or general partner;

(14) "Partnership agreement":

(A) Means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in a record, or in any combination thereof, of all the partners of a limited partnership concerning the matters described in § 61-3-104(a); and

(B) Includes the agreement as amended or restated;

(15) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company,

cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(16) "Principal office" means the principal executive office of a limited partnership or foreign limited partnership, whether or not the office is located in this state;

(17) "Property" means all property, whether real, personal, mixed, or tangible or intangible, or any right or interest in such property;

(18) "Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(19) "Registered agent" means an agent of a limited partnership or foreign limited partnership who is authorized to receive service of any process or notice required or permitted by law to be served on the partnership;

(20) "Registered foreign limited partnership" means a foreign limited partnership that is registered to do business in this state pursuant to a statement of registration filed by the secretary of state;

(21) "Required information" means the information that a limited partnership is required to maintain under § 61-3-107;

(22) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and

(24) "Transfer" includes:

- (A) An assignment;
- (B) A conveyance;
- (C) A sale;
- (D) A lease;
- (E) An encumbrance, including a mortgage or security interest;
- (F) A gift; and
- (G) A transfer by operation of law.

**61-3-102. Knowledge; Notice.**

(a) A person knows a fact if the person:

- (1) Has actual knowledge of it; or
- (2) Is deemed to know it under law other than this chapter.

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

- (1) Has reason to know the fact from all the facts known to the person at the time in question; or
- (2) Is deemed to have notice of the fact under subsection (c) or (d).

(c) A certificate of limited partnership filed with the secretary of state is notice that the partnership is a limited partnership and that the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (d), the certificate is not notice of any other fact not set out in this subsection (c).

(d) A person who is not a partner, is deemed to have notice of:

(1) A person's dissociation as a general partner the earlier of:

(A) Ninety (90) days after an amendment to the certificate of limited partnership stating that the other person has dissociated becomes effective; or

(B) Ninety (90) days after a statement of dissociation pertaining to the other person becomes effective;

(2) A limited partnership's:

(A) Dissolution ninety (90) days after an amendment to the certificate of limited partnership stating that the limited partnership is dissolved becomes effective; termination ninety (90) days after a statement of termination under § 61-3-802(b)(2)(F) becomes effective; and

(B) Participation in a merger, conversion, or domestication, ninety (90) days after articles of merger, conversion, or domestication under part 11 of this chapter become effective.

(e) Subject to § 61-3-209(f), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

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

#### **61-3-103. Governing Law.**

The law of this state governs:

- (1) The internal affairs of a limited partnership; and
- (2) The liability of a partner as partner for a debt, obligation, or other liability of a limited partnership.

**61-3-104. Partnership Agreement; Scope, Function, and Limitations.**

(a) Except as otherwise provided in subsections (c) and (d), the partnership agreement governs:

- (1) Relations among the partners as partners and between the partners and the limited partnership;
- (2) The activities and affairs of the partnership and the conduct of those activities and affairs; and
- (3) The means and conditions for amending the partnership agreement.

(b) To the extent the partnership agreement does not provide for a matter described in subsection (a), this chapter governs the matter.

(c) A partnership agreement shall not:

- (1) Vary the law applicable under § 61-3-103;
- (2) Vary a limited partnership's capacity under § 61-3-110 to sue and be sued in its own name;
- (3) Vary § 61-3-204;
- (4) Vary the right of a general partner under § 61-3-406(b)(2) to vote on or consent to an amendment to the certificate of limited partnership deleting a statement that the limited partnership is a limited liability limited partnership;
- (5) Vary the notice requirements under § 61-3-102 or under this chapter in a manner that is manifestly unreasonable;
- (6) Vary the requirements with respect to the limited partnership's name under § 61-3-112;

(7) Vary the requirement under § 61-3-119 regarding the Workers' Compensation Law, compiled in title 50, chapter 6;

(8) Eliminate or vary the restrictions on reimbursement and indemnification contained in § 61-3-408(a) and (b);

(9) Eliminate or vary the potential for personal liability of a general partner under § 61-3-404;

(10) Eliminate or vary this section;

(11) Eliminate or vary the limitations on distributions in § 61-3-504;

(12) Eliminate or vary the liability for unlawful distributions in § 61-3-505;

(13) Unreasonably restrict a right to information or access to records under § 61-3-304 or § 61-3-407;

(14) Eliminate or restrict the duty of loyalty under § 61-3-409(b)(1) or (b)(2), except to the extent provided by subsection (d);

(15) Unreasonably reduce the duty of care under § 61-3-409;

(16) Eliminate the obligation of good faith and fair dealing under § 61-3-305(a) and § 61-3-409(d), but the partnership agreement may determine standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(17) Vary the grounds for expulsion specified in § 61-3-603(5)(B);

(18) Vary the power of person to dissociate as a general partner under § 61-3-604(a), except to require that the notice under § 61-3-603(1) be in a record;

(19) Vary the causes of dissolution specified in § 61-3-801(a)(6);

(20) Vary the requirement to wind up the partnership's activities and affairs as specified in § 61-3-802(a), (b)(1), and (d);



(21) Vary the provisions of § 61-3-905, but the partnership agreement may provide that the partnership shall not have a special litigation committee;

(22) Vary any requirements relating to documents required to be filed with the secretary of state or any register of deeds, or otherwise vary or restrict any other rights of the secretary of state or any register of deeds; and

(23) Except as provided in §§ 61-3-105 and 61-3-106(b), vary or restrict any rights of any person under this chapter, other than a partner.

(d) Without limiting other terms that may be included in a partnership agreement, the following applies:

(1) The partnership agreement may:

(A) Specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one (1) or more disinterested and independent persons after full disclosure of all material facts; and

(B) Alter the prohibition in § 61-3-504(a)(2) so that the prohibition requires only that the partnership's total assets not be less than the sum of its total liabilities; and

(2) If not manifestly unreasonable, the partnership agreement may:

(A) Alter or eliminate the aspects of the duty of loyalty stated in § 61-3-409(b)(1) or (b)(2);

(B) Identify specific types or categories of activities that do not violate the duty of loyalty;

(C) Alter the duty of care, but shall not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law; and

(D) Alter or eliminate any other fiduciary duty.

(e) The court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subdivision (c)(5), (c)(16), or (d)(2). The court:

(1) Shall make its determination as of the time the challenged term became part of the partnership agreement and by considering only circumstances existing at that time; and

(2) May invalidate the term only if, in light of the purposes, activities, and affairs of the limited partnership, it is readily apparent that:

(A) The objective of the term is unreasonable; or

(B) The term is an unreasonable means to achieve its objective.

**61-3-105. Partnership Agreement; Effect on Limited Partnership and Person  
Becoming Partner; Preformation Agreement.**

(a) A limited partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the agreement.

(b) A person that becomes a partner is deemed to assent to the partnership agreement.

(c) Two (2) or more persons intending to become the initial partners of a limited partnership may make an agreement providing that upon the formation of the partnership, the agreement shall become the partnership agreement.

**61-3-106. Partnership Agreement; Effect on Third Parties and Relationship to  
Records Effective on Behalf of Limited Partnership.**

(a) A partnership agreement may specify that its amendment requires the approval of a person who is not a party to the agreement or the satisfaction of a

condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Subject only to a court order issued under § 61-3-703(b)(2) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

(1) Is effective with regard to any debt, obligation, or other liability of the partnership or its partners to the person in the person's capacity as a transferee or person dissociated as a partner; and

(2) Is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a partner.

(c) If a record delivered by a limited partnership to the secretary of state for filing becomes effective and contains a provision that would be ineffective under § 61-3-104(c) if contained in the partnership agreement, the provision is ineffective in the record.

(d) Subject to subsection (c), if a record delivered by a limited partnership to the secretary of state for filing becomes effective and conflicts with the partnership agreement:

(1) The agreement prevails as to partners, persons dissociated as partners, and transferees; and

(2) The record prevails as to other persons to the extent they reasonably rely on the record.

#### **61-3-107. Required Information.**

A limited partnership shall maintain at its principal office the following information:

(1) A current list showing the full name and last known street and mailing address, including zip codes, of each partner, separately identifying the general partners, and the limited partners;

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

(3) A copy of any filed articles of merger or conversion;

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

(5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) A copy of any financial statement of the partnership for the three (3) most recent years;

(7) A copy of the three (3) most recent annual reports delivered by the partnership to the secretary of state pursuant to § 61-3-211;

(8) A copy of any record made by the partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this act or the partnership agreement; and

(9) Unless contained in a partnership agreement made in a record, a record stating:

(A) A description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

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

(C) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(D) Any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

**61-3-108. Dual Capacity.**

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

**61-3-109. Nature, Purpose, and Duration of Limited Partnership.**

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

(b) A limited partnership may have any lawful purpose, regardless of whether for profit.

(c) A limited partnership has perpetual duration.

**61-3-110. Powers.**

A limited partnership has the capacity to sue and be sued in the name of the partnership and the power to do all things necessary or convenient to carry on the partnership's activities and affairs.

**61-3-111. Supplemental Principles of Law.**

Unless displaced by this chapter, the principles of law and equity supplement this chapter.

**61-3-112. Permitted Names.**

(a) The name of a limited partnership may contain the name of any partner, but must not contain the phrases "corporation," "incorporated," "limited liability company," or abbreviations of like import.

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "LP" or "L.P." and must not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.".

(c) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "LP" or "L.P.".

(d) The name of a limited partnership, and the name under which a foreign limited partnership may register to do business in this state, must be distinguishable on the records of the secretary of state from any:

(1) Name of an existing person whose formation required the filing of a record by the secretary of state and which is not at the time administratively dissolved;

(2) Name of a limited liability partnership whose statement of qualification is in effect;

(3) Name under which a person is registered to do business in this state by the filing of a record by the secretary of state;

(4) Name reserved under § 61-3-113 or other law of this state providing for the reservation of a name by the filing of a record by the secretary of state; and

(5) Name registered under § 61-3-114 or other law of this state providing for the registration of a name by the filing of a record by the secretary of state.

(e) A domestic or foreign limited partnership, or person acting on behalf of a limited partnership not yet formed, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (d). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (d) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of the name or change the name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (d) consents in writing to the use of the name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(f) In determining whether a name is the same as or not distinguishable on the records of the secretary of state from the name of another person, words, phrases, or abbreviations indicating the type of person, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP", "R.L.L.P.", "limited liability limited partnership", "LLLLP", "L.L.L.P.", "registered limited liability limited partnership", "RLLLLP", "R.L.L.L.P.", "limited liability company", "LLC", "L.L.C.", "limited cooperative association", "limited cooperative", "LCA", or "L.C.A." must not be taken into account.

(g) The name of a limited partnership or foreign limited partnership must not contain language stating or implying that the limited partnership or foreign limited partnership:

(1) Transacts or has the power to transact any business for which authorization, in whatever form and however denominated, is required under the laws of this state, unless the appropriate commission or official has granted the authorization and certifies that fact to the secretary of state in writing;

(2) Is formed as, affiliated with or sponsored by, any fraternal, veterans', service, religious, charitable or professional organization, unless the formation, affiliation or sponsorship is certified in writing to the secretary of state by the body authorizing the formation or the organization with which affiliation or sponsorship is claimed, as applicable; or

(3) Is an agency or instrumentality of, affiliated with or sponsored by the United States, any state, or a subdivision or agency of the United States, unless



the fact is certified in writing to the secretary of state by the appropriate official of the United States, the state, or the subdivision or agency, as applicable.

(h) A limited partnership or foreign limited partnership may use a name that is not distinguishable from a name described in subdivisions (d)(1)-(5) if the partnership delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the partnership to use the name in this state.

**61-3-113. Reservation of Name.**

(a) A person may reserve the exclusive use of a name that complies with § 61-3-112 by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the name is available, the secretary of state shall reserve the name for the applicant's exclusive use for one hundred twenty (120) days.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the secretary of state a signed notice in a record of the transfer which states the name and address of the person to which the reservation is being transferred.

(c) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

**61-3-114. Registration of Name.**

(a) A foreign limited partnership not registered to do business in this state under part 10 of this chapter may register its name, or an alternate name adopted pursuant to § 61-3-1006, if the name is distinguishable on the records of the secretary of state from the names that are not available under § 61-3-112.

(b) To register its name or an alternate name adopted pursuant to § 61-3-1006, a foreign limited partnership must deliver to the secretary of state for filing an application stating the partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to § 61-3-1006. If the secretary of state finds that the name applied for is available, the secretary of state must register the name for the applicant's exclusive use.

(c) The registration of a name under this section is effective for one (1) year after the date of registration.

(d) A foreign limited partnership whose name registration is effective may renew the registration for successive one-year periods by delivering, not earlier than three (3) months before the expiration of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one-year period.

(e) A foreign limited partnership whose name registration is effective may register as a foreign limited partnership under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

**61-3-115. Registered Agent.**

(a) Each limited partnership and each registered foreign limited partnership shall designate and maintain a registered agent in this state. The designation of a registered agent is an affirmation of fact by the limited partnership or registered foreign limited partnership that the agent has consented to be served.

(b) A registered agent for a limited partnership or registered foreign limited partnership must have a place of business in this state.

(c) The only duties under this chapter of a registered agent that has complied with this chapter are:

(1) To forward to the limited partnership or registered foreign limited partnership at the address most recently supplied to the agent by the partnership or foreign partnership any process, notice, or demand pertaining to the partnership or foreign partnership which is served on or received by the agent;

(2) If the registered agent resigns, to provide the notice required by § 61-3-117(a)(4) to the partnership or foreign partnership at the address most recently supplied to the agent by the partnership or foreign partnership; and

(3) To keep current the information with respect to the agent in the certificate of limited partnership.

**61-3-116. Change of Registered Agent or Address for Registered Agent by Limited Partnership.**

(a) A limited partnership or registered foreign limited partnership may change its registered agent or the address of its registered agent by delivering to the secretary of state for filing a statement of change that states:

(1) The name of the limited partnership or registered foreign limited partnership;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office and zip code for the office, and the county in which the office is located;

(4) The name of its current registered agent; and

(5) If the current registered agent is to be changed, the name of the new registered agent.

(b) The general or limited partners of a limited partnership need not approve the delivery to the secretary of state for filing of:

(1) A statement of change under this section; or

(2) A similar filing changing the registered agent or registered office, if any, of the partnership in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an affirmation of fact by the limited partnership or registered foreign limited partnership that the agent has consented to serve.

(d) As an alternative to using the procedure in this section, a limited partnership may amend its certificate of limited partnership.

**61-3-117. Resignation of Registered Agent.**

(a) A registered agent may resign as an agent for a limited partnership or registered foreign limited partnership by delivering to the secretary of state for filing a statement of resignation that states:

(1) The name of the limited partnership or registered foreign limited partnership;

(2) The name of the agent;

(3) That the agent resigns from serving as registered agent for the limited partnership or registered foreign limited partnership; and

(4) A certification that the registered agent has mailed a copy of the statement to the principal office of the limited partnership by certified mail.

(b) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

When a statement of resignation takes effect, the registered agent ceases to have responsibility under this chapter for any matter thereafter tendered to it as agent for the limited partnership or registered foreign limited partnership. The resignation does not affect any contractual rights the limited partnership or registered foreign limited

partnership has against the agent or that the agent has against the limited partnership or registered foreign limited partnership.

(c) A registered agent may resign with respect to a limited partnership or registered foreign limited partnership whether or not the limited partnership or registered foreign limited partnership is in good standing.

(d) If a registered agent resigns or is unable to perform its duties, the designating limited partnership must, not later than sixty (60) days after the resignation or discovery that the agent is unable to perform its duties, designate another registered agent to the end that it shall at all times have a registered agent in this state.

**61-3-118. Change of Name or Address by Registered Agent.**

(a) If a registered agent changes its name or address, the agent shall deliver to the secretary of state for filing a statement of change that states:

(1) The name of the limited partnership or registered foreign limited partnership represented by the registered agent;

(2) The name of the agent as currently shown in the records of the secretary of state for the limited partnership or registered foreign limited partnership;

(3) If the name of the agent has changed, the agent's new name; and

(4) If the address of the agent has changed, the agent's new address and a mailing address, such as a post office box if the United States postal service does not deliver to the agent's street address.

(b) A registered agent shall promptly furnish notice to the represented limited partnership or registered foreign limited partnership of the filing by the secretary of state of the statement of change and the changes made by the statement.

**61-3-119. Service of Process, Notice, or Demand.**

(a) A limited partnership's registered agent is the limited partnership's agent for service of process, notice, or demand required or permitted by law to be served on the limited partnership.

(b) The secretary of state shall be an agent of a limited partnership upon whom any process, notice, or demand may be served when:

(1) A domestic or foreign limited partnership authorized to do business in this state fails to appoint or maintain a registered agent in this state;

(2) Its registered agent cannot be found with reasonable diligence;

(3) A foreign limited partnership transacts business or conducts affairs in this state without first submitting an application for registration with the secretary of state; or

(4) The registration of a foreign limited partnership has been cancelled.

(c) Whenever a domestic or foreign limited partnership authorized to do business in this state is an employer within the meaning of the Workers' Compensation Law, compiled in title 50, chapter 6, and the limited partnership is, for the purpose of workers' compensation, self-insured or a part of a self-insurance pool as provided in title 50, chapter 6, part 4, the limited partnership shall, for workers' compensation actions only, be required to appoint the commissioner of commerce and insurance and the commissioner's chief deputy, or their successors, as its true and lawful attorneys upon either of whom all lawful process in any such action or legal proceeding may be served, as is required of insurance companies by title 56, chapter 2.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a limited partnership.

**61-3-120. Delivery of Record.**

(a) Except as otherwise provided in this chapter, permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice, and electronic transmission.

(b) Delivery to the secretary of state is effective only when a record is received by the secretary of state.

**61-3-121. Service on Secretary of State.**

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign limited partnership as provided in § 61-3-119(b), of any process, notice or demand must be made by delivering to the secretary of state the original and one (1) copy of the process, notice, or demand, duly certified by the clerk of the court in that the suit or action is pending or brought, together with the proper fee. A statement that identifies which of the grounds listed in § 61-3-119(b) for service on the secretary of state must be included. The secretary of state shall endorse the time of receipt upon the original and copy and shall immediately send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to the limited partnership at its registered office or principal office, or designated alternative mailing address, as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which the limited partnership is formed. If none of the addresses described in the previous sentence are available to the secretary of state, service may be made to any one (1) of the general partners at the address set forth in the certificate of limited partnership. The secretary of state may require the plaintiff, or complainant as the case may be, or the plaintiff's attorney, to furnish the latter address.

(b) The refusal or failure of the limited partnership to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign

the return receipt, does not affect the validity of the service, and any limited partnership refusing or failing to accept delivery of registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained in the registered or certified mail.

(c) When the registered or certified mail return receipt is received by the secretary of state or when a limited partnership refuses or fails to accept delivery of the registered or certified mail and it is returned to the secretary of state, the secretary of state shall forward the receipt or the refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice the secretary of state sent to the defendant limited partnership and the affidavit setting forth compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and the receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action, and service on the defendant shall be complete. Service made under this section has the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on a defendant domestic or foreign limited partnership may be served on the secretary of state as agent for the defendant limited partnership in the same manner, at the same cost and with the same effect as process, notice or demand are served on the secretary of state as agent for the defendant limited partnership under this section.

(e) No appearance is required in the suit or action by the defendant domestic or foreign limited partnership nor shall any judgment be taken against the domestic or



foreign limited partnership in less than one (1) month after the date service is completed under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of the service and the action with reference thereto.

## **Part 2. Formation; Certificate of Limited Partnership and Filings.**

### **61-3-201. Formation of Limited Partnership; Certificate of Limited Partnership.**

(a) To form a limited partnership, a person must deliver a certificate of limited partnership to the secretary of state for filing.

(b) A certificate of limited partnership must state:

(1) The name of the limited partnership, that complies with § 61-3-112;

(2) The street and mailing addresses of the partnership's principal office; the address of its principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office;

(3) If the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership is required to maintain; the name of the limited partnership's initial registered agent and street and addresses in this state of the partnership's registered office and the county in which the registered office is located;

(4) The name and street and mailing addresses of each general partner, and a mailing address such as a post office box if the United States postal service does not deliver to the general partner's address; and

(5) Whether the limited partnership is a limited liability limited partnership.

(c) A certificate of limited partnership may contain statements as to matters other than those required by subsection (b), but must not vary or otherwise affect § 61-3-104(c) and (d) in a manner inconsistent with that section.

(d) The partnership agreement must not be filed.

(e) A limited partnership is formed when:

(1) The initial certificate of limited partnership is filed with the secretary of state or at any later date or time specified in the certificate of limited partnership in accordance with and subject to § 61-3-207;

(2) At least two (2) persons have become partners;

(3) At least one (1) person has become a general partner; and

(4) At least one (1) person has become a limited partner.

**61-3-202. Amendment or Restatement of Certificate of Limited Partnership.**

(a) A certificate of limited partnership may be amended or restated at any time.

(b) To amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment stating:

(1) The name of the partnership; and

(2) The text of the amendment.

(c) To restate its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing a restatement, designated as such in its heading.

(d) A limited partnership shall, not later than sixty (60) days after the happening of any of the following events, deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

(1) The admission of a new general partner;

(2) The dissociation of a person as a general partner; or

(3) The appointment of a person to wind up the limited partnership's activities and affairs under § 61-3-802(c) or (d).

(e) If a general partner knows that any information in a filed certificate of limited partnership was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the general partner must, not later than sixty (60) days after the general partner obtains such knowledge:

(1) Cause the certificate to be amended; or

(2) If appropriate, deliver to the secretary of state for filing a statement of change under § 61-3-116 or a statement of correction under § 61-3-208.

**61-3-203. Signing of Records to be Delivered for Filing to Secretary of State.**

(a) The following records delivered to the secretary of state for filing pursuant to this chapter must be signed as follows:

(1) An initial certificate of limited partnership must be signed by all general partners listed in the certificate;

(2) An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate;

(3) An amendment to the certificate of limited partnership designating as general partner a person admitted under § 61-3-801(a)(3)(B) following the dissociation of a limited partnership's last general partner must be signed by that person;

(4) An amendment to the certificate of limited partnership required by § 61-3-802(c) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person;

(5) Any other amendment to the certificate of limited partnership must be signed by:

(A) At least one (1) general partner listed in the certificate;

(B) Each person designated in the amendment as a new general partner; and

(C) Each person that the amendment indicates has dissociated as a general partner, unless:

(i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(ii) The person has previously delivered to the secretary of state for filing a statement of dissociation;

(6) A restated certificate of limited partnership must be signed by at least one (1) general partner listed in the certificate, and, to the extent the restated certificate effects a change to any other record under this subsection (a), the certificate must be signed in a manner that satisfies the applicable subdivision;

(7) A statement of termination must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to § 61-3-802(c) or (d) to wind up the dissolved limited partnership's activities and affairs;

(8) Any other record delivered by a limited partnership to the secretary of state for filing must be signed by at least one (1) general partner listed in the certificate of limited partnership;

(9) A statement by a person pursuant to § 61-3-605(a)(3) stating that the person has dissociated as a general partner must be signed by that person;

(10) A statement of negation by a person pursuant to § 61-3-306 must be signed by that person; and

(11) Any other record delivered on behalf of a person to the secretary of state for filing must be signed by that person.

(b) Any record delivered for filing under this chapter may be signed by an agent, including an attorney in fact. An authorization, including a power of attorney, to sign any record or to enter into a partnership agreement or amendment of the partnership agreement must be in writing, but need not be sworn to, verified, or acknowledged, and need not be filed in the office of the secretary of state, but if in writing, must be retained by a general partner. Whenever this chapter requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

**61-3-204. Signing and Filing Pursuant to Judicial Order.**

(a) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved may petition the appropriate court to order:

- (1) The person to sign the record;
- (2) The person to deliver the record to the secretary of state for filing; or
- (3) The secretary of state to file the record unsigned.

(b) For purposes of subsection (a), the appropriate court is:

- (1) For actions brought under subdivisions (a)(1) and (a)(2), either:
  - (A) The chancery court for the county in which the partnership maintains its principal office; or

(B) The chancery court of Davidson County; and

(2) For actions brought under subdivision (a)(3), the chancery court of Davidson County.

(c) If a petitioner under subsection (a) is not the limited partnership or foreign limited partnership to which the record pertains, the petitioner must make the limited partnership or foreign limited partnership a party to the action.

(d) A record filed under subdivision (a)(3) is effective without being signed.

**61-3-205. Liability for Materially False Information in Filed Record.**

(a) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains materially false information, a person that suffers loss by reliance on the information may recover damages for the loss from a general partner if:

(1)

(A) The record was delivered for filing on behalf of the partnership; and

(B) The general partner knew or had notice of the materially false statement for a reasonably sufficient time before the information was relied upon so that, before the reliance, the general partner reasonably could have:

(i) Effected an amendment under § 61-3-202;

(ii) Filed a petition under § 61-3-204; or

(iii) Delivered to the secretary of state for filing a statement of change under § 61-3-116 or a statement of correction under § 61-3-208; or

(2) After filing, that general partner knew that any arrangement or other fact described in the certificate is materially false in any respect or has changed making the statement materially false, if that general partner had reasonably sufficient time before the information was relied upon to have:

(A) Effected an amendment under § 61-3-202;

(B) Filed a petition under § 61-3-204; or

(C) Delivered to the secretary of state for filing a statement of change under § 61-3-116 or a statement of correction under § 61-3-208.

(b) No general partner has any liability for failing to cause the amendment, correction, or cancellation of a certificate to be filed or failing to file a petition for its amendment, correction, or cancellation pursuant to subsection (a) if the certificate of amendment, certificate of cancellation, or petition is filed within ninety (90) days of when the general partner knew or should have known that the statement in the certificate was false in any material respect.

**61-3-206. Filing Requirements.**

(a) To be filed by the secretary of state pursuant to this chapter, a record must be received by the secretary of state, must comply with this chapter, and satisfy the following:

(1) The filing of the record must be required or permitted by this chapter;

(2) The record must be physically delivered in written form unless and to the extent the secretary of state permits electronic delivery of the record;

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals;

(4) The record must be signed by a person authorized or required under this chapter to sign the record; and

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this chapter prohibits the disclosure by the secretary of state of information contained in a record delivered to the secretary of state for filing, the secretary of state must file the record if the record otherwise complies with this chapter but may redact the information.

(c) When a record is delivered to the secretary of state for filing, any fee required under this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other than this chapter must be paid in a manner permitted by the secretary of state or by that law.

(d) The secretary of state may require that a record delivered in written form be accompanied by an identical or conformed copy.

(e) The secretary of state may provide forms for filings required or permitted to be made by this chapter, but, except as otherwise provided in subsection (f), their use is not required.

(f) The secretary of state may require that a cover sheet for a filing be on a form prescribed by the secretary of state.

(g) The secretary of state has the power to promulgate appropriate rules establishing acceptable methods for execution of any document to be filed with the secretary of state.

**61-3-207. Effective Date and Time.**



(a) Subject to § 61-3-209(d), a record filed under this chapter is effective:

(1) On the date and at the time of its filing by the secretary of state, as provided in § 61-3-209(b);

(2) On the date of filing and at the time specified in the record as its effective time, if later than the time described in subdivision (a)(1);

(3) At a specified delayed effective date and time, which may not be more than ninety (90) days after the date of filing; or

(4) If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than ninety (90) days after the date of filing.

**61-3-208. Correcting Filed Record.**

(a) A person on whose behalf a filed record was delivered to the secretary of state for filing may correct the record if:

(1) The record at the time of filing was inaccurate;

(2) The record was defectively signed; or

(3) The electronic transmission of the record to the secretary of state was defective.

(b) A record is corrected by delivering to the secretary of state for filing a statement of correction that:

(1) Does not state a delayed effective date;

(2) Is signed by the person correcting the filed record;

(3) Identifies the filed record to be corrected, including its filing date, or has attached to the statement of correction a copy of the filed record;

(4) Specifies the inaccuracy or defect to be corrected and the reason it is incorrect; and

(5) Corrects the inaccuracy or defect in the filed record.

(c) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of § 61-3-102(d) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

**61-3-209. Duty of Secretary of State to File; Review of Refusal to File; Delivery of Record by Secretary of State.**

(a) The secretary of state shall file a record delivered to the secretary of state for filing that satisfies this chapter. The duty of the secretary of state under this section is ministerial.

(b) When the secretary of state files a record, the secretary of state must record it as filed on the date and at the time of its delivery. After filing a record, the secretary of state shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing.

(c) If the secretary of state refuses to file a record, the secretary of state must, not later than fifteen (15) business days after the record is delivered:

(1) Return the record or notify the person that submitted the record of the refusal; and

(2) Provide a brief explanation in a record of the reason for the refusal.

(d)

(1) If the secretary of state refuses to file a record, the person that submitted the record may petition the chancery court of Davidson County to compel filing of the record. The record and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(2) Any judicial review of the secretary of state's refusal to file a record must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) The filing of or refusal to file a record does not:

(1) Affect the validity or invalidity of the record in whole or in part; or

(2) Create a presumption that the information contained in the record is correct or incorrect.

(f) Except as otherwise provided in § 61-3-119 or by law other than this chapter, the secretary of state may deliver any record to a person by delivering it:

(1) In person to the person that submitted it;

(2) To the address of the person's registered agent;

(3) To the principal office of the person; or

(4) To another address, including an electronic mail address, the person provides to the secretary of state for delivery.

**61-3-210. Certificate of Existence or Registration.**

(a) On request of any person, the secretary of state must issue a certificate of existence for a limited partnership or a certificate of registration for a registered foreign limited partnership.

(b) A certificate under subsection (a) must state:

(1) The limited partnership's name or the registered foreign limited partnership's name used in this state;

(2) In the case of a limited partnership:

(A) That a certificate of limited partnership has been filed and has taken effect;

(B) The date the certificate became effective;

(C) The period of the partnership's duration if the records of the secretary of state reflect that its period of duration is less than perpetual; and

(D) That:

(i) No statement of administrative dissolution, or statement of termination has been filed; and

(ii) The records of the secretary of state do not otherwise reflect that the partnership has been dissolved or terminated;

(3) In the case of a registered foreign limited partnership, that the registered foreign limited partnership is registered to do business in this state;

(4) That all fees, taxes, interest, and penalties owed to this state by the limited partnership or the foreign limited partnership have been paid, if:

(A) Payment is reflected in the records of the secretary of state;

and

(B) Nonpayment affects the existence or registration of the limited partnership or foreign limited partnership; and

(5) Other facts reflected in the records of the secretary of state pertaining to the limited partnership or foreign limited partnership that the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

**61-3-211. Annual Report for Secretary of State.**

(a) A limited partnership or registered foreign limited partnership shall deliver to the secretary of state for filing an annual report that states:

- (1) The name of the limited partnership or foreign limited partnership;
- (2) The name of its registered agent in this state;
- (3) The street address, including the zip code, of its principal office and a mailing address, such as a post office box if the United States postal service does not deliver mail to the principal office;
- (4) The name of at least one (1) general partner; and
- (5) In the case of a foreign limited partnership, its jurisdiction of formation and any alternate name adopted under § 61-3-1006(a).

(b) Information in the annual report must be current as of the date the report is signed by the limited partnership or registered foreign limited partnership.

(c) Every limited partnership and registered foreign limited partnership shall file the annual report with the secretary of state on or before the first day of the fourth month following the close of the limited partnership or registered foreign limited partnership's fiscal year.

(d) If an annual report does not contain the information required by this section, the secretary of state must promptly notify the reporting limited partnership or registered foreign limited partnership in a record and return the report for correction.

(e) If an annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under § 61-3-116.

(f) If an annual report contains a street or mailing address for the principal office that differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under § 61-3-116.

### **Part 3. Limited Partners.**

#### **61-3-301. Becoming Limited Partner.**

(a) Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

(b) After formation, a person becomes a limited partner:

- (1) As provided in the partnership agreement;
- (2) As the result of a transaction effective under part 11 of this chapter;
- (3) With the affirmative vote or consent of all the partners; or
- (4) As provided in § 61-3-801(a)(4) or (a)(5).

(c) A person may become a limited partner without:

- (1) Acquiring a transferable interest; or
- (2) Making or being obligated to make a contribution to the limited

partnership.

#### **61-3-302. No Agency Power of Limited Partner as Limited Partner.**

(a) A limited partner is not an agent of a limited partnership solely by reason of being a limited partner.

(b) A person's status as a limited partner does not prevent or restrict law other than this chapter from imposing liability on a limited partnership because of the person's conduct.

#### **61-3-303. No Liability as Limited Partner for Limited Partnership Obligations.**

(a) A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the partnership solely by reason of being or acting as a limited partner, even if

the limited partner participates in the management and control of the limited partnership. This subsection (a) applies regardless of the dissolution of the partnership.

(b) Neither the failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs nor the failure of a limited partnership to maintain the information required under § 61-3-107 is a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the partnership.

(c) Notwithstanding any provision in this chapter to the contrary, a limited partner, or in the case of a limited liability limited partnership, a general partner may elect to become liable for the obligations of the partnership by complying with § 67-4-2008(b).

**61-3-304. Rights to Information of Limited Partner and Person Dissociated as Limited Partner.**

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

(b) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the limited partnership as is just and reasonable if:

(1) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(2) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) The information sought is directly connected to the limited partner's purpose.

(c) Not later than ten (10) days after receiving a demand pursuant to subsection (b), the limited partnership shall inform in a record the limited partner that made the demand of:

(1) What information the partnership will provide in response to the demand, and when and where the partnership will provide the information; and

(2) The partnership's reasons for declining, if the partnership declines to provide any demanded information.

(d) Whenever this chapter or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the partnership and is material to the limited partner's decision.

(e) Subject to subsection (j), on ten-days' demand made in a record received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:

(1) The information pertains to the period during which the person was a limited partner;

(2) The person seeks the information in good faith; and

(3) The person satisfies the requirements imposed on a limited partner by subsection (b).



(f) A limited partnership shall respond to a demand made pursuant to subsection (e) in the manner provided in subsection (c).

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

(h) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership agreement or under subsection (j) applies both to the agent or legal representative and to the limited partner or person dissociated as a limited partner.

(i) Subject to § 61-3-704, the rights under this section do not extend to a person as transferee.

(j) In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection (j), the partnership has the burden of proving reasonableness.

**61-3-305. Limited Duties of Limited Partners.**

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

(b) Except as otherwise provided in subsection (a), a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

(c) If a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

**61-3-306. Person Erroneously Believing Self to be Limited Partner.**

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

(1) Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(2) Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of negation under this section.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subdivision (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subdivision (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

#### **Part 4. General Partners.**

##### **61-3-401. Becoming General Partner.**

(a) Upon formation of a limited partnership, a person becomes a general partner as agreed among the persons that are to be the initial partners.

(b) After formation of a limited partnership, a person becomes a general partner:

- (1) As provided in the partnership agreement;
- (2) As the result of a transaction effective under part 11 of this chapter;
- (3) With the affirmative vote or consent of all the partners; or
- (4) As provided in § 61-3-801(a)(3)(B).

(c) A person may become a general partner without:

- (1) Acquiring a transferable interest; or
- (2) Making or being obligated to make a contribution to the partnership.

##### **61-3-402. General Partner Agent of Limited Partnership.**

(a) Each general partner is an agent of the limited partnership for the purposes of the limited partnership's activities and affairs. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course of the partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership, unless the general partner did not have authority to act for the partnership in the particular matter and the person with

which the general partner was dealing knew or had notice that the general partner lacked authority.

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

**61-3-403. Limited Partnership Liable for General Partner's Actionable Conduct.**

(a) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of the limited partnership's activities and affairs or with the actual or apparent authority of the limited partnership.

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

**61-3-404. General Partner's Liability.**

(a) Except as otherwise provided in subsections (b) and (c), all general partners are liable jointly and severally for all debts, obligations, and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner is not personally liable for a debt, obligation, or other liability of the limited partnership incurred before the person became a general partner.

(c) A debt, obligation, or other liability of a limited partnership incurred while the limited partnership is a limited liability limited partnership is solely the debt, obligation, or other liability of the limited liability limited partnership. A general partner is not

personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited liability limited partnership solely by reason of being or acting as a general partner. This subsection (c) applies:

(1) Despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability limited partnership under § 61-3-406(b)(2); and

(2) Regardless of the dissolution of the partnership.

(d) The failure of a limited liability limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a general partner for a debt, obligation, or other liability of the partnership.

(e) An amendment of a certificate of limited partnership deleting a statement that the limited partnership is a limited liability limited partnership does not affect the limitation in this section on the liability of a general partner for a debt, obligation, or other liability of the limited partnership incurred before the amendment became effective.

**61-3-405. Actions by and Against Partnership and Partners.**

(a) To the extent not inconsistent with § 61-3-404, a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not, by itself, a judgment against a general partner. A judgment against a partnership must not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(c) A judgment creditor of a general partner shall not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under § 61-3-404; and

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

(2) The partnership is a debtor in bankruptcy;

(3) The general partner has agreed that the creditor need not exhaust partnership assets;

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

(5) Liability is imposed on the general partner by law or contract independent of the existence of the partnership.

**61-3-406. Management Rights of General Partner.**

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

(b) The affirmative vote or consent of all the partners is required to:

(1) Amend the partnership agreement;

(2) Amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership; and

(3) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities and affairs.

(c) A limited partnership shall reimburse a general partner for an advance to the partnership beyond the amount of capital the general partner agreed to contribute.

(d) A payment or advance made by a general partner which gives rise to a limited partnership obligation under subsection (c) or § 61-3-408(a) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(e) A general partner is not entitled to remuneration for services performed for the limited partnership.

**61-3-407. Rights to Information of General Partner and Person Dissociated as General Partner.**

(a) A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office, without having any particular purpose for seeking the information.

(b) On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the general partner's rights and duties under the partnership agreement or this chapter.

(c) A limited partnership shall furnish to each general partner:

(1) Without demand, any information concerning the partnership's activities, affairs, financial condition, and other circumstances that the partnership knows and is material to the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter, except to the extent the

partnership can establish that the partnership reasonably believes the general partner already knows the information; and

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

(d) The duty to furnish information under subsection (c) also applies to each general partner to the extent the general partner knows any of the information described in subsection (b).

(e) Subject to subsection (j), on ten-days' demand made in a record received by a limited partnership, a person dissociated as a general partner may have access to the information and records described in subsections (a) and (b) at the locations specified in those subsections if:

(1) The information or record pertains to the period during which the person was a general partner;

(2) The person seeks the information or record in good faith; and

(3) The person satisfies the requirements imposed on a limited partner by § 61-3-304(b).

(f) A limited partnership shall respond to a demand made pursuant to subsection (e) in the manner provided in § 61-3-304(c).

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

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the partnership



agreement or under subsection (j) applies both to the agent or legal representative and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but if:

(1) A general partner dies, § 61-3-704 applies; and

(2) An individual dissociates as a general partner under § 61-3-603(6)(B) or (C), the legal representative of the individual may exercise the rights under subsection (c) of a person dissociated as a general partner.

(j) In addition to any restriction or condition stated in the partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection (j), the partnership has the burden of proving reasonableness.

**61-3-408. Reimbursement; Indemnification; Advancement; and Insurance.**

(a) A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the partnership, if the general partner complied with §§ 61-3-406, 61-3-409, and 61-3-504 in making the payment.

(b) A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of § 61-3-406, § 61-3-409, or § 61-3-504.

(c) In the ordinary course of its activities and affairs, a limited partnership may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a general partner, if the person promises to repay the partnership if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

(d) A limited partnership may purchase and maintain insurance on behalf of a general partner against liability asserted against or incurred by the general partner in that capacity or arising from that status even if, under § 61-3-104, the partnership agreement could not eliminate or limit the person's liability to the partnership for the conduct giving rise to the liability.

**61-3-409. Standards of Conduct for General Partners.**

(a) A general partner owes to the limited partnership and, subject to § 61-3-901, the other partners, only the duties of loyalty and care stated in subsections (b) and (c).

(b) The fiduciary duty of loyalty of a general partner includes the duties:

(1) To account to the limited partnership and hold as trustee for the limited partnership any property, profit, or benefit derived by the general partner:

(A) In the conduct or winding up of the partnership's activities and affairs;

(B) From a use by the general partner of the partnership's property; or

(C) From the appropriation of a partnership opportunity;

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership; and

(3) To refrain from competing with the partnership in the conduct or winding up of the partnership's activities and affairs.

(c) The duty of care of a general partner in the conduct or winding up of the limited partnership's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

(d) A general partner shall discharge the duties and obligations under this chapter or under the partnership agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement solely because the general partner's conduct furthers the general partner's own interest.

(f) All the partners of a limited partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction by a general partner that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subdivision (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership.

(h) If, as permitted by subsection (f) or the partnership agreement, a general partner enters into a transaction with the limited partnership that would otherwise be prohibited by subdivision (b)(2), the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

## **Part 5. Contributions and Distributions.**

### **61-3-501. Form of Contribution and Acceptance.**

(a) A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited partnership or an agreement to transfer property to, perform services for, or provide another benefit to the partnership.

(b) Neither a purported contribution nor an offer of consideration to make a contribution must be treated as a contribution to a limited partnership until:

(1) The contribution is accepted by the affirmative vote or consent of all general partners; and

(2) The amount and value of the contribution are recorded in the required information of the limited partnership.

**61-3-502. Liability for Contribution.**

(a) A person's obligation to make a contribution to a limited partnership is not excused by the person's death, disability, termination, or other inability to perform personally.

(b) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution that has not been made. The foregoing option is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have against the partner under the partnership agreement or applicable law.

(c) A conditional obligation of a partner to make a contribution or return money or other property to a limited partnership shall not be enforced unless the conditions to the obligation have been satisfied or waived as to or by the partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

(d) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in subsection (a)

without knowledge or notice of a compromise under this subsection (d), the creditor may enforce the obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution.

(e) A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make is subject to specified penalties for, or specified consequences of, the failure. The penalty or consequence may take the form of:

(1) Reducing or eliminating the defaulting partner's proportionate interest in the limited partnership;

(2) Subordinating the defaulting partner's partnership interest to that of non-defaulting partners;

(3) A forced sale of the defaulting partner's partnership interest;

(4) Forfeiture of the defaulting partner's partnership interest;

(5) The lending by other partners of the amount necessary to meet the defaulting partner's commitment;

(6) A fixing of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the defaulting partner's partnership interest at such value; or

(7) Other penalty or consequence.

#### **61-3-503. Sharing of and Right to Distributions Before Dissolution.**

(a) Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner, except to the

extent necessary to comply with a transfer effective under § 61-3-702 or charging order in effect under § 61-3-703.

(b) A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in § 61-3-810(f), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as a partner on whose account the distribution is made.

#### **61-3-504. Limitations on Distributions.**

(a) A limited partnership may not make a distribution, including a distribution under § 61-3-810, if after the distribution:

(1) The partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

(2) The partnership's total assets would be less than the sum of its total liabilities, other than liabilities for which the recourse of creditors is limited to specified property, plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the

preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution; provided, however, that the value of property that is subject to a liability for which the recourse of creditors is limited must be included in the total assets of the partnership, only to the extent the value of the property exceeds the liability.

(b) A limited partnership may base a determination that a distribution is not prohibited under subsection (a) on:

(1) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) A fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) In the case of a distribution that consists of a redemption or other purchase by the limited partnership of a transferrable interest, or of a transfer to a partner in return for relinquishment of any of that person's rights as a partner, as of the earlier of:

(A) The date money or other property is transferred or debt is incurred by the limited partnership; or

(B) The date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution;

(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs not later than one hundred twenty (120) days after that date; or

(B) The payment is made, if the payment occurs more than one hundred twenty (120) days after the distribution is authorized.

(d) A limited partnership's indebtedness to a partner or transferee incurred by reason of a distribution made in accordance with this section is at parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited partnership's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under § 61-3-810, the liabilities of a dissolved limited partnership do not include any claim that has been disposed of under § 61-3-806, § 61-3-807, or § 61-3-808.

**61-3-505. Liability for Improper Distributions.**

(a) If a general partner consents to a distribution made in violation of § 61-3-504 and in consenting to the distribution fails to comply with § 61-3-409, the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of § 61-3-504.

(b) A person that receives a distribution knowing that the distribution violated § 61-3-504 is personally liable to the limited partnership but only to the extent that the



distribution received by the person exceeded the amount that could have been properly paid under § 61-3-504.

(c) A general partner against which an action is commenced because the general partner is liable under subsection (a) may:

(1) Implead any other person that is liable under subsection (a) and seek to enforce a right of contribution from the person; and

(2) Implead any person that received a distribution in violation of subsection (b) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred unless commenced not later than two (2) years after the distribution.

## **Part 6. Dissociation.**

### **61-3-601. Dissociation as Limited Partner.**

(a) A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(b) A person is dissociated as a limited partner when:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a limited partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

(2) An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

(3) The person is expelled as a limited partner pursuant to the partnership agreement;

(4) The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

(A) It is unlawful to carry on the limited partnership's activities and affairs with the person as a limited partner;

(B) There has been a transfer of all the person's transferable interest in the limited partnership, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under § 61-3-703;

(C) The person is an entity and:

(i) The limited partnership notifies the person that the person will be expelled as a limited partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) Not later than ninety (90) days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) The person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(5) On application by the limited partnership or a partner in a direct action under § 61-3-901, the person is expelled as a limited partner by judicial order because the person:

(A) Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(B) Has committed willfully or persistently, or is committing willfully and persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under § 61-3-305(a); or

(C) Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs that makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

(6) In the case of an individual, the individual dies;

(7) In the case of a person that is a testamentary or inter vivos trust or is acting as a limited partner by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited partnership is distributed;

(8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is not an individual, the existence of the person terminates;

(10) The limited partnership participates in a merger under part 11 of this chapter; and

(A) The partnership is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a limited partner;

(11) The limited partnership participates in a conversion under part 11 of this chapter; or

(12) The limited partnership dissolves and completes winding up.

**61-3-602. Effect of Dissociation as Limited Partner.**

(a) If a person is dissociated as a limited partner:

(1) Subject to § 61-3-704, the person does not have further rights as a limited partner;

(2) The person's contractual obligation of good faith and fair dealing as a limited partner under § 61-3-305(a) ends with regard to matters arising and events occurring after the person's dissociation; and

(3) Subject to § 61-3-704 and part 11 of this chapter, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a limited partner does not of itself discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners which the person incurred while a limited partner.

**61-3-603. Dissociation as General Partner.**

A person is dissociated as a general partner when:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a general partner, but, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on that later date;

(2) An event stated in the partnership agreement as causing the person's dissociation as a general partner occurs;

(3) The person is expelled as a general partner pursuant to the partnership agreement;

(4) The person is expelled as a general partner by the affirmative vote or consent of all the other partners if:

(A) It is unlawful to carry on the limited partnership's activities and affairs with the person as a general partner;

(B) There has been a transfer of all the person's transferable interest in the partnership, other than:

(i) A transfer for security purposes; or

(ii) A charging order in effect under § 61-3-703;

(C) The person is an entity and:

(i) The partnership notifies the person that the person will be expelled as a general partner because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) Not later than ninety (90) days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) The person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(5) On application by the limited partnership or a partner in a direct action under § 61-3-901, the person is expelled as a general partner by judicial order because the person:

(A) Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

(B) Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under § 61-3-409; or

(C) Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs of the limited partnership with the person as a general partner;

(6) In the case of an individual:

(A) The individual dies;

(B) A guardian or general conservator for the individual is appointed; or

(C) A court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this chapter or the partnership agreement;

(7) The person:

(A) Becomes a debtor in bankruptcy;

(B) Executes an assignment for the benefit of creditors; or

(C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) In the case of a person that is a testamentary or inter vivos trust or is acting as a general partner by virtue of being a trustee of the trust, the trust's entire transferable interest in the limited partnership is distributed;

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited partnership is distributed;

(10) In the case of a person that is not an individual, the existence of the person terminates;

(11) The limited partnership participates in a merger under part 11 of this chapter; and

(A) The partnership is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a general partner;

(12) The limited partnership participates in a conversion under part 11 of this chapter; or

(13) The limited partnership dissolves and completes winding up.

**61-3-604. Power to Dissociate as General Partner, Wrongful Dissociation.**

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under § 61-3-603(1).

(b) A person's dissociation as a general partner is wrongful only if the dissociation:

(1) Is in breach of an express provision of the partnership agreement; or

(2) Occurs before the completion of the winding up of the limited partnership, and:

- (A) The person withdraws as a general partner by express will;
- (B) The person is expelled as a general partner by judicial order under § 61-3-603(5);
- (C) The person is dissociated as a general partner under § 61-3-603(7); or
- (D) In the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a general partner because the person willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to § 61-3-901, to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the general partner to the partnership or the other partners.

**61-3-605. Effect of Dissociation as General Partner.**

- (a) If a person is dissociated as a general partner:
  - (1) The person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates;
  - (2) The person's duties and obligations as a general partner under § 61-3-409 end with regard to matters arising and events occurring after the person's dissociation;
  - (3) The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited



partnership which states that the person has dissociated as a general partner;  
and

(4) Subject to § 61-3-704 and part 11 of this chapter, any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a general partner does not, of itself, discharge the person from any debt, obligation, or other liability to the limited partnership or the other partners that the person incurred while a general partner.

**61-3-606. Power to Bind and Liability of Person Dissociated as General Partner.**

(a) After a person is dissociated as a general partner and before the limited partnership is merged out of existence or converted under part 11 of this chapter, or dissolved, the partnership is bound by an act of the person only if:

(1) The act would have bound the partnership under § 61-3-402 before the dissociation; and

(2) At the time the other party enters into the transaction:

(A) Less than one (1) year has passed since the dissociation; and

(B) The other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner that caused the partnership to be bound is liable:

(1) To the partnership for any damage caused to the partnership arising from the obligation incurred under subsection (a); and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**61-3-607. Liability of Person Dissociated as General Partner to Other Person.**

(a) A person's dissociation as a general partner does not, of itself, discharge the person's liability as a general partner for a debt, obligation, or other liability of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person is not liable for a partnership obligation incurred after dissociation.

(b) A person whose dissociation as a general partner results in a dissolution and winding up of the limited partnership's activities and affairs is liable on an obligation incurred by the partnership under § 61-3-805 to the same extent as a general partner under § 61-3-404.

(c) A person that is dissociated as a general partner without the dissociation resulting in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the limited partnership after the dissociation only if:

(1) A general partner would be liable on the transaction; and

(2) At the time the other party enters into the transaction:

(A) Less than one (1) year has passed since the dissociation; and

(B) The other party does not have knowledge or notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for a debt, obligation, or other liability of the partnership.

(e) A person dissociated as a general partner is released from liability for a debt, obligation, or other liability of the limited partnership if the partnership's creditor, with knowledge or notice of the person's dissociation as a general partner but without the

person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation, or other liability.

## **Part 7. Transferable Interests and Rights of Transferees and Creditors.**

### **61-3-701. Nature of Transferable Interest.**

A transferable interest is personal property.

### **61-3-702. Transfer of Transferable Interest.**

(a) A transfer, in whole or in part, of a transferable interest:

(1) Is permissible;

(2) Does not, by itself, cause a person's dissociation as a partner or a dissolution and winding up of the limited partnership's activities and affairs; and

(3) Subject to § 61-3-704, does not entitle the transferee to:

(A) Participate in the management or conduct of the limited partnership's activities and affairs; or

(B) Except as otherwise provided in subsection (c), have access to required information, records, or other information concerning the limited partnership's activities and affairs.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

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

(d) A transferable interest may be evidenced by a certificate of the interest issued by a limited partnership in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

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

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the partnership agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Except as otherwise provided in §§ 61-3-601(b)(4)(B) and 61-3-603(4)(B), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.

(h) If a general or limited partner transfers a transferable interest to a person that becomes a general or limited partner with respect to the transferred interest, the transferee is liable for the transferor's obligations under §§ 61-3-502 and 61-3-505 known to the transferee when the transferee becomes a partner.

#### **61-3-703. Charging Order.**

(a) On application by a judgment creditor of a partner or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

- (1) Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and
- (2) Make all other orders necessary to give effect to the charging order.

(c) The partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(d) This chapter does not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

(e) This section provides the exclusive remedy by which a person, other than the partnership itself, seeking in the capacity of a judgment creditor to enforce a judgment against a partner or transferee may satisfy the judgment from the judgment debtor's transferable interest.

#### **61-3-704. Power of Legal Representative of Deceased Partner.**

If a partner dies, the deceased partner's legal representative may exercise:

- (1) The rights of a transferee provided in § 61-3-702(c); and
- (2) For the purposes of settling the estate, the rights of a current limited partner under § 61-3-304.

### **Part 8. Dissolution.**

#### **61-3-801. Events Causing Dissolution.**

(a) A limited partnership is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

- (1) An event or circumstance that the partnership agreement states causes dissolution;
- (2) The affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective;
- (3) After the dissociation of a person as a general partner:

(A) If the limited partnership has at least one (1) remaining general partner, by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or

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

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

(ii) At least one (1) person is admitted as a general partner in accordance with the consent;

(4) The passage of ninety (90) consecutive days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the personal representative of the last remaining limited partner and all of the general partners agree, in writing or by vote, to continue the business of the limited partnership and to the admission of the personal representative of the limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last remaining limited partner to cease to be a limited partner. However, a partnership agreement may provide that the general partners or the personal representative of the last remaining limited partner is obligated to agree in writing to continue the business of the limited partnership and to the administration of the personal

representative of the limited partner or its nominee or designee to the limited partnership as a limited partner, effective as of the occurrence of the event that caused the last limited partner to cease to be a limited partner;

(5) The passage of ninety (90) consecutive days during which the partnership has only one (1) partner, unless before the end of the period:

(A) The last remaining partner admits at least one (1) person as a partner;

(B) If the previously sole remaining partner is only a general partner, the sole remaining general partner admits at least one (1) person as a limited partner; and

(C) If the previously sole remaining partner is only a limited partner, the sole remaining limited partner admits at least one (1) person as a general partner;

(6) On application by a partner, the entry by the appropriate court of an order dissolving the partnership on the grounds that:

(A) The conduct of all or substantially all of the limited partnership's activities and affairs is unlawful; or

(B) It is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the certificate of limited partnership and partnership agreement; or

(7) The signing and filing of a statement of administrative dissolution by the secretary of state under § 61-3-811.

(b) If an event occurs that imposes a deadline on a limited partnership under subsection (a) and before the limited partnership has met the requirements of the

deadline, another event occurs that imposes a different deadline on the partnership under subsection (a):

- (1) The occurrence of the second event does not affect the deadline caused by the first event; and

- (2) The limited partnership's meeting of the requirements of the first deadline does not extend the second deadline.

### **61-3-802. Winding Up.**

(a) A dissolved limited partnership shall wind up its activities and affairs and, except as otherwise provided in § 61-3-803, the partnership continues after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs, the limited partnership:

- (1) Shall discharge the limited partnership's debts, obligations, and other liabilities, settle and close the limited partnership's activities and affairs, and marshal and distribute the assets of the limited partnership; and

- (2) May:

- (A) Amend its certificate of limited partnership to state that the partnership is dissolved;

- (B) Preserve the limited partnership's activities, affairs, and property as a going concern for a reasonable time;

- (C) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

- (D) Transfer the limited partnership's property;

- (E) Settle disputes by mediation or arbitration;



(F) Deliver to the secretary of state for filing a statement of termination stating the name of the limited partnership and that the limited partnership is terminated; and

(G) Perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective.

A person appointed under this subsection (c):

(1) Has the powers of a general partner under § 61-3-804 but is not liable for the debts, obligations, and other liabilities of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved limited partnership's activities and affairs; and

(2) Shall promptly deliver to the secretary of state for filing an amendment to the limited partnership's certificate of limited partnership stating:

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

(B) The name and street address, including the zip code, of the person appointed, and a mailing address such as a post office box if the United States postal service does not deliver mail to the street address of the person; and

(C) That the person has been appointed pursuant to this subsection (c) to wind up the limited partnership.

(d) On the application of a partner, the appropriate court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the limited partnership's activities and affairs, if:

(1) The limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or

(2) The applicant establishes other good cause.

**61-3-803. Rescinding Dissolution.**

(a) A limited partnership may rescind its dissolution, unless a statement of termination applicable to the partnership has become effective, the court of record has entered an order under § 61-3-801(a)(6) dissolving the partnership, or the secretary of state has dissolved the partnership under § 61-3-811.

(b) Rescinding dissolution under this section requires:

(1) The affirmative vote or consent of each partner; and

(2) If the limited partnership has delivered to the secretary of state for filing an amendment to the certificate of limited partnership stating that the limited partnership is dissolved and:

(A) The amendment has not become effective, delivery to the secretary of state for filing of a statement of withdrawal applicable to the amendment; or

(B) The amendment has become effective, delivery to the secretary of state for filing of an amendment to the certificate of limited partnership stating that dissolution has been rescinded under this section.

(c) If a limited partnership rescinds its dissolution:

(1) The limited partnership resumes carrying on the limited partnership's activities and affairs as if dissolution had never occurred;

(2) Subject to subdivision (c)(3), any liability incurred by the limited partnership after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission shall not be adversely affected.

**61-3-804. Power to Bind Partnership After Dissolution.**

(a) A limited partnership is bound by a general partner's act after dissolution that:

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

(2) Would have bound the partnership under § 61-3-402 before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(1) At the time the other party enters into the transaction:

(A) Less than one (1) year has passed since the dissociation; and

(B) The other party does not know or have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) The act:

(A) Is appropriate for winding up the limited partnership's activities and affairs; or

(B) Would have bound the limited partnership under § 61-3-402 before dissolution and at the time the other party enters into the transaction the other party does not know or have notice of the dissolution.

**61-3-805. Liability After Dissolution of General Partner and Person Dissociated as General Partner.**

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under § 61-3-804(a) by an act that is not appropriate for winding up the limited partnership's activities and affairs, the general partner is liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under § 61-3-804(b), the person is liable:

(1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the obligation.

**61-3-806. Known Claims Against Dissolved Limited Partnership.**

(a) A dissolved limited partnership may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) The dissolved limited partnership shall notify the limited partnership's known claimants in writing of the dissolution at any time after the dissolution's effective date.

The written notice must:

- (1) Describe information that must be included in a claim;
- (2) State whether the claim is admitted, or not admitted, and if admitted:
  - (A) The amount that is admitted, which may be as of a given date;and
  - (B) Any interest obligation if fixed by an instrument of indebtedness;

(3) Provide a mailing address, including zip code, where a claim may be sent;

(4) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved limited partnership must receive the claim; and

(5) State that, except to the extent that any claim is admitted, the claim is barred if written notice of the claim is not received by the deadline.

(c) A claim against the dissolved limited partnership is barred to the extent that it is not admitted:

(1) If the dissolved limited partnership delivered written notice to the claimant in accordance with subsection (b) and the claimant does not deliver a written notice of the claim to the dissolved limited partnership by the deadline; or

(2) If the dissolved limited partnership delivered written notice to the claimant that the claimant's claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(e) For purposes of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five (5) days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed;

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(4) Twenty (20) days after its deposit in the United States mail, as evidenced by the postmark if mailed correctly addressed, and with other than first class, registered or certified postage affixed.

**61-3-807. Other Claims Against Dissolved Limited Partnership.**

(a) A dissolved limited partnership may publish notice of the limited partnership's dissolution and request persons having claims against the partnership to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited partnership's principal office is located or, if the principal office is not located in this state, in the county in which the office of the partnership's registered agent is or was last located;

(2) Describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address, including zip code, to which the claim is to be sent;

(3) State that a claim against the partnership is barred unless an action to enforce the claim is commenced not later than two (2) years after publication of the notice; and

(4) Unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership also bars any corresponding claim against any general partner or person dissociated as a general partner that is based on § 61-3-404.

(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership not later than two (2) years after the publication date of the notice:

(1) A claimant that did not receive notice in a record under § 61-3-806;

(2) A claimant whose claim was timely sent to the limited partnership but not acted on; and

(3) A claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) A claim not barred under this section or § 61-3-806 may be enforced:

(1) Against the dissolved limited partnership, to the extent of the limited partnership's undistributed assets;

(2) Except as otherwise provided in § 61-3-808, if assets of the limited partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the limited partnership's assets distributed to the partner or transferee after dissolution, whichever is less, but a person's total liability for all claims under this

subdivision (d)(2) must not exceed the total amount of assets distributed to the person after dissolution; and

(3) Against any person liable on the claim under §§ 61-3-404 and 61-3-607.

**61-3-808. Court Proceedings.**

(a) A dissolved limited partnership that has published a notice under § 61-3-807 may file an application with the chancery court in the county where the limited partnership's principal office is located or, if the principal office is not located in this state, where the office of the limited partnership's registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are contingent, have not been made known to the limited partnership, or are based on an event occurring after the date of dissolution but which, based on the facts known to the limited partnership, are reasonably expected to arise after the date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under § 61-3-807.

(b) Not later than ten (10) days after the filing of an application under subsection (a), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the limited partnership.

(c) In a proceeding brought under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited partnership.

(d) A dissolved limited partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the limited partnership's obligations with respect to claims that are contingent, have not been made known to the limited



partnership, or are based on an event occurring after the date of dissolution, and such claims must not be enforced against a partner or transferee on account of assets received in liquidation.

**61-3-809. Liability of General Partner and Person Dissociated as General Partner**

**When Claim Against Limited Partnership Barred.**

If a claim against a dissolved limited partnership is barred under § 61-3-806, § 61-3-807, or § 61-3-808, any corresponding claim under § 61-3-404 or § 61-3-607 is also barred.

**61-3-810. Disposition of Assets in Winding Up, When Contributions Required.**

(a) In winding up its activities and affairs, a limited partnership shall apply the limited partnership's assets, including the contributions required by this section, to discharge the limited partnership's obligations to creditors, including partners that are creditors.

(b) After a limited partnership complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under § 61-3-703:

(1) To each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) Among persons owning transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the limited partnership.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following applies:

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under § 61-3-607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those persons when the obligation was incurred;

(2) If a person does not contribute the full amount required under subdivision (c)(1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by subdivision (c)(1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those other persons when the obligation was incurred; and

(3) If a person does not make the additional contribution required by subdivision (c)(2), further additional contributions are determined and due in the same manner as provided in subdivision (c)(2).

(d) A person that makes an additional contribution under subdivision (c)(2) or (3) may recover from any person whose failure to contribute under subdivision (c)(1) or (2) necessitated the additional contribution. A person shall not recover under this subsection (d) more than the amount additionally contributed. A person's liability under this subsection (d) must not exceed the amount the person failed to contribute.

(e) If a limited partnership does not have sufficient surplus to comply with subdivision (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(f) All distributions made under subsections (b) and (c) must be paid in money.

**61-3-811. Administrative Dissolution.**

(a) The secretary of state may commence a proceeding under subsection (b) to dissolve a limited partnership administratively if:

(1) The limited partnership fails to pay any fee, tax, interest, or penalty required to be paid to the secretary of state;

(2) The limited partnership fails to deliver an annual report to the secretary of state not later than two (2) months after the report is due;

(3) The limited partnership is without a registered agent or registered office in this state for two (2) months or more;

(4) The limited partnership does not notify the secretary of state within two (2) months that the limited partnership's registered agent or registered office has been changed, that the limited partnership's registered agent has resigned, or that the limited partnership's registered office has been discontinued;

(5) The limited partnership submits to the secretary of state a check, bank draft, money order, or other such instrument, for payment of any fee and the instrument is dishonored upon presentation for payment;

(6) A general or limited partner or other representative of a limited partnership signed a document the person knew was false in any material respect, with the intent that the document be filed with the secretary of state; or

(7) The name of the limited partnership in any document filed under this chapter fails to comply with § 61-3-112.

(b) If the secretary of state determines that one (1) or more grounds exist for administratively dissolving a limited partnership, the secretary of state must serve the partnership with notice in a record of the secretary of state's determination. The record may be sent by first class mail.

(c) If a limited partnership, not later than two (2) months after service of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state must administratively dissolve the partnership by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the partnership pursuant to § 61-3-119, except that the statement of administrative dissolution may be sent by first class mail.

(d) A limited partnership that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up the limited partnership's activities and affairs and liquidate its assets under §§ 61-3-802, 61-3-806, 61-3-807, 61-3-808, and 61-3-810, or to apply for reinstatement under § 61-3-812.

(e) The administrative dissolution of a limited partnership does not terminate the authority of the limited partnership's registered agent.

**61-3-812. Reinstatement.**

(a) A limited partnership that is administratively dissolved under § 61-3-811 may apply to the secretary of state for reinstatement following the administrative dissolution. The application must:

- (1) Be accompanied by a confirmation of good standing relative to the limited partnership;

(2) State the name of the limited partnership at the time of the limited partnership's administrative dissolution;

(3) State a name for the limited partnership that satisfies § 61-3-112; and

(4) State that the grounds for dissolution did not exist or have been eliminated.

(b) If the secretary of state determines that the application is accompanied by the confirmation of good standing and contains the information required by subsection (a), and that the information is correct, then the secretary of state must cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited partnership. Service of the copy may be by first class mail.

(c) If the limited partnership name in subdivision (a)(2) is different than the limited partnership name in subdivision (a)(3), the application for reinstatement must constitute an amendment to the certificate of limited partnership insofar as it pertains to the limited partnership's name.

(d) When reinstatement is effective, reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the limited partnership resumes carrying on the limited partnership's business as if the administrative dissolution had never occurred.

**61-3-813. Judicial Review of Denial of Reinstatement.**

(a) If the secretary of state denies a limited partnership's application for reinstatement following administrative dissolution, the secretary of state must serve the limited partnership with a notice in a record that explains the reasons for the denial.

(b) A limited partnership may seek judicial review of a denial of reinstatement in the chancery court of Davidson County not later than thirty (30) days after service of the notice of denial.

## **Part 9. Actions by Partners.**

### **61-3-901. Direct Action by Partner.**

(a) Subject to subsection (b), a partner may maintain a direct action against another partner or the limited partnership, with or without an accounting as to the limited partnership's activities and affairs, to enforce the partner's rights and otherwise protect the partner's interests, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(b) A partner maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) A right to an accounting on a dissolution and winding up does not revive a claim barred by law.

### **61-3-902. Derivative Action.**

A partner may maintain a derivative action to enforce a right of a limited partnership if:

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

(2) A demand under subdivision (1) would be futile.

### **61-3-903. Proper Plaintiff.**

A derivative action to enforce a right of a limited partnership may be maintained only by a person that:

- (1) Is a partner at the time the action is commenced; and
- (2) Either:
  - (A) Was a partner when the conduct giving rise to the action occurred; or
  - (B) Whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

**61-3-904. Pleading.**

In a derivative action, the complaint must state with particularity:

- (1) The date and content of plaintiff's demand and the response to the demand by the general partner; or
- (2) Why demand should be excused as futile.

**61-3-905. Special Litigation Committee.**

(a) If a limited partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited partnership. If the limited partnership appoints a special litigation committee, on motion by the committee made in the name of the limited partnership, except for good cause shown, the court must stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection (a) does not prevent the court from:

- (1) Enforcing a person's right to information under § 61-3-304 or § 61-3-407; or

(2) Granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee must be composed of one (1) or more disinterested and independent individuals, who may be partners.

(c) A special litigation committee may be appointed:

(1) By a majority of the general partners not named as parties in the proceeding; or

(2) If all general partners are named as parties in the proceeding, by a majority of the general partners named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited partnership that the proceeding:

(1) Continue under the control of the plaintiff;

(2) Continue under the control of the committee;

(3) Be settled on terms approved by the committee; or

(4) Be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of the committee's determination and report supporting the committee's determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made the committee's recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court must enforce the committee's determination. Otherwise, the court shall dissolve the stay



of discovery entered under subsection (a) and allow the action to continue under the control of the plaintiff.

**61-3-906. Proceeds and Expenses.**

(a) Except as otherwise provided in subsection (b):

(1) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the plaintiff; and

(2) If the plaintiff receives any proceeds, the plaintiff must remit the proceeds immediately to the limited partnership.

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

(c) A derivative action on behalf of a limited partnership must not be voluntarily dismissed or settled without the court's approval.

**Part 10. Foreign Limited Partnerships.**

**61-3-1001. Governing Law.**

(a) Subject to the Constitution of Tennessee:

(1) The law of the jurisdiction of formation of a foreign limited partnership governs:

(A) The organization and internal affairs of the foreign limited partnership;

(B) The liability of a partner as partner for a debt, obligation, or other liability of the foreign limited partnership; and

(C) The liability of a series of the foreign limited partnership;

(2) A foreign limited partnership is not precluded from registering to do business in this state because of any difference between the law of the foreign limited partnership's jurisdiction of formation and the law of this state.

(b) Registration of a foreign limited partnership to do business in this state does not authorize the foreign partnership to engage in any activities and affairs or exercise any power that a limited partnership may not engage in or exercise in this state.

**61-3-1002. Registration to Do Business in This State.**

(a) A foreign limited partnership shall not do business in this state until the foreign limited partnership registers with the secretary of state under this part.

(b) A foreign limited partnership doing business in this state shall not maintain an action or proceeding in this state unless the foreign limited partnership is registered to do business in this state and has paid to this state all fees for the years or parts thereof during which the foreign limited partnership did business in this state without having registered.

(c) The failure of a foreign limited partnership to register to do business in this state does not impair the validity of a contract or act of the foreign limited partnership or preclude the foreign limited partnership from defending an action or proceeding in this state.

(d) A limitation on the liability of a general partner or limited partner of a foreign limited partnership is not waived solely because the foreign limited partnership does business in this state without registering to do business in this state.

(e) Section 61-3-1001(a) and (b) applies even if the foreign limited partnership fails to register under this part.

(f) Any foreign limited partnership doing business in this state without first having registered shall be fined and shall pay to the secretary of state three (3) times the

otherwise required filing fees for each year or part thereof during which the foreign limited partnership failed to register in this state.

**61-3-1003. Registration.**

(a) To register to do business in this state, a foreign limited partnership must submit to the secretary of state:

(1) An original copy executed by a general partner of an application for registration as a foreign limited partnership, setting forth:

(A) The name of the foreign limited partnership and, if different, the name under which the foreign limited partnership proposes to register and do business in this state;

(B) The jurisdiction where organized, the date of the foreign limited partnership's organization and a statement from a general partner that, as of the date of filing, the foreign limited partnership validly exists as a limited partnership under the laws of the jurisdiction of the foreign limited partnership's organization;

(C) The street address and zip code of the foreign limited partnership's registered office in this state, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office; the county in which that office is located; and the name of the foreign limited partnership's registered agent at that office;

(D) The street address, including the zip code, of the foreign limited partnership's principal office, and a mailing address such as a post office box if the United States postal service does not deliver to the principal office;

(E) The name and business, residence or mailing address and zip code of each of the general partners; and

(F) The date on which the foreign limited partnership first did, or intends to do, business in this state;

(2) With the completed application, a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of limited partnership records in the jurisdiction under whose law it is formed. The certificate must not bear a date of more than two (2) months prior to the date the application is filed in this state; and

(3) A fee as set forth in § 61-3-1205.

(b) If the secretary of state determines upon registration that a foreign limited partnership has been doing business in this state for a period of one (1) year or more prior to applying for registration, then the secretary of state must not file the registration until the foreign limited partnership submits a confirmation of good standing.

**61-3-1004. Amendment of Foreign Registration.**

(a) If any statement required by § 61-3-1003 in the application for registration of a foreign limited partnership was false when made or any matter described in the application for registration has changed, making the application false, the foreign limited partnership must promptly file with the secretary of state an application for an amended registration of a foreign limited partnership. Notwithstanding the preceding sentence, a change in the foreign limited partnership's registered agent or registered office can be made by filing a statement of change as provided in § 61-3-116. Nothing in this chapter requires an amended registration if the only change in the certificate of foreign limited partnership is related to the admission or substitution of limited partners.

(b) The requirements of § 61-3-1003 for obtaining an original registration of a foreign limited partnership apply to obtaining an amended registration under this section.

**61-3-1005. Activities Not Constituting Doing Business.**

(a) Activities of a foreign limited partnership that do not constitute doing business in this state under this part include:

(1) Maintaining, defending, or settling any proceeding, claim, or dispute;

(2) Holding meetings of the foreign limited partnership's partners or representatives, or carrying on any other activities concerning the foreign limited partnership's internal affairs;

(3) Maintaining bank accounts;

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

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through representatives or otherwise, if the orders require acceptance outside of this state before the orders become contracts;

(7) Creating or acquiring indebtedness, deeds of trust, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debts;

(9) Owning, without more, real or personal property. However, for a reasonable time, the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust is also not considered transacting business, if the owner is attempting to liquidate the investment, and if

no office or other agency for the office, other than an independent agency, is maintained in this state;

(10) Conducting an isolated transaction that is completed within one (1) month and that is not a transaction in the course of repeated transactions of a like nature; or

(11) Transacting business in interstate commerce.

(b) A person does not do business in this state solely by being a partner of a foreign limited partnership that does business in this state.

(c) The enumeration of activities in subsections (a) and (b) is not exhaustive, and is applicable solely to determine whether a foreign limited partnership is required to register and for no other purpose. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under the law of this state other than this chapter.

**61-3-1006. Noncomplying Name of Foreign Limited Partnership.**

(a) A foreign limited partnership whose name does not comply with § 61-3-112 shall not register to do business in this state until the foreign limited partnership adopts, for the purpose of doing business in this state, an alternate name that complies with § 61-3-112. After registering to do business in this state with an alternate name, a foreign limited partnership shall do business in this state under:

(1) The alternate name; or

(2) The foreign limited partnership's name, with the addition of the foreign limited partnership's jurisdiction of formation.

(b) If a registered foreign limited partnership changes its name to one that does not comply with § 61-3-112, the foreign limited partnership must not do business in this

state until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with § 61-3-112.

**61-3-1007. Withdrawal Deemed on Conversion to Domestic Filing Entity or Domestic Limited Liability Partnership.**

A registered foreign limited partnership that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the secretary of state for filing is deemed to have withdrawn its registration on the effective date of the conversion.

**61-3-1008. Transfer of Registration.**

(a) When a registered foreign limited partnership has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the secretary of state to do business in this state, the foreign entity must deliver to the secretary of state for filing an application for transfer of registration. The application must state:

(1) The name of the registered foreign limited partnership before the merger or conversion;

(2) That, before the merger or conversion, the registration pertained to a foreign limited partnership;

(3) The name of the applicant foreign entity into which the foreign limited partnership has merged or to which it has been converted and, if the name does not comply with § 61-3-112, an alternate name adopted pursuant to § 61-3-1006(a);

(4) The type of entity of the applicant foreign entity and the foreign entity's jurisdiction of formation;

(5) The street addresses, including zip code, of the principal office of the applicant foreign entity and if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street address of that office;

(6) The name and street address, including zip code, of the applicant foreign entity's registered agent in this state; and

(7) If the United States postal service does not deliver mail to any of the street addresses listed in the application, a mailing address, including zip code, to which mail may be delivered.

(b) When an application for transfer of registration takes effect, the registration of the foreign limited partnership to do business in this state is transferred without interruption to the foreign entity into which the partnership has merged or to which it has been converted.

**61-3-1009. Revocation of Registration.**

(a) The secretary of state may commence a proceeding under subsection (b) to administratively revoke the registration of a registered foreign limited partnership authorized to transact business in this state, if:

(1) The foreign limited partnership does not deliver its annual report to the secretary of state within two (2) months after the report is due;

(2) The foreign limited partnership is without a registered agent or registered office in this state for two (2) months or more;

(3) The foreign limited partnership does not inform the secretary of state, under § 61-3-116 or § 61-3-117, that the foreign limited partnership's registered agent or registered office has changed, that the foreign limited partnership's registered agent has resigned, or that the foreign limited partnership's registered



office has been discontinued, within two (2) months of the change, resignation, or discontinuance;

(4) The name of the foreign limited partnership contained in a document filed pursuant to this chapter fails to comply with § 61-3-1006;

(5) A general partner or representative of the foreign limited partnership signed a document the person knew was false in any material respect, with the intent that the document be delivered to the secretary of state for filing;

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of the foreign limited partnership's records in the jurisdiction under the laws of which the foreign limited partnership is formed, stating that the foreign limited partnership has been terminated, or has been a constituent party to a merger and was not the surviving entity of the merger;

(7) The foreign limited partnership is exceeding the authority conferred upon it by this part; or

(8) The foreign limited partnership submits to the secretary of state a check, bank draft, money order, or other instrument for payment of any fee, and the instrument is dishonored upon presentation for payment.

(b)

(1) If the secretary of state determines that one (1) or more grounds exist under subsection (a) for revocation of a registration, the secretary of state must serve the foreign limited partnership with written communication of the secretary of state's determination, except that the determination may be sent by first class mail. If the grounds for revocation are pursuant to subdivision (a)(6), notice need

not be sent, and a certificate of revocation may be sent without the two-month waiting period required by subdivision (b)(2).

(2) If the foreign limited partnership does not correct each ground for administrative revocation, or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, within two (2) months after service of the communication of the determination, the secretary of state may revoke the foreign limited partnership's registration by signing a certificate of revocation that recites the ground or grounds for revocation and the revocation's effective date. The secretary of state shall file the original of the certificate and shall serve a copy on the foreign limited partnership, except that the copy of the certificate may be sent by first class mail.

(3) The authority of a foreign limited partnership to transact business in this state ceases on the date shown on the certificate revoking the foreign limited partnership's registration.

(4) The secretary of state's revocation of a foreign limited partnership's registration appoints the secretary of state as the foreign limited partnership's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited partnership was authorized to transact business in this state. Service of process on the secretary of state under this subdivision (b)(4) is service on the foreign limited partnership.

(5) The administrative revocation of a foreign limited partnership's registration does not terminate the designation or authority of the registered agent or registered office of the limited partnership.

**61-3-1010. Reinstatement of Foreign Limited Partnership.**

(a) If the registration of a foreign limited partnership is administratively revoked pursuant to § 61-3-1009, the partnership may apply to the secretary of state for reinstatement following the administrative revocation. The application must:

(1) Be accompanied by a certificate of existence, or a document of similar import, duly authenticated by the secretary of state or other official having custody of foreign limited partnership's records in the jurisdiction under whose law the foreign limited partnership is formed and bearing a date of no more than two (2) months prior to the date the application is filed in this state;

(2) State the name of the foreign limited partnership at the time of the revocation of the foreign limited partnership's registration;

(3) State a name for the limited partnership that satisfies § 61-3-112; and

(4) State that the grounds for revocation of the foreign limited partnership's registration did not exist or have been eliminated.

(b) If the secretary of state determines that the application is accompanied by the required certificate of existence or corresponding document and contains the information required by subsection (a), and that the information is correct, then the secretary of state must cancel the certificate of revocation and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign limited partnership. Service of the copy may be made by first class mail.

(c) If the foreign limited partnership name in subdivision (a)(2) is different than the foreign limited partnership name in subdivision (a)(3), the application for reinstatement must constitute an amendment to the registration insofar as it pertains to the foreign limited partnership's name.

(d) When reinstatement is effective, reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the foreign limited partnership resumes carrying on its business as if the administrative dissolution had never occurred.

**61-3-1011. Judicial Review of Denial of Reinstatement of Foreign Limited Partnership.**

(a) If the secretary of state denies a foreign limited partnership's application for reinstatement following revocation of its registration, the secretary of state must serve the foreign limited partnership with a notice in a record that explains the reasons for the denial.

(b) A foreign limited partnership may seek judicial review of a denial of reinstatement in the chancery court of Davidson County not later than thirty (30) days after service of the notice of denial.

**61-3-1012. Cancellation of Registration.**

(a) A registered foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation of registration stating:

(1) The name of the foreign limited partnership and its jurisdiction of formation;

(2) That the foreign limited partnership is not doing business in this state and that it withdraws its registration to do business in this state;

(3) That the foreign limited partnership revokes the authority of its registered agent to accept service on its behalf in this state; and

(4) An address to which service of process may be made under subsection (b).

(b) After the withdrawal of the registration of a foreign limited partnership, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited partnership was registered to do business in this state may be made pursuant to § 61-3-119.

**61-3-1013. Enjoining From Doing Business.**

The attorney general and reporter may maintain an action by complaint in the chancery court of any county in which a foreign limited partnership is transacting any business in this state to enjoin a foreign limited partnership from doing business in this state in violation of this part.

**Part 11. Merger and Conversion.**

**61-3-1101. Definitions.**

(a) As used in this part:

(1) "Conversion" means a transaction authorized by §§ 61-3-1110 - 61-3-1115;

(2) "Converted entity" means the converting entity as the converting entity continues in existence after a conversion;

(3) "Converting entity" means the domestic entity that approves a plan of conversion pursuant to § 61-3-1112 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation;

(4) "Distributional interest" means the right under an unincorporated entity's organic law and organic rules to receive distributions from the entity;

(5) "Domestic", with respect to an entity, means governed as to the entity's internal affairs by the law of this state;

(6) "Entity":

(A) Means:

- (i) A business corporation;
  - (ii) A nonprofit corporation;
  - (iii) A general partnership, including a limited liability partnership;
  - (iv) A limited partnership, including a limited liability limited partnership;
  - (v) A limited liability company;
  - (vi) A general cooperative association;
  - (vii) A limited cooperative association;
  - (viii) An unincorporated nonprofit association;
  - (ix) A statutory trust, business trust, or common-law business trust; or
  - (x) Any other person that has:
    - (a) A legal existence separate from any interest holder of that person; or
    - (b) The power to acquire an interest in real property in its own name; and
- (B) Does not include:
- (i) An individual;
  - (ii) A trust with a predominantly donative purpose or a charitable trust;
  - (iii) An association or relationship that is not an entity listed in subdivision (6)(A) and is not a partnership under § 61-1-202 or a similar provision of the governing jurisdiction;
  - (iv) A decedent's estate; or

(v) A government or a governmental subdivision, agency, or instrumentality;

(7) "Filing entity":

(A) Means an entity whose formation requires the filing of a public organic record; and

(B) Does not include a limited liability partnership;

(8) "Foreign," with respect to an entity, means an entity governed as to the entity's internal affairs by the law of a jurisdiction other than this state;

(9) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for or consent to the election of the governors of the entity; or

(C) Receive notice of or vote on or consent to an issue involving the internal affairs of the entity;

(10) "Governor" means:

(A) A director of a business corporation;

(B) A director or trustee of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A manager of a manager-managed limited liability company;

(F) A member of a member-managed limited liability company;

(G) A director of a general cooperative association;

(H) A director of a limited cooperative association;

(I) A manager of an unincorporated nonprofit association;

(J) A trustee of a statutory trust, business trust, or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the entity's activities and affairs are managed pursuant to the organic law and organic rules of the entity;

(11) "Interest" means:

(A) A share in a business corporation;

(B) A membership in a nonprofit corporation;

(C) A partnership interest in a general partnership;

(D) A partnership interest in a limited partnership;

(E) A membership interest in a limited liability company;

(F) A share in a general cooperative association;

(G) A member's interest in a limited cooperative association;

(H) A membership in an unincorporated nonprofit association;

(I) A beneficial interest in a statutory trust, business trust, or common-law business trust; or

(J) A governance interest or distributional interest in any other type of unincorporated entity;

(12) "Interest holder" means:

(A) A shareholder of a business corporation;

(B) A member of a nonprofit corporation;

(C) A general partner of a general partnership;



- (D) A general partner of a limited partnership;
- (E) A limited partner of a limited partnership;
- (F) A member of a limited liability company;
- (G) A shareholder of a general cooperative association;
- (H) A member of a limited cooperative association;
- (I) A member of an unincorporated nonprofit association;
- (J) A beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or
- (K) Any other direct holder of an interest;

(13) "Interest holder liability" means:

(A) Personal liability for a liability of an entity that is imposed on a person:

(i) Solely by reason of the status of the person as an interest holder; or

(ii) By the organic rules of the entity that make one (1) or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or

(B) An obligation of an interest holder under the organic rules of an entity to contribute to the entity;

(14) "Merger" means a transaction authorized by §§ 61-3-1104 - 61-3-1109;

(15) "Merging entity" means an entity that is a party to a merger and exists immediately before the merger becomes effective;

(16) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity;

(17) "Organic rules" means the public organic record and private organic rules of an entity;

(18) "Plan" means a plan of merger, plan of conversion, or plan of domestication;

(19) "Plan of conversion" means a plan under § 61-3-1111;

(20) "Plan of merger" means a plan under § 61-3-1105.

(21) "Private organic rules":

(A) Means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any; and

(B) Includes:

(i) The bylaws of a business corporation;

(ii) The bylaws of a nonprofit corporation;

(iii) The partnership agreement of a general partnership;

(iv) The partnership agreement of a limited partnership;

(v) The operating agreement of a limited liability company;

(vi) The bylaws of a general cooperative association;

(vii) The bylaws of a limited cooperative association;

(viii) The governing principles of an unincorporated nonprofit association; and

(ix) The trust instrument of a statutory trust or similar rules of a business trust or a common-law business trust;

(22) "Protected agreement" means:

(A) A record evidencing indebtedness and any related agreement in effect on the date the entity becomes subject to this chapter pursuant to § 61-3-1207;

(B) An agreement that is binding on an entity on the date the entity becomes subject to this chapter pursuant to § 61-3-1207;

(C) The organic rules of an entity in effect on the date the entity becomes subject to this chapter pursuant to § 61-3-1207; or

(D) An agreement that is binding on any of the governors or interest holders of an entity on the date the entity becomes subject to this chapter pursuant to § 61-3-1207;

(23) "Public organic record":

(A) Means the record the filing of which by the secretary of state is required to form an entity and any amendment to or restatement of that record; and

(B) Includes:

(i) The articles of incorporation of a business corporation;

(ii) The articles of incorporation of a nonprofit corporation;

(iii) The certificate of limited partnership of a limited partnership;

(iv) The certificate of organization of a limited liability company;

(v) The articles of incorporation of a general cooperative association;

(vi) The articles of organization of a limited cooperative association; and

(vii) The certificate of trust of a statutory trust or similar record of a business trust;

(24) "Registered foreign entity" means a foreign entity that is registered to do business in this state pursuant to a record filed by the secretary of state;

(25) "Statement of conversion" means a statement under § 61-3-1114;

(26) "Statement of merger" means a statement under § 61-3-1108;

(27) "Surviving entity" means the entity that continues in existence after or is created by a merger; and

(28) "Type of entity" means a generic form of entity:

(A) Recognized at common law; or

(B) Formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

**61-3-1102. Required Notice or Approval.**

(a) A domestic entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger shall give the notice or obtain the approval to be a party to a conversion.

(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this part becomes effective must not, as a result of the transaction, be diverted from the objects for which the property was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of the attorney general specifying the disposition of the property.

(c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity.

(d) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the surviving entity under this section.

**61-3-1103. Appraisal Rights.**

An interest holder of a domestic merging or converting limited partnership is entitled to contractual appraisal rights in connection with a transaction under this part only to the extent provided in:

- (1) The partnership agreement; or
- (2) The plan.

**61-3-1104. Merger Authorized.**

(a) By complying with §§ 61-3-1105 - 61-3-1109:

(1) One (1) or more domestic limited partnerships may merge with one (1) or more domestic or foreign entities into a domestic or foreign surviving entity; and

(2) Two (2) or more foreign entities may merge into a domestic limited partnership.

(b) By complying with the provisions of §§ 61-3-1104 - 61-3-1109 applicable to foreign entities, a foreign entity may be a party to a merger under §§ 61-3-1105 - 61-3-1109 or may be the surviving entity in the merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

**61-3-1105. Plan of Merger.**

(a) A domestic limited partnership may become a party to a merger under this section and §§ 61-3-1106 - 61-3-1109 by approving a plan of merger. The plan must be in a record and contain:

(1) As to each merging entity, its name, jurisdiction of formation, and type of entity;

(2) If the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(3) The manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) If the surviving entity exists before the merger, any proposed amendments to:

(A) Its public organic record, if any; and

(B) Its private organic rules that are, or are proposed to be, in a record;

(5) If the surviving entity is to be created in the merger:

(A) Its proposed public organic record, if any; and

(B) The full text of its private organic rules that are proposed to be in a record;

(6) The other terms and conditions of the merger; and

(7) Any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(b) In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

**61-3-1106. Approval of Merger.**

(a) A plan of merger is not effective unless the plan has been approved:

(1) By a domestic merging limited partnership, the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective; and

(2) In a record, by each partner of a domestic merging limited partnership that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the merger becomes effective, unless:

(A) The partnership agreement of the partnership provides in a record for the approval of a merger in which some or all of its partners become subject to interest holder liability by the affirmative vote or consent of fewer than all the partners; and

(B) The partner consented in a record to or voted for that provision of the partnership agreement or became a partner after the adoption of that provision.

(b) A merger involving a domestic merging entity that is not a limited partnership is not effective unless the merger is approved by that entity in accordance with the entity's organic law.

(c) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

**61-3-1107. Amendment or Abandonment of Plan of Merger.**

(a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic merging limited partnership may approve an amendment of a plan of merger:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which the plan may be amended; or

(2) By its partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) The public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(c) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited partnership may abandon the plan in the same manner as the plan was approved.

(d) If a plan of merger is abandoned after a statement of merger has been delivered to the secretary of state for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the



secretary of state for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

- (1) The name of each party to the plan of merger;
- (2) The date on which the statement of merger was filed by the secretary of state; and
- (3) A statement that the merger has been abandoned in accordance with this section.

**61-3-1108. Statement of Merger, Effective Date of Merger.**

(a) A statement of merger must be signed by each merging entity and delivered to the secretary of state for filing.

(b) A statement of merger must contain:

- (1) The name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;
- (2) The name, jurisdiction of formation, and type of entity of the surviving entity;
- (3) A statement that the merger was approved by each domestic merging entity, if any, in accordance with §§ 61-3-1104 - 61-3-1109 and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;
- (4) If the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;
- (5) If the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment; and

(6) If the surviving entity is created by the merger and is a domestic limited liability partnership, its application for registration, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of merger may contain any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the law of this state, except that the public organic record does not need to be signed.

(e) If the surviving entity is a domestic limited partnership, the merger becomes effective when the statement of merger is effective. In all other cases, the merger becomes effective on the later of:

(1) The date and time provided by the organic law of the surviving entity;

and

(2) When the statement is effective.

**61-3-1109. Effect of Merger.**

(a) When a merger becomes effective:

(1) The surviving entity continues or comes into existence;

(2) Each merging entity that is not the surviving entity ceases to exist;

(3) All property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

(4) All debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

(5) Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) If the surviving entity exists before the merger:

(A) All of the surviving entity's property continues to be vested in it without transfer, reversion, or impairment;

(B) The surviving entity remains subject to all of its debts, obligations, and other liabilities; and

(C) All the surviving entity's rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) The name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) If the surviving entity exists before the merger:

(A) The surviving entity's public organic record, if any, is amended to the extent provided in the statement of merger; and

(B) The surviving entity's private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) If the surviving entity is created by the merger, its private organic rules become effective and:

(A) If the surviving entity is a filing entity, its public organic record becomes effective; and

(B) If the surviving entity is a limited liability partnership, its application for registration becomes effective; and

(10) The interests in each merging entity that are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under § 61-3-1103 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or

third party would have upon a dissolution, liquidation, or winding up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging limited partnership with respect to which the person had interest holder liability is subject to the following:

(1) The merger does not discharge any interest holder liability under this chapter to the extent the interest holder liability was incurred before the merger became effective;

(2) The person does not have interest holder liability under this chapter for any debt, obligation, or other liability that is incurred after the merger becomes effective;

(3) This chapter continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (d)(1) as if the merger had not occurred; and

(4) The person has whatever rights of contribution from any other person as are provided by this chapter, law other than this chapter, or the partnership agreement of the domestic merging limited partnership with respect to any interest holder liability preserved under subdivision (d)(1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging limited partnership as provided in § 61-3-1119.

(f) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is cancelled.

**61-3-1110. Conversion Authorized.**

(a) By complying with §§ 61-3-1111 - 61-3-1115, a domestic limited partnership may become:

(1) A domestic entity that is a different type of entity; or

(2) A foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of §§ 61-3-1111 - 61-3-1115 applicable to foreign entities, a foreign entity may become a domestic limited partnership if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited partnership but does not refer to a conversion, the provision applies to a conversion of the partnership as if the conversion were a merger until the provision is amended after the date the entity becomes subject to this chapter pursuant to § 61-3-1207.

**61-3-1111. Plan of Conversion.**

(a) A domestic limited partnership may convert to a different type of entity under this section and §§ 61-3-1112 - 61-3-1115 by approving a plan of conversion. The plan must be in a record and contain:

(1) The name of the converting limited partnership;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) The manner of converting the interests in the converting limited partnership into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) The proposed public organic record of the converted entity if it will be a filing entity;

(5) The private organic rules of the converted entity that are proposed to be in a record when the conversion is effective;

(6) Any other terms and conditions of the conversion not otherwise set forth in the private organic rules of the converting limited partnership or the law of this state; and

(7) Any other provision required by the law of this state or the partnership agreement of the converting limited partnership.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

**61-3-1112. Approval of Conversion.**

(a) A plan of conversion is not effective unless it has been approved:

(1) By a domestic converting limited partnership, the affirmative vote or consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the vote or consent is to be effective; and

(2) In a record, by each partner of a domestic converting limited partnership that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:

(A) The partnership agreement of the partnership provides in a record for the approval of a conversion or a merger in which some or all of its partners become subject to interest holder liability by the affirmative vote or consent of fewer than all of the partners; and

(B) The partner voted for or consented in a record to that provision of the partnership agreement or became a partner after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a limited partnership is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

**61-3-1113. Amendment or Abandonment of Plan of Conversion.**

(a) A plan of conversion of a domestic converting limited partnership may be amended:

(1) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) By its partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the partners of the converting partnership under the plan;

(B) The public organic record, if any, or private organic rules of the converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) Any other terms or conditions of the plan, if the change would adversely affect the partner in any material respect.

(b) After a plan of conversion has been approved by a domestic converting limited partnership and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited partnership may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the secretary of state for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the secretary of state for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

(1) The name of the converting limited partnership;

(2) The date on which the statement of conversion was filed by the secretary of state; and

(3) A statement that the conversion has been abandoned in accordance with this section.

**61-3-1114. Statement of Conversion, Effective Date of Conversion.**



(a) A statement of conversion must be signed by the converting entity and delivered to the secretary of state for filing.

(b) A statement of conversion must contain:

(1) The name, jurisdiction of formation, and type of entity of the converting entity;

(2) The name, jurisdiction of formation, and type of entity of the converted entity;

(3) If the converting entity is a domestic limited partnership, a statement that the plan of conversion was approved in accordance with §§ 61-3-1112 - 61-3-1115 or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(4) If the converted entity is a domestic filing entity, its public organic record, as an attachment; and

(5) If the converted entity is a domestic limited liability partnership, its application for registration, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(e) If the converted entity is a domestic limited partnership, the conversion becomes effective when the statement of conversion is effective. In all other cases, the conversion becomes effective on the later of:

- (1) The date and time provided by the organic law of the converted entity;  
and
- (2) When the statement is effective.

**61-3-1115. Effect of Conversion.**

- (a) When a conversion becomes effective:
  - (1) The converted entity is:
    - (A) Organized under and subject to the organic law of the converted entity; and
    - (B) The same entity without interruption as the converting entity;
  - (2) All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;
  - (3) All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;
  - (4) Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;
  - (5) The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;
  - (6) The certificate of limited partnership of the converted entity becomes effective;
  - (7) The provisions of the partnership agreement of the converted entity that are to be in a record, if any, approved as part of the plan of conversion become effective; and
  - (8) The interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them

under the plan of conversion and to any appraisal rights they have under § 61-3-1103.

(b) Except as otherwise provided in the partnership agreement of a domestic converting limited partnership, the conversion does not give rise to any rights that a partner or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting limited partnership with respect to which the person had interest holder liability is subject to the following:

(1) The conversion does not discharge any interest holder liability under this chapter to the extent the interest holder liability was incurred before the conversion became effective;

(2) The person does not have interest holder liability under this chapter for any debt, obligation, or other liability that is incurred after the conversion becomes effective;

(3) This chapter continues to apply to the release, collection, or discharge of any interest holder liability preserved under subdivision (d)(1) as if the conversion had not occurred; and

(4) The person has whatever rights of contribution from any other person as are provided by this chapter, law other than this chapter or the organic rules of the converting entity with respect to any interest holder liability preserved under subdivision (d)(1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in § 61-3-119.

(f) If the converting entity is a registered foreign entity, its registration to do business in this state is cancelled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

## **Part 12. Miscellaneous Provisions.**

### **61-3-1201. Uniformity of Application and Construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. The rule that statutes in derogation of the common law are to be strictly construed does not apply to this chapter.

### **61-3-1202. Relation to Electronic Signatures in Global and Nation Commerce Act.**

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.) but does not modify, limit, or supersede 15 U.S.C. § 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. § 7003(b).

### **61-3-1203. Savings Clause.**

This chapter does not affect an action commenced, proceeding brought, or right accrued before the effective date of this chapter.

**61-3-1204. Severability Clause.**

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

**61-3-1205. Fees.**

(a) The secretary of state shall collect the following fees when the documents described in this subsection (a) are delivered to the secretary of state for filing:

- (1) Annual report for secretary of state - \$20.00;
- (2) Application for use of indistinguishable name - \$20.00;
- (3) Application for reservation of limited partnership name - \$20.00;
- (4) Notice of transfer of reserved name - \$20.00;
- (5) Notice of cancellation of reserved name - \$20.00;
- (6) Statement of change of registered agent/office (by domestic/foreign limited partnership) - \$20.00;
- (7) Statement of change of registered office of limited partnership (by agent) - \$5.00 per limited partnership, but not less than - \$20.00;
- (8) Statement of resignation of registered agent for limited partnership - \$20.00;
- (9) Certificate of limited partnership (including designation of initial registered office and agent) - \$100;
- (10) Amendment to the certificate of limited partnership - \$20.00;
- (11) Certificate of cancellation of limited partnership - \$20.00;
- (12) Restated certificate of limited partnership - \$20.00;
- (13) Amended and restated certificate of limited partnership - \$20.00;

- (14) Certificate of merger of limited partnership - \$100;
- (15) Application for registration of foreign limited partnership (including designation of initial registered office and agent) - \$600;
- (16) Application for amended registration of foreign limited partnership - \$20.00;
- (17) Certificate of cancellation of registration of foreign limited partnership - \$20.00;
- (18) Certificate of correction - \$20.00;
- (19) Execution, amendment or cancellation of limited partnership by judicial order - No Fee;
- (20) Application for certificate of existence or registration of limited partnership - \$20.00;
- (21) Application for reinstatement - \$70.00;
- (22) Statement of dissolution - \$20.00;
- (23) Withdrawal statement - \$25.00; and
- (24) Any other document required or permitted to be filed by this chapter - \$20.00;

(b) The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a domestic or foreign limited partnership. All copies must be certified or validated by the secretary of state.

**61-3-1206. Short Title.**

This chapter shall be known and may be cited as the "Tennessee Uniform Limited Partnership Act of 2017."

**61-3-1207. Applicability; Savings Clause.**

(a)

(1) This chapter applies to:

(A) Every domestic limited partnership formed on or after January 1, 2018;

(B) Any domestic limited partnership that was formed prior to January 1, 2018, and that has elected to be governed by this chapter pursuant to subsection (b); and

(C) The outstanding and future interests in the respective domestic limited partnerships described in subdivisions (a)(1)(A) and (B).

(2) If there are other specific statutory provisions that govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on or fix special procedures or methods for special categories of limited partnerships, then, to the extent those provisions are inconsistent with or different from this chapter, those provisions prevail.

(b)

(1) On or after January 1, 2018, a domestic limited partnership formed prior to January 1, 2018, under the Tennessee Uniform Limited Partnership Act, of 1988, compiled in chapter 2 of this title, may voluntarily elect to be governed by this chapter by amending its certificate of limited partnership to include the statement "This limited partnership elects to be governed by the Tennessee Uniform Limited Partnership Act of 2017," or a statement of like import. The

election and amendment to the certificate of limited partnership is not effective unless it has been approved in a record by:

(A) All general partners; and

(B) The limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners, in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(2) Any partnership presently governed by the Tennessee Uniform Limited Partnership Act of 1988 that does not voluntarily elect to be governed by this chapter pursuant to subdivision (b)(1), continues to be governed by the Tennessee Uniform Limited Partnership Act of 1988.

(c)

(1) Any limited partnership formed prior to January 1, 1988, that is presently governed by the limited partnership law in effect prior to January 1, 1988, may voluntarily elect to be governed by this chapter by filing a certificate of limited partnership pursuant to § 61-3-201. The certificate must include the statement "This limited partnership elects to be governed by the Tennessee Uniform Limited Partnership Act of 2017," or a statement of like import. This election and the filing of the certificate of limited partnership is not effective unless it has been approved in a record by:

(A) All general partners; and

(B) The limited partners or, if there is more than one (1) class or group of limited partners, then by each class or group of limited partners,



in either case, by limited partners who own more than fifty percent (50%) of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate.

(2) Any limited partnership that does not voluntarily elect to be governed by this chapter pursuant to subdivision (c)(1), shall continue to be governed by the law under which the limited partnership is presently governed, except that the limited partnership shall not have its term extended other than under this chapter.

(d)

(1) This chapter applies to:

(A) Every foreign limited partnership that first registers to do business in this state on or after January 1, 2018;

(B) Every foreign limited partnership that registers a name in this state on or after January 1, 2018; and

(C) Every foreign limited partnership that has registered a name in this state prior to January 1, 2018, pursuant to the Tennessee Uniform Limited Partnership Act of 1988.

(2) With respect to each foreign limited partnership that first registered to do business in this state prior to January 1, 2018, the Tennessee Uniform Limited Partnership Act of 1988 applies to the foreign limited partnership until the due date of the first annual report required to be filed by the foreign limited partnership on or after January 1, 2018, after which due date this chapter applies to the foreign limited partnership, except that the foreign limited partnership is not required to again register to do business in this state.

(e) This chapter does not affect an action or proceeding commenced, or right accrued, under the Tennessee Uniform Limited Partnership Act of 1988.

SECTION 2. Tennessee Code Annotated, Section 61-1-1001, is amended by deleting the section and substituting instead the following:

(a) To become a registered limited liability partnership, a partnership must file with the secretary of state an application stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain; a brief statement of the business in which the partnership engages; other matters that the partnership determines to include; and that the partnership thereby applies for status as a registered limited liability partnership.

(b) The application must be executed by one (1) or more partners authorized to execute an application. The registration of a general partnership as a registered limited liability partnership must be approved by a majority of the partners or as otherwise provided in the partnership agreement.

(c) The application must be accompanied by a fee of fifty dollars (\$50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars (\$250) and a maximum of two thousand five hundred dollars (\$2,500).

(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a completed application with the required fee.

(e) A partnership registered under this section shall pay, in each year following the year in which its application is filed, on a date specified by the secretary of state, an annual fee of fifty dollars (\$50.00) for each partner on the date of filing, subject to a minimum of two hundred fifty dollars (\$250) and a maximum of two thousand five

hundred dollars (\$2,500). The fee must be accompanied by a notice, on a form provided by the secretary of state, of any material changes in the information contained in the partnership's application for registration.

(f) A partnership becomes a registered limited liability partnership at the time of the filing of the application, or at a later time as is specified in the application, if there has been substantial compliance with this chapter. Registration remains effective until:

(1) The secretary of state files a written withdrawal statement or other similar document:

(A) Executed and submitted by one (1) or more partners authorized to execute a withdrawal statement, which shall be accompanied by a fee of twenty dollars (\$20.00); and

(B) Accompanied by a tax clearance for termination or withdrawal relative to such registered limited liability partnership; or

(2) Sixty (60) days after the secretary of state mails to the partnership at its last address of record a notice that the partnership has failed to make timely payment of the annual fee specified in subsection (e), unless the fee is paid within the sixty-day period.

(g) The status of a partnership as a registered limited liability partnership and the liability of the partners of the partnership is not affected by:

(1) Errors in the information stated in an application under subsection (a) or a notice under subsection (e); or

(2) Changes after the filing of such an application or notice in the information stated in the application or notice.

(h) The secretary of state may provide forms for an application under subsection (a) or a notice under subsection (e).

(i) A partnership that registers as a registered limited liability partnership is not deemed to have dissolved as a result of such registration and is for all purposes the same partnership that existed before the registration and continues to be a partnership under the laws of this state.

(j) If a registered limited liability partnership dissolves and the business of the partnership is continued without winding up or liquidation of the partnership affairs, the partnership that continues the business of the dissolved partnership is a registered limited liability partnership and is not required to file a new application and is deemed to have filed any documents required or permitted under this chapter which were filed by the predecessor partnership.

(k) If a registered limited liability partnership dissolves and the business of the partnership is not continued, then during the wind up or liquidation period the partners of such partnership shall continue to be subject to § 61-1-306(c)-(f).

(l) If a partnership registers as a registered limited liability partnership, a partner remains liable for an obligation incurred by the partnership before the partnership registered as a registered limited liability partnership. The partner's liability for obligations and liabilities of the registered limited liability partnership incurred after registration is as provided in § 61-1-306.

(m) The fact that an application or notice is on file in the office of the secretary of state is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the application or notice.

(n) A registered limited liability partnership may amend its registration by filing with the secretary of state a statement of amendment containing the name of the partnership, the address of its principal office or registered office in this state, and the

amendment. The statement of amendment shall be accompanied by a fee of twenty dollars (\$20.00).

(o) The secretary of state may furnish upon request and payment of a fee of twenty dollars (\$20.00) a certificate of good standing indicating that registered limited liability partnership is registered in good standing.

SECTION 3. Tennessee Code Annotated, Section 61-2-1202, is amended by deleting the section and substituting instead the following:

This chapter shall be known and may be cited as the "Tennessee Uniform Limited Partnership Act of 1988."

SECTION 4. The headings to sections and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 5. This act shall take effect January 1, 2018, the public welfare requiring it.