CHAPTER 17

UNIFORM PARTNERSHIP ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§1001. Definitions

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

1. Business. "Business" includes every trade, occupation and profession.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

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

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

3. Distribution. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Foreign limited liability partnership. "Foreign limited liability partnership" means a partnership that:

A. Is formed under laws other than the laws of this State; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Has the status of a limited liability partnership under those laws. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Limited liability partnership. "Limited liability partnership" means a partnership that has registered as a limited liability partnership pursuant to section 821 and does not have a similar statement in effect in any other jurisdiction.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Partnership. "Partnership" means an association of 2 or more persons to carry on as co-owners a business for profit formed under section 1022, predecessor law or comparable law of another jurisdiction.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

7. Partnership agreement. "Partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

9. Partnership interest; partner's interest in partnership. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

10. Person. "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

11. Property. "Property" means all property, real, personal or mixed, tangible or intangible or any interest therein.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

12. State. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

13. Statement. "Statement" means a statement of dissociation under section 1074, a statement of dissolution under section 1085, a statement of merger under section 1097, a statement electing to be governed by this chapter prior to July 1, 2006 or an amendment or cancellation of any of the foregoing.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

14. Transfer. "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1002. Knowledge and notice

1. Knows. A person knows a fact if the person has actual knowledge of it.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

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

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

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

3. Notifies or gives notification. A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

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

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

5. Person other than individual; reasonable diligence. Except as otherwise provided in subsection 6, a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if that person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Effective as to partnership. A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership except in the case of a fraud on the partnership committed by or with the consent of that partner.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1003. Effect of partnership agreement; nonwaivable provisions

1. Partnership agreement governs; default. Except as otherwise provided in subsection 2, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Nonwaivable provisions of chapter. The partnership agreement may not:

A. Vary the rights and duties under section 1005 except to eliminate the duty to provide copies of statements to all of the partners; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Unreasonably restrict the right of access to books and records under section 1043, subsection 2; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Eliminate the duty of loyalty under section 1044, subsection 2 or section 1063, subsection 2, paragraph C, but:

(1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty if not manifestly unreasonable; or

(2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty; [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. Unreasonably reduce the duty of care under section 1044, subsection 3 or section 1063, subsection 2, paragraph C; [PL 2005, c. 543, Pt. A, §2 (NEW).]

E. Eliminate the obligation of good faith and fair dealing under section 1044, subsection 4, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable; [PL 2005, c. 543, Pt. A, §2 (NEW).]

F. Vary the power to dissociate as a partner under section 1062, subsection 1, except to require the notice under section 1061, subsection 1 to be in writing; [PL 2005, c. 543, Pt. A, §2 (NEW).]

G. Vary the right of a court to expel a partner in the events specified in section 1061, subsection 5; [PL 2005, c. 543, Pt. A, §2 (NEW).]

H. Vary the requirement to wind up the partnership business in cases specified in section 1081, subsection 4, 5 or 6; [PL 2005, c. 543, Pt. A, §2 (NEW).]

I. Vary the law applicable to a limited liability partnership under section 1006, subsection 2; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

J. Restrict rights of 3rd parties under this chapter. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1004. Supplemental principles of law

1. Law and equity. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Interest rate. If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Title 14, section 1602-B.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1005. Execution, filing and recording of statements

1. Filing with Secretary of State. To be effective under this chapter, a statement must be filed in the office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the office of the Secretary of State. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this State.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Recorded in registry of deeds. A certified copy of a statement that has been filed in the office of the Secretary of State and recorded in the registry of deeds of the county in which real property is located has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the Secretary of State does not have the effect provided for recorded statements in this chapter.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Execution. A statement filed by a partnership must be executed by at least one partner. Other statements must be executed either by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Amendment or cancellation. A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Copies. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement.

Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Secretary of State. The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The registry of deeds may collect a fee for recording a statement.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1006. Governing law

1. Partnership. Except as otherwise provided in a filed statement, in a written partnership agreement or in subsection 2, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1007. Partnership subject to amendment or repeal of chapter

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1008. Forms

The Secretary of State may prescribe and furnish on request forms for any documents required or permitted to be filed by this chapter. If the Secretary of State so requires, use of these forms is mandatory. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1009. Filing, service and copying fees

1. Filing fees. The following fees must be paid to the Secretary of State.

A. For filing a statement of disassociation under section 1074, the fee is $20; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. For filing a statement of dissolution under section 1085, the fee is $75; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. For filing a statement of conversion under section 1093, the fee is $150; [PL 2009, c. 56, §23 (AMD).]

D. For filing a statement of merger under section 1095, the fee is $150; [PL 2005, c. 543, Pt. A, §2 (NEW).]

E. For any other statement required or permitted to be filed by this chapter, the fee is $35; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

F. For preclearance of any statement for filing, the fee is $100. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2009, c. 56, §23 (AMD).]

2. Service of process fee. The Secretary of State shall collect a fee of $20 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 that party prevails in the proceeding.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Copying and certifying fees. The Secretary of State shall charge the following fees for copying and certifying the copy of any filed documents.

A. For copying, the fee is $2 per page. [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. For certifying the copy, the fee is $5. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW). PL 2009, c. 56, §23 (AMD).

§1010. Expedited service

The Secretary of State may provide expedited service for the processing of documents in accordance with this chapter. The Secretary of State shall establish a fee schedule and adopt rules to set forth the procedures governing this expedited service. All fees collected as provided by this section must be deposited into a fund for use by the Secretary of State in providing improved filing service.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1011. Filing duty of Secretary of State

1. Duty to file. If a document delivered to the office of the Secretary of State for filing pursuant to this chapter satisfies the requirements of section 1005, the Secretary of State shall file the document.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Recording as filed; acknowledgment. The Secretary of State files a document pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a document, the Secretary of State shall deliver to the partnership or its representative a copy of the document with an acknowledgment of the date of filing.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Refusal to file; written explanation. If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within 5 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Ministerial. The Secretary of State's duty to file a document under this section is ministerial, and the filing or refusal to file a document does not:

A. Affect the validity or invalidity of the document in whole or part; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Relate to the correctness or incorrectness of information contained in the document; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1012. Appeal Secretary of State's refusal to file document

1. Commencing an appeal. If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the partnership within 30 days after the return of the document may appeal the refusal to the Superior Court of the county where the corporation's principal office is located or, if there is not a principal office in this State, of Kennebec County. The appeal is commenced by petitioning the court to compel filing of the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Court order. Upon the receipt of a petition filed under subsection 1, the court may summarily order the Secretary of State to file a document or take other action the court considers appropriate.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Appeal court's decision. The court's final decision may be appealed as in other civil proceedings.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1013. Evidentiary effect of copy of filed document

A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State pursuant to section 1011 is conclusive evidence that the original document is on file with the Secretary of State. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1014. Penalty for signing false document

A person commits a Class E crime if that person signs a document pursuant to this chapter knowing it is false in any material respect with intent that the document be delivered to the Secretary of State for filing. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1015. Powers

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this chapter, including the power to make rules not inconsistent with this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1016. Access to Secretary of State's database

The Secretary of State may provide public access to the database of the Department of the Secretary of State through a dial-in modem, public terminals and electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may adopt rules to establish a fee

schedule and governing procedures. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1017. Publications

1. Informational publications. The Secretary of State may establish by rule a fee schedule to cover the cost of printing and distribution of publications and to set forth the procedures for the sale of these publications. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Funds; fees deposited. All fees collected pursuant to this section must be deposited in a fund for use by the Secretary of State for the purpose of replacing and updating publications offered in accordance with this Title and for funding new publications.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 2

NATURE OF PARTNERSHIP

§1021. Partnership as entity

1. Distinct from partners. A partnership is an entity distinct from its partners.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Limited liability partnership. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 821.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1022. Formation of partnership

1. Formation of partnership. Except as otherwise provided in subsection 2, the association of 2 or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Not partnership. An association formed under a statute other than this chapter, a predecessor statute or a comparable statute of another jurisdiction is not a partnership under this chapter.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Determination of formation; rules. In determining whether a partnership is formed, the following rules apply.

A. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property. [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived. [PL 2005, c. 543, Pt. A, §2 (NEW).]

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

(1) Of a debt by installments or otherwise;

(2) For services as an independent contractor or of wages or other compensation to an employee;

(3) Of rent;

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

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

(6) For the sale of the goodwill of a business or other property by installments or otherwise. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1023. Partnership property

Property acquired by a partnership is property of the partnership and not of the partners individually. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1024. When property is partnership property

1. Partnership property. Property is partnership property if acquired in the name of:

A. The partnership; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Property acquired by partnership. Property is acquired in the name of the partnership by a transfer to:

A. The partnership in its name; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Presumed to be separate property. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 3

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

§1031. Partner agent of partnership

1. Partner as agent. Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Other act binding on partnership if authorized. An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1032. Transfer of partnership property

1. Transfer of partnership property. Partnership property may be transferred as follows.

A. Partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name. [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to those partners of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held. [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to those persons of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Recovery of property from transferee. A partnership may recover partnership property from a transferee only if the partnership proves that execution of the instrument of initial transfer did not bind the partnership under section 1031 and:

A. As to a subsequent transferee who gave value for property transferred under subsection 1, paragraph A or B, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. As to a transferee who gave value for property transferred under subsection 1, paragraph C, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. No recovery. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection 2, from any earlier transferee of the property.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1033. Partnership liable for partner's actionable conduct

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1034. Partner's liability

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Obligation incurred while limited liability partnership. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or

indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under section 821, subsection 2.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Exceptions to limited liability of shareholders. The exceptions under common law to a limited liability of shareholders of a business corporation organized under the Maine Business Corporation Act and shareholders of a professional corporation organized under the Maine Professional Service Corporation Act apply to the limited liability of partners in a professional limited liability partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Exception for certain obligations. With regard to certain obligations incurred prior to the effective date of this chapter, the following provisions apply:

A. To the extent any obligations of a partnership were incurred prior to the effective date of this chapter and while the partnership was a limited liability partnership, the limitation on liability of a partner is governed exclusively by paragraph B and the provisions of subsection 3 do not apply. [PL 2007, c. 231, §35 (NEW); PL 2007, c. 231, §40 (AFF).]

B. A partner in a limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities however chargeable to the partnership or to another partner or partners, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct or malpractice committed by another partner, employee, agent or representative of the partnership in the course of the partnership business while the partnership is a limited liability partnership. [PL 2007, c. 231, §35 (NEW); PL 2007, c. 231, §40 (AFF).]

C. For purposes of defining an obligation to which paragraph B applies, the term of an obligation is the original term of the obligation plus, unless otherwise agreed in writing by the obligor partnership and the obligee, any period as to which the obligor partnership has an option to unilaterally renew or extend the term of such obligation. [PL 2007, c. 231, §35 (NEW); PL 2007, c. 231, §40 (AFF).]

[PL 2007, c. 231, §35 (NEW); PL 2007, c. 231, §40 (AFF).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW). PL 2007, c. 231, §35 (AMD). PL 2007, c. 231, §40 (AFF).

§1035. Actions by and against partnership and partners

1. Sue and be sued. A partnership may sue and be sued in the name of the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Action against partnership and partners. An action may be brought against the partnership and, to the extent not inconsistent with section 1034, any or all of the partners in the same action or in separate actions.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Judgment against partnership; partner. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Execution against assets of partner. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 1034 and:

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

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

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

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

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Application to partnership liability or obligation. This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 1036.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1036. Liability of purported partner

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Liability of dissociated partner. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Nonpartners not liable as partners. Except as otherwise provided in subsections 1 and 2, persons who are not partners as to each other are not liable as partners to other persons.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 4

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

§1041. Partner's rights and duties

1. Partner's account. Each partner is deemed to have an account that is:

A. Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership and the partner's share of the partnership profits; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that is distributed by the partnership to the partner and the partner's share of the partnership losses. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Reimbursement and indemnification. A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

7. Use or possess partnership property. A partner may use or possess partnership property only on behalf of the partnership.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

9. Consent of all partners required. A person may become a partner only with the consent of all of the partners.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

10. Decision by majority or unanimous. A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

11. Obligations to other persons. This section does not affect the obligations of a partnership to other persons under section 1031.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1042. Distributions in kind

A partner has no right to receive, and may not be required to accept, a distribution in kind. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1043. Partner's rights and duties with respect to information

1. Books and records at chief executive office. A partnership shall keep its books and records, if any, at its chief executive office.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Access to books and records. A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

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

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1044. General standards of partner's conduct

1. Partner's fiduciary duties. The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections 2 and 3 as those duties may be clarified or limited in the partnership agreement to the extent and in the manner authorized by section 1003, subsection 2.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

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

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

C. To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Obligation of good faith and fair dealing. A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing, as those obligations may be clarified in the partnership agreement to the extent and in the manner authorized by section 1003, subsection 2.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1045. Actions by partnership and partners

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

A. Enforce the partner's rights under the partnership agreement; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Enforce the partner's rights under this chapter, including:

(1) The partner's rights under sections 1041, 1043 and 1044;

(2) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 1071 or enforce any other right under subchapter 6 or 7; or

(3) The partner's right to compel a dissolution and winding up of the partnership business or enforce any other right under subchapter 8; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1046. Continuation of partnership beyond definite term or particular undertaking

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 5

TRANSFEREES AND CREDITORS OF PARTNER

§1051. Partner not co-owner of partnership property

A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1052. Partner's transferable interest in partnership

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership, the allocations of income, gain, loss, deduction or credit or similar items

related to such profits and losses and the partner's right to receive distributions. The interest is personal property. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1053. Transfer of partner's transferable interest

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

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

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

C. Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions or to inspect or copy the partnership books or records. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Transferee of partner's interest. A transferee of a partner's transferable interest in the partnership has a right:

A. To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. To seek under section 1081, subsection 6, a judicial determination that it is equitable to wind up the partnership business. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Account of transaction to transferee. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1054. Partner's transferable interest subject to charging order

1. Charging order; interest of judgment debtor. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts and inquiries the judgment debtor might have made or that the circumstances of the case may require.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Charging order; lien. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

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

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

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

4. Exemptions apply. This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Exclusive remedy for judgment creditor. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 6

PARTNER'S DISSOCIATION

§1061. Events causing partner's dissociation

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

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

2. Agreed event. An event agreed to in the partnership agreement as causing the partner's dissociation;
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Expulsion pursuant to agreement. The partner's expulsion pursuant to the partnership agreement;
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Expulsion by unanimous vote. The partner's expulsion by the unanimous vote of the other partners if:

A. It is unlawful to carry on the partnership business with that partner; [PL 2005, c. 543, Pt. A, §2 (NEW).]

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

C. Within 90 days after the partnership notifies a partner who is a limited liability company or corporation that it will be expelled because it has filed a certificate of dissolution or the equivalent or that it has been judicially or administratively dissolved, the applicable certificate of dissolution or its equivalent has not been revoked or it has not been administratively reinstated; [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. Within 90 days after the partnership notifies a partner who is a limited liability company or corporation that it will be expelled because its right to do business has been suspended by the jurisdiction of organization or incorporation, there has been no reinstatement of its right to do business by such jurisdiction; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

E. A partnership that is a partner has been dissolved and its business is being wound up; [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Expulsion by judicial determination. On application by the partnership or another partner, the partner's expulsion by judicial determination because:

A. The partner engaged in wrongful conduct that adversely and materially affected the partnership business; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 1044; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. The partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner; [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Partner's actions. The partner's:

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

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

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

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

7. Partner who is individual. In the case of a partner who is an individual:

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

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

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1062. Partner's power to dissociate; wrongful dissociation

1. By express will. A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 1061, subsection 1.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Wrongful dissociation. A partner's dissociation is wrongful only if:

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

B. In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(1) The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under section 1061, subsections 6 to 10 or wrongful dissociation under this subsection;

(2) The partner is expelled by judicial determination under section 1061, subsection 5;

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

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1063. Effect of partner's dissociation

1. Appreciation of law. If a partner's dissociation results in a dissolution and winding up of the partnership business, subchapter 8 applies; otherwise, subchapter 7 applies.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Internal effects of partner's dissociation. Upon a partner's dissociation:

A. The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 1083; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The partner's duty of loyalty under section 1044, subsection 2, paragraph C terminates; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. The partner's duty of loyalty under section 1044, subsection 2, paragraphs A and B and duty of care under section 1044, subsection 3 continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 1083. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

§1071. Purchase of dissociated partner's interest

1. Purchase of interest if no dissolution. If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 1081, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection 2.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Buyout price. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 1087, subsection 2 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Damages for wrongful dissociation; interest. Damages for wrongful dissociation under section 1062, subsection 2, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Indemnification. A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 1072.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Payment after 120 days. If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be

paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection 3.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Deferred payment. If a deferred payment is authorized under subsection 8, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection 3, stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

7. Disclosures with payment or tender. The payment or tender required by subsection 5 or 6 must be accompanied by the following:

A. A statement of partnership assets and liabilities as of the date of dissociation; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The latest available partnership balance sheet and income statement, if any; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. An explanation of how the estimated amount of the payment was calculated; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection 3 or other terms of the obligation to purchase. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

8. Wrongful dissociation. A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

9. Dissociated partner's action against partnership. A dissociated partner may maintain an action against the partnership, pursuant to section 1045, subsection 2, paragraph B, subparagraph (2), to determine the buyout price of that partner's interest, any offsets under subsection 3, or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection 3, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection 8, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection 7.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1072. Dissociated partner's power to bind and liability to partnership

1. Apparent authority of dissociated partner. For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a

surviving partnership under subchapter 9, is bound by an act of the dissociated partner that would have bound the partnership under section 1031 before dissociation only if at the time of entering into the transaction the other party:

A. Reasonably believed that the dissociated partner was then a partner; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Did not have notice of the partner's dissociation; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Is not deemed to have notice under section 1074, subsection 2. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Liability for obligation after dissociation. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection 1.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1073. Dissociated partner's liability to other persons

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Liability to other party. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under subchapter 9, within 2 years after the partner's dissociation, only if the partner is liable for the obligation under section 1034 and at the time of entering into the transaction the other party:

A. Reasonably believed that the dissociated partner was then a partner; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Did not have notice of the partner's dissociation; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Is not deemed to have had notice under section 1074, subsection 2. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1074. Statement of dissociation

1. Filing of statement. A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Deemed to have notice. For the purposes of section 1072, subsection 1, paragraph C and section 1073, subsection 2, paragraph C, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1075. Continued use of partnership name

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 8

WINDING UP PARTNERSHIP BUSINESS

§1081. Events causing dissolution and winding up of partnership business

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events: [PL 2005, c. 543, Pt. A, §2 (NEW).]

1. Notice of express will to withdraw. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 1061, subsections 2 to 10, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Dissolution before expiration of term. In a partnership for a definite term or particular undertaking:

A. Within 90 days after a partner's dissociation by death or otherwise under section 1061, subsections 6 to 10 or wrongful dissociation under section 1062, subsection 2, the express will of at least 1/2 of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to section 1062, subsection 2, paragraph B, subparagraph (1) constitutes the expression of that partner's will to wind up the partnership business; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The express will of all of the partners to wind up the partnership business; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. The expiration of the term or the completion of the undertaking; [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Event in partnership agreement. An event agreed to in the partnership agreement resulting in the winding up of the partnership business;
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Unlawful continuation; cure. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section; [PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Judicial determination; application by partner. On application by a partner, a judicial determination that:

A. The economic purpose of the partnership is likely to be unreasonably frustrated; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

A. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1082. Partnership continues after dissolution

1. Continuation for purpose of winding up. Subject to subsection 2, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

A. The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The rights of a 3rd party accruing under section 1084, subsection 1 or arising out of conduct in reliance on the dissolution before the 3rd party knew or received a notification of the waiver may not be adversely affected. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1083. Right to wind up partnership business

1. Participation of partner; judicial supervision. After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative or transferee, the Superior Court, for good cause shown, may order judicial supervision of the winding up.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Legal representative of last surviving partner. The legal representative of the last surviving partner may wind up a partnership's business.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Powers of person winding up business. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 1087, settle disputes by mediation or arbitration and perform other necessary acts.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1084. Partner's power to bind partnership after dissolution

Subject to section 1085, a partnership is bound by a partner's act after dissolution that: [PL 2005, c. 543, Pt. A, §2 (NEW).]

1. Appropriate act. Is appropriate for winding up the partnership business; or
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Act would have bound partnership. Would have bound the partnership under section 1031 before dissolution, if the other party to the transaction did not have notice of the dissolution.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1085. Statement of dissolution

1. Filing of statement. After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Deemed to have notice. For the purposes of sections 1031 and 1084, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 30 days after it is filed.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1086. Partner's liability to other partners after dissolution

1. Liable for partner's share. Except as otherwise provided in subsection 2 and section 1034, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 1084.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Liability for inappropriate act. A partner who, with knowledge of the dissolution, incurs a partnership liability under section 1084, subsection 2 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1087. Settlement of accounts and contributions among partners

1. Application of assets. In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge the partnership's obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection 2.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Settlement of partnership accounts; distributions; contribution. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 1034.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Contribution by other partners; recovery. If a partner fails to contribute the full amount required under subsection 2, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 1034. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 1034.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Contribution for losses after settlement. After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 1034.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Deceased partner's estate liable. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Enforcement for creditors. An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 9

CONVERSIONS AND MERGERS

§1091. Definitions

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

1. Corporation. "Corporation" means a corporation created under the Maine Business Corporation Act, predecessor law or comparable law of another jurisdiction.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. General partner. "General partner" means a partner in a partnership, a general partner in a limited partnership, a general partner in a limited liability partnership and a general partner in a limited liability limited partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Limited liability company. "Limited liability company" means a limited liability company created under the Maine Limited Liability Company Act, predecessor law or comparable law of another jurisdiction.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Limited liability limited partnership. "Limited liability limited partnership" means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Limited partner. "Limited partner" means a limited partner in a limited partnership and a limited partner in a limited liability partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

6. Limited partnership. "Limited partnership" means a limited partnership created under the Uniform Limited Partnership Act, predecessor law or comparable law of another jurisdiction.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

7. Member. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest in the limited liability company.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

8. Partner. "Partner" includes both a general partner and a limited partner.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

9. Partnership. "Partnership" means a partnership formed under section 1022 or any predecessor law.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

10. Shareholder. "Shareholder" means the person in whose name the units into which proprietary interests in a corporation are divided are registered in the records of the corporation or the beneficiary owner of such units to the extent of the rights granted by a nominee certificate on file with a corporation.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1092. Conversion of partnership to limited partnership

(REPEALED)

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW). PL 2009, c. 56, §24 (RP).

§1093. Conversion of partnership to a business entity

1. Conversion. A partnership or a limited liability partnership may be converted to a limited partnership, limited liability limited partnership, corporation or limited liability company pursuant to this section.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Terms and conditions. The terms and conditions of a conversion of a partnership to a limited partnership, limited liability limited partnership, corporation or limited liability company must be approved by all of the partners or as otherwise provided in the partnership agreement.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Organizational documents filed. After the conversion is approved by the partners, articles of conversion must be executed on behalf of the converting entity by a partner or other duly authorized representative. The articles must:

A. Set forth the name of the entity immediately before the filing of the articles of conversion and the name to which the name of the entity is to be changed, which must be a name that satisfies the organic law of the surviving entity; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. State the type of entity that the surviving entity will be; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Set forth a statement that the plan of entity conversion was duly approved by the partners in the manner required by this Act and the partnership agreement; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. If the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document with any other desired provisions that are permitted or have attached a public organic document. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Effective date of conversion. The conversion takes effect when the articles of conversion are filed or at any later date specified in the articles of conversion or as provided by the organic laws of the surviving entity.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Liability. A general partner who becomes a limited partner, general partner in a limited liability limited partnership, shareholder or member as a result of the conversion remains liable as a general partner of a partnership for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with a limited partnership, limited liability limited partnership, corporation or limited liability company reasonably believes when entering the transaction that the limited partner, general partner, shareholder or member is a general partner in a partnership or a general partner in a limited partnership, the limited partner, general partner, shareholder or member is liable for an obligation for which such partner would be personally liable under section 1034 that is incurred by the limited partnership, limited liability limited partnership, corporation or limited liability company within 90 days after the conversion takes effect. The limited partner's, general partner's, shareholder's or member's liability for all other obligations of the limited partnership, limited liability limited partnership, corporation or limited liability company incurred after the conversion takes effect is that of a limited partner, shareholder or member as provided in the jurisdiction in which the limited partnership, limited liability limited partnership, corporation or limited liability company is formed.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1094. Effect of conversion

1. Same entity. A partnership that has been converted pursuant to this subchapter is for all purposes the same entity that existed before the conversion.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Effective date. When a conversion takes effect:

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

B. All obligations of the converting partnership continue as obligations of the converted entity; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

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

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1095. Merger of partnerships

1. Merger pursuant to plan. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more partnerships or limited partnerships.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Plan of merger. The plan of merger must set forth:

A. The name, the jurisdiction of organization and the date of organization of each partnership or limited partnership that is a party to the merger; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The name of the surviving entity into which the other partnerships or limited partnerships will merge; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Whether the surviving entity is a partnership or a limited partnership and the status of each partner; [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. The terms and conditions of the merger; [PL 2005, c. 543, Pt. A, §2 (NEW).]

E. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

F. The street address of the surviving entity's chief executive office. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Approval of plan. The plan of merger must be approved:

A. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the State or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Amendment or abandonment. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Effective date of merger. The merger takes effect on the later of:

A. The approval of the plan of merger by all parties to the merger, as provided in subsection 3; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Any effective date specified in the plan of merger. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1096. Effect of merger

1. Effect of merger. When a merger takes effect:

A. The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Agent for service of process. The Secretary of State is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Liability of partner. A partner of the surviving partnership or limited partnership is liable for:

A. All obligations of a party to the merger for which the partner was personally liable before the merger; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. Except as otherwise provided in section 1034, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Obligations incurred before merger. If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute

the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 1087 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Dissociated partner. A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity of which that partner was a partner as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 1071 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 1072 by an act of a general partner dissociated under this subsection, and the partner is liable under section 1073 for transactions entered into by the surviving entity after the merger takes effect.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1097. Statement of merger

1. Filing of statement. After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Statement of merger. A statement of merger must contain:

A. The name, the jurisdiction of organization and the date of organization of each partnership or limited partnership that is a party to the merger; [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. The name of the surviving entity into which the other partnerships or limited partnerships were merged; [PL 2005, c. 543, Pt. A, §2 (NEW).]

C. The street address of the surviving entity's chief executive office and of an office in this State, if any; [PL 2005, c. 543, Pt. A, §2 (NEW).]

D. Whether the surviving entity is a partnership or a limited partnership; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

E. If the surviving partnership or limited partnership is not organized under the laws of this State, a statement that the surviving partnership or limited partnership:

(1) Agrees that it may be served with process in this State in a proceeding for enforcement of an obligation of a party to the merger that was organized under the laws of this State, as well as for enforcement of an obligation of the surviving partnership or limited partnership arising from the merger; and

(2) Appoints the Secretary of State as its agent for service of process in any such proceeding and the surviving partnership or limited partnership shall specify the address to which a copy of the process must be mailed by the Secretary of State. [PL 2005, c. 543, Pt. A, §2 (NEW).]
[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Name in which property held. Except as otherwise provided in subsection 4, for the purposes of section 1032, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.
[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Transfer of real property. For the purposes of section 1032, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity. A certified copy of the statement of merger

may be recorded in the registry of deeds of the county in which the real property is located as evidence of title, but the failure to record the statement does not affect the validity of the transfer of title. [PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Incomplete statement. A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to section 1005, subsection 3, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection 2, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections 3 and 4. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1098. Nonexclusive

This subchapter is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

SUBCHAPTER 10

MISCELLANEOUS PROVISIONS

§1101. Uniformity of application and construction

This chapter must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1102. Short title

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

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1103. Effective date

This chapter takes effect July 1, 2007. [PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1104. Applicability

1. Application before July 1, 2007. Before July 1, 2007, this chapter governs only a partnership formed:

A. After July 1, 2007, except a partnership that is continuing the business of a dissolved partnership under former Title 31, section 318; and [PL 2005, c. 543, Pt. A, §2 (NEW).]

B. Before July 1, 2007 that elects, as provided by subsection 3, to be governed by this chapter. [PL 2005, c. 543, Pt. A, §2 (NEW).]

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Application on and after July 1, 2007. On and after July 1, 2007, this chapter governs all partnerships.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

3. Election before July 1, 2007. Before July 1, 2007, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to 3rd parties apply to limit those partners' liability to a 3rd party who had done business with the partnership within one year before the partnership's election to be governed by this chapter only if the 3rd party knows or has received a notification of the partnership's election to be governed by this chapter. A partnership may elect to be governed by this chapter by filing a statement of election stating the name of the partnership and that the partnership has made the election pursuant to this section.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

§1105. Rules of construction

1. Savings clause. This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

2. Freedom to contract. It is the policy of the chapter to give maximum effect to the freedom of contract and to the enforceability of partnership agreements.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

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

[PL 2005, c. 543, Pt. A, §2 (NEW).]

4. Statutes in derogation of common law. Rules that statutes in derogation of the common law are to be strictly construed do not apply to this chapter.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

5. Obligations of contract. Neither this chapter nor any amendment of this chapter may be construed to impair the obligations of any contract existing when this chapter or amendment goes into effect.

[PL 2005, c. 543, Pt. A, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 543, §A2 (NEW).

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