

State of Alabama



Alabama Law Institute

Alabama Limited Partnership Law

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ALABAMA LAW INSTITUTE

www.ali.state.al.us

Alabama State House
Suite 207

11 South Union Street
Montgomery, Alabama 36130
(334) 242-7411
FAX (334) 242-8411

Law Center
Room 326

Post Office Box 861425
Tuscaloosa, Alabama 35486
(205) 348-7411
FAX (205) 348-8411

Alabama Law Institute

Alabama Limited Partnership Law

with

Conforming Changes to Title 10A, Chapter 1 (HUB)

and

**Conforming Changes to Title 10A, Chapter 5A
(LLCs)**

January 2016

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Preface

The current Alabama Limited Partnership Law and the Alabama Business and Nonprofit Entity Code were both enacted in 2010, but the current Alabama Limited Partnership Law had not been through the Alabama Law Institute process of integrating the current Alabama Limited Partnership Law with the Alabama Business and Nonprofit Entity Code. Rather, that integration process was left to the Code Commissioner. See Section 10A-1-1.02(e).

During the drafting of the Alabama Limited Liability Company Law of 2014 (the “LLC Law”), several anomalies were found in the current Alabama Limited Partnership Law (the “current LP Law”), including a number of integration issues. It was also determined that the two Laws had many similar provisions, but utilized different language to accomplish the same result.

The Business Entity Committee charged with keeping the Alabama Business and Nonprofit Entity Code (the “Code”) current agreed that the current LP Law needed to be better integrated with the Code using the process developed in the drafting of the LLC Law, and needed to have the language of the current LP Law and the LLC Law as similar as possible in areas where the same result was attempting to be accomplished. This harmonization of the current LP Law and the LLC Law, along with the better integration of the current LP Law, is intended to (i) assist the practitioner by reducing the differences between the two Laws where possible and (ii) allow for more consistent case law developments between the two Laws.

Part 1

Part 1 of this booklet addresses the changes to the current LP Law. While the changes are numerous, the focus of the changes was on better integrating the current LP law with the Code, while at the same time harmonizing the current LP Law with the LLC Law.

A few noteworthy features of this Act are:

(a) Contractual Nature. Much like the current LP Law, this new LP Law focuses on the contractual nature of the limited partnership, and thus, there are few mandatory provisions. Most features of a limited partnership can be modified by the partners to suit their needs in a partnership agreement; however, since the new LP Law, like the current LP Law includes many default provisions, those default provisions apply if the partners do not modify them in the partnership agreement.

(b) Mandatory Safeguards. Despite the emphasis on allowing the partners to make their own contract, the new LP Law maintains certain obligations, such as the implied contractual covenant of good faith and fair dealing, cannot be modified.

(c) Notice Filing. In keeping with the contractual nature of the limited partnership, the filings required to form, dissolve, merge, or convert a limited partnership are designed only to notify the State and third parties that the limited partnership exists and how to contact it. The details about the limited partnership will be contained in the partnership agreement.

(d) Agency. Unlike a limited liability company, the agency of a limited partnership is set by statute, and is vested in the general partners. Thus, the certificate of formation requires that the general partners be listed.

(e) Purposes. The rules governing limited partnerships are phrased in terms of “activities and affairs,” reflecting the fact that limited partnerships can be used for purposes other than carrying on a business (e.g., holding title to property, estate planning).

(f) Harmonization. The committee went to great lengths to harmonize, to the extent possible, the various processes of formation, filings, notice, amendment and restatement of certificates of formation, admission of limited partners and general partners, contributions and distributions, dissociation of partners

and the effects thereof, transfers of interests, charging orders, rights of personal representatives, dissolution and winding up, direct and derivative actions, and conversions and mergers. This process revealed some issues with the Chapter 1 of the Code (the “Hub”) which are dealt with in Part 2 of this booklet.

(g) Dissolution. The dissolution process has been modified to follow the more modern rule of filing a statement of dissolution rather than amending the certificate of formation. This change places the new LP Law on the same footing as the Alabama General Partnership Law and the LLC Law.

(h) Conversions. The process for conversions was slightly modified to take into account a request from the Secretary of State—that is when both the converting entity and the converted entity are domestic entities, to have the statement of conversion and the certificate of formation filed simultaneously with the Secretary of State to resolve confusion that many practitioners were having utilizing the current LP Law. That change simply reflects current practice by the Secretary of State in its application of the conversion provisions under the Hub.

(i) Powers of Personal Representatives. During the drafting process, the Alabama Supreme Court issued its ruling in *L.B. Whitfield, III Family LLC v. Virginia Ann Whitfield et al.*, 150 So.3d 171 (Ala 2014). The new LP Law, along with the changes to the LLC Law in Part 3 hereof, clarifies that the holding in that case should not apply to the default powers of a deceased partner’s personal representative or other legal representative so long as that personal representative or other legal representative holds the deceased partner’s transferable interests.

Part 2

Part 2 of this this booklet addresses the changes to the Hub. A number of definitions needed to be modified to reflect the LLC Law and the changes made in the new LP Law. Additional changes were made to the synonymous terms provisions, the short title

provisions, the amendment provisions (which now provides a default rule for allowing amendments to certain filing instruments of an entity if rules are not provided in the specific chapters governing that entity or in that entity's governing documents), and the indemnity provisions (making clear that the indemnity provisions do not automatically apply to limited partnership, unless the partners provide for such in the partnership agreement, or unless otherwise provided for in the new LP Law or other applicable law). In addition, due to an error in integration, the provisions regarding allowable names of a limited partnership had been moved to the current LP Law rather than the HUB. This integration issue has been reversed such that the practitioner is able to look to the HUB for the naming conventions of all filing or registering entities.

Part 3

Part 3 of this booklet addresses the changes to the LLC Law. The majority of the changes are reflective of the harmonization of the LP Law and the LLC Law.

This draft was the product of much hard work by the Business Entities Standing Committee which is chaired by Jim Wilson. Jack Stephenson and Scott Ludwig served as the primary reporters on this project leading the effort of the committee.

Othni J. Lathram
Director

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**Part 1:
Alabama Limited Partnership Law**

Chapter 9A

Article 1

General Provisions

§ 10A-9A-1.01.	Short Title.
§ 10A-9A-1.02.	Definitions.
§ 10A-9A-1.03.	Knowledge and notice.
§ 10A-9A-1.04.	Nature and purpose.
§ 10A-9A-1.05.	Powers; Indemnification.
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§ 10A-9A-1.10.	Partnership agreement; effect on third parties and relationship to writings effective on behalf of limited partnership.
§ 10A-9A-1.11.	Required information.
§ 10A-9A-1.12.	Transactions of partner with partnership.
§ 10A-9A-1.13.	Dual capacity.
§ 10A-9A-1.14.	Consent and proxies of partners.

§ 10A-9A-1.01. Short title.

This chapter and the provisions of Chapter 1, to the extent applicable to limited partnerships, shall be known and may be cited as the Alabama Limited Partnership Law.

Comment

This Chapter updates Alabama's limited partnership law in a manner that provides for greater alignment with Alabama's limited liability company law. This Chapter is not based on a single source, but rather has borrowed concepts and provisions from a variety of sources.

A summary of significant features of this Chapter are:

(a) Contractual Nature. This Chapter focuses on the contractual nature of the limited partnership. There are few mandatory provisions in this Chapter; most features of a limited partnership can be modified by the parties to suit their needs. This Chapter includes many default provisions that apply if the partners do not modify them in the partnership agreement.

(b) Mandatory Safeguards. Despite the emphasis on allowing the parties to make their own contract, this Chapter provides that certain obligations, such as the implied contractual covenant of good faith and fair dealing, cannot be modified.

(c) Notice Filing. In keeping with the contractual nature of the limited partnership, the filings required to form, dissolve, merge, or convert a limited partnership are designed only to notify the State and third parties that the limited partnership exists and how to contact it. The details about the limited partnership will be contained in the partnership agreement.

(d) Agency. Unlike a limited liability company, the agency of a limited partnership is set by statute, and is vested in the general partners. Thus, the certificate of formation requires that the4 general partners be listed.

(e) Purposes. The rules governing limited partnerships are phrased in terms of "activities and affairs," reflecting the fact that limited partnerships can be used for purposes other than carrying on a business (e.g., holding title to property, estate planning).

Reference in the commentary to “RUPA” refers to the Revised Uniform Partnership Act (1997); reference to “RULPA” refers to the Revised Uniform Limited Partnership Act (1985); reference to “ULPA” refers to the Uniform Limited Partnership Act (2001); reference to “RULLCA” refers to the Revised Uniform Limited Liability Company Act (2006); references to “RPLLCA” refers to the Revised Prototype Limited Liability Company Act (2011); and reference to “RMBCA” refers to the Revised Model Business Corporation Act (2007).

Reference in the commentary to “Colorado, § ” refers to a Section in the Colorado Limited Liability Company Act (Colo. Rev. Stat. § 7-80-101, et. seq.) or the Colorado Corporations and Associations Act (Colo. Rev. Stat. § 7-90-101, et. seq.); reference in the comment Sections to “Delaware, § ” refers to a Section in the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et. seq.); and reference in the comment Sections to “Texas, § ” refers to a Section in the Texas Business Organizations Code (Tex. Bus. Orgs. Code § 1.001, et. seq.).

§ 10A-9A-1.02. Definitions.

Notwithstanding Section 10A-1-1.03, as used in this chapter, unless the context otherwise requires, the following terms mean:

(1) “Certificate of Formation” with respect to a limited partnership means the certificate of formation required by Section 10A-9A-2.01, and the certificate of formation as amended or restated.

(2) “Distribution” except as otherwise provided in Section 10A-9A-5.08(f), means a transfer of money or other

property from a limited partnership to another person on account of a transferable interest.

(3) “Foreign limited liability limited partnership” means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to Section 10A-9A-4.04(c).

(4) “Foreign limited partnership” means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

(5) “General partner” means:

(A) with respect to a limited partnership, a person that:

(i) is admitted as a general partner under Section 10A-9A-4.01; or

(ii) was a general partner in a limited partnership when the limited partnership became subject to this chapter under Section 10A-9A-11.01(a); and

(B) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(6) “Limited liability limited partnership,” except in the phrase “foreign limited liability limited partnership,” means a limited partnership whose certificate of formation states that the limited partnership is a limited liability limited partnership.

(7) “Limited partner” means:

(A) with respect to a limited partnership, a person that:

(i) is admitted as a limited partner under Section 10A-9A-3.01; or

(ii) was a limited partner in a limited partnership when the limited partnership became subject to this chapter under Section 10A-9A-11.01(a); and

(B) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(8) “Limited partnership,” except in the phrases “foreign limited partnership” and “foreign limited liability limited partnership,” means an entity, having one or more general partners

and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under Article 10 or Section 10A-9A-11.01(a). The term includes a limited liability limited partnership.

(9) “Partner” means a limited partner or general partner.

(10) “Partnership agreement” means any agreement (whether referred to as a partnership agreement or otherwise), written, oral or implied, of the partners as to the activities and affairs of a limited partnership. The partnership agreement includes any amendments to the partnership agreement.

(11) “Person dissociated as a general partner” means a person dissociated as a general partner of a limited partnership.

(12) “Required information” means the information that a limited partnership is required to maintain under Section 10A-9A-1.11.

(13) “Transfer” means an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, or transfer by operation of law.

(14) “Transferable interest” means a partner's right to receive distributions from a limited partnership.

(15) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

Comment

The definitions of specific words and phrases used in this Chapter have been modified to conform with the Alabama Limited Liability Company Law of 2014. Each word or phrase which is defined in this section for use throughout this Chapter is intended to override and supersede that same specific word’s or phrase’s definition in Chapter 1 of this Title (the “Hub”) for purposes of this Chapter and the limited partnership law. Other words not defined in this Chapter may be defined in the Hub. Words and phrases that were deleted from the definitions in this section were deemed to be appropriately defined in the Hub or unnecessary.

*“**Certificate of formation**” replaces “certificate of limited partnership” in an effort to conform to Chapter 1. (Section 10A-1-1.06 provides that “certificate of formation” includes “certificate of limited partnership”).*

*“**General Partner**” is defined more specifically than that provided in Chapter 1 so as to reflect a general partner of a domestic limited partnership and a foreign limited partnership. It should be noted that a partnership agreement may vary Section 10A-9A-4.01 and may provide a process or mechanism for being admitted as a general partner which is different from or additional to the rules stated in that section. For the purposes of this definition, a person who is admitted as a general partner pursuant to a provision of the partnership agreement “is admitted as a general partner under Section 10A-9A-4.01.” The definition also includes general partners who were in existence before the effective date of this Chapter.*

*“**Limited partner**” is likewise more specifically defined than that provided in Chapter 1 so as to reflect a limited partner of a domestic limited partnership and a foreign limited partnership. Like the general partner admission process, a partnership*

agreement may vary Section 10A-9A-3.01 and provide a process or mechanism for being admitted as a limited partner which is different from or additional to the rules stated in that section. For the purposes of this definition, a person who is admitted as a limited partner pursuant to a provision of the partnership agreement “is admitted as a limited partner under Section 10A-9A-3.01.” The definition also includes limited partners who were in existence before the effective date of this Chapter.

“Limited partnership” is defined as domestic only. This definition is intended to override the definition in Chapter 1 (Section 10A-1-1.03(52)), which includes both domestic and foreign limited partnerships. The definition encompasses: (i) limited partnerships originally formed under this Chapter; (ii) limited partnerships formed or becoming subject to this Chapter pursuant to Article 10 of this Chapter; and (iii) all other preexisting domestic limited partnerships when they become subject to this Chapter under Section 10A-9A-11.01(a). This definition contains two substantive requirements. First, it is of the essence of a limited partnership to have two classes of partners. Accordingly, a limited partnership must have at least one general and one limited partner. Section 10A-9A-8.01(c) and (d) provide that a limited partnership dissolves if its sole general partner or sole limited partner dissociates and the limited partnership fails to admit a replacement in accordance with those sections. Although those sections are default rules, in light of this definition, a limited partnership may not indefinitely delay “having one or more general partners and one or more limited partners.” It is also of the essence of a limited partnership to have at least two partners. This definition codifies this requirement by referring to a limited partnership as “an entity”... which is formed under this chapter...by two or more persons...” Thus, while the same person may be both a general and limited partner, Section 10A-9A-1.13 (Dual Capacity), one person alone cannot be the “two persons” contemplated by this definition. However, nothing in this definition prevents two closely affiliated persons from satisfying the two person requirement.

The term “**sign**” as used in this Chapter is defined by way of the definition of “signature” in Section 10A-1-1.03 and the operative provisions of Section 10A-1-1.07. The definition of

“designated office” was deleted to avoid confusion as it was determined that it had a similar meaning as the office of the registered agent in some provisions and principal office in other provisions. The use of the term designated office had been previously eliminated in certain provisions. The definition of the term “principal office” was deleted as it was determined that the term was well defined under Alabama case law.

§ 10A-9A-1.03. Knowledge and notice.

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

- (1) has actual knowledge of it; or
- (2) is deemed to know it under law other than

this chapter.

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

- (1) knows of it;
- (2) receives notification of it;
- (3) has reason to know the fact from all of the

facts known to the person at the time in question; or

- (4) is deemed to have notice of the fact under

subsection (d).

(c) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person is deemed to have notice of a limited partnership's:

(1) matters included in the certificate of formation under Sections 10A-9A-2.01(a)(1), (a)(2), (a)(3), (a)(4), if applicable, (a)(5), and (a)(6) upon filing;

(2) general partner dissociating as a general partner, 90 days after the effective date of an amendment to the certificate of formation which states that the general partner has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the general partner, whichever occurs first;

(3) dissolution, 90 days after a statement of dissolution under Section 10A-9A-8.02 or Section 10A-9A-8.03 becomes effective;

(4) merger or conversion under Article 10 or under Article 8 of Chapter 1, 90 days after the statement of merger or conversion becomes effective; or

(5) reinstatement, 90 days after a certificate of reinstatement under Section 10A-9A-8.11 becomes effective.

(e) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is

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

Comment

The provisions of this section have been modified to conform with the Alabama Limited Liability Company Law of 2014. In addition, the concept of a certificate of termination has been eliminated as it caused confusion and unintended results. The concept of a statement of dissolution has been added to better align the provisions of this section with that of the Alabama General Partnership Law and the Alabama Limited Liability Company Law of 2014.

Subsections (b), (c), and (d) provide separate and independent avenues through which a person can have notice of a fact. A person has notice of a fact as soon as any of the avenues applies. For example, a limited partnership dissolves and files a statement of dissolution. The statement of dissolution is effective on March 1. On March 15, Person #1 has reason to know of the dissolution and therefore has "notice" of the dissolution under subsection (b)(3) even though subsection (d)(3) does not yet apply. Person #2 does not have actual knowledge of the dissolution until June 15. Nonetheless, under subsection (d)(2) Person #2 is deemed to have "notice" of the dissolution on May 30.

Subsection (d) provides what is commonly called constructive notice and works in conjunction with other sections of this Chapter

to curtail the power to bind and personal liability of general partners and persons dissociated as general partners. See Sections 10A-9A-4.02, 6.06, 6.07, 8.04, 8.05, 10.11, and 10.12 (and Article 8 of Chapter 1). The constructive notice begins 90 days after the effective date of the filed record. For the Chapter's rules on delayed effective dates, see Division B of Article 4 of Chapter 1). The 90-day delay applies only to the constructive notice and not to the event described in the filed record. For example, on March 15, X dissociates as a general partner from XYZ Limited Partnership by giving notice to XYZ. See Section 10A-9A-6.03(1). On March 20, XYZ amends its certificate of limited partnership to remove X's name from the list of general partners. See Section 10A-9A-2.02(d)(2). X's dissociation is effective March 15. If on March 16, X purports to be a general partner of XYZ and under Section 10A-9A-6.06(a) binds XYZ to some obligation, X will be liable under Section 10A-9A-6.06(b) as a "person dissociated as a general partner." On June 13 (90 days after March 15), the world has constructive notice of X's dissociation as a general partner. Beginning on that date, X will lack the power to bind XYZ. See Section 10A-9A-6.06(a)(2) (person dissociated as a general partner can bind the limited partnership if, "at the time the other party enters into the transaction the other party does not have notice of the dissociation and reasonably believes that the person is a general partner"). Constructive notice under this subsection applies all persons, including, but not limited to, partners, dissociated partners, transferees, and third parties.

Subsection (e) and Section 10A-9A-3.02, provide that if information is possessed by a person that is only a limited partner that information is not attributable to the limited partnership. However, information possessed by a person that is a general partner is attributable to the limited partnership.

§ 10A-9A-1.04. Nature and purpose.

(a) A limited partnership is a separate legal entity. A limited partnership's status for tax purposes shall not affect its status as a separate legal entity formed under this chapter. A

limited partnership is the same entity regardless of whether its certificate of formation states that the limited partnership is a limited liability limited partnership. A partner has no interest in any specific property of a limited partnership.

(b) A limited partnership may carry on any lawful activity, whether or not for profit, except a banking or insurance business.

Comment

The first sentence was modified to conform with the Alabama Limited Liability Company Law of 2014. No substantive change was made--a limited partnership is a separate legal entity and since it is a separate legal entity it is distinct from its partners. The second sentence of Section (a) was added to conform with the Alabama Limited Liability Company Law of 2014. The third sentence of subsection (a) confirms that acquiring or relinquishing an LLLP shield changes only the rules governing a general partner's liability for subsequently incurred obligations of the limited partnership--the underlying entity is unaffected.

The last sentence of subsection (a) is simply a statement of current law, as the limited partnership is an entity. Subsection (b) was modified by adding "whether or not for profit" in order to allow for nonprofit limited partnerships. If a limited partnership is organized for non-profit activities, the organizers should carefully review this Chapter's default rules and override them as necessary via the partnership agreement—see generally, the definition of transferable interest as the right to receive distributions, Article 5 regarding contributions and distributions, and Section 10A-9A-8.09 regarding distribution of assets upon dissolution. Subsection (b) also provides a prohibition for banking and insurance businesses to continue the prohibition under prior Alabama law. Subsection (c) was removed because it is covered in the Hub in Section 10A-1-3.03.

§ 10A-9A-1.05. Powers; Indemnification.

(a) A limited partnership shall possess and may exercise all the powers and privileges granted and enumerated by Chapter 1 or by any other law or by its partnership agreement, together with any powers incidental thereto, including those powers and privileges necessary or convenient to the conduct, promotion, or attainment of the business, purposes, or activities and affairs of the limited partnership and including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

(b) A limited partnership may indemnify and hold harmless a partner or other person, pay in advance or reimburse expenses incurred by a partner or other person, and purchase and maintain insurance on behalf of a partner or other person.

Comment

This section has been modified to conform with the Alabama Limited Liability Company Law of 2014 and the Hub. It should be noted that the “power to sue, be sued, and defend in its own name” is mentioned specifically so that Section 10A-9A-1.08(c)(2) can prohibit the partnership agreement from varying that power. The power to maintain an action against a partner is mentioned specifically to establish that the limited partnership itself has

standing to enforce the partnership agreement. Subsection (b) was derived from Section 10A-5A-4.10 of the Alabama Limited Liability Company Law of 2014, which is intended to provide more flexibility than is provided in Article 6 of Chapter 1. It should be noted that Section 10A-9A-4.06(c) provides for indemnification of the general partner, assuming that the partnership agreement does not override that section.

§ 10A-9A-1.06. Governing law.

(a) The law of this state governs:

(1) the organization and internal affairs of a limited partnership;

(2) the liability of a partner as a partner for the debts, obligations, or other liabilities of a limited partnership; and

(3) the authority of the partners of a limited partnership.

(b) The law of the state or other jurisdiction under which a foreign limited partnership is formed governs:

(1) the organization and internal affairs of a foreign limited partnership;

(2) the liability of a partner as a partner for the debts, obligations, or other liabilities of a foreign limited partnership; and

(3) the authority of the partners of a foreign limited partnership.

Comment

This section is substantially similar to Section 10A-5A-1.05 of the Alabama Limited Liability Company Law of 2014. Under general choice-of-law principles, a court must follow a statutory directive of its own state on choice of law. Restatement Second, Conflict of Laws § 6(1). Subsection (b) provides such a statutory directive. Consistent with unincorporated entity acts around the country, Subsection (b) specifies that the organization and internal affairs of a foreign limited partnership are governed by the laws of its jurisdiction of formation.

To avoid any uncertainty as to whether the “internal affairs” of a limited partnership include the liability of the partners for the debts and obligations of the limited partnership and the authority of partners, these matters are specified as matters that are governed by the laws of the limited partnership’s jurisdiction of formation. Section 10A-9A-1.08(c)(3) prohibits the variance of the law applicable to a limited partnership by way of its partnership agreement.

§ 10A-9A-1.07. Supplemental principles of law; rate of interest.

(a) It is the policy of this chapter and this state to give maximum effect to the principles of freedom of contract and to the enforceability of partnership agreements.

(b) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(c) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is the applicable federal rate as determined from time to time by the United States Treasury pursuant to 26 U.S.C. § 1274(d) or any successor law.

(d) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(e) The use of any gender shall be applicable to all genders. The captions contained in this chapter are for purposes of convenience only and shall not control or affect the construction of this chapter.

(f) Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, do not apply to any interest in a limited partnership, including all rights, powers, and interests arising under a partnership agreement or this chapter. This provision prevails over Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto, and is expressly intended to permit the enforcement of the provisions of a partnership agreement that would otherwise be ineffective under Sections 7-9A-406 and 7-9A-408 of the Uniform Commercial Code, and all successor statutes thereto.

(g) Division E of Article 3 of Chapter 1 shall have no application to this chapter.

(h) Sections 10A-1-1.03(73), (81), (88) and (91) shall have no application to this chapter.

(i) Section 10A-1-2.13(c) shall have no application to this chapter.

Comment

Subsections (a) through (i) are similar to the Alabama Limited Liability Company Law of 2014 Section 10A-5A-1.06, and Subsections (a) through (e) are similar to the Alabama Partnership Law Section 10A-8-1.05. Subsection (f) is substantially similar to the Alabama Limited Company Law of 2014 Section 10A-5A-1.06(e). Subsection (g) was added to clarify that the provisions of Chapter 1 (Sections 10A-1-3.41 through 10A-1-3.45) regarding certificates shall not apply to limited partnerships. If the partners of the limited partnership wish to issue certificates, such certificates may be issued in accordance with the limited partnership agreement. In addition, to the extent that the partners desire to have Article 8 of the UCC apply, Article 8 has specific requirements regarding such certificates. Subsection (h) was added to prevent the application of the definitions of “President,” “Vice-President,” “Secretary” and “Treasurer” to limited partnerships. Subsection (i) was added to avoid the creation of certain presumptions and certain statutory causes of action regarding guarantees in the limited partnership context. These matters seem best left to current remedies and to the parties to the partnership agreement. As to subsection (b), a court should not assume that a case concerning a general partnership is automatically relevant to a limited partnership governed by this Chapter. A general partnership case may be relevant by analogy, especially if (1) the issue in dispute involves a provision of this Chapter for which a comparable provision exists under the law of general partnerships; and (2) the fundamental differences between a general partnership and limited partnership are immaterial to the disputed issue. Because of the effort to conform this Chapter with the Alabama Limited Liability Company Law of 2014, a case involving an Alabama limited liability company may be relevant by analogy, especially if (1) the issue in dispute involves a provision of this Chapter for which a comparable provision exists under the Alabama Limited Liability Company Law of 2014; and (2) the fundamental differences between a limited liability company and limited partnership are immaterial to the disputed issue.

§ 10A-9A-1.08. Effect of partnership agreement; nonwaivable provisions.

(a) Except as otherwise provided in Subsections (b) and

(c):

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

(2) to the extent the partnership agreement does not otherwise provide for a matter described in Subsection (a)(1), this chapter governs the matter.

(b) (1) To the extent that, at law or in equity, a partner or other person has duties, including fiduciary duties, to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, the partner's or other person's duties may be expanded or restricted or eliminated by provisions in a written partnership agreement, but the implied contractual covenant of good faith and fair dealing may not be eliminated.

(2) A written partnership agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties, including fiduciary

duties, of a partner or other person to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement, but a partnership agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(3) A partner or other person shall not be liable to a limited partnership or to another partner or to another person that is a party to or is otherwise bound by a partnership agreement for breach of fiduciary duty for the partner's or other person's good faith reliance on the partnership agreement.

(4) A partnership agreement may provide that:

(A) a partner or transferee who fails to perform in accordance with, or to comply with the terms and conditions of, the partnership agreement shall be subject to specified penalties or specified consequences; and

(B) at the time or upon the happening of events specified in the partnership agreement, a partner or transferee may be subject to specified penalties or specified consequences.

(5) A penalty or consequence that may be specified under paragraph (4) of this subsection may include and take the form of reducing or eliminating the defaulting partner's or transferee's proportionate interest in a limited partnership, subordinating the partner's or transferee's transferable interest to that of non-defaulting partners or transferees, forcing a sale of that transferable interest, forfeiting the defaulting partner's or transferee's transferable interest, the lending by other partners or transferees of the amount necessary to meet the defaulting partner's or transferee's commitment, a fixing of the value of the defaulting partner's or transferee's transferable interest by appraisal or by formula and redemption or sale of the transferable interest at that value, or other penalty or consequence.

(6) A written partnership agreement may supersede, in whole or in part, the provisions of Division C and Division D of Article 3 of Chapter 1.

(c) A partnership agreement may not:

(1) vary the nature of the limited partnership as a separate legal entity under Section 10A-9A-1.04(a);

(2) vary a limited partnership's power under Section 10A-9A-1.05 to sue, be sued, and defend in its own name;

(3) vary the law applicable to a limited partnership under Section 10A-9A-1.06;

(4) restrict rights under this chapter of a person other than a partner, a dissociated partner, or a transferee;

(5) vary the requirements of Section 10A-9A-2.03;

(6) vary the information required under Section 10A-9A-1.11 or unreasonably restrict the right to information under Sections 10A-9A-3.04 or 10A-9A-4.07, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(7) vary the power of the court under Section 10A-9A-2.04;

(8) eliminate the implied contractual covenant of good faith and fair dealing as provided under Section 10A-9A-1.08(b)(1);

(9) eliminate or limit the liability of a partner or other person for any act or omission that constitutes a bad faith

violation of the implied contractual covenant of good faith and fair dealing as provided under Section 10A-9A-1.08(b)(2);

(10) waive the requirements of Section 10A-9A-5.02(e);

(11) reduce the limitations period specified under Section 10A-9A-5.08(d) for an action commenced under other applicable law;

(12) waive the prohibition on issuance of a certificate of a transferable interest in bearer form under Section 10A-9A-7.02(c);

(13) vary the power of a person to dissociate as a general partner under Section 10A-9A-6.04(a) except that the partnership agreement may require that the notice under Section 10A-9A-6.03(1) be in a writing or in a specific form thereof;

(14) vary the power of a court to decree dissolution in the circumstances specified in Section 10A-9A-8.01(f);

(15) vary the requirement to wind up the partnership's activities and affairs as specified in Section 10A-9A-8.02; or

(16) vary the rights of a partner under Section 10A-9A-10.10.

Comment

Subsection (a) is substantially similar to the Alabama Limited Liability Company Law of 2014 Section 10A-5A-1.08(a).

Subsection (b) is substantially similar to the Alabama Limited Liability Company Law of 2014 Section 10A-5A-1.08(b). Subsections (b)(1) and (c)(8) make clear that the implied contractual covenant of good faith and fair dealing may not be eliminated. The term “implied contractual covenant of good faith and fair dealing” as used in this Chapter is the same as that set forth in Delaware §18-1101 (c), (d), and (e), as that term was interpreted by the Delaware Supreme Court in Gerber v. Enterprise Products Holdings, LLC, 67 A.3d 400 (2013). The Alabama Supreme Court recognized this concept in Sellers v. Head, 73 So.2d 747 (Ala. 1954)(This implied covenant provides that if a contract fails to specify all of the duties and obligations intended to be assumed, “the law will imply an agreement to do those things according to reason and justice the parties should do in order to carry out the purpose for which the contract was made.”) Section 7-1-304, and cases construing the section such as, Tanner v. Church’s Fried Chicken, Inc., 582 So.2d 449, 452 (Ala. 1991) and Government Street Lumber Co., Inc. v. AmSouth Bank, NA, 553 So.2d 68 (1989) should not be utilized in interpreting the term “implied contractual covenant of good faith and fair dealing.” Consistent with the Alabama Supreme Court holding in Peninsular Life Ins. Co. v. Blackmon, 476 So.2d 87, 89 (Ala. 1985) the term “implied contractual covenant of good faith and fair dealing” does not create any new cause of action in tort for bad faith or any other tort. See also changes to Section 408(b) and (c) which expand the default duties by changing the word “only” to “includes.” This change allows for a finding of other duties and places the Alabama Limited Partnership Law in a position that it was prior to January 1, 2011.

Subsection (b)(6) makes clear that a partnership agreement may supersede, in whole or in part, Sections 10A-1-3.21, 10A-1-3.22, 10A-1-3.23, 10A-1-3.24, 10A-1-3.31, 10A-1-3.32, and 10A-1-3.33.

Subsection (c)(10) affirms the requirement that all contribution obligations must be set forth in writing and that requirement may not be waived by a partnership agreement.

Subsection (c)(12) affirms the requirement that a limited partnership may not issue certificate of a transferable interest in bearer form.

Subsection (c)(13) allows the partnership agreement to require that the notice of dissociation of a general partner be in a specific form of writing.

Subsection (c)(14) should not be read to limit a partnership agreement's power to provide for arbitration. For example, an agreement to arbitrate all disputes – including dissolution disputes – is enforceable. Any other interpretation would put this Chapter at odds with federal law. See Southland Corp. v. Keating, 465 U.S. 1 (1984) (holding that the Federal Arbitration Act preempts state statutes that seek to invalidate agreements to arbitrate) and Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995) (same). This provision does prohibit any narrowing of the substantive grounds for judicial dissolution as stated in Section 10A-9A-8.01(f). For example, a provision of a partnership agreement that states that no partner may obtain judicial dissolution without showing that a general partner is in material breach of the partnership agreement is ineffective to prevent a court from ordering dissolution under Section 10A-9A-8.01(f).

Subsection (c)(16) restricts a partnership agreement from varying the rights under Section 10A-9A-10.10 which provides special consent requirements with regard to transactions that might make a partner personally liable for entity debts.

§10A-9A-1.09. Partnership agreement; effect on limited partnership and persons admitted as partners.

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

(b) A person that is admitted as a partner of a limited partnership becomes a party to and assents to the partnership agreement except as provided in Section 10A-9A-7.02(g).

(c) Two or more persons intending to be the initial general partner and the initial limited partner of a limited partnership may make an agreement providing that upon the formation of the limited partnership, the agreement will become the partnership agreement.

Comment

This Section is derived from Alabama Limited Liability Company Law of 2014 Section 10A-5A-1.09. The language specifying that a person is deemed to become a party to the partnership agreement upon admission as a partner is intended to make clear that the partner is bound by and may enforce the partnership agreement.

§10A-9A-1.10. Partnership agreement; effect on third parties and relationship to writings effective on behalf of limited partnership.

(a) If a partnership agreement provides for the manner in which it may be amended, including by requiring the approval

of a person who is not a party to the partnership agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, except that the approval of any person may be waived by that person and any conditions may be waived by all persons for whose benefit those conditions were intended.

(b) A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent set forth in the partnership agreement.

(c) The obligations of a limited partnership and its partners to a person in the person's capacity as a transferee or dissociated partner are governed by the partnership agreement. A transferee and a dissociated partner are bound by the partnership agreement.

(d) If a writing that has been delivered by a limited partnership for filing in accordance with Chapter 1 and has become effective conflicts with a provision of the partnership agreement:

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

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

Comment

This Section was derived from Alabama Limited Liability Company Law of 2014 Section 10A-5A-1.10. Subsection (d) was previously located in Section 10A-9-2.01(d), and thus, there is no change in law, rather the move was made to make Alabama's unincorporated entity laws more consistent.

§ 10A-9A-1.11. Required information.

A limited partnership shall maintain the following information:

(1) A current list of the full name and last known business or residential street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order.

(2) Copies of the filed certificate of formation and all amendments thereto, together with signed copies of any powers of attorney under which any certificate of formation, amendment, or restatement has been signed.

(3) Copies of any filed statement of conversion or merger.

(4) Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.

(5) Copies of the then effective partnership agreement and any amendment thereto.

(6) Copies of any financial statement of the limited partnership for the three most recent years.

(7) Copies of any writing made by the limited partnership during the past three years of any approval or consent given by or taken of any partner pursuant to this chapter or the partnership agreement.

(8) Unless contained in a partnership agreement made in a writing, a writing stating:

(A) the amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

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

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

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

Comment

It is appropriate to require a limited partnership to maintain the records listed in Section 10A-9A-1.11, however, those records may be located at various locations. For example, the financial statements and tax returns might be maintained at the office of a limited partnership's accountant, while the certificate of formation and partnership agreement might be maintained at the offices of the limited partnership's attorney. Sections 10A-9A-3.04 and 10A-9A-4.07 govern access to the information required by this section, as well as to other information pertaining to a limited partnership.

Subparagraph (7) does not require a limited partnership to make a writing of approvals or consents given. However, if the limited partnership has made such a writing, this paragraph requires that the limited partnership maintain the writing for three years. The requirement applies to any writing made by the limited partnership, not just to writings made contemporaneously with the giving of approval or consent.

Subparagraph (9) states that information is "contained in a partnership agreement made in a "writing" only to the extent that the information is "integrated" into a writing and, in that memorialized form, has been consented to as part of the partnership agreement. This subparagraph is not a statute of frauds provision. For example, failure to comply with paragraph (8)(A) or (B) does not render unenforceable an oral promise to make a contribution. Likewise, failure to comply with paragraph (8)(D) does not invalidate an oral term of the partnership specifying "events upon the happening of which the limited partnership is to be dissolved and its activities wound up." See also Section 10A-9A-8.01(a). However, the mere fact that a limited partnership maintains a record in purported compliance with paragraph (8)(A) or (B) does not prove that a person has actually promised to make a contribution. Likewise, the mere fact that a

limited partnership maintains a record in purported compliance with paragraph (8)(D) does not prove that the partnership agreement actually includes the specified events as causes of dissolution. Consistent with the partnership agreement's plenary power to structure and regulate the relations of the partners inter se, a partnership agreement can impose "made in a writing" requirements which render unenforceable oral promises to make contributions or oral understandings as to "events upon the happening of which the limited partnership is to be dissolved."

§ 10A-9A-1.12. Transactions of partner with partnership.

A partner may lend money to and transact other activities or affairs with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

Comment

This section has no impact on a general partner's duty under Section 10A-9A-4.08(b)(2) (duty of loyalty includes refraining from acting as or for an adverse party) and means rather that this Chapter does not discriminate against a creditor of a limited partnership that happens also to be a partner. See, e.g., BT-I v. Equitable Life Assurance Society of the United States, 75 Cal. App. 4th 1406, 1415, 89 Cal. Rptr. 2d 811, 814 (Cal. App. 4 Dist. 1999). and SEC v. DuPont, Homsey & Co., 204 F. Supp. 944, 946 (D. Mass. 1962), vacated and remanded on other grounds, 334 F.2d 704 (1st Cir. 1964). This section does not, however, override other law, such as fraudulent transfer or conveyance acts.

§ 10A-9A-1.13. Dual capacity.

A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the

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

Comment

While the same person may be both a general and limited partner, the definition of a “limited partnership” requires that one person alone cannot be the “two persons.” However, nothing prevents two closely affiliated persons from satisfying the two person requirement of the definition of a “limited partnership.” See Section 10A-9A-1.02(8).

§ 10A-9A-1.14. Consent and proxies of partners.

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing a writing of appointment, either personally or by the partner's attorney in fact.

Comment

This Chapter imposes no meeting requirement and does not distinguish among oral, writing, express, and tacit approval or

consent. The partnership agreement may establish such requirements and make such distinctions.

Article 2

Formation; Certificate of Formation and Other Filings

- § 10A-9A-2.01. Formation of limited partnership; certificate of formation.
- § 10A-9A-2.02. Amendment or restatement of certificate of formation.
- § 10A-9A-2.03. Execution of documents.
- § 10A-9A-2.04. Signing and filing pursuant to judicial order.
- § 10A-9A-2.05. Liability for false information in a filing writing.
- § 10A-9A-2.06. Certificate of existence or authorization.

§ 10A-9A-2.01. Formation of limited partnership; certificate of formation.

(a) In order to form a limited partnership, a person must deliver a certificate of formation for filing to the filing officer as provided in subsection (e). Notwithstanding Section 10A-1-3.05, the certificate of formation shall set forth:

- (1) the name of the limited partnership, which must comply with Article 5 of Chapter 1;
- (2) the address of the registered office required by Article 5 of Chapter 1;
- (3) the name of the registered agent at the registered office as required by Article 5 of Chapter 1;

(4) the name and the street and mailing address of each general partner;

(5) whether the limited partnership is a limited liability limited partnership;

(6) any additional information required by Article 8 of Chapter 1 or by Article 10 of this Chapter; and

(7) any other matters the partners determine to include therein which comply with Section 10A-9A-1.08.

(b) A limited partnership is formed when the certificate of formation becomes effective in accordance with Article 4 of Chapter 1.

(c) The fact that a certificate of formation has been filed and is effective in accordance with Article 4 of Chapter 1 is notice of the matters required to be included by Subsections (a)(1), (a)(2), (a)(3), (a)(4), if applicable, (a)(5), and (a)(6), but is not notice of any other fact.

(d) A partnership agreement shall be entered into either before, after, or at the time of filing the certificate of formation and, whether entered into before, after, or at the time of filing, may be made effective as of the filing of the certificate of formation or at any other time or date provided in the partnership agreement.

(e) A certificate of formation shall be delivered for filing to the judge of probate of the county in which the initial registered office of the limited partnership is located pursuant to Article 4 of Chapter 1 unless the certificate of formation is required to be delivered for filing to a different filing officer under Article 8 of Chapter 1 or Article 10 of this Chapter.

Comment

This Section governs how a limited partnership is formed. The limited partnership comes into existence when the certificate of formation becomes effective in accordance with Article 4 of Chapter 1. This Section relies on the Hub regarding matters governing the name, registered office and place of filing the certificate of formation; however, this section is intended to supersede Section 10A-1-3.05 as to the certificate of formation. This Chapter permits a limited partnership to be a limited liability limited partnership (“LLLP”), and this provision requires the certificate of formation to state whether the limited partnership is an LLLP. The requirement is intended to force the persons forming the limited partnership to decide whether the limited partnership is to be an LLLP. Subject to Sections 10A-9A-4.06(b)(2) and 10A-9A-10.10, a limited partnership may amend its certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership. An amendment deleting such a statement must be accompanied by an amendment stating that the limited partnership is not a limited liability limited partnership. Section 10A-9A-2.01(a)(5) does not permit a certificate of limited partnership to be silent on this point, except under certain narrow circumstances for a limited partnership in existence prior to January 1, 2010, and which has not amended or restated its certificate of formation on or after January 1, 2010. See Section 10A-9A-11.01(b)(2).

Unlike other entities, to form a limited partnership, the general partners listed in the certificate of formation must sign the

certificate of formation, rather than an organizer—see Section 10A-9A-2.03(a)(1). This process protects a person from being listed as a general partner without that person’s agreement.

Under this chapter, the partnership agreement governs the limited partnership and its partners and the certificate of formation does not. Thus, the drafter is taking a risk by including additional information since such additional information: (i) is available to the public (including competitors); (ii) increases the chances of a conflict between the certificate of formation and the partnership agreement, see Section 1.10(d), and (iii) does not override the partnership agreement as to the partners as to third parties that cannot reasonably rely on the certificate of formation. In addition, placing additional information in the certificate of formation does not enable a limited partnership to expand, contract or eliminate the provisions of Section 1.08 (c).

Subsection (d) requires that each limited partnership shall have a partnership agreement. In that regard, it is important to note that Subsection 1.02(10) allows for a written, oral or implied partnership agreement. Further, Chapter 1 defines “writing” or “written” to mean “Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.” Thus, the requirement that each limited partnership shall have a partnership agreement will always be met anytime activities and affairs of the limited partnership are carried on, as no such activities and affairs may be carried on without some agreement to provide authority to the general partner. Subsection (d) also allows for a partnership agreement to be entered into either before, after or at the time of filing the certificate of formation and may be made effective as of the filing of the certificate of formation or at any time or date provided in the partnership agreement.

Subsection (e) provides for the normal pattern under Alabama law of delivering for filing the certificate of formation to the judge of probate of the county in which the initial registered office of the limited partnership is located, except in cases where Article 8 of Chapter 1 or Article 10 of this Chapter may have altered the rule to meet the requirement of Section 10A-1-4.02(c).

§ 10A-9A-2.02. Amendment or restatement of certificate of formation.

Notwithstanding Division B of Article 3 of Chapter 1:

(a) A certificate of formation may be amended at any time.

(b) A certificate of formation may be restated with or without amendment at any time.

(c) To amend its certificate of formation, a limited partnership must deliver a certificate of amendment for filing to the filing officer provided for in subsection (j) which certificate of amendment shall state:

(1) the name of the limited partnership;

(2) the date of filing of its certificate of formation, and of all prior amendments and the office or offices where filed; and

(3) the changes the amendment makes to the certificate of formation as most recently amended or restated.

(d) Prior to a statement of dissolution being delivered to the filing officer for filing, a limited partnership shall promptly deliver a certificate of amendment for filing with the filing officer provided for in subsection (j) to reflect:

- (1) the admission of a new general partner; or
- (2) the dissociation of a person as a general partner.

(e) Prior to a statement of dissolution being delivered to the filing officer for filing, if a general partner knows that any information in a filed certificate of formation was inaccurate when the certificate of formation was filed or has become inaccurate due to changed circumstances and if such information is required to be set forth in a newly filed certificate of formation under this Chapter, the general partner shall promptly:

- (1) cause the certificate of formation to be amended; or
- (2) if appropriate, deliver for filing with the filing officer provided for in subsection (j) a statement of change in accordance with Division D of Article 4 of Chapter 1 or a statement of correction in accordance with Division C of Article 5 of Chapter 1.

(f) A certificate of formation may be amended at any time pursuant to this section for any other proper purpose as determined by the limited partnership. A certificate of formation

may also be amended in a statement of merger pursuant to Article 8 of Chapter 1 or Article 10 of this Chapter.

(g) In order to restate its certificate of formation, a limited partnership must deliver a restated certificate of formation for filing with the filing officer provided for in subsection (j). A restated certificate of formation must:

- (1) be designated as such in the heading;
- (2) state the name of the limited partnership;
- (3) state the date of filing of its certificate of formation, and of all prior amendments and the filing office or offices where filed; and

(4) set forth any amendment or change effected in connection with the restatement of the certificate of formation.

Any such restatement that effects an amendment shall be subject to any other provision of this chapter not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect the amendment or change.

(h) The original certificate of formation, as theretofore amended, shall be superseded by the restated certificate of formation and thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall

be the certificate of formation of the limited partnership, but the original effective date of formation shall remain unchanged.

(i) An amended or restated certificate of formation may contain only the provisions that would be permitted at the time of the amendment if the amended or restated certificate of formation were a newly filed original certificate of formation.

(j) If a limited partnership is not an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the certificate of amendment or restated certificate of formation for filing with the judge of probate in whose office the original certificate of formation is filed. If a limited partnership is an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the certificate of amendment or restated certificate of formation for filing with the secretary of state.

(k) The filing of a certificate of amendment to the certificate of formation shall have the effect, and shall take effect, as provided in Section 10A-1-3.14.

(l) The filing of a restated certificate of formation shall have the effect, and shall take effect, as provided in Section 10A-1-3.18.

Comment

This section is intended to supersede Division B of Article 3 of Chapter 1. Portions of this Section are derived from Section 10A-5A-2.02 of the Alabama Limited Liability Company Law of 2014. A limited partnership may both amend and restate its certificate of formation with a single filing. Subsections (k) and (l) were added to conform with Section 10A-5A-2.03 of the Alabama Limited Liability Company Law of 2014. The concept of a statement of dissolution has been introduced to the Alabama Limited Partnership Law in an effort to make the process for notifying third parties similar in the general partnership, limited partnership, and limited liability company contexts. The statement of dissolution takes the place of amending the certificate of formation, in that a statement of dissolution is required to set forth the general partner or general partners or other person or persons who are authorized to conduct the dissolution and winding up of the limited partnership, and who are able to bind the limited partnership during the dissolution and winding up process—that was previously accomplished with an amendment to the certificate of formation—see Sections 10A-9A-8.02(b)(1) and 10A-9A-8.03(d)(2). As to notice of third parties, see Section 10A-9A-1.03(d)(3) which provides for notice to be deemed notice 90 days after the statement of dissolution becomes effective. The obligation to amend the certificate of formation as set forth in subsection (d) and (e) continues until such time as the statement of dissolution is filed. Thus, if the limited partnership has dissolved, but has not yet filed its statement of dissolution under Section 10A-9A-8.02 or 10A-9A-8.03, the limited partnership is required to amend its certificate of formation if necessary under subsection (d) and (e). Generally the responsibility for maintaining a limited partnership’s public record rests with the general partner or partners. It should be noted that amending or restating the certificate of formation should be done with care so as to not

inadvertently acquire or relinquish LLLP status. See Sections 10A-9A-4.06(b)(2), and Section 10A-9A-10.10(b).

Subsection (e) imposes an obligation directly on the general partners rather than on the limited partnership to maintain the public records of the limited partnership.

§ 10A-9A-2.03. Execution of documents.

(a) A writing delivered to a filing officer for filing pursuant to this chapter must be signed as provided by this section.

(1) A limited partnership's initial certificate of formation must be signed by all general partners listed in the certificate of formation.

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

(3) An amendment designating as general partner a person admitted under Section 10A-9A-8.01(c) following the dissociation of a limited partnership's last general partner must be signed by the person or persons so designated.

(4) Any other amendment must be signed by:

(A) at least one general partner; and

(B) each other person designated in the amendment as a new general partner.

(5) A restated certificate of formation must be signed by at least one general partner and, to the extent the restated certificate of formation effects a change under any other paragraph of this subsection, the restated certificate of formation must be signed in a manner that satisfies that paragraph.

(6) a statement of dissolution must be signed by all general partners or by the person or persons appointed pursuant to Section 10A-9A-8.03(b) or (c) to wind up the dissolved limited partnership's activities and affairs.

(7) A statement of conversion must be signed by each general partner of the limited partnership.

(8) A statement of merger must be signed by each general partner of the limited partnership.

(9) Any other writing delivered on behalf of a limited partnership for filing must be signed by at least one general partner.

(10) A statement of withdrawal by a person pursuant to Section 10A-9A-3.06 must be signed by that person.

(11) A writing delivered on behalf of a foreign limited partnership to the Secretary of State for filing must be signed by at least one general partner of the foreign limited partnership.

(12) Any other writing delivered on behalf of any person for filing must be signed by that person.

(b) Any writing to be filed under this chapter may be signed by an agent, including an attorney-in-fact. Powers of attorney relating to the signing of the writing need not be delivered to the filing officer.

(c) Any writing which is required in this chapter to be signed by a person need not be signed by any person:

(1) who is deceased or dissolved or for whom a guardian or general conservator has been appointed, if the record so states; or

(2) who has previously delivered for filing with the filing officer pursuant to Article 4 of Chapter 1 a statement of dissociation or withdrawal.

Comment

This section pertains only to signing requirements and implies nothing about approval requirements. For example, subsection (a)(2) requires that an amendment changing a limited

partnership's LLLP status be signed by all general partners listed in the certificate of formation, but under Section 10A-9A-4.06(b)(2) all partners must consent to that change unless otherwise provided in the partnership agreement. A person who signs a writing without ascertaining that the writing has been properly authorized risks liability under Section 10A-9A-2.05. The recurring reference to general partners "listed in the certificate of formation" recognizes that a person might be admitted as a general partner under Section 10A-9A-4.01 without immediately being listed in the certificate of formation. Such persons may have rights, powers, and obligations despite their unlisted status, but they cannot act as general partners for the purpose of affecting the limited partnership's public record. A certificate of termination was eliminated, as well as an amendment to the certificate of formation in favor of a statement of dissolution.

§ 10A-9A-2.04. Signing and filing pursuant to judicial order.

(a) If a person required by this chapter to sign a writing or deliver a writing to a filing officer for filing under this chapter does not do so, any other person that is aggrieved by that failure may petition the circuit court in the county in which the limited partnership's principal place of business within this state is located, and if the limited partnership does not have a principal place of business within this state then the circuit court for the county in which the limited partnership's most recent registered office is located, to order:

- (1) the person to sign the writing;
- (2) the person to deliver the writing to the filing officer for filing; or

(3) the filing officer to file the writing unsigned.

(b) If a petitioner under subsection (a) is not the limited partnership or foreign limited partnership to whom the writing pertains, the petitioner shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (a) may seek the remedies provided in subsection (a) in a separate action against the person required to sign or deliver the writing or as a part of any other action concerning the limited partnership or foreign limited partnership in which the person required to sign or deliver the writing is made a party.

(c) A writing filed unsigned pursuant to this section is effective without being signed.

(d) A court may award reasonable expenses, including reasonable attorneys' fees, to the party or parties who prevail, in whole or in part, with respect to any claim made under subsection (a).

Comment

This section has been changed to conform with Section 10A-5A-2.05 of the Alabama Limited Liability Company Law of 2014.

§ 10A-9A-2.05. Liability for false information in a filed writing.

If a writing delivered for filing under this chapter and filed under this chapter contains information which is false in any material respect and if such information is required to be set forth on a newly filed certificate of formation under this chapter, a person that suffers loss by reasonable reliance on the information may recover damages for the loss from:

(1) a person that signed the writing, or caused another to sign it on the person's behalf, and knew the information to be false at the time the writing was signed; and

(2) a general partner that has notice that the information was false when the writing was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 10A-9A-2.02, file a petition pursuant to Division B of Article 5 of Chapter 1, or deliver for filing a statement of change pursuant to or a statement of correction pursuant to Division C of Article 5 of Chapter 1.

Comment

This section pertains to both limited partnerships and foreign limited partnerships. LLLP status is irrelevant to this section. Instead this section imposes direct liability on signers and general partners. This subsection's liability rules apply only to writings (i) created by private persons ("delivered for filing"), and (ii) which actually become part of the public record. This subsection does not preempt other law, which might provide remedies for misleading information contained, for example, in a record that is delivered to the filing officer for filing but withdrawn before the filing officer takes the official action of filing the record. In addition, a person who claims to have suffered a loss because of the information in the filed writing must have "reasonably relied" on information in the filed writing in order to recover damages from the claimed loss. This reasonable reliance showing is an attempt to limit the instances in which this section is used. This section will not apply in the circumstance in which a limited partnership was formed under a predecessor act and that limited partnership is protected under Section 10A-9A-11.01(b)(2). In addition to the potential liability provided for in this section, it should be noted that Section 10A-1-4.01(c) states, with regard to filing instruments, "The execution of a filing instrument constitutes an affirmation by each person executing the instrument that the facts therein are true, under penalties for perjury prescribed by Section 13A-10-103 or its successor."

§ 10A-9A-2.06. Certificate of existence or authorization.

(a) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited partnership if the writings filed in the office of the Secretary of State show that the limited partnership has been formed under the laws of this state. A certificate of existence shall reflect only the information on file with the Secretary of State. To

the extent writings have been delivered to the Secretary of State, the certificate of existence must state:

- (1) the limited partnership's name;
- (2) that the limited partnership was formed under the laws of this state, the date of formation, and the filing office in which the certificate of formation was filed;
- (3) whether a statement of dissolution of the limited partnership has been delivered to the Secretary of State for filing;
- (4) whether the limited partnership has delivered to the Secretary of State for filing a certificate of reinstatement; and
- (5) other facts of record in the office of the Secretary of State which may be requested by the applicant.

(b) The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited partnership if the writings filed in the Office of the Secretary of State show that the Secretary of State has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(1) the foreign limited partnership's name and any alternate name for use in this state under Article 5 of Chapter 1;

(2) that the foreign limited partnership is authorized to conduct activities and affairs in this state;

(3) that the Secretary of State has not revoked the foreign limited partnership's certificate of authority;

(4) that the foreign limited partnership has not filed with the Secretary of State a certificate of withdrawal, a notice of cancellation, or otherwise terminated its certificate of authority; and

(5) other facts of record in the office of the Secretary of State which may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact activities and affairs in this state.

(d) The Secretary of State shall not be required to issue a certificate of existence for a limited partnership if its certificate of formation was filed prior to January 1, 2011; provided,

however, that the Secretary of State shall issue a certificate of existence upon the filing by the limited partnership of a certificate of information with the Secretary of State which must:

- (1) state all information required in Section 10A-9A-2.01(a)(1), (a)(2), (a)(3), (a) (4), (a)(5) and (a)(6); and
- (2) list and attach certified copies of all writings filed as to the limited partnership.

Comment

A certificate of existence can reveal only information present in the public record, and under this Chapter significant information bearing on the status of a limited partnership may be outside the public record. For example, while the Hub provides for a limited partnership to have a perpetual duration, the partnership agreement may set a definite term or designate particular events whose occurrence will cause dissolution. Section 10A-9A-8.01(a). Dissolution is also possible by consent, Section 10A-9A-8.01(b), and, absent a contrary provision in the partnership agreement, will at least be at issue whenever there is no remaining general partner or no remaining limited partner. Section 10A-9A-8.01(c) and (d). Except as provided under Section 10A-9A-8.03(d), this Chapter does not require a limited partnership to deliver to the filing officer for filing a writing indicating that the limited partnership has dissolved. This section does however incorporate the concept of a statement of dissolution under Section 10A-9A-8.02 and 10A-9A-8.03, as well as a certificate of reinstatement under Section 10A-9A-8.11, should those statements be of record. The certificate of existence will only be required to contain the information outlined in subsection (a). In addition to the certificate containing the date of formation, a certificate of existence must also include the filing office in which it was filed because of Section 10A-1-4.02(c). Subsection (d) was added in order to provide a means by which a certificate of existence may be obtained even if the Secretary of State's records are not complete.

Article 3

Limited Partners

- § 10A-9A-3.01. Admission of limited partner.
- § 10A-9A-3.02. No right or power as limited partner to bind limited partnership.
- § 10A-9A-3.03. No Liability as Limited Partner for Limited Partnership Obligation.
- § 10A-9A-3.04. Right of limited partner and former limited partner to information.
- § 10A-9A-3.05. Limited duties of limited partners.
- § 10A-9A-3.06. Person erroneously believing self to be limited partner.

§ 10A-9A-3.01. Admission of limited partner.

(a) The initial limited partner or limited partners of a limited partnership are admitted as a limited partner or limited partners upon the formation of the limited partnership.

(b) After formation, a person is admitted as a limited partner of the limited partnership:

- (1) as provided in the partnership agreement;
 - (2) as the result of a transaction effective under Article 10 of this chapter or Article 8 of Chapter 1;
 - (3) with the consent of all the partners; or
 - (4) as provided in Section 10A-9A-8.01(d) or
- (e).

(c) A person may be admitted as a limited partner without:

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

Comment

This section has been modified to conform with the Alabama Limited Liability Company Law of 2014. Subparagraph (b)(2) refers to the mergers and conversion provisions under this chapter as well as under Chapter 1 of this title in recognition that limited partners may be admitted pursuant to a merger or conversion under this chapter or the provisions contained in the Chapter 1 of this title.

§ 10A-9A-3.02. No right or power as limited partner to bind limited partnership.

A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

Comment

A limited partner's status as owner provides neither the right to act for nor the right to bind the limited partnership. The phrase "as a limited partner" is intended to recognize that: (i) this Section does not disable a general partner that also owns a limited partner interest; (ii) the partnership agreement may as a matter of contract allocate managerial rights to one or more limited partners; and (iii) a separate agreement can empower and entitle a person that is a limited partner to act for the limited partnership in another capacity; e.g., as an agent. If the limited partner acts as an agent of the limited partnership then the law of agency would

control the rights and powers to act for and bind the limited partnership and would also dictate the obligations, duties, and liabilities for such actions. Notwithstanding the fact that a limited partner has no right or power to bind the limited partnership, this Chapter specifies various circumstances in which limited partners have approval or consent rights, including:

- (1) admission of a limited partner, Section 10A-9A-3.01(b)(3)*
- (2) admission of a general partner, Section 10A-9A-4.01(b)(3)*
- (3) amendment of the partnership agreement, Section 10A-9A-4.06(b)(1)*
- (4) the decision to amend the certificate of limited partnership so as to obtain or relinquish LLLP status, Section 10A-9A-4.06(b)(2)*
- (5) the disposition of all or substantially all of the limited partnership's property, outside the ordinary course, Section 10A-9A-4.06(b)(3)*
- (6) the compromise of a partner's obligation to make a contribution or return an improper distribution, Section 10A-9A-5.02(c)*
- (7) expulsion of a limited partner by consent of the other partners, Section 10A-9A-6.01(b)(3)*
- (8) expulsion of a general partner by consent of the other partners, Section 10A-9A-6.03(4)*
- (9) causing dissolution by consent, Section 10A-9A-8.01(b)*
- (10) avoiding dissolution and appointing a successor general partner, following the dissociation of the last remaining general partner, Section 10A-9A-8.01(c)(1)*
- (11) appointing a person to wind up the limited partnership when there is no general partner, Section 10A-9A-8.03(b)*
- (12) approving, amending or abandoning a plan of conversion, Section 10A-9A-10.03(a) and (b)(2)*

(13) *approving, amending or abandoning a plan of merger, Section 10A-9A-10.07(a) and (b)(2).*

§ 10A-9A-3.03. No Liability as Limited Partner for Limited Partnership Obligation.

A debt, obligation, or other liability of a limited partnership, whether arising in contract, tort, or otherwise, 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 limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

Comment

This section provides a full, status-based liability shield for each limited partner, “even if the limited partner participates in the management and control of the limited partnership.” The section thus eliminates the so-called “control rule” with respect to personal liability for entity obligations and brings limited partners into parity with limited liability company members, limited liability partnership partners and corporate shareholders. The liability shield of a limited partnership for a limited partner is substantially the same liability shield as the liability shield of a limited liability company for a member and the liability shield of a limited liability partnership for a partner. In a world with LLPs, LLCs and, most importantly, LLLPs, the control rule has become an anachronism. This Chapter therefore takes the next logical step in the evolution of the limited partner’s liability shield and renders the control rule extinct. The shield established by this section protects only against liability for the limited partnership’s obligations and only to the

extent that the limited partner is claimed to be liable on account of being a limited partner. Thus, a person that is both a general and limited partner will be liable as a general partner for the limited partnership's obligations. Moreover, this section does not prevent a limited partner from being liable as a result of the limited partner's own conduct and is therefore inapplicable when a third party asserts that a limited partner's own wrongful conduct has injured the third party. This section is likewise inapplicable to claims by the limited partnership or another partner that a limited partner has breached a duty under this Act or the partnership agreement. This section does not eliminate a limited partner's liability for promised contributions, Section 10A-9A-5.02 or improper distributions, Section 10A-9A-5.08. That liability pertains to a person's status as a limited partner but is not liability for an obligation of the limited partnership. The shield provided by this section applies whether or not a limited partnership is a limited liability limited partnership.

§ 10A-9A-3.04. Right of limited partner and former limited partner to information.

Notwithstanding the provisions of Sections 10A-1-3.32 and 10A-1-3.33:

(a) Subject to subsection (g), on 10 days' demand, made in a writing received by the limited partnership, a limited partner may inspect and copy required information during regular business hours and at a reasonable location specified by the limited partnership. The limited partner need not have any particular purpose for seeking the information.

(b) Subject to subsection (g), during regular business hours and at a reasonable location specified by the limited

partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and affairs and financial condition of the limited partnership and other information regarding the activities and affairs of the limited partnership as is just and reasonable if:

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

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

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

(c) Within 10 days after receiving a demand pursuant to subsection (b), the limited partnership in a writing shall inform the limited partner that made the demand:

(1) what information the limited partnership will provide in response to the demand;

(2) when and where the limited partnership will provide the information;

(3) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining; and

(4) what, if any, restrictions will be imposed pursuant to the partnership agreement or subsection (g).

(d) Subject to subsections (f) and (g), a person dissociated as a limited partner may inspect and copy required information during regular business hours and at a reasonable location specified by the limited partnership if:

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

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

(3) the person meets the requirements of subsection (b).

(e) The limited partnership shall respond to a demand made pursuant to subsection (d) in the same manner as provided in subsection (c).

(f) If a limited partner dies, Section 10A-9A-7.04 applies.

(g) In addition to any restriction or condition stated in its limited partnership agreement, a limited partnership, as a matter within the ordinary course of its activities and affairs, may:

(1) 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; and

(2) keep confidential from the partners and any other person, for such period of time as the limited partnership deems reasonable, any information that the limited partnership reasonably believes to be in the nature of trade secrets or other information that disclosure of which the limited partnership in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its activities and affairs, or that the limited partnership is required by law or by agreement with a third party to keep confidential.

In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving

reasonableness. Any general partner, or any agent, officer or employee of a general partner or any agent of a limited partnership, who, without reasonable cause, refuses to allow any limited partner or the limited partner's agent or attorney to inspect or copy any information of the limited partnership to which such limited partner is entitled under subsection (a) or (b) shall be personally liable to the limited partner for a penalty in an amount not to exceed ten percent of the fair market value of the limited partnership interest of the limited partner in addition to any other damages or remedy.

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

(i) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (g) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(j) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal

representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

Comment

This provision supersedes Sections 10A-1-3.32 and 10A-1-3.33 with respect to the right of limited partners and former limited partners to obtain information from a limited partnership in accordance with Section 10A-1-1.02(c). This section balances two countervailing concerns relating to information: the need of limited partners and former limited partners for access versus the limited partnership's need to protect confidential business data and other intellectual property. "Reasonable location" is used in subsections (a), (b) and (d) as an acknowledgement that the limited partnership information may be located at different locations. Subsection (g) was modified to conform to Section 10A-5A-4.09 of the Alabama Limited Liability Company Law of 2014 to provide a limited partnership the right to utilize reasonable restrictions and conditions on access to and use of information to be furnished under this Section and to keep certain information confidential from the partners and was expanded to provide for personal liability for refusal to produce information as required by this Chapter.

Subsection (i) was omitted because it introduced a standard for disclosure that presented compliance issues when evaluating whether a partnership action has been approved by the limited partners. Limited partners should be adequately protected by the duties imposed upon general partners under Section 10A-9A-4.08. The omission of subsection (i) is not intended to change prior law relating to a partnership's duty to disclose information to a limited partner. The duty of disclosure is also covered under Section 10A-9A-4.08.

The general partners are obliged through their duties of care and loyalty to protect information whose confidentiality is important to the limited partnership or otherwise inappropriate for dissemination. See Section 10A-9A-4.08 (general standards of general partner conduct). A limited partner, in contrast, "does not have any duty to the limited partnership or to any other partner

solely by reason of being a limited partner.” Section 10A-9A-3.05(a). (Both general partners and limited partners are subject to the implied contractual covenant of good faith and fair dealing. Sections 10A-9A-3.05(b) and 10A-9A-4.08(d).)

Like predecessor law, this Chapter divides limited partner access rights into two categories – required information and other information. However, this Chapter builds on predecessor law by:

- (i) expanding slightly the category of required information and stating explicitly that a limited partner may have access to that information without having to show any particular purpose for seeking the information;*
- (ii) specifying a procedure for limited partners to follow when demanding access to other information;*
- (iii) specifying how a limited partnership must respond to such a demand and setting a time limit for the response;*
- (iv) retaining predecessor law’s “just and reasonable” standard for determining a limited partner’s right to other information, while recognizing that, to be “just and reasonable,” a limited partner’s demand for other information must meet at minimum standards of relatedness and particularity*
- (v) codifying the power of the partnership agreement to vary limited partner access rights;*
- (vi) permitting the limited partnership to establish other reasonable limits on access; and*
- (vii) providing access rights for former limited partners.*

The access rights stated in this Section are personal to each limited partner and are enforceable through a direct action under Section 10A-9A-9.01. These access rights are in addition to whatever discovery rights a party has in a civil suit.

Subsection (a) – *The phrase “required information” is a defined term. See Sections 10A-9A-1.02(12) and 10A-9A-1.11. This subsection’s broad right of access is subject not only to reasonable limitations in the partnership agreement, Section 10A-9A-*

1.08(c)(6), but also to the power of the limited partnership to impose reasonable limitations on use. Unless the partnership agreement provides otherwise, it will be the general partner or partners that have the authority to use that power. See Section 10A-9A-4.06(a).

Section (b) – This subsection does not impose a requirement of good faith, because Section 10A-9A-3.05(b) contains a generally applicable duty for limited partners to exercise rights under the partnership agreement and this Chapter consistent with the implied contractual covenant of good faith and fair dealing.

Subsection (d) – The access is limited to the required information and is subject to certain conditions.

Example: A person dissociated as a limited partner seeks data which the limited partnership has compiled, which relates to the period when the person was a limited partner, but which is beyond the scope of the information required by Section 10A-9A-1.11. No matter how reasonable the person's purpose and how well drafted the person's demand, the limited partnership is not obliged to provide the data.

Example: A person dissociated as a limited partner seeks access to required information pertaining to the period during which the person was a limited partner. The person makes a bald demand, merely stating a desire to review the required information at the limited partnership's designated office. In particular, the demand does not describe "with reasonable particularity the information sought and the purpose for seeking the information." See subsection (b)(2). The limited partnership is not obliged to allow access. The person must first comply with subsection (d), which incorporates by reference the requirements of subsection (b). Subsection (f) and Section 10A-9A-7.04 provide greater access rights for the estate of a deceased limited partner.

Subsection (d)(2) – A duty of good faith is needed here, because a person claiming access under this subsection is no longer a limited partner and is no longer subject to Section 10A-9A-3.05(b). See Section 10A-9A-6.02(a)(2) (dissociation as a limited partner terminates duty of good faith as to subsequent events).

Subsection (g) – This subsection permits the limited partnership – as distinguished from the partnership agreement – to impose use limitations. Under Section 10A-9A-4.06(a), it will be the general partner or partners that decide whether the limited partnership will impose use restrictions.

The limited partnership bears the burden of proving the reasonableness of any restriction imposed under this subsection. In determining whether a restriction is reasonable, a court might consider: (i) the danger or other problem the restriction seeks to avoid; (ii) the purpose for which the information is sought; and (iii) whether, in light of both the problem and the purpose, the restriction is reasonably tailored. Restricting use of the names and addresses of limited partners is not per se unreasonable.

Subsection (j)– Section 10A-9A-3.04 provides no information rights to a transferee as transferee.

It is nonetheless possible for a person that happens to be a transferee to have rights under Section 10A-9A-3.04. For example, under Section 10A-9A-6.02(a)(3) a person dissociated as a limited partner becomes a “mere transferee” of its own transferable interest. While that status provides the person no rights under this section, the status of person dissociated as a limited partner triggers rights under subsection (d).

§ 10A-9A-3.05. Limited duties of limited partners.

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

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

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

Comment

This section tracks the implied contractual covenant of good faith and fair dealing found in the Alabama Limited Liability Company Law of 2014.

Subsection (a) – *Fiduciary duty typically attaches to a person whose status or role creates significant power for that person over the interests of another person. Under this Chapter, limited partners have very limited power of any sort in the regular activities of the limited partnership and no power whatsoever justifying the imposition of fiduciary duties either to the limited partnership or fellow partners. It is possible for a partnership agreement to allocate significant managerial authority and power to a limited partner, but in that case the power exists not as a matter of status or role but rather as a matter of contract. The proper limit on such contract-based power is the implied contractual covenant of good faith and fair dealing, not fiduciary duty, unless the partnership agreement itself expressly imposes a fiduciary duty or creates a role for a limited partner which, as a matter of other law, gives rise to a fiduciary duty. For example, if the partnership agreement makes a limited partner an agent for the limited partnership as to particular matters, the law of agency will*

impose fiduciary duties on the limited partner with respect to the limited partner's role as agent.

Subsection (b) –*The same language appears in Section 10A-9A-4.08(d), pertaining to general partners.*

§ 10A-9A-3.06. Person erroneously believing self to be limited partner.

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

(1) causes an appropriate certificate of formation, amendment, or statement of correction to be signed and filed with the filing officer in accordance with Article 4 of Chapter 1; or

(2) withdraws from future participation as an owner in the organization by signing a statement of withdrawal and filing it with the Secretary of State.

(b) A person that makes an investment described in subsection (a) is liable to the same extent as a general partner to any third party that enters into a transaction with the organization, believing in good faith that the person is a general partner, before the statement of withdrawal, certificate of formation, amendment, or statement of correction to show that the person is not a general partner is filed with the filing officer in accordance with Article 4 of Chapter 1.

(c) 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 formation, amendment, or statement of correction to be signed and filed with the filing officer in accordance with Article 4 of Chapter 1, the person has the right to withdraw from the organization pursuant to 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 organization.

Comment

This section was modified to refer to the requirements of Article 4 of Chapter 1 for the filing instruments, except that Section 10A-9A-3.06(a)(2) requires a statement of withdrawal to be filed with the Secretary of State because a statement of withdrawal is not addressed in Article 4 of Chapter 1.

Subsection (a)(2) – *The requirement that a person “withdraw from future participation as an owner in the organization” means, in part, that the person refrain from taking any further profit from the organization. The requirement does not mean, however, that the person is required to return previously obtained profits or forfeit any investment.*

Article 4

General Partners

- § 10A-9A-4.01. Admission of general partner.
- § 10A-9A-4.02. General partner agent of limited partnership.
- § 10A-9A-4.03. Limited partnership liable for general partner's actionable conduct.
- § 10A-9A-4.04. General partner's liability.
- § 10A-9A-4.05. Actions by and against partnership and partners.
- § 10A-9A-4.06. Management rights of general partner.
- § 10A-9A-4.07. Right of general partner and former general partner to information.
- § 10A-9A-4.08. General standards of general partner's conduct.
- § 10A-9A-4.09. Reliance on reports and information.

§ 10A-9A-4.01. Admission of general partner.

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

(b) After formation of a limited partnership, a person is admitted as a general partner:

- (1) as provided in the partnership agreement;
- (2) as the result of a transaction effective under Article 10 or Article 8 of Chapter 1;
- (3) with the consent of all the partners; or

(4) as provided in Section 10A-9A-8.01(c) or
(e).

(c) A person may be admitted as a general partner
without:

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

Comment

This section is derived from Section 10A-5A-4.01 of the Alabama Limited Liability Company Law of 2014. Subsection (b)(2) recognizes that a limited partnership may be subject to a merger or conversion under this chapter or the provisions contained in Article 8 of Chapter 1 of this title.

This section does not make a person's status as a general partner dependent on the person being so designated in the certificate of formation. If a person does become a general partner under this section without being so designated:

- (i) *the limited partnership is obligated to promptly and appropriately amend the certificate of formation, Section 10A-9A-2.02(d)(1); and*
- (ii) *each general partner that knows of the anomaly is personally obligated to cause the certificate of formation to be promptly and appropriately amended, Section 10A-9A-2.02(e), and is subject to liability for failing to do so, Section 10A-9A-2.05.*

It should be noted that Section 10A-9A-1.03(d) provides constructive notice of the facts set forth in the certificate of formation with respect to that information required in Section 10A-9A-2.01(a)(1) through (a)(6). Therefore, parties relying on the

certificate of formation, should be protected and the limited partnership and the general partners are exposed to the extent that the certificate of formation is not current as to such information.

§ 10A-9A-4.02. General partner agent of limited partnership.

(a) 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 writing in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities and affairs or activities and affairs of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under Section 10A-9A-1.03(d) that the general partner lacked authority.

(b) 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 limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

Comment

As with agency laws, this section looks first to apparent authority unless the third party has notice of no actual authority. The fact that a person is not listed in the certificate of formation as a general partner is not notice that the person is not a partner and is not notice that the person lacks authority to act for the limited partnership.

§ 10A-9A-4.03. Limited partnership liable for general partner's actionable conduct.

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

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

Comment

The limited partnership is liable for the actionable conduct or omission of a general partner acting in the ordinary course of its business or “with the authority of the partnership.” This is intended to include a general partner’s apparent, as well as actual,

authority. This Section makes the limited partnership vicariously liable for a general partner's misconduct. That vicarious liability in no way discharges or diminishes the general partner's direct liability for that general partner's own misconduct. A general partner can cause a limited partnership to be liable under this Section, even if the general partner is not designated as a general partner in the certificate of formation.

§ 10A-9A-4.04. General partner's liability.

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

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

(c) A debt, obligation, or liability of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or liability of the limited partnership. A general partner of a limited liability limited partnership is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such a debt, obligation, or liability solely by reason of being or acting,

or omitting to act, as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under Section 10A-9A-4.06(b)(2).

Comment

This Section was modeled after the current provisions for limited liability partnerships, Section 10A-8-3.06, of the Code of Alabama (1975), as amended.

§ 10A-9A-4.05. Actions by and against partnership and partners.

(a) To the extent not inconsistent with Section 10A-9A-4.04, a general partner may be joined in an action against the limited partnership or named in a separate action.

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

(c) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless

the partner is personally liable for the claim under Section 10A-9A-4.04 and either:

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

(2) the limited partnership is a debtor in bankruptcy;

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

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

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

Comment

If a limited partnership is a limited liability limited partnership throughout its existence, this section will bar a creditor of a limited partnership from impleading, suing or reaching the assets of a general partner unless the creditor can satisfy subsection (c)(5).

§ 10A-9A-4.06. Management rights of general partner.

(a) Each general partner has equal rights in the management and conduct of the limited partnership's activities and affairs. Except as expressly provided in this chapter, any matter relating to the activities and affairs of the limited 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) The consent of all of the partners is necessary to:

(1) amend the partnership agreement;

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

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

(c) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities and affairs of the limited partnership or for the preservation of its activities and affairs or its property.

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

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

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

(g) Notwithstanding the provisions of Article 6 of Chapter 1, a limited partnership may indemnify and hold harmless a partner or other person, pay in advance or reimburse expenses incurred by a partner or other person, and purchase and maintain insurance on behalf of a partner or other person.

Comment

It should be noted that subsection (b)(2) requires all of the partners to consent, which by its very nature includes all of the general partners, and thus the addition or deletion of a statement in the certificate of formation that the limited partnership is a limited liability limited partnership requires the consent of all of the general partners. Based on that, the language “subject to Section 10A-9A-10.10” was determined to be surplusage, and was therefore removed. The requirement of the consent of all of the general partners to add or delete a statement in the certificate of formation that the limited partnership is a limited liability limited partnership is further supported by Section 10A-9A-2.03(a)(2). In addition, the provisions in Section 10A-9A-10.10 are intended to provide protection to the general partners in the event of an amendment of the certificate of formation pursuant to a merger, or in the event that the merger was into a limited partnership or other entity in which the general partners would have personal liability. That protection is in the form of requiring all of the general partners to consent to such an amendment removing a statement in the certificate of formation that the limited partnership is a limited liability limited partnership and/or the consent of all of the general partners to merge with an entity in which the general partners would have personal liability. In the event that the limited partnership utilizes Article 8 of Chapter 1 instead of Article 10 of this Chapter, and the limited partnership attempts to amend the certificate of formation via a merger in order to remove a statement in the certificate of formation that the limited partnership is a limited liability limited partnership and/or attempts to merge into an entity in which the general partners will have personal liability, the provisions of Article 8 of Chapter 1, in particular, Section 10A-1-8.02(i)(6), protect the general partners by requiring each general partner to consent to becoming personally liable. Subsection (g) was added to supersede the provisions in Article 6 of Chapter 1 relating to indemnification by a limited partnership.

Subsection (a) – *This Chapter assumes that, more often than not, people utilizing this Chapter will want (i) strong centralized management, strongly entrenched, and (ii) passive investors with little control over the entity. Section 10A-9A-3.02 essentially*

excludes limited partners from the ordinary management of a limited partnership's activities. This subsection states affirmatively the general partners' commanding role. Only the partnership agreement and the express provisions of this Chapter can limit that role.

The authority granted by this subsection includes the authority to delegate. Delegation does not relieve the delegating general partner or partners of their duties under Section 10A-9A-4.08. However, the fact of delegation is a fact relevant to any breach of duty analysis.

Example: *A sole general partner personally handles all "important paperwork" for a limited partnership. The general partner neglects to renew the fire insurance coverage on a building owned by the limited partnership, despite having received and read a warning notice from the insurance company. The building subsequently burns to the ground and is a total loss. The general partner might be liable for breach of the duty of care under Section 10A-9A-4.08(c) (gross negligence).*

Example: *A sole general partner delegates responsibility for insurance renewals to the limited partnership's office manager, and that manager neglects to renew the fire insurance coverage on the building. Even assuming that the office manager has been grossly negligent, the general partner is not necessarily liable under Section 10A-9A-4.08(c). The office manager's gross negligence is not automatically attributed to the general partner. Under Section 10A-9A-4.08(c), the question is whether the general partner was grossly negligent (or worse) in selecting the general manager, delegating insurance renewal matters to the general manager and supervising the general manager after the delegation.*

The partnership agreement may also provide for delegation and, subject to Sections 10A-9A-1.08(c)(8) and (c)(9), may modify a general partner's Section 10A-9A-4.08 duties.

***Subsection (b)** – This subsection limits the managerial rights of the general partners, requiring the consent of each general and limited partner for the specified actions. The subsection is subject to change by the partnership agreement, except as provided in Section 10A-9A-1.08(c)(16) (pertaining to consent rights established by Section 10A-9A-10.10).*

***Subsection (c)** – This Act does not include any parallel provision for limited partners, because they are assumed to be passive. To the extent that by contract or other arrangement a limited partner has authority to act on behalf of the limited partnership, agency law principles will create an indemnity obligation. In other situations, principles of restitution might apply.*

***Subsection (f)** – This subsection provides no compensation for any services performed by the general partner on behalf of the limited partnership. This would presumably include services provided during the winding up process. This process is different than the Alabama Limited Liability Company Law of 2014, and the Alabama General Partnership Law.*

§ 10A-9A-4.07. Right of general partner and former general partner to information.

Notwithstanding the provisions of Sections 10A-1-3.32 and 10A-1-3.33:

(a) Subject to subsection (f), a general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours at a reasonable location specified by the limited partnership, required information and any other records maintained by the limited partnership

regarding the limited partnership's activities and affairs and financial condition.

(b) Subject to subsection (f), each general partner and the limited partnership shall furnish to a general partner:

(1) without demand, any information concerning the limited partnership's activities and affairs and activities and affairs reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

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

(c) Subject to subsections (e) and (f), on 10 days' demand made in a writing received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (a) at the location specified in subsection (a) if:

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

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

(3) the person satisfies the requirements imposed on a limited partner by Section 10A-9A-3.04(b).

(d) The limited partnership shall respond to a demand made pursuant to subsection (c) in the same manner as provided in Section 10A-9A-3.04(c).

(e) If a general partner dies, Section 10A-9A-7.04 applies.

(f) In addition to any restriction or condition stated in its limited partnership agreement, a limited partnership, as to a matter within the ordinary course of its activities and affairs, may:

(1) 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; and

(2) keep confidential from the partners and any other person, for such period of time as the limited partnership deems reasonable, any information that the limited partnership reasonably believes to be in the nature of trade secrets or other

information the disclosure of which the limited partnership in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its activities and affairs, or that the limited partnership is required by law or by agreement with a third party to keep confidential.

In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

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

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (f) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(i) The rights under this section do not extend to a person as transferee, but the rights under subsection (c) of a person dissociated as a general partner may be exercised by the legal

representative of an individual who dissociated as a general partner under Section 10A-9A-6.03(6).

(j) Any general partner who, without reasonable cause, refuses to allow any general partner or person dissociated as a general partner, or their agent or attorney to inspect or copy any records of the limited partnership to which such general partner or person disassociated as a general partner is entitled under this section, shall be personally liable to the general partner or person dissociated as a general partner for a penalty in an amount not to exceed 10 percent of the fair market value of the partnership interest of the general partner or person dissociated as a general partner, in addition to any other damages or remedy.

Comment

This provision supersedes Sections 10A-1-3.32 and 10A-1-3.33 with respect to the right of general partners and former general partners to obtain information from a limited partnership in accordance with Section 10A-1-1.02(c).

This section's structure parallels the structure of Section 10A-9A-3.04 and the Comment to that section may be helpful in understanding this section.

Subsection (b)(1) – *If a particular item of material information is apparent in the limited partnership's records, whether a general partner is obliged to disseminate that information to fellow general partners depends on the circumstances.*

Example: A limited partnership has two general partners: each of which is regularly engaged in conducting the limited partnership's activities; both of which are aware of and have regular access to all significant limited partnership records; and neither of which has special responsibility for or knowledge about any particular aspect of those activities or the partnership records pertaining to any particular aspect of those activities. Most likely, neither general partner is obliged to draw the other general partner's attention to information apparent in the limited partnership's records.

Example: Although a limited partnership has three general partners, one is the managing partner with day-to-day responsibility for running the limited partnership's activities. The other two meet periodically with the managing general partner. Most likely, the managing general partner has a duty to draw the attention of the other general partners to important information, even if that information would be apparent from a review of the limited partnership's records.

In all events under subsection (b)(1), the question is whether the disclosure by one general partner is "reasonably required for the proper exercise" of the other general partner's rights and duties.

Subsection (f) - was modified to conform to Section 10A-5A-4.09 of the Alabama Limited Liability Company Law of 2014 to provide the right to allow a limited partnership to utilize reasonable restrictions and conditions on access to and use of information to be furnished under this Section, and to keep certain information confidential from the partners.

Subsection (g) – Although the limited partnership is entitled to charge a person under this Section, an acting general partner would most likely be entitled to reimbursement under Section 10A-9A-4.06(c).

Subsection (j) - was added to provide for personal liability for refusal to produce information as required by this Chapter.

§ 10A-9A-4.08. General standards of general partner's conduct.

(a) The duties that a general partner has to the limited partnership and to the other partners include the duty of loyalty and the duty of care as described in subsections (b) and (c).

(b) A general partner's duty of loyalty to the limited partnership and to the other partners includes each of the following:

(1) to account to the limited partnership and to hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct or winding up of the limited partnership's activities and affairs or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

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

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

(c) A general partner's duty of care to the limited partnership and to the other partners in the conduct or winding up of the limited partnership's activities and affairs includes refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

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

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

Comment

This Section is derived from Section 10A-5A-4.08 of the Alabama Limited Liability Company Law of 2014. Section (a) was modified by deleting the words “only” and “limited” and inserting the word “include” in order to allow for the broader modification rule of Section 10A-9A-1.08(b)(1). Thus, additional duties (fiduciary and otherwise) may exist with respect to the general partner and the modification, expansion, restriction, or elimination of duties should be carefully addressed in the partnership agreement.

This Section does not prevent a general partner from delegating one or more duties, but delegation does not discharge the duty. If

the partnership agreement removes a particular responsibility from a general partner, that general partner's duty must be judged according to the rights and powers the general partner retains. For example, if the partnership agreement denies a general partner the right to act in a particular matter, the general partner's compliance with the partnership agreement cannot be a breach of duty. However, the general partner may still have a duty to provide advice with regard to the matter. That duty could arise from the duty of care under Section 10A-9A-4.08(c) and the duty to provide information under Section 10A-9A-4.07(b).

***Subsection (a)** – The reference to “the other partners” does not affect the distinction between direct and derivative claims. See Section 10A-9A-9.01(b) (prerequisites for a partner bringing a direct claim).*

***Subsection (b)** – A general partner's duty under this subsection continues through winding up, since the limited partners' dependence on the general partner does not end at dissolution.*

***Subsection (d)** – This provision is substantially similar to Section 10A-9A-3.05(b).*

§ 10A-9A-4.09 Reliance on reports and information.

A general partner of a limited partnership shall be fully protected in relying in good faith upon the records of the limited partnership and upon information, opinions, reports, or statements presented by another general partner or agent of the limited partnership, or by any other person as to matters the general partner reasonably believes are within that other person's professional or expert competence, including information, opinions, reports, or statements as to the value and amount of the

assets, liabilities, profits, or losses of the limited partnership, or the value and amount of assets or reserves or contracts, agreements, or other undertakings that would be sufficient to pay claims and obligations of the limited partnership, or to make reasonable provision to pay those claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to partners or creditors might properly be paid.

Comment

This Section is derived from Section 10A-5A-4.11 of the Alabama Limited Liability Company Law of 2014, and Delaware, § 17-407(b) and (c), and more closely aligns the reliance provisions with the default standards set forth in Section 10A-9A-4.08 in comparison to the provisions of Division C of Article 3 of Chapter 1, which, in accordance with Section 10A-9A-1.08(b)(6), may be superseded by the partnership agreement. However, it should be noted that unless the partnership agreement supersedes Division C of Article 3 of Chapter 1, this Section and Division C of Article 3 of Chapter 1 will apply.

Article 5

Contributions and Distributions

- § 10A-9A-5.01. Form of contribution.
- § 10A-9A-5.02. Liability for contribution.
- § 10A-9A-5.03. Sharing of distributions before dissolution.
- § 10A-9A-5.04. Interim distributions.
- § 10A-9A-5.05. No distribution on account of dissociation.
- § 10A-9A-5.06. Distribution in kind.
- § 10A-9A-5.07. Right to distribution
- § 10A-9A-5.08. Limitations on distribution for improper distributions.

§ 10A-9A-5.01. Form of contribution.

A contribution by a partner may be made to a limited partnership as agreed by the partners.

Comment

This section incorporates the more expansive definition of "contribution" as set forth in Section 10A-1-1.03(11). It recognizes the partners must agree to the contributions to be made to the limited partnership. This section is substantially similar to Section 10A-5A-4.03 of the Alabama Limited Liability Company Law of 2014.

§ 10A-9A-5.02. Liability for contribution.

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

(b) If a partner does not make a contribution required by an enforceable promise, the partner or the partner's estate is obligated, at the election of the limited partnership, to contribute money equal to the value of the portion of the contribution that has not been made. The foregoing election shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited partnership may have under the partnership agreement or applicable law.

(c) The obligation of a partner to make a contribution to a limited partnership may be compromised only by consent of all partners. A conditional obligation of a partner to make a contribution to a limited partnership may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by that partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership before the time the call occurs.

(d) A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in subsection (a), without notice of any compromise under this subsection, may enforce the original obligation.

(e) A promise by a partner to make a contribution to a limited partnership is not enforceable unless set forth in a writing signed by the partner.

Comment

This Section is substantially similar to Section 10A-5A-4.04 of the Alabama Limited Liability Company Law of 2014. Subsection (e) was added to require promises to make contributions to be in a writing. Pursuant to Section 10A-9A-1.08(c)(10), a partnership agreement may not waive the requirement of subsection (e).

Subsection (a) – *Under common law principles of impracticability, an individual’s death or incapacity will sometimes discharge a duty to render performance. Restatement (Second) of Contracts, Sections 261 and 262. This subsection overrides those principles.*

Subsection (b) – *This subsection is a statutory liquidated damage provision, exercisable at the option of the limited partnership, with the damage amount set according to the value of the promised, non-monetary contribution as stated in the required information.*

Example: *In order to become a limited partner, a person promises to contribute to the limited partnership various assets which the partnership agreement values at \$150,000. In return for the person’s promise, and in light of the agreed value, the limited partnership admits the person as a limited partner with a right to receive 25% of the limited partnership’s distributions.*

The promised assets are subject to a security agreement, but the limited partner promises to contribute them “free and clear.” Before the limited partner can contribute the assets, the secured party forecloses on the security interest and sells the assets at a public sale for \$75,000. Even if the \$75,000 reflects the actual fair market value of the assets, under this subsection the limited partnership has a claim against the limited partner for “the value,

as stated in the required information, of the stated contribution which has not been made” – i.e., \$150,000.

This section applies “at the option of the limited partnership” and does not affect other remedies which the limited partnership may have under other law.

Example: *Same facts as the previous example, except that the public sale brings \$225,000. The limited partnership is not obliged to invoke this subsection and may instead sue for breach of the promise to make the contribution, asserting the \$225,000 figure as evidence of the actual loss suffered as a result of the breach.*

Subsection (c) – *The first sentence of this subsection applies not only to promised contributions but also to improper distributions. See Section 10A-9A-5.08. The second sentence, pertaining to creditor’s rights, applies only to promised contributions.*

§ 10A-9A-5.03. Sharing of distributions before dissolution.

All partners shall share equally in any distributions made by a limited partnership before its dissolution and winding up.

Comment

This Section is derived from Section 10A-5A-4.05(a)(1) of the Alabama Limited Liability Company Law of 2014. Since limited partnerships may be taxed in a variety of manners, it was determined to be inappropriate to address profits and losses. Thus, the focus is on distributions, which are, as a default rule, shared equally among the partners. This is a change from the prior law, and avoids a number of problems which the prior law created, including the determination of the “value” of contributions, whether those contributions were made, and whether those contributions were returned.

This Section's rule for sharing distributions is subject to change under Section 10A-9A-1.08. A limited partnership that does vary the rule should be careful to consider not only the tax and accounting consequences but also the "ripple" effect on other provisions of this Act. See, e.g., Sections 10A-9A-8.01 and 10A-9A-8.03(c) (provide equal consent power).

§ 10A-9A-5.04. Interim distributions.

A partner has a right to a distribution before the dissolution and winding up of a limited partnership as provided in the partnership agreement. A decision to make a distribution before the dissolution and winding up of the limited partnership is a decision in the ordinary course of the activities and affairs of the limited partnership.

Comment

This Section is derived from Section 10A-5A-4.05(a)(2) of the Alabama Limited Liability Company Law of 2014. The second sentence of this section clarifies that the decision to make a distribution before dissolution is a decision in the ordinary course. Under Section 10A-9A-4.06(a), the general partner or partners make this decision for the limited partnership. Distributions made pursuant to this Section are subject to outstanding charging orders under Section 10A-9A-7.03. Under Section 10A-9A-4.06(a), the general partner or partners make this decision for the limited partnership.

§ 10A-9A-5.05. No distribution on account of dissociation.

A partner's dissociation does not entitle the dissociated partner to a distribution.

Comment

This Section is derived from Section 10A-5A-4.05(a)(2) of the Alabama Limited Liability Company Law of 2014. Under this Chapter, a partner that dissociates becomes a transferee of its own transferable interest. See Sections 10A-9A-6.02(a)(3) (person dissociated as a limited partner) and 10A-9A-6.05(a)(5) (person dissociated as a general partner).

§ 10A-9A-5.06. Distribution in kind.

A partner does not have a right to demand and receive a distribution from a limited partnership in any form other than money. Except as otherwise provided in Section 10A-9A-8.09(c), a limited partnership may distribute an asset in kind if each partner receives a percentage of the asset in proportion to the partner's share of distributions.

Comment

This Section is derived from Section 10A-5A-4.05(a)(3) of the Alabama Limited Liability Company Law of 2014.

§ 10A-9A-5.07. Right to distribution.

If a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited

partnership by the partner or dissociated partner on whose account the distribution is made.

Comment

This Section has had a few minor changes to conform to Section 10A-5A-4.05(a)(4) of the Alabama Limited Liability Company Law of 2014. This Section's first sentence refers to distributions generally. The reference in the second sentence to "dissociated partner" encompasses circumstances in which the partner is gone and the dissociated partner's transferable interest is all that remains.

§ 10A-9A-5.08. Limitations on distribution and liability for improper distributions.

(a) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their transferable interests and liabilities for which the recourse of creditors is limited to specific property of the limited partnership, exceed the fair value of the assets of the limited partnership, except that the fair value of the property that is subject to a liability for which recourse of creditors is limited shall be included in the assets of the limited liability partnership only to the extent that the fair value of the property exceeds that liability.

(b) A general partner who consents to a distribution in violation of subsection (a) or the partnership agreement, and who knew at the time of the distribution that the distribution violated subsection (a) or the partnership agreement, shall be liable to the limited partnership for the amount of that distribution.

(c) A limited partner who receives a distribution in violation of subsection (a) or the partnership agreement, and who knew at the time of the distribution that the distribution violated subsection (a) or the partnership agreement, shall be liable to the limited partnership for the amount of the distribution received by that partner. A limited partner who receives a distribution in violation of subsection (a) or the partnership agreement, and who did not know at the time of the distribution that the distribution violated subsection (a) or the partnership agreement, shall not be liable for the amount of the distribution received by that partner.

(d) Except as provided in subsection (e), this section shall not affect any obligation or liability of a partner under other applicable law for the amount of a distribution.

(e) An action under this section or other applicable law is barred if not commenced within two years after the distribution.

(f) For purposes of subsection (a), “distribution” does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of the limited partnership’s activities and affairs under a bona fide retirement plan or other benefits program.

(g) This section shall not apply to distributions made in accordance with Section 10A-9A-8.09.

Comment

*This Section is derived from Section 10A-5A-4.06 of the Alabama Limited Liability Company Law of 2014, which is substantially similar to Section 17-607 of the Delaware Revised Uniform Limited Partnership Act. This Section does not refer to imposing liability based on authorization or consent to a distribution, as that is a determination of whether the general partner properly exercised and discharged its duties in conformance with the partnership agreement and/or this chapter. This Section (with the exception of Subsection (e)) does not alter fraudulent transfer statutes and other applicable laws. Subsection (e) provides for a statute of limitations that applies to a claw-back under this Section or “other applicable law,” e.g., fraudulent transfer statutes. Conflict of laws principles may impact a court’s analysis of the applicable statute of limitations in a fraudulent transfer action. See *In re Heritage Org., LLC*, 413 B.R. 438 (Bankr. N.D. Tex. 2009). Subsection (g) is derived from RMBCA § 6.40(h).*

ARTICLE 6

Dissociation

- § 10A-9A-6.01. **Dissociation as Limited Partner.**
- § 10A-9A-6.02. **Effect of Dissociation as Limited Partner.**
- § 10A-9A-6.03. **Dissociation as General Partner.**
- § 10A-9A-6.04. **Person's Power to Dissociate as General Partners; Wrongful Dissociation.**
- § 10A-9A-6.05. **Effect of Dissociation as General Partner.**
- § 10A-9A-6.06. **Power to Bind and Liability to Limited Partnership before Dissolution of Partnership of Person Dissociated as General Partner.**
- § 10A-9A-6.07. **Liability to Other Persons of Person Dissociated as General Partner.**

§ 10A-9A-6.01. **Dissociation as limited partner.**

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

(b) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(1) an event stated in the partnership agreement as causing the person's dissociation as a limited partner;

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

(3) the person is expelled as a limited partner by the unanimous consent of the other partners if:

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

(B) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes;

(C) the person is an organization and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a statement of dissolution or the equivalent, or its right to conduct activities and affairs has been suspended by its jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to conduct activities and affairs has not been reinstated; or

(D) the person is an organization and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because the person has been dissolved and its activities and affairs are being wound up, the

organization has not been reinstated or the dissolution and winding up have not been revoked or cancelled;

(4) on application by the limited partnership, the person is expelled as a limited partner by judicial order because the person:

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

(B) has willfully or persistently committed, or is willfully or persistently committing, a material breach of the partnership agreement or the person's duty or obligation under this chapter or other applicable law; or

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

(5) in the case of a person who is an individual, the person dies, there is appointed a guardian or general conservator for the person or there is a judicial determination that the person has otherwise become incapable of performing the

person's duties as a limited partner under this chapter or the partnership agreement;

(6) the person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property, but this subsection (6) shall not apply to a person who is the sole remaining limited partner of the limited partnership;

(7) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, the trust's entire transferable interest in the limited partnership is distributed, but not solely by reason of the substitution of a successor trustee;

(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, but not solely by reason of the substitution of a successor personal representative;

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

(10) the transfer of a limited partner's entire remaining transferable interest to another partner;

(11) the transfer of a limited partner's entire remaining transferable interest to a transferee upon the transferee's becoming a partner; or

(12) the limited partnership's participation in a conversion or merger under Article 10, or Article 8 of Chapter 1 of this title if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

Comment

This Section has been modified to conform with Section 10A-5A-6.02 of the Alabama Limited Liability Company Law of 2014.

The phrase "relating to the limited partnership's activities" used in Sections 10A-9A-6.01(b)(4)(C) and 10A-9A-6.03(5)(C) has been changed to "relating to the activities and affairs of the limited partnership" to provide for a consistent application of the two sections.

This Chapter refers to a person's dissociation as a limited partner rather than to the dissociation of a limited partner, because the same person may be both a general and a limited partner. See Section 10A-9A-1.13 (Dual Capacity). It is possible

for a dual capacity partner to dissociate in one capacity and not in the other.

§ 10A-9A-6.02. Effect of dissociation as limited partner.

(a) Upon a person's dissociation as a limited partner:

(1) subject to Section 10A-9A-7.04, the person does not have further rights as a limited partner;

(2) the person's implied contractual covenant of good faith and fair dealing as a limited partner under Section 10A-9A-3.05(b) continues only as to matters arising and events occurring before the dissociation; and

(3) subject to Section 10A-9A-7.04, and Article 10, and Article 8 of Chapter 1 of this title, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person immediately after dissociation as a mere transferee.

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

Comment

Subsection (a)(1) – In general, when a person dissociates as a limited partner, the person's rights as a limited partner disappear and, subject to Section 10A-9A-1.13 (Dual Status), the person's

status degrades to that of a mere transferee. However, Section 10A-9A-7.04 provides some special rights when dissociation is caused by an individual's death.

Subsection (a)(3) – For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 10A-9A-1.11(8)(c).

Article 10 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a limited partner and may override the rule stated in this paragraph.

§ 10A-9A-6.03. Dissociation as general partner.

A person is dissociated from a limited partnership as a general partner when any of the following occurs:

(1) the limited partnership has notice of the person's express will to dissociate as a general partner, except that if the person specifies a dissociation date later than the date the limited partnership had notice, then the person is dissociated as a general partner 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 unanimous consent of the other partners if:

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

(B) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes;

(C) the person is an organization and, within 90 days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a statement of dissolution or the equivalent, or its right to conduct activities and affairs has been suspended by its jurisdiction of formation, the statement of dissolution or the equivalent has not been revoked or its right to conduct activities and affairs has not been reinstated; or

(D) the person is a limited liability company or partnership that has been dissolved and whose activities and affairs are being wound up;

(5) on application by the limited partnership, or a partner in a direct action under Section 10A-9A-9.01, the person's expulsion as a general partner by judicial order because the person:

(A) has engaged, or is engaging, in wrongful conduct that adversely and materially affected, or will adversely

and materially affect, the limited partnership's activities and affairs;

(B) has willfully or persistently committed, or is willfully or persistently committing, a material breach of the partnership agreement or the person's duty or obligation under this chapter or other applicable law; or

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

(6) in the case of a person who is an individual, the person dies, there is appointed a guardian or general conservator for the person or there is a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under this chapter or the partnership agreement;

(7) the person becomes a debtor in bankruptcy, executes an assignment for the benefit of creditors, or seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, the trust's entire transferable interest in the limited partnership is distributed, but not merely by reason of the substitution of a successor trustee;

(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, but not merely by reason of the substitution of a successor personal representative;

(10) in the case of a general partner that is not an individual, the legal existence of the person otherwise terminates;

(11) the transfer of a general partner's entire remaining transferable interest to another partner;

(12) the transfer of a general partner's entire remaining transferable interest to a transferee upon the transferee's becoming a partner; or

(13) the limited partnership's participation in a conversion or merger under Article 10 or Article 8 of Chapter 1 of this title, if the limited partnership:

(A) is not the converted or surviving entity; or

(B) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

Comment

This Section has been modified to conform with Section 10-5A-6.02 of the Alabama Limited Liability Company Law of 2014. The requirement that the “transfer of all or substantially all of the person’s transferable interest...” has been altered to restrict a general partner’s expulsion by unanimous consent, only if all of the person’s transferable interest in the limited partnership has been transferred.

The term “judicial determination” was replaced by the term “judicial order” for consistency. A judicial order is a ruling by a court of competent jurisdiction.

This Chapter refers to a person’s dissociation as a general partner rather than to the dissociation of a general partner, because the same person may be both a general and a limited partner. See Section 10A-9A-1.13 (Dual Capacity). It is possible for a dual capacity partner to dissociate in one capacity and not in the other.

The partnership agreement may not eliminate the power to dissociate of a general partner as set forth in paragraph (1). See Section 10A-9A-1.08(c)(13).

§ 10A-9A-6.04. Person’s power to dissociate as general partner; wrongful dissociation.

(a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to Section 10A-9A-6.03(1).

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

(1) it is in breach of an express provision of the limited partnership; or

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

(A) the person dissociates as a general partner by express will;

(B) the person is expelled as a general partner by judicial order under Section 10A-9A-6.03(5);

(C) the person is dissociated as a general partner by becoming a debtor in bankruptcy; or

(D) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 10A-9A-9.01, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of

the general partner to the limited partnership or to the other partners.

Comment

Subsection (a) – The partnership agreement may not eliminate this power. See Section 10A-9A-1.08(c)(13).

Subsection (b)(1) – The reference to “an express provision of the partnership agreement” means that a person’s dissociation as a general partner in breach of the implied contractual covenant of good faith and fair dealing is not wrongful dissociation for the purposes of this section. The breach might be actionable on other grounds.

Subsection (b)(2) – The reference to “before the termination of the limited partnership” reflects the expectation that each general partner will shepherd the limited partnership through winding up. A person’s obligation to remain as general partner through winding up continues even if another general partner dissociates.

Subsection (c) – The language “subject to Section 10A-9A-9.01” is intended to preserve the distinction between direct and derivative claims.

§ 10A-9A-6.05. Effect of dissociation as general partner.

- (a) Upon a person’s dissociation as a general partner:
 - (1) the person’s right to participate as a general partner in the management and conduct of the partnership’s activities and affairs terminates;
 - (2) the person’s duty to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership’s activities and affairs terminates;

(3) the person's following duties continue only with regard to matters arising and events occurring before the person's dissociation as a general partner:

(A) the duty to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities and affairs or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

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

(C) the duty of care under Section 10A-9A-4.08;

(4) the person may sign and deliver for filing in accordance with Article 4 of Chapter 1, a statement of dissociation pertaining to the person and, at the request of the limited partnership, if the limited partnership has not filed a statement of dissolution, shall sign an amendment to the certificate of formation which states that the person has dissociated; and

(5) subject to Section 10A-9A-7.04, Article 10, and Article 8 of Chapter 1 of this title, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned immediately after dissociation by the person as a mere transferee.

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

Comment

Subsection (a)(1) – Once a person dissociates as a general partner, the person loses all management rights as a general partner regardless of what happens to the limited partnership.

Subsection (a)(4) – Both the statement of dissociation and the amendment to the certificate of formation covered by this paragraph have the same effect under Section 10A-9A-1.03(d) -- namely, to give constructive notice that the person has dissociated as a general partner. The notice benefits the person by curtailing any further personal liability under Sections 10A-9A-6.07, 10A-9A-8.05, and 10A-9A-10.11. The notice benefits the limited partnership by curtailing any lingering power to bind under Sections 10A-9A-6.06, 10A-9A-8.04, and 10A-9A-10.12. If that signature is required and the person refuses or fails to sign, the limited partnership may invoke Section 10A-9A-2.04 (Signing and Filing Pursuant to Judicial Order).

If the limited partnership has not filed a statement of dissolution, the limited partnership is obligated to amend its certificate of formation to reflect the dissociation of a person as general partner. See Section 10A-9A-2.02(d)(2).

Subsection (a)(5) – In general, when a person dissociates as a general partner, the person’s rights as a general partner disappear and, subject to Section 10A-9A-1.13 (Dual Status), the person’s status degrades to that of a mere transferee. For any person that is both a general partner and a limited partner, the required records must state which transferable interest is owned in which capacity. Section 10A-9A-1.11(8)(c).

Section 10A-9A-7.04 provides some special rights when an individual dissociates by dying. Article 10 provides for conversions and mergers. A plan of conversion or merger may provide for the dissociation of a person as a general partner and may override the rule stated in this paragraph.

§ 10A-9A-6.06. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.

(a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under Article 10 or under Article 8 of Chapter 1 of this title, or merged out of existence under Article 10 or Article 8 of Chapter 1 of this title, the limited partnership is bound by an act of the person only if:

(1) the act would have bound the limited partnership under Section 10A-9A-4.02 before the dissociation; and

(2) at the time the other party enters into the transaction the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

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

(1) to the limited partnership for any damage caused to the limited 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.

Comment

A dissociated general partner can obtain protection from this Section by filing a statement of dissociation under Section 10A-9A-6.05(a)(4), which will serve as constructive notice that the person has dissociated as a general partner in accordance with Section 10A-9A-1.03(d)(2). If the limited partnership has not filed a statement of dissolution, Section 10A-9A-2.02(d)(2) requires a limited partnership to file an amended certificate of formation deleting the dissociated general partner from the certificate of formation, and the amended certificate of formation will serve as

constructive notice of the dissociation in accordance with Section 10A-9A-1.03(d)(2).

If there is no general partner after the dissociation of the general partner and the limited partners fail to timely appoint a new general partner under Section 10A-9A-8.01(c)(1), thereby causing the limited partnership to be dissolved, and the limited partners thereafter appoint a person (not a general partner) to wind up the limited partnership, the limited partnership is required to file a statement of dissolution pursuant to Section 10A-9A-8.03(d)(2). In contrast to the above mentioned means by which the limited partnership or dissociated general partner can protect themselves, a third party dealing with the dissociated general partner may be unable to determine that the person has dissociated if there is no notice.

The liability provided by subsection (b) is not exhaustive. For example, if a person dissociated as a general partner causes a limited partnership to be bound under subsection (a) and, due to a guaranty, some other person is liable on the resulting obligation, that other person may have a claim under other law against the person dissociated as a general partner.

§ 10A-9A-6.07. Liability to other persons of person dissociated as general partner.

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

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited

partnership's activities and affairs is liable to the same extent as a general partner under Section 10A-9A-4.04 on an obligation incurred by the limited partnership under Section 10A-9A-8.04.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities and affairs is liable on a transaction entered into by the limited partnership after the dissociation only if:

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

(2) at the time the other party enters into the transaction the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

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

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

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

Comment

A person's dissociation as a general partner does not categorically prevent the person from being liable as a general partner for subsequently incurred obligations of the limited partnership. If the dissociation results in dissolution, subsection (b) applies and the person will be liable as a general partner on any partnership obligation incurred under Section 10A-9A-8.04. In these circumstances, neither filing a statement of dissociation nor a statement of dissolution or to state that the person has dissociated as a general partner will curtail the person's lingering exposure to liability.

If the dissociation does not result in dissolution, subsection (c) applies. In this context, filing a statement of dissociation or amending the certificate of formation to state that the person has dissociated as a general partner will curtail the person's lingering liability. See subsection (c)(2)(B).

If the limited partnership subsequently dissolves as the result of some other occurrence (i.e., not a result of the person's dissociation as a general partner), subsection (c) continues to apply. In that situation, Section 10A-9A-8.04 will determine whether, for the purposes of subsection (c), the limited partnership has entered into a transaction after dissolution.

If the limited partnership is a limited liability limited partnership, these liability rules are moot.

Subsection (a) -- *The phrase "liability as a general partner for an obligation of the limited partnership" refers to liability under Section 10A-9A-4.04. This Chapter leaves to other law the question of when a limited partnership obligation is incurred.*

Article 7

Transferable Interests and Rights of Transferees and Creditors

- § 10A-9A-7.01. Transferable Interest.
- § 10A-9A-7.02. Transfer of Partner's Transferable Interest.
- § 10A-9A-7.03. Rights of Creditor of Partner of Transferee.
- § 10A-9A-7.04. Power of Personal Representative of Deceased Partner.

§ 10A-9A-7.01. Transferable interest.

The only interest of a partner which is transferable is the partner's transferable interest. A transferable interest is personal property.

Comment

Like all other partnership statutes, this Chapter dichotomizes each partner's rights into economic rights and other rights. The former are freely transferable, as provided in Section 10A-9A-7.02. The latter are not transferable at all, unless the partnership agreement so provides.

Although a partner or transferee owns a transferable interest as a present right, that right only entitles the owner to distributions if and when made. See Section 10A-9A-5.04 (subject to any contrary provision in the partnership agreement, no right to interim distribution unless the limited partnership decides to make an interim distribution).

§ 10A-9A-7.02. Transfer of partner's transferable interest.

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

(1) is permissible;

(2) does not by itself cause the partner's dissociation;

(3) does not by itself cause a dissolution and winding up of the limited partnership; and

(4) subject to Section 10A-9A-7.04, does not entitle the transferee to:

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

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

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

(c) A transferable interest may be evidenced by a certificate of transferable interest issued by the limited partnership.

A partnership agreement may provide for the transfer of the transferable interest represented by the certificate and make other provisions with respect to the certificate. No certificate of transferable interest shall be issued in bearer form.

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

(e) Except as otherwise provided in Sections 10A-9A-6.01(b)(3), 10A-9A-6.01(b)(10), 10A-9A-6.01(b)(11), 10A-9A-6.03(4)(B), 10A-9A-6.03(11), and 10A-9A-6.03(12) when a partner transfers a transferable interest, the transferor retains the rights of a partner other than the right to distributions transferred and retains all duties and obligations of a partner.

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

(g) When a partner transfers a transferable interest to a person that is admitted as a partner with respect to the transferred interest, the transferee is liable for the partner's obligations under Sections 10A-9A-5.02 and 10A-9A-5.08 to the extent that the

obligations are known to the transferee when the transferee voluntarily accepts admission as a partner.

Comment

This section is substantially similar to Section 10A-5A-5.02 of the Alabama Limited Liability Company Law of 2014.

***Subsection (a)(2)** -- The phrase “by itself” is significant. A transfer of all of a person’s transferable interest could lead to dissociation via expulsion, Sections 10A-9A-6.01(b)(3)(B) and 10A-9A-6.03(4)(B); See also Section 10A-9A-6.01(b)(10), (11) and (12) and Section 10A-9A-6.03(11), (12) and (13).*

***Subsection (a)(3)** -- Mere transferees have no right to intrude as the partners carry on their activities and affairs as partners. Moreover, a partner’s implied contractual covenant of good faith and fair dealing under Sections 10A-9A-3.05(b) and 10A-9A-4.08(d) is framed in reference to “the limited partnership and the other partners.”*

§ 10A-9A-7.03. Rights of creditor of partner or transferee.

(a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged and after the limited partnership has been served with the charging order, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the transferable interest.

(b) The limited partnership, after being served with a charging order and its terms, shall be entitled to pay or deposit any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the charged transferable interest into the hands of the clerk of the court so issuing the charging order, and the payment or deposit shall discharge the limited partnership and the judgment debtor from liability for the amount so paid or deposited and any interest that might accrue thereon. Upon receipt of the payment or deposit, the clerk of the court shall notify the judgment creditor of the receipt of the payment or deposit. The judgment creditor shall, after any payment or deposit into the court, petition the court for payment of so much of the amount paid or deposited as is held by the court as may be necessary to pay the judgment creditor's judgment. To the extent the court has excess amounts paid or deposited on hand after the payment to the judgment creditor, the excess amounts paid or deposited shall be distributed to the judgment debtor and the charging order shall be extinguished. The court, may in its discretion, order the clerk to deposit, pending the judgment creditor's petition, any money paid or deposited with the clerk, in

an interest bearing account at a bank authorized to receive deposits of public funds.

(c) A charging order constitutes a lien on the judgment debtor's transferable interest.

(d) Subject to subsection (c):

(1) a judgment debtor that is a partner retains the rights of a partner and remains subject to all duties and obligations of a partner; and

(2) a judgment debtor that is a transferee retains the rights of a transferee and remains subject to all duties and obligations of a transferee.

(e) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(f) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest and the judgment creditor shall have no right to foreclose, under this chapter or any other law, upon the charging order, the charging order lien, or the judgment debtor's transferable interest. A judgment creditor of a partner or transferee shall have no right to

obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a limited partnership. Court orders for actions or requests for accounts and inquiries that the judgment debtor might have made, are not available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's transferable interest and may not be ordered by a court.

Comment

This Section provides that unsecured creditors can obtain from a court a “charging order,” which is similar to an attachment or garnishment, against the partner’s transferable interest. Under this Section, the charging order is available to judgment creditors of partners or transferees. A charging order is not available to a party with rights against a partner or transferee other than as a judgment creditor. The phrase “judgment debtor” encompasses both partners and transferees. This Section attempts to balance the needs of the judgment creditor, the judgment debtor, and the limited partnership. The Section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities and affairs of the limited partnership. Further, this Section provides for a payment mechanism that is intended to protect all parties.

Subsection (a). *This Subsection provides the judgment creditor with one specific right. That right is the right to receive any distribution that the judgment debtor would have received, but only after the limited partnership has been served with the charging order. This change was made in an effort to define what the judgment creditor was entitled to receive from the limited partnership and to protect the limited partnership from unknown charging orders.*

Subsection (b). *This provision provides a method for the limited partnership to pay a distribution that is subject to a charging order to the court. A payment pursuant to this Subsection discharges the limited partnership and the judgment debtor to the extent of the payment. Because the judgment creditor may have a number of sources for the payment of its judgment, this Subsection provides a mechanism to protect the limited partnership, the judgment debtor, and the judgment creditor in the event a distribution exceeds the amount then owed to the judgment creditor. The judgment creditor has no say in the timing or amount of the distributions. The charging order does not entitle the judgment creditor to accelerate any distributions or otherwise to interfere with the management and activities and affairs of the limited partnership.*

Subsection (c). *This provision provides the judgment creditor with a lien for purposes of the Uniform Commercial Code, the Bankruptcy Code, and general creditor rights laws; however, the lien may not be foreclosed upon. This lien is also important in the context of a merger, conversion, reorganization, or other transfers of transferable interests.*

The priority of the lien as to other creditors will be determined under applicable law and is not addressed in this Chapter. The lien cannot be foreclosed upon as other liens. The limited scope of the remedy provided under this Chapter eliminates a significant number of issues presented by other statutes that attempt to provide rights of redemption and other pre- and post-foreclosure remedies. Those rights were seen as clumsy and ineffective in assisting the collection of the debt while potentially posing the threat that a judgment creditor might obtain an overly broad court order interfering with the day-to-day activities and affairs of the limited partnership. The inability to foreclose is expressly stated in Subsection (f).

Subsection (d). *This provision clarifies that a partner or transferee whose transferable interest has been charged does not lose any of the partner's or transferee's rights, other than the right to receive distributions from the limited partnership to the extent of the charging order.*

Subsection (e). This provision gives the judgment debtor the benefit of any exemptions applicable under state law with respect to the transferable interest.

Subsection (f). The first two sentences of this provision are derived from Texas, § 101.112 (c), (d), and (f). This provision attempts to eliminate the problems encountered by overly broad court orders. The provision was not intended, nor should it be interpreted, to prevent a court from enforcing its charging order against the person who violates the charging order.

§ 10A-9A-7.04 Power of Personal Representative of Deceased Partner.

If a partner dies, the deceased partner's personal representative or other legal representative may:

(a) for the period of time that the deceased partner's personal representative or other legal representative holds the deceased partner's transferable interest:

(1) exercise the rights of a holder of transferable interests under this chapter;

(2) exercise the rights of a transferee under Section 10A-9A-7.02; and

(3) for purposes of settling the estate, exercise the rights of a current limited partner under Section 10A-9A-3.04; and

(b) for the period of time that the deceased partner's personal representative or other legal representative does not hold

the deceased partner's transferable interest, for purposes of settling the estate, exercise the rights of a person dissociated as a limited partner under Section 10A-9A-3.04.

Comment

This Section is similar to Section 10A-5A-5.04 of the Alabama Limited Liability Company Law of 2014.

Section 10A-9A-7.02 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 10A-9A-7.02(d).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate. Subsection (a) provides that for the period of time that the deceased partner's personal representative or other legal representative holds the deceased partner's transferable interest, the personal representative or legal representative may, for purposes of settling the estate, exercise the informational rights of a current limited partner under Section 10A-9A-3.04. Subsection (b) provides that for the period of time that the deceased partner's personal representative or other legal representative does not hold the deceased partner's transferable interest, the personal representative or legal representative may, for purposes of settling the estate, exercise the informational rights of a person dissociated as a limited partner under Section 10A-9A-3.04. Those rights are of course subject to the limitations and obligations stated in that section, as well as any generally applicable limitations stated in the partnership agreement.

This Section was modified to clarify that the holding in L.B. Whitfield, III Family LLC v. Virginia Ann Whitfield et al., 150 So.3d 171 (Ala 2014) should not apply to the default powers of a deceased partner's personal representative or other legal representative so long as that personal representative or other legal representative holds the deceased partner's transferable interests. The default of this Section is that upon the death of an individual, that individual's transferable interests are then held by

that individual's personal representative or other legal representative to be distributed in accordance with that individual's will, or in the event there is no will, distributed in accordance with the applicable intestate statute. Since the policy of this Chapter and this State is to give maximum effect to the principles of freedom of contract and to the enforceability of a partnership agreement, it would appear that transferable interests could be held jointly with rights of survivorship, and thus, upon the death of a partner, the transferable interest would vest in the joint owner, and would not be subject to the default powers of the deceased partner's personal representative or other legal representative. In addition, it would appear that a partnership agreement could provide other means of transferring the transferable interest outside of the probate estate and appointing partners outside of the probate estate. See Section 10A-9A-8.01(c)(2), (d)(2), and (e)(2). See generally, Williams v. Williams, 438 So.2d 735 (Ala. 1983); Cowin v. Salmon, 13 So.2d 190, 244 Ala. 285 (1943); More v. Carnes, 309 Ky. 41, 214 S.W. 2d 984 (1948); and Blechman v. Blechman, 160 So.3d 152 (Fla. 2015).

ARTICLE 8

Dissolution and Winding-Up

- § 10A-9A-8.01. Events of Dissolution.**
- § 10A-9A-8.02. Effect of Dissolution.**
- § 10A-9A-8.03. Right to wind up activities and affairs.**
- § 10A-9A-8.04. Power of General Partner and Person Dissociated as General Partner to bind Partnership after Dissolution.**

- § 10A-9A-8.05. Liability after Dissolution of General Partner and person Dissociated as General Partner to Limited Partnership; Other General Partners, and Persons Dissociated as General Partner.**

- § 10A-9A-8.06. Known claims against Dissolved Limited Partnership.**
- § 10A-9A-8.07. Other claims against Dissolved Limited Partnership,**
- § 10A-9A-8.08. Liability of General Partner and Person Dissociated as General Partner when claim against Limited Partnership.**

- § 10A-9A-8.09. Disposition of Assets; when Contributions required.**

- § 10A-9A-8.10. Reinstatement after Dissolution.**
- § 10A-9A-8.11. Certificate of reinstatement.**
- § 10A-9A-8.12. Limited Partnership Name upon Reinstatement.**
- § 10A-9A-8.13. Effect of Reinstatement.**

§ 10A-9A-8.01. Events of Dissolution.

A limited partnership is dissolved and its activities and affairs shall be wound up upon the occurrence of the first of the following events:

(a) An event or circumstance that the partnership agreement states causes dissolution.

(b) Consent of all partners to dissolve.

(c) When there is no remaining general partner, unless either of the following applies:

(1) All of the limited partners agree in writing, within 90 days after the dissociation of the last general partner, to continue the activities and affairs of the limited partnership and to admit one or more new general partners.

(2) The activities and affairs of the limited partnership are continued and one or more new general partners are admitted in the manner stated in the partnership agreement.

(d) When there is no remaining limited partner, unless either of the following applies:

(1) All of the general partners agree in writing, within 90 days after the dissociation of the last limited partner, to continue the activities and affairs of the limited partnership and to admit one or more new limited partners.

(2) The activities and affairs of the limited partnership are continued and one or more new limited partners are admitted in the manner stated in the partnership agreement.

(e) When there are no remaining partners, unless either of the following applies:

(1) The holders of all of the transferable interests in the limited partnership agree in writing, within 90 days after the dissociation of the last general partner, to continue the activities and affairs of the limited partnership and to admit one or more new general partners and one or more new limited partners.

(2) The activities and affairs of the limited partnership are continued and one or more new general partners and one or more new limited partners are admitted in the manner stated in the partnership agreement.

(f) On application by a partner, the entry of an order dissolving the limited partnership on the grounds that it is not reasonably practicable to carry on the limited partnership's activities and affairs in conformity with the partnership agreement, which order is entered by the circuit court for the county in which the limited partnership's principal place of business within this state is located, and if the limited partnership does not have a principal place of business within this state then by the circuit court for the county in which the limited partnership's most recent registered office is located.

Comment

This Section has been modified to recognize that the limited partnership is an entity, and that the old dissolution rules were written in an attempt to comply with certain pre “check-the-box” regulation tax issues. Since those tax issues no longer exist, and since the limited partnership is recognized as an entity, it was determined that the entity needed more stability in the dissolution area. Thus, the dissolution provisions now reflect the dissolution provisions of the Alabama Limited Liability Company Law of 2014. In addition, since the default distribution rules under Section 10A-9A-5.03 were modified to provide equal distributions to all partners based on status of being a partner rather than on the percentage of the rights to distributions, this Section’s default rules were modified to provide partners with equal rights as to the right to continue or dissolve the limited partnership based on status of being a partner rather than on the percentage rights to distributions.

§ 10A-9A-8.02. Effect of dissolution.

Notwithstanding Section 10A-1-9.12:

(a) A dissolved limited partnership continues its existence as a limited partnership but may not carry on any activities and affairs except as is appropriate to wind up and liquidate its activities and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to persons owning transferable interests;
- (3) discharging or making provisions for discharging its liabilities;

(4) distributing its remaining property in accordance with Section 10A-9A-8.09; and

(5) doing every other act necessary to wind up and liquidate its activities and affairs.

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

(1) deliver for filing a statement of dissolution to the filing officer provided for in subsection (e) setting forth:

(A) The name of the limited partnership;

(B) The date of filing its certificate of formation, and all amendments and restatements thereof, and the office or offices where filed;

(C) That the limited partnership has dissolved;

(D) The name and street mailing address of the general partner who will be winding up the affairs of the limited partnership pursuant to Section 10-9A-8.03(a), and if none, the name and street address of the person appointed pursuant to Section 10A-9A-8.03(b) or (c) to wind up the activities and affairs of the limited partnership; and

(E) Any other information the limited partnership deems appropriate;

(2) preserve the limited partnership's activities and affairs and property as a going concern for a reasonable time;

(3) prosecute, defend, or settle actions or proceedings whether civil, criminal or administrative;

(4) transfer the limited partnership's assets;

(5) resolve disputes by mediation or arbitration;

and

(6) merge or convert in accordance with Article 10 of this chapter or Article 8 of Chapter 1.

(c) The dissolution of a limited partnership does not:

(1) transfer title to the limited partnership's property;

(2) prevent the commencement of a proceeding by or against the limited partnership in its limited partnership name;

(3) terminate, abate or suspend a proceeding pending by or against the limited partnership on the effective date of dissolution;

(4) terminate the authority of its registered agent; or

(5) abate, suspend or otherwise alter the application of Sections 10A-9A-3.03 and 10A-9A-4.04(b) and (c).

(d) A statement of dissolution shall be deemed to be a filing instrument under Chapter 1.

(e) If a limited partnership is not an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the statement of dissolution for filing to the judge of probate in whose office the original certificate of formation is filed. If a limited partnership is an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the statement of dissolution for filing to the Secretary of State.

Comment

This Section is derived Section 10A-5A-7.02 of the Alabama Limited Liability Company Law of 2014 which is based on RMBCA § 14.05. This Section provides for a statement of dissolution in lieu of an amendment of the certificate of formation, but the filing of such a statement is optional if the limited partnership has a general partner named in the certificate of formation that will conduct the winding up of the limited partnership; however, if a person is appointed pursuant to Section 10A-9A-8.03, the filing of

the statement of dissolution is mandatory in order to provide that person with the protections of Section 10A-9A-8.03. The statement of dissolution, much like prior law provides notice to third parties about the person who will be winding up the activities and affairs of the limited partnership. See Section 10A-9A-1.03. In that regard, a statement of dissolution is not the end of the dissolution and winding up process, but rather is notice of that process. If the limited partnership either elects not to file, or because of circumstances does not file, a statement of dissolution, third parties without knowledge or notice of the dissolution may continue to rely upon the certificate of formation and limited partnership agreement as if the limited partnership was not dissolved. This Section acknowledges that a statement of dissolution may be filed at any time in that process (unless it is required under Section 10A-9A-8.03), and that even though the limited partnership may be “dissolved,” the limited partnership nonetheless remains in existence (See Section 10A-9A-8.02(a)) as a limited partnership and has the powers and authorities provided in this Chapter, but its activities are limited to those appropriate to winding up as set forth in this Article 8. This Section also acknowledges that the dissolution and winding up process may take some time to complete, and thus, the limited partnership’s status as a limited partnership continues throughout that process.

Section (d) was added to clarify that a statement of dissolution is, for purposes of Chapter 1, a “filing instrument” (defined as any document that must or may be filed). Although Chapter 1 appears to cover where the statement of dissolution should be filed and what the filing fees should be in Sections 10A-1-4.02(a)(5) and 4.31(a), this provision is intended to clarify that treatment. Subsection (e) was added to reflect the filing requirements of Section 10A-1-4.02(c)(4). Because a statement of dissolution is a “filing instrument,” the effective date of a statement of dissolution is governed by Article 4 of Chapter 1.

§ 10A-9A-8.03. Right to wind up activities and affairs.

(a) If a dissolved limited partnership has a general partner or general partners that have not dissociated, that general partner or those general partners shall wind up the activities and

affairs of the limited partnership and shall have the powers set forth in Section 10A-9A-8.04

(b) If a dissolved limited partnership does not have a general partner, a person or persons to wind up the dissolved limited partnership's activities and affairs may be appointed by the consent of a majority of the limited partners.

(c) The circuit court for the county in which the limited partnership's principal place of business within this state is located, and if the limited partnership does not have a principal place of business within this state then the circuit court for the county in which the limited partnership's most recent registered office is located, may order judicial supervision of the winding up of a dissolved limited partnership, including the appointment of a person to wind up the limited partnership's activities and affairs:

(1) on application of a partner, if the applicant establishes good cause;

(2) on application of a partner or transferee, if the limited partnership does not have a general partner and within a reasonable time following the dissolution no person having the authority to wind up the activities and affairs of the limited partnership has been appointed pursuant to subsection (b);

(3) on application of a partner or transferee, if the limited partnership does not have a general partner and within a reasonable time following the dissolution the person appointed pursuant to subsection (b) is not winding up the activities and affairs of the limited partnership; or

(4) in connection with a proceeding under Section 10A-9A-8.01(f).

(d) A person appointed under subsection (b) or (c) is not a general partner but:

(1) has the powers of a general partner under Section 10A-9A-8.04 but is not liable for the debts, liabilities, and other obligations of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the activities and affairs of the dissolved limited partnership; and

(2) shall promptly deliver for filing a statement of dissolution to the filing officer provided for in subsection (e) setting forth the items listed in Section 10-9A-8.02(b)(1) and the following:

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

(B) the name and street mailing address of each person that has been appointed to wind up the activities and affairs of the limited partnership;

(C) that each person has been appointed pursuant to this subsection to wind up the activities and affairs of the limited partnership; and

(D) pursuant to this Section, that each person has the powers of a general partner under Section 10A-9A-8.04 but is not liable for the debts, liabilities, and other obligations of the limited partnership solely by reason of having or exercising those powers or otherwise acting to wind up the activities and affairs of the dissolved limited partnership.

(e) If the limited partnership is not an organization described in Section 10A-1-4.02(c)(4), then the person or persons appointed pursuant to subsection (b) or (c) shall deliver the statement of dissolution for filing to the judge of probate in whose office the original certificate of formation is filed. If the limited partnership is an organization described in Section 10A-1-4.02(c)(4), then the person or persons appointed pursuant to subsection (b) or (c) shall deliver the statement of dissolution for filing to the Secretary of State.

Comment

This Section is substantially similar to prior law under Section 10A-9A-8.03(c) and (d), but has been modified to conform with Section 10A-5A-7.03 of the Alabama Limited Liability Company Law of 2014. A person appointed under subsection (b) is not a general partner and therefore is not subject to the standards of a general partner such as Section 10A-9A-4.08.

Subsection (d) provides for a statement of dissolution in lieu of an amendment of the certificate of formation, but the filing of such a statement is mandatory if a person is appointed pursuant to Section 10A-9A-8.03(b) or (c) in order to provide that person with the protections of Section 10A-9A-8.03(d). The statement of dissolution, much like the prior law's amendment of the certificate of formation provides notice to third parties about the person who will be winding up the activities and affairs of the limited partnership. See Section 10A-9A-1.03. In that regard, a statement of dissolution is not the end of the dissolution and winding up process, but rather is notice of that process.

Section (e) was added to reflect the filing requirements of Section 10A-1-4.02(c)(4). Because a statement of dissolution is a "filing instrument," (See Section 10A-9A-8.02 (d)) the effective date of a statement of dissolution is governed by Article 4 of Chapter 1.

§10A-9A-8.04. Power of General Partner and Person Dissociated as General Partner to Bind Partnership after Dissolution.

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

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

(2) would have bound the limited partnership under Section 10A-9A-4.02 before dissolution, if, at the time the

other party enters into the transaction, the other party does not have notice of the dissolution.

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

(1) at the time the other party enters into the transaction the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(2) the act:

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

(B) would have bound the limited partnership under Section 10A-9A-4.02 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Comment

“Only” was added in subsection (b) to assure that this is the only situation in which a dissociated general partner can bind the partnership. This change conforms to Sections 6.06(a) and 6.07(c), which contain the phrase “only if.”

This Chapter does not provide a time limit as to the dissociated general partner's power as it is more important to protect persons dealing with a dissociated general partner than it is to protect the dissociated general partner or the limited partnership. Thus, the

limited partnership should be proactive upon the dissociation of a general partner to place third parties on notice. The dissociated general partner can obtain protection by filing a notice of dissociation under Section 10A-9A-6.05(a)(4), which serves as notice that the person has dissociated as a general partner in accordance with Section 10A-9A-1.03(d)(2). Under Section 10A-9A-2.02(d)(2), prior to its filing a statement of dissolution, a limited partnership is required to file an amended certificate of formation deleting the dissociated general partner from the certificate of formation and the amended certificate of formation will serve as notice of dissociation in accordance with Section 10A-9A-1.03(d)(2). The filing of the statement of dissolution has the effect of placing third parties on notice regarding the general partner or other person who is authorized to wind-up the activities and affairs of the limited partnership, and thus is in lieu of an amendment to the certificate of formation. See Section 10A-9A-1.03(d)(3). If a dissolved limited partnership does not have a general partner and the limited partners appoint a person to wind-up the activities and affairs of the limited partnership (See Section 10A-9A-8.03(b)) or if a court appoints a person to wind-up activities and affairs of the limited partnership (See Section 10A-9A-8.03(c)), the limited partnership is required under Sections 10A-9A-8.03(d)(2) to file a statement of dissolution, thereby giving notice to third parties, and also providing the person appointed to wind-up the activities and affairs of the dissolved limited partnership with the protections provided to that person under Section 10A-9A-8.03(d)(1). In contrast to the above mentioned means by which the dissolved limited partnership, dissociated general partner, or person appointed to wind-up the activities and affairs of the dissolved limited partnership, can protect themselves, a third party dealing with a dissolved limited partnership, dissociated general partner, or person appointed to wind-up the activities and affairs of the dissolved limited partnership may, without notice, be unable to determine that the limited partnership has dissolved, that the dissociated general partner has dissociated, or that the person appointed to wind-up the activities and affairs of the dissolved limited partnership under Section 10-9A-8.03 is not a general partner, and thus will be able to rely on the certificate of formation, the limited partnership agreement, and the actual and apparent authority of the parties involved.

Subsection (b) Deals with the post-dissolution power to bind of a person dissociated as a general partner. Paragraph (1) replicates the provisions of Section 10A-9A-6.06, pertaining to the pre-dissolution power to bind of a person dissociated as a general partner. Paragraph (2) replicates the provisions of subsection (a), which state the post-dissolution power to bind of a general partner. For a person dissociated as a general partner to bind a dissolved limited partnership, the person's act will have to satisfy both paragraph (1) and paragraph (2).

§10A-9A-8.05. Liability after Dissolution of General Partner and Person Dissociated as General Partner to Limited Partnership, Other General Partners, and Persons Dissociated as General Partner.

(a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Section 10A-9A-8.04(a) by an act that is not appropriate for winding up the partnership's activities and affairs, the general partner is liable:

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

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

(b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Section 10A-9A-8.04(b), the person is liable:

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

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

Comment

It is possible for more than one person to be liable under this Section on account of the same limited partnership obligation. This Act does not provide any rule for apportioning liability in that circumstance.

If the limited partnership is not a limited liability limited partnership, the liability created by this paragraph includes liability under Sections 10A-9A-4.04(a), 10A-9A-6.07(b), and 10A-9A-6.07(c). The paragraph also applies when a partner or person dissociated as a general partner suffers damage due to a contract of guaranty.

§ 10A-9A-8.06. Known claims against dissolved limited partnership.

Notwithstanding Sections 10A-1-9.01 and 10A-1-9.21:

(a) A dissolved limited partnership may dispose of any known claims against it by following the procedures described in subsection (b) at any time after the effective date of the dissolution of the limited partnership.

(b) A dissolved limited partnership may give notice of the dissolution in a record to the holder of any known claim. The notice must:

- (1) identify the dissolved limited partnership;
- (2) describe the information required to be included in a claim;
- (3) provide a mailing address to which the claim is to be sent;
- (4) state the deadline, which may not be fewer than 120 days from the effective date of the notice, by which the dissolved partnership must receive the claim;
- (5) state that if not sooner barred, the claim will be barred if not received by the deadline; and
- (6) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 10A-9A-4.04.

(c) Unless sooner barred by any other statute limiting actions, a claim against a dissolved limited partnership is barred:

(1) if a claimant who was given notice under subsection (b) does not deliver the claim to the dissolved limited partnership by the deadline; or

(2) if a claimant whose claim was rejected by the dissolved limited partnership, does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(d) For purposes of this section, “known claim” or “claim” includes unliquidated claims, but does not include a contingent liability that has not matured so that there is no immediate right to bring suit or a claim based on an event occurring after the effective date of dissolution.

(e) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

Comment

This Section is derived from Section 10A-5A-7.04 of the Alabama Limited Liability Company Law of 2014 which is derived from RMBCA § 14.06 with certain variations. The decision to include this provision and to override Sections 10A-1-9.01 and Section 10A-1-9.21 was based on the desire to have similar actions taken with regard to a limited partnership as are taken with a limited liability company.

Sections 10A-9A-8.06 and 10A-9A-8.07 provide a simplified system for handling known and unknown claims against a dissolved limited partnership, including claims based on events

that occur after the dissolution of the limited partnership. Section 10A-9A-8.06 deals solely with known claims while Section 10A-9A-8.07 deals with unknown or subsequently arising claims. A claim can be a “known” claim even if it is unliquidated; a claim that is contingent or has not yet matured or in certain cases has matured but has not been asserted is not a “known” claim (see Section 10A-9A-8.06(d)). For example, an unmatured liability under a guarantee, a potential default under a lease, or an unasserted claim based upon a defective product manufactured by the dissolved limited partnership would not be a “known” claim.

Known claims are handled in Section 10A-9A-8.06 through a process of written notice to claimants; the written notice must contain the information described in Section 10A-9A-8.06(b). Section 10A-9A-8.06(c) then provides fixed deadlines by which claims are barred under various circumstances, as follows:

(1) If a claimant was given effective written notice satisfying Section 10A-9A-8.06(b) but fails to file the claim by the deadline specified by the dissolved limited partnership, the claim is barred by Section 10A-9A-8.06(c)(1). (See Section 10A-9A-1.03 as to the effectiveness of notice. In that regard, it should be noted, that while a person may have notice of the dissolution by way of the filing of the statement of dissolution, that notice will not be sufficient to comply with the notice required under Section 10A-9A-8.06.)

(2) If a claimant receives written notice satisfying Section 10A-9A-8.06(b) and files the claim as required:

(i) but the dissolved limited partnership rejects the claim, the claimant must commence a proceeding to enforce the claim within 90 days of the rejection or the claim is barred by Section 10A-9A-8.06(c)(2); or

(ii) if the dissolved limited partnership does not act on the claim or fails to notify the claimant of the rejection, the claimant is not barred by Section 10A-9A-8.06(c) until the dissolved limited partnership notifies the claimant.

(3) If the dissolved limited partnership publishes notice under Section 10A-9A-8.07, a claimant who was not notified in writing is barred unless a proceeding is commenced to enforce the claim within two years after publication of the notice

(4) If the dissolved limited partnership does not publish notice, a claimant who was not notified in writing is not barred by Section 810A-9A-.06(c) from pursuing the claim.

These principles, it should be emphasized, do not lengthen statutes of limitation applicable under general state law. Thus, claims that are not barred under the foregoing rules—for example, if the dissolved limited partnership does not act on a claim—will nevertheless be subject to the general statute of limitations applicable to claims of that type.

The person or persons designated to wind up the dissolved limited partnership (See Section 10A-9A-8.03), must discharge or make provision for discharging the limited partnership's liabilities before distributing the remaining assets to the owners of the transferable interests (See Section 10A-9A-8.09(a)).

§ 10A-9A-8.07. Other claims against dissolved limited partnership.

Notwithstanding Sections 10A-1-9.01 and 10A-1-9.22:

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

(b) The notice authorized by subsection (a) must:

(1) be published at least one time in a newspaper of general circulation in the county in which the

dissolved limited partnership's principal place of business is located or, if it has none in this state, in the county in which the limited partnership's registered office is or was last located;

(2) describe the information that must be included in a claim and provide a mailing address to which the claim is to be sent;

(3) state that if not sooner barred, a claim against the dissolved limited partnership will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice; and

(4) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 10A-9A-4.04.

(c) If a dissolved limited partnership publishes a newspaper notice in accordance with subsection (b), unless sooner barred by any other statute limiting actions, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited

partnership within two years after the publication date of the newspaper notice:

(1) a claimant who was not given notice under Section 10A-9A-8.06;

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

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

(d) A claim that is not barred under this section, any other statute limiting actions, or Section 10A-9A-8.06 may be enforced:

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

(2) except as provided in subsection (h), if the assets of a dissolved limited partnership have been distributed after dissolution, against the person or persons owning the transferable interests to the extent of that person's proportionate share of the claim or of the assets distributed to that person after dissolution,

whichever is less, but a person's total liability for all claims under subsection (d) may not exceed the total amount of assets distributed to that person after dissolution of the limited partnership; or

(3) against any person liable on the claim under Section 10A-9A-4.04 and 10A-9A-6.07.

(e) A dissolved limited partnership that published a notice under this section may file an application with the circuit court in the county in which the dissolved limited partnership's principal place of business is located and if the limited partnership does not have a principal place of business within this state, in the county in which the dissolved limited partnership's most recent registered office is located, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved limited partnership or that are based on an event occurring after the effective date of the dissolution of the limited partnership but that, based on the facts known to the dissolved limited partnership, are reasonably estimated to arise after the effective date of the dissolution of the limited partnership. Provision need not be made

for any claim that is or is reasonably anticipated to be barred under subsection (c).

(f) Within ten days after the filing of the application provided for in subsection (e), notice of the proceeding shall be given by the dissolved limited partnership to each potential claimant as described in subsection (e).

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

(h) Provision by the dissolved limited partnership for security in the amount and the form ordered by the circuit court under subsection (e) shall satisfy the dissolved limited partnership's obligation with respect to claims that are contingent, have not been made known to the dissolved limited partnership, or are based on an event occurring after the effective date of the dissolution of the limited partnership, and those claims may not be enforced against a person owning a transferable interest to whom

assets have been distributed by the dissolved limited partnership after the effective date of the dissolution of the limited partnership.

(i) Nothing in this section shall be deemed to extend any otherwise applicable statute of limitations.

(j) If a claim has been satisfied, disposed of, or barred under Section 10A-9A-8.06, this section, or other law, the person or persons designated to wind up the affairs of a limited partnership, and the owners of the transferable interests receiving assets from the limited partnership, shall not be liable for that claim.

Comment

This Section is derived from Section 10A-5A-7.05 of the Alabama Limited Liability Company Law of 2014 which is derived from RMBCA § 14.07 and § 14.08, with certain variations. The decision to include this provision and to override Sections 10A-1-9.01 and 10A-1-9.22 was based on the desire to have similar actions taken with regard to a limited partnerships and limited liability companies.

This Section addresses the serious problem created by possible claims that might arise long after the dissolution process is completed and the assets are distributed. Most of these claims are based on personal injuries occurring after dissolution but caused by allegedly defective products sold before dissolution. The problems raised by these claims are intractable: on the one hand, the application of a mechanical limitation period to a claim for injury that occurs after the period has expired involves obvious injustice to the plaintiff. On the other hand, to permit these suits generally makes it impossible ever to complete the winding up process, make suitable provision for creditors, and distribute the

balance of the assets. Evolving legal rules make estimating future liability for personal injury claims difficult. In some circumstances successor liability theories have been applied to allow plaintiffs incurring post-dissolution injuries to bring suit against the person that acquired the assets.

Some courts have refused to broaden these doctrines, particularly when the purchaser of the assets has not continued the business. In these cases, the remedy of the plaintiff is limited to claims against the dissolved limited partnership and the owners of the transferrable interests receiving assets pursuant to the dissolution.

The solution adopted in this Section is to continue the liability of a dissolved limited partnership for subsequent claims for a period of two years after the dissolved limited partnership publishes notice of dissolution. It is recognized that a two year cut-off is itself arbitrary, but it is believed that the bulk of post-dissolution claims that can be estimated will arise during this period. This provision is therefore believed to be a reasonable compromise between the competing considerations of providing a remedy to injured plaintiffs and providing a basis for the person or persons designated to wind up the affairs of the limited partnership to estimate liabilities so that dissolved limited partnership may distribute remaining assets free of all claims and the owners of the transferable interests may receive them secure in the knowledge that they may not be reclaimed. The period of two years for asserting claims is the same period adopted by the Alabama Limited Liability Company Law of 2014, Section 10A-5A-7.05, Chapter 1, Section 10A-1-9.22, and the predecessor to this law.

The person or persons designated to wind up the affairs of the limited partnership must generally discharge or make provision for discharging the limited partnership's liabilities before distributing the remaining assets to the owners of the transferable interest. Many claims covered by this Section are of a type for which provision may be made by the purchase of insurance or by the setting aside of a portion of the assets, thereby permitting prompt distributions in liquidation. Claimants, of course, may have recourse to the remaining assets of the dissolved limited partnership (see Subsection (d)(1)).

Further, where unbarred claims arise after distributions have been made to the owners of the transferable interests in liquidation, Subsection (d)(2) authorizes recovery against the owners of the transferable interests receiving the earlier distributions. The recovery, however, is limited to the smaller of the recipient owners of the transferable interests' pro rata share of the claim or the total amount of assets received as liquidating distributions by the owners of the transferable interests from the limited partnership. The provision ensures that claimants seeking to recover distributions from owners of the transferable interests will try to recover from the entire class of owners of the transferable interests rather than concentrating only on the larger owners of the transferable interests and protects the limited liability of owners of the transferable interests.

This Section adds a provision which is not in Chapter 1 (Section 10A-1-9.22) allowing a dissolved limited partnership to initiate a proceeding to establish the provision that should be made for unknown or contingent claims before a distribution in liquidation is made to owners of the transferable interests. This provision is intended to remove the risk of the person or persons designated to wind up the affairs of the limited partnership and the owners of the transferable interests of liability for inadequate provision for claims.

Subsection (e) authorizes the proceeding and specifies that provision for unknown and contingent claims can only be for those claims that are estimated to arise after dissolution that are not expected to be barred by Section 10A-9A-8.06 or by Subsection (c). As a result, estimates for unknown or contingent claims, such as product liability injury claims that might arise after dissolution, need only be made for those claims that the court determines are reasonably anticipated to be asserted within two years after dissolution. Such estimates might reasonably be based on the claims experience of the limited partnership prior to its dissolution.

Subsection (f) provides that if the dissolved limited partnership elects to initiate a proceeding, it must give notice of the proceeding within 10 days after filing the court application to each holder of a claim described in Subsection (e). Notice to holders of guarantees

made by the limited partnership typically would be required under this Subsection.

Subsection (g) allows the court to appoint a guardian ad litem for unknown claimants but does not make the appointment mandatory. Reasonable fees and expenses of the guardian ad litem are to be paid by the dissolved limited partnership.

If the proceeding is completed, Subsection (h) establishes that the dissolved limited partnership is deemed to have satisfied its obligation to discharge or make provision for discharging its liabilities.

Subsection (j) clarifies that with respect to claims that have been satisfied, disposed of or barred under Sections 10A-9A-8.06 and 10A-9A-8.07, or other law, the person or persons designated to wind up the affairs of the limited partnership and the owners of the transferable interests receiving assets from the limited partnership are not liable for those claims.

§ 10A-9A-8.08. Liability of General Partner and Person Dissociated as General Partner When Claim against Limited Partnership Barred.

If a claim against a dissolved limited partnership is barred under Section 10A-9A-8.06 or 10A-9A-8.07, any corresponding claim under Section 10A-9A-4.04 or 10A-9A-6.07 is also barred.

Comment

The liability under Section 10A-9A-4.04 of a general partner or person dissociated as a general partner is merely liability for the obligations of the limited partnership.

§ 10A-9A-8.09. Disposition of Assets, When Contributions Required.

Notwithstanding Section 10A-1-9.12, upon the winding up of a limited partnership, the assets of the limited partnership,

including any obligation under Article 5 of this Chapter, and any contribution required by this section, shall be applied as follows:

(a) Payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, partners who are creditors, in satisfaction of liabilities of the limited partnership.

(b) After a limited partnership complies with subsection (a), any surplus must be distributed:

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

(2) then to each person owning a transferable interest in the proportions in which the owners of transferable interests share in distributions before dissolution.

(c) If the 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 their respective unreturned contributions.

(d) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to

each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following 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 10A-9A-6.07 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of 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 limited 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 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.

(e) A person that makes an additional contribution under subsection (d)(2) or (3) may recover from any person whose failure to contribute under subsection (d)(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.

(f) The estate of a deceased individual is liable for the person's obligations under this section.

(g) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (d).

Comment

This Section is substantially similar to Section 10A-5A-7.06 of the Alabama Limited Liability Company Act of 2014.

Subsection (d)(2) provides that if one or more of the persons liable to contribute to the dissolving limited partnership to allow it

to satisfy its obligations does not do so, the remaining persons that are liable to contribute to the limited partnership to allow it to satisfy its obligations must contribute the amount of the unsatisfied obligation. Subsection (d)(2) provides that the obligation of each person obligated to make up the unsatisfied obligation shall be in proportion to the right of the person to receive distributions as a general partner at the time the obligation was incurred. The operation of this rule can be illustrated by the following example:

There are three equal general partners, A, B, and C at the time an obligation for \$300 is incurred. When the partnership dissolves and is wound up, the obligation is not satisfied. Although A, B, and C are each obligated to contribute \$100 to satisfy the obligation, C does not do so. Under the rule of subsection (d)(2), A and B are obligated to contribute the additional \$100 needed to satisfy the obligation. They must do so in the proportion to their rights to receive distributions as general partners, disregarding any rights of the person that failed to contribute. Thus A and B, disregarding C, each have rights to receive half the distributions made to general partners and each must contribute \$50 to satisfy the obligation.

Subsection (d)(3) provides that the above rule shall be applied to successive failures to contribute. Continuing the above example, if B fails to contribute \$50, A will be liable to contribute \$100 to satisfy the obligation because A, disregarding B and C, has the right to receive all the distributions made to general partners.

In addition to the obligations under subsection (d), partners may have an obligation to contribute under Section 10A-9A-5.02 which has not yet been accomplished, or to return distributions made prior to dissolution which are required to be returned to the limited partnership under Section 10A-9A-5.08, unless otherwise barred by this Chapter or other applicable law. It should be noted that distributions under this Section 10A-9A-8.09 are not subject to the provisions of Section 10A-9A-5.08. See Section 10A-9A-5.08(g).

In no circumstances does this Chapter require a partner to make a payment for the purpose of equalizing or otherwise reallocating capital losses incurred by partners.

§ 10A-9A-8.10. Reinstatement after dissolution.

Notwithstanding Sections 10A-1-9.31 and 10A-1-9.32, a limited partnership that has been dissolved may be reinstated upon compliance with the following conditions:

(a) the consent shall have been obtained from the partners or other persons entitled to consent at the time that is:

(1) required for reinstatement under the partnership agreement; or

(2) if the partnership agreement does not state the consent required for reinstatement, sufficient for dissolution under the partnership agreement; or

(3) if the partnership agreement neither states the consent required for reinstatement nor for dissolution, sufficient for dissolution under this chapter;

(b) in the case of a written objection to reinstatement having been delivered to the limited partnership before or at the time of the consent required by subsection (a) by the partners or other persons having authority under the partnership agreement to bring about or prevent dissolution of the limited partnership, those partners or persons withdrawing that written objection effective at the time of the consent required by subsection (a);

(c) in the case of a limited partnership dissolved in a judicial proceeding initiated by one or more of the partners, the consent of each of those partners shall have been obtained and shall be included in the consent required by subsection (a); and

(d) the filing of a certificate of reinstatement in accordance with Section 10A-9A-8.11.

Comment

This Section is derived from Section 10A-5A-7.07 of the Alabama Limited Liability Company Law of 2014 which is derived from RPLLC § 712, which was derived from Colorado, § 7-90-1002.

This Section acknowledges limited partnerships, much like other unincorporated entities, may be unintentionally dissolved or intentionally dissolved, which dissolution which may occur with or without the knowledge of the partners or third parties. This Section allows the partners to reinstate a limited partnership with the effect of placing the limited partnership in a position of being treated as if it had never been dissolved. Such treatment would normally be effective retroactively to the date of dissolution, subject to the rights of third parties set forth in Section 10A-9A-8.13. This Section clearly contemplates that persons other than partners may have a right to consent on the issue of reinstatement. It is important to understand that all conditions (Subsections (a), (b), (c) and (d)) of this Section must be met in order to reinstate the limited partnership.

Subsection (a) provides for the general hierarchy of the consent required for reinstatement, beginning first with the consent required for reinstatement by the partnership agreement, and absent a provision in the partnership agreement, then second with the consent required for dissolution by the partnership agreement, and absent either of those consents being set forth in the partnership agreement, then third with the consent of the persons necessary under this Chapter for dissolution. Thus, if the

partnership agreement addresses reinstatement and provides the persons entitled to consent on reinstatement and the necessary consent required therefor, then those provisions shall control and it shall not be necessary to proceed with the other provisions of Subsection (a). Likewise, if the limited partnership is silent on the issue of reinstatement and dissolution, then the consent necessary shall be as set forth in this Chapter for dissolution.

Subsection (b) contemplates that a person with the authority under the partnership agreement to prevent or cause the dissolution of the limited partnership may file a written objection to the reinstatement with the limited partnership which may effectively block reinstatement of the limited partnership. This provision is intended to protect those persons who successfully dissolved the limited partnership. The persons may want this protection to make sure that the assets of the limited partnership are distributed in accordance with Section 10A-9A-8.09 or for other reasons. In the event the persons filing the written objection change their minds, Subsection (b) allows for such and thus, the reinstatement could proceed if the written objection is withdrawn.

Subsection (c) provides that if the limited partnership was dissolved in a judicial proceeding initiated by one or more of the partners, the consent of each of those partners shall have been obtained and shall be included in the consent required by Subsection (a). This provision is intended to protect those partners that successfully dissolved the limited partnership by way of judicial proceeding. The partners may want this protection to make sure that the assets of the limited partnership are distributed in accordance with Section 10A-9A-8.09 or for other reasons

§ 10A-9A-8.11. Certificate of reinstatement.

(a) In order to reinstate a limited partnership under this article, a certificate of reinstatement shall be delivered for filing to the filing officer provided for in subsection (d) which certificate of reinstatement shall have attached thereto a true and complete copy

of the limited partnership's certificate of formation. The certificate of reinstatement shall state:

(1) the name of the limited partnership before reinstatement;

(2) the name of the limited partnership following reinstatement, which limited partnership name shall comply with Section 10A-9A-8.12;

(3) the date of formation of the limited partnership;

(4) the date of dissolution of the limited partnership, if known;

(5) a statement that all applicable conditions of Section 10A-9A-8.10 have been satisfied; and

(6) the address of the registered office and the name of the registered agent at that address in compliance with Article 5 of Chapter 1.

(b) A limited partnership shall not be required to file a statement of dissolution in order to file a certificate of reinstatement.

(c) A certificate of reinstatement shall be deemed to be a filing instrument under Chapter 1.

(d) If a limited partnership is not an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the certificate of reinstatement for filing to the judge of probate in whose office the original certificate of formation is filed. If a limited partnership is an organization described in Section 10A-1-4.02(c)(4), then that limited partnership shall deliver the certificate of reinstatement for filing to the Secretary of State.

Comment

This Section is derived Section 10A-5A-7.08 of the Alabama Limited Liability Company Law of 2014 which is derived from RPLCA § 713 which was derived from Colorado, § 7-90-1003.

The certificate of reinstatement is required in order to obtain the benefit of the retroactive effect from Section 10A-9A-8.13. The certificate of reinstatement also provides notice to third parties that the limited partnership is no longer dissolved.

Subsection (b) was added to clarify that neither the probate judge nor the Secretary of State could require a limited partnership to file a statement of dissolution in order for the limited partnership to file a certificate of reinstatement.

Subsection (c) was added to clarify that a certificate of reinstatement is, for purposes of Chapter 1, a “filing instrument” (defined as any document that must or may be filed). Although Chapter 1 provisions appear to cover where the statement of dissolution should be filed and what the filing fees should be in Sections 10A-1-4.02(a)(5) and 4.31(a), this provision is intended to clarify that treatment.

Subsection (d) was added to reflect the filing requirements of Section 10A-1-4.02(c)(4).

§ 10A-9A-8.12 Limited partnership name upon reinstatement.

The name of a limited partnership following reinstatement shall be determined as follows:

(a) If the limited partnership remains in the Secretary of State's records as a limited partnership which has not been dissolved, then the name of the limited partnership following reinstatement shall be that limited partnership name at the time of reinstatement.

(b) If the limited partnership is listed in the Secretary of State's records as a limited partnership that has been dissolved, then the name of a limited partnership following reinstatement shall be that limited partnership name at the time of reinstatement if that limited partnership name complies with Article 5 of Chapter 1 at the time of reinstatement. If that limited partnership name does not comply with Article 5 of Chapter 1, the name of the limited partnership following reinstatement shall be that limited partnership name followed by the word "reinstated."

(c) A limited partnership shall not be required to file a statement of dissolution in order to retain or obtain the name of the limited partnership.

Comment

This Section is derived from Section 10A-5A-7.09 of the Alabama Limited Liability Company Law of 2014 which is derived from RPLLC § 714 which was derived from Colorado, § 7-90-1004.

This Section anticipates that the dissolved limited partnership may be operating and acting as if it were not dissolved and thus, the name would normally be available to the limited partnership since that name would normally not have been forfeited by the limited partnership. This Section also anticipates that the limited partnership may have forfeited its name, in which case there are two possibilities: the name has not been claimed by another organization and the name has been claimed by another organization. If the name has not been claimed by another organization, the reinstated limited partnership can use the same name. If the name has been claimed by another organization, the limited partnership can be reinstated under the name with the word “reinstated” following its name, e.g., ABC, LLC, Reinstated.

§ 10A-9A-8.13 Effect of reinstatement.

(a) Subject to subsection (b), upon reinstatement, the limited partnership shall be deemed for all purposes to have continued its activities and affairs as if dissolution had never occurred; and each right inuring to, and each debt, obligation, and liability incurred by, the limited partnership after the dissolution shall be determined as if the dissolution had never occurred.

(b) The rights of persons acting in reliance on the dissolution before those persons had notice of the reinstatement shall not be adversely affected by the reinstatement.

Comment

This Section is derived from Section 10A-5A-7.10 which is derived from RPLLC § 715 which is derived from Colorado, § 7-90-1005, and is similar to the concepts in the Alabama Partnership Law Section 10A-8-8.02(b). The language of Subsection (b) is different from the language of Section 10A-8-8.02(b)(2). Under Subsection (b) of this Section, a person must take an affirmative action in reliance upon the dissolution in order for the reinstatement not to be effective as set forth in Subsection (a). Thus, even if the underlying contract provides for a default or termination upon the dissolution of the limited partnership, if the other party to the contract does not attempt to exercise its rights upon such default, and the reinstatement occurs before any action taken by the other party in reliance upon the default, the contract would continue as if no dissolution ever occurred. On the other hand, if the other party to the contract takes an affirmative action, such as calling a loan as a result of the dissolution, then the calling of the loan would be an affirmative action taken in reliance on the dissolution and cannot be adversely affected by the reinstatement.

Since the effect of reinstatement is to return the limited partnership to a state of not being dissolved, and since Section 10A-9A-8.13(a) clearly states that a dissolved limited partnership continues its existence as a limited partnership, the reinstated limited partnership is for all purposes (including the probate judge and the Secretary of State's respective records and numbering systems) the same entity.

ARTICLE 9

Actions by Partners

§ 10A-9A-9.01.	Direct Action by Partner.
§ 10A-9A-9.02.	Right of Derivative Action.
§ 10A-9A-9.03.	Standing.
§ 10A-9A-9.04.	Demand.
§ 10A-9A-9.05.	Pleading.
§ 10A-9A-9.06.	Stay of Proceedings.
§ 10A-9A-9.07.	Discontinuance or Settlement.
§ 10A-9A-9.08.	Proceeds and Expenses.
§ 10A-9A-9.09.	Applicability to Foreign Limited Partnerships.

§ 10A-9A-9.01. Direct action by partner.

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

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

(c) A partner may maintain a direct action to enforce a right of a limited partnership if all partners at the time of suit are parties to the action.

(d) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law.

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

Comment

This Section is derived from Section 10A-5A-9.01 of the Alabama Limited Liability Company Law of 2014, RPLCA § 909 and RULLCA § 901. Subsection (c) deals with rights of the limited partnership, while subsections (a) and (b) deal with rights of the individual partner. Subsection (c) is a modification of the American Law Institute provision that allows the court to treat an action raising derivative claims as a direct action under certain circumstances. See American Law Institute Principles of Corporate Governance: Analysis and Recommendations § 7.01(d). Having all the partners before the court, without the other qualifications, should be a sufficient safeguard against multiple actions. Creditor protection, which is required to be considered by the court in allowing a direct suit under the American Law Institute provision, is inconsistent with the function of litigation by limited partnership partners, whether this litigation is “direct” or “derivative” in nature.

§ 10A-9A-9.02. Right of derivative action.

A partner may commence or maintain a derivative action in the right of a limited partnership to enforce a right of the limited partnership by complying with this article.

Comment

This Section is derived from Section 10A-5A-9.02 of the Alabama Limited Liability Company Law of 2014, RPLLC § 901, RULPA § 1001 and Alabama Rules of Civil Procedure Rule 23.1.

§ 10A-9A-9.03. Standing.

A partner may commence or maintain a derivative action in the right of the limited partnership only if the partner:

(1) fairly and adequately represents the interests of the limited partnership in enforcing the right of the limited partnership; and

(2) either:

(A) was a partner of the limited partnership at the time of the act or omission of which the partner complains; or

(B) whose status as a partner devolved upon the person 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 act or omission of which the partner complains.

Comment

This Section is derived from Section 10A-5A-9.03 of the Alabama Limited Liability Company Law of 2014, §, RPLLC § 902, RMBCA § 7.41, and Alabama Rules of Civil Procedure Rule 23.1.

§ 10A-9A-9.04. Demand.

A partner may commence a derivative action in the right of the limited partnership, if:

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

(b) a demand under subsection (a) would be futile.

Comment

This Section is substantially the same as Section 10A-5A-9.04 of the Alabama Limited Liability Company Law of 2014, and is also derived from RULLCA § 902, and Alabama Rules of Civil Procedure Rule 23.1.

§ 10A-9A-9.05. Pleading.

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

(a) the date and content of plaintiff's demand and the general partner's response by the limited partnership to the demand; or

(b) why the demand should be excused as futile.

Comment

This Section is derived from Section 10A-5A-9.05 of the Alabama Limited Liability Company Law of 2014, RPLLCAL § 904, RMBCA § 7.43, and Colorado, § 7-80-715.

§ 10A-9A-9.06. Stay of proceedings.

For the purpose of allowing the general partners and the limited partnership time to undertake an inquiry into the allegations made in the demand or complaint commenced pursuant to this article, the court may stay any derivative action for the period the court deems appropriate.

Comment

This Section is derived from Section 10A-5A-9.06 of the Alabama Limited Liability Company Law of 2014, RPLLCAL § 904, RMBCA § 7.43, and Colorado, § 7-80-715.

§ 10A-9A-9.07. Discontinuance or settlement.

A derivative action may not be dismissed or compromised without the approval of the court, and notice of the proposed

dismissal or compromise shall be given to partners of the limited partnership in such manner as the court directs.

Comment

This Section is derived from Section 10A-5A-9.07 of the Alabama Limited Liability Company Law of 2014, and from the last sentence of Alabama Rules of Civil Procedure Rule 23.1.

§ 10A-9A-9.08. Proceeds and expenses.

(a) Except as otherwise provided in subsection (b):

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

(2) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.

Comment

This Section is derived from Section 10A-5A-9.08 of the Alabama Limited Liability Company Law of 2014.

§ 10A-9A-9.09. Applicability to foreign limited partnerships.

In any derivative action in the right of a foreign limited partnership, the right of a person to commence or maintain a derivative action in the right of a foreign limited partnership, and any matters raised in the action covered by Sections 10A-9A-9.02 through 10A-9A-9.08, shall be governed by the law of the jurisdiction under which the foreign limited partnership was formed; except that any matters raised in the action covered by Sections 10A-9A-9.06, 10A-9A-9.07, and 10A-9A-9.08 shall be governed by the law of this state.

Comment

This Section is derived from Section 10A-5A-9.09 of the Alabama Limited Liability Company Law of 2014, RPLLCA § 908, Colorado, § 7-80-719, and RMBCA § 7.47.

ARTICLE 10

Conversions and Mergers

- § 10A-9A-10.01. **Definitions.**
 - § 10A-9A-10.02. **Conversion.**
 - § 10A-9A-10.03. **Action on Plan of Conversion by Converting Limited Partnership.**
 - § 10A-9A-10.04. **Filings Required for Conversion; Effective Date.**
 - § 10A-9A-10.05. **Effect of Conversion.**
 - § 10A-9A-10.06. **Merger.**
 - § 10A-9A-10.07. **Action on Plan of Merger by Constituent Limited Partnership.**
 - § 10A-9A-10.08. **Filings Required for Merger; Effective Date.**
 - § 10A-9A-10.09. **Effect of Merger.**
 - § 10A-9A-10.10. **Restrictions on Approval of Mergers, Conversions and on Relinquishing LLLP Status.**
 - § 10A-9A-10.11. **Article Not Exclusive.**
- § 10A-9A-10.01. **Definitions.**

Notwithstanding Section 10A-1-1.03, as used in this article, unless the context otherwise requires, the following terms mean:

- (1) **CONSTITUENT LIMITED PARTNERSHIP** means a constituent organization that is a limited partnership.
- (2) **CONSTITUENT ORGANIZATION** means an organization that is party to a merger under this article.

(3) “CONVERTED ORGANIZATION” means the organization into which a converting organization converts pursuant to this article.

(4) “CONVERTING LIMITED PARTNERSHIP” means a converting organization that is a limited partnership.

(5) “CONVERTING ORGANIZATION” means an organization that converts into another organization pursuant to this article.

(6) “GENERAL PARTNER” means a general partner of a limited partnership.

(7) “GOVERNING STATUTE” of an organization means the statute that governs the organization’s internal affairs.

(8) “ORGANIZATION” means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; nonprofit corporation; professional corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) “ORGANIZATIONAL DOCUMENTS” means:

(A) for a general partnership or foreign general partnership, its partnership agreement and if applicable, its registration as a limited liability partnership or a foreign limited liability partnership;

(B) for a limited partnership or foreign limited partnership, its certificate of formation and partnership agreement, or comparable writings as provided in its governing statute;

(C) for a limited liability company or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable writings as provided in its governing statute;

(D) for a business or statutory trust or foreign business or statutory trust its agreement of trust and declaration of trust, or comparable writings as provided in its governing statute;

(E) for a corporation for profit or foreign corporation for profit, its certificate of formation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(F) for a nonprofit corporation or foreign nonprofit corporation, its certificate of formation, bylaws, and

other agreements that are authorized by its governing statute, or comparable writings as provided in its governing statute;

(G) for a professional corporation or foreign professional corporation, its certificate of formation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable writings as provided in its governing statute; and

(H) for any other organization, the basic writings that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) “SURVIVING ORGANIZATION” means an organization into which one or more other organizations are merged under Article 10, whether the organization pre-existed the merger or was created pursuant to the merger.

Comment

It is important to remember that Chapter 1 of this title contains a number of definitions that are applicable to this Article, and that the definitions set forth in this Article are intended to override Chapter 1 for purposes of this Article and the Alabama Limited Partnership Law. The definitions in this Section were modified to conform with the Alabama Limited Liability Company Law of 2014.

§ 10A-9A-10.02 Conversion.

(a) An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to an organization other than a limited partnership pursuant to this section, Sections 10A-9A-10.03 through 10A-9A-10.05, and a plan of conversion, if:

(1) the governing statute of the organization that is not a limited partnership authorizes the conversion;

(2) the law of the jurisdiction governing the converting organization and the converted organization does not prohibit the conversion; and

(3) the converting organization and the converted organization each comply with the governing statute and organizational documents applicable to that organization in effecting the conversion.

(b) A plan of conversion must be in writing and must include:

(1) the name, type of organization, and mailing address of the principal office of the converting organization before conversion;

(2) the name, type of organization, and mailing address of the principal office of the converted organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration allowed in Section 10A-9A-10.02(c); and

(4) the organizational documents of the converted organization.

(c) In connection with a conversion, rights or securities of or interests in the converting organization may be exchanged for or converted into cash, property, or rights or securities of or interests in the converted organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another organization or may be cancelled.

Comment

This Section is substantially similar to Section 10A-5A-10.01 of the Alabama Limited Liability Company Law of 2014, and is derived from RPLCA § 1005, RULLCA § 1006, and RUPA § 902. Subsection (c) is derived from Delaware § 18-216(d).

In a statutory conversion, an existing entity changes its type of organization, the jurisdiction of its governing statute or both. For example, a limited partnership formed under the laws of one jurisdiction might convert to (i) a corporation (or other type of organization) formed under the laws of the same jurisdiction, (ii) a limited liability company (or other type of organization) formed under the laws of another jurisdiction, or (iii) a limited partnership (or other type of organization) formed under the laws of the another jurisdiction (referred to in some statutes as “domestication”). Note, that in the third example, this Section anticipates an Alabama limited partnership converting into a limited partnership to be formed under the laws of another jurisdiction, and it also anticipates a limited partnership formed under the laws of another jurisdiction converting into an Alabama limited partnership. The definition of “limited partnership” under Section 10A-9A-1.02(8) clearly indicates a limited partnership formed under the laws of this state, and thus subsection (a) provides the necessary flexibility to allow for the conversion illustrated by the third example, and the immediately preceding sentence.

In contrast to a merger, which involves at least two entities, a conversion involves only one entity. The converting and converted organization are the same entity. The theory being that the underlying entity is only changing its entity clothing.

For this Chapter to apply to a conversion, either the converting or converted organization must be a limited partnership subject to this Chapter. It should be noted that a plan of conversion may include other matters than those listed above, including, but not limited to, the provision of appraisal rights. In addition, the partnership agreement could provide procedures for the authorization of a conversion or it could provide provisions that explicitly deny the right to convert. Since this Chapter is designed to promote the freedom of contract and allow the partners to determine their destiny, the limited partnership agreement may have many provisions which are not provided for in the default provisions of this Chapter, subject to the constraints of Section 10A-9A-1.08.

§ 10A-9A-10.03. Action on plan of conversion by converting limited partnership.

(a) Subject to Section 10A-9A-10.10, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(b) Subject to Section 10A-9A-10.10 and any contractual rights, after a conversion is approved, and at any time before a filing is made under Section 10A-9A-10.4, a converting limited partnership may amend the plan or abandon the planned conversion:

- (1) as provided in the plan; and
- (2) except as prohibited by the plan, by the same consent as was required to approve the plan.

Comment

This Section is substantially similar to Section 10A-5A-10.02 of the Alabama Limited Liability Company Law of 2014, and is derived from RULLCA § 1007.

§ 10A-9A-10.04. Filings required for conversion; effective date.

- (a) After a plan of conversion is approved:
- (1) if the converting organization is an organization formed under the laws of this state, the converting organization shall file a statement of conversion in accordance

with subsection (c), which statement of conversion must be signed in accordance with Section 10A-9A-2.03(a) and which must include:

(A) the name of the converting organization;

(B) the date of the filing of the certificate of formation of the converting organization, if any, and all prior amendments and the filing office or offices, if any, where such is filed;

(C) a statement that the converting organization has been converted into the converted organization;

(D) the name and type of organization of the converted organization and the jurisdiction of its governing statute;

(E) the street and mailing address of the principal office of the converted organization;

(F) the date the conversion is effective under the governing statute of the converted organization;

(G) a statement that the conversion was approved as required by this chapter;

(H) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(I) if the converted organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-9A-10.05(b); and

(2) if the converted organization is a limited partnership, the converting organization shall file a certificate of formation in accordance with subsection (d), which certificate of formation must include, in addition to the information required by Section 10A-9A-2.01(a):

(A) a statement that the limited partnership was converted from the converting organization;

(B) the name and type of organization of the converting organization and the jurisdiction of the converting organization's governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited partnership, when the certificate of formation takes effect; and

(2) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

(c) If the converting organization is an organization formed under the laws of this state, then the converting organization shall file the statement of conversion required under subsection (a)(1) with the Secretary of State in accordance with Section 10A-1-4.02(c)(1).

(d) If the converted organization is a limited partnership, then, notwithstanding Section 10A-1-4.02(b), the converting organization shall file the certificate of formation required under subsection (a)(2) with the Secretary of State in accordance with Section 10A-1-4.02(c)(5), along with the fees specified in Section 10A-1-4.31 subject to subsection (f)(3) hereof.

(e) If the converting organization is required to file a statement of conversion and a certificate of formation with the Secretary of State, then the converting organization shall file the statement of conversion and the certificate of formation with the Secretary of State simultaneously.

(f) In the case of a statement of conversion that is to be filed with the Secretary of State pursuant to subsections (c):

(1) if the converting organization has a certificate of formation filed with the judge of probate, the Secretary of State shall within 10 days transmit a certified copy of the statement of conversion to the office of the judge of probate in the county in which the certificate of formation for such converting organization was filed along with the proper fee for the probate judge.

(2) if the converting organization did not file its certificate of formation with the probate judge, but rather in accordance with this title filed its certificate of formation with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of conversion to the office of the judge of probate and shall not collect any fee for the judge of probate.

(3) if the converting organization is, immediately prior to the conversion becoming effective, an organization described in Section 10A-1-4.02(c)(4), but is not required under this title to file its organizational documents with the judge of probate, the Secretary of State shall not transmit a

certified copy of the statement of the statement of conversion to the office of the judge of probate and shall not collect any fee for the judge of probate.

(g) In the case of a certificate of formation that is to be filed with the Secretary of State pursuant to subsection (d), the Secretary of State shall not transmit a certified copy of the certificate of formation to the office of the judge of probate and shall not collect any fee for the judge of probate, but shall collect the fee provided for the Secretary of State in Section 10A-1-4.31(a)(1).

(h) After a conversion becomes effective, if the converted organization is a limited partnership, then all filing instruments required to be filed under this title regarding that converted organization shall be filed with the Secretary of State.

(i) If:

(1) the converting organization is a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(2) the converted organization will be a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(3) the name of the converting organization and the converted organization are to be the same, other than words, phrases or abbreviations indicating the type of entity; and

(4) the name of the converted organization complies with Division A of Article 5 of Chapter 1 or Section 10A-1-7.07, as the case may be; then notwithstanding Division B of Article 5 of Chapter 1, no name reservation shall be required and the converted organization shall for all purpose of this title be entitled to utilize the name of the converting organization without any further action by the converting organization or the converted organization.

(j) A certified copy of any document required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which the converting organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect a filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the converted organization's title to such real property.

(k) A statement of conversion shall be a filing instrument under Chapter 1.

(l) Except as set forth in subsection (f)(2), the filing fees for a statement of conversion shall be the same fee as provided in Section 10A-1-4.31(a)(5).

Comment

This Section is substantially similar to Section 10A-5A-10.03 of the Alabama Limited Liability Company Law of 2014, and is derived from RPLCA § 1007, and RULLCA § 1008.

It is important to keep in mind that only converting organizations that have been formed under the laws of this state are required to file the statement of conversion. Thus, the statement of conversion would not be filed by a converting organization that was not formed under the laws of this state. It is also important to keep in mind that either the converting or the converted organization must be a limited partnership, as defined in Section 10A-9A-1.02(8). Thus, the filing requirement of the converting organization that have been formed under the laws of this state seems reasonable as the conversion is touching upon the transaction of a limited partnership either as the converting organization or as the converted organization.

Subsection (d) overrides and supersedes Section 10A-1-4.02(b) in the context of a conversion, and provides for the certificate of formation to be filed with the Secretary of State.

Subsection (e) clarifies that if a converting organization and a converted entity are formed under the laws of this State, that the statement of conversion and the certificate of formation are to be filed with the Secretary of State at the same time.

Subsection (h) was added to clarify the rule of Section 10A-1-4.02(c)(4).

Subsection (i) was added to clarify the current practice in conversions when a filing entity (see Section 10A-1-1.03(27)) and a foreign filing entity (See Section 10A-1-1.03(31)) that is registered to conduct activities and affairs in this state converts into a filing entity or a foreign filing entity that is registered to conduct activities and affairs in this state. Since the converted organization is, immediately after the conversion, for all purposes the same entity as the converting organization was immediately before the conversion, it only makes sense that the mere change in the identifier of the type of organization that the converting organization and converted organization utilize (without more) should not require the converting organization to reserve its own name with a different identifier. To hold otherwise would lead to the unusual result that the same organization would have to provide permission to itself to use its name. This rule does not apply in the circumstance of a converting organization that does not have a name on the records of the Secretary of State or in the circumstance of a converted organization's name not complying with the rules under Division A of Article 5 of Chapter 1 of Title 10A or Section 10A-1-7.07, as the case may be.

Subsection (j) was added to allow real estate attorneys to file certified copies of the documents required to be filed under this Section in the local probate judge's office in which the converting organization owned real property in order to clear any questions regarding the title to such real property. Subsection (h) makes it clear that lack of such filing will not affect converted organization's title to the real property.

Subsection (k) was added to clarify that a statement of conversion was a filing instrument for purposes of Chapter 1 of this Title.

Subsection (l) was added to set forth the filing fees of the statement of conversion which is to be the same as articles of merger, etc., as set forth in Section 10A-1-4.31(a)(5), with the one exception set forth in Subsection (f) where no fee is to be collected for the probate judge.

§ 10A-9A-10.05. Effect of conversion.

(a) When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization without reservation or impairment and the title to any property vested by deed or otherwise in the converting organization shall not revert or be in any way impaired by reason of the conversion;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization and neither the rights of creditors, nor the liens upon the property of the converting organization shall be impaired by the conversion;

(3) an action or proceeding pending by or against the converting organization continues as if the conversion had not occurred;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect;

(6) except as otherwise agreed, for all purposes of the laws of this state, the converting organization shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting organization;

(7) for all purposes of the laws of this state, the rights, privileges, powers, interests in property, debts, liabilities and duties of the converting organization, shall be the rights, privileges, powers, interests in property, debts, liabilities and duties of the converted organization, and shall not be deemed as a consequence of the conversion, to have been transferred to the converted organization;

(8) if the converted organization is a limited partnership, for all purposes of the laws of this state, the limited partnership shall be deemed to be the same organization as the converting organization, and the conversion shall constitute a continuation of the existence of the converting organization in the form of a limited partnership;

(9) if the converted organization is a limited partnership, the existence of the limited partnership shall be deemed to have commenced on the date the converting organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated, or otherwise came into being;

(10) the conversion shall not affect the choice of law applicable to matters arising prior to conversion; and

(11) If the Secretary of State has assigned a unique identifying number or other designation to the converting organization and (i) the converted organization is formed pursuant to the laws of this State or (ii) the converted organization is, within 30 days after the effective date of the conversion, registered to transact business in this State, then that unique identifying number or other designation shall continue to be assigned to the converted organization.

(b) A converted organization that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability for which the converting limited partnership, or series thereof, is liable if, before the conversion, the converting limited partnership was subject to suit in this state on

the debt, obligation or other liability. If a converted organization that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then service of process on that converted organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in Section 10A-1-5.35.

Comment

This Section is substantially similar to Section 10A-5A-10.04 of the Alabama Limited Liability Company Law of 2014, and is derived from RPLLC § 1008, and RULLCA § 1009.

§ 10A-9A-10.06. Merger.

(a) A limited partnership may merge with one or more other constituent organizations pursuant to this section, Sections 10A-9A-10.07 through 10A-9A-10.09, and a plan of merger, if:

(1) the governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in writing and must include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization and, if the surviving organization is to be created pursuant to the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration as allowed by subsection (c);

(4) if the surviving organization is to be created pursuant to the merger, the surviving organization's organizational documents; and

(5) if the surviving organization is not to be created pursuant to the merger, any amendments to be made by the merger to the surviving organization's organizational documents.

(c) In connection with a merger, rights or securities of or interests in a constituent organization may be exchanged for or

converted into cash, property, or rights or securities of or interests in the surviving organization, or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, or rights or securities of or interests in another organization or may be cancelled.

Comment

This Section is substantially similar to Section 10A-5A-10.05 of the Alabama Limited Liability Company Law of 2014, and is derived from RPLLC § 1001, and RULLCA § 1002.

§ 10A-9A-10.07. Action on plan of merger by constituent limited partnership.

(a) Subject to Section 10A-9A-10.10, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(b) Subject to Section 10A-9A-10.10 and any contractual rights, after a merger is approved, and at any time before a filing is made under Section 10A-9A-10.08, a constituent limited partnership may amend the plan or abandon the merger:

- (1) as provided in the plan; and
- (2) except as prohibited by the plan, with the same consent as was required to approve the plan.

Comment

This Section is substantially similar to Section 10A-5A-10.06 of the Alabama Limited Liability Company Law of 2014, and is derived from RULLCA § 1003.

§ 10A-9A-10.08. Filings required for merger; effective date.

(a) After each constituent organization has approved the plan of merger, a statement of merger must be signed on behalf of:

(1) each constituent limited partnership, as provided in Section 10A-9A-2.03(a); and

(2) each other constituent organization, as provided by its governing statute.

(b) A statement of merger under this section must include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization and the jurisdiction of its governing statute;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each constituent organization which was formed under the laws of this state;

(4) the date the merger is effective under the governing statute of the surviving organization;

(5) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a limited partnership, the limited partnership's certificate of formation; or

(B) if it will be an organization other than a limited partnership, any organizational document that creates the organization that is required to be in a public writing;

(6) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public writing;

(7) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(8) if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-9A-10.09(b); and

(9) any additional information required by the governing statute of any constituent organization.

(c) The statement of merger shall be delivered for filing to the Secretary of State in accordance with Section 10A-1-4.02(c)(1), along with the fees specified in Section 10A-1-4.31, subject to the last sentence of this subsection (c). For each constituent organization which is formed under the laws of this state and which is not, immediately prior to the merger becoming effective, an organization described in Section 10A-1-4.02(c)(4), the Secretary of State shall within 10 days transmit a certified copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent organization was filed along with the proper fee for the probate judge. For each constituent organization which is formed under the laws of this state and which is, immediately prior to the merger becoming effective, an organization described in Section 10A-1-4.02(c)(4), but which has a certificate of formation filed

with the judge of probate, the Secretary of State shall transmit a certified copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent organization was filed along with the proper fee for the judge of probate. For each constituent organization which (1) is formed under the laws of this state, (2) is, immediately prior to the merger becoming effective, an organization described in Section 10A-1-4.02(c)(4), and (3) did not file its certificate of formation with the probate judge, but rather in accordance with this title filed its certificate of formation with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of merger to the office of the judge of probate and shall not collect any fee for the judge of probate.

(d) A merger becomes effective under this article:

(1) if the surviving organization is a limited partnership, upon the later of:

(A) the filing of the statement of merger with the Secretary of State; or

(B) as specified in the statement of merger; or

(2) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

(e) After a merger becomes effective, if the surviving organization is a limited partnership, then all filing instruments required to be filed under this title regarding that surviving organization shall be filed with the Secretary of State.

(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled to collect the filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to such real property.

(g) A statement of merger shall be a filing instrument under Chapter 1.

(h) Except as provided in the last sentence of subsection (c), the filing fees for a statement of merger shall be the same fees as provided in Section 10A-1-4.31(a)(5).

Comment

This Section is substantially similar to Section 10A-5A-10.07 of the Alabama Limited Liability Company Law of 2014, and is derived from RPLLC § 1003, and RULLCA § 1004.

Subsection (c) was added to clarify the responsibility of the Secretary of State regarding the forwarding of a statement of merger to the appropriate probate judge. In the case of an organization which has its certificate of formation filed with a probate judge, the normal rules of collecting a fee and forwarding a certified copy of the statement of merger would apply. However, in the case of an organization which has filed its certificate of formation solely with the Secretary of State because of the rules provided in Section 10A-1-4.02(c)(4) and has not filed a certificate of formation with a probate judge, then the Secretary of State shall not transmit a certificated copy of the statement of merger to a probate judge and shall not collect a fee for the probate judge. Without the clarification provided for in Subsection (c), the statement of merger might be required to be forwarded to a probate judge, the location of which is not determinable.

Subsection (g) was added to clarify that a statement of merger is a filing instrument for purposes of Chapter 1 of this Title.

Subsection (h) was added to set forth the filing fees of the statement of merger which is to be the same as articles of merger, etc., as set forth in Section 10A-1-4.31(a)(5). The only exception to this rule is when no fee is to be collected for the probate judge in the circumstance set forth in the last sentence of Subsection (c).

§ 10A-9A-10.09. Effect of merger.

(a) When a merger becomes effective:

(1) the surviving organization continues or, in the case of a surviving organization created pursuant to the merger, comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that ceases to exist vests in the surviving organization without reservation or impairment and the title to any property vested by deed or otherwise in the surviving organization shall not revert or be in any way impaired by reason of the merger;

(4) all debts, obligations or other liabilities of each constituent organization that ceases to exist continue as debts, obligations or other liabilities of the surviving organization and neither the rights of creditors, nor any liens upon the property of any constituent organization, shall be impaired by the merger;

(5) an action or proceeding pending by or against any constituent organization continues as if the merger had not occurred;

(6) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of each constituent organization vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership;

(9) if the surviving organization is created pursuant to the merger:

(A) if it is a limited partnership, the certificate of formation becomes effective; or

(B) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization existed before the merger, any amendments provided for in the statement of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign entity consents to the jurisdiction of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. If a surviving organization that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot with

reasonable diligence be served, then the service of process on that surviving organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in Section 10A-1-5.35.

Comment

This Section is substantially similar to Section 10A-5A-10.08 to the Alabama Limited Liability Company Law of 2014, and is derived from RPLLC § 1004 and RULLCA § 1005.

§ 10A-9A-10.10. Restrictions on approval of mergers, conversions and on relinquishing LLLP status.

(a) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or plan of merger are ineffective without that partner's consent to the plan.

(b) An amendment to a certificate of formation which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without each general partner's written consent to such amendment.

(c) A partner does not give the consent required by subsection (a) or (b) merely by consenting to a provision of the

partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

Comment

This Section is substantially similar to Section 10A-5A-10.09 to the Alabama Limited Liability Company Law of 2014, and is derived from the second alternative to RPLLCA § 1009.

§ 10A-9A-10.11. Liability of general partner after conversion or merger.

(a) A conversion or merger under this article does not discharge any liability under Sections 10A-9A-4.04 and 10A-9A-6.07 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

(1) the provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(2) for the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(3) if a person is required to pay any amount under this subsection:

(A) the person has a right of contribution from each other person that was liable as a general partner under Section 10A-9A-4.04 when the obligation was incurred and has not been released from the obligation under Section 10A-9A-6.07; and

(B) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) In addition to any other liability provided by law:

(1) a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that:

(i) the converted or surviving business is the converting or constituent limited partnership;

(ii) the converting or constituent limited partnership is not a limited liability limited partnership; and

(iii) the person is a general partner in the converting or constituent limited partnership; and

(2) a person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(A) immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and

(B) at the time the third party enters into the transaction the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

Comment

This Chapter does not place a time limit on the liability of a general partner which has disassociated. The general partner and the limited partnership are in the best position to resolve this issue by appropriate filings of a statement of dissociation or an amendment to the certificate of formation, as the case may be.

This Section extrapolates the approach of Section 10A-9A-6.07 into the context of a conversion or merger involving a limited partnership.

Subsection (a) pertains to general partner liability for obligations which a limited partnership incurred before a conversion or merger. This Chapter leaves to other law the question of when a limited partnership obligation is incurred.

If the converting or constituent limited partnership was a limited liability limited partnership at all times before the conversion or merger, this subsection will not apply because no person will have any liability under Section 404 or 607.

Subsection (b) pertains to entity obligations incurred after a conversion or merger and creates lingering exposure to personal liability for general partners and persons previously dissociated as general partners. In contrast to subsection (a)(3), this subsection does not provide for contribution among persons personally liable under this section for the same entity obligation. That issue is left for other law.

Subsection (b)(1) provides that if the converting or constituent limited partnership was a limited liability limited partnership immediately before the conversion or merger, there is no lingering exposure to personal liability under this subsection.

Subsections (b)(1) and (b)(2) provide that a person might have notice under Section 10A-9A-1.03.

§ 10A-9A-10.12. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.

(a) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 10A-9A-4.02; and

(2) at the time the third party enters into the transaction, the third party:

(A) does not have notice of the conversion or merger; and

(B) reasonably believes that the converted or surviving business is the converting or constituent

limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(1) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 10A-9A-4.02 if the person had been a general partner; and

(2) at the time the third party enters into the transaction, the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(c) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (a) or (b), the person is liable:

(1) to the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(2) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Comment

This Section extrapolates the approach of Section 10A-9A-6.06 into the context of a conversion or merger involving a limited partnership. The notice referred to in this Section is notice under Section 10A-9A-1.03.

§ 10A-9A-10.13. Article not exclusive.

This article is not exclusive. This article does not preclude an entity from being converted or merged under law other than this chapter.

Comment

This Section is substantially similar to Section 10A-5A-10.10 to the Alabama Limited Liability Company Law of 2014, and is derived from RPLLC § 1010 and RULLCA § 1015. This Section clarifies that a limited partnership or other organization utilizing this Article 10 of this Chapter, may do so without using Article 8 of

Chapter 1, or may elect to use Article 8 of Chapter 1 without using Article 10 of this Chapter.

ARTICLE 11

MISCELLANEOUS PROVISIONS

- § 10A-9A-11.01. **Application to Existing Relationships.**
- § 10A-9A-11.02. **Severability Clause.**
- § 10A-9A-11.03. **Relation to Electronic Signatures in Global and National Commerce Act.**
- § 10A-9A-11.04. **Effective Date.**
- § 10A-9A-11.05. **Repeals.**
- § 10A-9A-11.06. **Savings Clause.**
- § 10A-9A-11.07. **Classification.**

§ 10A-9A-11.01. **Application to Existing Relationships.**

(a) Beginning January 1, 2017, this chapter governs all limited partnerships and all foreign limited partnerships.

(b) With respect to a limited partnership formed before January 1, 2010, 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 10A-1-3.03 does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2010.

(2) The limited partnership is not required to amend its certificate of formation to comply with Section 10A-9A-

2.01(a)(5); but once amended or restated, the certificate of formation must comply with Section 10A-9A-2.01(a)(5).

(3) Sections 10A-9A-6.01 and 10A-9A-6.02 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 January 1, 2010.

(4) Section 10A-9A-6.03(4) does not apply.

(5) Section 10A-9A-6.03(5) does not apply and a court has the same power to expel a general partner as the court had immediately before January 1, 2010.

(6) Section 10A-9A-8.01(c) does 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 January 1, 2010.

(c) With respect to limited partnerships formed before January 1, 2017:

(1) the limited partnership's formation document, whether a certificate of limited partnership or a certificate of formation is deemed to be the limited partnership's certificate of formation; and

(2) the limited partnership's partnership agreement is deemed the limited partnership's partnership agreement.

(d) With respect to a limited partnership formed before October 1, 1998, the term "partnership agreement" as defined in Section 10A-9A-1.02(10), includes the certificate of partnership.

Comment

Subsection (b) specifies six provisions of this chapter which normally will not apply to limited partnerships in existence before January 1, 2010, unless the limited partnership' partners agree otherwise or unless the partnership agreement provides otherwise. Except for subsection (b)(2), the list refers to provisions governing the relationship of the partners inter se and are considered too different than the law in existence prior to January 1, 2010, to be fairly applied to a preexisting limited partnership without the consent of its partners. Each of these inter se provisions is subject to change in the partnership agreement. However, many limited partnerships in existence prior to January 1, 2010, may have taken for granted the analogous provisions of the law in existence prior to January 1, 2010 and may therefore not have addressed the issues in their partnership agreements.

The six provisions are:

(1) subsection (b)(1) refers to Section 10A-1-3.03 which provides that a limited partnership has a perpetual duration.

(2) subsection (b)(2) refers to Section 10A-9A-2.01(a)(5) which requires the certificate of formation to state "whether the limited partnership is a limited liability limited partnership." The requirement is intended to force the organizers of a limited partnership to decide whether the limited partnership is to be an LLLP and therefore is inapposite to limited partnerships in existence prior to January 1, 2010. However, if a limited

partnership does amend or restate its certificate, that limited partnership shall comply with Section 10A-9A-2.01(a)(5).

(3) subsection (b)(3) refers to Sections 10A-9A-6.01 and 10A-9A-6.02 which concern a person's dissociation as a limited partner.

(4) subsection (b)(4) refers to Section 10A-9A-6.03(4) which provides for the expulsion of a general partner by the unanimous consent of the other partners in specified circumstances.

(5) subsection (b)(5) refers to Section 10A-9A-6.03(5) which provides for the expulsion of a general partner by a court in specified circumstances.

(6) subsection (b)(6) refers to Section 10A-9A-8.01(c) which concerns the continuance or dissolution of a limited partnership following a person's dissociation as a general partner.

Subsection (c) is simply a clarification of existing documents which may have different names.

Subsection (d) was added to conform with the definition of "partnership agreement" in Chapter 1.

§ 10A-9A-11.02. Severability Clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 10A-9A-11.03. Relation to Electronic Signatures In Global And National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but this chapter does not modify, limit, or supersede Section 101(c) of that act or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

§ 10A-9A-11.04. Effective Date.

This chapter takes effect January 1, 2017.

§ 10A-9A-11.05. Repeals.

Effective January 1, 2017, the following parts of the Code of Alabama (1975) are repealed: Sections 10A-9-1.01 to 10A-9-12.08, inclusive, as amended and in effect immediately before the effective date of this Act.

§ 10A-9A-11.06. Savings Clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

§ 10A-9A-11.07. Classification.

For purposes of income taxation, other than under Chapter 14A of Title 40, a domestic or foreign limited partnership or limited liability limited partnership shall be treated as a partnership unless it is classified otherwise for federal income tax purposes, in which case it shall be classified in the same manner as it is for federal income tax purposes.

Comment

This provision is identical to prior Alabama Law.

Part 2:
Chapter 1 Amendments (Hub)

(Amended Section)

§ 10A-1-1.03. Definitions.

(1) AFFILIATE. A person who controls, is controlled by, or is under common control with another person. An affiliate of an individual includes the spouse, or a parent or sibling thereof, of the individual, or a child, grandchild, sibling, parent, or spouse of any thereof, of the individual, or an individual having the same home as the individual, or a trust or estate of which an individual specified in this sentence is a substantial beneficiary; a trust, estate, incompetent, conservatee, protected person, or minor of which the individual is a fiduciary; or an entity of which the individual is director, general partner, agent, employee or the governing authority or member of the governing authority.

(2) ASSOCIATE. When used to indicate a relationship with:

(A) a domestic or foreign entity or organization for which the person is:

(i) an officer or governing person; or

(ii) a beneficial owner of 10 percent or more of a class of voting ownership interests or similar securities of the entity or organization;

(B) a trust or estate in which the person has a substantial beneficial interest or for which the person serves as trustee or in a similar fiduciary capacity;

(C) the person's spouse or a relative of the person related by consanguinity or affinity within the fifth degree who resides with the person; or

(D) a governing person or an affiliate or officer of the person.

(3) ASSOCIATION. Includes, but is not limited to, an unincorporated nonprofit association as defined in Section 10A-17-1.02(2) and an unincorporated professional association as defined in Section 10A-30-1.01(2).

(4) BUSINESS CORPORATION. A corporation within the meaning of 10A-2-1.40(3) or Section 10A-2-1.40(9).

(5) BUSINESS TRUST. A business trust within the meaning of Section 10A-16-1.01.

(6) CERTIFICATE OF FORMATION.

(A) the document required to be filed publicly under Article 3 to form a filing entity; and

(B) if appropriate, a restated certificate of formation and all amendments of an original or restated certificate of formation.

(7) CERTIFICATE OF OWNERSHIP. An instrument evidencing an ownership interest or membership interest in an entity.

(8) CERTIFICATE OF TERMINATION. Any document, such as articles of dissolution in the case of a corporation, or certificate of cancellation, in the case of a limited partnership, required by law to be filed publicly with respect to an entity's dissolution and the winding up of its affairs or the end of its existence. In the case of an entity whose separate existence ceases as a result of a merger, the articles of merger shall constitute the certificate of termination.

(9) CERTIFICATED OWNERSHIP IN INTEREST. An ownership interest of a domestic entity represented by a certificate issued in bearer or registered form.

(10) CERTIFICATION. Duly authenticated by the proper officer of the state or county under the laws of which a domestic or foreign entity is formed.

(11) CONTRIBUTION. A tangible or intangible benefit that a person transfers to an entity in consideration for an ownership interest in the entity or otherwise in the person's capacity as an owner or a member. In the case of an entity to which Section 234 of the Constitution of Alabama of 1901, now appearing as Section 234 of the Official Compilation of the Constitution of Alabama of 1901, as amended, applies, the benefit that may constitute a contribution transferred in exchange for an ownership interest or transferred in the transferor's capacity as an owner or member shall be limited to money, work or labor done, or property actually received. For entities to which Section 234 does not apply, the benefit that may constitute a contribution transferred in exchange for an ownership interest or transferred in the transferor's capacity as an owner or member may include cash, property, services rendered, a contract for services to be performed, a promissory note or other obligation of a person to pay cash or transfer property to the entity, or securities or other

interests in or obligations of an entity. In either case, the benefit does not include cash or property received by the entity:

(A) with respect to a promissory note or other obligation to the extent that the agreed value of the note or obligation has previously been included as a contribution; or

(B) that the person intends to be a loan to the entity.

(12) CONVERSION.

(A) the continuance of a domestic entity as a foreign entity of any type;

(B) the continuance of a foreign entity as a domestic entity of any type; or

(C) the continuance of a domestic entity of one type as a domestic entity of another type.

(13) CONVERTED ENTITY. An entity resulting from a conversion. The term converted entity is synonymous with the term resulting entity.

(14) CONVERTING ENTITY. An entity as the entity existed before the entity's conversion.

(15) COOPERATIVE. Includes an employee cooperative within the meaning of Section 10A-11-11.02(2).

(16) CORPORATION. Includes a business corporation within the meaning of Section 10A-2-1.40(3) or Section 10A-2-1.40(9), a nonprofit corporation within the meaning of Section 10A-3-1.02(7) or Section 10A-3-1.02(4), a professional corporation within the meaning of Section 10A-4-1.03(3) or Section 10A-4-1.03(4), and those entities specified in Chapter 20 as corporate.

(17) COURT. Every court and judge having jurisdiction in a case.

(18) DAY. When used in the computation of time excludes the first day and includes the last day of the period so computed, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time to be computed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

(19) DEBTOR IN BANKRUPTCY. A person who is the subject of:

(A) an order for relief under the United States bankruptcy laws, Title 11, United States Code, or comparable order under a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(20) DIRECTOR. An individual who serves on the board of directors, by whatever name known, of a foreign or domestic corporation.

(21) DISTRIBUTION. A transfer of property, including cash, from an entity to an owner or member of the entity in the owner's or member's capacity as an owner or member. The term includes a dividend, a redemption or purchase of an ownership interest, or a liquidating distribution.

(22) DOMESTIC. With respect to an entity, that the entity is formed and exists under this title.

(23) DOMESTIC ENTITY. An organization formed and existing under this title.

(24) EFFECTIVE DATE OF THIS TITLE. January 1, 2011.

(25) ELECTRONIC SIGNATURE. An electronic signature as that term is defined in the Alabama Electronic Transactions Act, Chapter 1A of Title 8, or any successor statute.

(26) ENTITY. A domestic entity or foreign entity.

(27) **FILING ENTITY.** A domestic entity that is a corporation, limited partnership, limited liability company, professional association, employee cooperative corporation, or real estate investment trust.

(28) **FILING INSTRUMENT.** An instrument, document, or statement that is required or authorized by this title to be filed by or for an entity with the filing officer in accordance with Article 4.

(29) **FILING OFFICER.** The officer with whom a filing instrument is required or permitted to be filed under Article 4 or under any other provision of this title.

(30) **FOREIGN.** With respect to an entity, that the entity is formed and existing under the laws of a jurisdiction other than this state.

(31) **FOREIGN ENTITY.** An organization formed and existing under the laws of a jurisdiction other than this state.

(32) **FOREIGN FILING ENTITY.** A foreign entity that registers or is required to register as a foreign entity under Section 10A-1-7.01(a)(1).

(33) **FOREIGN GOVERNMENTAL AUTHORITY.** A governmental official, agency, or instrumentality of a jurisdiction other than this state.

(34) FOREIGN LIMITED PARTNERSHIP. A limited partnership within the meaning of Section 10A-91.02(74).

(35) FOREIGN NONFILING ENTITY. A foreign entity that is not a foreign filing entity.

(36) FUNDAMENTAL BUSINESS TRANSACTION. A merger, interest exchange, conversion, or sale of all or substantially all of an entity's assets.

(37) GENERAL PARTNER.

(A) each partner in a general partnership; or

(B) a person who is admitted to a limited partnership as a general partner in accordance with the governing documents of the limited partnership.

(38) GENERAL PARTNERSHIP. A partnership within the meaning of Section 10A-8-1.02(3). The term includes a registered limited liability partnership within the meaning of Section 10A-8-102(7).

(39) GOVERNING AUTHORITY. A person or group of persons who are entitled to manage and direct the affairs of an entity under this title and the governing documents of the entity, except that if the governing documents of the entity or this title divide the authority to manage and direct the affairs of the entity

among different persons or groups of persons according to different matters, governing authority means the person or group of persons entitled to manage and direct the affairs of the entity with respect to a matter under the governing documents of the entity or this title. The term includes the board of directors of a corporation, by whatever name known, or other persons authorized to perform the functions of the board of directors of a corporation, the general partners of a general partnership or limited partnership, the managers of a limited liability company that is managed by managers, the members of a limited liability company that is managed by members who are entitled to manage the company, and the trust managers of a real estate investment trust. The term does not include an officer who is acting in the capacity of an officer.

(40) GOVERNING DOCUMENTS.

(A) in the case of a domestic entity:

(i) the certificate of formation for a domestic filing entity or the document or agreement under which a domestic nonfiling entity is formed; and

(ii) the other documents or agreements, including bylaws, partnership agreements of limited partnerships,

operating agreements of limited liability companies, or similar documents, adopted by the entity under this title to govern the formation or the internal affairs of the entity; or

(B) in the case of a foreign entity, the instruments, documents, or agreements adopted under the law of its jurisdiction of formation to govern the formation or the internal affairs of the entity.

(41) GOVERNING PERSON. A person serving as part of the governing authority of an entity.

(42) INDIVIDUAL. A natural person and the estate of an incompetent or deceased natural person.

(43) INSOLVENCY. The inability of a person to pay the person's debts as they become due in the usual course of business or affairs.

(44) INSOLVENT. A person who is unable to pay the person's debts as they become due in the usual course of business or affairs.

(45) JUDGE OF PROBATE. The judge of probate of the county in which a domestic entity's certificate of formation is filed, or, with respect to partnership statements provided for in

Section 10A-8-1.06, the judge of probate of the county in which a statement is filed.

(46) JURISDICTION OF FORMATION.

(A) in the case of a domestic filing entity, this state;

(B) in the case of a foreign filing entity, the jurisdiction in which the entity's certificate of formation or similar organizational instrument is filed; or

(C) in the case of a foreign or domestic nonfiling entity:

(i) the jurisdiction the laws of which are chosen in the entity's governing documents to govern its internal affairs if that jurisdiction bears a reasonable relation to the owners or members or to the domestic or foreign nonfiling entity's business and affairs under the principles of this state that otherwise would apply to a contract among the owners or members; or

(ii) if subparagraph (i) does not apply, the jurisdiction in which the entity has its principal place of business.

(47) LAW. Unless the context requires otherwise, both statutory and common law.

(48) LICENSE. A license, certificate of registration, or other legal authorization.

(49) LICENSING AUTHORITY. The state court, state regulatory licensing board, or other like agency which has the power to issue a license or other legal authorization to render professional services.

(50) LIMITED LIABILITY COMPANY. A limited liability company within the meaning of ~~Chapter 5~~ or Chapter 5A, as applicable.

(51) LIMITED PARTNER. A person who has been admitted to a limited partnership as a limited partner as provided by:

(A) in the case of a domestic limited partnership, Section 10A-9-3.01 or Section 10A-9A-3.01, as applicable; or

(B) in the case of a foreign limited partnership, the laws of its jurisdiction of formation.

(52) LIMITED PARTNERSHIP. A limited partnership within the meaning of Section 10A-9-1.02(11), ~~or Section 10A-9-1.02(7)~~ or 10A-9A-1.02(8), as applicable.

(53) MANAGERIAL OFFICIAL. An officer or a governing person.

(54) MEMBER.

(A) a person defined as a member under ~~Chapter 5~~
or Chapter 5A, as applicable;

(B) in the case of a nonprofit corporation governed by Article 3, a person having membership rights in a corporation in accordance with its governing documents as provided in Section 10A-3-1.02(5);

(C) in the case of an employee cooperative corporation governed by Chapter 11, a natural person who, as provided in Section 10A-11-1.02(5), has been accepted for membership in and owns a membership share in an employee cooperative.

(D) in the case of a nonprofit association, a person who, as provided in Section 10A-17-1.02(1), may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of its policy.

(55) MERGER.

(A) the division of a domestic entity into two or more new domestic entities or other organizations or into a surviving domestic entity and one or more new domestic or foreign entities or non-code organizations; or

(B) the combination of one or more domestic entities with one or more domestic entities or non-code organizations resulting in:

(i) one or more surviving domestic entities or non-code organizations;

(ii) the creation of one or more new domestic entities or non-code organizations, or one or more surviving domestic entities or non-code organizations; or

(iii) one or more surviving domestic entities or non-code organizations and the creation of one or more new domestic entities or non-code organizations.

(56) NON-CODE ORGANIZATION. An organization other than a domestic entity.

(57) NONFILING ENTITY. A domestic entity that is not a filing entity. The term includes a domestic general partnership, a registered limited liability partnership, and a nonprofit association.

(58) NONPROFIT ASSOCIATION. An unincorporated nonprofit association within the meaning of Section 10A-17-1.02(2).

(59) NONPROFIT CORPORATION. A nonprofit corporation within the meaning of Section 10A-3-1.02(7) or Section 10A-3-1.02(4).

(60) NONPROFIT ENTITY. An entity that is a nonprofit corporation, nonprofit association, or other entity that is organized solely for one or more of the nonprofit purposes. ~~specified by the chapter or article of this title applicable to that form of nonprofit entity and no part of the income or profit of which is distributable to its members, owners, directors, officers, or other governing persons.~~

(61) OFFICER. An individual elected, appointed, or designated as an officer of an entity by the entity's governing authority or under the entity's governing documents.

(62) ORGANIZATION. A corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, savings and loan association, or other organization, regardless of whether the organization is for profit, nonprofit, domestic, or foreign.

(63) ORGANIZER. A person, who need not be an owner or member of the entity, who, having the capacity to contract, is

authorized to execute documents in connection with the formation of the entity.

(64) OWNER.

(A) with respect to a foreign or domestic business corporation or real estate investment trust, a shareholder;

(B) with respect to a foreign or domestic partnership, a partner;

(C) with respect to a foreign or domestic limited liability company or association, a member; and

(D) with respect to another foreign or domestic entity, an owner of an equity interest in that entity.

(65) OWNERSHIP INTEREST. An owner's interest in an entity. The term includes the owner's share of profits and losses or similar items and the right to receive distributions. The term does not include an owner's right to participate in management or participate in the direction or oversight of the entity. An ownership interest is personal property.

(66) PARENT ENTITY or PARENT ORGANIZATION.

An entity or organization that:

(A) owns at least 50 percent of the ownership or membership interest of a subsidiary; or

(B) possesses at least 50 percent of the voting power of the owners or members of a subsidiary.

(67) PARTNER. A limited partner or general partner.

(68) PARTNERSHIP. Includes a general partnership ~~within the meaning of Section 10A-8-1.02(3), including~~ a registered limited liability partnership, ~~within the meaning of Section 10A-8-1.02(7) and~~ a foreign registered limited liability partnership, ~~within the meaning of Section 10A-8-1.02(2) and also includes a~~ limited partnership, ~~within the meaning of Section 10A-9-1.02(7), or Section 10A-9-1.02(11),~~ a foreign limited partnership, a limited liability limited partnership within the meaning of Section 10A-9-1.02(9) and Section 10A-9A-1.02(6), and a foreign limited liability limited partnership within the meaning of Section 10A-9-1.02(6) and Section 10A-9A-1.02(3).

(69) PARTNERSHIP AGREEMENT. ~~The agreement, written or oral, among the partners concerning the affairs of the general or limited partnership, as the case may be, and the conduct of its business.~~ Any agreement (whether referred to as a partnership agreement or otherwise), written, oral or implied, of the partners as to the activities and affairs of a general partnership or a limited partnership. The partnership agreement includes any

amendments to the partnership agreement. In the case of limited partnerships formed prior to October 1, 1989~~8~~, partnership agreement includes the certificate of partnership.

(70) PARTNERSHIP INTEREST. In the case of a general partnership, ~~and in the case of a limited partnership,~~ the meaning set forth in Section 10A-8-1.02(5).

(71) PARTY TO THE MERGER. A domestic entity or non-code organization that under a plan of merger is divided or combined by a merger. The term does not include a domestic entity or non-code organization that is not to be divided or combined into or with one or more domestic entities or non-code organizations, regardless of whether ownership interests of the entity are to be issued under the plan of merger.

(72) PERSON. An individual or an organization, whether created by the laws of this state or another state or foreign country, including, without limitation, a general partnership, registered limited liability partnership, limited partnership, limited liability company, corporation, professional corporation, professional association, trustee, personal representative, fiduciary, as defined in Section 19-3-150 or person performing in any similar capacity, business trust, estate, trust, association, joint venture, government,

governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(73) PRESIDENT.

(A) the individual designated as president of an entity under the entity's governing documents; or

(B) the officer or committee of persons authorized to perform the functions of the principal executive officer of an entity without regard to the designated name of the officer or committee.

(74) PROFESSIONAL ASSOCIATION. A professional association within the meaning of Section 10A-30-1.01.

(75) PROFESSIONAL CORPORATION. A professional corporation within the meaning of Section 10A-4-1.03(2) or Section 10A-4-1.03(3).

(76) PROFESSIONAL ENTITY. A professional association or a professional corporation.

(77) PROFESSIONAL SERVICE. Any type of service that may lawfully be performed only pursuant to a license issued by a state court, state regulatory licensing board, or other like agency pursuant to state laws.

(78) PROPERTY. Includes tangible and intangible property and an interest in that property.

(79) REAL ESTATE INVESTMENT TRUST. An unincorporated trust, association, or other entity within the meaning of Section 10A-10-1.02(1).

(80) REGISTERED LIMITED LIABILITY PARTNERSHIP. A registered limited liability partnership within the meaning of Section 10A-8-1.04~~2~~(7).

(81) SECRETARY.

(A) the individual designated as secretary of an entity under the entity's governing documents; or

(B) the officer or committee of persons authorized to perform the functions of secretary of an entity without regard to the designated name of the officer or committee.

(82) SECRETARY OF STATE. The Secretary of State of the State of Alabama.

(83) SIGNATURE. Any symbol executed or adopted by a person with present intention to authenticate a writing. Unless the context requires otherwise, the term includes an electronic signature and a facsimile of a signature.

(84) STATE. Includes, when referring to a part of the United States, a state or commonwealth, and its agencies and governmental subdivisions, and a territory or possession, and its agencies and governmental subdivisions, of the United States.

(85) SUBSCRIBER. A person who agrees with or makes an offer to an entity to purchase by subscription an ownership interest in the entity.

(86) SUBSCRIPTION. An agreement between a subscriber and an entity, or a written offer made by a subscriber to an entity before or after the entity's formation, in which the subscriber agrees or offers to purchase a specified ownership interest in the entity.

(87) SUBSIDIARY. An entity or organization at least 50 percent of:

(A) the ownership or membership interest of which is owned by a parent entity or parent organization; or

(B) the voting power of which is possessed by a parent entity or parent organization.

(88) TREASURER.

(A) the individual designated as treasurer of an entity under the entity's governing documents; or

(B) the officer or committee of persons authorized to perform the functions of treasurer of an entity without regard to the designated name of the officer or committee.

(89) TRUSTEE. A person who serves as a trustee of a trust, including a real estate investment trust.

(90) UNCERTIFICATED OWNERSHIP INTEREST. An ownership interest in a domestic entity that is not represented by a certificate in bearer or registered form.

(91) VICE PRESIDENT.

(A) the individual designated as vice president of an entity under the governing documents of the entity; or

(B) the officer or committee of persons authorized to perform the functions of the president of the entity on the death, absence, or resignation of the president or on the inability of the president to perform the functions of office without regard to the designated name of the officer or committee.

(92) WRITING or WRITTEN. Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Comment

“Affiliate” [1]. The term “affiliate” was derived from the definition of “related person” in the Alabama Business Corporation Act, previously codified at Section 10-2B-8.60(3), with no substantive change but with the substitution of the generic term “individual” for the term “director”. The definition has also been somewhat expanded.

“Certificate of formation” [6]. The term “certificate of formation” was derived from the term “formation document” in the Alabama Business Entities and Conversion Act, previously codified as Section 10-15-2(13)). The term is defined in general terms rather than by way of example, but with no substantive change.

“Certificate of termination” [8]. The term “certificate of termination” was derived from the term “termination document” in the Alabama Business Entities and Conversion Act, previously codified at Section 10-15-2(24).

“Certification” [10]. The term “certification” was derived from the definition of “certification” in the Alabama Nonprofit Corporation Act previously codified at Section 10-3A-2(4), with no substantive change but with the substitution of the generic phrase “entity is formed” for “nonprofit corporation is incorporated.”

“Contribution” [11] was derived from the Alabama Limited Partnership Act previously codified at Section 10-9B-101(3). It has been re-written so as to preserve the existing distinction in Alabama law between those which are subject to Alabama Constitution, Article XII, Section 234 under which the permissible form of contribution for an ownership interest is limited to money, work or labor done, or property actually received (see Section 10-2B-6.21(b) of the Alabama Business Corporation Act, and those entities not subject to the Alabama Constitution’s limitation.

“Court” [17] was derived from the Alabama Limited Liability Company Act previously codified as Section 10-12-2(d) with no change.

“Day” [18] was derived from the Alabama Business Corporation Act previously codified as Section 10-2B-1.40(5) with no change.

“Debtor in bankruptcy” [19] was derived from the Alabama Uniform Partnership Act previously codified as Section 10-8A-101(2), with no substantive change. Neither is the term substantively different from the definition of “Bankrupt” in the Alabama Limited Liability Company Act, Section 10-12-2(b).

“Director” [20] was derived from Alabama Business Corporation Act previously codified as Section 10-2B-8.50(2). The definition is greatly simplified but without substantive change.

“Distribution” [21] was derived from Alabama Uniform Partnership Act previously codified as Section 10-8A-101(3), with no substantive change though re-stated in generic terms. See also, Alabama Business Corporation Act, previously codified as Section 10-2B-1.40(7), which is more specific but also not substantively different.

“Entity” [26] was derived from the Alabama Business Corporation Act, previously codified as Section 10-2B-1.40(11) but is narrower in scope. The definition contained in prior Section 10-2B-1.40(11) includes “trusts” (and not just business trusts), “two or more persons having a joint or common economic interest”, and “state, United States, and foreign governments.” “Entity” is defined in subsection (26) as meaning a “domestic entity” (an “organization formed and existing under this Code”, subsection (23)) or a “foreign entity” (an organization formed and existing under the laws of a jurisdiction other than this state (subsection (31))). Thus only “organizations” may be “entities” and the definition of “organization” in subsection (63) while quite broad does not include trusts (other than business trusts), two or more persons with joint or common economic interests, or governments.

“Foreign entity” [31] was derived from Alabama Business Entities Merger and Conversion Act previously codified as Section 10-15-2(7) definition of “foreign business entity.” This results from the fact that “foreign entity” is defined as an “organization” which, under subsection (63) can be nonprofit as well as for profit; the term “foreign business entity” only included for profit entities.

“General partner” [37] was derived from prior Section 10-8A-901(4) of the Alabama Uniform Partnership Act. It was re-written without substantive change. This definition covers the same subject

matter as Section 10-9B-1101(5) or the Alabama Limited Partnership Act and Section 10-15-2(14) of the Alabama Business Entities Conversion and Merger Act.

***“Individual” [42]** was derived from Alabama Business Corporation Law previously codified as Section 10-2B-1.40(15) without substantive change.*

***“Insolvency” [43]** was derived from the Alabama Nonprofit Corporation Act, previously codified as Section 10-3A-27, without substantive change. It was re-written for greater grammatical clarity.*

***“Licensing authority” [48]** was derived from the Alabama Professional Corporation Act, previously codified as Section 10-4-382(2), without substantive change.*

***“Manager” [52]** was derived from the Alabama Limited Liability Company Act previously codified as Section 10-12-2(i), without substantive change.*

***“Member” [54].** Subsection (A) was derived from prior Section 10-12-2(i) of the Alabama Limited Liability Act, without substantive change. Subsection (B) was derived from prior Section 10-3A-2(8) of the Alabama Nonprofit Corporation Act, without substantive change. Subsection (C) was derived from prior Section 10-14-2(5) of the Alabama Employee Cooperative Corporations Act, without substantive change. Subsection (D) was derived from prior Section 10-3B-2(1) of the Alabama Unincorporated Nonprofit Associations Act, without substantive change.*

***“Organizer” [64]** was derived from prior Section 10-12-2(l) of the Alabama Limited Liability Company Act, without substantive change.*

***“Owner” [65]** was derived from the definition of “Equity Owner” in prior Section 10-15-2(4) of the Alabama Business Entities Merger and Conversion Act, with no substantive change in the existing provisions, but with the addition of a “catch-all” provision as subsection (D).*

***“Partner” [68]** was derived from prior Section 10-9B-101(10) of the Alabama Limited Partnership Act, without substantive change.*

“Partnership agreement” [70]. The first sentence was derived from prior Section 10-8A-101(6) of the Alabama Uniform Partnership Act, without substantive change. Virtually the same language appeared in prior Section 10-9B-101(11), from which the second sentence was derived, without substantive change.

“Person” [73] is derived without substantive change from Section 10-12-2(m) of the Alabama Limited Liability Company Act.

“Probate Judge” [75] was derived without substantive change from prior Section 10-2A-1.40(20) of the Alabama Business Corporation Act. The use of the generic term “certificate of formation” eliminates the need for the proviso in Section 10-2A-1.40(20) with respect to the equivalence of articles of incorporation and certificates of incorporation for corporations existing on January 1, 1981. The last sentence relating to partnership statements was new with the passage of the this act.

“Professional service” [80] was derived without substantive change from prior Section 10-4-382(1) of the Alabama Professional Corporation Act.

“Secretary” [84] was derived without substantive change from prior Section 10-2B-1.40(23) of the Alabama Business Corporation Act.

“Secretary of State” [85] was derived without change from the Alabama Uniform Partnership Act previously codified as Section 10-8A-101(13).

“State” [87] was derived without substantive change from Alabama Business Corporation Act Section 10-2B-1.40(26). This definition includes the District of Columbia, all states, commonwealths, territories and possessions of the United States.

“Subscriber” [88] was derived without substantive change from the Alabama Business Corporation Act previously codified as Section 10-2B-1.40(27).

(Amended Section)

§ 10A-1-1.06. Synonymous terms.

To the extent not inconsistent with the Constitution of Alabama of 1901, and other statutes of this state wherein the terms may be found, and as the context requires, in this title or any other statute of this state:

(1) a reference to certificate of formation includes, in the case of a corporation, articles of incorporation, certificate of incorporation, and charter; in the case of limited partnership, a certificate of limited partnership and a certificate of formation; in the case of a limited liability company, certificate of formation and articles of organization; and in the case of a business trust or a real estate investment trust, declaration of trust and, similarly, a reference to articles of incorporation, certificate of incorporation, charter, certificate of limited partnership, or articles of organization includes a certificate of formation;

(2) a reference to certificate of termination includes, in the case of a corporation or a limited liability company, articles of dissolution and statement of dissolution, and in the case of a limited partnership, a certificate of cancellation and a statement of dissolution; similarly, a reference to articles of dissolution,

statement of dissolution, or certificate of cancellation includes certificate of termination and certificate of dissolution and, similarly, a reference to certificate of termination includes articles of dissolution, statement of dissolution, and certificate of dissolution, and similarly, a reference to a statement of dissolution includes articles of dissolution, certificate of termination, and certificate of dissolution;

(3) a reference to certificate of merger includes articles of merger and statement of merger and similarly, a reference to articles of merger includes certificate of merger and statement of merger, and similarly, a reference to statement of merger includes certificate of merger and articles of merger;

(4) a reference to authorized capital stock includes authorized shares;

(5) a reference to capital stock includes authorized and issued shares, issued shares, and stated capital;

(6) a reference to a certificate of registration, certificate of authority, and permit to do business includes registration;

(7) a reference to stock and shares of stock includes shares;

(8) a reference to stockholder includes shareholder; and

(9) a reference to no par stock includes shares without par value.

Comment

This section is necessary for purposes of accommodating the generic nomenclature of this Title with the more traditional terminology. It made no substantive change and while the generic nomenclature is useful for uniformity throughout this Title, it is not intended that all filings must be named in this manner in order to be effective.

(Amended Section)

§ 10A-1-1.08. Short titles.

(a) The provisions of this title as described by this section may be cited as provided by this section.

(b) Chapter 2 and the provisions of Chapter 1 to the extent applicable to business corporations may be cited as the Alabama Business Corporation Law.

(c) Chapter 3 and the provisions of Chapter 1 to the extent applicable to nonprofit corporations may be cited as the Alabama Nonprofit Corporation Law.

(d) Chapter 4 and the provisions of Chapter 1 to the extent applicable to professional corporations may be cited as the Alabama Professional Corporation Law.

~~(e) Chapter 5 and the provisions of Chapter 1 to the extent applicable to limited liability companies may be cited as the~~

~~Alabama Limited Liability Company Law.~~ Chapter 5A and the provisions of Chapter 1 to the extent applicable to limited liability companies may be cited as the Alabama Limited Liability Company Law of 2014.

(f) Chapter 8 and the provisions of Chapter 1 to the extent applicable to general partnerships may be cited as the Alabama Uniform Partnership Law.

(g) Chapter 9 and the provisions of Chapter 1 to the extent applicable to limited partnerships may be cited as the Alabama Uniform Limited Partnership Law ~~of 2010.~~ Chapter 9A and the provisions of Chapter 1 to the extent applicable to limited partnerships may be cited as the Alabama Limited Partnership Law.

(h) Chapter 10 and the provisions of Chapter 1 to the extent applicable to real estate investment trusts may be cited as the Alabama Real Estate Investment Trust Law.

(i) Chapter 11 and the provisions of Chapter 1 and Chapter 2 to the extent applicable to employee cooperative corporations may be cited as the Alabama Employee Cooperative Corporations Law.

(j) Chapter 17 may be cited as the Alabama Unincorporated Nonprofit Association Law.

Comment

Each of the subsections of this Section was drawn from an existing “short title” section or subsection, adjusted so as to include within the identified body of law the applicable provisions of this Chapter 1 of this title as well as the entity specific chapter provisions. Each respective short title provision is repeated without change in the respective entity specific chapter.

(Amended Section)

§ 10A-1-4.26. Amendment of filings.

A filing instrument that an entity files with the Secretary of State or the judge of probate, as the case may be, may be amended or supplemented ~~to the extent permitted by~~ in accordance with the provisions of this title the chapter that apply to that entity or in accordance with that entity’s governing documents. If neither the chapter that applies to that entity nor the governing documents of that entity provides or prohibits a process for the approval and filing of an amendment or supplement to that filing instrument for that entity, then that filing instrument may be amended or supplemented and filed utilizing the same process for approval and filing as was used to approve and file that filing instrument.

Comment

This section ~~simply~~ cross-references to the appropriate entity-specific provisions and the appropriate entity-specific governing documents. If neither the entity-specific provisions nor the entity specific governing documents provides or prohibits a process for amending or supplementing a filing instrument, then that filing instrument may be amended or supplemented and filed using the same approval process and filing process as was used on that filing instrument.

(New Section)

§ 10A-1-5.05. Name of Limited Partnership.

(a) The name of a limited partnership may contain the name of any partner.

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

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

(d) Subject to Section 10A-1-7.07, this section applies to any foreign limited partnership transacting business in this state,

having a certificate of authority to transact business in this state, or applying for a certificate of authority.

(e) The name of a limited partnership may not contain the following words: “bank,” “banking,” “banker,” “trust,” “insurance,” “insurer,” “corporation,” “incorporated,” or any abbreviation of such words.

Comment

This section was moved from Section 10A-9-1.08 to this Section in order to conform with the location of the other organization’s naming conventions. Subsection (e) reflects a long standing prohibition contained in Alabama law which was contained at Section 10-9B-102(3) and 10-9B-108(g). Subsection (d) refers to Section 10A-1-7.07 for foreign limited partnerships which provides guidance on appropriate naming conventions for foreign limited partnerships transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority if the foreign limited partnership’s actual name does not comply with this section.

(Amended Section)

§ 10A-1-6.02. Application of article.

(a) Except as provided by subsection (b), this article does not apply to a:

- (1) general partnership;
- (2) limited liability company; ~~or~~
- (3) limited partnership; and
- (4) nonprofit corporation.

(b) The governing documents of a general partnership, limited liability company, limited partnership, or nonprofit corporation may adopt provisions of this article or may contain enforceable provisions relating to:

(1) indemnification;

(2) advancement or reimbursement of expenses; ~~or~~

(3) insurance; or

(4) ~~another~~ other arrangements .

Comment

Subsection (a) is intended to clearly state that Article 6 of the Chapter 1 does not apply to general partnerships, limited liability companies, limited partnerships, and nonprofit corporations. Subsection (b) recognizes that each of the respective chapters governing general partnerships, limited liability companies, limited partnerships, and nonprofit corporations, either statutorily or because of the contractual nature of the organization allows such organizations to provide certain individualized and tailored contractual protections for persons those organizations may deem appropriate to protect. In doing so, those organizations may utilize their own concepts, may utilize some, part or all of the concepts in Article 6 of Chapter 1, or may refer to some, part or all of Article 6 of Chapter 1. Adoption of the provisions of Article 6 of Chapter 1 may include mandatory indemnification and court ordered indemnification in situations for which general partnerships, limited liability companies, limited partnerships, and nonprofit corporations are unaccustomed.

(Amended Section)

§ 10A-1-6.13. Limitations in governing documents.

~~(a)~~ The certificate of formation of an enterprise may restrict the circumstances under which the enterprise must or may indemnify a person under this division.

~~(b) The written partnership agreement of a limited partnership may restrict the circumstances in the same manner as the certificate of formation under subsection (a).~~

Comment

Subsection (b) of this Section was removed to reflect the change in Section 10A-1-6.02 which excludes limited partnerships from the application of Article 6 of Chapter 1 unless the limited partnership elects to adopt some, part of all of the provisions of Article 6 of Chapter 1.

(Amended Section)

§ 10A-1-6.25. Indemnification and advancement of expenses to persons other than governing persons.

(a) Notwithstanding any other provision of this chapter but subject to subsection (d) and to the extent consistent with other law, an enterprise may indemnify and advance expenses to a person who is not a governing person, including an officer, employee, agent, or delegate, as provided by:

- (1) the enterprise's governing documents;

(2) general or specific action of the enterprise's governing authority;

(3) resolution of the enterprise's owners or members;

(4) contract; or

(5) common law.

(b) An enterprise shall indemnify and advance expenses to an officer to the same extent that indemnification or advancement of expenses is required under this chapter for a governing person.

(c) A person described by subsection (a) may seek indemnification or advancement of expenses from an enterprise to the same extent that a governing person may seek indemnification or advancement of expenses under this chapter.

(d) The certificate of formation of an enterprise may restrict the circumstances under which the enterprise must or may indemnify a person under this section. ~~The written partnership agreement of a limited partnership may restrict the circumstances in the same manner as the certificate of formation of the limited partnership.~~

Comment

This section was derived from prior Section 10-2B-8.56 of the Alabama Business Corporation Act. The last sentence of subsection (d) was removed to reflect the change in Section 10A-1-6.02 which excludes limited partnerships from the application of Article 6 of Chapter 1 unless the limited partnership elects to adopt some, part of all of the provisions of Article 6 of Chapter 1.

(Amended Section)

§ 10A-1-7.07. Entity name.

If the name of a foreign entity does not satisfy the requirements of Article 5, the entity, for use in this state, may:

(1) if a corporation, add to its corporate name the word “corporation” or “incorporated” or an abbreviation of one of the words;

(2) if a banking corporation, add to its corporate name the words “bank,” “banking,” or “bankers”;

(3) if a limited partnership that is not a limited liability limited partnership, add to its partnership name the word “limited” or the abbreviation “Ltd.” or the phrase “limited partnership” or the abbreviation “L.P.” or “LP, ” but its name must not contain the phrase “limited liability limited partnership” or the abbreviation “LLLP” or “L.L.L.P.”

(4) if a limited liability limited partnership, add to its partnership name the phrase “limited

liability limited partnership” or the abbreviation “LLLP” or “L.L.L.P.” and must not contain the abbreviation “Ltd.,” “L.P.,” or “LP.”

(4 5) if a limited liability company, add to its company name the phrase “limited liability company” or the abbreviation “L.L.C.” or “LLC”;

(5 6) if a professional corporation, add to its corporate name the phrase “professional corporation” or the abbreviation “P.C.” or “PC”;

(6 7) if a registered limited liability partnership, add to its partnership name the phrase “registered limited liability partnership” or the abbreviation “L.L.P.” or “LLP”; and

(7 8) use a fictitious name available for use in this state that satisfies the requirements of Article 5, if it delivers to the Secretary of State for filing a copy of the resolution of its governing authority, certified by its secretary, adopting the fictitious name.

Comment

This section collects in one place the various provisions of prior Alabama law, such as prior Section 10-12-49 of the Alabama Limited Liability Company Act, ~~that~~ which required foreign entities to adopt names that satisfy the same name requirements as domestic entities.

Part 3:
Chapter 5A Amendments (LLCs)

(Amended Section)

§ 10A-5A-1.10. Limited liability company agreement; effect on third parties and relationship to writings effective on behalf of limited liability company.

(a) If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law, except that the approval of any person may be waived by that person and any conditions may be waived by all persons for whose benefit those conditions were intended.

(b) A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth in the limited liability company agreement.

(c) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the limited liability company

agreement. A transferee and a dissociated member are bound by the limited liability company agreement.

(d) If a writing that has been delivered by a limited liability company for filing in accordance with ~~Article 3 of~~ Chapter 1 and has become effective conflicts with a provision of the limited liability company agreement:

(1) The limited liability company agreement prevails as to members, dissociated members, and transferees; and

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

Comment

This Section was derived from RPLLC § 112 which derived Subsection (a) from Delaware, § 18-302(e), and Subsection (b) from Delaware, § 18-101(7).

(Amended Section)

§ 10A-5A-4.01. Admission of members.

(a) The initial member or members of a limited liability company are admitted as a member or members upon the formation of the limited liability company.

(b) After formation of a limited liability company, a person is admitted as a member of the limited liability company:

(1) as provided in the limited liability company agreement;

(2) as the result of a transaction effective under Article 10;

(3) with the consent of all the members; or

(4) as provided in Section 10A-5A-7.01(c)(1) or (c)(2)~~if, within 90 consecutive days after the occurrence of the dissociation of the last remaining member:~~

~~(A) all holders of the transferable interest last transferred by the last person to have been a member consent to the designation of a person to be admitted as a member; and~~

~~(B) the designated person consents to be admitted as a member effective as of the date the last person to have been a member ceased to be a member.~~

(c) A person may be admitted as a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company. A person may be admitted as the sole member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

Comment

Section 4.01(a) is a new Section specifically tailored to reflect the requirement of Section 2.01(a)(4) that the certificate of formation provide a statement that at least one member of the limited liability company existed at the time of the filing of the certificate of formation. As such, the initial member or members are admitted to the limited liability company upon the filing of the certificate of formation. It should be noted that § 10A-1-3.01(d) provides: “Except in a proceeding by the state to terminate the existence of a filing entity, the filing of a certificate of formation by the filing officer is conclusive evidence of: (1) the formation and existence of the filing entity; (2) the satisfaction of all conditions precedent to the formation of the filing entity; and (3) the authority of the filing entity to conduct activities and affairs in this state.”

Section 4.01(b) is substantially derived from current law § 10A-5-6.01; RULLCA 401(d); and RPLLCA § 401(b). This Subsection allows for the admission of members: as provided in the limited liability company agreement; as a result of a merger or conversion as provided under Article 10; with the consent of all of the members; or in accordance with Section 10A-5A-7.01(c)(1) or (c)(2) ~~or within 90 days after the last member dissociated under certain circumstances.~~

Section 4.01(c) is new and is derived from Delaware § 18-301(d). It allows a person to be admitted as a member (whether as the sole member or as another member) without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

It should be noted that as a default rule, members associated with a series of a limited liability company must first become members of the limited liability company — See Section 10A-5A-11.01(c).

(Amended Section)

§ 10A-5A-5.04. Power of personal representative of deceased member.

If a member dies, the deceased member's personal representative or other legal representative may:

(a) for the period of time that the deceased member's personal representative or other legal representative holds the deceased member's transferable interest:

(1) exercise the rights of a holder of transferable interests under this chapter;

(2) exercise the rights of a transferee under Section 10A-9A-5.02; and

(3) for purposes of settling the estate, exercise the rights of a current member under Section 10A-5A-4.09; and

(b) for the period of time that the deceased member's personal representative or other legal representative does not hold the deceased member's transferable interest, for purposes of settling the estate, exercise the rights of a dissociated member under Section 10A-9A-4.09.

Comment

This Section is similar to Section 10A-9A-7.04 of the Alabama Limited Partnership Law.

Section 10A-9A-5.02 strictly limits the rights of transferees. In particular, a transferee has no right to participate in direction or oversight of the limited liability company's activities or affairs in any way, no approval or consent rights and no information rights. This section provides special informational rights for a deceased member's legal representative for the purposes of settling the estate. Subsection (a) provides that for the period of time that the deceased member's personal representative or other legal representative holds the deceased member's transferable interest, the personal representative or legal representative may, for purposes of settling the estate, exercise the informational rights of a current member under Section 10A-9A-4.09. Subsection (b) provides that for the period of time that the deceased member's personal representative or other legal representative does not hold the deceased member's transferable interest, the personal representative or legal representative may, for purposes of settling the estate, exercise the informational rights of a dissociated member under Section 10A-9A-4.09. Those rights are of course subject to the limitations and obligations stated in that section, as well as any generally applicable limitations stated in the limited liability company agreement.

This Section was modified to clarify that the holding in L.B. Whitfield, III Family LLC v. Virginia Ann Whitfield et al., 150 So.3d 171 (Ala 2014) should not apply to the default powers of a deceased member's personal representative or other legal representative so long as that personal representative or other legal representative holds the deceased member's transferable interests. The default of this Section is that upon the death of an individual, that individual's transferable interests are then held by that individual's personal representative or other legal representative to be distributed in accordance with that individual's will, or in the event there is no will, distributed in accordance with the applicable intestate statute. Since the policy of this Chapter and this State is to give maximum effect to the principles of freedom of contract and to the enforceability of a limited liability company agreement, it would appear that

transferable interests could be held jointly with rights of survivorship, and thus, upon the death of a member, the transferable interest would vest in the joint owner, and would not be subject to the default powers of the deceased member's personal representative or other legal representative. In addition, it would appear that a limited liability company agreement could provide other means of transferring the transferable interest outside of the probate estate and appointing members outside of the probate estate. See Section 10A-5A-7.01(c)(2). See generally, Williams v. Williams, 438 So.2d. 735 (Ala. 1983); Cowin v. Salmon, 13 So.2d 190, 244 Ala. 285 (1943); More v. Carnes, 309 Ky. 41, 214 S.W. 2d 984 (1948); and Blechman v. Blechman, 160 So.3d 152 (Fla. 2015).

~~Section 10A-5-6.04 in the Prior LLC Law was replaced by this simple statement referring back to Section 4.09~~

(Amended Section)

§ 10A-5A-7.01. Events of dissolution.

A limited liability company is dissolved and its affairs shall be wound up upon the occurrence of the first of the following events:

(a) An event or circumstance that the limited liability company agreement states causes dissolution.

(b) Consent of all members to dissolve.

(c) When there is no remaining member, unless either of the following applies:

(1) The holders of all the transferable interests in the limited liability company agree in writing, within 90 days after the dissociation of the last member, to continue the

~~legal existence and~~ activities and affairs of the limited liability company and to appoint one or more new members.

(2) The ~~legal existence and~~ activities and affairs of the limited liability company are continued and one or more new members are appointed in the manner stated in the limited liability company agreement.

(d) On application by a member, the entry of an order dissolving the limited liability company on the grounds that it is not reasonably practicable to carry on the limited liability company's activities and affairs in conformity with the limited liability company agreement, which order is entered by the circuit court for the county in which the limited liability company's principal place of business within this state is located, and if the limited liability company does not have a principal place of business within this state then by the circuit court for the county in which the limited liability company's most recent registered office is located.

Comment

This Section is substantially the same as the Prior LLC Law Section 10A-5-7.01. For dissolution of a series, see Section 10A-5A-11.09.

(Amended Section)
§ 10A-5A-7.02. Effect of dissolution.

Notwithstanding Section 10A-1-9.12:

(a) A dissolved limited liability company continues its existence as a limited liability company but may not carry on any activities and affairs except as is appropriate to wind up and liquidate its activities and affairs, including:

- (1) collecting its assets;
- (2) disposing of its properties that will not be distributed in kind to persons owning transferable interests;
- (3) discharging or making provisions for discharging its liabilities;
- (4) distributing its remaining property in accordance with Section 10A-5A-7.06; and
- (5) doing every other act necessary to wind up and liquidate its activities and affairs.

(b) In winding up its activities and affairs, a limited liability company may:

- (1) deliver for filing a statement of dissolution to the filing officer provided for in subsection (e) setting forth:

(A) The name of the limited liability company.

(B) The date of filing its certificate of formation, and all amendments and restatements thereof, and the office or offices where filed.

(C) That the limited liability company has dissolved.

~~(D) The effective date of the statement of dissolution, which shall be a date certain, if it is not to be effective immediately.~~

~~(E)~~ Any other information the limited liability company deems appropriate.

(2) preserve the limited liability company's activities and affairs and property as a going concern for a reasonable time;

(3) prosecute, defend, or settle actions or proceedings whether civil, criminal or administrative;

(4) transfer the limited liability company's assets;

(5) resolve disputes by mediation or arbitration;

and

(6) merge or convert in accordance with Article 10.

(c) The dissolution of a limited liability company does not:

(1) transfer title to the limited liability company's property;

(2) prevent the commencement of a proceeding by or against the limited liability company in its limited liability company name;

(3) terminate, abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;

(4) terminate the authority of its registered agent;

or

(5) abate, suspend or otherwise alter the application of Section 10A-5A-3.01.

(d) A statement of dissolution shall be deemed to be a filing instrument under Chapter 1.

(e) If a limited liability company is not an organization described in Section 10A-1-4.02(c)(4), then that limited liability company shall deliver the statement of dissolution for filing to the judge of probate in whose office the original certificate of formation is filed. If a limited liability company is an organization described in Section 10A-1-4.02(c)(4), then that limited liability

company shall deliver the statement of dissolution for filing to the Secretary of State.

Comment

This Section is derived from RPLLCA § 707 which is based on RMBCA § 14.05. This Section reflects the Prior LLC Law in Sections 10A-5-7.03(b) and 10A-5-7.04. This Section provides for a statement of dissolution, but the filing of such a statement is optional, rather than mandatory as was the rule under the Prior LLC Law Section 10A-5-7.06. Subsection (d) was added to clarify that a statement of dissolution is, for purposes of Chapter 1, a “filing instrument” (defined as any document that must or may be filed). Although Chapter 1 appears to cover where the statement of dissolution should be filed and what the filing fees should be in Sections 10A-1-4.02(a)(5) and 4.31(a), this provision is intended to clarify that treatment. Subsection (e) was added to reflect the filing requirements of Section 10A-1-4.02(c)(4).

For provisions of claims see Sections 10A-1-9.01, 10A-1-9.21, and 10A-1-9.22.

For the effect of the dissolution of a series, see Section 10A-5A-11.10.

(Amended Section)

§ 10A-5A-10.03. Filings required for conversion; effective date.

(a) After a plan of conversion is approved:

(1) if the converting organization is an organization formed under the laws of this state, the converting organization

shall file a statement of conversion in accordance with subsection (c), which statement of conversion must be signed in accordance with Section 10A-5A-2.04(a) and which must include:

(A) the name of the converting organization;

(B) the date of the filing of the certificate of formation of the converting organization, if any, and all prior amendments and the filing office or offices, if any, where such is filed;

(C) a statement that the converting organization has been converted into the converted organization;

(D) the name and type of organization of the converted organization and the jurisdiction of its governing statute;

(E) the street and mailing address of the principal office of the converted organization;

(F) the date the conversion is effective under the governing statute of the converted organization;

(G) a statement that the conversion was approved as required by this chapter;

(H) a statement that the conversion was approved as required by the governing statute of the converted organization;

and

(I) if the converted organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-5A-10.04(b); and

(2) if the converted organization is a limited liability company, the converting organization shall file a certificate of formation in accordance with subsection (d), which certificate of formation must include, in addition to the information required by Section 10A-5A-2.01(a):

(A) a statement that the limited liability company was converted from the converting organization;

(B) the name and type of organization of the converting organization and the jurisdiction of the converting organization's governing statute; and

(C) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(b) A conversion becomes effective:

(1) if the converted organization is a limited liability company, when the certificate of formation takes effect; and

(2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

(c) If the converting organization is an organization formed under the laws of this state ~~and the converting organization is not an organization described in Section 10A-1-4.02(c)(4), then the converting organization shall file the statement of conversion required under subsection (a)(1) in the office of the judge of probate in the county required by this title for the filing of its organizational documents, if any, and if the organizational documents were not required by this title to be filed in the office of the judge of probate, then the converting organization shall file the statement of conversion required under subsection (a)(1) with the Secretary of State.~~ ~~If the converting organization is an organization formed under the laws of this state and the converting organization is an organization described in accordance with Section 10A-1-4.02(c)(1).~~ (4), then the converting organization shall file the statement of conversion required under subsection (a) (1) with the Secretary of State.

(d) If the converted organization is a limited liability company, then notwithstanding the converting organization is an

~~organization formed under the laws of this state, and the converting organization is not an organization described in Section 10A-1-4.02(e)(4)(b), then the converting organization shall file the certificate of formation required under subsection (a)(2) with the judge of probate of the county in which a certificate of formation of a limited liability company is filed under this chapter. If the converted organization is a limited liability company, the converting organization is an organization formed under the laws of this state, and the converting organization is an organization described in Section 10A-1-4.02(e)(4), then the converting organization shall file the certificate of formation required under subsection (a)(2) with the Secretary of State in accordance with Section 10A-1-4.02(c)(5), along with the fees specified in Section 10A-1-4.31 subject to subsection (f)(3) hereof. If the converted organization is a limited liability company and the converting organization is not an organization formed under the laws of this state, then the converting organization shall file the certificate of formation required under subsection (a)(2) with the judge of probate of the county in which a certificate of formation of a limited liability company is filed under this chapter.~~

~~(e) In the case of a statement of conversion or a certificate of formation that is to be filed with the judge of probate pursuant to subsections (c) and (d), the judge of probate shall within 10 days transmit a certified copy of the statement of conversion or certificate of formation to the Secretary of State, along with the proper fee. If the converting organization is required to file a statement of conversion and a certificate of formation with the Secretary of State, then the converting organization shall file the statement of conversion and the certificate of formation with the Secretary of State simultaneously.~~

(f) In the case of a statement of conversion that is to be filed with the Secretary of State pursuant to subsections (c):

(1) ~~if the converting organization is, immediately prior to the conversion becoming effective, an organization described in Section 10A-1-4.02(c)(4), but which~~ has a certificate of formation filed with the judge of probate, the Secretary of State shall within 10 days transmit a certified copy of the statement of conversion to the office of the judge of probate in the county in which the certificate of formation for such converting organization was filed along with the proper fee for the probate judge.

(2) if the converting organization is, ~~immediately prior to the conversion becoming effective, an organization described in Section 10A-1-4.02(e)(4), and~~ did not file its certificate of formation with the probate judge, but rather in accordance with this title Section 10A-1-4.02(e)(4) filed its certificate of formation with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of conversion to the office of the judge of probate and shall not collect any fee for the judge of probate.

(3) if the converting organization is, immediately prior to the conversion becoming effective, an organization described in Section 10A-1-4.02(c)(4), but is not required under this title to file its organizational documents with the judge of probate, the Secretary of State shall not transmit a certified copy of the statement of the statement of conversion to the office of the judge of probate and shall not collect any fee for the judge of probate.

(g) In the case of a certificate of formation that is to be filed with the Secretary of State pursuant to subsection (d), the Secretary of State shall not transmit a certified copy of the certificate of formation ~~statement of conversion~~ to the office of the judge of probate and shall not collect any fee for the judge of probate, but

shall collect the fee provided for the Secretary of State in Section 10A-1-4.31(a)(1).

(h) After a conversion becomes effective, if the converted organization is a limited liability company, then all filing instruments required to be filed under this title regarding that converted organization shall be filed with the Secretary of State.

(i) If:

(1) the converting organization is a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(2) the converted organization will be a filing entity or a foreign filing entity registered to conduct activities and affairs in this state;

(3) the name of the converting organization and the converted organization are to be the same, other than words, phrases or abbreviations indicating the type of entity; and

(4) the name of the converted organization complies with Division A of Article 5 of Chapter 1 or Section 10A-1-7.07, as the case may be; then notwithstanding Division B of Article 5 of Chapter 1, no name reservation shall be required and the converted organization shall for all purpose of this title be entitled to utilize

the name of the converting organization without any further action by the converting organization or the converted organization.

(j) A certified copy of any document required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which the converting organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate shall, however, be entitled to collect a filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the converted organization's title to such real property.

(k) A statement of conversion shall be a filing instrument under Chapter 1.

(l) Except as set forth in subsection (f)(2), the filing fees for a statement of conversion shall be the same fee as provided in Section 10A-1-4.31(a)(5).

Comment

This Section is substantially similar to Alabama Limited Partnership Law Section 10A-9-11.04, and is derived from RPLLCA § 1007 and RULLCA § 1008.

It is important to keep in mind that only converting organizations that have been formed under the laws of this state are required to

file the statement of conversion. Thus, the statement of conversion would not be filed by a converting organization that was not formed under the laws of this state. It is also important to keep in mind that either the converting or the converted organization must be a limited liability company, as defined in Section 10A-5A-1.02(j). Thus, the filing requirement of the converting organization that have been formed under the laws of this state seems reasonable as the conversion is touching upon the transaction of a limited liability company either as the converting organization or as the converted organization.

~~*Subsections (c), (d), (e), (f) and (g) were added to clarify the filing location of the filing instruments required to be filed under this Section (and this title in the case of a converted organization that is a limited liability company) in light of the rules provided in § 10A-1-4.02(c)(4), which require all filing instruments required by this title for corporations created by an act of the Legislature prior to the adoption of the Constitution of Alabama of 1901, and for all entities which have resulted from a merger, share exchange, or conversion, which would normally be delivered to the judge of probate for filing shall be delivered to the Secretary of State for filing. Thus, without the clarification provided for Subsections (c),(d), (e), (f) and (g) the statement of conversion might be required to be filed in one location while the certificate of formation might be required to be filed in another location, or the locations for filing might not be clear leading to the filing of such filing instruments in all possible locations. These rules attempt to prevent the unnecessary duplicative filings that might otherwise occur.*~~

~~Since the statement of conversion is really intended to put third parties on notice, and to signal the Secretary of State of the change in entity status of the converting organization, it is important that the filing locations be easily determined. Also, it should be noted that unlike Chapter 1, the conversion under this Chapter becomes effective on the filing of the certificate of formation if the converted organization is a limited liability company, and if the converted organization is not a limited liability company, then the conversion becomes effective as provided by the governing statute of the converted organization. Thus, the statement of conversion is not the effectuating filing. Thus, even if there is some slight confusion as to the filing locations, the effectiveness of the conversion should not be in question.~~

Subsection (d) overrides and supersedes Section 10A-1-4.02(b) in the context of a conversion, and provides for the certificate of formation to be filed with the Secretary of State.

Subsection (e) clarifies that if a converting organization and a converted entity are formed under the laws of this State, that the statement of conversion and the certificate of formation are to be filed with the Secretary of State at the same time.

Subsection (h) was added to clarify the rule of Section 10A-1-4.02(c)(4).

Subsection (i) was added to clarify the current practice in conversions when a filing entity (see Section 10A-1-1.03(27)) and a foreign filing entity (See Section 10A-1-1.03(31)) that is registered to conduct activities and affairs in this state converts into a filing entity or a foreign filing entity that is registered to conduct activities and affairs in this state. Since the converted

organization is, immediately after the conversion, for all purposes the same entity as the converting organization was immediately before the conversion, it only makes sense that the mere change in the identifier of the type of organization that the converting organization and converted organization utilize (without more) should not require the converting organization to reserve its own name with a different identifier. To hold otherwise would lead to the unusual result that the same organization would have to provide permission to itself to use its name. This rule does not apply in the circumstance of a converting organization that does not have a name on the records of the Secretary of State or in the circumstance of a converted organization's name not complying with the rules under Division A of Article 5 of Chapter 1 of Title 10A or Section 10A-1-7.07, as the case may be.

Subsection (j) was added to allow real estate attorneys to file certified copies of the documents required to be filed under this Section in the local probate judge's office in which the converting organization owned real property in order to clear any questions regarding the title to such real property. Subsection (h) makes it clear that lack of such filing will not affect converted organization's title to the real property.

Subsection (k) was added to clarify that a statement of conversion was a filing instrument for purposes of Chapter 1 of this Title.

Subsection (l) was added to set for the filing fees of the statement of conversion which is to be the same as articles of merger, etc., as set forth in Section 10A-1-4.31(a)(5), with the one exception set forth in Subsection (f) where no fee is to be collected for the probate judge.

(Amended Section)
§ 10A-5A-10.04. Effect of conversion.

(a) When a conversion takes effect:

(1) all property owned by the converting organization, or series thereof, remains vested in the converted organization without reservation or impairment and the title to any property vested by deed or otherwise in the converting organization shall not revert or be in any way impaired by reason of the conversion;

(2) all debts, obligations, or other liabilities of the converting organization, or series thereof, continue as debts, obligations, or other liabilities of the converted organization and neither the rights of creditors, nor the liens upon the property of the converting organization shall be impaired by the conversion;

(3) an action or proceeding pending by or against the converting organization, or series thereof, continues as if the conversion had not occurred;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization, or series thereof, remain vested in the converted organization;

(5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect;

(6) except as otherwise agreed, for all purposes of the laws of this state, the converting organization, and any series thereof, shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of the converting organization, or series thereof;

(7) for all purposes of the laws of this state, the rights, privileges, powers, interests in property, debts, liabilities and duties of the converting organization, and all series thereof, shall be the rights, privileges, powers, interests in property, debts, liabilities and duties of the converted organization, and shall not be deemed as a consequence of the conversion, to have been transferred to the converted organization;

(8) if the converted organization is a limited liability company, for all purposes of the laws of this state, the limited liability company shall be deemed to be the same organization as the converting organization, and the conversion shall constitute a continuation of the existence of the converting organization in the form of a limited liability company;

(9) if the converted organization is a limited liability company, the existence of the limited liability company shall be deemed to have commenced on the date the converting organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated, or otherwise came into being; ~~and~~

(10) the conversion shall not affect the choice of law applicable to matters arising prior to conversion, ~~and~~

(11) If the Secretary of State has assigned a unique identifying number or other designation to the converting organization and (i) the converted organization is formed pursuant to the laws of this State or (ii) the converted organization is, within 30 days after the effective date of the conversion, registered to transact business in this State, then that unique identifying number or other designation shall continue to be assigned to the converted organization.

(b) A converted organization that is a foreign entity consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability for which the converting limited liability company, or series thereof, is liable if, before the conversion, the converting limited liability company was subject to

suit in this state on the debt, obligation or other liability. If a converted organization that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then service of process on that converted organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in Section 10A-1-5.35.

Comment

This Section is substantially similar to Alabama Limited Partnership Law Section 10A-9-11.04, and is derived from RPLLC § 1008 and RULLCA § 1009.

(Amended Section)

§ 10A-5A-10.07. Filings required for merger; effective date.

(a) After each constituent organization has approved the plan of merger, a statement of merger must be signed on behalf of:

(1) each constituent limited liability company, as provided in Section 10A-5A-2.04(a); and

(2) each other constituent organization, as provided by its governing statute.

(b) A statement of merger under this section must include:

(1) the name, type of organization, and mailing address of the principal office of each constituent organization and the jurisdiction of its governing statute;

(2) the name, type of organization, and mailing address of the principal office of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created pursuant to the merger, a statement to that effect;

(3) the date of the filing of the certificate of formation, if any, and all prior amendments and the filing office or offices, if any, and where such is filed of each constituent organization which was formed under the laws of this state;

(4) the date the merger is effective under the governing statute of the surviving organization;

(5) if the surviving organization is to be created pursuant to the merger:

(A) if it will be a limited liability company, the limited liability company's certificate of formation; or

(B) if it will be an organization other than a limited liability company, any organizational document that creates the organization that is required to be in a public writing;

(6) if the surviving organization exists before the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public writing;

(7) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(8) if the surviving organization is a foreign organization not authorized to conduct activities and affairs in this state, the street and mailing address of an office for the purposes of Section 10A-5A-10.08(b); and

(9) any additional information required by the governing statute of any constituent organization.

(c) ~~Each constituent organization which is formed under the laws of this state shall file~~ The statement of merger shall be delivered for filing to ~~with~~ the Secretary of State in accordance with Section 10A-1-4.02(c)(1), along with the fees specified in Section 10A-1-4.31, subject to the last sentence of this subsection (c). For each constituent organization which is formed under the laws of this state and which is not, immediately prior to the merger becoming effective, an organization described in Section 10A-1-4.02(c)(4),

the Secretary of State shall within 10 days transmit a certified copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent organization was filed along with the proper fee for the probate judge. For each constituent organization which is formed under the laws of this state and which is, immediately prior to the merger becoming effective, an organization described in Section 10A-1-4.02(c)(4), but which has a certificate of formation filed with the judge of probate, the Secretary of State shall transmit a certified copy of the statement of merger to the office of the judge of probate in the county in which the certificate of formation for each such constituent organization was filed along with the proper fee for the judge of probate. For each constituent organization which (1) is formed under the laws of this state, (2) is, immediately prior to the merger becoming effective, an organization described in Section 10A-1-4.02(c)(4), and (3) did not file its certificate of formation with the probate judge, but rather in accordance with ~~Section 10A-1-4.02(c)(4)~~ this title filed its certificate of formation with the Secretary of State, the Secretary of State shall not transmit a certified copy of the statement of merger to the office of the

judge of probate and shall not collect any fee for the judge of probate.

(d) A merger becomes effective under this article:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) the filing of the statement of merger with the Secretary of State; or

(B) as specified in the statement of merger; or

(2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

(e) After a merger becomes effective, if the surviving organization is a limited liability company, then all filing instruments required to be filed under this Title regarding that surviving organization shall be filed with the Secretary of State.

(f) A certified copy of the statement of merger required to be filed under this section may be filed in the real estate records in the office of the judge of probate in any county in which any constituent organization owned real property, without payment and without collection by the judge of probate of any deed or other transfer tax or fee. The judge of probate, however, shall be entitled

to collect the filing fee of five dollars (\$5). Any such filing shall evidence chain of title, but lack of filing shall not affect the surviving organization's title to such real property.

(g) A statement of merger shall be a filing instrument under Chapter 1.

(h) Except as provided in the last sentence of subsection (c), the filing fees for a statement of merger shall be the same fees as provided in Section 10A-1-4.31(a)(5).

Comment

This Section is substantially similar to Alabama Limited Partnership Law Section 10A-9-11.08, and is derived from RPLLCA § 1003 and RULLCA § 1004.

Subsection (c) was added to clarify the responsibility of the Secretary of State regarding the forwarding of a statement of merger to the appropriate probate judge. In the case of an organization which has its certificate of formation filed with a probate judge, the normal rules of collecting a fee and forwarding a certified copy of the statement of merger would apply. However, in the case of an organization which has filed its certificate of formation solely with the Secretary of State because of the rules provided in Section 10A-1-4.02(c)(4), and other portions of this title, and has not filed a certificate of formation with a probate judge, then the Secretary of State shall not transmit a certificated copy of the statement of merger to a probate judge and shall not collect a fee for the probate judge. Without the clarification

provided for Subsection (c) the statement of merger might be required to be forwarded to a probate judge, the location of which is not determinable.

Subsection (g) was added to clarify that a statement of merger is a filing instrument for purposes of Chapter 1 of this Title.

Subsection (h) was added to set forth the filing fees of the statement of merger which is to be the same as articles of merger, etc., as set forth in Section 10A-1-4.31(a)(5). The only exception to this rule is when no fee is to be collected for the probate judge in the circumstance set forth in the last sentence of Subsection (c).

(Amended Section)

§ 10A-5A-10.08. Effect of merger.

(a) When a merger becomes effective:

(1) the surviving organization continues or, in the case of a surviving organization created pursuant to the merger, comes into existence;

(2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization, or series thereof, that ceases to exist vests in the surviving organization without reservation or impairment and the title to any property vested by deed or otherwise in the surviving organization shall not revert or be in any way impaired by reason of the merger;

(4) all debts, obligations or other liabilities of each constituent organization, or series thereof, that ceases to exist continue as debts, obligations or other liabilities of the surviving organization and neither the rights of creditors, nor any liens upon the property of any constituent organization, shall be impaired by the merger;

(5) an action or proceeding pending by or against any constituent organization, or series thereof, continues as if the merger had not occurred;

(6) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of each constituent organization, or series thereof, vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Article 7 and does not dissolve a series for purposes of Article 11;

(9) if the surviving organization is created pursuant to the merger:

(A) if it is a limited liability company, the certificate of formation becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization existed before the merger, any amendments provided for in the statement of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign entity consents to the jurisdiction of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. If a surviving organization that is a foreign entity fails to designate or maintain a registered agent, or the designated registered agent cannot with reasonable diligence be served, then the service of process on that surviving organization for the purposes of enforcing a debt, obligation, or other liability under this subsection may be made in the same manner and has the same consequences as provided in Section 10A-1-5.35.

Comment

This Section is substantially similar to Alabama Limited Partnership Law Section 10A-9-11.09 and is derived from RPLLC § 1004 and RULLCA § 1005.