WEST VIRGINIA CODE CHAPTER 47 ARTICLE 9

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§47-9-1. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section eight of this article and the certificate as amended;

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

(3) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission;

(4) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient;

(5) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section twenty-three of this article;

(6) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

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

(8) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

(9) "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

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

(11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

(12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

(13) "Person" means a natural person, partnership, limited partnership (domestic or foreign),

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limited liability company, professional limited liability company, trust, estate, association, corporation, or any other legal or commercial entity;

(14) "Sign" or "signature" includes, but is not limited to, any manual, facsimile, conformed or electronic signature with means to identify a record by a signature, mark or other symbol, with intent to authenticate it; and

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

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§47-9-2. Name of limited partnership.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "limited partnership," or the abbreviation "Ltd. Partnership," "LP" or "L.P.";

(2) May not contain the name of a limited partner unless: (i) It is also the name of a general partner or the corporate name of a corporate general partner; or (ii) the business of the limited partnership had been carried on under the name before the admission of that limited partner;

(3) May not be the same as, and must be distinguishable from, the name of any corporation, limited partnership, limited liability partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation, limited partnership, limited liability partnership, or limited liability company in this state; and

(4) May not include the words "engineer", "engineers", "engineering" or any combination of those words unless the purpose of the corporation is to practice professional engineering as defined in article thirteen, chapter thirty of this code, as amended, and one or more of the incorporators is a registered professional engineer as defined therein.

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§47-9-3. Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under this article and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name along with the fee prescribed by section two, article one, chapter fifty-nine of this code. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve that name for the exclusive use of the applicant for a period of one hundred twenty days. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

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§47-9-4. Secretary of State constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon Secretary of State; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

The Secretary of State is hereby constituted the attorney-in-fact for and on behalf of every limited partnership created by virtue of the laws of this state and every foreign limited partnership authorized to conduct affairs or do or transact business herein pursuant to the provisions of this article, with authority to accept service of notice and process on behalf of every such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership. No act of such limited partnership appointing the Secretary of State such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to the person to whom notice and process shall be sent, whose name and address were last furnished to the state officer at the time authorized by statute to accept service of notice and process and upon whom notice and process may be served; and if no such person has been named, to the principal office of the limited partnership at the address last furnished to the state officer at the time authorized by statute to accept service of process and upon whom process may be served, as required by law, or if no address is available on record with the Secretary of State then to the address provided on the original process or process, if available. No process or notice shall be served on the Secretary of State or accepted by him less than ten days before the return day thereof. Such limited partnership shall pay the annual fee prescribed by article twelve, chapter eleven of this code for the services of the Secretary of State as its attorney-in-fact.

Any foreign limited partnership which shall conduct affairs or do or transact business in this state without having been authorized so to do pursuant to the provisions of this article shall be conclusively presumed to have appointed the Secretary of State as its attorney-in-fact with authority to accept service of notice and process on behalf of such limited partnership and upon whom service of notice and process may be made in this state for and upon every such limited partnership in any action or proceeding described in the next following paragraph of this section. No act of such limited partnership appointing the Secretary of State as such attorney-in-fact shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, by a means

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which may include electronic issuance and acceptance of electronic return receipts, to such limited partnership at the address of its principal office, which address shall be stated in such process or notice. Such service or acceptance of such process or notice shall be sufficient if such return receipt shall be signed by an agent or employee of such limited partnership. After receiving verification from the United States Postal Service that acceptance of process or notice has been signed, the Secretary of State shall notify the clerk's office of the court from which the process or notice was issued by a means which may include electronic notification. If the process or notice was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process or notice shall be served on the Secretary of State or accepted by him or her less than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

For the purpose of this section, a foreign limited partnership not authorized to conduct affairs or do or transact business in this state pursuant to the provisions of this article shall nevertheless be deemed to be conducting affairs or doing or transacting business herein: (a) If such limited partnership makes a contract to be performed, in whole or in part, by any party thereto in this state; (b) if such limited partnership commits a tort, in whole or in part, in this state; or (c) if such limited partnership manufactures, sells, offers for sale or supplies any product in a defective condition and such product causes injury to any person or property within this state notwithstanding the fact that such limited partnership had no agents, servants or employees or contacts within this state at the time of said injury. The making of such contract, the committing of such tort or the manufacture or sale, offer of sale or supply of such defective product as herein above described shall be deemed to be the agreement of such limited partnership that any notice or process served upon, or accepted by, the Secretary of State pursuant to the next preceding paragraph of this section in any action or proceeding against such limited partnership arising from or growing out of such contract, tort or manufacture or sale, offer of sale or supply of such defective product shall be of the same legal force and validity as process duly served on such limited partnership in this state.

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§47-9-5. Office and records.

(a) Each limited partnership shall continuously maintain in this state an office, which may, but need not be, a place of its business in this state, at which shall be kept the following records:

(1) A current list of the full name and last known business address of each partner, separately identifying the general and the limited partners, set forth in alphabetical order;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any power of attorney pursuant to which any certificate has been executed;

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

(4) A copy of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) Unless contained in a written partnership agreement, a writing setting out:

(A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

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

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

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

(b) Such records shall be available for inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

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§47-9-6. Nature of business.

A limited partnership may carry on any business which a partnership without limited partners may carry on, except the business of banking, brokerage or making insurance.

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§47-9-7. Business transactions of partner with partnership.

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

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§47-9-8. Certificate and formation of limited partnership.

(a) In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The general character of its business;

(3) The mailing address of the principal office and the name and address of the agent for service of process, if any;

(4) The name and the business address of each general partner;

and

(5) Any other matters the general partners determine to include therein.

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

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§47-9-9. Amendment to certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

(1) The name of the limited partnership;

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

(3) The amendment to the certificate.

(b) Within thirty days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) The admission of a new partner;

(2) The withdrawal of a partner; or

(3) The continuation of the business under section forty-four of this article after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the thirty-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

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§47-9-10. Cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The date of filing of its certificate of limited partnership;

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

(4) The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(5) Any other information the general partners filing the certificate determine.

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§47-9-10a. Administrative dissolution of a limited partnership; reinstatement; appeals.

(a) The Secretary of State may commence a proceeding to administratively dissolve a limited partnership if the limited partnership does not:

(1) Pay all applicable fees, franchise taxes, or penalties imposed by this chapter or other law within 60 days after the due date;

(2) Deliver its annual or biennial report to the Secretary of State within 60 days after the due date;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is required for the continued operation of the limited partnership;

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited partnership pursuant to this chapter.

(b) If the Secretary of State determines that adequate grounds exist to administratively dissolve a limited partnership, the Secretary of State shall make and file a record of the determination and serve the limited partnership with a notice of the determination along with a copy of the record by certified mail.

(1)(A) The limited partnership must correct each issue described in the dissolution record or take reasonable steps toward correcting each issue within 60 days of service of the record on the limited partnership.

(B) If the limited partnership fails to take adequate steps toward correcting the issue or issues described in the record, the Secretary of State may administratively dissolve the limited partnership by signing the certification of dissolution.

(C) The Secretary of State shall file the original certificate of dissolution and serve a copy of the certificate of dissolution to the limited partnership by certified mail.

(2) A limited partnership that has been administratively dissolved may continue its existence only to the extent necessary to wind up and liquidate its business and affairs.

(3) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

(c) A limited partnership that has been administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The

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application for reinstatement shall:

(1) Recite the name of the limited partnership and the effective date of its administrative dissolution;

(2) Demonstrate that the grounds for dissolution either did not exist or have been eliminated;

(3) Demonstrate that the limited partnership's name satisfies the requirements of §47-9-2 of this code; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the limited partnership have been paid.

(d)(1) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (c) of this section and that the information is accurate, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement.

(2) The Secretary of State shall file the certificate of reinstatement and serve the limited partnership with a copy of the certificate.

(e) When the Secretary of State grants a reinstatement, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes its business as if the administrative dissolution had never occurred.

(f) If the Secretary of State denies a limited partnership's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited partnership with a notice that explains the reason or reasons for denial.

(g) A limited partnership may appeal a denial of reinstatement by filing a petition to set aside the dissolution in the circuit court of Kanawha County within 30 days after the date upon which the limited partnership received notice of the denial of reinstatement. The petition shall include a copy of the Secretary of State's certificate of dissolution, the limited partnership's application for reinstatement and, the Secretary of State's notice of denial. A copy of the petition shall be served on the Secretary of State by certified mail.

(h) If a reinstatement is granted by the court, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership resumes its business as if the administrative dissolution had never occurred.

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§47-9-11. Execution of certificates.

(a) Each certificate required by this article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner must specifically describe the admission.

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

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§47-9-12. Judicial amendment or cancellation of certificate.

If a person required by section eleven of this article to execute a certificate of amendment or cancellation fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the appropriate circuit court to direct the execution of the certificate. If the court finds that the amendment or cancellation is proper and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

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§47-9-13. Filing of certificate.

(a) One signed copy of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, shall be delivered to the Secretary of State. Delivery may be made by electronic transmission if permitted by the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he or she shall file it and deliver to the limited partnership or its representative a receipt for the record and the fees.

(b) Upon the filing of a certificate of amendment, or judicial decree of amendment, in the office of the Secretary of State the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the Secretary of State, required by section eight of this article, shall determine the validity of the limited partnership.

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§47-9-14. Liability for false statement in certificate.

If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

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

(2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under section twelve of this article.

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§47-9-15. Notice.

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

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§47-9-16. Delivery of certificates to limited partners.

Upon the return by the Secretary of State pursuant to section thirteen of this article of a receipt for the record and the fees the general partners shall promptly deliver or mail a copy of the receipt for the record and the fees to each limited partner unless the partnership agreement provides otherwise.

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§47-9-17. Admission of limited partners.

(a) A person becomes a limited partner on the later of:

(1) The date the original certificate of limited partnership is filed; or

(2) The date stated in the records of the limited partnership as the date that person becomes a limited partner.

(b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in section forty- two of this article, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of that power.

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§47-9-18. Voting by limited partners.

Subject to section nineteen of this article, the partnership agreement may grant to all or a specified group of the limited partners the right to vote, on a per capita or other basis, upon any matter.

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§47-9-19. Liability to third parties.

(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business: Provided, That if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by doing one or more of the following:

(1) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director or shareholder of a general partner that is a corporation;

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

(3) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(5) Requesting or attending a meeting of partners;

(6) Proposing, approving or disapproving, by voting or otherwise on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership;

(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) A change in the nature of the business;

(v) The admission or removal of a general partner;

(vi) The admission or removal of a limited partner;

(vii) A transaction involving an actual or potential conflict of interest between a general

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partner and the limited partnership or the limited partners;

(viii) An amendment to the partnership agreement or certificate of limited partnership; or

(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) Winding up the limited partnership pursuant to section forty-six of this article; or

(8) Exercising any right or power permitted to limited partners under this article and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2), section two of this article, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

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§47-9-20. Person erroneously believing himself limited partner.

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

(1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) Withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) of this section, is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

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§47-9-21. Right of limited partner to information.

Each limited partner has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by section five of this article;

(2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns from each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

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§47-9-22. Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admissions of additional general partners, with the written consent of all partners.

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§47-9-23. Events of withdrawal of general partner.

Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in section thirty-two of this article;

(2) The general partner ceases to be a member of the limited partnership as provided in section forty of this article;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided for in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties;

(5) Unless otherwise provided in writing in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person, (i) his death; or (ii) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

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

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

(9) In the case of a general partner that is a corporation, the filing of a certificate of

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dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

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§47-9-24. General powers and liabilities of general partner.

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

(b) Except as provided in this article, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided in this article or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to other partners.

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§47-9-25. Contributions by general partner.

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

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§47-9-26. Voting by general partners.

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

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§47-9-27. Form of contribution.

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

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§47-9-28. Liability for contribution.

(a) No promise by a limited partner to contribute to the limited partnership is enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to the portion of the value, as stated in the partnership records required to be kept by section five of this article of the stated contribution that has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this article may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

WV Legislature

§47-9-29. Sharing of profits and losses.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept by section five of this article, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

WV Legislature

§47-9-30. Sharing of distributions.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners and classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept by section five of this article, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

WV Legislature

§47-9-31. Interim distributions.

Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

WV Legislature

§47-9-32. Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him

WV Legislature

§47-9-33. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

WV Legislature

§47-9-34. Distribution upon withdrawal.

Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement, and, if not otherwise provided in the agreement, he is entitled to receive within a reasonable time after withdrawal the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

WV Legislature

§47-9-35. Distribution in kind.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

WV Legislature

§47-9-36. Right to distribution.

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

WV Legislature

§47-9-37. Limitations on distribution.

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

WV Legislature

§47-9-38. Liability upon return of contribution.

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

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

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the records required to be kept by section five of this article, of his contribution which has not been distributed to him

WV Legislature

§47-9-39. Nature of partnership interest.

A partnership interest is personal property.

WV Legislature

§47-9-40. Assignment of partnership interest.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

WV Legislature

§47-9-41. Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

WV Legislature

§47-9-42. Right of assignee to become limited partner.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this article. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in section thirty-eight of this article: Provided, That the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under sections fourteen and twenty-eight of this article.

WV Legislature

§47-9-43. Power of estate of deceased or incompetent partner.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

WV Legislature

§47-9-44. Nonjudicial dissolution.

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

(1) At the time or upon the happening of events specified in the certificate of limited partnership;

(2) Upon the happening of events specified in writing in the partnership agreement;

(3) The written consent of all partners;

(4) An event of withdrawal of a general partner, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired;

(5) Entry of a decree of judicial dissolution under section forty-five of this article; or

(6) Signing of a certificate of dissolution by the Secretary of State under section ten-a of this article.

WV Legislature

§47-9-45. Judicial dissolution.

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

WV Legislature

§47-9-46. Winding up of affairs.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs: Provided, That the appropriate circuit court may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

WV Legislature

§47-9-47. Distribution of assets.

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

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section thirty-one or thirty-four of this article;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under said section thirty-one or thirty- four; and

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

WV Legislature

§47-9-48. Law governing foreign limited partnerships.

Subject to the Constitution of this state, (1) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

WV Legislature

§47-9-49. Registration of foreign limited partnership.

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership or if its name is unavailable for use in this state, a limited partnership name that satisfies the requirements of section two of this article, including a copy of the resolution of its partners adopting the fictitious name;

(2) The state and date of its formation;

(3) The name and address of an agent for service of process, if any;

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

(5) The name and business address of each general partner; and

(6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

(b) The foreign limited partnership shall deliver with the completed application a certificate of existence, or a document of similar import, duly authenticated by the Secretary of State or other official having custody of the partnership records in the state or country under whose law it is organized.

WV Legislature

§47-9-50. Issuance of registration.

If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he shall file it and deliver to the limited partnership or its representative a receipt for the record and the fees.

This filing, or failure to file, shall in no way affect the formation of the limited partnership. Only the filing in the office of the Secretary of State, required by section nine of this article, shall determine the validity of the limited partnership.

WV Legislature

§47-9-51. Registration of name of foreign limited partnership.

A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that could be registered by a domestic limited partnership under the provisions of section two of this article.

WV Legislature

§47-9-52. Foreign limited partnership -- Changes and amendments to registration.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

WV Legislature

§47-9-53. Foreign limited partnership -- Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to claims for relief or causes of action arising out of the transaction of business in this state.

WV Legislature

§47-9-53a. Revocation and reinstatement of foreign limited partnership certificates of authority.

(a) The Secretary of State may revoke a certificate of authority of a foreign limited partnership to transact business in this state in the manner set forth in subsection (b) of this section if:

(1) The limited partnership fails to:

(A) Pay all applicable fees, franchise taxes, and penalties owed to the state within 60 days after the due date;

(B) Deliver its annual or biennial report within 60 days of the due date; or

(C) File a statement to change a name or business address of an agent as required by this article; or

(2) The limited partnership has made a misrepresentation of any material fact in any application, report, affidavit, or other record submitted pursuant to this article; or

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is required for the continued operation of the limited partnership; or

(4) The limited partnership is in default with the Bureau of Employment Programs as provided in §21a-2-6 of this code.

(b)(1) The Secretary of State may not revoke a certificate of authority of a foreign limited partnership unless the Secretary of State serves notice to the foreign limited partnership of the Secretary's intent to revoke the foreign limited partnership's certificate of authority at least 60 days prior to the effective date of the revocation, by a notice addressed to the foreign limited partnership's principal office.

(2) The notice must specify the cause for the revocation of the certificate of authority.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the revocation.

(c) A foreign limited partnership that has been administratively revoked may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the foreign limited partnership and the effective date of its administrative revocation;

(2) Demonstrate that the grounds for revocation either did not exist or have been eliminated;

WV Legislature

(3) Demonstrate that the foreign limited partnership's name satisfies the requirements of §47-9-2 of this code; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the foreign limited partnership have been paid.

(d) If the Secretary of State determines that the application for reinstatement contains the information required by subsection (c) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement.

(2) The Secretary of State shall file the certificate of reinstatement and serve the foreign limited partnership with a copy of the certificate.

(e) When the Secretary of State grants a reinstatement, the reinstatement relates back to and takes effect as of the effective date of the administrative revocation and the foreign limited partnership resumes its business as if the administrative revocation had never occurred.

WV Legislature

§47-9-54. Foreign limited partnership -- Transaction of business without registration.

(a) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in the state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) A foreign limited partnership, by transacting business in the state without registration, appoints the Secretary of State as its agent for service of process with respect to claim for relief or cause of action arising out of the transaction of business in this state.

WV Legislature

§47-9-55. Action by Attorney General to restrain a foreign limited partnership.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

WV Legislature

§47-9-56. Right of action by limited partner.

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

WV Legislature

§47-9-57. Proper plaintiff in derivative action.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

WV Legislature

§47-9-58. Pleading in derivative action.

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

WV Legislature

§47-9-59. Expenses in derivative action.

If a derivative action is successful in whole or in part or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him

WV Legislature

§47-9-60. Construction and application of article.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting the same.

WV Legislature

§47-9-61. Short title of article.

This article may be cited as the "Uniform Limited Partnership Act."

WV Legislature

§47-9-62. Effective date of article.

The provisions of this article become effective on January 1, 1982.

WV Legislature

§47-9-63. Rules for cases not provided for in article.

In any case not provided for in this article, the provisions of the uniform partnership act, article eight-a of this chapter, shall apply.

WV Legislature