

**CHAPTER 425**  
**PARTNERSHIPS**

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## Note

Source notes for part I begin with L 1969, c 247 which completely amended this part.

### "PART I. GENERAL PARTNERSHIPS

**§425-1 Registration and annual statements.** (a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, the partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements prescribed in this chapter. A registration statement shall be filed by a partnership formed under the laws of this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this State. Every registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;
- (3) The mailing address of the partnership's principal office and the information required by section 425R-4(a); provided that if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction shall also be specified;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this State; and
- (5) The fact that none of the partners is either a minor or an incompetent person.

(b) Every domestic and foreign partnership shall file an annual statement with the director which shall contain the information specified in subsection (a)(1), (2), (3), and (5) and a listing of the names of any partner admitted, withdrawn, or who has died during the year; provided that the information provided to satisfy the requirements of subsection (a)(3) shall be current. A domestic or foreign partnership that has filed with the department director a statement of qualification or statement of foreign qualification to register as a limited liability partnership or foreign limited liability partnership shall file the annual report prescribed in section 425-163 in lieu of the annual statement required in this section. The annual statement shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any of the provisions of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, the annual statement shall be filed on or before March 31 of each year and shall reflect the state of the partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, the annual statement shall be filed on or before June 30 of each year and shall reflect the state of the partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, the annual statement shall be filed on or before September 30 of each year and shall reflect the state of the partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, the annual statement shall be filed on or before December 31 of each year and shall reflect the state of the partnership's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign partnership is registered in the same year in which the annual statement is due, the domestic or foreign partnership shall not be required to file an annual statement for that year. Thereafter, the domestic or foreign partnership shall comply with the requirements of this section.

(e) The registration statement of a domestic partnership shall be certified by any partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner. [L 1969, c 247, pt of §1; am L 1971, c 48, §1; am L 1980, c 270, §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1999, c 284, §2; am L 2000, c 219, §51; am L 2001, c 129, §67; am L 2002, c 130, §81; am L 2003, c 124, §47; am L 2006, c 235, §11; am L 2009, c 55, §30]

### **Attorney General Opinions**

A "joint venture" sharing opportunities for profit under a jointly-owned contract may be a partnership. Att. Gen. Op. 66-30.

## Case Notes

Failure to register firm does not affect relations of one partner to another. 11 H. 563.

Partnership arises when. 62 H. 583, 618 P.2d 276.

" **§425-1.5 Filing in office of the director; effective time and date.** (a) A certified and executed partnership registration statement, any other statement or certification, or any judicial decree of dissolution or cancellation, a registration statement for a foreign general partnership, or any other statement or certification relating thereto, shall be delivered to the director for filing. Unless the director finds that any statement or certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

(1) Stamp the word "Filed" and the date of delivery thereof; and

(2) File the document in the director's office.

(b) Upon the filing of a partnership dissolution statement or judicial decree of dissolution in the office of the director, the domestic general partnership shall be dissolved as set forth therein, and upon the effective date of a certificate of withdrawal or a judicial decree thereof, the foreign general partnership shall be withdrawn.

(c) Articles of conversion and articles of merger may specify a delayed effective time and date, and if so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date the document is filed. [L 1995, c 198, pt of §1; am L 2003, c 124, §48]

" **[\$425-1.6] Filing requirements; filing duty of the director.** (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the director.

(b) The document must contain the information required by this chapter. It may contain other information as well.

(c) If the director has prescribed a mandatory form for the document, the document must be in or on the prescribed form.

(d) The director's duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

(1) Affect the validity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect. [L 1995, c 198, pt of §1]

" **§425-1.7 Correcting a filed document.** (a) A domestic or foreign general partnership may correct a document filed with the director if the document:

- (1) Contains incorrect information; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected by preparing and delivering to the director for filing, a statement of correction that:

- (1) Describes the document including its file date or attaches a copy of it to the statement;
- (2) Specifies the incorrect information and the reason it is incorrect or the manner in which the execution was defective;
- (3) Corrects the incorrect information or defective execution; and
- (4) Is executed and certified by a general partner.

(c) A statement of correction is effective on the effective date of the document it corrects, except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, a statement of correction is effective when filed. [L 1995, c 198, pt of §1; am L 1996, c 182, §9; am L 2002, c 130, §82]

" **[\$425-1.8] Execution of statements.** Each statement or document required by this chapter to be filed with the director of commerce and consumer affairs shall be signed and certified by at least one partner. [L 2002, c 130, pt of §5]

" **§425-2 Forms to be furnished by director.** The registration, annual and other statements required by this part shall be filed on forms to be furnished by the director of commerce and consumer affairs. [L 1969, c 247, pt of §1; am L 1980, c 270, §2; am L 1982, c 204, §8; am L 1983, c 124, §17]

" **§425-3 Foreign partnerships, powers and liabilities.** A partnership formed under the laws of any other jurisdiction, shall, on filing a registration statement as required by section 425-1 and subject to continuing compliance with the other provisions of this part, have the same powers and privileges, and be subject to the same disabilities as are by law conferred upon partnerships formed under the laws of the State, provided always that the purposes for which the partnership is formed are



not repugnant to or in conflict with any law of the State. [L 1969, c 247, pt of §1]

" **[§425-3.5] Activities not constituting transacting business.** (a) The activities of a foreign general partnership that do not constitute transacting business in this State within the meaning of this chapter include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign partnership's own securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this chapter, the ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

(c) This section shall not apply in determining the contracts or activities that may subject a foreign general partnership to service of process, taxation, or regulation under any other law of this State. [L 2006, c 235, §1]

" **§425-4 Partnership between husband and wife; prima facie proof.** If any business tax return is filed by, or license to do business is issued in the names of, both husband and wife, such tax return or license shall constitute prima facie proof, insofar as the State or any of its political subdivisions is concerned, that a partnership in such business exists between husband and wife in respect of such business. If the business

tax return is filed by, or license is issued in the name of, one of them only, it shall constitute like proof that the husband and wife are not partners in respect of such business. [L 1969, c 247, pt of §1]

" **§425-5 Minors and incompetent persons.** A minor or incompetent person may not be a partner, but may have a beneficial interest in a partnership through a trustee or duly appointed guardian.

This section shall not apply to the current partners in any duly registered partnership doing business in the State as of July 14, 1969. [L 1969, c 247, pt of §1; am L 2001, c 129, §68]

" **§425-6 Partnership name.** (a) No statement or certificate of any partnership shall be recorded by the director unless the name is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the partnership files with the director any one of the following:

- (1) The written consent from the entity or holder of a reserved or registered name to use and register the same or substantially identical name, and one or more words are added by the partnership to make the name distinguishable from the name on record; or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.

(b) The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited partnership, limited liability company, or limited liability partnership name, trade name, trademark, or service mark.

(c) The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section. [L 1969, c 247, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1984, c 118, §3; am L 1996, c 92, §13; am L 1999, c 249, §23; am L 2000, c 219, §52; am L 2001, c 129, §69; am L 2012, c 58, §13]

## Case Notes

Cited: 37 H. 382; 46 H. 15, 19, 374 P.2d 1.

" **§425-7 Partnership name; change of.** Whenever any partnership shall change its partnership name, it shall within thirty days thereafter file in the office of the director of commerce and consumer affairs a statement showing: (1) the registered name of the partnership; and (2) the new name of the partnership. The statement shall be signed and certified as correct by any partner. [L 1969, c 247, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17]

" **§425-8 Reservation of partnership name.** The exclusive right to the use of a partnership name may be reserved by any person intending to organize a domestic partnership, by any domestic partnership intending to change its name, by any foreign partnership intending to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein, by any foreign partnership authorized to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein and intending to change its name, or by any person intending to organize a foreign partnership and intending to have the partnership to do or carry on any business in the State or to take, hold, sell, demise, or convey real estate or other property therein. Reservations shall be made by filing with the director of commerce and consumer affairs an application in such form as the director may prescribe to reserve a specified partnership name, and payment to the director of a fee equivalent to that paid by a corporation for the same service. If the director finds that the name is available for partnership use, the director shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. The right to the exclusive use of a specified partnership name so reserved may be transferred to any other person or partnership by filing in the office of the director a notice of a transfer executed by the applicant for whom the name is reserved specifying the name and address of the transferee. [L 1969, c 247, pt of §1; am L 1980, c 270, §3; am L 1982, c 204, §8; am L 1983, c 124, §17; gen ch 1985; am L 1989, c 288, §2]

" **§425-9 Statement of dissolution.** Whenever a domestic general partnership is dissolved, and the business is not continued, a statement thereof showing the cause of dissolution shall be filed in the office of the director of commerce and consumer affairs within thirty days after the dissolution. The

statement shall be certified by at least one partner who shall certify that the dissolution was approved by all of the partners. [L 1969, c 247, pt of §1; am L 1980, c 270, §4; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1999, c 284, §3; am L 2003, c 124, §49]

### Case Notes

Assignment of partnership interest operates as dissolution of partnership. 1 H. 121. Sale by one of the partners of that partner's interest dissolves partnership. 6 H. 162.

Agreement as to accounting on winding up partnership. 4 H. 553.

" **§425-10 Taxes, etc., a prior lien on partnership property on dissolution.** Upon dissolution of a general partnership, any lawful taxes, imposts, license fees or assessments for which the partnership, or any partner in respect thereof, is liable shall constitute a prior lien upon the assets of the partnership but not as against the interest of those creditors who have prior recorded liens. [L 1969, c 247, pt of §1]

" **§425-11 Record of statements.** The director shall keep books or files in which the information required by this chapter to be filed with the director shall be recorded. The books or files shall be open to public inspection. [L 1969, c 247, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; gen ch 1985; am L 2002, c 130, §83]

" **§425-12 Fee for filing documents and issuing certificates.**

(a) The following fees shall be paid to the director of commerce and consumer affairs upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$10;
- (3) Partnership dissolution statement, \$10;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$10;
- (6) Application for certificate of withdrawal, \$5;
- (7) Statement of correction, \$10;
- (8) Reservation of name, \$10;
- (9) Transfer of reservation of name, \$10;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;

- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$10;
- (14) Special handling fee for review of any general partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate;
- (16) Special handling fee for certification of documents, \$10;
- (17) Special handling fee for review of articles of conversion or merger, \$75; and
- (18) For filings relating to registered agents, the fees established by section 425R-2.
  - (b) The director shall charge and collect:
    - (1) For furnishing a certified copy of any document, instrument, or paper relating to a general partnership, \$10 for the certificate and affixing the seal thereto; and
    - (2) At the time of any service of process on the director as agent for service of process of a general partnership, \$10, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

(c) All fees collected under this section shall be managed in accordance with section 26-9(1). [L 1969, c 247, pt of §1; am L 1979, c 162, §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1985, c 189, §7; am L 1988, c 141, §48; am L 1992, c 6, §7; am L 1996, c 181, §3; am L 1999, c 129, §13 and c 280, §16; am L 2000, c 219, §53; am L 2001, c 129, §70; am L 2002, c 130, §84; am L 2004, c 116, §6 and c 117, §3; am L 2006, c 184, §16; am L 2009, c 55, §31]

### **Cross References**

Modification of fees, see §92-28.

" **§425-13 Personal liability and penalty.** (a) If a partner neglects or fails to comply with any provision of this part, all partners shall be liable jointly and severally for all the debts and liabilities of the partnership, and may be severally sued therefor, without the necessity of joining the other partners in any action or suit, and shall also severally forfeit to the State \$25 for each and every month while the default shall continue, to be recovered by action brought in the name of the State by the director of commerce and consumer affairs; provided that as to the forfeiture penalty, the director may, for good cause shown, reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this part, knowing the same to be false in any material particular, shall be fined not more than \$5,000.

(c) Any person who negligently but without intent to defraud signs or certifies as correct any statement or certificate filed pursuant to this part, which statement or certificate is false in any material particular, shall be punished by a fine not exceeding \$500. [L 1969, c 247, pt of §1; am L 1980, c 270, §5; am L 1982, c 204, §8; am L 1983, c 124, §17]

### Case Notes

Each member of nonregistered partnership firm may be held liable for partnership debts and sued severally therefor. 9 H. 507; 22 H. 455, 457.

Only penalties for nonregistration of copartnership are fine and liability of one partner for all partnership debts, and where firm is defendant, plaintiff is relieved of consequences of nonjoinder of partner as defendant. Unregistered partnership not liable for individual or personal debt of one partner. 11 H. 198.

Noncompliance with statute does not make partnership illegal and does not affect right of one partner to restrain late copartner from collecting assets contrary to their agreement. 11 H. 563; 22 H. 196, 198.

" **§425-14 Cancellation of registration.** (a) The director may commence a proceeding to cancel the registration of a domestic or foreign general partnership if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(b) Within two years after the administrative cancellation of a domestic general partnership under this section, the registration statement of the domestic general partnership may be reinstated by the director upon written application executed

by any partner of the domestic general partnership. The application shall:

- (1) Recite the name of the domestic general partnership and the effective date of its administrative cancellation;
- (2) Contain all statements due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the domestic general partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(c) Within the applicable reinstatement period, should the name of the domestic general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the administratively canceled domestic general partnership pursuant to the amendment provisions of this chapter.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative cancellation and the domestic general partnership may resume its business as if the administrative cancellation had never occurred. [L 1969, c 247, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1999, c 249, §24; am L 2000, c 219, §54; am L 2001, c 129, §71; am L 2002, c 130, §85; am L 2003, c 124, §50; am L 2006, c 235, §12; am L 2009, c 23, §9; am L 2012, c 58, §14]

" **§425-15 Not applicable to corporations.** Nothing in this part contained shall apply to corporations or incorporated companies. [L 1969, c 247, pt of §1]

" **§425-16 Fees, government realizations.** All fees received by virtue of this part shall be accounted for as part of the revenue of the State. [L 1969, c 247, pt of §1]

" **§425-17 Withdrawal procedure for foreign general partnership.** (a) Any foreign general partnership which has qualified to transact business in this State may withdraw and

surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal. Any such general partnership shall file in the office of the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

- (1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;
- (2) That the foreign general partnership is not transacting business in this State;
- (3) That the foreign general partnership surrenders its authority to transact business in this State;
- (4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
- (5) The dates that notice of the foreign general partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide, or a statement that publication was not made;
- (6) That all taxes, debts, obligations, and liabilities of the foreign general partnership in this State have been paid and discharged or that adequate provision has been made therefor;
- (7) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and
- (8) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

(b) Upon the filing of the application for withdrawal, and after the payment of a fee of \$10, the director shall issue a certificate of withdrawal, which shall be effective as of the date of the filing of the application for withdrawal, and the authority of the foreign general partnership to transact business in this State shall then cease. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices and processes may be made on any agent of the



general partnership within this State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it. [L 1969, c 247, pt of §1; am L 1980, c 270, §6; am L 1982, c 204, §8; am L 1983, c 124, §17; gen ch 1985; am L 1993, c 174, §8; am L 1996, c 181, §4; am L 2000, c 219, §55; am L 2001, c 129, §72]

" **§425-18 Registered agent.** Each domestic partnership or foreign partnership shall continuously maintain in this State a registered agent, who shall have a business address in this State and may be:

- (1) An individual who resides in this State;
- (2) A domestic entity authorized to transact business or conduct affairs in this State; or
- (3) A foreign entity authorized to transact business or conduct affairs in this State. [L 2002, c 130, pt of §5; am L 2009, c 55, §32]

" **§425-19 Designation or change of registered agent.** (a) A partnership that does not already have a registered agent shall designate its registered agent by complying with the requirements of section 425R-4.

(b) A partnership may change its registered agent by complying with the requirements of section 425R-7.

(c) If the registered agent changes its name, its address, or its type or jurisdiction of organization, the agent shall comply with the requirements of section 425R-8 or 425R-9, whichever is applicable. [L 2002, c 130, pt of §5; am L 2009, c 55, §33]

" **§425-20 Resignation of registered agent.** A registered agent may resign from the registered agent's appointment by complying with the requirements of section 425R-10. [L 2002, c 130, pt of §5; am L 2009, c 55, §34]

## "PART II. UNIFORM LIMITED PARTNERSHIP ACT

**§§425-21 to 52 REPEALED.** L 1989, c 288, §3.

### Cross References

Similar provisions, see chapter 425D.

" **§425-21 Service on partnership.** (a) Service of any notice or process authorized by law that is issued against any domestic or foreign partnership by any court, judicial or

administrative officer, or board may be made in the manner provided by law upon any registered agent or partner of the partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or partner cannot be found, upon any person who is found in charge of the property, business, or office of the partnership within the jurisdiction of the court, officer, or board.

(b) If no partner or other person in charge of the property, business, or office of the partnership can be found within the State, and the partnership has not filed with the director of commerce and consumer affairs pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of the State may be served, or the person named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to the partnership at its principal office.

(c) Service by registered or certified mail is perfected at the earliest of:

- (1) The date the partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a partnership in any other manner permitted by law. [L 2002, c 130, pt of §5; am L 2003, c 124, §51; am L 2006, c 184, §17]

## **PART II. UNIFORM LIMITED PARTNERSHIP ACT--REPEALED**

**§§425-21 to 52 REPEALED.** L 1989, c 288, §3.

### **Cross References**

Similar provisions, see chapter 425E.

## **"PART III. FOREIGN LIMITED PARTNERSHIPS--REPEALED**

**§§425-71 to 77 REPEALED.** L 1989, c 288, §3.

### **Cross References**

Similar provisions, see chapter 425E, article 9.

**"PART IV. UNIFORM PARTNERSHIP ACT [OLD]--REPEALED**

**§§425-101 to 143 REPEALED. L 1999, c 284, §5.**

**PART IV. UNIFORM PARTNERSHIP ACT**

General Provisions

**§425-101 [Definitions.]** As used in this part, unless the context otherwise requires:

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

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

- (1) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
- (2) A comparable order under federal, state, or foreign law governing insolvency.

"Director" means the director of commerce and consumer affairs.

"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

"Entity" includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

"Foreign limited liability partnership" means a partnership that:

- (1) Is formed under laws other than the laws of this State; and
- (2) Has the status of a limited liability partnership under those laws.

"Individual" means a natural person.

"Limited liability partnership" means a partnership that has filed a statement of qualification under section 425-152 and does not have a similar statement in effect in any other jurisdiction.

"Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under

section 425-109, a predecessor law, or comparable law of another jurisdiction.

"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

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

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

"Person" includes any individual or entity.

"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

"Statement" means a registration or annual statement filed under section 425-1, a statement of correction filed under section 425-1.7, a statement of change filed under section 425-7, a statement of dissolution filed under section 425-9, a statement of denial filed under section 425-115, a statement of dissociation filed under section 425-136, a statement of qualification under section 425-153, a statement of foreign qualification under section 425-158, an amendment, or any other document filed under this chapter.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance. [L 1999, c 284, pt of §1; am L 2000, c 218, §3; am L 2004, c 121, §28; am L 2006, c 184, §18]

### Case Notes

Purported intent set out in plaintiff's declaration to promote a romantic and/or anticipated marital relationship, although including financial decisions, did not constitute an intent to create a partnership. 129 H. 507 (App.), 304 P.3d 648 (2013).

" **§425-102 Knowledge and notice.** (a) A person knows a fact if the person has actual knowledge of it.

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

(1) Knows of it;

(2) Has received a notification of it; or

(3) Has reason to know it exists from all of the facts known to the person at the time in question.

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

(d) A person receives a notification when the notification:

- (1) Comes to the person's attention; or
- (2) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

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

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. [L 1999, c 284, pt of §1]

" **§425-103 Effect of partnership agreement; nonwaivable provisions.** (a) Except as otherwise provided in subsection (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this part governs relations among the partners and between the partners and the partnership.

- (b) The partnership agreement shall not:
- (1) Vary the rights and duties under section 425-105 except to eliminate the duty to provide copies of statements to all of the partners;
  - (2) Unreasonably restrict the right of access to books and records under section 425-122(b);

- (3) Eliminate the duty of loyalty under section 425-123(b) or 425-132(b)(3), but:
  - (A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
  - (B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (4) Unreasonably reduce the duty of care under section 425-123(c) or 425-132(b)(3);
- (5) Eliminate the obligation of good faith and fair dealing under section 425-123(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (6) Vary the power to dissociate as a partner under section 425-131(a), except to require the notice under section 425-130(1) to be in writing;
- (7) Vary the right of a court to expel a partner in the events specified in section 425-130(5);
- (8) Vary the requirement to wind up the partnership business in cases specified in section 425-138(4), (5), or (6); or
- (9) Restrict rights of third parties under this part. [L 1999, c 284, pt of §1; am L 2000, c 218, §4]

" **§425-104 Supplemental principles of law.** (a) Unless displaced by particular provisions of this part, the principles of law and equity supplement this part.

(b) If an obligation to pay interest arises under this part and the rate is not specified, the rate is that specified in section 478-2. [L 1999, c 284, pt of §1]

" **§425-105 Recording and notification of statements.** (a) A certified copy of a statement that has been filed in the office of the director and recorded in the bureau of conveyances has the effect provided for recorded statements in this part. A recorded statement that is not a certified copy of a statement filed in the office of the director does not have the effect provided for recorded statements in this part.

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

partner or other person does not limit the effectiveness of the statement as to a person not a partner. [L 1999, c 284, pt of §1]

" **§425-106 Governing law.** (a) Except as otherwise provided in subsection (b), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) The law of this State governs relations among the partners, and between the partners and the partnership, and the liability of partners for an obligation of a limited liability partnership. [L 1999, c 284, pt of §1; am L 2000, c 218, §5; am L 2004, c 121, §29]

#### **Case Notes**

Partnership did not exist as a matter of law where plaintiff and defendant did not have an agreement to share profits; a \$1.5 million release fee was interest on a loan and the loan commitment and accompanying letter did not evince an intent by the parties to share profits inasmuch as they lacked any language commonly utilized in partnership agreements, such as "partnership", "partner", "profits", and did not intimate any community of interest, or co-ownership, or sharing of profits, tending to show the relationship of partners. 111 H. 286, 141 P.3d 459 (2006).

" **§425-107 Partnership subject to amendment or repeal of chapter.** A partnership governed by this part is subject to any amendment to or repeal of this chapter. [L 1999, c 284, pt of §1]

#### **Case Notes**

Partnership did not exist as a matter of law where plaintiff and defendant did not have an agreement to share profits; a \$1.5 million release fee was interest on a loan and the loan commitment and accompanying letter did not evince an intent by the parties to share profits inasmuch as they lacked any language commonly utilized in partnership agreements, such as "partnership", "partner", "profits", and did not intimate any community of interest, or co-ownership, or sharing of profits, tending to show the relationship of partners. 111 H. 286, 141 P.3d 459 (2006).

"Nature of Partnership

**§425-108 Partnership as entity.** (a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 425-153. [L 1999, c 284, pt of §1; am L 2000, c 218, §6]

" **§425-109 Formation of partnership.** (a) Except as otherwise provided in subsection (b), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this part, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this part.

(c) In determining whether a partnership is formed, the following rules apply:

- (1) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
- (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
- (3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:
  - (A) Of a debt by installments or otherwise;
  - (B) For services as an independent contractor or of wages or other compensation to an employee;
  - (C) Of rent;
  - (D) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
  - (E) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
  - (F) For the sale of the goodwill of a business or other property by installments or otherwise. [L 1999, c 284, pt of §1]



Cited, where defendant adequately alleged that the friends formed an association to carry on as co-owners a business for profit and defendant thus sufficiently alleged the existence of a partnership; defendants' motion for judgment on the pleadings as to defendant's claims of breach of fiduciary duty based on partnership law denied. 410 F. Supp. 2d 919 (2005).

" **§425-110 Partnership property.** Property acquired by a partnership is property of the partnership and not of the partners individually. [L 1999, c 284, pt of §1]

" **§425-111 When property is partnership property.** (a) Property is partnership property if acquired in the name of:

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

(b) Property is acquired in the name of the partnership by a transfer to:

- (1) The partnership in its name; or
- (2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

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

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes. [L 1999, c 284, pt of §1]

"Relations of Partners to  
Persons Dealing with Partnership

**§425-112 Partner agent of partnership.** Subject to the effect of a partnership registration statement under section 425-1:

- (1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.
- (2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners. [L 1999, c 284, pt of §1]

" **§425-113 Transfer of partnership property.** (a)

Partnership property may be transferred as follows:

- (1) Subject to the effect of a partnership registration statement filed under section 425-1, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.
  - (2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
  - (3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.
- (b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 425-112 and:
- (1) As to a subsequent transferee who gave value for property transferred under subsection (a)(1) and (2), proves that the subsequent transferee knew or had

received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

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

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

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document. [L 1999, c 284, pt of §1]

" **§425-114 Partnership registration statement.** (a) A filed registration statement supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

- (1) Except for transfers of real property, a grant of authority contained in a filed registration statement is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in the filed registration statement. A filed cancellation of a limitation on authority revives the previous grant of authority.
- (2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed registration statement recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the bureau of conveyances of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy

of the filed registration statement containing the limitation on authority is of record in the bureau of conveyances.

(c) Except as otherwise provided in subsections (a) and (b) and sections 425-136 and 425-142, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed registration statement. [L 1999, c 284, pt of §1]

" **§425-115 Statement of denial.** A partner or other person named as a partner in a filed statement of partnership authority may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in section 425-114(a) and (b). [L 1999, c 284, pt of §1]

" **§425-116 Partnership liable for partner's actionable conduct.** (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss. [L 1999, c 284, pt of §1]

" **§425-117 Partner's liability.** (a) Except as otherwise provided in subsections (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership. [L 1999, c 284, pt of §1]

" **§425-118 Actions by and against partnership and partners.**

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and, to the extent not inconsistent with section 425-117, any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership shall not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner shall not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 425-117 and:

- (1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
- (2) The partnership is a debtor in bankruptcy;
- (3) The partner has agreed that the creditor need not exhaust partnership assets;
- (4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or
- (5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 425-119. [L 1999, c 284, pt of §1]

" **§425-119 Liability of purported partner.** (a) If a person, by word or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is

liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

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

(c) Except as otherwise provided in subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons. [L 1999, c 284, pt of §1]

#### "Relations of Partners to Each Other and to Partnership

**§425-120 Partner's rights and duties.** (a) Each partner is deemed to have an account that is:

- (1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
- (2) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

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

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

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

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

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

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

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under section 425-112. [L 1999, c 284, pt of §1]

" **§425-121 Distributions in kind.** A partner has no right to receive, and shall not be required to accept, a distribution in kind. [L 1999, c 284, pt of §1]

" **§425-122 Partner's rights and duties with respect to information.** (a) A partnership shall keep its books and records, if any, at its chief executive office.

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

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required

for the proper exercise of the partner's rights and duties under the partnership agreement or this part; and

- (2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances. [L 1999, c 284, pt of §1]

" **§425-123 General standards of partner's conduct.** (a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (b) and (c).

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

- (1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
- (2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
- (3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

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

(d) A partner shall discharge the duties to the partnership and the other partners under this part or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

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

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

(g) This section applies to a person winding up the partnership business as the personal or legal representative of



the last surviving partner as if the person were a partner. [L 1999, c 284, pt of §1]

### Case Notes

Partners in a joint venture have a statutory duty of loyalty and good faith to refrain from self-dealing; a breach of fiduciary duty in this context is not barred by the economic loss rule because the duty arises not only from the contract but also from partnership principles. 780 F. Supp. 2d 1061 (2011).

" **§425-124 Actions by partnership and partners.** (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

- (1) Enforce the partner's rights under the partnership agreement;
- (2) Enforce the partner's rights under this part, including:
  - (A) The partner's rights under section 425-120, 425-122, or 425-123;
  - (B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 425-133 or enforce any other right under sections 425-130 to 425-132 or sections 425-133 to 425-137; or
  - (C) The partner's right to compel a dissolution and winding up of the partnership business or enforce any other right under sections 425-138 to 425-144; or
- (3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law. [L 1999, c 284, pt of §1]

" **§425-125 Continuation of partnership beyond definite term or particular undertaking.** (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the

same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue. [L 1999, c 284, pt of §1]

"Transferees and Creditors of Partner

**§425-126 Partner not co-owner of partnership property.** A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily. [L 1999, c 284, pt of §1]

" **§425-127 Partner's transferable interest in partnership.** The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property. [L 1999, c 284, pt of §1]

" **§425-128 Transfer of partner's transferable interest.** (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

- (1) Is permissible;
- (2) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and
- (3) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right:

- (1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and
- (3) To seek under section 425-138 a judicial determination that it is equitable to wind up the partnership business.

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

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

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

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer. [L 1999, c 284, pt of §1]

" **§425-129 Partner's transferable interest subject to charging order.** (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

- (1) By the judgment debtor;
- (2) With property other than partnership property, by one or more of the other partners; or
- (3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This part does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership. [L 1999, c 284, pt of §1]

"Partner's Dissociation

**§425-130 Events causing partner's dissociation.** A partner is dissociated from a partnership upon the occurrence of any of the following events:

- (1) The partnership's receipt of notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;
- (2) An event agreed to in the partnership agreement as causing the partner's dissociation;
- (3) The partner's expulsion pursuant to the partnership agreement;
- (4) The partner's expulsion by the unanimous vote of the other partners if:
  - (A) It is unlawful to carry on the partnership business with that partner;
  - (B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;
  - (C) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed articles of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the articles of dissolution or no reinstatement of its charter or its right to conduct business; or
  - (D) A partnership that is a partner has been dissolved and its business is being wound up;
- (5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:
  - (A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;
  - (B) The partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 425-123; or
  - (C) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;
- (6) The partner's:
  - (A) Becoming a debtor in bankruptcy;

- (B) Executing an assignment for the benefit of creditors;
  - (C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or
  - (D) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a partner who is an individual:
    - (A) The partner's death;
    - (B) The appointment of a guardian or general conservator for the partner; or
    - (C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;
  - (8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;
  - (9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or
  - (10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate. [L 1999, c 284, pt of §1]

" **§425-131 Partner's power to dissociate; wrongful dissociation.** (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 425-130(1).

- (b) A partner's dissociation is wrongful only if:
  - (1) It is in breach of an express provision of the partnership agreement; or
  - (2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

- (A) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under section 425-130(6) to (10) or wrongful dissociation under this subsection;
- (B) The partner is expelled by judicial determination under section 425-130(5);
- (C) The partner is dissociated by becoming a debtor in bankruptcy; or
- (D) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it wilfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners. [L 1999, c 284, pt of §1]

" **§425-132 Effect of partner's dissociation.** (a) If a partner's dissociation results in a dissolution and winding up of the partnership business, sections 425-138 to 425-144 apply; otherwise, sections 425-133 to 425-137 apply.

- (b) Upon a partner's dissociation:
  - (1) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 425-140;
  - (2) The partner's duty of loyalty under section 425-123(b)(3) terminates; and
  - (3) The partner's duty of loyalty under section 425-123(b)(1) and (2) and duty of care under section 425-123(c) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 425-140. [L 1999, c 284, pt of §1]

"Partner's Dissociation When  
Business Not Wound Up

**§425-133 Purchase of dissociated partner's interest.** (a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 425-138, the partnership shall cause the dissociated partner's interest in the partnership to be

purchased for a buyout price determined pursuant to subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under section 425-144(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under section 425-131(b), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 425-134.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c).

(f) If a deferred payment is authorized under subsection (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) shall be accompanied by the following:

- (1) A statement of partnership assets and liabilities as of the date of dissociation;
- (2) The latest available partnership balance sheet and income statement, if any;
- (3) An explanation of how the estimated amount of the payment was calculated; and
- (4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under

subsection (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to section 425-124(b)(2), to determine the buyout price of that partner's interest, any offsets under subsection (c), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (g). [L 1999, c 284, pt of §1]

" **§425-134 Dissociated partner's power to bind and liability to partnership.** (a) For two years after a partner dissociates without resulting in a dissolution and winding up of the

partnership business, the partnership is bound by an act of the dissociated partner which would have bound the partnership under section 425-112 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and
- (3) Is not deemed to have had knowledge under section 425-114(b) or notice under section 425-136(c).

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which



the partnership is liable under subsection (a). [L 1999, c 284, pt of §1]

" **§425-135 Dissociated partner's liability to other persons.**

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

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership within two years after the partner's dissociation, only if the partner is liable for the obligation under section 425-117 and at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated partner was then a partner;
- (2) Did not have notice of the partner's dissociation; and
- (3) Is not deemed to have had knowledge under section 425-114(b) or notice under section 425-136(c).

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. [L 1999, c 284, pt of §1]

" **§425-136 Statement of dissociation.** (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of section 425-114(a) and (b).

(c) For the purposes of sections 425-134(a)(3) and 425-135(b)(3), a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed. [L 1999, c 284, pt of §1]

" **§425-137 Continued use of partnership name.** Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the

partners or the partnership continuing the business. [L 1999, c 284, pt of §1]

"Winding Up Partnership Business

**§425-138 Events causing dissolution and winding up of partnership business.** A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

- (1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under section 425-130(2) to (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;
- (2) In a partnership for a definite term or particular undertaking:
  - (A) Within ninety days after a partner's dissociation by death or otherwise under section 425-130(6) to (10) or wrongful dissociation under section 425-131(b), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to section 425-131(b)(2) constitutes the expression of that partner's will to wind up the partnership business;
  - (B) The express will of all of the partners to wind up the partnership business; or
  - (C) The expiration of the term or the completion of the undertaking;
- (3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;
- (4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;
- (5) On application by a partner, a judicial determination that:
  - (A) The economic purpose of the partnership is likely to be unreasonably frustrated;
  - (B) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

- (C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or
- (6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:
  - (A) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or
  - (B) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer. [L 1999, c 284, pt of §1]

" **§425-139 Partnership continues after dissolution.** (a)

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

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

- (1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and
- (2) The rights of a third party accruing under section 425-141(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected. [L 1999, c 284, pt of §1]

" **§425-140 Right to wind up partnership business.** (a)

After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, a court of competent jurisdiction for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 425-144, settle disputes by mediation or arbitration, and perform other necessary acts. [L 1999, c 284, pt of §1]

" **§425-141 Partner's power to bind partnership after dissolution.** Subject to section 425-142, a partnership is bound by a partner's act after dissolution that:

- (1) Is appropriate for winding up the partnership business; or
- (2) Would have bound the partnership under section 425-112 before dissolution, if the other party to the transaction did not have notice of the dissolution. [L 1999, c 284, pt of §1]

" **§425-142 Statement of dissolution.** (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed registration for the purposes of section 425-114(a) and is a limitation on authority for the purposes of section 425-114(b).

(c) For the purposes of sections 425-112 and 425-141, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a registration statement which will operate with respect to a person not a partner as provided in section 425-114(a) and (b) in any transaction, whether or not the transaction is appropriate for winding up the partnership business. [L 1999, c 284, pt of §1]

" **§425-143 Partner's liability to other partners after dissolution.** (a) Except as otherwise provided in subsection (b) and section 425-117, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 425-141.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under section 425-141(2) by an

act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability. [L 1999, c 284, pt of §1]

" **§425-144 Settlement of accounts and contributions among partners.** (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 425-117.

(c) If a partner fails to contribute the full amount required under subsection (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 425-117. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 425-117.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 425-117.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to

represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership. [L 1999, c 284, pt of §1]

"Miscellaneous Provisions--Repealed

**§425-145 REPEALED.** L 2000, c 218, §7.

"Limited Liability Partnerships

**§425-151 Name.** The name of a limited liability partnership shall contain "Registered Limited Liability Partnership" or "Limited Liability Partnership", or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP". [L 2000, c 218, pr of §1; am L 2001, c 241, §1]

" **[§425-152] Limited liability partnerships; formation.** (a) A partnership may become a limited liability partnership if the partnership:

- (1) Obtains the partnership's approval of the terms and conditions upon which the partnership shall become a limited liability partnership;
- (2) Files a registration statement with the director pursuant to part I, either prior to, or simultaneously with the filing of a statement of qualification as provided by this subpart; and
- (3) Is in good standing pursuant to part I.

(b) The terms and conditions upon which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement; provided that where a partnership agreement specifies the vote necessary to amend provisions of the partnership agreement controlling obligations to contribute to the partnership, approval shall be by the vote necessary to amend those provisions.

(c) The filing of a statement of qualification pursuant to this subpart establishes that a partnership has satisfied all conditions precedent to qualification of the partnership as a limited liability partnership. [L 2000, c 218, pt of §1]

" **§425-153 Statement of qualification.** A statement of qualification shall contain:

- (1) The name of the partnership;
- (2) A statement that the partnership elects to be a limited liability partnership; and
- (3) The mailing address of the partnership's initial principal office and the information required by section 425R-4(a). [L 2000, c 218, pt of §1; am L

2001, c 129, §73; am L 2002, c 130, §86; am L 2004, c 121, §30; am L 2009, c 55, §35]

" **§425-154 Amending and restating, amending, and restating the statement of qualification; voluntary cancellation.** (a) A statement of qualification may be amended and restated at any time for any proper purpose determined by the partners. The amended and restated statement of qualification shall set forth:

- (1) All of the operative provisions of the statement of qualification as previously amended; and
- (2) A statement that the amended and restated statement of qualification supersedes the original statement of qualification and all amendments thereto.

The amended and restated statement of qualification shall be delivered to the director for filing. The director may certify the amended and restated statement of qualification as the statement of qualification currently in effect, without including the information required to be filed by paragraph (2).

(b) A statement of qualification shall be amended by delivering a statement of amendment of limited liability partnership to the director for filing. The statement of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date on which the limited liability partnership's statement of qualification was filed; and
- (3) The amendment to the statement of qualification.

(c) A restated statement of qualification may be executed and filed in the same manner as a statement of amendment. The restated statement of qualification shall set forth all of the operative provisions of the statement of qualification as previously amended, together with a statement that the restated statement of qualification correctly sets forth without change the corresponding provisions of the statement of qualification as previously amended, and that the restated statement of qualification supersedes the original statement of qualification and all amendments thereto. The director may certify the restated statement of qualification currently in effect, without including the information required to be set forth in the restatement by this subsection.

(d) An amended, restated, or amended and restated statement of qualification shall be effective when filed.

(e) A limited liability partnership validly created under this chapter may voluntarily cancel its limited liability status with an amendment to a statement of qualification. [L 2000, c 218, pt of §1; am L 2001, c 241, §2; am L 2002, c 130, §87; am L 2003, c 124, §52]

" **§425-155 Status as limited liability partnership; cancellation.** (a) The status of a partnership as a limited liability partnership shall be effective upon the filing of the statement of qualification.

(b) Status as a limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14, revoked pursuant to section 425-164, or voluntarily canceled pursuant to section 425-154. Cancellation of a statement of qualification shall be effective upon filing.

(c) The status of a partnership as a limited liability partnership and the liability of its partners shall not be affected by errors in or amendments made to the information required to be contained in the statement of qualification under section 425-153. [L 2000, c 218, pt of §1; am L 2001, c 241, §3]

" **§425-156 Foreign limited liability partnerships.** (a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter, file a statement of foreign qualification with the director, and submit a certificate of good standing or other similar record duly authenticated by the secretary of state or other official having custody of limited liability partnership records in the state or country under whose law it was formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) A foreign limited liability partnership shall not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this State. [L 2000, c 218, pt of §1; am L 2001, c 241, §4; am L 2002, c 130, §88; am L 2003, c 124, §53]

" **[§425-157] Law governing foreign limited liability partnership.** (a) The law under which a foreign limited liability partnership is formed shall govern relations among the partners, between the partners and the partnership, and the liability of partners for obligations of the partnership.

(b) A statement of foreign qualification shall not be construed to authorize a foreign limited liability partnership to engage in any business or exercise any power prohibited to a limited liability partnership in this State. [L 2000, c 218, pt of §1]

" **§425-158 Statement of foreign qualification.** A statement of foreign qualification shall contain:



- (1) The name of the foreign limited liability partnership, which name complies with the law of the state or other jurisdiction under which the foreign limited liability partnership is formed;
- (2) A statement that the partnership elects to be a foreign limited liability partnership; and
- (3) The mailing address of the partnership's principal office and the information required by section 425R-4(a). [L 2000, c 218, pt of §1; am L 2001, c 241, §5; am L 2002, c 130, §89; am L 2004, c 121, §31; am L 2006, c 184, §19 and c 235, §13; am L 2009, c 55, §36]

" **§425-159 Amending, restating, and amending and restating the statement of foreign qualification; voluntary cancellation.**

(a) A foreign limited liability partnership shall amend, restate, and amend and restate the statement of qualification in the same manner prescribed for domestic limited liability partnerships in section 425-154.

(b) A foreign limited liability partnership validly elected under this chapter may voluntarily cancel its limited liability status in an amendment to a statement of qualification. [L 2000, c 218, pt of §1; am L 2001, c 241, §6; am L 2003, c 124, §54]

" **[§425-160] Status as qualified foreign limited liability partnership; cancellation.** (a) The status of a partnership as a qualified foreign limited liability partnership shall be effective upon the filing of the statement of foreign qualification.

(b) Status as a qualified foreign limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14 or revoked pursuant to section 425-164. Cancellation of a statement of foreign qualification is effective when it is filed.

(c) The status of a partnership as a foreign limited liability partnership and the liability of its partners shall not be affected by errors in or amendments made to the information required to be contained in the statement of foreign qualification under section 425-158. [L 2000, c 218, pt of §1]

" **[§425-161] Foreign limited liability partnerships; effect of failure to qualify.** (a) A foreign limited liability partnership engaged in the transaction of business in this State shall not maintain an action or proceeding in this State unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification shall not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by the transaction of business in this State without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this State without a statement of foreign qualification, the director shall be its agent for service of process with respect to a right of action arising out of a business transaction in this State. [L 2000, c 218, pt of §1]

" **§425-162 Foreign limited liability partnerships; activities not constituting the transaction of business.** (a)

Activities of a foreign limited liability partnership that do not constitute the transaction of business include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
- (8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
- (10) Transacting business in interstate commerce.

(b) The ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes the transaction of business in this State.

(c) This section shall not apply to a determination of contracts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State. [L 2000, c 218, pt of §1; am L 2002, c 130, §90]

" **§425-163 Annual report.** (a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) The mailing address of the partnership's principal office and the information required by section 425R-4(a); provided that if the partnership is formed under the laws of any other jurisdiction, the name of the other jurisdiction shall also be specified;
- (3) The name and address of each partner; and
- (4) The fact that none of the partners is either a minor or an incompetent person.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for a domestic or foreign limited liability partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, the annual report shall be filed on or before March 31 of each year and shall reflect the state of the partnership's affairs as of January 1 of the year of filing;
- (2) April 1 and June 30, the annual report shall be filed on or before June 30 of each year and shall reflect the state of the partnership's affairs as of April 1 of the year of filing;
- (3) July 1 and September 30, the annual report shall be filed on or before September 30 of each year and shall reflect the state of the partnership's affairs as of July 1 of the year of filing; and
- (4) October 1 and December 31, the annual report shall be filed on or before December 31 of each year and shall reflect the state of the partnership's affairs as of October 1 of the year of filing;

provided that if a domestic or foreign limited liability partnership is registered in the same year in which the annual report is due, the domestic or foreign limited liability partnership shall not be required to file an annual report for that year. Thereafter, the domestic or foreign limited liability partnership shall comply with the requirements of this section.

(e) Each annual report shall be certified as correct by any partner. [L 2000, c 218, pt of §1; am L 2002, c 130, §91; am L 2003, c 124, §55; am L 2006, c 235, §14; am L 2009, c 55, §37]

" **§425-164 Revocation of statement of qualification.** (a) The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership if:

- (1) The partnership fails to:
  - (A) Pay any fees prescribed by law;
  - (B) File its annual report for a period of two years;
  - (C) Appoint and maintain an agent for service of process as required; or
  - (D) File a statement of a change in the name or business address of the agent as required by chapter 425R; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The director shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice shall be mailed to the partnership at its last known address appearing in the records of the director. The notice shall specify the annual report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation shall not be effective if the specified annual report is filed and the specified fee is paid before the effective date of the revocation.

(b) Revocation under subsection (a) shall only affect a partnership's status as a limited liability partnership or foreign limited liability partnership, and shall not be deemed an event of dissolution of the partnership.

(c) A partnership whose statement of qualification has been administratively revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall:

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfiled;

- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the department of taxation indicating that all taxes owed by the partnership have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(d) A reinstatement under subsection (c) shall relate back to and take effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership shall continue upon reinstatement as if the revocation had never occurred. [L 2000, c 218, pt of §1; am L 2002, c 130, §92; am L 2003, c 124, §56; am L 2006, c 235, §15; am L 2009, c 23, §10 and c 55, §38; am L 2012, c 58, §15]

" **§§425-165, 166 REPEALED.** L 2002, c 130, §§115, 116.

" **§425-167 Correction of filed documents.** (a) A domestic limited liability partnership or foreign limited liability partnership may correct a document filed with the director if the document:

- (1) Contains an incorrect statement; or
- (2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected by preparing and delivering to the director for filing, a statement of correction that:

- (1) Identifies the document, including its filing date, or attaches a copy of it to the statement;
- (2) Identifies the incorrect statement, if any;
- (3) Explains why the incorrect statement, if any, is incorrect, or describes the manner in which execution of the document was defective; and
- (4) Corrects the incorrect statement or defective execution.

(c) A certificate of correction is effective retroactive to the effective date of the document corrected except as to persons relying on the uncorrected document and adversely affected by the correction, as to which persons, a certificate of correction is effective from the time of filing. [L 2000, c 218, pt of §1; am L 2002, c 130, §93]

" **§425-168 Fee for recording.** (a) The director shall collect the following fees for the following limited liability partnership documents:

- (1) Annual report, \$25;
- (2) Statement of qualification, \$50;

- (3) Statement of foreign qualification, \$100;
- (4) Statement of correction, amendment, restatement, or amendment and restatement, \$25;
- (5) Certificate of good standing, \$5;
- (6) Articles of conversion or merger, \$100;
- (7) For any other certificate, statement, or document, \$25;
- (8) Certification of domestic or foreign partnership, \$10; and
- (9) For filings relating to registered agents, the fees established by section 425R-2.

(b) The following special handling fees shall be assessed by the director for expeditious handling and review of the following documents:

- (1) Statement of qualification, \$25;
  - (2) Statement of correction, amendment, restatement, or amendment and restatement, \$25;
  - (3) Annual report, \$25;
  - (4) Certification of domestic or foreign limited liability partnership, \$10;
  - (5) Certificate of good standing for domestic or foreign limited liability partnership, \$10;
  - (6) Articles of conversion or merger for domestic or foreign limited liability partnership, \$75;
  - (7) Statement of foreign qualification, \$25;
  - (8) Statement of correction, amendment, restatement, or amendment and restatement of foreign limited liability partnership, \$25;
  - (9) Annual report, \$25; and
  - (10) For any other certificate or document authorized by this subpart, \$25.
- (c) The director shall charge and collect:
- (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited liability partnership, \$10 for the certificate and affixing the seal thereto; and
  - (2) At the time of any service of process on the director as agent for service of process of a limited liability partnership, \$10, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

(d) All fees collected under this section shall be managed in accordance with section 26-9(1). [L 2000, c 218, pt of §1; am L 2001, c 129, §74; am L 2002, c 130, §94; am L 2004, c 116, §7 and c 117, §4; am L 2009, c 55, §39]

" **[\$425-169] Revocation if instrument dishonored.** The director may revoke the filing of a document filed under this subpart if the director determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the State for payment. Documents revoked under this section shall be returned and notice of revocation shall be given to the filing party by regular mail. Failure to give or receive the notice shall not invalidate revocation under this section. Revocation of a filing under this section shall not affect an earlier filing. [L 2000, c 218, pt of §1]

" **§425-170 REPEALED.** L 2002, c 130, §117.

" **[\$425-171] Action by director.** The director may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this subpart. [L 2000, c 218, pt of §1]

" **[\$425-172] Personal liability and penalty.** (a) Each partner of a partnership that neglects or fails to substantially comply with any provision of this subpart shall severally forfeit to the State \$25 for each and every month while the default continues, to be recovered by action brought in the name of the State by the director; provided that the director, for good cause shown, may reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this subpart, or who presents any statement or certificate for filing, knowing that the statement or certificate is false in any material respect and with the intent to deceive or defraud, shall be guilty of a class C felony.

(c) Any person who negligently, but without intent to deceive or defraud, signs or certifies as correct any statement or certificate filed pursuant to this subpart, that is in fact false, shall be subject to a civil fine not to exceed \$500. [L 2000, c 218, pt of §1]

" **[\$425-173] Transition rules for limited liability partnerships and foreign limited liability partnerships under prior law.** (a) All entities that were limited liability partnerships registered under the law in effect on the date preceding July 1, 2000, shall be converted into and be deemed partnerships that have registered under part I and filed a statement of qualification of limited liability partnership pursuant to this subpart.

(b) All entities that were foreign limited liability partnerships registered under the law in effect on the date

preceding July 1, 2000, shall be converted into and be deemed foreign limited liability partnerships that have registered under part I and filed a statement of foreign qualification pursuant to this subpart. [L 2000, c 218, pt of §1]

#### **Revision Note**

"July 1, 2000" substituted for "the effective date of this subpart".

#### **"PART V. LIMITED LIABILITY PARTNERSHIP ACT--REPEALED**

##### **Note**

Part heading on page 468 of the main volume is reproduced to correct printing error.

**§§425-151 to 180 REPEALED.** L 2000, c 218, §8.

##### **Note**

L 2000, c 219, §§56 to 59 purports to amend §§425-164, 169, 171, and 172.

Part heading on page 468 of the main volume is reproduced to correct printing error.

#### **PART VI. [MISCELLANEOUS PROVISIONS]**

**§425-191 REPEALED.** L 2002, c 41, §29.

" **§425-192 Conversion into and from partnerships or limited liability partnerships.** (a) A domestic partnership or limited liability partnership may adopt a plan of conversion and convert to a foreign partnership, limited liability partnership, or any other entity if:

- (1) The domestic partnership or limited liability partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections 425-203 and 428-904 to 428-906 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;



- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign partnership, limited liability partnership, or other entity may adopt a plan of conversion and convert to a domestic partnership or limited liability partnership if the conversion is permitted by and complies with the laws of the state or country in which the foreign partnership, limited liability partnership, or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial partnership or limited liability partnership agreement of the converted entity if the converted entity is a partnership or limited liability partnership. [L 1999, c 280, pt of §4; am L 2001, c 129, §75; am L 2002, c 41, §18]

" **§425-193 Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 425-192 and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:

- (A) The name, type of entity, and state or country of incorporation, formation, or organization of the converting and converted entities;
  - (B) That a plan of conversion has been approved in accordance with section 425-192;
  - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
  - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or the converted entity after the conversion on written request and without cost, to any partner, shareholder, owner, or member of the converting entity or the converted entity;
- and

- (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director.

(c) The converted entity, if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion. [L 1999, c 280, pt of §4; am L 2001, c 129, §76; am L 2009, c 23, §11]

" **§425-194 REPEALED.** L 2003, c 124, §104.

" **§425-195 Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;

- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted;
- (7) A shareholder, partner, member, or other owner of the converted entity, shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
  - (A) Agreed in writing to be liable for such debts or obligations;
  - (B) Was liable under applicable law prior to the effective date of the conversion for such debts or obligations; or
  - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign general partnership, limited liability partnership, or other business entity incorporated, formed, or organized under a law other than the law of this State, the converted entity shall file with the director:
  - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic general partnership;
  - (B) An irrevocable appointment of a resident of this State including the resident's street address, as its agent to accept service of process in any such proceeding; and
  - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and

- (9) If the converting partnership is a domestic general partnership, or limited liability partnership, section 425-203 shall apply as if the converted entity were the survivor of a merger with the converting entity. [L 1999, c 280, pt of §4; am L 2002, c 41, §19; am L 2006, c 235, §16]

" **§425-196 Administrative order of abatement for infringement of partnership name.** (a) Any domestic partnership in good standing formed under this chapter or foreign partnership authorized to do business in this State under this chapter claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held [in] accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
- (A) Require the entity to register a new trade name with the director; and
  - (B) Require the entity to conduct business in this State under this new trade name; or
- (2) (A) Require the entity to change its registered name;
- (B) Require the entity to register the new name with the director; and
  - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind

up its affairs in accordance with chapter 414, 414D, 415A, 425, 425E, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602. [L 1999, c 250, §4; am L 2002, c 40, §63; am L 2003, c 210, §8]

" **[\$425-197] Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [L 2000, c 218, pt of §2]

" **[\$425-198] Short title.** This chapter may be cited as the Uniform Partnership Act (1977). [L 2000, c 218, pt of §2]

#### **Revision Note**

Sections 425-197 and 425-198 were enacted as a new part designated as "Miscellaneous Provisions". Instead, the sections have been added to this part with the same heading.

#### **"[PART VII.] MERGERS**

**§425-201 Definitions.** As used in this part:

"Association" means an association organized under chapter 421 or 421C.

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

"Organizing articles" means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

"Other business entity" means a corporation, limited liability company, limited partnership, or association. [L 2002, c 41, pt of §3; am L 2003, c 124, §57; am L 2004, c 121, §32]

" **§425-202 Foreign mergers.** (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger, duly authenticated by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a). [L 2002, c 41, pt of §3; am L 2003, c 124, §58; am L 2004, c 121, §33]

" **[§425-203] Merger of general partnerships and limited liability partnerships.** (a) Pursuant to a plan of merger, a domestic general partnership, foreign general partnership, domestic limited liability partnership, or foreign limited liability partnership may merge with one or more domestic professional corporations or with one or more general partnerships, limited liability partnerships, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign general partnerships or limited liability partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

- (b) The plan of merger shall set forth:
- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
  - (2) The name of the surviving entity with or into which the other entity or entities will merge;
  - (3) The terms and conditions of the merger;

- (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
  - (5) The street address of the surviving entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
  - (6) Amendments, if any, to the organizing articles of the surviving entity or, if no such amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.
- (c) A plan of merger may:
- (1) Amend the partnership agreement of a general partnership or limited liability partnership; or
  - (2) Adopt a new partnership agreement, for a general partnership or limited liability partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant [to] this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a general partnership's or limited liability partnership's partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent partnership or limited liability partnership to the merger (including a partnership or a limited liability partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving general partnership or limited liability partnership.

(d) A plan of merger may set forth other provisions relating to the merger.

- (e) A plan of merger shall be approved:
- (1) In the case of a domestic general partnership or limited liability partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all partners; and
  - (2) In the case of a foreign general partnership or foreign limited liability partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership or foreign limited liability partnership is organized.

(f) If a foreign general partnership or foreign limited liability partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign general partnership or foreign limited liability partnership is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any partnership or limited liability partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the constituent partnership; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect on the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date. [L 2002, c 41, pt of §3]

" **§425-204 Articles of merger.** (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each general partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the



entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;

- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
  - (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
  - (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
  - (5) A statement that includes:
    - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;
    - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any proceeding pursuant to this paragraph, that includes the resident's street address in this State; and
    - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.
- (b) If the articles of merger provide for a future effective date, and:
- (1) The plan of merger is amended to change the future effective date;
  - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
  - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date; then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated. [L 2002, c 41, pt of §3; am L 2003, c 124, §59; am L 2004, c 121, §34; am L 2006, c 235, §17]

" **[\$425-205] Effect of merger.** (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A partner of a surviving partnership or limited liability partnership shall be liable for all obligations of a party to the merger for which the partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a general partnership or limited liability partnership that is not the surviving entity in the merger shall not require the general partnership or limited liability partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter. [L 2002, c 41, pt of §3]

" **§425-206 REPEALED.** L 2004, c 121, §59.