WEST VIRGINIA CODE CHAPTER 47B ARTICLE 9

WV Legislature

§47B-9-1. Definitions.

In this article:

(1) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(2) "Limited partner" means a limited partner in a limited partnership.

(3) "Limited partnership" means a limited partnership created under section one, et seq., article nine, chapter forty-seven of this code, predecessor law, or comparable law of another jurisdiction.

(4) "Partner" includes both a general partner and a limited partner.

WV Legislature

§47B-9-2. Conversion of partnership to limited partnership.

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) A statement that the partnership was converted to a limited partnership from a partnership;

(2) Its former name; and

(3) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect for which the partner is personally liable under section six, article three of this chapter. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect for which a general partner would be personally liable under said section. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in sections one et seq., article nine, chapter forty-seven of this code.

www.legislature

§47B-9-3. Conversion of limited partnership to partnership.

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership for which the partner is personally liable under section six, article three of this chapter incurred after the conversion takes effect.

WV Legislature

§47B-9-4. Effect of conversion; entity unchanged.

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

WV Legislature

§47B-9-5. Merger of partnerships.

(a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) The terms and conditions of the merger;

(5) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property, in whole or part; and

(6) The street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:

(1) The approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;

(2) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) Any effective date specified in the plan of merger.

WV Legislature

§47B-9-6. Effect of merger.

(a) When a merger takes effect:

(1) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(2) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(b) The Secretary of State of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) All obligations of a party to the merger for which the partner was personally liable before the merger;

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section seven, article eight of this chapter or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a

WV Legislature

partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section one, article seven of this chapter or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section two, article seven of this chapter by an act of a general partner dissociated under this subsection, and the partner is liable under section three, article seven of this chapter for transactions entered into by the surviving entity after the merger takes effect.

WV Legislature

§47B-9-7. Statement of merger.

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) The name of each partnership or limited partnership that is a party to the merger;

(2) The name of the surviving entity into which the other partnerships or limited partnership were merged;

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(4) Whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in subsection (d) of this section, for the purposes of section two, article three of this chapter, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of section two, article three of this chapter, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection (c), section five, article one of this chapter, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d) of this section.

WVLegislature

§47B-9-8. Nonexclusive.

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

WV Legislature