

ASSOCIATIONS CODE (15 PA.C.S.) AND NAMES (54 PA.C.S.) - OMNIBUS  
AMENDMENTS

Act of Nov. 21, 2016, P.L. 1328, No. 170

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Session of 2016  
No. 2016-170

HB 1398

AN ACT

Amending Titles 15 (Corporations and Unincorporated Associations) and 54 (Names) of the Pennsylvania Consolidated Statutes, modernizing the law on limited liability partnerships, general partnerships, limited partnerships and limited liability companies; and making conforming changes with respect to associations, corporations, unincorporated nonprofit associations and business trusts by doing the following:

As to general provisions, making conforming changes by revising provisions on application of title, definitions, defense of usury, tax clearance of certain fundamental transactions and fee schedule.

As to entities generally, making conforming changes by revising requirements for foreign association names.

As to entity transactions, making conforming changes by revising provisions on regulatory conditions and required notices and approvals, nature of transactions, approval by limited partnership, effect of merger, statement of division and effectiveness, effect of division and effect of domestication.

As to foreign associations, making conforming changes by revising provisions on governing law.

As to corporations, making conforming changes by revising provisions on distributions by business corporations and by adding provisions on derivative actions and the use of special litigation committees by business corporations and nonprofit corporations.

As to partnerships generally:

extensively revising provisions on:

interchangeability of partnership, limited liability company and corporate forms of organization; and

ownership of certain professional partnerships;

and

adding a provision on failure to observe formalities.

As to limited liability partnerships:

extensively revising provisions on:

scope;

definitions;

limitation on liability of partners;

extraterritorial application of subchapter;

foreign registered limited liability

partnerships; and

annual registration; and

adding provisions on:

distributions; and

dissolution.

As to general partnerships, repealing existing Chapter 83 and replacing it with a new Chapter 84 relating to:

general provisions;

nature of partnership;

relations of partners to persons dealing with partnership;  
relations of partners to each other and to partnership;  
transferable interests and rights of transferees and creditors;  
dissociation;  
dissociation as partner if business not wound up;  
and  
dissolution and winding up.

As to limited partnerships, repealing existing Chapter 85 and replacing it with a new Chapter 86 relating to:

general provisions;  
formation and filings;  
limited partners;  
general partners;  
contributions and distributions;  
dissociation;  
transferable interests and rights of transferees and creditors;  
dissolution and winding up; and  
actions by partners.

As to limited liability companies:

repealing existing Subchapters A, B, C, D, E, F, I and K of Chapter 89 and replacing them with a new Chapter 88 relating to:

general provisions;  
formation and filings;  
relations of members and managers to persons dealing with limited liability company;  
relations of members to each other and to limited liability company;  
transferable interests and rights of transferees and creditors;  
dissociation;  
dissolution and winding up;  
actions by members; and  
benefit companies;

and

revising provisions on restricted professional companies.

As to unincorporated nonprofit associations, making conforming amendments by revising provisions on ownership and transfer of property.

As to business trusts, making conforming changes by revising provisions on application and effect of chapter and liability of trustees and beneficiaries.

As to names, revising provisions on register established.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 101(c) of Title 15 of the Pennsylvania Consolidated Statutes is amended to read:

§ 101. Short title and application of title.

\* \* \*

(c) References to prior statutes.--A reference in the [articles or bylaws or other organic documents] **organic rules** of an association to any provision of law supplied or repealed by this title shall be deemed to be a reference to the superseding provision of this title.

Section 1.1. The definitions of "association," "general partnership," "limited liability company" and "limited partnership" in section 102(a) of Title 15 are amended and the section is amended by adding definitions to read:

§ 102. Definitions.

(a) Defined terms.--Subject to additional or inconsistent definitions contained in subsequent provisions of this title that are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

"Association." A corporation, for profit or not-for-profit, a partnership, a limited liability company, a business or statutory trust, an entity or two or more persons associated in a common enterprise or undertaking. The term does not include:

(1) a testamentary trust or an inter vivos trust as defined in 20 Pa.C.S. § 711(3) (relating to mandatory exercise of jurisdiction through orphans' court division in general);

(2) an association or relationship that:

(i) is not a person that has:

(A) a legal existence separate from any interest holder of the person; or

(B) the power to acquire an interest in real property in its own name; and

(ii) is not a partnership under the rules stated in section [8312 (relating to rules for determining the existence of a partnership)] **8422(c) (relating to formation of partnership)** or a similar provision of the laws of another jurisdiction;

(3) a decedent's estate; or

(4) a government or a governmental subdivision, agency or instrumentality.

\* \* \*

"Charitable purposes." The relief of poverty, the advancement and provision of education, including postsecondary education, the advancement of religion, the prevention and treatment of disease or injury, including mental retardation and mental disorders, governmental or municipal purposes and any other purpose the accomplishment of which is recognized as important and beneficial to the public.

\* \* \*

"Debtor in bankruptcy." A person that is the subject of:

(1) an order for relief under 11 U.S.C. (relating to bankruptcy) or a comparable order under a successor statute of general application; or

(2) a comparable order under Federal, State or foreign law governing insolvency.

\* \* \*

"General partnership." [A domestic or foreign partnership as defined in section 8311 (relating to partnership defined), whether or not it is a limited liability partnership or electing partnership.] **Either of the following:**

(1) A partnership as defined in section 8412 (relating to definitions).

(2) An association whose internal affairs are governed by the laws of a jurisdiction other than this Commonwealth which would be a partnership if its internal affairs were governed by the laws of this Commonwealth.

\* \* \*

"Limited liability company." [A domestic or foreign limited liability company as defined in section 8903 (relating to definitions and index of definitions).] **Either of the following:**

(1) **A limited liability company as defined in section 8812 (relating to definitions).**

(2) **An association whose internal affairs are governed by the laws of a jurisdiction other than this Commonwealth which would be a limited liability company if its internal affairs were governed by the laws of this Commonwealth.**

\* \* \*

"Limited partnership." [A domestic or foreign limited partnership as defined in section 8503 (relating to definitions and index of definitions), whether or not it is a limited liability limited partnership or electing partnership.] **Either of the following:**

(1) **A limited partnership as defined in section 8612 (relating to definitions).**

(2) **An association whose internal affairs are governed by the laws of a jurisdiction other than this Commonwealth which would be a limited partnership if its internal affairs were governed by the laws of this Commonwealth.**

\* \* \*

Section 1.2. Title 15 is amended by adding a section to read:

**§ 114. Defense of usury.**

**A domestic association other than a business corporation shall be subject to section 1510 (relating to certain specifically authorized debt terms) with respect to obligations, as defined in that section, governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth, to the same extent as if the domestic association were a domestic business corporation.**

Section 2. Sections 139(a) and (c), 152, 153(a)(2) and (3), 206, 314(a), (d) and (e), 315, 324(a) and (c) and 336(a)(2) of Title 15 are amended to read:

**§ 139. Tax clearance of certain fundamental transactions.**

(a) Requirement.--Except as provided in subsection (c) or (d), clearance certificates from the Department of Revenue and the Department of Labor and Industry, evidencing the payment by the association of all taxes and charges due the Commonwealth required by law, must be delivered to the department for filing when any of the following is delivered to the department for filing:

(1) Articles or a statement or certificate of merger merging a domestic association into a nonregistered foreign association.

(2) Articles or a statement or certificate of conversion or domestication effecting a conversion or domestication of a domestic association into a nonregistered foreign association.

(3) Articles [or] **of dissolution**, a certificate of dissolution **or termination** or a statement of revival of a domestic association.

(4) An application for termination of registration, statement of withdrawal or similar document by a registered foreign association.

(5) Articles or a statement or certificate of division dividing a domestic association solely into foreign associations.

\* \* \*

(c) [Alternative provisions.--If clearance certificates are filed with the court as required under subsection (b), it shall

not be necessary to file the clearance certificates with the Department of State.] **Exceptions.--It shall not be necessary to file tax clearance certificates with the Department of State:**

(1) If clearance certificates are filed with the court as required under subsection (b).

(2) With articles of dissolution under section 1971 (relating to voluntary dissolution by shareholders or incorporators).

(3) With a certificate of dissolution under section 8482(b)(2)(i) (relating to winding up and filing of certificates).

(4) With a certificate of termination under section 8681.1 (relating to voluntary termination by partners).

(5) With a certificate of dissolution under section 8872(b)(2)(i) (relating to winding up and filing of certificates).

(6) With a certificate of termination under section 8878 (relating to voluntary termination by members or organizers).

\* \* \*

§ 152. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Ancillary transaction." Includes:

(1) preclearance of document;

(2) amendment of articles, charter, certificate or other organic document, restatement of articles, charter, certificate or other organic document;

(3) dissolution, cancellation or termination of an association;

(4) withdrawal or transfer of registration by foreign association;

(5) [withdrawal by] **dissociation as a partner;**

**(5.1) statement or certificate of authority and denial or negation of authority;**

(6) any transaction similar to any item listed in paragraphs (1) through [(5)] **(5.1);**

(6.1) withdrawal, abandonment or termination of a document which has been delivered to the department for filing but has not yet become effective; or

(7) delivery to the department for filing in, by or with the department or the Secretary of the Commonwealth of any articles, statements, proceedings, agreements or any similar papers affecting associations under the statutes of this Commonwealth for which a specific fee is not set forth in section 153 (relating to fee schedule) or other applicable statute.

§ 153. Fee schedule.

(a) General rule.--The nonrefundable fees of the bureau, including fees for the public acts and transactions of the Secretary of the Commonwealth administered through the bureau, shall be as follows:

\* \* \*

(2) Foreign associations:

(i) Registration statement or similar qualifications to do business..... 250

(ii) Amendment of registration statement or similar change in qualification to do business.... 250

(iii) Domestication of alien association under section 161 (relating to domestication of certain alien associations).....	250
[(iv) Statement of merger, division or conversion or similar instrument reporting occurrence of merger, division or conversion not effected by a filing in the department.....	70]
(v) Additional fee for each [qualified] <b>registered</b> foreign association which is named in a statement of merger or similar instrument.....	40
(vi) Each ancillary transaction.....	70
(3) Partnerships and limited liability companies:	
(i) Certificate of limited partnership or certificate of organization of a limited liability company.....	125
(ii) Statement of registration of [registered] limited liability partnership <b>or limited liability limited partnership</b> or statement of election as an electing partnership.....	125
(iii) Each ancillary transaction.....	70
* * *	

§ 206. Requirements for foreign association names.

(a) General rule.--The department shall not file a registration statement pursuant to section 412 (relating to foreign registration statement) for a foreign association that, except as provided under subsection (b), has a name that is rendered unavailable for use by a covered association [under section 202(a), (b) or (c)(1)(i), (iii), (iv) or (v) or (2) (relating to requirements for names generally)] **by any provision of this subchapter.**

(b) Exception.--The provisions of section 202(b) and (c) **(relating to requirements for names generally)** shall not prevent the filing of a registration statement of a foreign association [setting forth a name that is prohibited] **whose name in its jurisdiction of formation would be prohibited from use in this Commonwealth** by section 202(b) and (c) if the foreign association [delivers to the department for filing a resolution of its governors adopting] **adopts** a name for use in registering to do business in this Commonwealth that is available for use by a covered association.

§ 314. Regulatory conditions and required notices and approvals.

(a) Regulatory approvals.--If [laws] **the law** of this Commonwealth other than this chapter requires notice to or the approval of a governmental agency or officer of the Commonwealth in connection with the participation under an organic law that is not part of this title by a domestic or foreign association in a transaction which is a form of transaction authorized by this chapter, the notice must be given or the approval obtained by the association before it may participate in any form of transaction under this chapter.

\* \* \*

(d) Preservation of transfers.--[A] **Subject to subsection (c) and section 5550 (relating to devises, bequests and gifts after certain fundamental changes),** a bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to:

- (1) a merging association that is not the surviving association and that takes effect or remains payable after the merger inures to the surviving association[.]; **and**

(2) a dividing association may be allocated in the division as if it were an asset of the dividing association and, if the bequest, devise, gift, grant or promise takes effect or remains payable after the division, vests as provided in section 367(a)(4) (relating to effect of division).

(e) **Trust obligations.**--A trust obligation that would govern property:

(1) if transferred to a merging association that is not the surviving association applies to property that is transferred **after a merger** to the surviving association[.]; and

(2) if transferred to a dividing association that is not a resulting association applies to property that is transferred **after a division to a resulting association.**

[(e)] (f) Cross reference.--See section 318 (relating to excluded entities and transactions).

§ 315. Nature of transactions.

(a) **General rule.**--The fact that a sale or conversion of the interests in or assets of an association or a transaction under a particular subchapter produces a result that could be accomplished in any other manner permitted by a different subchapter or other law shall not be a basis for recharacterizing the sale, conversion or transaction as a different form of sale, conversion or transaction under any other subchapter or other law.

(b) **Business purpose not required.**--A transaction under this chapter does not require an independent business purpose in order for the transaction to be lawful.

§ 324. Approval by limited partnership.

(a) Proposal of plan.--[A] **Except as provided in the organic rules,** a plan shall be proposed in the case of a domestic limited partnership by the adoption by a unanimous vote of the general partners of a resolution approving the plan. Except where the approval of the limited partners is unnecessary under this chapter or the organic rules, the general partners shall submit the plan to a vote of the limited partners entitled to vote thereon at a regular or special meeting of the limited partners.

\* \* \*

(c) Required vote by limited partners.--[The] **Except as provided in the organic rules:**

(1) A plan shall be adopted upon receiving [a majority of the votes cast by all limited partners, if any, entitled to vote thereon] **the affirmative vote or consent of limited partners owning the rights to receive a majority of the distributions as limited partners** of each domestic limited partnership that is a party to the proposed transaction under the plan and, if any class of limited partners is entitled to vote thereon as a class, [a majority of the votes cast] **the affirmative vote or consent of limited partners owning the rights to receive a majority of the distributions as limited partners** in each class vote.

(2) A proposed plan [may] **shall** not be deemed to have been adopted by the limited partnership unless it has also been approved by the general partners, regardless of the fact that the general partners have directed or suffered the submission of the plan to the limited partners for action.

\* \* \*

§ 336. Effect of merger.

(a) General rule.--When a merger under this subchapter becomes effective, all of the following apply:

\* \* \*

(2) [Each] **The separate existence of each** merging association that is not the surviving association ceases [to exist].

\* \* \*

Section 2.1. Section 366(h) of Title 15 is amended and the section is amended by adding a subsection to read:

§ 366. Statement of division; effectiveness.

\* \* \*

(h) **Coordination of transactions.**--A new association may be a party to another transaction under this chapter that takes effect simultaneously with the division. The new association shall be deemed to exist before the effectiveness of the other transaction, but solely for the purpose of being a party to the other transaction. The plan relating to the other transaction shall be deemed to have been approved by the new association if the plan is approved by the dividing association in connection with its approval of the plan of division. The statement that is delivered to the department for filing with respect to the other transaction shall state that it was approved by the new association under this subsection.

[(h)] (i) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Section 2.2. Sections 367(a)(2) and (6), 368(j) and 376(f) of Title 15 are amended to read:

§ 367. Effect of division.

(a) General rule.--When a division becomes effective, all of the following apply:

\* \* \*

(2) If the dividing association is not to survive the division, the **separate existence of the** dividing association ceases [to exist].

\* \* \*

(6) The liabilities of the dividing association are allocated between or among the resulting associations as provided in section 368 (relating to allocation of liabilities in division)[.] **and the resulting associations to which liabilities are allocated are liable for those liabilities as successors to the dividing association, and not by transfer, whether directly, indirectly or by operation of law.**

\* \* \*

§ 368. Allocation of liabilities in division.

\* \* \*

(j) Taxes.--Any taxes, interest, penalties and public accounts of the Commonwealth claimed against the dividing association **for periods prior to the effective date of the division** that are settled, assessed or determined prior to or after the division shall be the liability of all of the resulting associations and, together with interest thereon, shall be a lien against the franchises and property of each resulting association. Upon the application of the dividing association, the Department of Revenue, with the concurrence of the Department of Labor and Industry, shall release one or more, but less than all, of the resulting associations from liability and liens for all taxes, interest, penalties and public accounts of the dividing association due the Commonwealth for periods prior to the effective date of the division if those



departments are satisfied that the public revenues will be adequately secured.

§ 376. Effect of domestication.

\* \* \*

[(f) Service of process.--When a domestication becomes effective, a foreign domesticated entity may be served with process in this Commonwealth for the collection and enforcement of any of its debts, obligations and other liabilities in accordance with applicable law.]

\* \* \*

Section 2.3. Section 402 of Title 15 is amended by adding a subsection to read:

§ 402. Governing law.

\* \* \*

**(g) Defense of usury.--A foreign association shall be subject to section 1510 (relating to certain specifically authorized debt terms) with respect to obligations, as defined in that section, governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth, to the same extent as if the foreign association were a domestic business corporation.**

Section 3. Sections 521, 522 and 523(a) and (b) of Title 15 are amended to read:

§ 521. Pensions and allowances.

A banking institution [or a savings association] may grant allowances or pensions to officers, directors and employees for faithful and long-continued services and, after the death of the officer, director or employee either while in the service of the corporation or after retirement, pensions or allowances may be granted or continued to their dependents. The allowances to dependents shall be reasonable in amount and paid only for a limited time and, unless part of an employee benefit plan or employment contract in effect at the time of retirement or death of the officer, director or employee, shall not exceed in total the amount of the compensation paid to the officer, director or employee during the 12 months preceding retirement or death.

§ 522. Indemnification of authorized representatives.

A banking institution [or a savings association] shall be governed by the provisions of Subchapter D of Chapter 17 (relating to indemnification).

§ 523. Actions by shareholders or members to enforce a secondary right.

(a) General rule.--In any action brought to enforce a secondary right on the part of one or more shareholders or members against any officer or director or former officer or director of a banking institution [or a savings association], because the corporation refuses to enforce rights which may properly be asserted by it, the plaintiff or plaintiffs must aver and it must be made to appear that the plaintiff or each plaintiff was a shareholder or was a member of the corporation at the time of the transaction of which he complains or that his stock or membership devolved upon him by operation of law from a person who was a shareholder or member at that time.

(b) Security for costs.--In any such action instituted or maintained by a holder or holders of less than 5% of the outstanding shares of any class of the corporation or voting trust certificates therefor, or by a member or members of a corporation organized without capital stock which has outstanding contracts or accounts with its members if the value of the contracts or accounts held or owned by the member or members instituting or maintaining the suit is less than 5% of the value of all the contracts or accounts outstanding, the

corporation in whose right the action is brought shall be entitled, at any stage of the proceedings, to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorneys' fees, which may be incurred by [it] **the corporation** in connection therewith [and] **or** for which it may become liable pursuant to section 522 (relating to indemnification of authorized representatives) (but only insofar as relates to mandatory indemnification in actions by or in the right of the corporation) to which security the corporation shall have recourse in such amount as the court having jurisdiction shall determine upon the termination of the action. The amount of the security may, from time to time, be increased or decreased in the discretion of the court having jurisdiction of the action upon showing that the security provided has or [may] **is likely to** become inadequate or excessive. **The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.**

\* \* \*

Section 4. Section 1551(b) of Title 15 is amended and the section is amended by adding a subsection to read:  
§ 1551. Distributions to shareholders.

\* \* \*

(b) **Limitation.**--A distribution, including a distribution under Subchapter F (relating to voluntary dissolution and winding up) or H (relating to postdissolution provision for liabilities) of Chapter 19, may not be made if, after giving effect thereto:

- (1) the corporation would be unable to pay its debts as they become due in the usual course of its business; or
- (2) the total assets of the corporation would be less than the sum of its total liabilities plus (unless otherwise provided in the articles) the amount that would be needed, if the corporation were to be dissolved at the time as of which the distribution is measured, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

\* \* \*

(d.1) **Distribution in winding up.**--In measuring the effect of a distribution under Subchapter F or H of Chapter 19, the liabilities of a dissolved corporation do not include any liabilities for which adequate provision has been made or any claim that has been barred under those subchapters.

\* \* \*

Section 5. Sections 1781 and 1782 heading and (c) of Title 15 are amended to read:

§ 1781. [(Reserved).] **Derivative action.**

(a) **General rule.**--Subject to section 1782 (relating to eligible shareholder plaintiffs and security for costs) and subsection (b), a plaintiff may maintain a derivative action to enforce a right of a business corporation only if:

- (1) the plaintiff first makes a demand on the corporation or the board of directors requesting that it cause the corporation to bring an action to enforce the right, and:

- (i) if a special litigation committee is not appointed under section 1783 (relating to special litigation committee), the corporation does not bring the action within a reasonable time; or

- (ii) if a special litigation committee is appointed under section 1783, a determination is made:

(A) under section 1783(e)(1) that the corporation not object to the action; or

(B) under section 1783(e)(5)(i) that the plaintiff continue the action;

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 1783(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 1783(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that immediate and irreparable harm to the business corporation would otherwise result.

(2) If demand is excused under paragraph (1), demand shall be made promptly upon commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of the essential facts relied upon to support each of the claims made in the demand.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the plaintiff making the demand is notified either:

(i) that the board of directors has decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 1783(e) after the appointment of a special litigation committee under section 1783; or

(2) the plaintiff commences an action asserting the claim.

(f) Certain provisions of articles ineffective.--This section may not be relaxed by any provision of the articles. § 1782. [Actions against directors and officers] **Eligible shareholder plaintiffs and security for costs.**

\* \* \*

(c) Security for costs.--In any action or proceeding instituted or maintained by holders or owners of less than 5% of the outstanding shares of any class of the corporation, unless the shares held or owned by the holders or owners have an aggregate fair market value in excess of \$200,000, the corporation in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorneys' fees, that may be incurred by [it] **the corporation** in connection therewith or for which it may become liable pursuant to section 1743 (relating to mandatory indemnification) (but only insofar as relates to actions by or in the right of the corporation) to which security the corporation shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may, from time to time, be increased or decreased in the discretion of the court upon showing that the security provided has or [may] **is likely to** become inadequate or excessive. The security may be denied or limited [in the

discretion of] **by** the court [upon preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, establishing prima facie that the requirement of full or partial security would impose] **if the court finds after an evidentiary hearing that** undue hardship on plaintiffs and serious injustice would result.

\* \* \*

Section 6. Title 15 is amended by adding sections to read:  
§ 1783. **Special litigation committee.**

(a) **General rule.**--If a business corporation or the board of directors receives a demand to bring an action to enforce a right of the corporation, or if a derivative action is commenced before demand has been made on the corporation or the board, the board may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the corporation or recommend to the board whether pursuing any of the claims asserted is in the best interests of the corporation. The corporation shall send a notice in record form to the plaintiff promptly after the appointment of a committee under this section notifying the plaintiff that a committee has been appointed and identifying by name the members of the committee. A committee may not be appointed under this section if every shareholder of the corporation is also a director of the corporation.

(b) **Discovery stay.**--If the board of directors appoints a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the committee made in the name of the business corporation, the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) **Composition of committee.**--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand or action;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be shareholders or directors.

(d) **Appointment of committee.**--A special litigation committee may be appointed:

(1) by a majority of the directors not named as actual or potential parties in the demand or action; or

(2) if all the directors are named as actual or potential parties in the demand or action, by a majority of the directors so named.

(e) **Determination.**--After appropriate investigation by a special litigation committee, the committee or the board of directors may determine that it is in the best interests of the business corporation that:

(1) an action based on some or all of the claims asserted in the demand not be brought by the corporation but that the corporation not object to an action being brought by the party that made the demand;

(2) an action based on some or all of the claims asserted in the demand be brought by the corporation;

(3) some or all of the claims asserted in the demand be settled on terms approved by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

- (i) the plaintiff;
- (ii) the corporation; or
- (iii) the committee;

(6) some or all the claims asserted in an action already commenced be settled on terms approved by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced either before or after a determination is made under subsection (e):

(1) The business corporation shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee supporting the determination. The corporation shall serve each party with a copy of the determination and report. If the corporation moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The corporation shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:

- (i) dissolve any stay of discovery entered under subsection (b);
- (ii) allow the action to continue under the control of the plaintiff; and
- (iii) permit the defendants to file preliminary objections, other appropriate pleadings and motions.

(g) Certain provisions of articles ineffective.--The provisions of this section may not be varied by the articles. § 1784. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the business corporation and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the corporation.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the business corporation, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the corporation.

(c) Certain provisions of articles ineffective.--This section may not be relaxed by any provision of the articles.

Section 6.1. Sections 1971(a) and 3301(d) of Title 15 are amended to read:

§ 1971. Voluntary dissolution by shareholders or incorporators.

(a) General rule.--The shareholders or incorporators of a business corporation that has [not commenced business] **never transacted business or held assets other than money received from subscriptions for shares** may effect the dissolution of the corporation by filing articles of dissolution in the Department of State. The articles of dissolution shall be executed in the name of the corporation by a majority of the incorporators or a majority in interest of the shareholders and shall set forth:

(1) The name of the corporation and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office.

(2) The statute under which the corporation was incorporated and the date of incorporation.

(3) That the corporation has [not commenced business] **never transacted business or held assets other than money received from subscriptions for shares**.

(4) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.

(5) That all liabilities of the corporation have been discharged or that adequate provision has been made therefor.

(6) That a majority of the incorporators or a majority in interest of the shareholders elect that the corporation be dissolved.

\* \* \*

§ 3301. Application and effect of chapter.

\* \* \*

(d) Organic [records] **rules** may not be inconsistent.--A provision of the articles or bylaws of a benefit corporation may not relax, be inconsistent with or supersede any provision of this chapter.

Section 6.2. The definitions of "benefit corporation," "benefit director," "independent," "minimum status vote" and "subsidiary" in section 3302 of Title 15 are amended to read:  
§ 3302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Benefit corporation." A business corporation that [has elected to become] **is** subject to this chapter [and whose status as a benefit corporation has not been terminated].

"Benefit director." [Either:

(1) the] **The** director designated as the benefit director of a benefit corporation as provided in section 3322 (relating to benefit director). [; or

(2) a person with one or more of the powers, duties or rights of a benefit director to the extent provided in the bylaws under section 3322.]

\* \* \*

"Independent." When a person has no material relationship with a benefit corporation or any of its subsidiaries, other than the relationship of serving as the benefit director or benefit officer. A material relationship between an individual and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is or has been within the last three years an employee of the benefit corporation or any of its subsidiaries, other than as a benefit officer;

(2) an immediate family member of the person is or has been within the last three years an executive officer, other than a benefit officer, of the benefit corporation or any of its subsidiaries; or

(3) the person, or an association of which the person is a [director, officer or other manager] **governor or officer** or in which the person owns beneficially or of record 5% or more of the outstanding [equity] interests, owns beneficially or of record 5% or more of the outstanding shares of the benefit corporation. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire [equity] interests in the association had been exercised.

"Minimum status vote." **As follows:**

(1) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series must be entitled, as a class, to vote on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

(ii) The corporate action must be approved by a vote of the shareholders of each class or series entitled to cast at least two-thirds of the votes that all shareholders of the class or series are entitled to cast on the action.

(2) In the case of a domestic association other than a business corporation, in addition to any other required approval, vote or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of [equity] interest in the association that are entitled to receive a distribution of any kind from the association must be entitled as a class to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

(ii) The action must be approved by vote or consent of the holders described in subparagraph (i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

\* \* \*

"Subsidiary." An association in which a person owns beneficially or of record 50% or more of the outstanding [equity] interests. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire [equity] interests in the association had been exercised.

\* \* \*

Section 7. Sections 3321(c), 3322(e), 3323(c), 3325(b), 3331(a)(8) and 4146 of Title 15 are amended to read:  
§ 3321. Standard of conduct for directors.

\* \* \*

(c) Exoneration from personal liability.--

(1) A director shall not be personally liable, as such, for monetary damages for any action taken as a director [if the director performed the duties of his or her office in compliance with section 1712 and this section.] **in the course**

**of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or a knowing violation of law.**

(2) A director shall not be personally liable for monetary damages for failure of the benefit corporation to **pursue or** create general public benefit or a specific public benefit.

\* \* \*

§ 3322. Benefit director.

\* \* \*

[(e) Alternative governance arrangements.--

(1) The bylaws of a benefit corporation must provide that the persons or shareholders who perform the duties of the board of directors include a person with the powers, duties, rights and immunities of a benefit director if any of the following apply:

(i) The bylaws of a benefit corporation provide that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person other than the directors under section 1721(a) (relating to board of directors).

(ii) The bylaws of a statutory close corporation that is a benefit corporation provide that the business and affairs of the corporation shall be managed by or under the direction of the shareholders.

(2) A person that exercises one or more of the powers, duties or rights of a benefit director under this subsection:

(i) does not need to be independent of the benefit corporation;

(ii) shall have the immunities of a benefit director;

(iii) may share the powers, duties and rights of a benefit director with one or more other persons; and

(iv) shall not be subject to the procedures for election or removal of directors in Subchapter C of Chapter 17 unless:

(A) the person is also a director of the benefit corporation; or

(B) the bylaws make those procedures applicable.]

\* \* \*

§ 3323. Standard of conduct for officers.

\* \* \*

(c) Exoneration from personal liability.--

(1) An officer shall not be personally liable, as such, for monetary damages for any action taken as an officer [if the officer performed the duties of the position in compliance with section 1712(c) and this section.] **in the course of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or a knowing violation of law.**

(2) An officer shall not be personally liable for monetary damages for failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

\* \* \*

§ 3325. Right of action.

\* \* \*

(b) Parties with standing.--A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit corporation; or

(2) derivatively by:



(i) a shareholder that owned at least 2% of the total number of shares of a class or series outstanding at the time of the act complained of;

(ii) a director;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the [equity] interests in an association of which the benefit corporation is a subsidiary at the time of the act complained of; or

(iv) such other persons as may be specified in the articles or bylaws of the benefit corporation.

\* \* \*

§ 3331. Annual benefit report.

(a) Contents.--A benefit corporation must deliver to each shareholder an annual benefit report including:

\* \* \*

[(8) If the benefit corporation has dispensed with, or restricted the discretion or powers of, the board of directors, a description of:

(i) the persons that exercise the powers, duties and rights and who have the immunities of the board of directors; and

(ii) the benefit director, as required by section 3322(e).]

\* \* \*

§ 4146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation for profit, whether or not required to [procure a certificate of authority under this chapter] **register under Chapter 4 (relating to foreign associations):**

Section 1503 (relating to defense of ultra vires), as to contracts and conveyances governed by the laws of this Commonwealth and conveyances affecting real property situated in this Commonwealth.

Section 1506 (relating to form of execution of instruments), as to instruments or other documents governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 1510 (relating to certain specifically authorized debt terms), as to obligations (as defined in the section) governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 1782 (relating to [actions against directors and officers] **eligible shareholder plaintiffs and security for costs**), as to any **derivative** action [or proceeding] brought in a court of this Commonwealth.

Subchapter F of Chapter 25 (relating to business combinations), to the extent provided in section 2551(c) (relating to continuing applicability).

Section 8. The definition of "charitable purposes" in section 5103(a) of Title 15 is amended to read:

§ 5103. Definitions.

(a) General definitions.--Subject to additional definitions contained in subsequent provisions of this subpart that are applicable to specific provisions of this subpart, the following words and phrases when used in Part I (relating to preliminary provisions) or in this subpart shall have the meanings given to them in this section unless the context clearly indicates otherwise:

\* \* \*

["Charitable purposes." The relief of poverty, the advancement and provision of education, including postsecondary education, the advancement of religion, the prevention and treatment of disease or injury, including mental retardation and mental disorders, governmental or municipal purposes, and any other purpose the accomplishment of which is recognized as important and beneficial to the public.]

\* \* \*

Section 9. Title 15 is amended by adding a section to read:  
§ 5781. Derivative action.

(a) General rule.--Subject to section 5782 (relating to eligible member plaintiffs and security for costs) and subsection (b), a plaintiff may maintain a derivative action to enforce a right of a nonprofit corporation only if:

(1) the plaintiff first makes a demand on the corporation or the board of directors, requesting that it cause the corporation to bring an action to enforce the right, and:

(i) if a special litigation committee is not appointed under section 5783 (relating to special litigation committee), the corporation does not bring the action within a reasonable time; or

(ii) if a special litigation committee is appointed under section 5783, a determination is made:

(A) under section 5783(e)(1) that the corporation not object to the action; or

(B) under section 5783(e)(5)(i) that the plaintiff continue the action;

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 5783(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 5783(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the member makes a specific showing that immediate and irreparable harm to the nonprofit corporation would otherwise result.

(2) If demand is excused under paragraph (1), demand shall be made promptly after commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of the essential facts relied upon to support each of the claims made in the demand.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the plaintiff making the demand is notified either:

(i) that the board of directors has decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 5783(e) after the appointment of a special litigation committee under section 5783; or

(2) the plaintiff commences an action asserting the claim.

Section 10. Section 5782 heading and subsection (c) of Title 15 are amended to read:

§ 5782. [Actions against directors, members of an other body and officers] **Eligible member plaintiffs and security for costs.**

\* \* \*

(c) Security for costs.--In any action or proceeding instituted or maintained by less than the smaller of 50 members of any class or 5% of the members of any class of the corporation, the corporation in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by [it] **the corporation** in connection therewith or for which it may become liable pursuant to section 5743 (relating to mandatory indemnification), but only insofar as relates to actions by or in the right of the corporation, to which security the corporation shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may from time to time be increased or decreased in the discretion of the court upon showing that the security provided has or [may] **is likely to** become inadequate or excessive. The security may be denied or limited [in the discretion of] **by** the court [upon preliminary showing to the court, by application and upon such verified statements and depositions as may be required by the court, establishing prima facie that the requirement of full or partial security would impose] **if the court finds after an evidentiary hearing that** undue hardship on plaintiffs and serious injustice would result.

\* \* \*

Section 11. Title 15 is amended by adding sections to read: § 5783. **Special litigation committee.**

(a) **General rule.**--If a nonprofit corporation or the board of directors receives a demand to bring an action to enforce a right of the corporation, or if a derivative action is commenced before demand has been made on the corporation or the board, the board may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the corporation or recommend to the board whether pursuing any of the claims asserted is in the best interests of the corporation. The corporation shall send a notice in record form to the plaintiff promptly after the appointment of a committee under this section notifying the plaintiff that a committee has been appointed and identifying by name the members of the committee.

(b) **Discovery stay.**--If the board of directors appoints a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the committee made in the name of the nonprofit corporation, the court shall stay discovery for the time reasonably necessary to permit the committee to complete its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) **Composition of committee.**--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand or action;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be members, directors or members of an other body.

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) by a majority of the directors not named as actual or potential parties in the demand or action; or

(2) if all the directors are named as actual or potential parties in the demand or action, by a majority of:

(i) the members of an other body not named as parties in the proceeding if the other body has the authority to appoint a special litigation committee; or

(ii) the directors so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee or the board of directors may determine that it is in the best interests of the nonprofit corporation that:

(1) an action based on some or all of the claims asserted in the demand not be brought by the corporation but that the corporation not object to an action being brought by the party that made the demand;

(2) an action based on some or all of the claims asserted in the demand be brought by the corporation;

(3) some or all of the claims asserted in the demand be settled on terms approved by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the corporation; or

(iii) the committee;

(6) some or all the claims asserted in an action already commenced be settled on terms approved by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced before or after a determination is made under subsection (e):

(1) The nonprofit corporation shall file with the court after a determination is made under subsection (e) a statement of the determination and a report supporting the determination. The corporation shall serve each party with a copy of the determination and report. If the corporation moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The corporation shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections, other appropriate pleadings and motions.

(g) Attorney General.--Nothing in this section limits the rights, powers and duties of the Attorney General under other applicable law with respect to a nonprofit corporation.

§ 5784. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the nonprofit corporation and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the corporation.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the nonprofit corporation, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the corporation.

Section 12. Sections 6146, 8102 and 8105 of Title 15 are amended to read:

§ 6146. Provisions applicable to all foreign corporations.

The following provisions of this subpart shall, except as otherwise provided in this section, be applicable to every foreign corporation not-for-profit, whether or not required to [procure a certificate of authority under this chapter] **register under Chapter 4 (relating to foreign associations):**

Section 5503 (relating to defense of ultra vires) as to contracts and conveyances governed by the laws of this Commonwealth and conveyances affecting real property situated in this Commonwealth.

Section 5506 (relating to form of execution of instruments) as to instruments or other documents governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 5510 (relating to certain specifically authorized debt terms) as to obligations (as defined in the section) governed by the laws of this Commonwealth or affecting real property situated in this Commonwealth.

Section 5782 (relating to [actions against directors, members of an other body and officers] **eligible member plaintiffs and security for costs**) as to any **derivative** action [or proceeding] brought in a court of this Commonwealth.

§ 8102. Interchangeability of partnership, limited liability company and corporate forms of organization.

(a) General rule.--Subject to any restrictions on a specific line of business made applicable by section 103 (relating to subordination of title to regulatory laws):

(1) Any business that may be conducted in a corporate form may also be conducted as a partnership or a limited liability company.

(2) A domestic or foreign partnership or limited liability company may exercise any right, power, franchise or privilege that a domestic or foreign corporation engaged in the same line of business might exercise under the laws of this Commonwealth, including powers conferred by section 1511 (relating to additional powers of certain public utility

corporations) or other provisions of law granting the right to a duly authorized corporation to take or occupy property and make compensation therefor.

(b) Exceptions.--Subsection (a) shall not:

(1) Affect any law relating to the taxation of partnerships, limited liability companies or corporations.

(2) [Apply to a banking institution, credit union, insurance corporation or savings association,] **Authorize acting as a banking institution, credit union or insurer unless the laws relating thereto or this part expressly [contemplate] permit the conduct of the regulated business in partnership or limited liability company form. See [section 8911 (relating to purposes).] sections 8620(b) (relating to characteristics of limited partnership) and 8818(b) (relating to characteristics of limited liability company).**

(3) Except as otherwise provided by law, permit a partnership to provide full limited liability for all of the investors therein or otherwise fail to preserve the intrinsic differences between the partnership and corporate forms.

§ 8105. **Ownership of certain professional partnerships and limited liability companies.**

(a) **General rule.**--Except as otherwise provided by statute, rule or regulation applicable to a particular profession, all of the ultimate beneficial owners of the [partnership] interests in a [partnership that renders one or more restricted professional services shall] **general partnership, limited partnership, electing partnership or limited liability company, and all of the governors of the entity, must be licensed persons[. As used in this section, the term "restricted professional services" shall have the meaning specified in section 8903 (relating to definitions and index of definitions).] in the profession the entity practices if the entity renders any of the following professional services:**

- (1) **chiropractic;**
- (2) **dentistry;**
- (3) **law;**
- (4) **medicine and surgery;**
- (5) **optometry;**
- (6) **osteopathic medicine and surgery;**
- (7) **podiatric medicine;**
- (8) **public accounting;**
- (9) **psychology; or**
- (10) **veterinary medicine.**

(b) **Transitional provision.**--Subsection (a) shall not apply to a person that holds only a transferable interest that was acquired before February 21, 2017.

Section 13. Title 15 is amended by adding a section to read:  
§ 8106. **Failure to observe formalities.**

**The failure of a limited liability partnership, limited partnership, limited liability limited partnership, electing partnership or limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a partner, member or manager of the entity for a debt, obligation or other liability of the entity.**

Section 14. Chapter 82 heading of Title 15 is amended to read:

CHAPTER 82

[REGISTERED] LIMITED LIABILITY PARTNERSHIPS AND  
LIMITED LIABILITY LIMITED PARTNERSHIPS

Section 15. Chapter 82 Subchapter A heading of Title 15 is amended to read:

SUBCHAPTER A  
DOMESTIC [REGISTERED]  
LIMITED LIABILITY PARTNERSHIPS **AND**  
**LIMITED LIABILITY LIMITED PARTNERSHIPS**

Section 16. Section 8201 of Title 15 is amended to read:  
§ 8201. Scope.

(a) Application of subchapter.--This subchapter applies to a general or limited partnership **whose internal affairs are governed by or that is** formed under the laws of this Commonwealth **and** that registers under this section. Any partnership that desires to register under this subchapter or to amend or terminate its registration shall [file in] **deliver to** the Department of State **for filing** a statement of registration, amendment or termination, as the case may be, which shall be signed by a general partner and shall set forth:

(1) The name of the partnership.

(2) Either:

(i) the address of the principal place of business of the partnership, in the case of a general partnership; or

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership, in the case of a limited partnership.

(3) A statement that the partnership registers under this subchapter or that the registration of the partnership under this subchapter shall be amended or terminated, as the case may be. If the statement relates to an amendment, the amendment shall restate in full the statement of registration.

(4) A statement that:

(i) the registration, amendment or termination has been authorized by at least a majority in interest of the partners[.]; **and**

(ii) **in the case of a termination, the termination has also been authorized by all of the general partners.**

(b) Effect of filing.--Upon the filing of the statement of registration, amendment or termination in the department, the registration under this subchapter shall be effective, amended or terminated, as the case may be. The effectiveness, amendment or termination of the registration of a partnership under this subchapter shall not be deemed to cause a dissolution of the partnership.

(c) Effect of registration.--As long as the registration under this subchapter is in effect, the partnership shall be governed by the provisions of this subchapter and, to the extent not inconsistent with this subchapter, Chapter [83] **84** (relating to general partnerships) [and, if a limited partnership, in addition, Chapter 85] **or 86** (relating to limited partnerships). Without limiting the generality of the foregoing, a domestic or foreign [registered] limited liability partnership **or limited liability limited partnership** shall be treated the same as if it were not registered under this subchapter for purposes of:

(1) determining whether it is a permissible form of entity in which to conduct the practice of a profession; or

(2) the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation.

(d) Continuation of registration.--If a [registered] limited liability partnership **or limited liability limited partnership** is dissolved and its business is continued without liquidation of the partnership affairs, the registration under this subchapter of the dissolved partnership shall continue to be applicable to the partnership continuing the business, and it shall not be necessary to make a new filing under this section until such time, if any, as the registration is to be amended or terminated.

(e) Prohibited termination.--A registration under this subchapter may not be terminated while the partnership is a [bankrupt as that term is defined in section 8903 (relating to definitions and index of definitions)] **debtor in bankruptcy**. See section 8221(f) (relating to annual registration).

(f) Alternative procedure.--In lieu of filing a statement of registration as provided in subsection (a), a limited partnership may register as a [registered] limited liability **limited** partnership by including in its certificate of limited partnership, either originally or by amendment, the statements required by subsection (a)(3) and (4). To terminate its registration, a limited partnership that uses the procedure authorized by this subsection shall amend its certificate of limited partnership to delete the statements required by this subsection.

(g) Constructive notice.--[Filing] **Registration** under this section shall constitute constructive notice that the partnership is a [registered] limited liability **partnership or limited liability limited** partnership and that the partners are entitled to the protections from liability provided by this subchapter.

(h) **Approval of termination**--In addition to any required approvals under the partnership agreement, the termination of a statement of registration must be approved by the affirmative vote or consent of all the general partners.

(i) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).

Section 17. Section 8202 of Title 15 is amended to read: § 8202. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

**"Distribution."** A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited liability partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(1) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's business or to have access to records or other information concerning the partnership's business; and

(2) does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;



(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a partnership for the benefit of any or all of its partners;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the partners; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

["Foreign registered limited liability partnership." A partnership that has registered under a law of any jurisdiction other than this Commonwealth similar to this subchapter, whether or not the partnership is required to register under section 8211 (relating to foreign registered limited liability partnerships).]

"Partner." Includes a person who is or was a partner in a [registered] limited liability partnership **or a general partner in a limited liability limited partnership** at any time while the registration of the partnership under this subchapter is or was in effect.

["Registered limited liability partnership" or "domestic registered limited liability partnership." A partnership as to which a registration under section 8201(a) (relating to scope) is in effect.]

Section 18. Section 8204 of Title 15 is amended to read: § 8204. Limitation on liability of partners.

(a) General rule.--Except as provided in subsection (b), a partner in a [registered] limited liability partnership **or limited liability limited partnership** shall not be [individually] liable directly or indirectly, whether by way of indemnification, contribution or otherwise, [for debts and obligations] **under an order of court or in any other manner for any debts, obligations or other liabilities** of, or chargeable to, the partnership, whether sounding in contract or tort or otherwise, that arise [from any negligent or wrongful acts or misconduct committed by another partner or other representative of the partnership] while the registration of the partnership under this subchapter is in effect.

(b) Exceptions.--

(2) Subsection (a) shall not affect the liability of a partner:

(i) Individually for any negligent or wrongful acts or misconduct committed by [him or by any person under his direct supervision and control] **the partner**.

(ii) For any debts [or], obligations **or other liabilities** of the partnership:

[(A) arising from any cause other than those specified in subsection (a); or]

(B) as to which the partner has agreed in [writing] **record form** to be liable[.]; or

(C) **that:**

(I) **arose before February 21, 2017; and**

(II) **did not arise from any negligent or wrongful acts or misconduct committed by a partner or other representative of the partnership.**

(iii) To the extent expressly undertaken in the partnership agreement or the certificate of limited partnership.

(3) Subsection (a) shall not affect in any way:

(i) the liability of the partnership itself for all its debts [and obligations], **obligations and other liabilities;**

(ii) the availability of the entire assets of the partnership to satisfy its debts [and obligations], **obligations and other liabilities;** or

(iii) any obligation undertaken by a partner in [writing] **record form** to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

(c) Continuation of limited liability.--Neither the termination of the registration of a partnership under this subchapter nor the dissolution, **winding up or termination** of the partnership shall affect the limitation on the liability of a partner in the partnership under this section with respect to [negligent or wrongful acts or misconduct occurring] **debts, obligations and other liabilities that arose** while the registration under this subchapter was in effect.

(d) **Proper parties.**--A partner in a limited liability partnership or limited liability limited partnership is not a proper party to an action or proceeding by or against the partnership, the object of which is to recover damages or enforce debts, obligations or other liabilities for which the partner is not liable.

(e) Cross reference.--See section 103 (relating to subordination of title to regulatory laws).

Section 19. Section 8205 of Title 15 is repealed:  
[§ 8205. Liability of withdrawing partner.

(a) General rule.--Except as provided in subsection (b), if the business of a registered limited liability partnership is continued without liquidation of the partnership affairs following the dissolution of the partnership as a result of the withdrawal for any reason of a partner, the withdrawing partner shall not be individually liable directly or indirectly, whether by way of indemnification, contribution or otherwise, for the debts and obligations of either the dissolved partnership or any partnership continuing the business if a statement of withdrawal is filed as provided in this section.

(b) Exceptions.--Subsection (a) shall not affect the liability of a partner:

(1) Individually for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control.

(2) For any debts or obligations of the partnership as to which the withdrawing partner has agreed in writing to be liable.

(3) To the partnership for damages if the partnership agreement prohibits the withdrawal of the partner or the withdrawal otherwise violates the partnership agreement.

(4) Under section 8334 (relating to partner accountable as fiduciary).

(5) To the extent a debt or obligation of the partnership has been expressly undertaken by the partner in the partnership agreement or the certificate of limited partnership.

(6) If the partnership subsequently dissolves within one year after the date of withdrawal of the partner and the business of the partnership is not continued following such subsequent dissolution. This paragraph shall not be applicable in the case of a withdrawal caused by:

(i) the death of the partner; or

(ii) the retirement of the partner pursuant to a retirement policy of the dissolved partnership that has been in effect prior to the retirement of the partner for the shorter of one year or the period that the partnership has been in existence.

(7) For any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

(c) Statement of withdrawal.--A statement of withdrawal shall be executed by the withdrawing partner or his personal representative and shall set forth:

(1) The name of the registered limited liability partnership.

(2) The name of the withdrawing partner.

(d) Filing and effectiveness.--The statement of withdrawal shall be filed in the Department of State and shall be effective upon filing. The withdrawing partner shall send a copy of the filed statement of withdrawal to the registered limited liability partnership.

(e) Permissive filing.--Filing under this section is permissive, and failure to make a filing under this section by a partner entitled to do so shall not affect the right of that partner to the limitation on liability provided by section 8204 (relating to limitation on liability of partners).

(f) Constructive notice.--Filing under this section shall constitute constructive notice that the partner has withdrawn from the partnership and is entitled to the protection from liability provided by this section.

(g) Variation of section.--A written provision of the partnership agreement may restrict or condition the application of this section to some or all of the partners of the partnership.

(h) Application of section.--A partner in a foreign registered limited liability partnership, regardless of whether or not it has registered to do business in this Commonwealth under section 8211 (relating to foreign registered limited liability partnerships), shall not be entitled to make a filing under this section with regard to that partnership.

(i) Cross references.--See sections 134 (relating to docketing statement) and 135 (relating to requirements to be met by filed documents).]

Section 20. Section 8207 of Title 15 is amended to read:  
§ 8207. Extraterritorial application of subchapter.

[(a) Legislative intent.--It is the intent of the General Assembly in enacting this subchapter that the legal existence of registered limited liability partnerships organized in this Commonwealth be recognized outside the boundaries of this Commonwealth and that, subject to any reasonable requirement of registration, a domestic registered limited liability partnership transacting business outside this Commonwealth be granted protection of full faith and credit under the Constitution of the United States.]

(b) Basis for determining liability of partners.--The liability of partners in a [registered] **domestic** limited liability partnership **or domestic limited liability limited partnership** shall at all times be determined under Chapters [83] **84** (relating to general partnerships) and [85] **86** (relating to limited partnerships) as modified by the provisions of this subchapter.

(c) Conflict of laws.--The personal liability of a partner of a [registered] **domestic** limited liability partnership **or**

**domestic limited liability limited partnership** to any person or in any action or proceeding for the debts, obligations or **other** liabilities of the partnership or for the acts or omissions of other partners or representatives of the partnership shall be governed solely and exclusively by the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with regard to the liability of partners of a [registered] **domestic** limited liability partnership [registered under this subchapter] **or domestic limited liability limited partnership** for the debts, obligations and **other** liabilities of the partnership or for the acts or omissions of the other partners or representatives of the partnership, the laws of this Commonwealth shall govern in determining such liability.

Section 21. Subchapter B of Chapter 82 of Title 15 is repealed:

[SUBCHAPTER B  
FOREIGN REGISTERED  
LIMITED LIABILITY PARTNERSHIPS

§ 8211. Foreign registered limited liability partnerships.

(a) Governing law.--Subject to the Constitution of Pennsylvania:

(1) The laws of the jurisdiction under which a foreign registered limited liability partnership is organized govern its organization and internal affairs and the liability of its partners except as provided in subsection (c).

(2) A foreign registered limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this Commonwealth.

(c) Exception.--The liability of the partners in a foreign registered limited liability partnership shall be governed by the laws of the jurisdiction under which it is organized, except that the partners shall not be entitled to greater protection from liability than is available to the partners in a domestic registered limited liability partnership.]

Section 22. Section 8221 of Title 15 is amended to read:  
§ 8221. Annual registration.

(a) General rule.--Every domestic [registered] limited liability partnership **or limited liability limited partnership** in existence on December 31 of any year and every foreign [registered] limited liability partnership **or limited liability limited partnership** that is registered to do business in this Commonwealth on December 31 of any year shall [file in] **deliver to** the Department of State **for filing** with respect to that year, and on or before April 15 of the following year, a certificate of annual registration on a form provided by the department, signed by a general partner and accompanied by the annual registration fee prescribed by subsection (b). The department shall not charge a fee other than the annual registration fee for filing the certificate of annual registration.

(b) Annual registration fee.--

(1) The annual registration fee to be paid when filing a certificate of annual registration shall be equal to a base fee of \$200 times the number of persons who were general partners of the partnership on December 31 of the year with respect to which the certificate of annual registration is being filed and who:

(i) in the case of a natural person, had his principal residence on that date in this Commonwealth;  
or

(ii) in the case of any other person, was incorporated or otherwise organized or existing on that date under the laws of this Commonwealth.

(2) The base fee of \$200 shall be increased on December 31, 1997, and December 31 of every third year thereafter by the percentage increase in the Consumer Price Index for Urban Workers during the most recent three calendar years for which that index is available on the date of adjustment. Each adjustment under this paragraph shall be rounded up to the nearest \$10.

(c) Notice of annual registration.--Not later than February 1 of each year, the department shall give notice to every partnership required to file a certificate of annual registration with respect to the preceding year of the requirement to file the certificate. The notice shall state the amount of the base fee payable under subsection (b)(1), as adjusted pursuant to subsection (b)(2), if applicable, and shall be accompanied by the form of certificate of annual registration to be filed. Failure by the department to give notice to any party, or failure by any party to receive notice, of the annual registration requirement shall not relieve the party of the obligation to file the certificate of annual registration.

(d) Credit to Corporation Bureau Restricted Account.--The annual registration fee shall not be deemed to be an amount received by the department under Subchapter C of Chapter 1 for purposes of section 155 (relating to disposition of funds), except that \$25 of the fee shall be credited to the Corporation Bureau Restricted Account.

(e) Failure to **file or** pay annual fee.--

(1) Failure to file the certificate of annual registration required by this section for five consecutive years shall result in the automatic termination of:

(i) the status of the [registered] limited liability partnership [as such.] **or limited liability limited partnership as such, if it is a domestic partnership;**  
**or**

(ii) **the registration of the limited liability partnership or limited liability limited partnership, if it is a foreign partnership.**

(1.1) [In addition, any] **Any** annual registration fee that is not paid when due shall be a lien in the manner provided in this subsection from the time the annual registration fee is due and payable. If a certificate of annual registration is not filed within 30 days after the date on which it is due, the department shall assess a penalty of \$500 against the partnership, which shall also be a lien in the manner provided in this subsection. The imposition of that penalty shall not be construed to relieve the partnership from liability for any other penalty or interest provided for under other applicable law.

(2) If the annual registration fee paid by a [registered limited liability] partnership is subsequently determined to be less than should have been paid because it was based on an incorrect number of general partners or was otherwise incorrectly computed, that fact shall not affect the existence [or status of the registered limited liability partnership as such], **status or foreign registration of the partnership**, but the amount of the additional annual registration fee that should have been paid shall be a lien in the manner provided in this subsection from the time the incorrect payment is discovered by the department.

(3) The annual registration fee shall bear simple interest from the date that it becomes due and payable until paid. The interest rate shall be that provided for in section 806 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, with respect to unpaid taxes. The penalty provided for in paragraph (1) shall not bear interest. The payment of interest shall not relieve the [registered limited liability] partnership from liability for any other penalty or interest provided for under other applicable law.

(4) The lien created by this subsection shall attach to all of the property and proceeds thereof of the [registered limited liability] partnership in which a security interest can be perfected in whole or in part by filing in the department under 13 Pa.C.S. Div. 9 (relating to secured transactions; sales of accounts, contract rights and chattel paper), whether the property and proceeds are owned by the partnership at the time the annual registration fee or any penalty or interest becomes due and payable or whether the property and proceeds are acquired thereafter. Except as otherwise provided by statute, the lien created by this subsection shall have priority over all other liens, security interests or other charges, except liens for taxes or other charges due the Commonwealth. The lien created by this subsection shall be entered on the records of the department and indexed in the same manner as a financing statement filed under 13 Pa.C.S. Div.9. At the time an annual registration fee, penalty or interest that has resulted in the creation of a lien under this subsection is paid, the department shall terminate the lien with respect to that annual registration fee, penalty or interest without requiring a separate filing by the partnership for that purpose.

(5) If the annual registration fee paid by a [registered limited liability] partnership is subsequently determined to be more than should have been paid for any reason, no refund of the additional fee shall be made.

(6) Termination of the status [of a registered limited liability partnership as such] **or foreign registration of a partnership under this section**, whether voluntarily or involuntarily, shall not release it from the obligation to pay any accrued fees, penalties and interest and shall not release the lien created by this subsection.

(f) Exception for bankrupt partnerships.--A partnership that would otherwise be required to pay the annual registration fee set forth in subsection (b) shall not be required to pay that fee with respect to any year during any part of which the partnership is a [bankrupt as defined in section 8903 (relating to definitions and index of definitions)] **debtor in bankruptcy**. The partnership shall, instead, indicate on its certificate of annual registration for that year that it is exempt from payment of the annual registration fee pursuant to this subsection. If the partnership fails to file timely a certificate of annual registration, a lien shall be entered on the records of the department pursuant to subsection (e) which shall not be removed until the partnership files a certificate of annual registration indicating its entitlement to an exemption from payment of the annual registration fee as provided in this subsection. See section 8201(e) (relating to scope).

Section 23. Chapter 82 of Title 15 is amended by adding subchapters to read:

**SUBCHAPTER D  
DISTRIBUTIONS**

Sec.

8231. Limitations on distributions by limited liability partnership.

8232. Liability for improper distributions by limited liability partnership.

§ 8231. Limitations on distributions by limited liability partnership.

(a) General rule.--A domestic limited liability partnership may not make a distribution, including a distribution under section 8486 (relating to disposition of assets in winding up and required contributions), if after the distribution:

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

(2) the partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) Valuation.--A domestic limited liability partnership may base a determination that a distribution is not prohibited under subsection (a) (2) on:

(1) the book values of the assets and liabilities of the partnership, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the partnership;

(3) the current value of the assets and liabilities of the partnership, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

(c) Excluded liabilities.--In determining whether a distribution is prohibited under subsection (a) (2), the partnership need not consider obligations and liabilities unless they are required to be reflected on a balance sheet, not including the notes to the balance sheet, prepared on the basis of generally accepted accounting principles, or other such accounting practices and principles as are used generally by the partnership in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Measuring date of distribution.--Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) as of the date specified by the partnership when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

(e) Date of redemption.--In the case of a distribution as described in paragraph (1) of the definition of "distribution" in section 8202 (relating to definitions), the distribution is deemed to occur as of the earlier of the date money or other property is transferred or debt is incurred by the partnership, or the date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution.

(f) Status of distribution debt.--The indebtedness of a domestic limited liability partnership to a partner or transferee incurred by reason of a distribution made in

accordance with this section shall be at least on a parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

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

(h) Distributions in winding up.--In measuring the effect of a distribution under section 8486, the liabilities of a dissolved domestic limited liability partnership do not include any claim that has been barred under section 8241 (relating to known claims against dissolved limited liability partnership) or 8242 (relating to other claims against dissolved limited liability partnership) or for which security has been provided under section 8243 (relating to court proceedings).

(i) Cross references.--See sections 8415(d)(1) (relating to contents of partnership agreement) and 8447 (relating to standards of conduct for partners).

§ 8232. Liability for improper distributions by limited liability partnership.

(a) General rule.--If a partner of a limited liability partnership consents to a distribution made in violation of section 8231 (relating to limitations on distributions by limited liability partnership) and in consenting to the distribution fails to comply with section 8447 (relating to standards of conduct for partners), the partner is personally liable to the partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of section 8231.

(b) Recipients.--A person that receives a distribution knowing that the distribution violated section 8231 is personally liable to the limited liability partnership, but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 8231.

(c) Contribution.--A person against which an action is commenced because the person is liable under subsection (a) may:

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

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

(d) Statute of repose.--An action under this section is barred unless commenced within two years after the distribution.

#### SUBCHAPTER E DISSOLUTION

Sec.

8241. Known claims against dissolved limited liability partnership.

8242. Other claims against dissolved limited liability partnership.

8243. Court proceedings.



8244. Liability of partner when claim against partnership barred.

§ 8241. Known claims against dissolved limited liability partnership.

(a) General rule.--Except as provided in subsection (d), a dissolved limited liability partnership may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) Notice.--A dissolved limited liability partnership may notify in record form its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;

(4) state that the claim will be barred if not received by the deadline; and

(5) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any partner or person dissociated as a partner which is based on section 8436 (relating to partner's liability).

(c) Claims barred.--A claim against a dissolved limited liability partnership is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the partnership:

(i) the partnership causes the claimant to receive a notice in record form stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action within 90 days after the claimant receives the notice.

(d) Later arising claims.--This section shall not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

§ 8242. Other claims against dissolved limited liability partnership.

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

(b) Notice procedure.--A notice under subsection (a) must:

(1) be officially published one time;

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

(3) state that a claim against the partnership is barred unless an action to enforce the claim is commenced within two years after publication of the notice; and

(4) unless the partnership has been throughout its existence a limited liability partnership, state that the barring of a claim against the partnership will also bar any

corresponding claim against any partner or person dissociated as a partner which is based on section 8436 (relating to partner's liability).

(c) Claims barred.--If a dissolved limited liability partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership within two years after the publication date of the notice:

(1) a claimant that did not receive notice in record form under section 8241 (relating to known claims against dissolved limited liability partnership);

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

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

(d) Claims not barred.--A claim not barred under this section or section 8241 may be enforced:

(1) against a dissolved limited liability partnership, to the extent of its undistributed assets;

(2) except as provided in section 8243 (relating to court proceedings), if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, except that a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) against any person liable on the claim under sections 8436, 8473 (relating to liability of person dissociated as partner to other persons) and 8485 (relating to liability after dissolution).

§ 8243. Court proceedings.

(a) Determination of security.--A dissolved limited liability partnership that has published a notice under section 8242 (relating to other claims against dissolved limited liability partnership) may file an application with the court of common pleas embracing the county where the partnership's principal office is located or, if the principal office is not located in this Commonwealth, where its registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the partnership and:

(1) at the time of the application:

(i) are contingent; or

(ii) have not been made known to the partnership;

or

(2) are based on an event occurring after the date of dissolution.

(b) When security not required.--Security is not required for any claim that is or is reasonably anticipated to be barred under section 8241 (relating to known claims against dissolved limited liability partnership).

(c) Notice.--Within 10 days after the filing of an application under subsection (a), the dissolved limited liability partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

(d) Guardian ad litem.--In any proceeding under this section, the court may appoint a guardian ad litem to represent

all claimants whose identities are unknown. The reasonable fees and expenses of the guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability partnership.

(e) Effect on contingent claims.--A dissolved limited liability partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the partnership's obligations with respect to claims that are contingent, have not been made known to the partnership or are based on an event occurring after the date of dissolution. The claims may not be enforced against a partner or transferee on account of assets received in liquidation.

§ 8244. Liability of partner when claim against partnership barred.

If a claim against a dissolved limited liability partnership is barred under this subchapter, any corresponding claim under sections 8436 (relating to partner's liability), 8473 (relating to liability of person dissociated as partner to other persons) and 8485 (relating to liability after dissolution) is also barred.

Section 24. Repeals are as follows:

(1) The General Assembly finds and declares as follows:

(i) Over the last 25 years, there have been significant changes in the business model for partnerships; and statutory law must be updated to deal with the new business model.

(ii) Statutory law on general partnerships has not been addressed by the General Assembly since 1988.

(iii) Section 18 of this act adds a new chapter on general partnerships. The new chapter extensively revises existing statutory law to the degree that identification of individual changes or reproduction of voluminous text to be eliminated would inhibit rather than enhance serious legal analysis.

(iv) The repeal under paragraph (2) is necessary to carry out this paragraph.

(2) Chapter 83 of Title 15 is repealed.

Section 25. Title 15 is amended by adding a chapter to read:

#### **CHAPTER 84**

#### **GENERAL PARTNERSHIPS**

#### **Subchapter**

- A. General Provisions**
- B. Nature of Partnership**
- C. Relations of Partners to Persons Dealing with Partnership**
- D. Relations of Partners to Each Other and to Partnership**
- E. Transferable Interests and Rights of Transferees and Creditors**
- F. Dissociation**
- G. Dissociation as Partner if Business Not Wound Up**
- H. Dissolution and Winding Up**

#### **SUBCHAPTER A**

#### **GENERAL PROVISIONS**

#### **Sec.**

- 8411. Short title and application of chapter.**
- 8412. Definitions.**
- 8413. Knowledge and notice.**
- 8414. Governing law.**
- 8415. Contents of partnership agreement.**
- 8416. Application of partnership agreement.**
- 8417. Amendment and effect of partnership agreement.**
- 8418. Signing of filed documents.**

8419. Liability of general partner or other person for false or missing information in filed document.

§ 8411. Short title and application of chapter.

(a) Short title.--This chapter shall be known and may be cited as the Pennsylvania Uniform Partnership Act of 2016.

(b) Initial application.--Before April 1, 2017, this chapter governs only:

(1) a partnership formed on or after February 21, 2017; and

(2) except as provided in subsection (d), a partnership formed before February 21, 2017, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(c) Full effective date.--Except as provided under subsection (d), on and after April 1, 2017, this chapter governs all partnerships.

(d) Liabilities to third parties.--With respect to a partnership that elects under subsection (b)(2) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the partnership's partners to third parties apply:

(1) before April 1, 2017, to:

(i) a third party that had not done business with the partnership in the year before the election took effect; and

(ii) a third party that had done business with the partnership in the year before the election took effect only if the third party knows or has been notified of the election; and

(2) on and after April 1, 2017, to all third parties, except that those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(ii).

(e) Cross reference.--See section 8415(c)(5) (relating to contents of partnership agreement).

§ 8412. Definitions.

(a) General definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

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

"Contribution." Property or a benefit described in section 8443 (relating to form of contribution) which is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

"Distribution." A transfer of money or other property from a partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(1) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's business or have access to records or other information concerning the partnership's business; and

(2) does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a partnership for the benefit of any or all of its partners;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the partners; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"Partner." A person that:

(1) has become a partner in a partnership under section 8442 (relating to becoming partner) or was a partner in a partnership when the partnership became subject to this chapter under section 8411 (relating to short title and application of chapter); and

(2) has not dissociated as a partner under section 8461 (relating to events causing dissociation).

"Partnership." An association of two or more persons to carry on as co-owners a business for profit formed under this chapter or that becomes subject to this chapter under Chapter 3 (relating to entity transactions) or section 8411 (relating to short title and application of chapter). The term includes a limited liability partnership or an electing partnership that is not also a limited partnership.

"Partnership agreement." The agreement, whether or not referred to as a partnership agreement and whether oral, implied, in record form or in any combination thereof, of all the partners of a partnership concerning the matters described in section 8415(a) (relating to contents of partnership agreement). The term includes the agreement as amended or restated.

"Partnership at will." 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.

"Transferable interest." The right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a partnership, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee." A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

(b) Index of definitions.--The following is a nonexclusive list of definitions in section 102 (relating to definitions) that apply to this chapter:

"Act" or "action."

"Court."

"Debtor in bankruptcy."

"Department."

"Jurisdiction."

"Jurisdiction of formation."

"Obligation."

"Principal office."

"Professional services."

"Property."

"Record form."

"Sign."

"Transfer."

§ 8413. Knowledge and notice.

(a) Knowledge.--A person knows a fact if the person:

(1) has actual knowledge of it; or  
(2) is deemed to know it under subsection (d)(1) or law other than this chapter.

(b) Notice.--A person has notice of a fact if the person:  
(1) has reason to know the fact from all the facts known to the person at the time in question; or  
(2) is deemed to have notice of the fact under subsection (d)(2).

(c) Notification.--Except as provided under section 113(b) (relating to delivery of document), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(d) Constructive knowledge or notice.--A person not a partner is deemed:

(1) to know of a limitation on authority to transfer real property as provided in section 8433(g) (relating to certificate of partnership authority); and

(2) to have notice of:

(i) a person's dissociation as a partner 90 days after a certificate of dissociation under section 8474 (relating to certificate of dissociation) becomes effective;

(ii) the dissolution of the partnership 90 days after a certificate of dissolution under section 8482(b)(2)(i) (relating to winding up and filing of certificates) is effective;

(iii) the termination of the partnership 90 days after a certificate of termination under section 8482(b)(2)(vi) is effective; and

(iv) participation in a merger, interest exchange, conversion, division or domestication, 90 days after a statement of merger, interest exchange, conversion, division or domestication under Chapter 3 (relating to entity transactions) is effective.

(e) Effect of partner's knowledge or notice.--A partner's knowledge or notice of a fact relating to the partnership is effective immediately as knowledge of or notice to the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

§ 8414. Governing law.

(a) General rule.--The internal affairs of a partnership and the liability of a partner as a partner for the debts, obligations or other liabilities of the partnership are governed by:

(1) in the case of a limited liability partnership, the laws of this Commonwealth; and

(2) in the case of a partnership that is not a limited liability partnership, the laws of:

(i) the jurisdiction chosen by a provision of the partnership agreement in record form; or

(ii) the jurisdiction in which the partnership has its principal office if there is no choice of law under subparagraph (i).

(b) Enforceability of chosen law.--A choice of law under subsection (a)(2)(i) is enforceable even though:

(1) The chosen jurisdiction has no substantial relationship to the partners or the partnership and there is no other reasonable basis for the parties' choice.

(2) Application of the chosen law would be contrary to a fundamental policy of a jurisdiction that has a materially

greater interest in the determination of the particular issue than does the jurisdiction whose law has been chosen.

(c) Cross reference.--See section 8415(c)(6) (relating to contents of partnership agreement).

§ 8415. Contents of partnership agreement.

(a) Scope of partnership agreement.--Except as provided in subsections (c) and (d), the partnership agreement governs:

(1) relations among the partners as partners and between the partners and the partnership;

(2) the rights and duties under this title of a person in the capacity of a partner;

(3) the business of the partnership and the conduct of that business;

(4) the means and conditions for amending the partnership agreement; and

(5) the means and conditions for approving a transaction under Chapter 3 (relating to entity transactions).

(b) Title applies generally.--To the extent the partnership agreement does not provide for a matter described in subsection (a), this title governs the matter.

(c) Limitations.--A partnership agreement may not do any of the following:

(1) Vary a provision of Chapter 1 (relating to general provisions) or Subchapter A of Chapter 2 (relating to names).

(2) Vary the right of a partner to approve a merger, interest exchange, conversion, division or domestication under section 333(a)(2) (relating to approval of merger), 343(a)(2) (relating to approval of interest exchange), 353(a)(3) (relating to approval of conversion), 363(a)(2) (relating to approval of division) or 373(a)(2) (relating to approval of domestication).

(3) Vary the required contents of a plan of merger under section 332(a) (relating to plan of merger), plan of interest exchange under section 342(a) (relating to plan of interest exchange), plan of conversion under section 352(a) (relating to plan of conversion), plan of division under section 362(a) (relating to plan of division) or plan of domestication under section 372(a) (relating to plan of domestication).

(4) Vary a provision of Chapter 81 (relating to general provisions) or 82 (relating to limited liability partnerships and limited liability limited partnerships), except as provided in subsection (d).

(5) Vary the provisions of section 8411(b), (c) and (d) (relating to short title and application of chapter).

(6) Vary the law applicable under section 8414(a)(1) (relating to governing law).

(7) Vary any requirement, procedure or other provision of this title pertaining to:

(i) registered offices; or

(ii) the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

(8) Vary the provisions of section 8437 (relating to actions by and against partnership and partners).

(9) Unreasonably restrict the duties and rights under section 8446 (relating to rights to information), except as provided in subsection (d).

(10) Eliminate the duty of loyalty provided for under section 8447(b)(1)(i) or (ii) or (2) (relating to standards of conduct for partners) or the duty of care, except as provided in subsection (d).

(11) Vary the contractual obligation of good faith and fair dealing under section 8447(d), except as provided under subsection (d).

(12) Unreasonably restrict the right of a person to maintain an action under section 8448(b) (relating to actions by partnership and partners).

(13) Provide indemnification or exoneration in violation of the limitations in sections 8441(m) (relating to partner's rights and duties) and 8447(i).

(14) Vary the power of a person to dissociate as a partner under section 8462(a) (relating to power to dissociate as partner and wrongful dissociation), except to require that the notice under section 8461(1) (relating to events causing dissociation) be in record form.

(15) Vary the causes of dissolution specified in section 8481(a)(4) or (5) (relating to events causing dissolution).

(16) Vary the requirement to wind up the partnership's business as specified in section 8482(a), (b)(1) and (d) (relating to winding up and filing of certificates).

(17) Except as provided in section 8417(b) (relating to amendment and effect of partnership agreement), restrict the rights under this title of a person other than a partner.

(d) Permitted terms.--Subject to subsection (c)(13), the following rules apply:

(1) The partnership agreement may:

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

(ii) alter the prohibition in section 8231(a)(2) (relating to limitations on distributions by limited liability partnership) so that the prohibition requires only that the partnership's total assets not be less than the sum of its total liabilities; and

(iii) impose reasonable restrictions on the availability and use of information obtained under section 8446 and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

(2) To the extent the partnership agreement expressly relieves a partner of a responsibility that the partner would otherwise have under this title and imposes the responsibility on one or more other partners, the agreement also may eliminate or limit any fiduciary duty of the partner relieved of the responsibility which would have pertained to the responsibility.

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

(i) alter the aspects of the duty of loyalty stated in section 8447(b)(1)(i) or (ii) or (2);

(ii) prescribe the standards by which the performance of the contractual obligation of good faith and fair dealing under section 8447(d) is to be measured;

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

(iv) alter the duty of care; and

(v) alter or eliminate any other fiduciary duty.

(e) Determination of manifest unreasonableness.--The court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subsection (d)(3).  
The court:



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

(2) may invalidate the term only if, in light of the purposes and business of the partnership, it is readily apparent that:

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the term's objective.

§ 8416. Application of partnership agreement.

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

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

(c) Preformation agreement.--Two or more persons intending to become the initial partners of a partnership may make an agreement providing that upon the formation of the partnership the agreement will become the partnership agreement.

(d) Cross reference.--See section 8422(a) (relating to formation of partnership).

§ 8417. Amendment and effect of partnership agreement.

(a) Approval of amendments.--A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition. See section 8441(j) (relating to partner's rights and duties).

(b) Obligations to nonpartners.--The obligations of a partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Except as provided in section 8445(d) (relating to sharing of and right to distribution before dissolution) or in a court order issued under section 8454(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

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

(2) is not effective to the extent the amendment:

(i) imposes a new debt, obligation or other liability on the transferee or person dissociated as a partner; or

(ii) prejudices the rights under section 8471 (relating to purchase of interest of person dissociated as partner) of a person that dissociated as a partner before the amendment was made.

(c) Provisions in filed documents.--If a document delivered by a partnership to the department for filing becomes effective and contains a provision that would be ineffective under section 8415(c) or (d)(3) (relating to contents of partnership agreement) if contained in the partnership agreement, the provision is ineffective in the document.

(d) Conflicts with partnership agreement.--Subject to subsection (c), if a document delivered by a partnership to the department for filing becomes effective and conflicts with a provision of the partnership agreement:

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

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

(e) Prohibition of oral amendments.--If a provision of a partnership agreement in record form provides that the partnership agreement cannot be amended, modified or rescinded except in record form, an oral agreement, amendment, modification or rescission shall not be enforceable.

§ 8418. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a partnership must be signed as follows:

(1) Except as provided under paragraphs (2) and (3), a document signed on behalf of a partnership must be signed by a person authorized by the partnership.

(2) A document filed on behalf of a dissolved partnership that has no partner must be signed by the person winding up the partnership's business under section 8482(c) (relating to winding up and filing of certificates) or a person appointed under section 8482(d) to wind up the business.

(3) A certificate of denial by a person under section 8434 (relating to certificate of denial) must be signed by that person.

(4) Any other document delivered on behalf of a person to the department for filing must be signed by that person.

(b) Cross reference.--See section 142 (relating to effect of signing filings).

§ 8419. Liability of general partner or other person for false or missing information in filed document.

(a) General rule.--If a document delivered to the department for filing under this title and filed by the department contains a materially false statement or fails to state a material fact required to be stated, a person that suffers loss by reasonable reliance on the statement or failure to state a material fact may recover damages for the loss from:

(1) a person that signed the document or caused another to sign it on the person's behalf and knew there was false or missing information in the document at the time it was signed; and

(2) subject to subsection (b), a partner if:

(i) the document was delivered for filing on behalf of the partnership; and

(ii) the partner knew or had notice there was false or missing information for a reasonably sufficient time before the document was relied upon so that, before the reliance, the partner reasonably could have:

(A) filed a petition under section 144 (relating to signing and filing pursuant to judicial order); or

(B) delivered to the department for filing a statement of correction under section 138 (relating to statement of correction) or a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(b) Partner relieved of responsibility.--To the extent the partnership agreement expressly relieves a partner of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the partnership to the department for filing under this title and imposes that responsibility on one or more other partners, the liability

stated in subsection (a) (2) applies to those other partners and not to the partner that the partnership agreement relieves of the responsibility.

(c) Cross reference.--See section 143 (relating to liability for inaccurate information in filing).

SUBCHAPTER B  
NATURE OF PARTNERSHIP

Sec.

8421. Partnership as entity.

8422. Formation of partnership.

8423. Partnership property.

8424. When property is partnership property.

§ 8421. Partnership as entity.

(a) General rule.--A partnership is an entity distinct from its partners.

(b) Limited liability partnership.--A partnership is the same entity regardless of whether the partnership has a statement of registration in effect under section 8201 (relating to scope).

§ 8422. Formation of partnership.

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

(b) Excluded associations.--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.

(c) Rules for determining formation of partnership.--In determining whether a partnership is formed, the following rules apply:

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

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

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

(i) of a debt by installments or otherwise;

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

(iii) of rent;

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

(v) 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, rights to income, proceeds or increase in value derived from the collateral; or

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

(d) Cross reference.--See section 8416(c) (relating to application of partnership agreement).

§ 8423. Partnership property.

Property owned by a partnership is partnership property and is not owned by the partners individually.

§ 8424. When property is partnership property.

(a) General rule.--Property is owned by a partnership and not by the partners individually if the property is acquired in the name of:

(1) the partnership by a transfer to:

(i) the partnership in its name; or

(ii) 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; or

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

(b) Property purchased with partnership assets.--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.

(c) Property acquired in name of partner.--Property acquired in the name of one or more of the partners is presumed to be separate property owned by the individual partner or partners, even if used for partnership purposes, if the property is acquired without:

(1) 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

(2) use of partnership assets.

#### SUBCHAPTER C

#### RELATIONS OF PARTNERS TO PERSONS

#### DEALING WITH PARTNERSHIP

Sec.

8431. Partner agent of partnership.

8432. Transfer of partnership property.

8433. Certificate of partnership authority.

8434. Certificate of denial.

8435. Partnership liable for partner's actionable conduct.

8436. Partner's liability.

8437. Actions by and against partnership and partners.

8438. Liability of purported partner.

§ 8431. Partner agent of partnership.

Subject to the effect of a certificate of partnership authority under section 8433 (relating to certificate of partnership authority), the following rules apply:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the signing 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 did not have authority to act for the partnership in the particular matter and the person with which the partner was dealing knew or had notice that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership's business or business of the kind carried on by the partnership binds the partnership only if the partner had actual authority to take the action.

§ 8432. Transfer of partnership property.

(a) General rule.--Partnership property may be transferred as follows:

(1) Subject to the effect of a certificate of partnership authority under section 8433 (relating to certificate of partnership authority), partnership property held in the name of the partnership may be transferred by an instrument of transfer signed by a partner in the partnership name.

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

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

(b) Recovery of property by partnership.--A partnership may recover partnership property from a transferee only if it proves that the signing of the instrument of initial transfer did not bind the partnership under section 8431 (relating to partner agent of partnership) and:

(1) as to a subsequent transferee who gave value for property transferred under subsection (a)(1) or (2), proves that the subsequent transferee knew or had notice that the person who signed the instrument of initial transfer lacked authority to bind the partnership; or

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

(c) Subsequent transferees.--A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under subsection (b) from any earlier transferee of the property.

(d) Sole partner.--If one person holds all the interests in a partnership, all the partnership property vests in that person. The person may sign a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

§ 8433. Certificate of partnership authority.

(a) General rule.--A partnership may deliver to the department for filing a certificate of partnership authority. The certificate:

(1) must include the name of the partnership and:

(i) if the partnership is not a registered foreign limited liability partnership, the street and mailing addresses of its principal office; or

(ii) if the partnership is a registered foreign limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office;

(2) with respect to any position that exists in or with respect to the partnership, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) sign an instrument transferring real property held in the name of the partnership; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(i) sign an instrument transferring real property held in the name of the partnership; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the partnership.

(b) Amendment or cancellation.--To amend or cancel a certificate of authority filed by the department, a partnership must deliver to the department for filing an amendment or cancellation stating:

(1) the name of the partnership;

(2) if the partnership is not a registered foreign limited liability partnership, the street and mailing addresses of the partnership's principal office;

(3) if the partnership is a registered foreign limited liability partnership, subject to section 109, the address, including street and number, if any, of its registered office;

(4) the date the certificate being affected became effective; and

(5) the contents of the amendment or a statement that the certificate is canceled.

(c) Effect of certificate.--A certificate of authority:

(1) affects only the power of a person to bind a partnership to persons that are not partners; and

(2) is not binding on the department for purposes of the administration of this title or any other provision of law.

(d) Effect of limitation on authority.--Subject to subsection (c) and section 8413(d)(1) (relating to knowledge and notice), and except as provided in subsections (f), (g) and (h), a limitation on the authority of a person or a position contained in an effective certificate of authority is not by itself evidence of any person's knowledge or notice of the limitation.

(e) Authority not relating to real property.--A grant of authority not pertaining to transfers of real property and contained in an effective certificate of authority is conclusive in favor of a person that gives value in reliance on the grant, unless when the person gives value:

(1) the person has knowledge to the contrary;

(2) the certificate has been canceled or restrictively amended under subsection (b); or

(3) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective.

(f) Authority relating to real property.--An effective certificate of authority that grants authority to transfer real property held in the name of the partnership, a certified copy of which certificate is recorded in the office of the recorder of deeds for the county in which the real property is located, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the certificate has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office of the recorder of deeds for the county in which the real property is located; or

(2) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective and a certified copy of the later-effective certificate is recorded in the office of the recorder of deeds for the county in which the real property is located.

(g) Constructive knowledge of limitation.--Subject to subsection (c), if a certified copy of an effective certificate containing a limitation on the authority to transfer real property held in the name of a partnership is recorded in the office of the recorder of deeds for the county in which real property is located, all persons are deemed to know of the limitation.

(h) Effect of certificate of dissolution.--Subject to subsection (i), an effective certificate of dissolution is a cancellation of any filed certificate of authority for the purposes of subsection (f) and is a limitation on authority for purposes of subsection (g).

(i) Post-dissolution certificate of authority.--After a certificate of dissolution becomes effective, a partnership may deliver to the department for filing and, if appropriate, may record a certificate of authority that is designated as a post-dissolution certificate of authority. The certificate operates as provided in subsections (f) and (g).

(j) Cancellation by operation of law.--Unless canceled earlier, an effective certificate of authority is canceled by operation of law five years after the date on which the certificate, or its most recent amendment, becomes effective. The cancellation is effective without recording under subsection (f) or (g).

(k) Effect of certificate of denial.--An effective certificate of denial under section 8434 (relating to certificate of denial):

(1) operates as a restrictive amendment under this section and a certified copy may be recorded as provided in subsection (f)(1) by the partnership or the person that delivered the certificate of denial to the department for filing; and

(2) affects only the authority of a person to bind a partnership with respect to persons that are not partners.

(l) Foreign partnerships.--A foreign partnership, regardless of whether it is registered to do business in this Commonwealth, may deliver a certificate of authority to the department for filing and may record a copy as provided in this section in the same manner and with the same effect as if it were a domestic partnership.

(m) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8418 (relating to signing of filed documents).

Section 8482 (relating to winding up and filing of certificates).

§ 8434. Certificate of denial.

(a) General rule.--A person named in a filed certificate of authority granting that person authority may deliver to the department for filing a certificate of denial that:

(1) provides the name of the partnership and:

(i) if the partnership is not a registered foreign limited liability partnership, the street and mailing addresses of its principal office; or

(ii) if the partnership is a registered foreign limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office;

(2) states the caption of the certificate of authority to which the certificate of denial pertains; and

(3) denies the grant of authority.

(b) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8418 (relating to signing of filed documents).

§ 8435. Partnership liable for partner's actionable conduct.

(a) General rule.--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 other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the actual or apparent authority of the partnership.

(b) Misapplication of property.--If, in the course of the partnership's business or while acting with actual or apparent 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.

§ 8436. Partner's liability.

(a) General rule.--Except as provided in subsection (b) or section 8204 (relating to limitation on liability of partners), all partners are jointly and severally liable for all debts, obligations and other liabilities of the partnership unless otherwise agreed by the claimant or provided by law.

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

§ 8437. Actions by and against partnership and partners.

(a) Partnership as party.--A partnership may sue and be sued in the name of the partnership.

(b) Partner as party.--To the extent not inconsistent with section 8436 (relating to partner's liability), a partner may be joined in an action against the partnership or named in a separate action.

(c) Judgment against partnership only.--A judgment against a partnership:

(1) is not by itself a judgment against a partner; and

(2) except as provided in subsection (d), may not be satisfied from a partner's assets.

(d) Judgment against partnership and partner.--If there is a judgment against a partnership and a partner on the same claim, the judgment creditor may levy execution against the assets of the partner if both of the following apply:



(1) The partner is personally liable for the claim under section 8436.

(2) One of the following subparagraphs applies:

(i) A writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part.

(ii) The partnership is a debtor in bankruptcy.

(iii) The partner has agreed that the creditor need not exhaust partnership assets.

(iv) A court grants permission to levy execution based on a finding that:

(A) partnership assets subject to execution are clearly insufficient to satisfy the judgment;

(B) exhaustion of partnership assets is excessively burdensome; or

(C) the grant of permission is an appropriate exercise of the court's equitable powers.

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

(e) Liability for representations.--This section also applies to any debt, liability or other obligation of a partnership which results from a representation by a partner or purported partner under section 8438 (relating to liability of purported partner).

(f) Cross reference.--See section 8415(c)(8) (relating to contents of partnership agreement).  
§ 8438. Liability of purported partner.

(a) General rule.--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 jointly and severally liable, with any other person consenting to the representation, with respect to that liability.

(b) Authority of purported partner.--If a person is represented in the manner described in subsection (a) 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 the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) Effect of certificate of partnership authority.--A person is not liable as a partner merely because the person is named by another as a partner in a certificate of partnership authority.

(d) No effect of failure to disclaim authority.--A person does not continue to be liable as a partner merely because of a failure to file a certificate of dissociation or to amend a certificate of partnership authority to indicate the person's dissociation as a partner.

(e) Nonliability of persons not partners.--Except as provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

SUBCHAPTER D  
RELATIONS OF PARTNERS TO EACH OTHER  
AND TO PARTNERSHIP

Sec.

- 8441. Partner's rights and duties.
- 8442. Becoming a partner.
- 8443. Form of contribution.
- 8444. Liability for contribution.
- 8445. Sharing of and right to distribution before dissolution.
- 8446. Rights to information.
- 8447. Standards of conduct for partners.
- 8448. Actions by partnership and partners.
- 8449. Continuation of partnership beyond definite term or particular undertaking.

§ 8441. Partner's rights and duties.

(a) Distributions and losses.--Each partner is entitled to share in distributions as provided in section 8445 (relating to sharing of and right to distribution before dissolution).

(b) Reimbursement.--A partnership shall reimburse a partner for:

(1) Any payment made by the partner in the course of the partner's activities on behalf of the partnership, if the partner complied with this section and section 8447 (relating to standards of conduct for partners) in making the payment.

(2) An advance to the partnership beyond the amount of capital the partner agreed to contribute.

(c) Indemnification.--A partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as partner, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of this section or section 8232 (relating to liability for improper distributions by limited liability partnership) or 8447.

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

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

(f) Loan to partnership.--A payment or advance made by a partner which gives rise to a partnership obligation under subsection (b) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(g) Management rights.--Each partner has equal rights in the management and conduct of the partnership's business.

(h) Rights to property.--A partner may use or possess partnership property only on behalf of the partnership.

(i) Compensation for services.--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.

(j) Required approvals by partners.--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 affirmative vote or consent of all the partners.

(k) Nonexclusivity.--The rights provided by subsections (b), (c), (d) and (e) shall not be deemed exclusive of any other rights to which a person seeking reimbursement, indemnification, advancement of expenses or insurance may be entitled under the partnership agreement, vote of partners, contract or otherwise, both as to action in his official capacity and as to action in another capacity while holding that position. Section 8447(f) shall be applicable to a vote, contract or other action under this subsection. A partnership may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under this section or otherwise.

(l) Grounds.--Indemnification under subsection (k) may be granted for any action taken and may be made whether or not the partnership would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the partnership. Indemnification under subsection (k) is declared to be consistent with the public policy of this Commonwealth.

(m) Limitation.--Indemnification under this section shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to constitute recklessness, willful misconduct or a knowing violation of law. § 8442. Becoming a partner.

(a) Upon formation.--Upon formation of a partnership, a person becomes a partner under section 8422(a) (relating to formation of partnership).

(b) After formation.--After formation of a partnership, a person becomes a partner:

- (1) as provided in the partnership agreement;
- (2) as a result of a transaction effective under Chapter 3 (relating to entity transactions); or
- (3) with the affirmative vote or consent of all the partners.

(c) Noneconomic partners.--A person may become a partner without:

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

(d) Nature of interest.--The interest of a partner in a partnership is personal property.

§ 8443. Form of contribution.

A contribution may consist of:

- (1) property transferred to, services performed for or another benefit provided to the partnership;

(2) an agreement to transfer property to, perform services for or provide another benefit to the partnership; or

(3) any combination of items listed in paragraphs (1) and (2).

§ 8444. Liability for contribution.

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

(b) Substitute payment.--If a person does not fulfill an obligation to make a contribution other than money, the person is obligated, at the option of the partnership, to contribute money equal to the value, as stated in the records of the partnership, of the part of the contribution which has not been made.

(c) Compromise of obligation.--The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a limited liability partnership extends credit or otherwise acts in reliance on an obligation described under subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

§ 8445. Sharing of and right to distribution before dissolution.

(a) Distributions before dissolution.--Any distribution made by a partnership before its dissolution and winding up shall be in equal shares among partners and persons dissociated as partners whose interests in the partnership have not been purchased under section 8471 (relating to purchase of interest of person dissociated as partner), except as provided in section 8453(b) (relating to transfer of transferable interest) or to the extent necessary to comply with a charging order in effect under section 8454 (relating to charging order).

(b) No right to distribution.--Subject to section 8471, a person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution.

(c) Form of distribution.--A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as provided in section 8486 (relating to disposition of assets in winding up and required contributions), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

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

§ 8446. Rights to information.

(a) Location of records.--A partnership shall keep its books and records, if any, at its principal office.

(b) Right to inspection.--On reasonable notice, a partner may inspect and copy during regular business hours, at a reasonable location specified by the partnership, any record maintained by the partnership regarding the partnership's business, financial condition and other circumstances.

(c) Material information.--The partnership shall furnish to each partner, without demand, any information concerning the partnership's business, financial condition and other circumstances which the partnership knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this title, except to the extent the partnership can establish that it reasonably believes the member already knows the information.

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

(e) Rights after dissociation.--Subject to subsection (j), within 10 days after receipt by a partnership of a demand made in record form, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:

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

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

(3) the information is material to the person's rights and duties under the partnership agreement or this title.

(f) Partnership response to demand.--Within 10 days after receiving a demand under subsection (e), the partnership shall, in record form, inform the person that made the demand of:

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

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

(g) Costs of copying.--A partnership may charge a person that makes a demand under this section the reasonable costs of copying.

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

(i) No rights of transferee.--Subject to section 8455 (relating to power of personal representative of deceased partner), the rights under this section do not extend to a person as transferee.

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

(k) Cross reference.--See section 8415 (relating to contents of partnership agreement).

§ 8447. Standards of conduct for partners.

(a) General rule.--A partner owes to the partnership and the other partners the duties of loyalty and care stated in subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a partner includes the duties:

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

(i) in the conduct or winding up of the partnership's business;

(ii) from a use by the partner of the partnership's property; or

(iii) from the appropriation of a partnership opportunity;

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

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

(c) Duty of care.--The duty of care of a partner in the conduct or winding up of the partnership business is to refrain from engaging in gross negligence, recklessness, willful misconduct or a knowing violation of law.

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

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

(f) Authorization or ratification.--All the partners may authorize or ratify, after disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty of a partner.

(g) Fairness as a defense.--It is a defense to a claim under subsection (b) (2) and any comparable claim in equity or at common law that the transaction was fair to the partnership at the time it was authorized or ratified under subsection (f).

(h) Rights and obligations in approved transaction.--If a partner enters into a transaction with the partnership which otherwise would be prohibited under subsection (b) (2), but the transaction is authorized or ratified as provided under subsection (f) or the partnership agreement, the partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

(i) Exoneration.--The partnership agreement may provide that a partner shall not be personally liable for monetary damages to the partnership or the other partners for a breach of subsection (c), except that a partner may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(j) Cross reference.--See section 8415 (relating to contents of partnership agreement).

§ 8448. Actions by partnership and partners.

(a) Action by partnership.--A partnership may maintain an action against a partner for either of the following that causes or threatens harm to the partnership:

(1) a breach of the partnership agreement; or

(2) the violation of a duty to the partnership.

(b) Action by partner.--A partner may maintain an action against the partnership or another partner, with or without an accounting as to partnership business, to enforce the partner's rights and protect the partner's interests, including rights

and interests under the partnership agreement or this title or arising independently of the partnership relationship.

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

(d) Cross reference.--See section 8415(c) (12) (relating to contents of partnership agreement).

§ 8449. Continuation of partnership beyond definite term or particular undertaking.

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

(b) Presumed agreement to continue partnership.--If the partners, or those partners 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.

#### SUBCHAPTER E

### TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

Sec.

8451. Partner not co-owner of partnership property.

8452. Nature of transferable interest.

8453. Transfer of transferable interest.

8454. Charging order.

8455. Power of personal representative of deceased partner.

§ 8451. Partner not co-owner of partnership property.

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

§ 8452. Nature of transferable interest.

(a) Personal property.--A transferable interest is personal property.

(b) Only right that may be transferred.--A person may not transfer to a person not a partner any rights in a partnership other than a transferable interest.

§ 8453. Transfer of transferable interest.

(a) General rule.--A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

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

(3) subject to section 8455 (relating to power of personal representative of deceased partner), does not entitle the transferee to:

(i) participate in the management or conduct of the partnership's business; or

(ii) except as provided in subsection (c), have access to records or other information concerning the partnership's business.

(b) Rights of transferee.--A transferee has the right to:

(1) receive, in accordance with the terms of the transfer:

(i) distributions to which the transferor would otherwise be entitled; and

(ii) allocations of income, gain, loss, deduction or credit or similar item which would otherwise be made to the transferor; and

(2) seek under section 8481(a)(5) (relating to events causing dissolution) a judicial determination that it is equitable to wind up the partnership business.

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

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

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

(f) Rights retained by transferor.--Except as provided in section 8461(4)(ii) (relating to events causing dissociation), if a partner transfers a transferable interest, the transferor retains the rights of a partner other than the transferable interest transferred and retains all the duties and obligations of a partner.

§ 8454. Charging order.

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

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

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Foreclosure.--Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner and is subject to section 8453 (relating to transfer of transferable interest).

(d) Satisfaction of judgment.--At any time before foreclosure under subsection (c), the partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) Purchase of rights.--At any time before foreclosure under subsection (c), a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) Exemption laws preserved.--This chapter shall not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.



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

§ 8455. Power of personal representative of deceased partner.

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

- (1) the rights of a transferee provided in section 8453(c) (relating to transfer of transferable interest); and
- (2) for purposes of settling the estate, the rights the deceased partner had under section 8446 (relating to rights to information).

#### SUBCHAPTER F DISSOCIATION

Sec.

8461. Events causing dissociation.

8462. Power to dissociate as partner and wrongful dissociation.

8463. Effects of dissociation.

§ 8461. Events causing dissociation.

A person is dissociated as a partner when any of the following occurs:

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

(2) An event stated in the partnership agreement as causing the person's dissociation occurs.

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

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

(i) it is unlawful to carry on the partnership business with the person as a partner;

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

(A) a transfer for security purposes; or

(B) a charging order in effect under section 8454 (relating to charging order) which has not been foreclosed;

(iii) the person is an association and:

(A) the partnership notifies the person that the person will be expelled as a partner because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or the equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated association that has been dissolved and whose activities and affairs are being wound up.

(5) On application by the partnership or another partner, the person is expelled as a partner by judicial order because the person:

(i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's business;

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under section 8447 (relating to standards of conduct for partners); or

(iii) has engaged or is engaging in conduct relating to the partnership's business which makes it not reasonably practicable to carry on the business with the person as a partner.

(6) The person:

(i) becomes a debtor in bankruptcy;

(ii) makes an assignment for the benefit of creditors; or

(iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property.

(7) In the case of an individual:

(i) the individual dies;

(ii) a guardian for the individual is appointed;

or

(iii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this title or the partnership agreement.

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

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

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

(11) The partnership participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the partnership is not the surviving entity;

or

(ii) otherwise as a result of the merger, the person ceases to be a partner.

(12) The partnership participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a partner.

(13) The partnership participates in a conversion under Chapter 3.

(14) The partnership participates in a division under Chapter 3 and:

(i) the partnership is not a resulting association;

or

(ii) as a result of the division, the person ceases to be a partner.

(15) The partnership participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a partner.

(16) The partnership dissolves and completes winding up.

§ 8462. Power to dissociate as partner and wrongful dissociation.

(a) Power to dissociate.--A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner by express will under section 8461(1) (relating to events causing dissociation).

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

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

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

(i) the person withdraws as a partner by express will, unless the withdrawal follows within 90 days after another person's dissociation by death or otherwise under section 8461(6), (7), (8), (9) or (10) or wrongful dissociation under this subsection;

(ii) the person is expelled as a partner by judicial order under section 8461(5);

(iii) the person is dissociated under section 8461(6); or

(iv) in the case of a person that is not a trust other than a business or statutory trust, an estate or an individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

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

(d) Cross reference.--See section 8415(c)(14) (relating to contents of partnership agreement).

§ 8463. Effects of dissociation.

(a) Effects on partnership.--If a person's dissociation results in a dissolution and winding up of the partnership business, Subchapter H (relating to dissolution and winding up) applies; otherwise, Subchapter G (relating to dissociation as partner if business not wound up) applies.

(b) Effects on person dissociated as partner.--If a person is dissociated as a partner:

(1) The person's right to participate in the management and conduct of the partnership's business terminates, except as provided under section 8482(c) (relating to winding up and filing of certificates).

(2) The person's duties and obligations under section 8447 (relating to standards of conduct for partners) end with regard to matters arising and events occurring after the person's dissociation, except to the extent the partner participates in winding up the partnership's business under section 8482.

(3) Any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation that is not subsequently purchased from the person or canceled or exchanged in a transaction under

Chapter 3 (relating to entity transactions) is owned by the person solely as a transferee.

(c) Existing obligations not discharged.--A person's dissociation does not of itself discharge the person from any debt, obligation or other liability to the partnership or the other partners which the person incurred while a partner.

#### SUBCHAPTER G

### DISSOCIATION AS PARTNER IF BUSINESS NOT WOUND UP

Sec.

8471. Purchase of interest of person dissociated as partner.

8472. Power to bind and liability of person dissociated as partner.

8473. Liability of person dissociated as partner to other persons.

8474. Certificate of dissociation.

8475. Continued use of partnership name.

§ 8471. Purchase of interest of person dissociated as partner.

(a) Right to buyout.--If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business under section 8481 (relating to events causing dissolution), the partnership shall cause the person's interest in the partnership to be purchased for a buyout price determined under subsection (b).

(b) Buyout price.--The buyout price of the interest of a person dissociated as a partner is the amount that would have been distributable to the person under section 8486(b) (relating to disposition of assets in winding up and required contributions) if, on the date of dissociation, the assets of the partnership were sold and the partnership was wound up, with the sale price equal to the greater of:

(1) the liquidation value; or

(2) the value based on a sale of the entire business as a going concern without the person.

(c) Interest and offsets.--Interest accrues on the buyout price from the date of dissociation to the date of payment, except that damages for wrongful dissociation under section 8462(b) (relating to power to dissociate as partner and wrongful dissociation) and all other amounts owing, whether or not presently due, from the person dissociated as a partner to the partnership must be offset against the buyout price.

(d) Indemnification.--A partnership shall defend, indemnify and hold harmless a person dissociated as a 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 person under section 8472 (relating to power to bind and liability of person dissociated as partner).

(e) Payment of partnership's estimate.--If an agreement for the purchase of the interest of a person dissociated as a partner is not reached within 120 days after a demand in record form for payment, the partnership shall pay, or cause to be paid, in money to the person the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) Buyout of deferred payment.--If a deferred payment is authorized under subsection (h), the partnership may tender an offer in record form to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.

(g) Information accompanying payment.--The payment or tender required by subsection (e) or (f) must be accompanied by the following:

- (1) a statement of partnership assets and liabilities as of the date of dissociation;
- (2) the latest available partnership balance sheet and income statement, if any;
- (3) an explanation of how the estimated amount of the payment was calculated; and
- (4) notice in record form that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the notice, the person dissociated as a partner commences an action to determine the buyout price, any offsets under subsection (c) or other terms of the obligation to purchase.

(h) Deferred payment on wrongful dissociation.--A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout price until the expiration of the term or completion of the undertaking, unless the person 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.

(i) Right to bring action.--A person dissociated as a partner may maintain an action against the partnership, under section 8448(b) (relating to actions by partnership and partners), to determine the buyout price of that person's interest, any offsets under subsection (c) 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 demand in record form for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the person's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney 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 (g).

§ 8472. Power to bind and liability of person dissociated as partner.

(a) When partnership bound.--After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business and before the partnership is merged or divided out of existence, converted or domesticated under Chapter 3 (relating to entity transactions), or dissolved, the partnership is bound by an act of the person only if:

- (1) the act would have bound the partnership under section 8431 (relating to partner agent of partnership) before dissociation; and
- (2) at the time the other party enters into the transaction:
  - (i) less than two years have passed since the dissociation; and

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

(b) Liability of person dissociated as partner.--If a partnership is bound under subsection (a), the person dissociated as a partner which caused the partnership to be bound is liable:

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

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

§ 8473. Liability of person dissociated as partner to other persons.

(a) General rule.--Except as provided in subsection (b), a person dissociated as a partner is not liable for a partnership obligation incurred after dissociation.

(b) Exception.--A person that is dissociated as a partner is liable on a transaction entered into by the partnership after the dissociation only if:

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

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

(i) less than two years have passed since the dissociation; and

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

(c) Constructive release by creditor.--A person dissociated as a partner is released from liability for a debt, obligation or other liability of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation or other liability. The release from liability under this subsection applies whether the liability arises directly or indirectly, by way of contribution or otherwise, but only if the liability arises solely by reason of having been a partner.

§ 8474. Certificate of dissociation.

(a) Right to file certificate.--A person dissociated as a partner or the partnership may deliver to the department for filing a certificate of dissociation stating:

(1) the name of the partnership;

(2) if the partnership is a limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(3) the name of the person and that the person has dissociated from the partnership.

(b) Effect of certificate.--A certificate of dissociation is a limitation on the authority of a person dissociated as a partner for the purposes of section 8433 (relating to certificate of partnership authority).

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8413(d)(2) (relating to knowledge and notice).

Section 8418 (relating to signing of filed documents).

§ 8475. Continued use of partnership name.

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

#### SUBCHAPTER H

#### DISSOLUTION AND WINDING UP

Sec.

8481. Events causing dissolution.

8482. Winding up and filing of certificates.

8483. (Reserved).

8484. Power to bind partnership after dissolution.

8485. Liability after dissolution.

8486. Disposition of assets in winding up and required contributions.

§ 8481. Events causing dissolution.

(a) General rule.--A partnership is dissolved, and its business shall be wound up, upon the occurrence of any of the following:

(1) In a partnership at will, the partnership knows or has notice of a person's express will to withdraw as a partner, other than a partner that has dissociated under section 8461(2), (3), (4), (5), (6), (7), (8), (9) or (10) (relating to events causing dissociation), except that, if the person has specified a withdrawal date later than the date the partnership knew or had notice, on the later date.

(2) In a partnership for a definite term or particular undertaking:

(i) within 90 days after a person's dissociation by death or otherwise under section 8461(6), (7), (8), (9) or (10) or wrongful dissociation under section 8462(b) (relating to power to dissociate as partner and wrongful dissociation), the affirmative vote or consent of at least half of the remaining partners to wind up the partnership business, for which purpose a person's rightful dissociation under section 8462(b)(2)(i) constitutes that partner's consent to wind up the partnership business;

(ii) the affirmative vote or consent of all the partners to wind up the partnership business; or

(iii) the expiration of the term or the completion of the undertaking.

(3) An event or circumstance that the partnership agreement states causes dissolution.

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

(i) the conduct of all or substantially all the partnership's business is unlawful;

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

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

(iv) it is otherwise not reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(5) On application by a transferee, the entry by the court of an order dissolving the partnership on the grounds that it is equitable to wind up the partnership business:

(i) 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

(ii) 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.

(6) The passage of 90 consecutive days during which the partnership does not have at least two partners.

(b) Cross reference.--See section 8415(c)(15) (relating to contents of partnership agreement).

§ 8482. Winding up and filing of certificates.

(a) General rule.--A dissolved partnership shall wind up its business and the partnership continues after dissolution only for the purpose of winding up.

(b) Conduct of winding up.--In winding up its business, the partnership:

(1) shall discharge the partnership's debts, obligations and other liabilities, settle and close the partnership's business, and marshal and distribute the assets of the partnership; and

(2) may:

(i) deliver to the department for filing a certificate of dissolution stating:

(A) the name of the partnership;

(B) if the partnership is a limited liability partnership, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(C) that the partnership is dissolved;

(ii) preserve the partnership business and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal or administrative;

(iv) transfer the partnership's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the department for filing the certificates, if any, required by section 139 (relating to tax clearance of certain fundamental transactions) and a certificate of termination stating:

(A) the name of the partnership;

(B) if the partnership is a limited liability partnership, subject to section 109, the address, including street and number, if any, of its registered office; and

(C) that the partnership is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(c) Participation after dissociation.--A person whose dissociation as a partner resulted in dissolution may participate in winding up as if still a partner, unless the dissociation was wrongful.

(d) Conduct of winding up when no partner.--If a dissolved partnership does not have a partner and no person has the right to participate in winding up under subsection (c), the personal representative or guardian of the last person to have been a



partner may wind up the partnership's business. If the personal representative or guardian does not exercise that right, a person to wind up the partnership's business may be appointed by the affirmative vote or consent of transferees owning a majority of the rights to receive distributions at the time the consent is to be effective. A person appointed under this subsection has the powers of a partner under section 8484 (relating to power to bind partnership after dissolution) but is not liable for the debts, obligations and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the partnership's business.

(e) Judicial supervision.--On the application of any partner or person entitled under subsection (c) to participate in winding up, a court may order judicial supervision of the winding up of a dissolved partnership, including the appointment of a person to wind up the partnership's business, if:

(1) the partnership does not have a partner and within a reasonable time following the dissolution no person has been appointed under subsection (d); or

(2) the applicant establishes other good cause.

(f) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8415(c)(16) (relating to contents of partnership agreement).

Section 8418 (relating to signing of filed documents).

§ 8483. (Reserved).

§ 8484. Power to bind partnership after dissolution.

(a) Power of partner.--A partnership is bound by a partner's act after dissolution which:

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

(2) would have bound the partnership under section 8431 (relating to partner agent of partnership) before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

(b) Power of person dissociated as partner.--A person dissociated as a partner binds a partnership through an act occurring after dissolution if:

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

(i) less than two years have passed since the dissociation; and

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

(2) the act:

(i) is appropriate for winding up the partnership's business; or

(ii) would have bound the partnership under section 8431 before dissolution and the other party does not know or have notice of the dissolution at the time the other party enters into the transaction.

§ 8485. Liability after dissolution.

(a) Liability of partner.--If a partner having knowledge of the dissolution causes a partnership to incur an obligation under section 8484(a)(2) (relating to power to bind partnership

after dissolution) by an act that is not appropriate for winding up the partnership business, the partner is liable:

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

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

(b) Liability of person dissociated as partner.--Except as provided under subsection (c), if a person dissociated as a partner causes a partnership to incur an obligation under section 8484(b), the person is liable:

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

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

(c) Exception in winding up.--A person dissociated as a partner is not liable under subsection (b) if:

(1) section 8482(c) (relating to winding up and filing of certificates) permits the person to participate in winding up; and

(2) the act that causes the partnership to be bound under section 8484(b) is appropriate for winding up the partnership's business.

§ 8486. Disposition of assets in winding up and required contributions.

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

(b) Surplus.--After a partnership complies with subsection (a), any surplus shall be distributed in the following order, subject to any charging order in effect under section 8454 (relating to charging order):

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

(2) among owners of transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership.

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

(1) Each person that was a partner when the obligation was incurred and that has not been released from the obligation under section 8473(c) (relating to liability of person dissociated as partner to other persons) shall contribute to the partnership for the purpose of enabling the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute under paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due

from each of those other persons is in proportion to the right to receive distributions when the obligation was incurred.

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

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

(e) Distributions when surplus insufficient.--If a partnership does not have sufficient surplus to comply with subsection (b) (1), the following shall apply:

(1) If the partnership has been a limited liability partnership at any time during its existence, any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(2) If the partnership has never been a limited liability partnership, the partners and any person whose dissociation resulted in dissolution shall contribute to the partnership funds sufficient to cause the insufficiency under subsection (b) (1) to be allocated consistently with section 8441(a) (relating to partner's rights and duties).

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

Section 26. Repeals are as follows:

(1) The General Assembly finds and declares as follows:

(i) Over the last 25 years, there have been significant changes in the business model for partnerships; and statutory law must be updated to deal with the new business model.

(ii) Existing statutory law on limited partnerships was enacted in 1988. Discrete amendments were enacted in 1990, 1992, 1994, 1996 and 2001. A more comprehensive legislative approach was taken in sections 48 through 53 of the act of October 22, 2014 (P.L.2640, No.172), known as the Associations Transactions Act.

(iii) Section 20 of this act adds a new chapter on limited partnerships. The new chapter, continuing the approach under the Associations Transactions Act, extensively revises existing statutory law to the degree that identification of individual changes or reproduction of voluminous text to be eliminated would inhibit rather than enhance serious legal analysis.

(iv) The repeal under paragraph (2) is necessary to carry out this paragraph.

(2) Chapter 85 of Title 15 is repealed.

Section 27. Title 15 is amended by adding a chapter to read:

## **CHAPTER 86**

### **LIMITED PARTNERSHIPS**

#### **Subchapter**

- A. General Provisions**
- B. Formation and Filings**
- C. Limited Partners**
- D. General Partners**
- E. Contributions and Distributions**

- F. Dissociation
- G. Transferable Interests and Rights of Transferees and Creditors
- H. Dissolution and Winding Up
- I. Actions by Partners

SUBCHAPTER A  
GENERAL PROVISIONS

Sec.

- 8611. Short title and application of chapter.
- 8612. Definitions.
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- 8616. Application of partnership agreement.
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- 8618. Required information.
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- 8620. Characteristics of limited partnership.

§ 8611. Short title and application of chapter.

(a) Short title.--This chapter may be cited as the Pennsylvania Uniform Limited Partnership Act of 2016.

(b) Initial application.--Before April 1, 2017, this chapter governs only:

(1) a limited partnership formed on or after February 21, 2017; and

(2) except as provided under subsections (c) and (d), a limited partnership formed before February 21, 2017, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(c) Full effective date.--Except as provided in subsections (d) and (e), on and after April 1, 2017, this chapter governs all limited partnerships.

(d) Transitional provisions.--With respect to a limited partnership formed before February 21, 2017, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Section 8620(c) (relating to characteristics of limited partnership) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before February 21, 2017.

(2) Sections 8661 (relating to dissociation as limited partner) and 8662 (relating to effects of dissociation as limited partner) do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before February 21, 2017.

(3) Section 8663(a)(4) (relating to dissociation as general partner) shall not apply.

(4) Section 8663(a)(5) shall not apply and the court has the same power to expel a general partner as the court had immediately before February 21, 2017.

(5) Section 8681(a)(3) (relating to events causing dissolution) shall not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before February 21, 2017.

(e) Liabilities to third parties.--With respect to a limited partnership that elects under subsection (b)(2) to be subject to this chapter, after the election takes effect, the provisions

of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(1) before April 1, 2017, to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has been notified of the election; and

(2) on and after April 1, 2017, to all third parties, except that those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1) (ii).

(f) Cross reference.--See section 8615 (relating to contents of partnership agreement).

§ 8612. Definitions.

(a) General definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Certificate of limited partnership." The certificate required by section 8621 (relating to formation of limited partnership and certificate of limited partnership). The term includes the certificate as amended or restated.

"Contribution." Property or a benefit described in section 8651 (relating to form of contribution) which is provided by a person to a limited partnership to become a partner or in the person's capacity as a partner.

"Distribution." A direct or indirect transfer of money or other property or incurrence of indebtedness by a limited partnership to a person on account of a transferable interest or in the person's capacity as a partner. The term:

(1) Includes:

(i) a redemption or other purchase by a limited partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's activities and affairs or to have access to records or other information concerning the partnership's activities and affairs.

(2) Does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a partnership for the benefit of any or all of its partners;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the members; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"General partner." A person that:

(1) has become a general partner under section 8641 (relating to becoming a general partner) or was a general partner in a partnership when the partnership became subject to this chapter under section 8611 (relating to short title and application of chapter); and

(2) has not dissociated as a general partner under section 8663 (relating to dissociation as general partner).  
"Limited partner." A person that:

(1) has become a limited partner under section 8631 (relating to becoming a limited partner) or was a limited partner in a limited partnership when the partnership became subject to this chapter under section 8611 (relating to short title and application of chapter); and

(2) has not dissociated as a limited partner under section 8661 (relating to dissociation as limited partner).

"Limited partnership." An association formed under this chapter or which becomes subject to this chapter under Chapter 3 (relating to entity transactions) or section 8611 (relating to short title and application of chapter). The term includes a limited liability limited partnership or an electing partnership that is also a limited partnership.

"Partner." A limited partner or general partner.

"Partnership agreement." The agreement, whether or not referred to as a partnership agreement and whether oral, implied, in record form or in any combination thereof, of all the partners of a limited partnership concerning the matters described under section 8615(a) (relating to contents of partnership agreement). The term includes the agreement as amended or restated.

"Required information." The information that a limited partnership is required to maintain under section 8618 (relating to required information).

"Transferable interest." The right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a limited partnership, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee." A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. The term includes a person that owns a transferable interest under section 8662(a)(3) (relating to effects of dissociation as limited partner) or 8665(a)(4) (relating to effects of dissociation as general partner).

(b) Index of definitions.--Following is a nonexclusive list of definitions in section 102 (relating to definitions) that apply to this chapter:

"Act" or "action."

"Court."

"Debtor in bankruptcy."

"Department."

"Jurisdiction."

"Jurisdiction of formation."

"Obligation."

"Professional services."

"Property."

"Record form."

"Sign."

"Transfer."

§ 8613. Knowledge and notice.

(a) Knowledge.--A person knows a fact if the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under law other than this chapter.

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

(1) has reason to know the fact from all the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subsection (c) or (d).

(c) Effect of certificate.--A certificate of limited partnership on file in the department is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as provided under subsection (d) and section 8201(g) (relating to scope), the certificate is not notice of any other fact.

(d) Constructive notice.--A person not a partner is deemed to have notice of:

(1) another person's dissociation as a general partner 90 days after an amendment to the certificate of limited partnership which states that the other person has dissociated becomes effective or 90 days after a certificate of dissociation pertaining to the other person becomes effective, whichever occurs first;

(2) a limited partnership's:

(i) dissolution 90 days after an amendment to the certificate of limited partnership stating that the limited partnership is dissolved is effective;

(ii) termination 90 days after a certificate of termination under section 8682(e) (relating to winding up and filing of certificates) is effective; and

(iii) participation in a merger, interest exchange, conversion, division or domestication, 90 days after a statement of merger, interest exchange, conversion, division or domestication under Chapter 3 (relating to entity transactions) is effective.

(e) Notification.--Except as provided in section 113(b) (relating to delivery of document), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

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

§ 8614. Governing law.

(a) General rule.--The laws of this Commonwealth govern:

(1) the internal affairs of a limited partnership; and

(2) the liability of a partner as partner for the debts, obligations or other liabilities of a limited partnership.

(b) Cross reference.--See section 8615(c)(6) (relating to contents of partnership agreement).

§ 8615. Contents of partnership agreement.

(a) Scope of partnership agreement.--Except as provided under subsections (c) and (d), the partnership agreement governs:

(1) relations among the partners as partners and between the partners and the limited partnership;

(2) the rights and duties under this title of a person in the capacity of a partner;

(3) the activities and affairs of the partnership and the conduct of those activities and affairs;

(4) the means and conditions for amending the partnership agreement; and

(5) the means and conditions for approving a transaction under Chapter 3 (relating to entity transactions).

(b) Title applies generally.--To the extent the partnership agreement does not provide for a matter described in subsection (a), this title governs the matter.

(c) Limitations.--A partnership agreement may not do any of the following:

(1) Vary a provision of Chapter 1 (relating to general provisions) or Subchapter A of Chapter 2 (relating to names).

(2) Vary the right of a partner to approve a merger, interest exchange, conversion, division or domestication under section 333(a)(2) (relating to approval of merger), 343(a)(2) (relating to approval of interest exchange), 353(a)(3) (relating to approval of conversion), 363(a)(2) (relating to approval of division) or 373(a)(2) (relating to approval of domestication).

(3) Vary the required contents of a plan of merger under section 332(a) (relating to plan of merger), plan of interest exchange under section 342(a) (relating to plan of interest exchange), plan of conversion under section 352(a) (relating to plan of conversion), plan of division under section 362(a) (relating to plan of division) or plan of domestication under section 372(a) (relating to plan of domestication).

(4) Vary a provision of Chapter 81 (relating to general provisions) or 82 (relating to limited liability partnerships and limited liability limited partnerships).

(5) Vary the provisions of section 8611(b), (c), (d) and (e) (relating to short title and application of chapter).

(6) Vary the law applicable under section 8614 (relating to governing law).

(7) Vary any requirement, procedure or other provision of this title pertaining to:

(i) registered offices; or

(ii) the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

(8) Vary a limited partnership's capacity under section 8620(d) (relating to characteristics of limited partnership) to sue and be sued in its own name.

(9) Vary a provision of section 8620(e).

(10) Eliminate the duty of loyalty provided for in section 8649(b)(1)(i) or (ii) or (2) (relating to standards of conduct for general partners) or the duty of care, except as provided in subsection (d).

(11) Vary the contractual obligation of good faith and fair dealing under sections 8635(a) (relating to limited duties of limited partners) and 8649(d), except as provided in subsection (d).

(12) Provide indemnification or exoneration in violation of the limitations in sections 8648(g) (relating to reimbursement, indemnification, advancement and insurance) and 8649(i).

(13) Vary the information required under section 8618 (relating to required information) or unreasonably restrict the duties and rights under section 8634 (relating to limited partner rights to information) or 8647 (relating to general partner rights to information), except as provided under subsection (d).

(14) Vary the power of a person to dissociate as a general partner under section 8664(a) (relating to power to dissociate as general partner and wrongful dissociation), except to require that the notice under section 8663(a)(1)



(relating to dissociation as general partner) be in record form.

(15) Vary the causes of dissolution specified in section 8681(a)(6) (relating to events causing dissolution).

(16) Vary the requirements to wind up the partnership's activities and affairs specified in section 8682(a), (b)(1), (d) and (e) (relating to winding up and filing of certificates).

(17) Unreasonably restrict the right of a partner to maintain an action under Subchapter I (relating to actions by partners).

(18) Vary the provisions of section 8694 (relating to special litigation committee), except that the partnership agreement may provide that the partnership may not have a special litigation committee.

(19) Except as provided in section 8617(b) (relating to amendment and effect of partnership agreement), restrict the rights under this title of a person other than a partner.

(d) Rules.--Subject to subsection (c)(12), the following rules apply:

(1) The partnership agreement may:

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

(ii) alter the prohibition in section 8654(a)(2) (relating to limitations on distributions) so that the prohibition requires only that the partnership's total assets not be less than the sum of its total liabilities; and

(iii) impose reasonable restrictions on the availability and use of information obtained under section 8618, 8634 or 8647 and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

(2) To the extent the partnership agreement expressly relieves a partner of a responsibility that the partner would otherwise have under this title and imposes the responsibility on one or more other partners, the agreement also may eliminate or limit any fiduciary duty of the partner relieved of the responsibility which would have pertained to the responsibility.

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

(i) alter the aspects of the duty of loyalty stated in section 8649(b)(1)(i) or (ii) or (2);

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

(iii) alter the duty of care;

(iv) alter or eliminate any other fiduciary duty; and

(v) prescribe the standards by which the performance of the contractual obligation of good faith and fair dealing is to be measured.

(e) Determination of manifest unreasonable.--A court shall decide as a matter of law whether a term of a partnership agreement is manifestly unreasonable under subsection (d)(3). The court:

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

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

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the term's objective.

§ 8616. Application of partnership agreement.

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

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

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

(d) Cross reference.--See section 8621 (relating to formation of limited partnership and certificate of limited partnership).

§ 8617. Amendment and effect of partnership agreement.

(a) Approval of amendments.--A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) Obligations to nonpartners.--The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or person dissociated as a partner are governed by the partnership agreement. Except as provided in section 8653(d) (relating to sharing of and right to distributions before dissolution) or in a court order issued under section 8673(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the partnership agreement made after a person becomes a transferee or is dissociated as a partner:

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

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

(c) Provisions in filed documents.--If a document delivered by a limited partnership to the department for filing becomes effective and contains a provision that would be ineffective under section 8615(c) or (d)(3) (relating to contents of partnership agreement) if contained in the partnership agreement, the provision is ineffective in the document.

(d) Conflicts with partnership agreement.--Subject to subsection (c):

(1) If a provision of the certificate of limited partnership conflicts with a provision of the partnership agreement, the provision of the certificate prevails.

(2) If a document other than its certificate of limited partnership that has been delivered by a limited partnership to the department for filing becomes effective and conflicts with a provision of the partnership agreement:

(i) the agreement prevails as to partners, persons dissociated as partners and transferees; and

(ii) the document prevails as to other persons to the extent they reasonably rely on the document.

(e) Prohibition of oral amendments.--If a provision of a partnership agreement in record form provides that the partnership agreement cannot be amended, modified or rescinded except in record form, an oral agreement, amendment, modification or rescission shall not be enforceable.

(f) Voting requirements.--A partnership agreement may provide in record form that, whenever a provision of this title requires the vote or consent of a specified number or percentage of partners or of a class of partners for the taking of any action, a higher number or percentage of votes or consents shall be required for the action. Except as otherwise provided in the partnership agreement, whenever the partnership agreement requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the partnership agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or the class of partners.

§ 8618. Required information.

(a) General rule.--A limited partnership shall maintain at its principal office the following information:

(1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order.

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

(3) A copy of any filed certificate or statement of merger, interest exchange, conversion, division or domestication.

(4) A copy of the partnership's Federal, State and local income tax returns and reports, if any, for the three most recent years.

(5) A copy of any provisions of the partnership agreement in record form and any amendment made in record form to any partnership agreement.

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

(7) A copy of any record made by the partnership during the past three years of any consent given by or vote taken of any partner under this title or the partnership agreement.

(8) Unless contained in a provision of the partnership agreement in record form, a record stating:

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

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

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

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

(b) Cross reference.--See section 8615 (relating to contents of partnership agreement).

§ 8619. Dual capacity.

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

§ 8620. Characteristics of limited partnership.

(a) Separate entity.--A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether:

(1) its certificate of limited partnership states that the limited partnership is a limited liability limited partnership; or

(2) it has a statement of registration in effect under section 8201 (relating to scope).

(b) Purpose.--A limited partnership may have any lawful purpose, other than acting as a banking institution, credit union or insurer, regardless of whether the purpose is for profit. See section 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization).

(c) Duration.--A limited partnership has perpetual duration.

(d) Powers.--A limited partnership has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

(e) Restrictions on nonprofit limited partnerships.--If a limited partnership has a purpose that is not for profit:

(1) Its purpose must be stated in the certificate of limited partnership.

(2) The partnership shall not distribute any part of its income or profits to its partners, but it may pay compensation in a reasonable amount to those persons for services rendered.

(3) The partnership may confer benefits on partners or nonpartners in conformity with its purposes, may repay capital contributions and may redeem evidences of indebtedness, except when the partnership is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes, or when the fair value of the assets of the partnership remaining after the conferring of benefits, payment or redemption would be insufficient to meet its liabilities. The partnership may make distributions of money or property to partners upon dissolution or final liquidation as permitted by this chapter.

(4) If the partnership is organized for a charitable purpose, it may take, receive and hold real and personal property as may be given, devised to, or otherwise vested in the partnership, in trust, for the purpose or purposes set forth in its certificate of limited partnership. The general partners shall, as trustees of the property, be held to the same degree of responsibility and accountability as other trustees, unless:

(i) a lesser degree or a particular degree of responsibility and accountability is prescribed in the trust instrument; or

(ii) the general partners are under the control of the limited partners or third persons who retain the right to direct, and do direct, the actions of the

general partners as to the use of the trust property from time to time.

(5) Property of the partnership committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the partnership obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

(f) Cross references.--See sections 8611(d) (relating to short title and application of chapter) and 8615 (relating to contents of partnership agreement).

#### SUBCHAPTER B FORMATION AND FILINGS

Sec.

8621. Formation of limited partnership and certificate of limited partnership.

8622. Amendment or restatement of certificate of limited partnership.

8623. Signing of filed documents.

8624. Liability of general partner for false or missing information in filed document.

8625. Registered office.

§ 8621. Formation of limited partnership and certificate of limited partnership.

(a) Formation.--To form a limited partnership, a person must deliver a certificate of limited partnership to the department for filing.

(b) Required contents of certificate.--A certificate of limited partnership must state:

(1) the name of the limited partnership, which must comply with Subchapter A of Chapter 2 (relating to names);

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the partnership's registered office; and

(3) the name and address of each general partner.

(c) Optional contents of certificate.--A certificate of limited partnership may contain statements as to matters other than those required under subsection (b), but may not vary or otherwise affect the provisions specified in section 8615(c) and (d) (relating to contents of partnership agreement) in a manner inconsistent with that section.

(d) Time of formation.--A limited partnership is formed when:

(1) the certificate of limited partnership becomes effective;

(2) at least two persons have become partners;

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

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

(e) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8620 (relating to characteristics of limited partnership).

Section 8623 (relating to signing of filed documents).

§ 8622. Amendment or restatement of certificate of limited partnership.

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

(b) Required contents of certificate of amendment.--To amend its certificate of limited partnership, a limited partnership must deliver to the department for filing a certificate of amendment that states:

- (1) the name of the partnership;
- (2) the date of filing of its initial certificate;
- (3) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and
- (4) the amendment.

(c) Restatement.--To restate its certificate of limited partnership, a limited partnership must deliver to the department for filing a certificate of amendment that:

- (1) is designated as a restatement; and
- (2) includes a statement that the restated certificate supersedes the original certificate and all amendments.

(d) Required amendments.--A limited partnership shall promptly deliver to the department for filing an amendment to its certificate of limited partnership to reflect:

- (1) the admission of a new general partner;
- (2) the dissociation of a person as a general partner;

or

- (3) the appointment of a person to wind up the partnership's activities and affairs under section 8682(c) or (d) (relating to winding up and filing of certificates).

(e) Obligation to correct.--If a general partner knows that any information in a filed certificate of limited partnership is inaccurate, the general partner shall promptly:

- (1) cause the certificate to be amended; or
- (2) if appropriate, deliver to the department for

filing:

- (i) a certificate of change of registered office under section 8625 (relating to registered office);
- (ii) a statement of correction under section 138 (relating to statement of correction); or
- (iii) a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(f) Amendment of voting provisions.--Except as provided in the certificate of limited partnership, whenever the certificate requires for the taking of any action by the partners or a class of partners a specific number or percentage of votes or consents, the provision of the certificate setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the partners or of the class of partners.

(g) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).  
§ 8623. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a limited partnership must be signed as follows:

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

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

(3) An amendment to the certificate of limited partnership designating as general partner a person admitted under section 8681(a)(3)(ii) (relating to events causing dissolution) following the dissociation of a limited partnership's last general partner must be signed by that person.

(4) An amendment to the certificate of limited partnership required by section 8682(c) (relating to winding up and filing of certificates) following the appointment of a person to wind up the dissolved limited partnership's activities and affairs must be signed by that person.

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

(i) at least one general partner listed in the certificate;

(ii) each person designated in the amendment as a new general partner; and

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

(A) the person is deceased or a guardian has been appointed for the person and the amendment so states; or

(B) the person has previously delivered to the department for filing a certificate of dissociation.

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

(7) A certificate of termination must be signed by all general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed under section 8682(c) or (d) to wind up the dissolved limited partnership's activities and affairs.

(8) Any other document delivered by a limited partnership to the department for filing must be signed by at least one general partner listed in the certificate of limited partnership.

(9) A statement by a person under section 8665(a)(3) (relating to effects of dissociation as general partner) stating that the person has dissociated as a general partner must be signed by that person.

(10) A certificate of negation by a person under section 8636 (relating to person erroneously believing self to be limited partner) must be signed by that person.

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

(b) Cross reference.--See section 142 (relating to effect of signing filings).

§ 8624. Liability of general partner for false or missing information in filed document.

(a) General rule.--If a document delivered to the department for filing under this title and filed by the department contains a materially false statement or fails to state a material fact required to be stated, a person that suffers loss by reasonable

reliance on the statement or failure to state a material fact may recover damages for the loss from a general partner if:

(1) the document was delivered for filing on behalf of the limited partnership; and

(2) the general partner knew or had notice there was false or missing information in the document for a reasonably sufficient time before the document was relied upon so that, before the reliance, the general partner reasonably could have:

(i) effected an amendment under section 8622 (relating to amendment or restatement of certificate of limited partnership);

(ii) filed a petition under section 144 (relating to signing and filing pursuant to judicial order); or

(iii) delivered to the department for filing:

(A) a certificate of change of registered office under section 8625 (relating to registered office);

(B) a statement of correction under section 138 (relating to statement of correction); or

(C) a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(b) Cross references.--See sections 142 (relating to effect of signing filings) and 143 (relating to liability for inaccurate information in filing).

§ 8625. Registered office.

(a) General rule.--Every limited partnership shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Change of registered office.--After formation, a change in the location of the registered office may be effected at any time by the limited partnership. Before the change becomes effective, the limited partnership shall amend its certificate of limited partnership under the provisions of this chapter to reflect the change in location, or shall deliver to the department for filing a certificate of change of registered office setting forth:

(1) The name of the limited partnership.

(2) The address, including street and number, if any, of its then registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

(c) Alternative procedure.--A limited partnership may satisfy the requirements of this chapter concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed by the department under any provision of this title that permits or requires the statement of the address of its then registered office, in lieu of that address, the statement authorized by section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

(d) Cross references.--See:

Section 108 (relating to change in location or status of registered office provided by agent).

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8615(c)(6) (relating to contents of partnership agreement).

Section 8623 (relating to signing of filed documents).



SUBCHAPTER C  
LIMITED PARTNERS

Sec.

- 8631. Becoming a limited partner.
  - 8632. No agency power of limited partner as limited partner.
  - 8633. No liability as limited partner for limited partnership obligations.
  - 8634. Limited partner rights to information.
  - 8635. Limited duties of limited partners.
  - 8636. Person erroneously believing self to be limited partner.
- § 8631. Becoming a limited partner.

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

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

- (1) as provided in the partnership agreement;
- (2) as the result of a transaction effective under Chapter 3 (relating to entity transactions);
- (3) with the affirmative vote or consent of all the partners; or
- (4) as provided in section 8681(a)(4) or (5) (relating to events causing dissolution).

(c) Noneconomic limited partners.--A person may become a limited partner without:

- (1) acquiring a transferable interest; or
- (2) making or being obligated to make a contribution to the limited partnership.

(d) Nature of interest.--The interest of a limited partner in a limited partnership is personal property.

§ 8632. No agency power of limited partner as limited partner.

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

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

§ 8633. No liability as limited partner for limited partnership obligations.

A debt, obligation or other liability of a limited partnership is not the debt, obligation or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the partnership. This subsection applies regardless of the dissolution, winding up or termination of the partnership.

§ 8634. Limited partner rights to information.

(a) Right to required information.--Within 10 days after receipt by a limited partnership of a demand made in record form, a limited partner may inspect and copy required information during regular business hours in the partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(b) Right to other information.--During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may inspect and copy information, other than the required information, regarding the activities, affairs, financial condition and other circumstances of the partnership if:

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

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

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

(c) Rights of person dissociated as limited partner.--Subject to subsection (h), on demand made in record form received by a limited partnership, a person dissociated as a limited partner may have access to information to which the person was entitled while a limited partner if:

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

(2) in seeking the information the person complies with section 8635(a) (relating to limited duties of limited partners) as if still a limited partner; and

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

(d) Required response to demand.--Within 10 days after receiving a demand under subsection (b) or (c), the limited partnership shall inform in record form the person that made the demand of:

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

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

(e) Copying costs.--A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying.

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

(g) No rights of transferee.--Subject to section 8674 (relating to power of personal representative of deceased partner), the rights under this section do not extend to a person as transferee.

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

(i) Cross reference.--See section 8615 (relating to contents of partnership agreement).

§ 8635. Limited duties of limited partners.

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

(b) No other duties.--Except as provided under subsection (a), a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

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

(d) Cross reference.--See section 8615(c)(11) (relating to contents of partnership agreement).

§ 8636. Person erroneously believing self to be limited partner.

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

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

(2) if a certificate of limited partnership is on file in the department, withdraws from future participation as an owner in the enterprise by delivering to the department for filing a certificate of negation under this section stating:

(i) the name of the limited partnership;

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the partnership's registered office;

(iii) the name of the person delivering the certificate to the department for filing; and

(iv) that the person is not a general partner; or

(3) files a certificate of denial under section 8434 (relating to certificate of denial) as if the enterprise were a general partnership.

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

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

(d) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).  
SUBCHAPTER D  
GENERAL PARTNERS

Sec.

- 8641. Becoming a general partner.
- 8642. General partner agent of limited partnership.
- 8643. Limited partnership liable for general partner's actionable conduct.
- 8644. General partner's liability.
- 8645. Actions by and against partnership and partners.
- 8646. Management rights.
- 8647. General partner rights to information.
- 8648. Reimbursement, indemnification, advancement and insurance.
- 8649. Standards of conduct for general partners.

§ 8641. Becoming a general partner.

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

(b) Admission after formation.--After formation of a limited partnership, a person becomes a general partner:

- (1) as provided in the partnership agreement;
- (2) as the result of a transaction effective under Chapter 3 (relating to entity transactions);
- (3) with the affirmative vote or consent of all the partners; or
- (4) under section 8681(a)(3)(ii) or (5) (relating to events causing dissolution) following the dissociation of a limited partnership's last general partner.

(c) Noneconomic general partners.--A person may become a general partner without:

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

(d) Nature of interest.--The interest of a general partner in a limited partnership is personal property.

§ 8642. General partner agent of limited partnership.

(a) General rule.--Each general partner is an agent of the limited partnership for the purposes of its activities and affairs. An act of a general partner, including the signing of a document in record form in the partnership's name, for apparently carrying on in the ordinary course the partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership, unless the general partner did not have authority to act for the partnership in the particular matter and the person with which the general partner was dealing knew or had notice that the general partner lacked authority.

(b) Act outside of ordinary course.--An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities and affairs, or activities and affairs of the kind carried on by the partnership, binds the partnership only if the partner had actual authority to take the action.

§ 8643. Limited partnership liable for general partner's actionable conduct.

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

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

§ 8644. General partner's liability.

(a) General rule.--Except as provided under subsection (b) or section 8204 (relating to limitation on liability of partners), all general partners are liable jointly and severally for all debts, obligations and other liabilities of the limited partnership unless otherwise agreed by the claimant or provided by law.

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

§ 8645. Actions by and against partnership and partners.

(a) General partner as party.--To the extent not inconsistent with section 8644 (relating to general partner's liability), a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) Judgment against partnership only.--A judgment against a partnership:

(1) is not by itself a judgment against a partner; and

(2) except as set forth in subsection (c), may not be satisfied from a partner's assets.

(c) Judgment against partnership and partner.--If there is a judgment against a partnership and a partner on the same claim, the judgment creditor may levy execution against the assets of the partner if both of the following paragraphs apply:

(1) The partner is personally liable for the claim under section 8644.

(2) One of the following subparagraphs applies:

(i) A writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part.

(ii) The partnership is a debtor in bankruptcy.

(iii) The partner has agreed that the creditor need not exhaust partnership assets.

(iv) A court grants permission to levy execution based on a finding that:

(A) partnership assets subject to execution are clearly insufficient to satisfy the judgment;

(B) exhaustion of partnership assets is excessively burdensome; or

(C) the grant of permission is an appropriate exercise of the court's equitable powers.

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

§ 8646. Management rights.

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

(b) Actions requiring unanimous approval.--The affirmative vote or consent of all the partners is required to:

(1) amend the partnership agreement; and

(2) amend the certificate of limited partnership to delete a statement that the limited partnership is a limited liability limited partnership.

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

(d) Status of advance.--A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection (c) or section 8648(a) (relating to reimbursement, indemnification, advancement and insurance) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(e) No right to remuneration.--A general partner is not entitled to remuneration for services performed for the limited partnership.

(f) Sale of assets.--A sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a limited partnership that is not made in the usual and regular course of the activities and affairs of the partnership must be approved by:

(1) all the general partners; and

(2) limited partners owning the rights to receive a majority of the distributions as limited partners.

(g) Cross reference.--See section 324 (relating to approval by limited partnership).

§ 8647. General partner rights to information.

(a) Right to required information.--A general partner may inspect and copy required information during regular business hours in the limited partnership's principal office.

(b) Right to other information.--On reasonable notice, a general partner may inspect and copy during regular business hours, at a reasonable location specified by the limited partnership, any other records maintained by the partnership in addition to the required information regarding the partnership's activities, affairs, financial condition and other circumstances.

(c) Obligation of limited partnership.--A limited partnership shall furnish to each general partner, without demand, any information concerning the partnership's activities, affairs, financial condition and other circumstances which the partnership knows and is material to the proper exercise of the general partner's rights and duties under the partnership agreement or this title, except to the extent the partnership can establish that it reasonably believes the general partner already knows the information.

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

(e) Rights of person dissociated as general partner.--Subject to subsection (j), within 10 days after receipt by a limited partnership of a demand made in record form, a person dissociated as a general partner may have access to the information and records described under subsections (a) and (b) at the locations specified under subsections (a) and (b) if:

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

(2) in seeking the information or record, the person complies with section 8649(d) (relating to standards of

conduct for general partners) as if still a general partner;  
and

(3) all of the following apply:

(i) the person seeks the information for a purpose reasonably related to the partner's interest as a former general partner;

(ii) the person makes a demand in record form received by the partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the person's purpose.

(f) Required response to demand.--Within 10 days after receiving a demand under subsection (e), the limited partnership shall, in record form, inform the person that made the demand of:

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

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

(g) Copying costs.--A limited partnership may charge a person that makes a demand under this section the reasonable costs of copying.

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

(i) No rights of transferee.--The rights under this section do not extend to a person as transferee, except that if:

(1) a general partner dies, section 8674 (relating to power of personal representative of deceased partner) applies; and

(2) an individual dissociates as a general partner under section 8663(a)(7)(ii) or (iii) (relating to dissociation as general partner), the personal representative of the individual may exercise the rights under subsection (d) of a person dissociated as a general partner.

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

(k) Cross reference.--See section 8615 (relating to contents of partnership agreement).

§ 8648. Reimbursement, indemnification, advancement and insurance.

(a) Reimbursement.--A limited partnership shall reimburse a general partner for any payment made by the general partner in the course of the general partner's activities on behalf of the partnership, if the general partner complied with sections 8646 (relating to management rights), 8649 (relating to standards of conduct for general partners) and 8654 (relating to limitations on distributions) in making the payment.

(b) Indemnification.--A limited partnership shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as a general partner, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of section 8646, 8649 or 8654.

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

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

(e) Nonexclusivity.--The rights provided under subsections (a), (b), (c) and (d) shall not be deemed exclusive of any other rights to which a person seeking reimbursement, indemnification, advancement of expenses or insurance may be entitled under the partnership agreement, vote of partners, contract or otherwise, both as to action in his official capacity and as to action in another capacity while holding that position. Section 8649(f) shall be applicable to a vote, contract or other action under this subsection. A limited partnership may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under this section or otherwise.

(f) Grounds.--Indemnification under subsection (e) may be granted for any action taken and may be made whether or not the limited partnership would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the partnership. Indemnification under subsection (e) is declared to be consistent with the public policy of the Commonwealth.

(g) Limitation.--Indemnification under this section shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to constitute recklessness, willful misconduct or a knowing violation of law. § 8649. Standards of conduct for general partners.

(a) General rule.--A general partner owes to the limited partnership and, subject to section 8691 (relating to direct action by partner), the other partners the duties of loyalty and care stated in subsections (b) and (c).

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

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

(i) in the conduct or winding up of the partnership's activities and affairs;

(ii) from a use by the general partner of the partnership's property; or



(iii) from the appropriation of a partnership opportunity;

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

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

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

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

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

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

(g) Fairness as a defense.--It is a defense to a claim under subsection (b) (2) and any comparable claim in equity or at common law that the transaction was fair to the limited partnership at the time it is authorized or ratified under subsection (f).

(h) Rights and obligations in approved transactions.--If a general partner enters into a transaction with the limited partnership which otherwise would be prohibited by subsection (b) (2) and the transaction is authorized or ratified as provided in subsection (f) or the partnership agreement, the general partner's rights and obligations arising from the transaction are the same as those of a person that is not a general partner.

(i) Exoneration.--The partnership agreement may provide that a general partner shall not be personally liable for monetary damages to the partnership or the other partner for a breach of subsection (c), except that a general partner may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(j) Cross reference.--See section 8615 (relating to contents of partnership agreement).

#### SUBCHAPTER E CONTRIBUTIONS AND DISTRIBUTIONS

Sec.

8651. Form of contribution.

8652. Liability for contribution.

8653. Sharing of and right to distributions before dissolution.

8654. Limitations on distributions.

8655. Liability for improper distributions.

§ 8651. Form of contribution.

A contribution may consist of:

(1) property transferred to, services performed for or another benefit provided to the limited partnership;

(2) an agreement to transfer property to, perform services for or provide another benefit to the partnership;  
or

(3) any combination of items listed in paragraphs (1) and (2).

§ 8652. Liability for contribution.

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

(b) Substitute payment.--If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited partnership to contribute money equal to the value, as stated in the required information, of the part of the contribution which has not been made.

(c) Compromise of obligation.--The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a limited partnership extends credit or otherwise acts in reliance on an obligation described in subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

§ 8653. Sharing of and right to distributions before dissolution.

(a) General rule.--Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners and persons dissociated as partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner, except as provided in section 8672(b) (relating to transfer of transferable interest) or to the extent necessary to comply with a charging order in effect under section 8673 (relating to charging order).

(b) No entitlement to distribution.--A person has a right to a distribution before the dissolution and winding up of a limited partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) Distribution in kind.--A person does not have a right to demand or receive a distribution from a limited partnership in any form other than money. Except as provided under section 8690(f) (relating to disposition of assets in winding up and required contributions), a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

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

§ 8654. Limitations on distributions.

(a) General rule.--A limited partnership may not make a distribution, including a distribution under section 8690 (relating to disposition of assets in winding up and required contributions), if after the distribution:

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

(2) the partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the partnership were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of partners and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) Valuation.--A limited partnership may base a determination that a distribution is not prohibited under subsection (a) (2) on:

(1) the book values of the assets and liabilities of the partnership, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the partnership;

(3) the current value of the assets and liabilities of the partnership, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

(c) Excluded liabilities.--In determining whether a distribution is prohibited by subsection (a) (2), the limited partnership need not consider obligations and liabilities unless they are required to be reflected on a balance sheet, not including the notes to the balance sheet, prepared on the basis of generally accepted accounting principles or other such accounting practices and principles as are used generally by the partnership in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Measuring date of distribution.--Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) as of the date specified by the limited partnership when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

(e) Date of redemption.--In the case of a distribution described in paragraph (1) of the definition of "distribution" in section 8612 (relating to definitions), the distribution is deemed to occur as of the earlier of the date money or other property is transferred or debt is incurred by the limited partnership or the date the person entitled to the distribution ceases to own the interest or right being acquired by the partnership in return for the distribution.

(f) Status of distribution debt.--The indebtedness of a limited partnership to a partner or transferee incurred by reason of a distribution made in accordance with this section shall be at least on a parity with the partnership's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

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

(h) Distributions in winding up.--In measuring the effect of a distribution under section 8690, the liabilities of a

dissolved limited partnership do not include any claim that has been barred under section 8686 (relating to known claims against dissolved limited partnership) or 8687 (relating to other claims against dissolved limited partnership), or for which security has been provided under section 8688 (relating to court proceedings).

(i) Cross references.--See sections 8615(d)(1)(ii) (relating to contents of partnership agreement) and 8649 (relating to standards of conduct for general partners).

§ 8655. Liability for improper distributions.

(a) General rule.--If a general partner consents to a distribution made in violation of section 8654 (relating to limitations on distributions) and in consenting to the distribution fails to comply with section 8649 (relating to standards of conduct for general partners), the general partner is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation of section 8654.

(b) Recipients.--A person that receives a distribution knowing that the distribution violated section 8654 is personally liable to the limited partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 8654.

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

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

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

(d) Statute of repose.--An action under this section is barred unless commenced within two years after the distribution.

#### SUBCHAPTER F DISSOCIATION

Sec.

8661. Dissociation as limited partner.

8662. Effects of dissociation as limited partner.

8663. Dissociation as general partner.

8664. Power to dissociate as general partner and wrongful dissociation.

8665. Effects of dissociation as general partner.

8666. Power to bind and liability of person dissociated as general partner.

8667. Liability of person dissociated as general partner to other persons.

§ 8661. Dissociation as limited partner.

(a) No right to dissociate.--A person does not have a right to dissociate as a limited partner before the completion of the winding up of the limited partnership.

(b) Events causing dissociation.--A person is dissociated as a limited partner when any of the following apply:

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

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

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

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

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

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

(A) a transfer for security purposes; or

(B) a charging order in effect under section 8673 (relating to charging order) which has not been foreclosed;

(iii) the person is an entity and:

(A) the partnership notifies the person that it will be expelled as a limited partner because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or the equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up.

(5) On application by the partnership or a partner in a direct action under section 8691 (relating to direct action by partner), the person is expelled as a limited partner by judicial order because the person:

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

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or the contractual obligation of good faith and fair dealing under section 8635(a) (relating to limited duties of limited partners); or

(iii) has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner.

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

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

transferable interest in the limited partnership is distributed.

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

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

(10) The partnership participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the partnership is not the surviving entity;

or

(ii) otherwise as a result of the merger, the person ceases to be a limited partner.

(11) The partnership participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a limited partner.

(12) The partnership participates in a conversion under Chapter 3.

(13) The partnership participates in a division under Chapter 3 and:

(i) the partnership is not a resulting association;

or

(ii) as a result of the division, the person ceases to be a partner.

(14) The partnership participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a limited partner.

(15) The partnership dissolves and completes winding up.

(c) Cross reference.--See section 8611(d) (relating to short title and application of chapter).

§ 8662. Effects of dissociation as limited partner.

(a) General rule.--If a person is dissociated as a limited partner:

(1) subject to section 8674 (relating to power of personal representative of deceased partner), the person does not have further rights as a limited partner;

(2) the person's contractual obligation of good faith and fair dealing as a limited partner under section 8635(a) (relating to limited duties of limited partners) ends with regard to matters arising and events occurring after the person's dissociation except as provided in section 8634(c) (relating to limited partner rights to information); and

(3) subject to section 8674 and Chapter 3 (relating to entity transactions), any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person solely as a transferee.

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

(c) Cross reference.--See section 8611(d) (relating to short title and application of chapter).

§ 8663. Dissociation as general partner.

(a) General rule.--A person is dissociated as a general partner when any of the following occurs:

(1) The limited partnership knows or has notice of the person's express will to withdraw as a general partner rightfully or wrongfully, except that, if the person has

specified a withdrawal date later than the date the partnership knew or had notice, on that later date.

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

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

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

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

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

(A) a transfer for security purposes; or

(B) a charging order in effect under section 8673 (relating to charging order) which has not been foreclosed;

(iii) the person is an entity and:

(A) the partnership notifies the person that it will be expelled as a general partner because:

(I) the person has filed a certificate of dissolution or the equivalent;

(II) the person has been administratively dissolved;

(III) the person's charter or the equivalent has been revoked; or

(IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(B) within 90 days after the notification:

(I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;

(II) the person has not been reinstated;

(III) the person's charter or the equivalent has not been reinstated; or

(IV) the person's right to conduct business has not been reinstated; or

(iv) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up.

(5) On application by the partnership or a partner in a direct action under section 8691 (relating to direct action by partner), the person is expelled as a general partner by judicial order because the person:

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

(ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement or a duty or obligation under section 8649 (relating to standards of conduct for general partners); or

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

(6) The person:

(i) becomes a debtor in bankruptcy;

(ii) executes an assignment for the benefit of creditors; or

(iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property.

(7) In the case of an individual:

(i) the individual dies;

(ii) a guardian for the individual is appointed;

or

(iii) a court orders that the individual has otherwise become incapable of performing the individual's duties as a general partner under this title or the partnership agreement.

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

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

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

(11) The partnership participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the partnership is not the surviving entity;

or

(ii) otherwise as a result of the merger, the person ceases to be a general partner.

(12) The partnership participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a general partner.

(13) The partnership participates in a conversion under Chapter 3.

(14) The partnership participates in a division under Chapter 3 and:

(i) the partnership is not a resulting association;

or

(ii) as a result of the division, the person ceases to be a partner.

(15) The partnership participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a general partner.

(16) The partnership dissolves and completes winding up.

(b) Cross reference.--See section 8611(d) (relating to short title and application of chapter).

§ 8664. Power to dissociate as general partner and wrongful dissociation.

(a) Power to dissociate.--A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by withdrawing as a general partner by express will under section 8663(a)(1) (relating to dissociation as general partner).

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

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

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



- (i) the person withdraws as a general partner by express will;
- (ii) the person is expelled as a general partner by judicial order under section 8663(a)(5);
- (iii) the person is dissociated as a general partner under section 8663(a)(6); or
- (iv) the person is expelled or otherwise dissociated as a general partner because its existence terminated, except that this subparagraph does not apply to a person that is:

- (A) a trust that is not a business or statutory trust;
- (B) an estate; or
- (C) an individual.

(c) Damages for wrongful dissociation.--A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 8691 (relating to direct action by partner), to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation or other liability of the general partner to the partnership or the other partners.

(d) Cross reference.--See section 8615 (relating to contents of partnership agreement).

§ 8665. Effects of dissociation as general partner.

(a) General rule.--If a person is dissociated as a general partner:

(1) The person's right to participate as a general partner in the management and conduct of the limited partnership's activities and affairs terminates.

(2) The person's duties and obligations as a general partner under section 8649 (relating to standards of conduct for general partners) end with regard to matters arising and events occurring after the person's dissociation except as provided in section 8647(e)(2) (relating to general partner rights to information).

(3) The person may deliver to the department for filing a certificate of dissociation stating:

- (i) the name of the partnership;
- (ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership; and
- (iii) the name of the person and that the person has dissociated as a general partner.

(4) At the request of the limited partnership, the person shall sign an amendment to the certificate of limited partnership which states that the person has dissociated as a general partner.

(5) Subject to section 8674 (relating to power of personal representative of deceased partner) and Chapter 3 (relating to entity transactions), any transferable interest owned by the person in the person's capacity as a general partner immediately before dissociation is owned by the person solely as a transferee.

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

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).  
§ 8666. Power to bind and liability of person dissociated as general partner.

(a) Power to bind.--After a person is dissociated as a general partner and before the limited partnership is merged or divided out of existence, converted or domesticated under Chapter 3 (relating to entity transactions) or dissolved, the partnership is bound by an act of the person only if:

(1) the act would have bound the partnership under section 8642 (relating to general partner agent of limited partnership) before the dissociation; and

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

(i) less than two years have passed since the dissociation; and

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

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

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

(2) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.  
§ 8667. Liability of person dissociated as general partner to other persons.

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

(b) Obligations incurred after dissolution.--A person whose dissociation as a general partner results in a dissolution and winding up of the limited partnership's activities and affairs is liable on an obligation incurred by the partnership under section 8685 (relating to general partner liability after dissolution) to the same extent as a general partner under section 8644 (relating to general partner's liability).

(c) When partnership not dissolved.--A person that is dissociated as a general partner without the dissociation resulting in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the partnership after the dissociation only if a general partner would be liable on the transaction, but at the time the other party enters into the transaction:

(1) less than two years have passed since the dissociation; and

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

(d) Constructive release by creditor.--A person dissociated as a general partner is released from liability for a debt, obligation or other liability of the limited partnership if the

partnership's creditor, with knowledge or notice of the person's dissociation as a general partner and without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation or other liability. The release from liability under this subsection applies whether the liability arises directly or indirectly, by way of contribution or otherwise, but only if the liability arises solely by reason of having been a general partner.

SUBCHAPTER G  
TRANSFERABLE INTERESTS AND RIGHTS  
OF TRANSFEREES AND CREDITORS

Sec.

8671. Nature of transferable interest.

8672. Transfer of transferable interest.

8673. Charging order.

8674. Power of personal representative of deceased partner.

§ 8671. Nature of transferable interest.

(a) Personal property.--A transferable interest is personal property.

(b) Only right that may be transferred.--A person may not transfer to a person not a partner any rights in a limited partnership other than a transferable interest.

§ 8672. Transfer of transferable interest.

(a) General rule.--A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

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

(3) subject to section 8674 (relating to power of personal representative of deceased partner), does not entitle the transferee to:

(i) participate in the management or conduct of the partnership's activities and affairs; or

(ii) except as provided under subsection (c), have access to required information, records or other information concerning the partnership's activities and affairs.

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

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

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

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

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

(g) Rights retained by transferor.--Except as provided under sections 8661(b)(4)(ii) (relating to dissociation as limited partner) and 8663(a)(4)(ii) (relating to dissociation as general

partner), if a general or limited partner transfers a transferable interest, the transferor retains the rights of a general or limited partner other than the transferable interest transferred and retains all the duties and obligations of a general or limited partner.

§ 8673. Charging order.

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

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

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Foreclosure.--Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner and is subject to section 8672 (relating to transfer of transferable interest).

(d) Satisfaction of judgment.--At any time before foreclosure under subsection (c), the partner or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) Purchase of rights.--At any time before foreclosure under subsection (c), a limited partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) Exemption laws preserved.--This chapter shall not deprive any partner or transferee of the benefit of any exemption law applicable to the transferable interest of the partner or transferee.

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

§ 8674. Power of personal representative of deceased partner.

If a partner dies, the personal representative of the deceased partner may exercise:

(1) the rights of a transferee provided in section 8672(c) (relating to transfer of transferable interest); and

(2) for the purposes of settling the estate, the rights of a current limited partner under section 8634 (relating to limited partner rights to information).

#### SUBCHAPTER H

#### DISSOLUTION AND WINDING UP

Sec.

8681. Events causing dissolution.

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§ 8681. Events causing dissolution.

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

- (1) an event or circumstance that the partnership agreement states causes dissolution;
- (2) the affirmative vote or consent of:
  - (i) all general partners; and
  - (ii) limited partners owning the rights to receive a majority of the distributions as limited partners at the time the vote or consent is to be effective;
- (3) after the dissociation of a person as a general partner:
  - (i) if the partnership has at least one remaining general partner, the affirmative vote or consent to dissolve the partnership within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the vote or consent is to be effective; or
  - (ii) if the partnership does not have a remaining general partner, the passage of 180 days after the dissociation, unless before the end of the period:
    - (A) consent to continue the activities and affairs of the partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
    - (B) at least one person is admitted as a general partner in accordance with the consent;
- (4) the passage of 180 consecutive days after the dissociation of the partnership's last limited partner, unless before the end of the period the partnership admits at least one limited partner;
- (5) the passage of 180 consecutive days during which the partnership has only one partner, unless before the end of the period:
  - (i) the partnership admits at least one person as a partner;
  - (ii) if the previously sole remaining partner is only a general partner, the partnership admits a person as a limited partner; and
  - (iii) if the previously sole remaining partner is only a limited partner, the partnership admits a person as a general partner; or
- (6) on application by a partner, the entry by the court of an order dissolving the partnership on the grounds that:
  - (i) the conduct of all or substantially all the partnership's activities and affairs is unlawful;

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

(iii) the general partners have acted, are acting or will act in a manner that is illegal or fraudulent.

(b) Multiple deadlines.--If an event occurs that imposes a deadline on a limited partnership under subsection (a) and before the partnership has met the requirements of the deadline, another event occurs that imposes a different deadline on the partnership under subsection (a):

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

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

(c) Cross references.--See sections 8611(d) (relating to short title and application of chapter) and 8615(c)(15) (relating to contents of partnership agreement).

§ 8681.1. Voluntary termination by partners.

(a) General rule.--The general partners of a limited partnership that has never transacted business or held assets other than money received as capital contributions may effect the termination of the partnership by delivering to the department for filing a certificate of termination stating:

(1) the name of the partnership;

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership;

(3) that the partnership has never transacted business or held assets other than money received as capital contributions;

(4) that the amounts, if any, actually paid in as contributions, less any part disbursed for necessary expenses, have been returned to those entitled to the return of the amounts;

(5) that all liabilities of the partnership have been discharged or that adequate provision has been made for those liabilities; and

(6) that a majority of the general partners elect that the partnership be terminated.

(b) Effect.--Upon the filing of the certificate of termination, the existence of the limited partnership shall cease.

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8623 (relating to signing of filed documents).

§ 8682. Winding up and filing of certificates.

(a) General rule.--A dissolved limited partnership shall wind up its activities and affairs and the partnership continues after dissolution only for the purpose of winding up.

(b) Conduct of winding up.--In winding up its activities and affairs, the limited partnership:

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

(2) may:

- (i) amend its certificate of limited partnership to state that the partnership is dissolved;
- (ii) preserve the partnership activities, affairs and property as a going concern for a reasonable time;
- (iii) prosecute, defend and settle actions and proceedings, whether civil, criminal or administrative;
- (iv) transfer the partnership's property;
- (v) participate in, agree to participate in and settle disputes by mediation, arbitration or alternative dispute resolution proceedings; and
- (vi) perform other acts necessary or appropriate to the winding up.

(c) Conduct of winding up when no general partner.--If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved partnership's activities and affairs may be appointed by the affirmative vote or consent of limited partners owning the rights to receive a majority of the distributions as limited partners at the time the vote or consent is to be effective. A person appointed under this subsection:

(1) has the powers of a general partner under section 8684 (relating to power to bind partnership after dissolution) but is not liable for the debts, obligations and other liabilities of the partnership solely by reason of having or exercising those powers or otherwise acting to wind up the dissolved partnership's activities and affairs; and

(2) shall deliver promptly to the department for filing an amendment to the partnership's certificate of limited partnership stating:

- (i) that the partnership does not have a general partner;
- (ii) the name and address of the person; and
- (iii) that the person has been appointed under this subsection to wind up the partnership.

(d) Judicial supervision.--On the application of a partner or person entitled under subsection (c) to participate in winding up, the court may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the partnership's activities and affairs, if:

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

(2) the applicant establishes other good cause.

(e) Certificate of termination.--When all debts, obligations and other liabilities of the limited partnership have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the partnership have been distributed to the partners, a certificate of termination shall be delivered to the department for filing along with the certificates required by section 139 (relating to tax clearance of certain fundamental transactions). The certificate of termination shall set forth:

(1) The name of the limited partnership.

(2) Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the partnership.

(3) That all debts, obligations and other liabilities of the partnership have been paid and discharged or that adequate provision has been made therefor.

(4) That all the remaining property and assets of the partnership have been distributed among its partners in accordance with their respective rights and interests.

(5) That there are no actions pending against the partnership in any court or that adequate provision has been made for the satisfaction of any judgment that may be entered against it in any pending action.

(6) That the partnership is terminated.

(f) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8615(c)(16) (relating to contents of partnership agreement).

Section 8623 (relating to signing of filed documents).

§ 8683. (Reserved).

§ 8684. Power to bind partnership after dissolution.

(a) Power of general partner.--A limited partnership is bound by a general partner's act after dissolution which:

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

(2) would have bound the partnership under section 8642 (relating to general partner agent of limited partnership) before dissolution if, at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

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

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

(i) less than two years have passed since the dissociation; and

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

(2) the act:

(i) is appropriate for winding up the partnership's activities and affairs; or

(ii) would have bound the partnership under section 8642 before dissolution and at the time the other party enters into the transaction, the other party does not know or have notice of the dissolution.

§ 8685. General partner liability after dissolution.

(a) Liability of general partner.--If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 8684(a) (relating to power to bind partnership after dissolution) by an act that is not appropriate for winding up the partnership's activities and affairs, the general partner is liable:

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

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

(b) Liability of person dissociated as general partner.--If a person dissociated as a general partner causes a limited



partnership to incur an obligation under section 8684(b), the person is liable:

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

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

§ 8686. Known claims against dissolved limited partnership.

(a) General rule.--Except as provided under subsection (d), a dissolved limited partnership may give notice of a known claim under subsection (b) which has the effect provided in subsection (c).

(b) Required notice.--A dissolved limited partnership may notify in record form its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant;

(4) state that the claim will be barred if not received by the deadline; and

(5) unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 8644 (relating to general partner's liability).

(c) Claims barred.--A claim against a dissolved limited partnership is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the partnership:

(i) the partnership causes the claimant to receive a notice in record form stating that the claim is rejected and will be barred unless the claimant commences an action against the partnership to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant fails to commence the required action no later than 90 days after the claimant receives the notice.

(d) Later arising claims.--This section shall not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

§ 8687. Other claims against dissolved limited partnership.

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

(b) Notice procedure.--A notice under subsection (a) must:

(1) be officially published one time;

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

(3) state that a claim against the partnership is barred unless an action to enforce the claim is commenced within two years after publication of the notice; and

(4) unless the partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 8644 (relating to general partner's liability).

(c) Claims barred.--If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the partnership within two years after the publication date of the notice:

(1) a claimant that did not receive notice in record form under section 8686 (relating to known claims against dissolved limited partnership);

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

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

(d) Claims not barred.--A claim not barred under this section or section 8686 may be enforced:

(1) against the dissolved limited partnership, to the extent of its undistributed assets;

(2) except as provided under section 8688 (relating to court proceedings), if assets of the partnership have been distributed after dissolution, against a partner or transferee to the extent of that person's proportionate share of the claim or of the partnership's assets distributed to the partner or transferee after dissolution, whichever is less, except that a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution; and

(3) against any person liable on the claim under sections 8644 and 8667 (relating to liability of person dissociated as general partner to other persons).

§ 8688. Court proceedings.

(a) Determination of security.--A dissolved limited partnership that has officially published a notice under section 8687 (relating to other claims against dissolved limited partnership) may file an application with the court of common pleas embracing the county where the partnership's principal office is located or, if the principal office is not located in this Commonwealth, where its registered office is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the partnership and:

(1) at the time of the application:

(i) are contingent; or

(ii) have not been made known to the partnership;

or

(2) are based on an event occurring after the date of dissolution.

(b) When security not required.--Security is not required for any claim that is or is reasonably anticipated to be barred under section 8687.

(c) Notice.--Within 10 days after the filing of an application under subsection (a), the dissolved limited partnership shall give notice of the proceeding to each claimant holding a contingent claim known to the partnership.

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

(e) Effect on contingent claims.--A dissolved limited partnership that provides security in the amount and form ordered by the court under subsection (a) satisfies the partnership's obligations with respect to claims that are contingent, have not been made known to the partnership or are based on an event occurring after the date of dissolution. The claims may not be enforced against a partner or transferee on account of assets received in liquidation.

§ 8689. General partner liability when claim against limited partnership barred.

If a claim against a dissolved limited partnership is barred under section 8686 (relating to known claims against dissolved limited partnership), 8687 (relating to other claims against dissolved limited partnership) or 8688 (relating to court proceedings), any corresponding claim under section 8644 (relating to general partner's liability) or 8667 (relating to liability of person dissociated as general partner to other persons) is also barred.

§ 8690. Disposition of assets in winding up and required contributions.

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

(b) Surplus.--After a limited partnership complies with subsection (a), any surplus shall be distributed in the following order, subject to any charging order in effect under section 8673 (relating to charging order):

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

(2) among owners of transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the partnership.

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

(1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 8667 (relating to liability of person dissociated as general partner to other persons) shall contribute to the partnership for the purpose of enabling the partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those persons when the obligation was incurred.

(2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each

of those other persons is in proportion to the right to receive distributions in the capacity of a general partner in effect for each of those other persons when the obligation was incurred.

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

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

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

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

#### SUBCHAPTER I ACTIONS BY PARTNERS

Sec.

8691. Direct action by partner.

8692. Derivative action.

8693. Security for costs.

8694. Special litigation committee.

8695. Proceeds and expenses.

§ 8691. Direct action by partner.

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

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

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

(d) Cross reference.--See section 8615(c) (17) (relating to contents of partnership agreement).

§ 8692. Derivative action.

(a) General rule.--Subject to subsection (b), a partner may maintain a derivative action to enforce a right of a limited partnership only if:

(1) the partner first makes a demand on the general partners requesting that they cause the partnership to bring an action to enforce the right, and:

(i) if a special litigation committee is not appointed under section 8694 (relating to special litigation committee), the partnership does not bring the action within a reasonable time; or

(ii) if a special litigation committee is appointed under section 8694, a determination is made:

(A) under section 8694(e)(1) that the partnership not object to the action; or

(B) under section 8694(e)(5)(i) that the plaintiff continue the action;

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 8694(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 8694(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the partner makes a specific showing that immediate and irreparable harm to the limited partnership would otherwise result.

(2) If demand is excused under paragraph (1), demand shall be made promptly after commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of the essential facts relied upon to support each of the claims made in the demand.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the partner making the demand is notified either:

(i) that the general partners have decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 8694(e) after the appointment of a special litigation committee under section 8694; or

(2) the plaintiff commences an action asserting the claim.

(f) Cross reference.--See section 8615(c)(17) (relating to contents of partnership agreement).

§ 8693. Security for costs.

In any action or proceeding instituted or maintained by partners holding transferable interests entitled to receive less than 5% of any distribution by a limited partnership, unless the transferable interests held by the partners have an aggregate fair market value in excess of \$200,000, the partnership in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorneys' fees, that may be incurred by the partnership in connection therewith or for which it may become liable pursuant to section 8648(b) (relating to reimbursement, indemnification, advancement and insurance) to which security the partnership shall have recourse in such amount as the court determines upon the termination of the action or proceeding. The amount of security may, from time to time, be increased or decreased in the discretion of the court upon showing that the security provided has or is likely to become inadequate or excessive. The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.

§ 8694. Special litigation committee.

(a) General rule.--If a limited partnership or the general partners receive a demand to bring an action to enforce a right of the partnership, or if a derivative action is commenced before demand has been made on the partnership or the general partners, the general partners may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the limited partnership or recommend to the general partners whether pursuing any of the claims asserted is in the best interests of the partnership. The partnership shall send a notice in record form to the plaintiff promptly after the appointment of the committee under this section notifying the plaintiff that a committee has been appointed and identifying by name the members of the committee.

(b) Discovery stay.--If the general partners appoint a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the committee made in the name of the partnership, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) Composition of committee.--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand or action;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be general or limited partners.

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) by a majority of the general partners not named as actual or potential parties in the demand or action; or

(2) if all general partners are named as actual or potential parties in the demand or action, by a majority of the general partners so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee or the general partners may determine that it is in the best interests of the limited partnership that:

(1) an action based on some or all of the claims asserted in the demand not be brought by the partnership but that the partnership not object to an action being brought by the party that made the demand;

(2) an action based on some or all of the claims asserted in the demand be brought by the partnership;

(3) some or all of the claims asserted in the demand be settled on terms approved by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the limited partnership; or

(iii) the committee;

(6) some or all of the claims asserted in an action already commenced be settled on terms approved by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and an action is commenced before a determination is made under subsection (e):

(1) The limited partnership shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee. The partnership shall serve each party with a copy of the determination and report. If the partnership moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The partnership shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

(g) Attorney General.--Nothing in this section shall limit the rights, powers and duties of the Attorney General under other applicable law with respect to a limited partnership organized for a charitable purpose.

(h) Cross reference.--See section 8615(c)(18) (relating to contents of partnership agreement).

§ 8695. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong to the limited partnership and not to the plaintiff; and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the partnership.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited partnership, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the limited partnership.

(c) Cross reference.--See section 8615(c)(7) (relating to contents of partnership agreement).

Section 28. Sections 8701, 8702 and 8705 of Title 15 are amended to read:

§ 8701. Scope and definition.

(a) Application of chapter.--This chapter applies to a general or limited partnership formed under the laws of this Commonwealth that elects to be governed by this chapter. Any partnership that desires to elect to be governed by this

chapter, or to amend or terminate the election, shall [file in] **deliver to** the Department of State **for filing** a statement of election, amendment or termination, as the case may be, which shall be signed by a general partner and shall set forth:

- (1) The name of the partnership.
- (2) The location of the principal place of business.
- (3) The name of each general partner of the partnership as of the date of the statement.
- (4) A statement that the partnership elects to be governed by this chapter or that the election to be governed by this chapter shall be amended or terminated, as the case may be.
- (5) If the election is to be made or terminated, a statement that the election or termination has been authorized by at least a majority in interest of the partners.

**(a.1) Effective date and time.--Subject to section 136(c) (relating to processing of documents by Department of State),** [Upon] **upon** the filing of the statement of election, amendment or termination in the department, the election to be governed by this chapter shall be effective, amended or terminated, as the case may be.

(b) Effect of election.--As long as an election under subsection (a) is in effect, the partnership shall be governed by the provisions of this chapter and, to the extent not inconsistent with this chapter, Chapter [83] **84** (relating to general partnerships) [and] **or**, if a limited partnership, Chapter [85] **86** (relating to limited partnerships).

(c) Definition.--As used in this chapter, the term "electing partnership" means a partnership as to which an election under subsection (a) is in effect.

(d) Cross [reference.--See section] **references.--See sections 134** (relating to docketing statement) **and 135 (relating to requirements to be met by filed documents).**  
§ 8702. Centralized management.

The business and affairs of every electing partnership shall be managed by one-third or less, but not less than one, of the partners selected for that purpose in the manner provided by any agreement between the partners, and no other partner shall have a right to participate in the management of the partnership. A partner of an electing partnership shall be an agent of the partnership only to the extent that an employee of the partnership would be under like circumstances. In making such a determination, the court may consider among other things whether a person dealing with the partnership has knowledge, as defined in section [8303(a) (relating to knowledge)] **8413(a) (relating to knowledge and notice)**, that this section is applicable to the partnership.

§ 8705. Limited liability in certain cases.

(a) General rule.--The liability of a partner of an electing partnership for the debts and obligations of the partnership shall be satisfied out of partnership assets alone if[:

- (1)] the debt or obligation arises from a transaction or occurrence in which the person dealing with the partnership has notice, as defined in section [8303(b) (relating to notice)] **8413(b) (relating to knowledge and notice)**, that this section is applicable to the partnership.[; or

- (2) the fact that this section is applicable to the partnership has been advertised in the manner provided by section 8357(a)(2)(ii) (relating to power of partner to bind partnership to third persons).]



(b) Exceptions.--Subsection (a) does not apply:

(1) Unless otherwise agreed by the obligee, to a debt or obligation arising prior to the time a partnership becomes an electing partnership [and complies with subsection (a) (1) or (2)].

(2) To a transaction or occurrence involving the furnishing or sale of any goods or services by the partnership.

(c) Professional relationship unaffected.--Subsection (a) shall not afford the partners of an electing partnership providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

Section 29. Title 15 is amended by adding a chapter to read:

## **CHAPTER 88**

### **LIMITED LIABILITY COMPANIES**

#### **Subchapter**

- A. General Provisions**
- B. Formation and Filings**
- C. Relations of Members and Managers to Persons Dealing with Limited Liability Company**
- D. Relations of Members to Each Other and to Limited Liability Company**
- E. Transferable Interests and Rights of Transferees and Creditors**
- F. Dissociation**
- G. Dissolution and Winding Up**
- H. Actions by Members**
- I. Benefit Companies**

#### **SUBCHAPTER A**

#### **GENERAL PROVISIONS**

#### **Sec.**

- 8811. Short title and application of chapter.**
- 8812. Definitions.**
- 8813. Knowledge and notice.**
- 8814. Governing law.**
- 8815. Contents of operating agreement.**
- 8816. Application of operating agreement.**
- 8817. Amendment and effect of operating agreement.**
- 8818. Characteristics of limited liability company.**
- 8819. Powers.**

§ 8811. Short title and application of chapter.

(a) Short title.--This chapter may be cited as the Pennsylvania Uniform Limited Liability Company Act of 2016.

(b) Initial application.--Before April 1, 2017, this chapter governs only:

(1) a limited liability company formed on or after February 21, 2017; and

(2) except as provided in subsection (c), a limited liability company formed before February 21, 2017, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(c) Full effective date.--Except as provided in subsection (d), on and after April 1, 2017, this chapter governs all limited liability companies.

(d) Certificates of membership interest.--For purposes of applying this chapter to a limited liability company formed before February 21, 2017, language in the company's certificate of organization authorizing the issuance of certificates of

membership interest operates as if that language were in the operating agreement.

(e) Cross reference.--See section 8815(c) (5) (relating to contents of operating agreement).

§ 8812. Definitions.

(a) General definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Certificate of organization." The certificate required by section 8821 (relating to formation of limited liability company and certificate of organization). The term includes the certificate as amended or restated.

"Contribution." Property or a benefit described under section 8842 (relating to form of contribution) which is provided by a person to a limited liability company to become a member or in the capacity of a person as a member.

"Distribution." A direct or indirect transfer of money or other property or incurrance of indebtedness by a limited liability company to a person on account of a transferable interest or in the person's capacity as a member. The term:

(1) includes:

(i) a redemption or other purchase by a limited liability company of a transferable interest; and

(ii) a transfer to a member in return for the member's relinquishment of any right to participate as a member in the management or conduct of the company's activities and affairs or to have access to records or other information concerning the company's activities and affairs; and

(2) does not include:

(i) amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program;

(ii) the making of, or payment or performance on, a guaranty or similar arrangement by a company for the benefit of any or all of its members;

(iii) a direct or indirect allocation or transfer effected under Chapter 3 (relating to entity transactions) with the approval of the members; or

(iv) a direct or indirect transfer of:

(A) a governance or transferable interest; or

(B) options, rights or warrants to acquire a governance or transferable interest.

"Limited liability company." An association formed under this chapter or which becomes subject to this chapter under Chapter 3 or section 8811 (relating to short title and application of chapter).

"Manager." A person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated under section 8847(c) (relating to management of limited liability company).

"Manager-managed limited liability company." A limited liability company that qualifies as such under section 8847(a).

"Member." A person that:

(1) has become a member of a limited liability company under section 8841 (relating to becoming a member) or was a member in a company when the company became subject to this chapter under section 8811(b); and

(2) has not dissociated as a member under section 8861 (relating to events causing dissociation).

"Member-managed limited liability company." A limited liability company that is not a manager-managed limited liability company.

"Operating agreement." The agreement, whether or not referred to as an operating agreement and whether oral, implied, in record form or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning matters described in section 8815(a) (relating to contents of operating agreement). The term includes the agreement as amended or restated.

"Organizer." A person that acts under section 8821 to form a limited liability company.

"Professional company." A limited liability company that renders one or more professional services.

"Transferable interest." The right, as initially owned by a person in the person's capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

"Transferee." A person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under section 8863(a)(3) (relating to effects of dissociation).

(b) Index of other definitions.--Following is a nonexclusive list of definitions in section 102 (relating to definitions) that apply to this chapter:

"Act" or "action."

"Debtor in bankruptcy."

"Department."

"Jurisdiction of formation."

"Principal office."

"Professional services."

"Property."

"Record form."

"Sign."

"Transfer."

§ 8813. Knowledge and notice.

(a) Knowledge.--A person knows a fact if the person:

(1) has actual knowledge of it; or

(2) is deemed to know it under subsection (d) or law other than this chapter.

(b) Notice.--A person has notice of a fact if the person has reason to know the fact from all the facts known to the person at the time in question.

(c) Constructive notice.--A person not a member or manager is deemed to have notice of:

(1) the dissolution of a limited liability company 90 days after a certificate of dissolution under section 8872(b)(2)(i) (relating to winding up and filing of certificates) is effective;

(2) the termination of a company 90 days after a certificate of termination under section 8872(f) is effective; and

(3) the participation of a company in a merger, interest exchange, conversion, division or domestication, 90 days after a statement of merger, interest exchange, conversion, division or domestication under Chapter 3 (relating to entity transactions) becomes effective.

(d) Notification.--Except as provided under section 113(b) (relating to delivery of document), a person notifies another

person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(e) Transfer of real property.--A person not a member or manager is deemed to know of a limitation on authority to transfer real property as provided under section 8832(g) (relating to certificate of authority).

(f) Effect of manager's knowledge or notice.--If the certificate of organization of a limited liability company provides that it is manager-managed, a manager's knowledge or notice of a fact relating to the company is effective immediately as knowledge of or notice to the company, except in the case of a fraud on the company committed by or with the consent of the manager.

§ 8814. Governing law.

(a) General rule.--The law of this Commonwealth governs:

(1) the internal affairs of a limited liability company; and

(2) the liability of a member as member and of a manager as manager for the debts, obligations or other liabilities of a limited liability company.

(b) Cross reference.--See section 8815(c)(6) (relating to contents of operating agreement).

§ 8815. Contents of operating agreement.

(a) Scope of operating agreement.--Except as provided under subsections (c) and (d), the operating agreement governs:

(1) relations among the members as members and between the members and the limited liability company;

(2) the rights and duties under this title of a person in the capacity of a member or manager;

(3) the activities and affairs of the company and the conduct of those activities and affairs;

(4) the means and conditions for amending the operating agreement; and

(5) the means and conditions for approving a transaction under Chapter 3 (relating to entity transactions).

(b) Title applies generally.--To the extent the operating agreement does not provide for a matter described in subsection (a), this title governs the matter.

(c) Limitations.--An operating agreement may not do any of the following:

(1) Vary a provision of Chapter 1 (relating to general provisions) or Subchapter A of Chapter 2 (relating to names).

(2) Vary the right of a member to approve a merger, interest exchange, conversion, division or domestication under section 333(a)(2) (relating to approval of merger), 343(a)(2) (relating to approval of interest exchange), 353(a)(3) (relating to approval of conversion), 363(a)(2) (relating to approval of division) or 373(a)(2) (relating to approval of domestication).

(3) Vary the required contents of a plan of merger under section 332(a) (relating to plan of merger), plan of interest exchange under section 342(a) (relating to plan of interest exchange), plan of conversion under section 352(a) (relating to plan of conversion), plan of division under section 362(a) (relating to plan of division) or plan of domestication under section 372(a) (relating to plan of domestication).

(4) Vary a provision of Chapter 81 (relating to general provisions).

(5) Vary the provisions of section 8811(b), (c) and (d) (relating to short title and application of chapter).

(6) Vary the law applicable under section 8814 (relating to governing law).

(7) Vary a provision of section 8818(d) (relating to characteristics of limited liability company).

(8) Vary a provision of section 8819 (relating to powers).

(9) Vary any requirement, procedure or other provision of this title pertaining to:

(i) registered offices; or

(ii) the department, including provisions pertaining to documents authorized or required to be delivered to the department for filing under this title.

(10) Provide indemnification or exoneration in violation of the limitations in sections 8848(g) (relating to reimbursement, indemnification, advancement and insurance), 8849.1(j) (relating to standards of conduct for members) and 8849.2(h) (relating to standards of conduct for managers).

(11) Eliminate the duty of loyalty provided for in section 8849.1(b)(1)(i) or (ii) or (2) or the duty of care of a member in a member-managed company, except as provided in subsection (d).

(12) Eliminate the duty of loyalty provided for in section 8849.2(b)(1)(i) or (ii) or (2) or the duty of care of a manager, except as provided in subsection (d).

(13) Vary the contractual obligation of good faith and fair dealing under section 8849.1(d) or 8849.2(d), except as provided in subsection (d).

(14) Restrict the duties and rights under section 8850 (relating to rights to information), except as provided in subsection (d).

(15) Vary the causes of dissolution specified in section 8871(a)(4) (relating to events causing dissolution).

(16) Vary the requirements to wind up the company's activities and affairs specified in section 8872(a), (b)(1), (e) and (f) (relating to winding up and filing of certificates).

(17) Unreasonably restrict the right of a member to maintain an action under Subchapter H (relating to actions by members).

(18) Vary the provisions of section 8884 (relating to special litigation committee), except that the operating agreement may provide that the company may not have a special litigation committee.

(19) Vary a provision of Subchapter I (relating to benefit companies).

(20) Except as provided in section 8817(b) (relating to amendment and effect of operating agreement), restrict the rights under this title of a person other than a member or manager.

(d) Permitted terms.--Subject to subsection (c)(10), the following rules apply:

(1) The operating agreement may:

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

(ii) alter the prohibition stated in section 8845(a)(2) (relating to limitations on distributions) so that the prohibition requires only that the company's total assets not be less than the sum of its total liabilities; and

(iii) impose reasonable restrictions on the availability and use of information obtained under section 8850 and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this title and imposes the responsibility on one or more other members, the operating agreement also may eliminate or limit any fiduciary duty of the member relieved of the responsibility that would have pertained to the responsibility.

(3) If not manifestly unreasonable, the operating agreement may:

(i) alter the aspects of the duty of loyalty stated under section 8849.1(b)(1)(i) or (ii) or (2) or 8849.2(b)(1)(i) or (ii) or (2);

(ii) prescribe the standards, if not manifestly unreasonable, by which the performance of the contractual obligation of good faith and fair dealing under section 8849.1(d) or 8849.2(d) is to be measured;

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

(iv) alter the duty of care; and

(v) alter or eliminate any other fiduciary duty.

(e) Determination of manifest unreasonableness.--The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under subsection (d)(3). The court:

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

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

(i) the objective of the term is unreasonable; or

(ii) the term is an unreasonable means to achieve the term's objective.

§ 8816. Application of operating agreement.

(a) Company bound.--A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the agreement.

(b) Deemed assent.--A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Preformation agreement.--Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

§ 8817. Amendment and effect of operating agreement.

(a) Approval of amendments.--An operating agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition. See section 8847(b)(6) and (c)(3)(iii) (relating to management of limited liability company).

(b) Obligations to nonmembers.--The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Except as provided in section 8844(d) (relating to sharing of and right to distributions before dissolution) or in a court order issued under section 8853(b)(2) (relating to charging order) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(1) is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

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

(c) Provisions in filed documents.--If a document delivered by a limited liability company to the department for filing contains a provision that would be ineffective under section 8815(c) or (d)(3) (relating to contents of operating agreement) if contained in the operating agreement, the provision is ineffective in the document.

(d) Conflicts with operating agreement.--Subject to subsection (c):

(1) If a provision of the certificate of organization conflicts with a provision of the operating agreement, the provision of the certificate prevails.

(2) If a document other than its certificate of organization has been delivered by the company to the department for filing and conflicts with a provision of the operating agreement:

(i) the operating agreement prevails as to members, dissociated members, transferees and managers; and

(ii) the document prevails as to other persons to the extent they reasonably rely on the document.

(e) Prohibition of oral amendments.--If a provision of an operating agreement in record form provides that the operating agreement cannot be amended, modified or rescinded except in record form, an oral agreement, amendment, modification or rescission shall not be enforceable.

§ 8818. Characteristics of limited liability company.

(a) Separate entity.--A limited liability company is an entity distinct from its member or members.

(b) Purpose.--A limited liability company may have any lawful purpose other than acting as an insurer, regardless of whether the purpose is for profit. Nothing under this section shall prohibit the organization of an insurance agency licensed in this Commonwealth as a limited liability company. See section 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization).

(c) Duration.--A limited liability company has perpetual duration.

(d) Restrictions on nonprofit companies.--If a limited liability company has a purpose that is not for profit:

(1) Its purpose must be stated in the certificate of organization.

(2) The company shall not distribute any part of its income or profits to its members, managers or officers, except that it may pay compensation in a reasonable amount to those persons for services rendered.

(3) The company may confer benefits on members or nonmembers in conformity with its purposes, may repay capital contributions and may redeem evidences of indebtedness, except when the company is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes, or when the fair value of the assets of the company remaining after the conferring of benefits, payment or redemption would be insufficient to meet its liabilities. The company may make distributions of money or property to members upon dissolution or final liquidation as permitted by this chapter.

(4) If the company is organized for a charitable purpose, it may take, receive and hold real and personal property as may be given, devised to or otherwise vested in the company, in trust, for the purpose or purposes set forth in its certificate of organization. The members, if it is member managed, or the managers, if it is manager managed, shall, as trustees of the property, be held to the same degree of responsibility and accountability as other trustees, unless:

(i) a lesser degree or a particular degree of responsibility and accountability is prescribed in the trust instrument;

(ii) if the company is member managed, the members remain under the control of third persons who retain the right to direct, and do direct, the actions of the members as to the use of the trust property from time to time; or

(iii) if the company is manager managed, the managers remain under the control of the members or third persons who retain the right to direct, and do direct, the actions of the managers as to the use of the trust property from time to time.

(5) Property of the company committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the company obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

(e) Cross reference.--See section 8815(c)(7) (relating to contents of operating agreement).

§ 8819. Powers.

(a) General rule.--A limited liability company has the power to do all things necessary or convenient to carry on its activities and affairs.

(b) Capacity to sue and be sued.--A limited liability company has the capacity to sue and be sued in its own name.

(c) Certain specifically authorized debt terms.--A limited liability company shall be subject to section 1510 (relating to certain specifically authorized debt terms) to the same extent as if it were a business corporation.

(d) Cross references.--See sections 8102 (relating to interchangeability of partnership, limited liability company and corporate forms of organization) and 8815(c)(8) (relating to contents of operating agreement).

#### SUBCHAPTER B FORMATION AND FILINGS

Sec.

8821. Formation of limited liability company and certificate of organization.

8822. Amendment or restatement of certificate of organization.



8823. Signing of filed documents.

8824. Liability of member, manager or other person for false or missing information in filed document.

8825. Registered office.

§ 8821. Formation of limited liability company and certificate of organization.

(a) Formation.--One or more persons may act as organizers to form a limited liability company by delivering to the department for filing a certificate of organization.

(b) Required contents of certificate.--A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Subchapter A of Chapter 2 (relating to names); and

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the company's registered office.

(c) Optional contents of certificate.--A certificate of organization may contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified under section 8815(c) and (d) (relating to contents of operating agreement) in a manner inconsistent with that section.

(d) Substitute certificate of authority.--A statement in a certificate of organization with respect to a matter described in section 8832(a)(2) or (3) (relating to certificate of authority) is effective as a certificate of authority and the statement is subject to the provisions of section 8832 in the same manner as a certificate of authority.

(e) Effect of certificate of organization.--A provision of the certificate of organization shall be deemed to be a provision of the operating agreement for purposes of any provision of this title that refers to a rule as set forth in the operating agreement.

(f) Time of formation.--A limited liability company is formed when its certificate of organization becomes effective.

(g) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8818(d)(1) (relating to characteristics of limited liability company).

Section 8823 (relating to signing of filed documents).

§ 8822. Amendment or restatement of certificate of organization.

(a) General rule.--A certificate of organization may be amended or restated at any time.

(b) Required contents of certificate of amendment.--To amend its certificate of organization, a limited liability company must deliver to the department for filing a certificate of amendment that states:

(1) the name of the company;

(2) the date of filing of its initial certificate of organization;

(3) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office; and

(4) the amendment.

(c) Restatement.--To restate its certificate of organization, a limited liability company must deliver to the department for filing a certificate of amendment that:

- (1) is designated as a restatement; and
- (2) includes a statement that the restated certificate supersedes the original certificate and all previous amendments.

(d) Obligation to correct.--If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization is inaccurate, the member or manager shall promptly:

- (1) cause the certificate to be amended; or
- (2) if appropriate, deliver to the department for filing a statement of correction under section 138 (relating to statement of correction) or a statement of abandonment under section 141 (relating to abandonment of filing before effectiveness).

(e) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8823 (relating to signing of filed documents).

§ 8823. Signing of filed documents.

(a) Required signatures.--Except as provided in this title, a document delivered to the department for filing under this title relating to a limited liability company must be signed as follows:

(1) Except as provided in paragraphs (2) and (3), a document signed on behalf of a limited liability company must be signed by a person authorized by the company.

(2) A company's initial certificate of organization must be signed by each organizer.

(3) A document delivered on behalf of a dissolved company that has no member must be signed by the person winding up the company's activities and affairs under section 8872(c) (relating to winding up and filing of certificates) or a person appointed under section 8872(d) to wind up the activities and affairs.

(4) A certificate of denial by a person under section 8833 (relating to certificate of denial) must be signed by that person.

(5) Any other document delivered on behalf of a person to the department for filing must be signed by that person.

(b) Cross reference.--See section 142 (relating to effect of signing filings).

§ 8824. Liability of member, manager or other person for false or missing information in filed document.

(a) General rule.--If a document delivered to the department for filing under this title and filed by the department contains a materially false statement or fails to state a material fact required to be stated, a person that suffers loss by reasonable reliance on the statement or failure to state a material fact may recover damages for the loss from:

- (1) a person that signed the document or caused another to sign it on the person's behalf and knew there was false or missing information in the document at the time it was signed; and

(2) subject to subsection (b), a member of a member-managed limited liability company or a manager of a manager-managed limited liability company if:

(i) the document was delivered for filing on behalf of the company; and

(ii) the member or manager knew or had notice there was false or missing information for a reasonably sufficient time before the document was relied upon so that, before the reliance, the member or manager reasonably could have:

(A) effected an amendment under section 8822 (relating to amendment or restatement of certificate of organization);

(B) filed a petition under section 144 (relating to signing and filing pursuant to judicial order); or

(C) delivered to the department for filing a statement of correction under section 138 (relating to statement of correction) or a statement of withdrawal under section 141 (relating to abandonment of filing before effectiveness).

(b) Substitute responsibility.--To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in documents delivered on behalf of the company to the department for filing under this chapter and imposes that responsibility on one or more other members, the liability stated under subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.  
§ 8825. Registered office.

(a) General rule.--Every limited liability company shall have and continuously maintain in this Commonwealth a registered office which may, but need not, be the same as its place of business.

(b) Change of registered office.--After organization, a change in the location of the registered office may be effected at any time by the company. Before the change becomes effective, the company shall amend its certificate of organization under the provisions of this chapter to reflect the change in location or shall file with the department a certificate of change of registered office setting forth:

(1) The name of the company.

(2) The address, including street and number, if any, of its then-registered office.

(3) The address, including street and number, if any, to which the registered office is to be changed.

(c) Alternative procedure.--A limited liability company may satisfy the requirements of this chapter concerning the maintenance of a registered office in this Commonwealth by setting forth in any document filed in the department under any provision of this chapter that permits or requires the statement of the address of its then-registered office, in lieu of that address, the statement authorized under section 109(a) (relating to name of commercial registered office provider in lieu of registered address).

(d) Cross references.--See:

Section 108 (relating to change in location or status of registered office provided by agent).

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8815(c)(7) (relating to contents of operating agreement).

Section 8823 (relating to signing of filed documents).

#### SUBCHAPTER C

#### RELATIONS OF MEMBERS AND MANAGERS

#### TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

Sec.

8831. Status of member or manager as agent.

8832. Certificate of authority.

8833. Certificate of denial.

8834. Liability of members and managers.

8835. Taxation of limited liability companies.

§ 8831. Status of member or manager as agent.

(a) No agency power of member as member.--A member is not an agent of a limited liability company solely by reason of being a member.

(b) Agency power of manager.--If the certificate of organization states that the company is manager managed, the act of a manager for apparently carrying on in the usual way the business of the company binds the company unless the manager so acting has in fact no authority to act for the company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager does not have that authority.

(c) Liability of company under other law.--A person's status as a member or manager does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

§ 8832. Certificate of authority.

(a) General rule.--A limited liability company may deliver to the department for filing a certificate of authority signed by the company. The certificate:

(1) must include the name of the company and, subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of its registered office;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) transfer real property held in the name of the company, including signing an instrument of transfer;  
or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(i) transfer real property held in the name of the company, including signing an instrument of transfer;  
or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) Amendment or cancellation.--To amend or cancel a certificate of authority filed by the department, a limited liability company must deliver to the department for filing an amendment or cancellation that states:

(1) the name of the company;

(2) subject to section 109, the address, including street and number, if any, of the company's registered office;

(3) the date the certificate being affected became effective; and

(4) the contents of the amendment or a statement that the certificate is canceled.

(c) Effect.--A certificate of authority:

(1) supersedes any inconsistent provision of the certificate of organization in effect at the time the certificate of authority becomes effective;

(2) affects only the power of a person to bind a limited liability company with respect to persons that are not members; and

(3) is not binding on the department for purposes of the administration of this title or any other provision of law.

(d) Certificate not evidence of knowledge or notice.--Except as provided in subsections (e), (f), (g) and (h), a limitation on the authority of a person or a position contained in an effective certificate of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Authority not pertaining to real property.--A grant of authority not pertaining to transfers of real property and contained in an effective certificate of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the certificate has been canceled or restrictively amended under subsection (b); or

(3) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective.

(f) Authority to transfer real property.--An effective certificate of authority or certificate of organization that grants authority to transfer real property held in the name of a limited liability company, a certified copy of which certificate is recorded in the office of the recorder of deeds for the county in which the property is located, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the certificate has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office of the recorder of deeds; or

(2) a limitation on the grant is contained in another certificate of authority that became effective after the certificate containing the grant became effective, and a certified copy of the later-effective certificate is recorded in the office of the recorder of deeds.

(g) Effect of recorded certificate.--If a certified copy of an effective certificate containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office of the recorder of deeds for the county in which the real property is located, all persons are deemed to know of the limitation.

(h) Effect of dissolution or termination of company.--An effective certificate of dissolution does not cancel a filed certificate of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection

(g). An effective certificate of termination cancels a filed certificate of authority.

(i) Automatic cancellation.--Unless earlier canceled, an effective certificate of authority that names an individual as having authority is canceled by operation of law five years after the date on which the certificate, or its most recent amendment, becomes effective. The cancellation operates without need for any recording under subsection (f) or (g).

(j) Effect of certificate of denial.--An effective certificate of denial:

(1) operates as a restrictive amendment under this section, and a certified copy may be recorded as provided in subsection (f)(1) by the limited liability company or the person that delivered the certificate of denial to the department for filing;

(2) affects only the authority of a person to bind the company with respect to persons that are not members; and

(3) supersedes any inconsistent provision of the certificate of organization in effect at the time the certificate of denial becomes effective.

(k) Foreign companies.--A foreign limited liability company may deliver a certificate of authority to the department for filing and may record a copy as provided in this section in the same manner and with the same effect as if it were a domestic company and regardless of whether the foreign company is registered to do business in this Commonwealth under Chapter 4 (relating to foreign associations).

(l) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8823 (relating to signing of filed documents).

§ 8833. Certificate of denial.

(a) General rule.--A person named in a filed certificate of authority granting that person authority may deliver to the department for filing a certificate of denial that:

(1) states:

(i) the name of the limited liability company;

(ii) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the company; and

(iii) the date the certificate of authority to which the certificate of denial pertains was filed; and

(2) denies the grant of authority.

(b) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8823 (relating to signing of filed documents).

Section 8832(j) (relating to certificate of authority).

§ 8834. Liability of members and managers.

(a) General rule.--A debt, obligation or other liability of a limited liability company is solely the debt, obligation or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other

liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of:

(1) whether the company has a single member or multiple members; and

(2) the dissolution, winding up or termination of the company.

(b) Professional relationship unaffected.--Subsection (a) shall not afford members of a professional company with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

(c) Disciplinary jurisdiction unaffected.--A professional company shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the company is engaged. The court, department, board or other government unit may require that a company include in its certificate of organization or operating agreement provisions that conform to any rule or regulation promulgated before, on or after the effective date of this section for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

(d) Rendering professional services.--

(1) Except as provided by a statute, rule or regulation applicable to a particular profession, a professional company may lawfully render professional services only through licensed persons. The company may employ persons not so licensed except that those persons shall not render any professional services rendered or to be rendered by it.

(2) Paragraph (1) shall not be interpreted to preclude the use of clerks, secretaries, nurses, administrators, bookkeepers, technicians and other assistants or paraprofessionals who are not usually and ordinarily considered by law, custom and practice to be rendering the professional service or services for which the professional company was organized nor to preclude the use of any other person who performs all of the person's employment under the direct supervision and control of a licensed person. A person shall not under the guise of employment render professional services unless duly licensed or admitted to practice as required by law.

(3) Notwithstanding any other provision of law, a professional company may charge for the professional services rendered by it, may collect those charges and may compensate those who render the professional services.

(e) Medical professional liability.--A professional company shall be deemed to be a partnership for purposes of section 744 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act .

(f) Cross reference.--See section 8105 (relating to ownership of certain professional partnerships and limited liability companies).

§ 8835. Taxation of limited liability companies.

(a) General rule.--For the purposes of the imposition by the Commonwealth of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or

occupation, other than the corporate net income tax, capital stock and foreign franchise tax and personal income tax, a domestic or foreign limited liability company shall be deemed to be a corporation organized and existing under Part II (relating to corporations), and a member of the company, as such, shall be deemed to be a shareholder of a corporation.

(b) Financial institutions.--For purposes of the bank shares tax and the mutual thrift institutions tax, a bank, bank and trust company, trust company, savings bank, building and loan association, savings and loan association or savings institution that is a domestic or foreign limited liability company shall be considered an "institution" as defined by Article VII or Article XV of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

(c) Political subdivisions.--Nothing in this section shall impair or preempt the ability of a political subdivision to levy, assess or collect any applicable taxes or license fees authorized under the act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, on any limited liability company.

SUBCHAPTER D  
RELATIONS OF MEMBERS TO EACH OTHER  
AND TO LIMITED LIABILITY COMPANY

Sec.

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§ 8841. Becoming a member.

(a) Single initial member.--If a limited liability company is initially to have only one member, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If the initial member and the organizer are different persons, the organizer acts on behalf of the initial member.

(b) Multiple initial members.--If a limited liability company is initially to have more than one member, those persons become members as agreed by those persons and the organizer before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) Powers and authority of organizer.--Until a limited liability company has its first member, the organizer is deemed to be a manager of the company.

(d) Admission after formation.--After formation of a limited liability company, a person becomes a member:

- (1) by action of the organizer if the company does not have any members;
- (2) as provided in the operating agreement;
- (3) as the result of a transaction effective under Chapter 3 (relating to entity transactions);



(4) with the affirmative vote or consent of all the members; or

(5) as provided in section 8871(a)(3) (relating to events causing dissolution).

(e) Noneconomic members.--A person may become a member without:

(1) acquiring a transferable interest; or

(2) making or being obligated to make a contribution to the limited liability company.

(f) Nature of interest.--The interest of a member in a limited liability company is personal property.

§ 8842. Form of contribution.

A contribution may consist of:

(1) property transferred to, services performed for or another benefit provided to the limited liability company;

(2) an agreement to transfer property to, perform services for or provide another benefit to the company; or

(3) any combination of items listed in paragraphs (1) and (2).

§ 8843. Liability for contributions.

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

(b) Substitute payment.--If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value, as stated in the records of the company, of the part of the contribution which has not been made.

(c) Compromise of obligation.--The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described under subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

§ 8844. Sharing of and right to distributions before dissolution.

(a) General rule.--Any distribution made by a limited liability company before its dissolution and winding up shall be in equal shares among members and persons dissociated as members, except as provided in section 8852(b) (relating to transfer of transferable interest) or to the extent necessary to comply with a charging order in effect under section 8853 (relating to charging order).

(b) No entitlement to distribution.--Except as provided under subsection (e), a person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution.

(c) Distribution in kind.--A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as provided in section 8877(d) (relating to disposition of assets in winding up), a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) Status as creditor.--If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available

to, a creditor of the limited liability company with respect to the distribution, except that the company's obligation to make a distribution is subject to offset for any amount owed to the company by the member or transferee on whose account the distribution is made.

(e) Distribution upon event of dissociation.--Upon the effectiveness of a transaction under Chapter 3 (relating to entity transactions) or an amendment of the certificate of organization or operating agreement that results in either case in an event of dissociation but does not result in the dissolution of the limited liability company, the dissociating member may elect in record form to receive in lieu of the property that the person would be entitled to receive pursuant to the terms of the transaction or amendment:

(1) any distribution to which the member is entitled under the operating agreement on the terms provided in the operating agreement; and

(2) within a reasonable time after dissociation, the fair value of the interest of the member in the company as of the date of dissociation based upon the right of the member to share in distributions from the company.

§ 8845. Limitations on distributions.

(a) General rule.--A limited liability company may not make a distribution, including a distribution under section 8877 (relating to disposition of assets in winding up), if after the distribution:

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

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) Valuation.--A limited liability company may base a determination that a distribution is not prohibited under subsection (a) (2) on:

(1) the book values of the assets and liabilities of the company, as reflected on its books and records;

(2) a valuation that takes into consideration unrealized appreciation and depreciation or other changes in value of the assets and liabilities of the company;

(3) the current value of the assets and liabilities of the company, either valued separately or valued in segments or as an entirety as a going concern; or

(4) any other method that is reasonable in the circumstances.

(c) Excluded liabilities.--In determining whether a distribution is prohibited under subsection (a) (2), the company need not consider obligations and liabilities unless they are required to be reflected on a balance sheet, not including the notes to the balance sheet, prepared on the basis of generally accepted accounting principles, or such other accounting practices and principles as are used generally by the company in the maintenance of its books and records and as are reasonable in the circumstances.

(d) Measuring date of distribution.--Except as provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) as of the date specified by the company when it authorizes the distribution if the distribution occurs within 125 days of the earlier of the date so specified or the date of authorization; or

(2) as of the date of distribution in all other cases.

(e) Date of redemption.--In the case of a distribution described under paragraph (1) of the definition of "distribution" in section 8812 (relating to definitions), the distribution is deemed to occur as of the earlier of the date money or other property is transferred or debt is incurred by the company or the date the person entitled to the distribution ceases to own the interest or right being acquired by the company in return for the distribution.

(f) Status of distribution debt.--The indebtedness of a limited liability company to a member or transferee incurred by reason of a distribution made in accordance with this section shall be at least on a parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(g) Certain subordinated debt.--The indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(h) Distributions in winding up.--In measuring the effect of a distribution under section 8877, the liabilities of a dissolved limited liability company do not include any claim that has been barred under section 8874 (relating to known claims against dissolved limited liability company) or 8875 (relating to other claims against dissolved limited liability company), or for which security has been provided under section 8876 (relating to court proceedings).

(i) Cross references.--See:

Section 8815(d)(1)(ii) (relating to contents of operating agreement).

Section 8849.1 (relating to standards of conduct for members).

Section 8849.2 (relating to standards of conduct for managers).

§ 8846. Liability for improper distributions.

(a) General rule.--Except as provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 8845 (relating to limitations on distributions) and in consenting to the distribution fails to comply with section 8849.1 (relating to standards of conduct for members) or 8849.2 (relating to standards of conduct for managers), the member or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of section 8845.

(b) Members without authority.--To the extent the operating agreement of a member-managed limited liability company relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) Recipients.--A person that receives a distribution knowing that the distribution violated section 8845 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 8845.

(d) Contribution.--A person against which an action is commenced because the person is liable under subsection (a) may:

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

(2) join any person that is liable under subsection (c) or otherwise seek to enforce a right of contribution from the person in the amount the person is liable for under subsection (c).

(e) Statute of repose.--An action under this section is barred unless commenced within two years after the distribution. § 8847. Management of limited liability company.

(a) Determination of management of company.--A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(i) the company is or will be manager managed;

(ii) the company is or will be managed by managers;

or

(iii) management of the company is or will be vested in managers; or

(2) includes words of similar import.

(b) Member-managed company.--In a member-managed limited liability company, the following rules apply:

(1) Except as expressly provided in this title, the management and conduct of the company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities and affairs.

(3) A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

(4) Except as provided under section 325 (relating to approval by limited liability company) with respect to a transaction under Chapter 3 (relating to entity transactions), an act outside the ordinary course of the activities and affairs of the company may be undertaken only with the affirmative vote or consent of all members.

(5) Except as provided under section 8822(d) (relating to amendment or restatement of certificate of organization), the certificate of organization may be amended only with the affirmative vote or consent of all members.

(6) The operating agreement may be amended only with the affirmative vote or consent of all members.

(c) Manager-managed company.--In a manager-managed limited liability company, the following rules apply:

(1) Except as expressly provided in this title, any matter relating to the activities and affairs of the company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

(2) Each manager has equal rights in the management and conduct of the company's activities and affairs.

(3) The affirmative vote or consent of all members is required:

(i) except as provided under section 325 with respect to a transaction under Chapter 3, to undertake any act outside the ordinary course of the company's activities and affairs;

(ii) except as provided under section 8822(d), to amend the certificate of organization; or

(iii) to amend the operating agreement.

(4) A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

(5) A person need not be a member to be a manager, except that the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(6) A person's ceasing to be a manager does not discharge any debt, obligation or other liability to the limited liability company or members which the person incurred while a manager.

(d) Action by consent or proxy.--An action requiring the vote or consent of members under this title may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent or otherwise act for the member by signing an appointing document in record form, personally or by the member's agent.

(e) Effect of dissolution.--The dissolution of a limited liability company does not affect the applicability of this section, except that a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) Reimbursement of advances.--A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

(g) Interest on advance.--A payment or advance made by a member which gives rise to an obligation of the limited liability company under subsection (f) or section 8848(a) (relating to reimbursement, indemnification, advancement and insurance) constitutes a loan to the company which accrues interest from the date of the payment or advance.

(h) No remuneration for services.--A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

(i) Increased vote requirements.--Whenever the certificate of organization or operating agreement requires for the taking of any action by the members or a class of members a specific number or percentage of votes or consents, the provision of the certificate or agreement setting forth that requirement shall not be amended or repealed by any lesser number or percentage of votes or consents of the members or the class of members. This subsection does not apply to a provision setting forth the right of members to act by unanimous consent in lieu of a meeting.

(j) Exception.--None of the following shall be considered an amendment of the certificate of organization for purposes of the voting rules in subsections (b)(6) and (c)(3)(iii):

- (1) a restatement of all the operative provisions of the certificate of organization without change;
- (2) a change in the name or registered office of the limited liability company; or
- (3) any combination of the foregoing purposes.

(k) Approval of minor amendments.--Unless otherwise provided in record form in the operating agreement, an amendment described in subsection (j) may be made by the affirmative vote or consent of a majority of the managers or, in the case of a member-managed limited liability company, of a majority of the members.

§ 8848. Reimbursement, indemnification, advancement and insurance.

(a) Reimbursement.--A limited liability company shall reimburse a member of a member-managed company or manager of a manager-managed company for any payment made by the member or in the course of the member's or manager's activities on behalf of the company, if the member or manager complied with the applicable provisions of sections 8847 (relating to management of limited liability company), 8849.1 (relating to standards of conduct for members) and 8849.2 (relating to standards of conduct for managers) in making the payment.

(b) Indemnification.--A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation or other liability does not arise from the person's breach of section 8845 (relating to limitations on distributions), 8847, 8849.1 or 8849.2.

(c) Advancement.--In the ordinary course of its activities and affairs, a limited liability company may advance expenses, including attorney fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified.

(d) Insurance.--A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under subsection (g), the operating agreement could not provide indemnification against the liability or eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

(e) Nonexclusivity.--The rights provided by subsections (a), (b), (c) and (d) shall not be deemed exclusive of any other rights to which a person seeking reimbursement, indemnification, advancement of expenses or insurance may be entitled under the operating agreement, vote of members or disinterested managers, contract or otherwise, both as to action in his official capacity and as to action in another capacity while holding that position. Sections 8849.1(f) and 8849.2(e) shall be applicable to a vote, contract or other action under this subsection. A limited liability company may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its

indemnification obligations, whether arising under this section or otherwise.

(f) Grounds.--Indemnification under subsection (e) may be granted for any action taken and may be made whether or not the limited liability company would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the company. Indemnification under subsection (e) is declared to be consistent with the public policy of the Commonwealth.

(g) Limitation.--Indemnification under this section shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court to constitute recklessness, willful misconduct or a knowing violation of law. § 8849. (Reserved).

§ 8849.1. Standards of conduct for members.

(a) General rule.--A member of a member-managed limited liability company owes to the company and, subject to section 8881(b) (relating to direct action by member), the other members the duties of loyalty and care stated under subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit or benefit derived by the member:

(i) in the conduct or winding up of the company's activities and affairs;

(ii) from a use by the member of the company's property; or

(iii) from the appropriation of a company opportunity;

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

(3) to refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

(c) Duty of care.--The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in gross negligence, recklessness, willful misconduct or knowing violation of law.

(d) Good faith and fair dealing.--A member shall discharge the duties and obligations under this title or under the operating agreement and exercise any rights consistent with the contractual obligation of good faith and fair dealing.

(e) Self-serving conduct.--A member does not violate a duty or obligation under this title or under the operating agreement solely because the member's conduct furthers the member's own interest.

(f) Authorization or ratification.--All the members of a member-managed limited liability company may authorize or ratify, after disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty of a member.

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

liability company at the time it is authorized or ratified under subsection (f).

(h) Rights and obligations in approved transaction.--If a member enters into a transaction with the limited liability company which otherwise would be prohibited under subsection (b)(2), and the transaction is authorized or ratified as provided under subsection (f) or the operating agreement, the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(i) Duties of members in manager-managed company.--Subject to subsection (d), a member does not have any duty to a manager-managed limited liability company or to any other member of the company solely by reason of being or acting as a member.

(j) Exoneration.--The operating agreement may provide that a member in a member-managed limited liability company shall not be personally liable for monetary damages to the company or the other members for a breach of subsection (c), except that a member may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(k) Cross reference.--See section 8815 (relating to contents of operating agreement).

§ 8849.2. Standards of conduct for managers.

(a) General rule.--A manager of a manager-managed limited liability company owes to the company and, subject to section 8881(b) (relating to direct action by member), the members the duties of loyalty and care stated under subsections (b) and (c).

(b) Duty of loyalty.--The fiduciary duty of loyalty of a manager in a manager-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit or benefit derived by the manager:

(i) in the conduct or winding up of the company's activities and affairs;

(ii) from a use by the manager of the company's property; or

(iii) from the appropriation of a company opportunity;

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

(3) to refrain from competing with the company in the conduct of the company's activities and affairs until completion of the winding up of the company.

(c) Duty of care.--The duty of care of a manager of a manager-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in gross negligence, recklessness, willful misconduct or knowing violation of law.

(d) Good faith and fair dealing.--A manager of a manager-managed limited liability company shall discharge the duties and obligations under this title or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) Ratification of breach of duty of loyalty.--All the members, or a majority of disinterested managers, of a manager-managed limited liability company may authorize or ratify, after disclosure of all material facts, a specific act or transaction by a manager that otherwise would violate the duty of loyalty.



(f) Fairness as a defense.--It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(g) Manager's rights in approved transaction.--If a manager enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (b)(2), and the transaction is approved or ratified as provided by subsection (e) or the operating agreement, the manager's rights and obligations arising from the transaction are the same as those of a person that is not a manager.

(h) Exoneration.--The operating agreement may provide that a manager in a manager-managed limited liability company shall not be personally liable for monetary damages to the company or the members for a breach of subsection (c), except that a manager may not be exonerated for an act that constitutes recklessness, willful misconduct or a knowing violation of law.

(i) Cross reference.--See section 8815 (relating to contents of operating agreement).

§ 8850. Rights to information.

(a) In member-managed company.--In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, affairs, financial condition and other circumstances.

(2) The company shall furnish to each member, without demand, any information concerning the company's activities, affairs, financial condition and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this title, except to the extent the company can establish that it reasonably believes the member already knows the information.

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(b) In manager-managed company.--In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

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

(i) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(ii) the member makes a demand in record form received by the company describing with reasonable particularity the information sought and the purpose for seeking the information; and

(iii) the information sought is directly connected to the member's purpose.

(3) Within 10 days after receiving a demand under paragraph (2)(ii), the company shall, in record form, inform the member that made the demand of:

(i) the information that the company will provide in response to the demand and when and where the company will provide the information; and

(ii) the company's reasons for declining, if the company declines to provide any demanded information.

(c) Rights of person dissociated as member.--Subject to subsection (h), within 10 days after receipt by a limited liability company of a demand made in record form, a person dissociated as a member may have access to information to which the person was entitled while a member if:

(1) the information pertains to the period during which the person was a member;

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

(3) the person satisfies the requirements imposed on a member under subsection (b) (2).

(d) Response of company.--A limited liability company shall respond to a demand made under subsection (c) in the manner provided in subsection (b) (3).

(e) Copying costs.--A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying.

(f) Rights of agent or guardian.--A member or person dissociated as a member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a guardian. Any restriction or condition imposed by the operating agreement or under subsection (h) applies both to the agent or guardian and the member or person dissociated as a member.

(g) No rights of transferee.--Subject to section 8854 (relating to power of personal representative of deceased member), the rights under this section do not extend to a person as transferee.

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

(i) Cross reference.--See section 8815 (relating to contents of operating agreement).

#### SUBCHAPTER E TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

Sec.

8851. Nature of transferable interest.

8852. Transfer of transferable interest.

8853. Charging order.

8854. Power of personal representative of deceased member.

§ 8851. Nature of transferable interest.

(a) Personal property.--A transferable interest is personal property.

(b) Only right that may be transferred.--A person may not transfer to a person not a member any rights in a limited liability company other than a transferable interest.

§ 8852. Transfer of transferable interest.

(a) General rule.--Subject to section 8853(f) (relating to charging order), a transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause the dissociation of the transferor as a member or a dissolution and winding up of the limited liability company's activities and affairs; and

(3) subject to section 8854 (relating to power of personal representative of deceased member), does not entitle the transferee to:

(i) participate in the management or conduct of the company's activities and affairs; or

(ii) except as provided in subsection (c), have access to records or other information concerning the company's activities and affairs.

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

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

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

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

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

(g) Rights retained by transferor.--Except as provided in section 8861(5)(ii) (relating to events causing dissociation), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

§ 8853. Charging order.

(a) General rule.--On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as provided in subsection (f), a charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

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

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Foreclosure.--Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as provided in subsection (f), the purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a

member, and is subject to section 8852 (relating to transfer of transferable interest).

(d) Satisfaction of judgment.--At any time before foreclosure under subsection (c), the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) Purchase of rights.--At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) Foreclosure against sole member.--If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

- (1) the court shall confirm the sale;
- (2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;
- (3) the purchaser thereby becomes a member; and
- (4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(g) Exemption laws preserved.--This chapter shall not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

(h) Exclusive remedy.--This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

§ 8854. Power of personal representative of deceased member.

If a member dies, the deceased member's personal representative may exercise:

- (1) the rights of a transferee provided in section 8852(c) (relating to transfer of transferable interest); and
- (2) for the purposes of settling the estate, the rights the deceased member had under section 8850 (relating to rights to information).

#### SUBCHAPTER F DISSOCIATION

Sec.

8861. Events causing dissociation.

8862. Power to dissociate and wrongful dissociation.

8863. Effects of dissociation.

§ 8861. Events causing dissociation.

A person is dissociated as a member when any of the following occurs:

- (1) The limited liability company knows or has notice of the person's express will to withdraw as a member, except that if the person specified a withdrawal date later than the date the company knew or had notice, on that later date.
- (2) An event stated in the operating agreement as causing the person's dissociation occurs.
- (3) The person's entire interest is transferred in a foreclosure sale under section 8853(f) (relating to charging order).
- (4) The person is expelled as a member pursuant to the operating agreement.
- (5) The person is expelled as a member by the affirmative vote or consent of all the other members if:

- (i) it is unlawful to carry on the company's activities and affairs with the person as a member;
- (ii) there has been a transfer of all the person's transferable interest in the company, other than:
  - (A) a transfer for security purposes; or
  - (B) a charging order in effect under section 8853 which has not been foreclosed;
- (iii) the person is an entity and:
  - (A) the company notifies the person that it will be expelled as a member because:
    - (I) the person has filed a certificate of dissolution or the equivalent;
    - (II) the person has been administratively dissolved;
    - (III) the person's charter or its equivalent has been revoked; or
    - (IV) the person's right to conduct business has been suspended by the person's jurisdiction of formation; and
  - (B) within 90 days after the notification:
    - (I) the certificate of dissolution or the equivalent has not been withdrawn, rescinded or revoked;
    - (II) the person has not been reinstated;
    - (III) the person's charter or the equivalent has not been reinstated; or
    - (IV) the person's right to conduct business has not been reinstated; or
- (iv) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up.

(6) On application by the company or a member in a direct action under section 8881 (relating to direct action by member), the person is expelled as a member by judicial order because the person:

- (i) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the company's activities and affairs;
- (ii) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under section 8849.1 (relating to standards of conduct for members); or
- (iii) has engaged or is engaging in conduct relating to the company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member.

(7) In the case of an individual:

- (i) the individual dies; or
- (ii) in a member-managed limited liability company:
  - (A) a guardian for the individual is appointed;or
  - (B) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this title or the operating agreement.

(8) In a member-managed limited liability company, the person:

- (i) becomes a debtor in bankruptcy;
- (ii) executes an assignment for the benefit of creditors; or

(iii) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all the person's property.

(9) In the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the company is distributed.

(10) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed.

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

(12) The company participates in a merger under Chapter 3 (relating to entity transactions) and:

(i) the company is not the surviving entity; or

(ii) otherwise as a result of the merger, the person ceases to be a member.

(13) The company participates in an interest exchange under Chapter 3 and, as a result of the interest exchange, the person ceases to be a member.

(14) The company participates in a conversion under Chapter 3.

(15) The company participates in a division under Chapter 3 and:

(i) the company is not a resulting association; or

(ii) as a result of the division, the person ceases to be a member.

(16) The company participates in a domestication under Chapter 3 and, as a result of the domestication, the person ceases to be a member.

(17) The company dissolves and completes winding up.  
§ 8862. Power to dissociate and wrongful dissociation.

(a) Power to dissociate.--A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 8861(1) (relating to events causing dissociation).

(b) Wrongful dissociation.--A person's dissociation as a member is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the completion of the winding up of the limited liability company and:

(i) the person withdraws as a member by express will;

(ii) the person is expelled as a member by judicial order under section 8861(6);

(iii) the person is dissociated under section 8861(8); or

(iv) the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated, except that this subparagraph does not apply to a person that is:

(A) a trust that is not a business or statutory trust;

(B) an estate; or

(C) an individual.

(c) Damages for wrongful dissociation.--A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 8881 (relating to direct action by member), to the other members for damages

caused by the dissociation. The liability is in addition to any debt, obligation or other liability of the member to the company or the other members.

§ 8863. Effects of dissociation.

(a) General rule.--If a person is dissociated as a member:

(1) the person's rights as a member terminate;

(2) if the company is member-managed, the person's duties and obligations under section 8849.1 (relating to standards of conduct for members) as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to sections 8844(e) (relating to sharing of and right to distributions before dissolution) and 8854 (relating to power of personal representative of deceased member) and Chapter 3 (relating to entity transactions), any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.

(b) Existing obligations not discharged.--A person's dissociation as a member does not of itself discharge the person from any debt, obligation or other liability to the company or the other members which the person incurred while a member.

SUBCHAPTER G

DISSOLUTION AND WINDING UP

Sec.

8871. Events causing dissolution.

8872. Winding up and filing of certificates.

8873. (Reserved).

8874. Known claims against dissolved limited liability company.

8875. Other claims against dissolved limited liability company.

8876. Court proceedings.

8877. Disposition of assets in winding up.

8878. Voluntary termination by members or organizers.

§ 8871. Events causing dissolution.

(a) General rule.--A limited liability company is dissolved, and its activities and affairs shall be wound up, upon the occurrence of any of the following:

(1) An event or circumstance that the operating agreement states causes dissolution.

(2) The consent of all the members.

(3) The passage of 180 consecutive days after the company ceases to have any members unless before the end of the period:

(i) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(ii) at least one person becomes a member in accordance with the consent.

(4) On application by a member, the entry by the court of an order dissolving the company on the grounds that:

(i) the conduct of all or substantially all the company's activities and affairs is unlawful;

(ii) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or

(iii) the managers or those members in control of the company:

(A) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) have acted or are acting in a manner that is oppressive and was, is or will be directly harmful to the applicant.

(b) Other remedies.--In a proceeding brought under subsection (a) (4) (iii) (B), the court may order a remedy other than dissolution.

(c) Cross reference.--See section 8815(c) (15) (relating to contents of operating agreement).

§ 8872. Winding up and filing of certificates.

(a) General rule.--A dissolved limited liability company shall wind up its activities and affairs, and the company continues after dissolution only for the purpose of winding up.

(b) Conduct of winding up.--In winding up its activities and affairs, a limited liability company:

(1) shall discharge the company's debts, obligations and other liabilities, settle and close the company's activities and affairs and marshal and distribute the assets of the company; and

(2) may:

(i) deliver to the department for filing a certificate of dissolution stating:

(A) the name of the company;

(B) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the company; and

(C) that the company is dissolved;

(ii) preserve the company's activities, affairs and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal or administrative;

(iv) transfer the company's property;

(v) settle disputes by mediation or arbitration;

and

(vi) perform other acts necessary or appropriate to the winding up.

(c) Conduct of winding up when no members.--If a dissolved limited liability company has no members, the personal representative, guardian or other person authorized to act on behalf of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person has the powers of a sole manager under section 8847(c) (relating to management of limited liability company) and is deemed to be a manager for the purposes of section 8834(a) (relating to liability of members and managers).

(d) Action by transferees.--If the personal representative, guardian or other person authorized to act under subsection (c) declines or fails to wind up the company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under section 8847(c) and is deemed to be a manager for the purposes of section 8834(a); and

(2) shall promptly deliver to the department for filing an amendment to the company's certificate of organization stating:

(i) that the company has no members;

(ii) the name and street and mailing addresses of the person; and



(iii) that the person has been appointed under this subsection to wind up the company.

(e) Judicial supervision.--The court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs:

(1) on the application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(i) the company does not have any members;

(ii) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(iii) within a reasonable time following the dissolution a person has not been appointed under subsection (c); or

(3) in connection with a proceeding under section 8871(a)(4) (relating to events causing dissolution).

(f) Certificate of termination.--When all debts, obligations and other liabilities of the limited liability company have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the company have been distributed to the members, a certificate of termination shall be delivered to the department for filing along with the certificates required by section 139 (relating to tax clearance of certain fundamental transactions). The certificate of termination shall set forth:

(1) The name of the limited liability company.

(2) Subject to section 109, the address, including street and number, if any, of the registered office of the company.

(3) That all debts, obligations and other liabilities of the company have been paid and discharged or that adequate provision has been made therefor.

(4) That all the remaining property and assets of the company have been distributed among its members in accordance with their respective rights and interests.

(5) That there are no actions pending against the company in any court or that adequate provision has been made for the satisfaction of any judgment that may be entered against it in any pending action.

(6) That the company is terminated.

(g) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

Section 8815(c)(16) (relating to contents of operating agreement).

Section 8823 (relating to signing of filed documents).

§ 8873. (Reserved).

§ 8874. Known claims against dissolved limited liability company.

(a) General rule.--Except as provided in subsection (d), a dissolved limited liability company may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) Required notice.--A dissolved limited liability company may notify in record form its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) Claims barred.--A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline;

or

(2) if the claim is timely received but rejected by the company:

(i) the company causes the claimant to receive a notice in record form stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

(ii) the claimant does not commence the required action within 90 days after the complainant receives the notice.

(d) Later arising claims.--This section shall not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent. § 8875. Other claims against dissolved limited liability company.

(a) Permissive notice.--A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) Notice procedure.--A notice under subsection (a) must:

(1) be officially published one time;

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

(3) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced within two years after publication of the notice.

(c) Claims barred.--If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the company within two years after the publication date of the notice:

(1) a claimant that did not receive notice in record form under section 8874 (relating to known claims against dissolved limited liability company);

(2) a claimant whose claim was timely sent to the company but not acted on; and

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

(d) Claims not barred.--A claim not barred under this section or section 8874 may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) except as provided in section 8876 (relating to court proceedings), if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member

or transferee after dissolution, whichever is less, except that a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution.

§ 8876. Court proceedings.

(a) Determination of security.--A dissolved limited liability company that has officially published a notice under section 8875 (relating to other claims against dissolved limited liability company) may file an application with the court for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the company and:

(1) at the time of application:

(i) are contingent; or

(ii) have not been made known to the company; or

(2) are based on an event occurring after the effective date of dissolution.

(b) When security not required.--Security is not required for any claim that is or is reasonably anticipated to be barred under section 8875(c).

(c) Notice.--Within 10 days after the filing of an application under subsection (a), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the company.

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

(e) Effect on contingent claims.--A dissolved limited liability company that provides security in the amount and form ordered by the court under subsection (a) satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company or are based on an event occurring after the effective date of dissolution. The claims may not be enforced against a member or transferee that received assets in liquidation.

§ 8877. Disposition of assets in winding up.

(a) Creditors.--In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) Surplus.--After a limited liability company complies with subsection (a), any surplus shall be distributed in the following order, subject to any charging order in effect under section 8853 (relating to charging order):

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

(2) among owners of transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the company.

(c) Insufficient assets.--If a limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(d) Form of payment.--All distributions made under subsections (b) and (c) must be paid in money.

§ 8878. Voluntary termination by members or organizers.

(a) General rule.--The members or organizers of a limited liability company that has never transacted business or held assets other than money received as capital contributions may effect the termination of the company by delivering to the department for filing a certificate of termination signed by an organizer or a member and stating:

(1) the name of the company;

(2) subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), the address, including street and number, if any, of the registered office of the company;

(3) that the company has never transacted business or held assets other than money received as capital contributions;

(4) that the amounts, if any, actually paid in as capital contributions, less any part disbursed for necessary expenses, have been returned to those entitled to the return of the amounts;

(5) that all liabilities of the company have been discharged or that adequate provision has been made for those liabilities; and

(6) that a majority of the organizers or a majority in interest of the members elect that the company be terminated.

(b) Effect.--Upon the filing of the certificate of termination, the existence of the limited liability company shall cease.

(c) Cross references.--See:

Section 134 (relating to docketing statement).

Section 135 (relating to requirements to be met by filed documents).

Section 136(c) (relating to processing of documents by Department of State).

#### SUBCHAPTER H ACTIONS BY MEMBERS

Sec.

8881. Direct action by member.

8882. Derivative action.

8883. Security for costs.

8884. Special litigation committee.

8885. Proceeds and expenses.

§ 8881. Direct action by member.

(a) General rule.--Subject to subsection (b), a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this title or arising independently of the membership relationship.

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

(c) Cross reference.--See section 8815(c)(17) (relating to contents of operating agreement).

§ 8882. Derivative action.

(a) General rule.--Subject to subsection (b), a member or manager may maintain a derivative action to enforce a right of a limited liability company only if:

(1) the plaintiff first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company,

requesting that they cause the company to bring an action to enforce the right and:

(i) if a special litigation committee is not appointed under section 8884 (relating to special litigation committee), the company does not bring the action within a reasonable time; or

(ii) if a special litigation committee is appointed under section 8884, a determination is made:

(A) under section 8884(e)(1) that the company not object to the action; or

(B) under section 8884(e)(5)(i) that the plaintiff continue the action;

(2) demand is excused under subsection (b);

(3) the action is maintained for the limited purpose of seeking court review under section 8884(f); or

(4) the court has allowed the action to continue under the control of the plaintiff under section 8884(f)(3)(ii).

(b) Prior demand excused.--

(1) A demand under subsection (a)(1) is excused only if the plaintiff makes a specific showing that irreparable harm to the limited liability company would otherwise result.

(2) If demand is excused under paragraph (1), demand should be made promptly after commencement of the action.

(c) Contents of demand.--A demand under this section must be in record form and give notice with reasonable specificity of the essential facts relied upon to support each of the claims made in the demand.

(d) Additional claims.--If a derivative action is commenced after a demand has been made under this section and includes a claim that was not fairly subsumed under the demand, a new demand must be made with respect to that claim. The new demand shall not relate back to the date of the original demand for purposes of subsection (e).

(e) Statute of limitations.--The making of a demand tolls any applicable statute of limitations with respect to a claim asserted in the demand until the earlier of the date:

(1) the plaintiff making the demand is notified either:

(i) that the managers or members have decided not to bring an action and not to appoint a special litigation committee; or

(ii) of a determination under section 8884(e) after the appointment of a special litigation committee under section 8884; or

(2) the plaintiff commences an action asserting the claim.

(f) Cross reference.--See section 8815(c)(17) (relating to contents of operating agreement).

§ 8883. Security for costs.

In any action or proceeding instituted or maintained by members holding transferable interests entitled to receive less than 5% of any distribution by a limited liability company, unless the transferable interests held by the members have an aggregate fair market value in excess of \$200,000, the company in whose right the action or proceeding is brought shall be entitled at any stage of the proceedings to require the plaintiffs to give security for the reasonable expenses, including attorney fees, that may be incurred by the company in connection therewith or for which it may become liable pursuant to section 8848(b) (relating to reimbursement, indemnification, advancement and insurance) to which security the company shall have recourse in such amount as the court determines upon the termination of the action or proceeding.

The amount of security may, from time to time, be increased or decreased in the discretion of the court upon showing that the security provided has or may become inadequate or excessive. The security may be denied or limited by the court if the court finds after an evidentiary hearing that undue hardship on plaintiffs and serious injustice would result.

§ 8884. Special litigation committee.

(a) General rule.--If a limited liability company or its members or managers receive a demand to bring an action to enforce a right of the company, or if a derivative action is commenced before demand has been made on the company or its members or managers, the members in a member-managed limited liability company, or the managers in a manager-managed limited liability company, may appoint a special litigation committee to investigate the claims asserted in the demand or action and to determine on behalf of the company or recommend to the managers or members whether pursuing any of the claims asserted is in the best interests of the company. The company shall send a notice in record form to the plaintiff promptly after the appointment of a committee under this section notifying the plaintiff that a committee has been appointed and identifying by name the members of the committee. A committee may not be appointed under this section if:

(1) every member of the company is also a manager of the company; or

(2) the company is member-managed and every member is actively involved in the management of the company.

(b) Discovery stay.--If the members or managers appoint a special litigation committee and an action is commenced before a determination has been made under subsection (e):

(1) On motion by the committee made in the name of the limited liability company, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation, except for good cause shown.

(2) The time for the defendants to plead shall be tolled until the process provided for under subsection (f) has been completed.

(c) Composition of committee.--A special litigation committee shall be composed of two or more individuals who:

(1) are not interested in the claims asserted in the demand;

(2) are capable as a group of objective judgment in the circumstances; and

(3) may, but need not, be members or managers.

(d) Appointment of committee.--A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(i) by a majority of the members not named as actual or potential parties in the demand or action; and

(ii) if all members are named as actual or potential parties in the demand or action, by a majority of the members so named; or

(2) in a manager-managed limited liability company:

(i) by a majority of the managers not named as actual or potential parties in the demand or action; and

(ii) if all managers are named as actual or potential parties in the demand or action, by a majority of the managers so named.

(e) Determination.--After appropriate investigation by a special litigation committee, the committee or the managers or members may determine that it is in the best interests of the limited liability company that:

(1) an action based on some or all of the claims asserted in the demand not be brought by the company but that the company not object to an action being brought by the party that made the demand;

(2) an action based on some or all of the claims asserted in the demand be brought by the company;

(3) some or all of the claims asserted in the demand be settled on terms approved by the committee;

(4) an action not be brought based on any of the claims asserted in the demand;

(5) an action already commenced continue under the control of:

(i) the plaintiff;

(ii) the company; or

(iii) the committee;

(6) some or all of the claims asserted in an action already commenced be settled on terms approved by the committee; or

(7) an action already commenced be dismissed.

(f) Court review and action.--If a special litigation committee is appointed and a derivative action is commenced either before or after a determination is made under subsection (e):

(1) The limited liability company shall file with the court after a determination is made under subsection (e) a statement of the determination and a report of the committee. The company shall serve each party with a copy of the determination and report. If the company moves to file the report under seal, the report shall be served on the parties subject to an appropriate stipulation agreed to by the parties or a protective order issued by the court.

(2) The company shall file with the court a motion, pleading or notice consistent with the determination under subsection (e).

(3) If the determination is one described in subsection (e)(2), (3), (4), (5)(ii), (6) or (7), the court shall determine whether the members of the committee met the qualifications required under subsection (c)(1) and (2) and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care. If the court finds that the members of the committee met the qualifications required under subsection (c)(1) and (2) and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall:

(i) dissolve any stay of discovery entered under subsection (b);

(ii) allow the action to continue under the control of the plaintiff; and

(iii) permit the defendants to file preliminary objections and other appropriate motions and pleadings.

(g) Attorney General.--Nothing in this section shall limit the rights, powers and duties of the Attorney General under other applicable law with respect to a limited liability company organized for a charitable purpose.

(h) Cross reference.--See section 8815(c)(18) (relating to contents of operating agreement).

§ 8885. Proceeds and expenses.

(a) Proceeds.--Except as provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise or settlement, belong

to the limited liability company and not to the plaintiff;  
and

(2) if the plaintiff or its counsel receives any proceeds, the proceeds shall be remitted immediately to the company.

(b) Expenses.--If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company, but in no event shall the attorney fees awarded exceed a reasonable proportion of the value of the relief, including nonpecuniary relief, obtained by the plaintiff for the company.

(c) Cross reference.--See section 8815(c)(13) (relating to contents of operating agreement).

#### SUBCHAPTER I BENEFIT COMPANIES

Sec.

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§ 8891. Application and effect of subchapter.

(a) General rule.--This subchapter shall apply to all benefit companies.

(b) Limited application of subchapter.--The existence of a provision of this subchapter shall not of itself create any implication that a contrary or different rule of law is or would be applicable to a limited liability company that is not a benefit company. This subchapter shall not affect any statute or rule of law that is or would be applicable to a limited liability company that is not a benefit company.

(c) Laws applicable to benefit companies.--Except as otherwise provided in this subchapter, the provisions of Part I (relating to preliminary provisions) and this chapter shall apply generally to benefit companies. The provisions of this subchapter shall control over inconsistent provisions of this title.

(d) Organic rules may not be inconsistent.--See section 8815(c)(19) (relating to contents of operating agreement).

§ 8892. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Benefit company." A limited liability company that is subject to this subchapter.

"Benefit enforcement proceeding." A claim or action for:

(1) failure to pursue or create the general public benefit purpose of the benefit company or any specific public benefit purpose set forth in its certificate of organization;  
or

(2) violation of any obligation, duty or standard of conduct under this subchapter.

"General public benefit." A material positive impact on society and the environment, taken as a whole and assessed against a third-party standard, from the business and operations of a benefit company.

"Independent." When a person has no material relationship with a benefit company or any of its subsidiaries. A material



relationship between an individual and a benefit company or any of its subsidiaries will be conclusively presumed to exist if:

(1) the person is or has been within the last three years an employee of the benefit company or any of its subsidiaries;

(2) an immediate family member of the person is or has been within the last three years an executive officer of the benefit company or any of its subsidiaries; or

(3) the person, or an association of which the person is a governor or officer or in which the person owns beneficially or of record 5% or more of the outstanding interests, owns beneficially or of record 5% or more of the outstanding interests of the benefit company. The percentage of ownership in an association shall be calculated as if all outstanding rights to acquire interests in the association had been exercised.

"Minimum status vote." As follows:

(1) In the case of a limited liability company, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The members of every class or series must be entitled, as a class, to vote on the action regardless of a limitation stated in the certificate of organization or operating agreement on the voting rights of any class or series.

(ii) The action must be approved by a vote of the members of each class or series entitled to cast at least two-thirds of the votes that all members of the class or series are entitled to cast on the action.

(2) In the case of a domestic association other than a limited liability company, in addition to any other required approval, vote or consent, the satisfaction of the following conditions:

(i) The holders of every class or series of interest in the association that are entitled to receive a distribution of any kind from the association must be entitled as a class to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

(ii) The action must be approved by vote or consent of the holders described in subparagraph (i) entitled to cast at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

"Specific public benefit." The term shall have the meaning specified in section 3302 (relating to definitions).

"Subsidiary." The term shall have the meaning specified in section 3302.

"Third-party standard." A standard for defining, reporting and assessing overall social and environmental performance which is:

(1) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in section 8895(a)(1)(ii), (iii), (iv) and (v) (relating to standard of conduct for members).

(2) Developed by an organization that is independent of the benefit company and satisfies the following requirements:

(i) Not more than one-third of the members of the governing body of the organization are representatives of any of the following:

(A) An association of businesses operating in a specific industry the performance of whose members is measured by the standard.

(B) Businesses from a specific industry or an association of businesses in that industry.

(C) Businesses whose performance is assessed against the standard.

(ii) The organization is not materially financed by an association or business described in subparagraph (i).

(3) Credible because the standard is developed by a person that both:

(i) Has access to necessary expertise to assess overall social and environmental performance.

(ii) Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

(4) Transparent because the following information is publicly available:

(i) About the standard:

(A) The criteria considered when measuring the overall social and environmental performance of a business.

(B) The relative weightings, if any, of those criteria.

(ii) About the development and revision of the standard:

(A) The identity of the directors, officers, material owners and the governing body of the organization that developed and controls revisions to the standard.

(B) The process by which revisions to the standard and changes to the membership of the governing body are made.

(C) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

#### § 8893. Benefit company status.

(a) Formation of benefit company.--A benefit company shall be formed in accordance with section 8821 (relating to formation of limited liability company and certificate of organization) except that its certificate of organization shall also state that it is a benefit company.

(b) Election of benefit company status.--An existing limited liability company may elect to become a benefit company by amending its certificate of organization so that it contains, in addition to the requirements of section 8821, a statement that the company is a benefit company. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(c) Election of status in a fundamental transaction.--If an association that is not a benefit company is a party to a merger or division or is the exchanging association in an interest exchange, and the surviving, new or any resulting association in the merger, division or interest exchange is to be a benefit company, then the plan of merger, division or interest exchange shall not be effective unless it is adopted by the association by at least the minimum status vote.

(d) Termination of benefit company status.--A benefit company may terminate its status as a benefit company and cease

to be subject to this subchapter by amending its certificate of organization to delete the provision required by subsection (a) or (b) to be stated in the certificate of organization of a benefit company. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(e) Termination of status in a fundamental transaction.--If a plan would have the effect of terminating the status of a limited liability company as a benefit company, the plan shall not be effective unless it is adopted by at least the minimum status vote. Any sale, lease, exchange or other disposition of all or substantially all of the assets of a benefit company, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

§ 8894. Purposes.

(a) General public benefit purpose.--A benefit company shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under section 8818(b) (relating to characteristics of limited liability company).

(b) Optional specific public benefit purpose.--The certificate of organization of a benefit company may identify one or more specific public benefits that it is the purpose of the benefit company to create in addition to its purposes under subsection (a) and section 8818(b). The identification of a specific public benefit does not limit the obligation of a benefit company to create general public benefit.

(c) Effect of purposes.--The creation of general and specific public benefit as provided in subsections (a) and (b) is in the best interests of the benefit company.

(d) Amendment.--A benefit company may amend its certificate of organization to add, amend or delete the identification of a specific public benefit that it is the purpose of the benefit company to create. The amendment shall not be effective unless it is adopted by at least the minimum status vote.

(e) Professional companies.--A professional company that is a benefit company does not violate a restriction on its permissible purposes or activities by having the purpose to create general public benefit or a specific public benefit.

§ 8895. Standard of conduct for members.

(a) Consideration of interests.--The members of a member-managed limited liability company that is a benefit company, when discharging their duties under this title or under the operating agreement:

- (1) shall consider the effects of any action upon:
  - (i) the members of the benefit company;
  - (ii) the employees and work force of the benefit company and its subsidiaries and suppliers;
  - (iii) the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit company;
  - (iv) community and societal considerations, including those of any community in which offices or facilities of the benefit company or its subsidiaries or suppliers are located;
  - (v) the local and global environment;
  - (vi) the short-term and long-term interests of the benefit company, including benefits that may accrue to the benefit company from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit company; and

(vii) the ability of the benefit company to accomplish its general public benefit purpose and any specific public benefit purpose; and

(2) may consider any other pertinent factors or the interests of any other group that they deem appropriate; but

(3) shall not be required to give priority to the interests of any person or group referred to in paragraph (1) or (2) over the interests of any other person or group unless the benefit company has stated in its certificate of organization its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in the certificate.

(b) Coordination with other provisions of law.--The consideration of interests and factors in the manner required under subsection (a) shall not constitute a violation of section 8849.1 (relating to standards of conduct for members).

(c) Exoneration from personal liability.--

(1) A member shall not be personally liable for monetary damages for any action taken as a member of a member-managed limited liability company in the course of performing the duties specified in subsection (a) unless the action constitutes self-dealing, willful misconduct or a knowing violation of law.

(2) A member shall not be personally liable for monetary damages for failure of the benefit company to pursue or create general public benefit or a specific public benefit.

(d) Limitation on standing.--A member of a member-managed limited liability company that is a benefit company does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of the benefit company arising from the status of the person as a beneficiary.

§ 8896. Standard of conduct for managers and officers.

(a) Managers.--Each manager of a manager-managed limited liability company that is a benefit company shall consider the interests and factors described in section 8895(a) (relating to standard of conduct for members) when discharging his or her duties under this title and under the operating agreement.

(b) Officers.--If a benefit company has a person serving in the capacity of an officer, the person shall consider the interests and factors described in section 8895(a) when discharging the person's duties under this title and under the operating agreement if:

(1) the officer has discretion to act with respect to a matter; and

(2) it reasonably appears to the officer that the matter may have a material effect on the creation by the benefit company of general public benefit or a specific public benefit identified in the certificate of organization of the benefit company.

(c) Coordination with other provisions of law.--The consideration of interests and factors by a manager in the manner described in subsection (a) shall not constitute a violation of section 8849.2 (relating to standards of conduct for managers).

(d) Exoneration from personal liability.--

(1) A manager or officer shall not be personally liable, as such, for monetary damages for any action taken as a manager or officer in the course of performing the duties specified in subsection (a) or (b) unless the action

constitutes self-dealing, willful misconduct or a knowing violation of law.

(2) A manager or officer shall not be personally liable for monetary damages for failure of the benefit company to pursue or create general public benefit or a specific public benefit.

(e) Limitation on standing.--A manager or officer does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit company arising from the status of the person as a beneficiary.

§ 8897. Right of action.

(a) Limitations.--

(1) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit company or its members, managers or officers with respect to:

(i) failure to pursue or create general public benefit or a specific public benefit set forth in its certificate of organization; or

(ii) violation of a duty or standard of conduct under this subchapter.

(2) A benefit company shall not be liable for monetary damages under this subchapter for any failure of the benefit company to pursue or create general public benefit or a specific public benefit.

(b) Parties with standing.--A benefit enforcement proceeding may be commenced or maintained only:

(1) directly by the benefit company; or

(2) derivatively by:

(i) a member that owned at least 2% of the total number of interests of a class or series outstanding at the time of the act complained of;

(ii) a manager of a manager-managed limited liability company;

(iii) a person or group of persons that owns beneficially or of record 5% or more of the interests in an association of which the benefit company is a subsidiary at the time of the act complained of; or

(iv) such other persons as may be specified in the certificate of organization or operating agreement of the benefit company.

(c) Cross reference.--The provisions of Subchapter H (relating to actions by members) shall apply to derivative actions under this section.

§ 8898. Annual benefit report.

(a) Contents.--A benefit company must deliver to each member an annual benefit report, including:

(1) A narrative description of:

(i) the ways in which the benefit company pursued general public benefit during the year and the extent to which general public benefit was created;

(ii) the ways in which the benefit company pursued any specific public benefit that the certificate of organization states is the purpose of the benefit company to create and the extent to which that specific public benefit was created;

(iii) any circumstances that have hindered the creation by the benefit company of general or specific public benefit; and

(iv) the process and rationale for selecting or changing the third-party standard used to prepare the benefit report.

(2) An assessment of the overall social and environmental performance of the benefit company against a third-party standard applied consistently with any application of that standard in prior benefit reports or accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be audited or certified by a third-party standards provider.

(3) A statement of any connection between the organization that established the third-party standard, or its directors, officers or any holder of 5% or more of the governance interests in the organization, and the benefit company or its members, managers or officers or any holder of 5% or more of the outstanding interests in the benefit company, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(b) Timing of report.--A benefit company shall annually send a benefit report to each member either:

(1) within 120 days following the end of the fiscal year of the benefit company; or

(2) at the same time that the benefit company delivers any other annual report to its members.

(c) Internet website posting.--A benefit company must post all of its benefit reports on the public portion of its Internet website, if any, except that any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) Availability of copies.--If a benefit company does not have an Internet website, the benefit company shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy, but any financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report provided.

(e) Filing of report.--Concurrently with the delivery of the benefit report to members pursuant to subsection (b), the benefit company must deliver a copy of the benefit report to the department for filing, except that any financial or proprietary information included in the benefit report may be omitted from the benefit report as filed under this section. The department shall charge a fee of \$70 for filing a benefit report.

Section 30. Repeals are as follows:

(1) The General Assembly finds and declares as follows:

(i) The limited liability company has been evolving as a legal entity over the last 25 years, and statutory law must be updated to deal with the evolving entity.

(ii) Existing statutory law on limited liability companies was enacted in 1994. Discrete amendments were enacted in 1997, 1998, 2006, 2013 and 2014; and significant amendments were made by section 2 of the act of June 22, 2001 (P.L.418, No.34), known as the GAA Amendments Act of 2001. A more comprehensive legislative approach was taken in sections 54 and 55 of the act of October 22, 2014 (P.L.2640, No.172), known as the Associations Transactions Act.

(iii) Section 29 of this act adds a new chapter on limited liability companies. The new chapter continues the approach under the GAA Amendments Act of 2001 and the Associations Transactions Act and extensively revises

existing statutory law to the degree that identification of individual changes or reproduction of voluminous text to be eliminated would inhibit rather than enhance serious legal analysis.

(iv) The repeal under paragraph (2) is necessary to carry out this paragraph.

(2) Subchapters A, B, C, D, E, F, I and K of Chapter 89 of Title 15 are repealed.

Section 31. Sections 8995(c), (d) and (e), 8997, 8998(g) and 9115 of Title 15 are amended to read:

§ 8995. Application and effect of subchapter.

\* \* \*

(c) Laws applicable to restricted professional companies.--Except as otherwise provided in this subchapter, [this chapter] **Chapter 88 (relating to limited liability companies)** shall be generally applicable to all restricted professional companies. The specific provisions of this subchapter shall control over the general provisions of [this chapter] **Chapter 88**.

(d) Election of restricted professional company status.--At the time an existing limited liability company that has previously conducted a business not involving the rendering of a restricted professional service begins to render one or more restricted professional services, the company shall amend its certificate of organization to include [the statement required by section 8913(7) (relating to certificate of organization)] **a statement that it is a restricted professional company**. For purposes of sections [8925] **8835** (relating to taxation of limited liability companies) and 8997, the company shall be deemed to have become a restricted professional company on the first day of the taxable year of the company following the taxable year in which the amendment of its certificate of organization required by this subsection is filed.

(e) Termination of restricted professional company status.--Except as provided in this subsection, the status of a restricted professional company as such shall terminate, and the company shall cease to be subject to this subchapter, at such time as it ceases to render any restricted professional services. Upon ceasing to render any restricted professional services, the company shall amend its certificate of organization to delete the statement required by [section 8913(7)] **subsection (d)**. For purposes of sections [8925] **8835** and 8997, the company shall be deemed to have ceased being a restricted professional company on the first day of the taxable year of the company following the taxable year in which it ceased to render any restricted professional services.

§ 8997. Taxation of restricted professional companies.

(a) General rule.--Except as provided in subsection (b) [and in section 8925(b) (relating to taxation of limited liability companies)], for the purposes of the imposition by the Commonwealth or any political subdivision of any tax or license fee on or with respect to any income, property, privilege, transaction, subject or occupation **other than the corporate net income tax, capital stock and foreign franchise tax and personal income tax**, a domestic or [qualified] **registered** foreign restricted professional company shall be deemed to be a limited partnership organized and existing under Chapter [85] **86** (relating to limited partnerships), and a member of such a company, as such, shall be deemed a limited partner of a limited partnership.

(b) Exception.--A domestic or qualified foreign restricted professional company shall be subject to section [8925(a)]

**8835(a) (relating to taxation of limited liability companies),** instead of subsection (a), for the whole of any taxable year of the company during any part of which the company has:

(1) engaged in any business not permitted by section 8996(a) (relating to purposes of restricted professional companies);

(3) been a member of a limited liability company.

§ 8998. Annual registration.

\* \* \*

(g) Cross [references.--See section 8907 (relating to execution of documents) and] **reference.--See** 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

§ 9115. Ownership and transfer of property.

(a) General rule.--A nonprofit association may acquire, hold or transfer, in its name, an interest in property.

(b) Testamentary and fiduciary dispositions.--A nonprofit association may be a beneficiary of a trust or contract, a legatee or a devisee.

(c) **Authority to take and hold trust property.--Every nonprofit association organized for a charitable purpose or purposes may take, receive and hold real and personal property as may be given, devised to or otherwise vested in the nonprofit association, in trust, for the purpose or purposes set forth in its governing principles. The managers of the nonprofit association shall, as trustees of the property, be held to the same degree of responsibility and accountability as other trustees, unless a lesser degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or unless the managers remain under the control of the members of the nonprofit association or third persons who retain the right to direct, and do direct, the actions of the managers as to the use of the trust property from time to time.**

(d) **Nondiversion of certain property.--Property of a nonprofit association committed to charitable purposes shall not, by any proceeding under Chapter 3 (relating to entity transactions) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the nonprofit association obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.**

Section 32. Section 9302 of Title 15 is amended to read:

§ 9302. Application of chapter.

(a) **General rule.--**This chapter shall apply to and the word "association" in this chapter shall mean a professional association organized under the act of August 7, 1961 (P.L.941, No.416), known as the Professional Association Act, which has not:

(1) Reorganized as an electing partnership under Chapter 87 (relating to electing partnerships).

(2) Elected to become a professional corporation in the manner provided by section 2905 (relating to election of professional associations to become professional corporations).

(3) Converted to a limited liability company under Subchapter E of Chapter 3 (relating to conversion).

(b) **No new associations.--**An association may not be originally organized under this chapter.

Section 33. Sections 9501 and 9506 of Title 15 are amended to read:

§ 9501. Application and effect of chapter.

(a) General rule.--



(1) Unless the context clearly indicates otherwise, this chapter shall apply to and the words "business trust" in this chapter shall mean an association organized as a trust:

(i) [Hereafter established under the laws of this Commonwealth.] **Whose deed of trust or other organic document has been filed in the department and is in effect under this chapter.**

(ii) Whose deed of trust or other organic document states, by amendment or otherwise, that the trust exists subject to the provisions of this chapter, in the case of a business trust heretofore established under the laws of this Commonwealth or heretofore or hereafter established under the laws of any other jurisdiction.

(2) The words "business trust" in this chapter shall not include:

(i) A trust contemplated by section 1768 (relating to voting trusts and other agreements among shareholders) or any similar provision of law.

(ii) A trust for creditors.

(iii) A mortgage, deed of trust or other indenture or similar instrument or agreement under which debt securities are outstanding or to be issued.

(iv) A trust for the benefit of one or more investors with respect to a lease of real or personal property, unless the instrument creating the trust is filed under this chapter.

(b) No franchise.--This chapter shall not confer on a business trust the power to engage in any activity that may be undertaken only in corporate form.

(c) Effect on taxation.--This chapter is enacted to codify and clarify certain common law principles applicable to business trusts and is not intended to affect the liability of any business trust to any tax. A trust that is subject to this chapter shall not be deemed to be organized or created by or under this or any other statute or to have the benefit of any state franchise for the purpose of existing law relating to taxation.

(d) Multistate application.--It is the intent of the General Assembly in enacting this chapter that the legal existence of business trusts organized in this Commonwealth be recognized outside the boundaries of this Commonwealth and that, subject to any reasonable requirement of registration, a domestic business trust transacting business outside this Commonwealth be granted protection of full faith and credit under the Constitution of the United States.

§ 9506. Liability of trustees and beneficiaries.

(a) General rule.--

(1) Except as otherwise provided in the instrument, the beneficiaries of a business trust shall be entitled to the same limitation of personal liability as is extended to shareholders in a domestic business corporation.

(2) Except as otherwise provided in the instrument, the trustees of a trust, as such, shall not be personally liable to any person for any act or obligation of the trust or any other trustee.

(3) An obligation of a trust based upon a writing may be limited to a specific fund or other identified pool or group of assets of the trust.

(b) Standards and immunities.--Except as otherwise provided in the instrument governing the trust, the provisions of Subchapters B (relating to fiduciary duty) and D (relating to

indemnification) of Chapter 17 shall be applicable to representatives of a business trust.

(c) Certain specifically authorized debt terms.--A business trust shall be subject to section 1510 (relating to certain specifically authorized debt terms) to the same extent as if it were a business corporation.

(d) Professional relationship unaffected.--Subsection (a) shall not afford trustees or beneficiaries of a business trust providing professional services with greater immunity than is available to the officers, shareholders, employees or agents of a professional corporation. See section 2925 (relating to professional relationship retained).

(e) Disciplinary jurisdiction unaffected.--A business trust providing professional services shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the court, department, board, commission or other government unit regulating the profession in which the business trust is engaged. The court, department, board or other government unit may require that a business trust include in its instrument provisions that conform to any rule or regulation heretofore or hereafter promulgated for the purpose of enforcing the ethics of a profession. This chapter shall not affect or impair the disciplinary powers of the court, department, board, commission or other government unit over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person rendering professional services and the person receiving professional services.

(f) Permissible beneficiaries.--Except as otherwise provided by a statute, rule or regulation applicable to a particular profession, all of the ultimate beneficial owners of interests in a business trust that renders one or more restricted professional services shall be licensed persons[. As used in this subsection, the term "restricted professional services" shall have the meaning specified in section 8903 (relating to definitions and index of definitions).] **in the profession the trust practices if the trust renders any of the following professional services: chiropractic, dentistry, law, medicine and surgery, optometry, osteopathic medicine and surgery, podiatric medicine, public accounting, psychology or veterinary medicine.**

(g) Conflict of laws.--The personal liability of a trustee or beneficiary of a business trust to any person or in any action or proceeding for the debts, obligations or liabilities of the trust or for the acts or omissions of other trustees, beneficiaries, employees or agents of the trust shall be governed solely and exclusively by this chapter and the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with respect to the liability of trustees or beneficiaries of a trust organized and existing under this chapter for the debts, obligations and liabilities of the trust or for the acts or omissions of the other trustees, beneficiaries, employees or agents of the trust, the laws of this Commonwealth shall govern in determining such liability.

(h) Medical professional liability.--A business trust shall be deemed to be a professional corporation for purposes of section [811 of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.] **744 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act .**

(i) **Failure to observe formalities.--The failure of a business trust to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a beneficiary or trustee of the trust for a debt, obligation or other liability of the trust.**

Section 34. Sections 501(a)(6) and (8) and 502(d) of Title 54 are amended to read:

§ 501. Register established.

(a) General rule.--A register is established by this chapter which shall consist of such of the following names as are not deleted therefrom by operation of section 504 (relating to effect of failure to make filings) or 506 (relating to voluntary termination of registration by corporations and other associations):

\* \* \*

(6) In the case of a limited partnership or limited liability company subject to 15 Pa.C.S. Ch. [85] **86** (relating to limited partnerships) or [89] **88** (relating to limited liability companies), the name of the partnership or company as set forth in the certificate of limited partnership, certificate of organization or statement of registration as a [registered] foreign association.

(8) In the case of a [registered] limited liability partnership subject to 15 Pa.C.S. Ch. 82 (relating to [registered] limited liability partnerships **and limited liability limited partnerships**) that is not also a limited partnership, the name of the partnership as set forth in the statement of registration as a [registered] foreign association.

\* \* \*

§ 502. Certain additions to register.

\* \* \*

(d) Annual renewal.--A person who has in effect a registration of a [corporate] name may renew the registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

\* \* \*

Section 35. This act shall take effect in 90 days.

APPROVED--The 21st day of November, A.D. 2016.

TOM WOLF