CHAPTER 42

Uniform Limited Partnership Act

Editor’s Note

1986 Act No. 533, Section 3, provides as follows:

“The comments following each code section . . . are included for analytical and information purposes only and must not be considered to be part of the sections themselves.”

ARTICLE 1

General Provisions

**SECTION 33‑42‑10.** Short title.

This chapter may be cited as the “Uniform Limited Partnership Act”.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. This chapter is derived from the Revised Uniform Limited Partnership Act (RULPA) originally approved by the National Conference of Commissioners on Uniform State Laws in August 1976 (referred to hereafter as the “1976 Uniform Act”) and revised in 1985 (referred to hereafter as the “1985 RULPA Amendments”). RULPA is intended to modernize the Uniform Limited Partnership Act of 1916 (referred to hereafter as the “1916 Uniform Act”) while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners that is not available in the corporate form. Moreover, the relationship among partners is consensual, and requires a degree of privity that forces the general partner to seek approval of the partners (sometimes unanimous approval) under circumstances that corporate management would find impractical. The limited partnership was not intended to be an alternative in all cases where corporate form is undesirable for tax or other reasons, and the new act was not intended to make it so. The new act clarifies many ambiguities and fills interstices in the prior uniform law by adding more detailed language and mechanics. In addition, some important substantive changes and additions have been made.

ARTICLE 1 provides a list of all of the definitions used in the act, integrates the use of limited partnership names with corporate names, and provides for an office and agent for service of process in the state of organization. All of these provisions are new. ARTICLE 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. ARTICLEs 1 and 2 reflect an important change in the statutory scheme, recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership) and merely reflects matters as to which creditors and other third parties should be put on notice.

ARTICLE 3 deals with the single most difficult issue facing lawyers who use the limited partnership form of organization: the powers and potential liabilities of limited partners. Section 303 (Section 33‑42‑430) lists a number of activities in which a limited partner may engage without being held to have so participated in the control of the business that he assumes the liability of a general partner. Moreover, it goes on to confine the liability of a limited partner who merely steps over the line of participation in control to persons who actually know of that participation in control. General liability for partnership debts is imposed only on those limited partners who are, in effect, “silent general partners”. With that exception, the provisions of RULPA that impose liability on a limited partner who has somehow permitted third parties to be misled to their detriment as to the limited partner’s true status confine that liability to those who have actually been misled. The provisions relating to general partners are collected in ARTICLE 4.

ARTICLE 5, the finance section, makes some important changes from the 1916 Uniform Act. The contribution of services and promises to contribute cash, property, or services are now explicitly permitted as contributions. And those who fail to perform promised services are required, in the absence of an agreement to the contrary, to pay the value of the services stated in the certificate of limited partnership.

A number of changes from the 1916 Uniform Act are made in Article 6, dealing with distributions from and the withdrawal of partners from the partnership. For example, Section 608 (Section 33‑42‑1080) creates a specific statute of limitations on the right of a limited partnership to recover all or part of a contribution that has been returned to a limited partner, whether to satisfy creditors or otherwise.:

The assignability of partnership interests is dealt with in considerable detail in Article 7. The provisions relating to dissolution appear in Article 8, which, among other things, imposes a new standard for seeking judicial dissolution of a limited partnership.

One of the thorniest questions for those who operate limited partnerships in more than one state has been the status of the partnership in a state other than the state of organization. Neither existing case law nor administrative practice makes it clear whether the limited partners continue to possess their limited liability and which law governs the partnership. Article 9 deals with this problem by providing for registration of foreign limited partnerships and specifying choice‑of‑law rules.

Finally, Article 10 of the new act authorizes derivative actions to be brought by limited partners.:

2. South Carolina has had statutes regulating limited partnerships since 1837. The original statute, 6 Stat. 578, was amended several times before 1960, when the 1916 Uniform Act was enacted. See Act No. 848 of 1960. The 1916 Uniform Act was codified as Chapter 43 of the 1976 South Carolina Code. In 1982 provisions requiring registration of foreign limited partnerships transacting business in this State derived from the 1976 Uniform Act were enacted in Act 306 of 1982 and codified as Sections 33‑43‑310 through 33‑43‑380 of the 1976 South Carolina Code. Act 491 of 1984 enacted the 1976 Uniform Act Official Text with some minor modifications, most notably Section 33‑42‑300. Act 491 of 1984 inadvertently repealed Chapter 41 of Title 33, which is the South Carolina Uniform Partnership Act, rather than Chapter 43 of Title 33, which contained the 1916 Uniform Act, as amended by Act 306 of 1982. This error was officially corrected by Act 11 of 1985, which also established June 27, 1984, as the effective date of Act 491 of 1984. This act incorporates the 1985 RULPA Amendments, plus several additional provisions based on limited partnership statutes from other states that had made modifications to RULPA. The most significant change made by the 1985 RULPA Amendments and this act is the use of a new short form certificate of limited partnership which eliminates the necessity of including in the certificate information about the limited partners and other matters required by the 1916 Uniform Act and the 1976 Uniform Act Official Text. See the Comments to Section 33‑42‑210 for further explanation of this concept.

3. The Comments which follow each section incorporate the Official Comments to RULPA prepared by the RULPA drafting committee (with respect to the 1985 RULPA Amendments, the Comments incorporate the September 13, 1985, draft of the proposed changes to the 1976 Uniform Act Official Text Comments), modified to accommodate the differences between RULPA and this chapter. The portion of the Comments taken from the Official Comments is reprinted with permission of the National Conference of Commissioners on Uniform State Laws.

These Comments are intended to assist those who use and interpret this chapter, including courts, to determine the intention of the drafters and the interrelation between the various sections, the 1916 Uniform Act, and other statutory provisions. As such, the Comments serve basically the same function and purpose as the Comments to the Uniform Commercial Code. See Farnsworth and Honnold, Commercial Law (3rd ed. 1976), pp. 8‑10. They can be particularly useful in a state like South Carolina because we have virtually no case law on limited partnerships. The Comments, however, are not part of the statutory law and therefore are not binding on any court or other adjudicatory body.

4. For persons wishing to conduct research on limited partnerships, a good starting point is Volume 6 of the Uniform Laws Annotated, which contains the Official Text of the 1916 Uniform Act, the 1976 Uniform Act as amended by the 1985 RULPA Amendments, and case and law review citations. A selected bibliography of partnership resource materials is found in Walthall, Rheubam, Rollinson & Talley, Partnership Law: A Selected Bibliography, 35 Bus. Law. 659 (1980); and Morgenstern and Kempin, Partnership Bibliography: 1980‑1984, 41 Bus. Law. 705 (1986). A very instructive analysis of Act 491 of 1984, which enacted the 1976 Uniform Act Official Text is found in Knight, The Revised Uniform Limited Partnership Act in South Carolina: A Topical Review of Salient Features, 36 S.C.L. Rev. 531 (1985).

5. In 1983, the Internal Revenue Service amended Treasury Regulations Section 301.7701‑2 in three respects, the most important of which is the amendment to Section 301.7701‑2(a)(5) granting limited partnerships formed under the 1976 Uniform Act Official Text the same status under the tax classification regulations as limited partnerships formed under the 1916 Uniform Act. See T.D.7889, 48 F.R.18804 (1983). The Internal Revenue Service has not issued any opinion on the tax effect of the 1985 RULPA Amendments as of the time these Comments were written, but based on Revenue Rulings involving limited partnership statutes from states having one or more of the provisions included in the 1985 RULPA Amendments, it seems that the 1985 Amendments can be classified as being tax neutral. Competent tax counsel should be consulted on the tax classification issue as well as all other tax issues relating to limited partnerships.

Derivation: Section 1102 of RULPA.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Partnership Section 255 , Introductory Comments.

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

**SECTION 33‑42‑20.** Definitions.

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

(1) “Certificate of limited partnership” means the certificate referred to in Section 33‑42‑210, any certificate of limited partnership filed with the office of the Secretary of State in connection with the formation of a limited partnership under any applicable statute of this State prior to the effective date of this chapter, and any such certificate as amended, or restated.

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

(3) “Event of withdrawal of a general partner” means an event that causes a person to cease to be a general partner as provided in Section 33‑42‑620.

(4) “Foreign limited partnership” means a partnership formed under the laws of any state other than this State and having as partners one or more general partners and one or more limited partners.

(5) “General partner” means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6) “Limited partner” means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(7) “Limited partnership” and “domestic limited partnership” mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

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

(9) “Partnership agreement” means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) “Partnership interest” means a partner’s share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11) “Person” means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section contains several definitions not found in the 1916 Uniform Act. The definitions in this section clarify a number of uncertainties in existing law and make certain changes. The following Comments explain important technical points with respect to several of the definitions.

Contribution. This definition makes it clear that a present contribution of services and a promise to make a future payment of cash, contribution of property, or performance of services are permissible forms for a contribution. When the form of contribution is a promise to make a future payment, such promise is only enforceable when set out in a writing signed by the limited partner. See Section 33‑42‑820. Accordingly, the present services or promise must be accorded a value in the partnership agreement or the partnership records required to be kept pursuant to Section 33‑42‑60, and, in the case of a promise, that value may determine the liability of a partner who fails to honor his agreement. Section 3 of the 1916 Uniform Act did not permit a limited partner’s contribution to be in the form of services, although the prohibition did not apply to general partners.

Foreign limited partnership. This chapter only deals with foreign limited partnerships formed under the laws of another “state” of the United States [see subdivision (12)]. The exclusion of entities formed under the laws of foreign countries from this chapter was not intended to suggest that their “limited partners” should not be accorded limited liability by the courts of this State. That question would be resolved by the choice of law rules of the forum state.

General partner. This definition recognizes the separate functions of the partnership agreement and the certificate of limited partnership. The partnership agreement establishes the basic grant of management power to the persons named as general partners; but because of the passive role played by the limited partners, the separate, formal step of embodying that grant of power in the certificate of limited partnership has been preserved to emphasize its importance.

Limited partner. Unlike the case of general partners, this definition provides for admission of limited partners through the partnership agreement and does not require mention of such limited partners in the certificate of limited partnership. The 1916 Uniform Act and the 1976 Uniform Act text required the naming of a limited partner in the certificate of limited partnership as a prerequisite for limited partner status. The elimination of the requirement that limited partners be named in the certificate of limited partnership makes unnecessary the need to amend the certificate of limited partnership with the admission or withdrawal of each limited partner. Thus, the risk of exposure to general liability of any limited partner who is erroneously excluded from the certificate of limited partnership is also eliminated.

Partnership agreement. The prior uniform law did not refer to the partnership agreement, assuming that all important matters affecting limited partners would be set forth in the certificate of limited partnership. Under modern practice, however, it has been common for the partners to enter into a comprehensive partnership agreement, only part of which was required to be included in the certificate of limited partnership. As reflected in Section 201 (Section 33‑42‑210), the certificate of limited partnership is confined principally to matters respecting the addition and withdrawal of general partners and other important issues are left to the partnership agreement.

Partnership interest. This definition is new and is intended to define what it is that is transferred when a partnership interest is assigned.

Derivation: Section 101 of RULPA.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 2, Limited Partnership; Registered Limited Liability Partnership.

S.C. Jur. Partnerships and Joint Ventures Section 50, Distinction Between Limited Partnerships and General Partnerships.

S.C. Jur. Partnerships and Joint Ventures Section 58, Requirement of General Partner.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 4:5 , Checklist‑Drafting Limited Partnership Agreement.

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

South Carolina Legal and Business Forms Section 4:32 , Property and Assets‑Contributions to Partnership Capital.

**SECTION 33‑42‑30.** Name.

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

(1) shall contain the words “limited partnership” or the abbreviation “LP”, or “L.P.”;

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

(3) may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this State or licensed or registered as a foreign corporation or limited partnership in this State; and

(4) which complies with subsection (1) is not in violation of the provision in Section 33‑4‑101 of the South Carolina Business Corporation Act of 1988 authorizing the use of “limited” or any abbreviation of that word in the name of a corporation.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1; 1988 Act No. 444, Section 3.

COMMENTS

1. Subdivision (2) of this section has been carried over from Section 5 of the 1916 Uniform Act with certain editorial changes. The remainder of this section is new and primarily reflects the intention to integrate the registration of limited partnership names with that of corporate names. Cf. Section 33‑5‑10 [ see Section 33‑4‑101] of the 1976 Code. See also subdivision (4) of this section. Accordingly, Section 33‑42‑210 provides for central, statewide filing of certificates of limited partnership, and subdivisions (2) and (3) of this section contain standards to be applied by the Secretary of State in determining whether the certificate should be filed.

2. The RULPA Official Text requires the use of the words “limited partnership” without abbreviation. Several states that have adopted RULPA authorize the use of the abbreviation “LP” or “L.P.”. These abbreviations are widely used in practice and authorizing their use will facilitate registration of foreign limited partnerships in this State. See Section 33‑42‑1640.

SOUTH CAROLINA REPORTERS’ COMMENTS

Section 33‑5‑10(e) of the 1981 South Carolina Business Corporation Act prohibited the use of the term “limited” by a limited partnership. This provision is not part of this act. However, Section 33‑5‑101 in Section 2 of this act specifically authorizes a corporation’s use of the term “limited” in its name. Section 33‑42‑30(e) of the South Carolina Uniform Limited Partnership Act (Act 533 of 1986) has been amended to avoid any inference that new Section 33‑5‑101 might preclude the use of the designation “limited” as part of the name of a limited partnership formed or authorized to transact business in South Carolina.

Derivation: Section 102 of RULPA.

CROSS REFERENCES

Assumed name of limited partnership, see Section 33‑42‑45.

Filing by limited partnerships formed before June 27, 1984 of certificates of amendment bringing them into compliance with certain requirements of this section, see Section 33‑42‑220.

Liability of a limited partner who permits his name to be used in the name of a limited partnership, see Section 33‑42‑430.

Provision that a foreign limited partnership may register with the Secretary of State under any name that could be registered by a domestic limited partnership under this section, see Section 33‑42‑1640.

Reservation of name for limited partnership, see Section 33‑42‑40.

Library References

Partnership 358.

Westlaw Topic No. 289.

C.J.S. Partnership Section 415.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 51, Name.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 4:5 , Checklist‑Drafting Limited Partnership Agreement.

South Carolina Legal and Business Forms Section 4:10 , Domestic Limited Partnership‑Certificate of Limited Partnership.

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

Attorney General’s Opinions

There is no statutory requirement that assumed name adopted for use by limited partnership include words “limited partnership” or abbreviation “L.P.” or “LP”. 1990 Op Atty Gen No. 90‑2.

Limited partnership is not limited to registration of only one assumed name. 1990 Op Atty Gen No. 90‑2.

**SECTION 33‑42‑40.** Reservation of name.

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

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

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

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

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

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Once having so reserved a name, the same applicant may not again reserve the same name until more than sixty days after the expiration of the last one hundred twenty day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of transfer, executed by the applicant for whom the name was received and specifying the name and address of the transferee.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section parallels a similar provision applicable to corporations. See Section 33‑5‑20 [see Section 33‑4‑102]. The 1916 Uniform Act did not provide for registration of names.

Derivation: Section 103 of RULPA.

CROSS REFERENCES

Provision that the assumed name of a limited partnership shall not be deceptively similar to any reserved name, see Section 33‑42‑45.

Library References

Partnership 358.

Westlaw Topic No. 289.

C.J.S. Partnership Section 415.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 51, Name.

Attorney General’s Opinions

There is no statutory requirement that assumed name adopted for use by limited partnership include words “limited partnership” or abbreviation “L.P.” or “LP”. 1990 Op Atty Gen No. 90‑2.

Limited partnership is not limited to registration of only one assumed name. 1990 Op Atty Gen No. 90‑2.

**SECTION 33‑42‑45.** Assumed name.

(a) This section rather than Sections 39‑13‑10 through 39‑13‑40 of the 1976 Code governs the registration of assumed names of limited partnerships formed or transacting business in South Carolina.

(b) A limited partnership that conducts or intends to conduct business in this State under a name other than the name shown in its certificate of limited partnership (or in the case of a foreign limited partnership that has registered in this State, the name shown in its certificate of registration to transact business in this State) shall file with the Secretary of State an assumed name certificate which shall state the name shown on its certificate of limited partnership (or certificate of registration in the case of a foreign limited partnership), the name under which the limited partnership’s business is to be conducted, which assumed name shall not be deceptively similar to the name of any domestic or foreign limited partnership authorized to transact business in this State, or to any reserved name pursuant to Section 33‑42‑40 and the address of the partnership’s registered office required to be maintained in this State.

(c) Such filing shall be effective, unless sooner terminated by the filing of a certificate of termination or by the cancellation of the certificate of limited partnership (or in the case of foreign limited partnership by cancellation of the certificate of registration to transact business in this State), for a period expiring on December thirty‑first of the fifth full calendar year following the year in which it is filed. It may be extended for additional consecutive periods of five full calendar years each by the filing of a new assumed name certificate not earlier than ninety days preceding the expiration of any such period. The Secretary of State shall notify a limited partnership of the impending expiration of its assumed name, by first‑class mail addressed to the partnership’s registered office as shown on the partnership’s certificate of limited partnership (or certificate of registration in the case of a foreign limited partnership that has registered in this State), no later than three calendar months before the initial or subsequent five‑year period will expire.

(d) The Secretary of State shall maintain current lists, alphabetically arranged, of the partnership registrants and assumed names permitted hereunder.

(e) The failure of any limited partnership to file the assumed name certificate required by subsection (b) does not:

(i) impair the validity of any contract or act of the limited partnership;

(ii) prevent the limited partnership from maintaining or defending any action, suit, or proceeding in any court of this State; or

(iii) result in any limited partner becoming liable as a general partner solely by reason of the failure of the limited partnership to file the required assumed name certificate.

HISTORY: 1986 Act No. 533, Section 1.

COMMENTS

This section is not part of RULPA; but it is consistent with RULPA’s intention to integrate the registration of limited partnership names with that of corporation names. See Comment 1 to Section 33‑42‑30. It tracks the assumed name statute in the South Carolina Business Corporation Act. See Section 33‑5‑35 [see Section 33‑4‑101]. The South Carolina Code contains an assumed name statute that technically applies to “all mercantile and industrial” limited partnerships (see Sections 39‑13‑10 through 39‑13‑40) that requires filing in the office of the clerk of court of the county in which the partnership’s principal place of business is located and also requires the posting of a sign containing the name of each partner “alongside the entrance of each place of business”. In addition to a fine of one dollar and imprisonment for five days for each day of noncompliance, Section 39‑13‑40 states that “each partner shall be severally liable” for violations. Most lawyers are unaware of these provisions and noncompliance is widespread. This section, which replaces Sections 39‑13‑10 through 39‑13‑40 with respect to all limited partnerships formed in South Carolina and all foreign limited partnerships registered in this State (See Article 9 of this chapter) that operate under an assumed name, will require a simple one‑page form that will be readily accessible to creditors and other persons wishing to determine the official legal name of a limited partnership.

Derivation: No RULPA counterpart. See Comment.

CROSS REFERENCES

Provision requiring compliance with this section by foreign limited partnerships transacting business in this State, see Section 33‑42‑1640.

Library References

Partnership 358.

Westlaw Topic No. 289.

C.J.S. Partnership Section 415.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Intellectual Property Section 59, Limited Partnerships.

S.C. Jur. Partnerships and Joint Ventures Section 51, Name.

S.C. Jur. Partnerships and Joint Ventures Section 84, Name.

Attorney General’s Opinions

There is no statutory requirement that assumed name adopted for use by limited partnership include words “limited partnership” or abbreviation “L.P.” or “LP”. 1990 Op Atty Gen No. 90‑2.

Limited partnership is not limited to registration of only one assumed name. 1990 Op Atty Gen No. 90‑2.

**SECTION 33‑42‑50.** Specified office and agent.

Each limited partnership shall continuously maintain in this State:

(1) an office in this State, which may but need not be a place of its business in this State, at which shall be kept the records required by Section 33‑42‑60 to be maintained;

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this State, a domestic corporation, or a foreign corporation authorized to do business in this State.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section requires that a limited partnership have certain minimum contacts with the state of organization, i.e., an office at which the constitutive documents and basic financial information is kept and an agent for service of process. It parallels similar provisions applicable to corporations. See Section 33‑5‑40 [see Section 33‑5‑101].

Derivation: Section 104 of RULPA.

CROSS REFERENCES

Filing by limited partnerships formed before June 27, 1984 of certificates of amendment bringing them into compliance with certain requirements of this section, see Section 33‑42‑220.

Issuance of a decree of dissolution by the circuit court of the county in which a limited partnership’s office designated pursuant to this section is located, upon application by or for a partner, see Section 33‑42‑1420.

Petitions to the circuit court of the county in which the limited partnership’s office, designated under this section, is located, where the petitioner seeks execution of a certificate, see Section 33‑42‑250.

Records which must be kept in the office maintained under this section, see Section 33‑42‑60.

Requirement that certificate of limited partnership set forth the address of the office and the name and address of the agent for service of process required by this section, see Section 33‑42‑210.

Withdrawal of a limited partner upon six months’ notice to each general partner at his address on the books at the partnership’s offices which are required to be maintained pursuant to this section, see Section 33‑42‑1030.

Winding up of the affairs of a limited partnership by the circuit court of the county in which the partnership’s office designated pursuant to this section is located, upon the application of any partner, his legal representative, or assignee, see Section 33‑42‑1430.

Library References

Partnership 375.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 429 to 437.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 55, Agent.

S.C. Jur. Partnerships and Joint Ventures Section 56, Records.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

**SECTION 33‑42‑60.** Records.

(a) Each limited partnership shall keep at the office referred to in Section 33‑42‑50(1) the following:

(1) a current list of the full name and last known mailing address of each partner separately identifying the general partners (in alphabetical order) and the limited partners (in alphabetical order);

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

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

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

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

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

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

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

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

(b) Records required to be kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

(c) A person who is not a partner is entitled to the information required by paragraphs (1) and (5) of subsection (a) if he gives the limited partnership written notice of his demand at least five business days before the date on which he wishes to inspect and copy the information to which he is entitled by this subsection and his demand is made in good faith and for a proper purpose. The limited partnership may impose a reasonable charge, covering the costs of labor and material for copies of any documents provided pursuant to this subsection. The charge may not exceed the estimated cost of production or reproduction of the records.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. This section was not in the 1916 Uniform Act. In view of the passive nature of the limited partner’s position, it has been widely felt that limited partners are entitled to access to certain basic documents, including the certificate of limited partnership, any partnership agreement, and a writing setting forth certain basic terms and conditions of the limited partnership, which, under the 1916 Uniform Act and the 1976 Uniform Act Official Text, were required to be in the certificate of limited partnership. It is in the partnership records required to be kept pursuant to this section that much of the information previously required to be set forth in the certificate of limited partnership is now to be kept. The names of the limited partners and information concerning partner capital contributions were, for example, required to be included in the certificate.

2. In view of the great diversity among limited partnerships, it was thought inappropriate to require a standard form of financial report, and this section does no more than require retention of tax returns and any other financial statements that have been prepared for the three most recent years.

3. This section differs from the RULPA Official Text in that it requires a “mailing” address rather “business” address for all partners. A mailing address is a broader term and several states that enacted RULPA have adopted this variation. Cf. Section 36‑9‑402 (1) (UCC Article 9 financing statements must provide “a mailing address” of the debtor).

4. Subsection (c) is not part of the RULPA Official Text. This subsection authorizes an existing or future creditor or litigant to obtain basic information about the limited partners. The requirement that the demand be made in good faith and for a proper purpose is designed to prevent, for example, a member of the public from seeking information about the limited partners in order to solicit the limited partners with respect to other investments. Cases interpreting similar shareholder inspection rights provisions should be relevant authority by analogy.

Derivation: Section 105 of RULPA.

CROSS REFERENCES

Allocation of profits and losses on the basis of the value (as stated in records kept pursuant to this section) of contributions made by each partner, where the partnership agreement does not provide for allocation, see Section 33‑42‑830.

Distribution of cash and other assets on the basis of the value (as stated in records kept pursuant to this section) of the contributions made by each partner, where the partnership agreement does not provide for such distribution, see Section 33‑42‑840.

Maintenance of an office at which the records required by this section shall be kept, see Section 33‑42‑50.

Partner’s obligation to contribute cash equal to that portion of the value (as stated in records required under this section) of the stated contribution which the partner has failed to make, see Section 33‑42‑820.

Partner’s receipt of a return of his contribution to the extent that a distribution reduces his shares of partnership assets below the value (as set forth in records kept pursuant to this section) of his contribution which has not been distributed to him, see Section 33‑42‑1080.

Right of a limited partner to inspect and copy partnership records, see Section 33‑42‑450.

Library References

Partnership 352 to 354.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 405 to 406, 418, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 56, Records.

S.C. Jur. Partnerships and Joint Ventures Section 70, Withdrawal of Limited Partner.

S.C. Jur. Partnerships and Joint Ventures Section 74, Partnership Contributions.

**SECTION 33‑42‑70.** Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is identical to Section 3 of the 1916 Uniform Act. Ethical rules and other regulations may prohibit some businesses that can legally operate as a general partnership from being a limited partnership. Lawyers, for example, cannot practice law in a limited partnership.

Derivation: Section 106 of RULPA.

Library References

Partnership 351.5.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 402 to 403, 416.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 50, Distinction Between Limited Partnerships and General Partnerships.

Forms

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

**SECTION 33‑42‑75.** Limited partnerships activities, financial assistance, and duration.

Any manufacturer, brewer, or importer of beer as referenced in Section 61‑4‑1115, or its affiliate may hold an interest in a limited partnership providing financial assistance to a general partner wholesaler, but may only exercise that control of the limited partnership business as is permitted by this Uniform Limited Partnership Act. However, in no event may the limited partner, directly or indirectly, have any managerial control or decision‑making authority including personnel decisions, with respect to the day‑to‑day operations of the limited partnership, and upon a default by the general partner wholesaler, the limited partner is not entitled, directly or indirectly, to any additional control, ownership, or financial interest in the general partner wholesaler, nor may the limited partner become the general partner in the limited partnership. No manufacturer, brewer, or importer of beer or its affiliate licensed in this State, directly or indirectly, may have any financial or ownership interest in the general partner wholesaler. It is further declared an unfair trade practice for any manufacturer, brewer, or importer of beer or its affiliate holding an interest in a limited partnership providing financial assistance to a general partner wholesaler pursuant to this section to have directly or indirectly any managerial control or decision‑making authority, including personnel decisions, with respect to the day‑to‑day operations of the limited partnership.

The only financial assistance that may be provided under the provisions of this section is the initial financial assistance to the limited partnership to acquire a licensed beer wholesaler. In this arrangement for financial assistance, the federal basic permit and the wholesaler’s license issued by the department must be issued in the name of the general partner wholesaler on behalf of the limited partnership, and not in the name of the limited partnership nor in the name of the manufacturer, brewer, or importer or its affiliate.

The limited partnership may not exist for more than ten years from the date of its creation and may not be recreated, renewed, or extended beyond that date. The limited partnership shall not be considered as amending or otherwise altering Title 61 except for the limited purposes permitted in this section in connection with a manufacturer, brewer, or importer of beer or its affiliate who is licensed in this State providing the financial assistance. A manufacturer, brewer, or importer or its affiliate shall not mandate, directly or indirectly, that a wholesaler use the financial assistance as described in this section.

A violation of this section is deemed to be a violation of the South Carolina Unfair Trade Practices Act.

HISTORY: 2001 Act No. 76, Section 6.

Library References

Intoxicating Liquors 124.

Partnership 368, 369.

Westlaw Topic Nos. 223, 289.

C.J.S. Intoxicating Liquors Sections 223 to 224, 232.

C.J.S. Partnership Sections 422, 429.

Attorney General’s Opinions

The maximum ten year duration for limited partnerships set forth in this section only applies to a limited partnership in which a manufacturer, brewer, or importer of beer, or its affiliate holds an interest and which provides financial assistance to a general partner wholesaler. S.C. Op.Atty.Gen. (August 9, 2016) 2016 WL 4419891.

**SECTION 33‑42‑80.** Business transactions of partner with partnership.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section makes a number of important changes in Section 13 of the 1916 Uniform Act. Section 13, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. This section leaves that question to a state’s general fraudulent conveyance statute. In addition, it eliminates the prior prohibition against a general partner (as opposed to a limited partner) sharing prorata with general creditors in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

Derivation: Section 107 of RULPA.

Library References

Partnership 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 68, Contractual Obligations.

ARTICLE 2

Formation: Certificate of Limited Partnership

**SECTION 33‑42‑210.** Certificate of limited partnership.

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

(1) the name of the limited partnership;

(2) the address of the office and the name and address of the agent for service of process required to be maintained by Section 33‑42‑50;

(3) the name and a mailing address of each general partner;

(4) The latest date upon which the limited partnership is to dissolve; and

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

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. The matters required to be set forth in the certificate of limited partnership have been simplified from those required by the 1916 Uniform Act and by the 1976 Uniform Act Official Text. This simplification recognizes the fact that the partnership agreement, not the certificate of limited partnership, over the years has become the authoritative document for most limited partnerships, and it is to the partnership agreement, not the certificate of limited partnership, that creditors will refer to obtain facts concerning the capital of the partnership and the rules regarding additional contributions to and withdrawals from the partnership.

2. This section incorporates a short form notice filing concept used for corporations and other purposes. See Section 33‑7‑30 [see Section 33‑1‑200] (articles of incorporation for a corporation) and Section 36‑9‑402 (UCC Article 9 financing statements). The information no longer required to be in the certificate is now required to be kept at the limited partnership’s registered office. See Section 33‑42‑60. This provides adequate protection to the limited partners and actual and potential creditors. Cf. Section 33‑42‑45 (assumed name filing requirement).

3. Subparagraph (b), which is based upon Section 2(1)(b) of the 1916 Uniform Act, has been retained to make it clear that existence of the limited partnership depends only upon compliance with this section. Its continued existence is not dependent upon compliance with other provisions of this chapter.

Derivation: Section 201 of RULPA.

CROSS REFERENCES

Incorporation of provisions of this section into the definition of “certificate of limited partnership” for purposes of this chapter, see Section 33‑42‑20.

Library References

Partnership 354, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Intellectual Property Section 59, Limited Partnerships.

S.C. Jur. Mortgages Section 12, Capacity of Parties.

S.C. Jur. Partnerships and Joint Ventures Section 52, Certificate of Formation.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 4:10 , Domestic Limited Partnership‑Certificate of Limited Partnership.

**SECTION 33‑42‑220.** Amendment to certificate.

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

(1) the name of the limited partnership;

(2) the date of filing the certificate; and

(3) the amendment to the certificate.

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

(1) the admission of a new general partner;

(2) the withdrawal of a general partner; or

(3) the continuation of the business under Section 33‑42‑1410 after an event of withdrawal of a general partner.

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

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

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

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

(g)(1) Each limited partnership formed before June 27, 1984, shall file no later than January 1, 1988, a certificate of amendment pursuant to this chapter causing such limited partnership to comply with the requirements of Section 33‑42‑30 respecting the name of the limited partnership, Section 33‑42‑50(1) respecting the office of the limited partnership at which certain records are to be kept, and Section 33‑42‑50(2) respecting the agent for service of process on the limited partnership. However, a limited partnership formed before June 27, 1984, is required to file the certificate of amendment only to the extent it does not fully comply with Sections 33‑42‑30 and 33‑42‑50 on or before January 1, 1988. The certificate of amendment is considered effective under this chapter upon its execution by a general partner of the limited partnership and its filing in the office of the Secretary of State.

(2) The failure of any limited partnership formed before June 27, 1984, to comply with subsection (g)(1) shall result on January 1, 1988, in, but only to, the extent of the failure:

(i) the designation of the principal place of business of the limited partnership as specified in the limited partnership’s certificate of limited partnership on that date as the office of partnership at which certain records are to be kept for purposes of Section 33‑42‑50(1);

(ii) the designation of the Secretary of State as the agent for service of process on such limited partnership for purposes of Section 33‑42‑50(2); and

(iii) the limited partnership being prohibited from filing any other certificate of amendment unless it satisfies the requirements of subsection (g)(1).

(3) The failure of any limited partnership formed before June 27, 1984, to file the certificate of amendment required by subsection (g)(1) does not:

(i) impair the validity of any contract or act of the limited partnership;

(ii) prevent the limited partnership from maintaining or defending any action, suit, or proceeding in any court in this State; or

(iii) result in any limited partner becoming liable as a general partner solely by reason of the failure of the limited partnership to file the required certificate of amendment.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. This section makes substantial changes in Section 24 of the 1916 Uniform Act and in Section 202 of the 1976 Uniform Act Official Text. Paragraph (b) lists the basic events, e.g. the addition or withdrawal of a general partner, that are so central to the function of the certificate of limited partnership that they require prompt amendment. With the elimination of the naming of limited partners as was required under the 1916 Uniform Act and the 1976 Uniform Act Official Text, it is no longer necessary to amend the certificate upon the admission or withdrawal of limited partners. This change should greatly reduce the need to amend the certificate of limited partnership.

2. Paragraph (c) makes it clear, as it was not clear under subdivision (2)(g) of former Section 24 of the 1916 Uniform Act, that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed. Paragraph (e) provides a “safe harbor” against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in paragraph (b); if the certificate of limited partnership is amended within thirty days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of Section 33‑42‑440.

3. Subsection (f) makes explicit that the common practice of restating a certificate of limited partnership is permitted under this act. Such a restated certificate is not to be viewed as an amendment to the certificate of limited partnership, but an integration into one instrument of all the provisions of a limited partnership’s certificate of limited partnership which are then in effect. A limited partnership may further amend its certificate of limited partnership by adopting a restated certificate of limited partnership, but any such amendment is subject to the provisions of this chapter which would apply if a separate certificate of amendment were filed to effect such amendment.

4. Subsection (g), which is not part of the RULPA Official Text, is a transition provision that applies to limited partnerships formed before Act 491 of 1984. To be in compliance with this chapter, most of these partnerships will have to amend their certificates of limited partnership in several respects. The principal amendments are the appointment of a registered agent, selection of a registered office, and adding the words “limited partnership”, “LP”, or “L.P.” to the partnership name. Paragraph (2) of subsection (g) states what happens if the requisite amendments are not filed by January 1, 1988.

Derivation: Section 202 of RULPA.

Library References

Partnership 354, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 53, Certificate of Formation‑Amendment of Certificate.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 4:13 , Domestic Limited Partnership‑Certificate of Amendment of Limited Partnership.

**SECTION 33‑42‑230.** Cancellation of certificate.

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

(1) the name of the limited partnership;

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

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

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

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section changes Section 24 of the 1916 Uniform Act by making it clear that the certificate of cancellation should be filed upon the commencement of winding up the limited partnership. Section 24 provided for cancellation “when the partnership is dissolved”.

Derivation: Section 203 of RULPA.

Library References

Partnership 376.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 439 to 440.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 54, Certificate of Formation‑Cancellation of Certificate.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 4:14 , Domestic Limited Partnership‑Cancellation of Certificate of Limited Partnership.

**SECTION 33‑42‑240.** Execution of certificates.

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

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

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

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

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

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the 1916 Uniform Act and modifies some of the provisions of the 1916 Uniform Act and the 1976 Uniform Act Official Text. Sections 2 and 25 of the 1916 Uniform Act required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. The 1976 Uniform Act Official Text, while simplifying the execution requirements, nevertheless required that an original certificate of limited partnership be signed by all partners and a certificate of amendment by all new partners being admitted to the limited partnership. The formal requirements for the execution of certificates were changed by the 1985 RULPA Amendments to reflect the amendments to Section 33‑42‑210 which eliminate the requirement to name the limited partners in the certificate of limited partnership. Thus, this section requires only that all general partners sign the original certificate of limited partnership. All general partners must also sign certificates of cancellation. Certificates of amendment are, however, required to be signed by only one general partner.

Derivation: Section 204 of RULPA.

CROSS REFERENCES

Provisions regarding petitions for execution of certificates where persons have failed or refused to execute them as required by this section, see Section 33‑42‑250.

Library References

Partnership 354, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 52, Certificate of Formation.

S.C. Jur. Partnerships and Joint Ventures Section 53, Certificate of Formation‑Amendment of Certificate.

S.C. Jur. Partnerships and Joint Ventures Section 54, Certificate of Formation‑Cancellation of Certificate.

**SECTION 33‑42‑250.** Execution by judicial act.

If a person required by Section 33‑42‑240 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court of the county in which the limited partnership’s office designated pursuant to Section 33‑42‑50(1) is located to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person designated has failed or refused to execute the appropriate certificate, it shall order the Secretary of State to record an appropriate certificate.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section eliminates the restriction under the 1976 Uniform Act Official Text that only a partner or an assignee of a partnership interest who is adversely affected by the failure or refusal of the appropriate person to file a certificate of cancellation or amendment had standing to seek judicial intervention. Under the 1985 RULPA Amendments, any person adversely affected by a failure or refusal to file any certificate (not only a certificate of cancellation or amendment) has standing to seek judicial intervention.

Derivation: Section 205 of RULPA.

CROSS REFERENCES

Recovery of damages from a general partner who fails to petition for cancellation or amendment of a certificate, see Section 33‑42‑270.

Library References

Partnership 354, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

**SECTION 33‑42‑260.** Filing in office of Secretary of State.

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) must be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(1) endorse on each duplicate original the word “Filed” and the day, month, and year of the filing thereof;

(2) file one duplicate original in his office; and

(3) return the other duplicate original to the person who filed it or his representative.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. Unlike the 1960 South Carolina limited partnership statute which required filing of a certificate of limited partnership in the office of the Secretary of State and the office of the clerk of court for the county in which the partnership had its principal place of business, this section requires filing of the certificate only in the office of the Secretary of State. But Cf. Section 33‑42‑300 (local filing of an affidavit of general partner authority to sign real property deeds and mortgages).

2. Paragraph (b) changes subdivision (5) of Section 25 of the 1916 Uniform Act by providing that certificates of cancellation are effective upon their effective date under Section 33‑42‑230 rather than being effective automatically on the date of filing.

Derivation: Section 206 of RULPA.

CROSS REFERENCES

Provision that receipt of certificate marked “Filed” from Secretary of State triggers requirement that copies be mailed or delivered to limited partners, see Section 33‑42‑290.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

**SECTION 33‑42‑270.** Liability for false statement in certificate.

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

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

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 33‑42‑250.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section changes Section 6 of the 1916 Uniform Act by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by confining the obligation to amend a certificate of limited partnership in light of future events to the general partners.

Derivation: Section 207 of RULPA.

CROSS REFERENCES

Liability of one who assigns his partnership interest, see Section 33‑42‑1240.

Library References

Partnership 354, 371.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 429, 438.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 61, Liability of General Partner to Third Parties.

S.C. Jur. Partnerships and Joint Ventures Section 71, Assignment of Limited Partnership Interest.

**SECTION 33‑42‑280.** Scope of notice.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section had no counterpart in the 1916 Uniform Act. As amended by the 1985 RULPA Amendments it reflects the elimination of the requirement in Section 201 of the 1976 Uniform Act Official Text that limited partners be named in the certificate of limited partnership. See the Comments to Section 33‑42‑210.

It also obviates the concern that third parties may be held to have notice of special provisions set forth in the certificate. While this section is designed to preserve the limited liability of limited partners, the notice provided is not intended to change any liability of a limited partner which may be created by his action or inaction under the laws of estoppel, agency, fraud, or the like or pursuant to Section 33‑42‑430.

Derivation: Section 208 of RULPA.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

**SECTION 33‑42‑290.** Delivery of certificates to limited partners.

Upon the return by the Secretary of State pursuant to Section 33‑42‑260 of a certificate marked “Filed”, the general partners shall promptly deliver or mail a copy of the certificate of limited partnership or the certificate of amendment or cancellation or restated certificate or any judicial decree of any of the above, as the case may be, to each limited partner unless the partnership agreement provides otherwise.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section, which has no counterpart in the 1916 Uniform Act, requires that limited partners receive a copy of the certificate of limited partnership and all amendments thereto. Cf. Section 34‑42‑60 (records that must be kept at a limited partnership’s registered office in this State).

Derivation: Section 209 of RULPA.

Library References

Partnership 354, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 52, Certificate of Formation.

**SECTION 33‑42‑300.** Affidavit of general partners’ authority.

(a) A limited partnership that owns real property in South Carolina shall, prior to selling, conveying, or transferring any interest in the property, file an affidavit containing the name of the partnership, the place or places where the partnership’s certificate of limited partnership is filed, and the name or names of the general partners who are authorized to sign documents relating to the property on behalf of the partnership in the office of the county where the index to deeds for the property is located. The affidavit required by this section must be recorded and indexed in the name of the partnership in both the grantor and grantee indices for deeds. The person or persons executing the affidavit as an agent or fiduciary of the partnership need not exhibit evidence of that authority as a prerequisite to its filing.

(b) The existence of the facts described in the affidavit required by subsection (a) must be conclusively presumed in favor of the limited partnership and against a grantee from the limited partnership of partnership real property located in the county in which the affidavit is recorded.

(c) The filing or failure to file the affidavit required by subsection (a) has no effect on the legal existence of a limited partnership or the liability of any limited partner.

(d) A limited partnership organized under the laws of another state that files an affidavit required by subsection (a) shall not have to register in this State as a foreign limited partnership pursuant to Article 9 of this chapter solely because of the necessity of filing the affidavit.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section, which is not part of RULPA, requires limited partnerships, including foreign limited partnerships, to file an affidavit designating the general partners who have authority to sign deeds and other documents prior to transferring any interest in real property owned by the limited partnership in South Carolina. The affidavit must be filed in the deed records of the county where the real property is located. Under subdivision (c) the failure to file the affidavit has no effect on the legal status of the limited partnership or the liability of any limited partner.

Derivation: There is no RULPA counterpart to this section. See the Comment.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 12, Capacity of Parties.

S.C. Jur. Partnerships and Joint Ventures Section 57, Affidavit of General Partners’ Authority.

**SECTION 33‑42‑310.** Status of existing county filings.

Certificates of limited partnership and certificates of amendment filed in any official county records of this State pursuant to any applicable statute of this State prior to June 27, 1984, are of no further force or effect for any purpose under this chapter on or after June 27, 1984. All certificates of amendment, certificates of cancellation, and restated certificates are fully effective to amend or cancel the certificates of limited partnership, as the case may be, upon proper filing thereof with the office of the Secretary of State pursuant to the requirements of this chapter.

HISTORY: 1986 Act No. 533, Section 1.

COMMENTS

This is a transition provision made necessary because prior to Act 491 of 1984 dual filing of a certificate of limited partnership was required. See Comment 1 to Section 33‑42‑260. Under this section, no county filing is required after June 27, 1984, even for those partnerships that were formed prior to that date.

Derivation: There is no RULPA counterpart to this section. See the Comment.

ARTICLE 3

Limited Partners

**SECTION 33‑42‑410.** Admission of additional limited partners.

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

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

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

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

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

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 33‑42‑1240, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

Subsection (a) is part of the 1985 RULPA Amendments; no counterpart is found in the 1916 Uniform Act or the 1976 Uniform Act Official Text. This section imposes on the partnership an obligation to maintain in its records the date each limited partner became a limited partner. Under the 1976 Uniform Act Official Text, one could not become a limited partner until an appropriate certificate was filed naming such person as a limited partner. With the elimination of the naming of limited partners in the certificate by the 1985 RULPA Amendments, it was necessary to create a mechanism to evidence a limited partner’s admission into a limited partnership. Subject to the limitation that no person may become a limited partner before the partnership is formed, which cannot be before a certificate is filed, the date set out in the limited partnership’s records establishes the date of the limited partner’s admission.

Subdivision (1) of subsection (b) adds to Section 8 of the 1916 Uniform Act an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Subdivision (2) is derived from Section 19 of the 1916 Uniform Act but abandons the former terminology of “substituted limited partner”.

Derivation: Section 301 of RULPA.

Library References

Partnership 363.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 73, Admission of Additional Limited Partners.

Forms

South Carolina Legal and Business Forms Section 4:5 , Checklist‑Drafting Limited Partnership Agreement.

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

**SECTION 33‑42‑420.** Voting.

Subject to Section 33‑42‑430, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section has no counterpart in the 1916 Uniform Act, and must be read together with subdivision (b)(6) of Section 33‑42‑430. Although the 1916 Uniform Act did not speak specifically of the voting powers of limited partners, it has long been common for partnership agreements to grant such powers to limited partners, subject to the control test in Section 7 of the 1916 Uniform Act and Section 303 of RULPA (Section 33‑42‑420). For further information on limited partner voting rights, see the comments to Section 33‑42‑430.

Derivation: Section 302 of RULPA.

Library References

Partnership 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 4:5 , Checklist‑Drafting Limited Partnership Agreement.

**SECTION 33‑42‑430.** Liabilities to third parties.

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner’s participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

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

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

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

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

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

(5) requesting or attending a meeting of partners;

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

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

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

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

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

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

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

(vii) a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

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

(7) winding up the limited partnership pursuant to Section 33‑42‑1430; or

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

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

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 33‑42‑30(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. This section makes several important changes in Section 7 of the 1916 Uniform Act. The first sentence of subsection (a) carries over the basic test from former Section 7, whether the limited partner “takes part in the control of the business”, in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. The second sentence of subsection (a) reflects a wholly new concept. Because of the difficulty of determining when the “control” line has been overstepped, it was thought unfair to impose general partner liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the “is not substantially the same as” test was introduced.

2. Subsection (b) is intended to provide a nonexclusive “safe harbor” by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. This list has been expanded by the 1985 RULPA Amendments beyond those actions enumerated in the 1976 Uniform Act Official Text to reflect case law which has developed over the years.

3. Subsection (d) is derived from Section 5 of the 1916 Uniform Act, but adds as a condition to the limited partner’s liability the fact that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

Derivation: Section 303 of RULPA, but subsection (a) follows the 1976 Uniform Act Official Text and subsection (b) differs somewhat from the 1985 RULPA Amendments.

CROSS REFERENCES

Provision that partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter, see Section 33‑42‑420.

Library References

Partnership 371.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 429, 438.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 64, Voting Rights.

S.C. Jur. Partnerships and Joint Ventures Section 66, Limited Liability to Third Parties.

S.C. Jur. Partnerships and Joint Ventures Section 68, Contractual Obligations.

S.C. Jur. Partnerships and Joint Ventures Section 69, “Safe Harbor” With Respect to Revocation or Loss of Limited Liability Status.

Forms

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

**SECTION 33‑42‑440.** Person erroneously believing himself limited partner.

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

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

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

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 11 of the 1916 Uniform Act. The “good faith” requirement has been added in the first sentence of subsection (a). The provisions of subdivision (2) of subsection (a) are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. Subsection (b) preserves the liability of the equity participant to any third party who has transacted business with that person believing in good faith that he was a general partner for any partnership liability incurred prior to withdrawal by that person from the limited partnership or amendment to the certificate demonstrating that such person is not a general partner.

Derivation: Section 304 of RULPA.

Library References

Partnership 366, 371, 375.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429 to 438.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 67, Persons Erroneously Believing Themselves to be Limited Partners.

**SECTION 33‑42‑450.** Information.

Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by Section 33‑42‑60;

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the 1916 Uniform Act.

Derivation: Section 305 of RULPA.

Library References

Partnership 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 67, Persons Erroneously Believing Themselves to be Limited Partners.

ARTICLE 4

General Partners

**SECTION 33‑42‑610.** Admission of additional or substitute general partners.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. This section as revised by the 1985 RULPA Amendment is similar to Section 9(1) (e) of the 1916 Uniform Act. It provides that the partnership agreement is to determine the procedure for authorizing the admission of additional general partners. Only when the partnership agreement is silent does this section provide for an admission procedure requiring the written consent of all partners. Under the wording of this section in the 1976 Uniform Act Official Text, many authorities believed that it was not permissible to have a provision in the partnership agreement authorizing less than unanimous consent for admission of a general partner.

2. This section specifically refers to substitute and additional general partners whereas RULPA only refers to additional general partners. See also Section 33‑42‑1410. Using both terms avoids the possibility of legal problems that might result from interpreting the word “additional” as only applying to an increase in the total number of general partners and therefore excluding a new general partner that replaces a general partner who has died or has retired.

Derivation: Section 401 of RULPA.

CROSS REFERENCES

Provision that a partnership is dissolved upon withdrawal of a general partner unless, inter alia, the remaining partners agree to admission of one or more additional or substitute general partners if necessary or desired, see Section 33‑42‑1410.

Library References

Partnership 363.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

**SECTION 33‑42‑620.** Events of withdrawal.

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

(1) the general partner withdraws from the limited partnership as provided in Section 33‑42‑1020;

(2) the general partner ceases to be a member of the limited partnership as provided in Section 33‑42‑1220;

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

(4) unless otherwise provided in writing in the limited partnership agreement, the general partner:

(i) makes an assignment for the benefit of creditors;

(ii) files a voluntary petition in bankruptcy;

(iii) is adjudicated a bankrupt or insolvent;

(iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

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

(6) in the case of a general partner who is a natural person,

(i) his death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate;

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

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

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section expands considerably the provisions of Section 20 of the 1916 Uniform Act which provided for dissolution in the event of the retirement, death, or insanity of a general partner. Subdivisions (1), (2), and (3) recognize that the general partner’s agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivisions (4) and (5) reflect a judgment that, unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the National Bankruptcy Act or a similar provision of law. Subdivisions (6) through (10) simply elaborate on the notion of death in the case of a general partner who is not a natural person. Of course, the addition of the words “and in the partnership agreement” was not intended to suggest that liabilities to third parties could be affected by provisions in the partnership agreement. Subdivisions (4) and (5) of the 1976 Uniform Act Official Text were amended by the 1985 RULPA Amendments to conform with the changes made in RULPA Section 201 (Section 33‑42‑210) which eliminated the requirement for certain information in the certificate of limited partnership.

Derivation: Section 402 of RULPA.

CROSS REFERENCES

Incorporation of provisions of this section into the definition of “event of withdrawal of a general partner” for purposes of this chapter, see Section 33‑42‑20.

Library References

Partnership 363, 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 62, Withdrawal of General Partner.

**SECTION 33‑42‑630.** General powers and liabilities.

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

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 9 (1) of the 1916 Uniform Act. It states the powers and liabilities of a partner who is a general partner in a limited partnership. See also Section 33‑42‑2020.

Derivation: Section 403 of RULPA.

Library References

Partnership 353, 366, 370.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 405 to 406, 422, 429 to 437.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 12, Capacity of Parties.

S.C. Jur. Partnerships and Joint Ventures Section 50, Distinction Between Limited Partnerships and General Partnerships.

S.C. Jur. Partnerships and Joint Ventures Section 59, Rights and Duties of General Partner.

S.C. Jur. Partnerships and Joint Ventures Section 60, Liability of General Partner to Partnership.

S.C. Jur. Partnerships and Joint Ventures Section 61, Liability of General Partner to Third Parties.

LAW REVIEW AND JOURNAL COMMENTARIES

Fiduciary Duties of Partners and Limited Liability Company Members Under South Carolina Law: A perspective from the Bench, 56 SC Law Rev 275 (Winter 2004).

NOTES OF DECISIONS

In general 1

1. In general

A partnership agreement, not complying with the Uniform Limited Partnership Act, will not be construed to limit partners’ obligations to only their investment. Demas v. Convention Motor Inns (S.C. 1977) 268 S.C. 186, 232 S.E.2d 724.

**SECTION 33‑42‑640.** Contributions by general partner.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 12 of the 1916 Uniform Act and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of a limited partner, but nevertheless is subject to the same liability as a general partner who is not a limited partner.

Derivation: Section 404 of RULPA.

Library References

Partnership 355.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 72, Limited Partner Assuming Role of General Partner.

**SECTION 33‑42‑650.** Voting.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section has no counterpart in the 1916 Uniform Act and is intended to make clear that this chapter does not require that the limited partners have any automatic right to vote on matters as a separate class. At the same time, this section authorizes the general partners to vote on issues independently of or in conjunction with the limited partners on any basis set forth in the partnership agreement. CF. Section 33‑42‑430 (b) (6) for a list of issues on which limited partners may be given voting rights without exposure to the unlimited liability of general partners.

Derivation: Section 405 of RULPA.

Library References

Partnership 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 64, Voting Rights.

ARTICLE 5

Finance

**SECTION 33‑42‑810.** Form of contribution.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

As noted in the comments on the defined term “contribution” in Section 33‑42‑20, this explicit permission to make contributions of services expands Section 4 of the 1916 Uniform Act. See also Section 33‑42‑820.

Derivation: Section 501 of RULPA.

CROSS REFERENCES

Liability of an assignee who becomes a limited partner for the obligations of his assignor to make and return contributions as provided in this article and Article 6, see Section 33‑42‑1240.

Library References

Partnership 355.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 74, Partnership Contributions.

**SECTION 33‑42‑820.** Liability for contributions.

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the partnership records required to be kept pursuant to Section 33‑42‑60) of the stated contribution that has not been made.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

1. This section is new and reflects the need for a promise of capital contributions to be in writing to be enforceable against a limited partner since the certificate of limited partnership no longer indicates capital contributions. Under the 1916 Uniform Act and the 1976 Uniform Act Official Text, a promise in writing was unnecessary since future capital contributions were indicated on the certificate of limited partnership which was signed by all limited partners.

2. Although Section 17 (1) of the 1916 Uniform Act required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the partnership agreement otherwise provides.

3. Subdivision (c) is derived, in part, from Section 17 (3) of the 1916 Uniform Act, but expands prior law by allowing not only a creditor who extends credit after a partner signs an obligation to enforce the obligation prior to any filing of a certificate of amendment or cancellation to reflect a compromise of such obligation, but also extends this right to any creditor who otherwise acts in reliance on such obligation before such obligation is compromised.

Derivation: Section 502 of RULPA.

CROSS REFERENCES

Liability of one who assigns his partnership interest, see Section 33‑42‑1240.

Library References

Partnership 355, 371.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 429, 438.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 60, Liability of General Partner to Partnership.

S.C. Jur. Partnerships and Joint Ventures Section 71, Assignment of Limited Partnership Interest.

S.C. Jur. Partnerships and Joint Ventures Section 74, Partnership Contributions.

**SECTION 33‑42‑830.** Sharing of profits and losses.

The profits and losses of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value (as stated in the partnership records required to be kept pursuant to Section 33‑42‑60) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. The 1916 Uniform Act did not provide for the basis on which partners share profits and losses in the absence of agreement. As amended by the 1985 RULPA Amendments, this section also amends the 1976 Uniform Act Official Text by requiring that any agreement allocating profits and losses be in writing; previously, such information was required to be described in the certificate of limited partnership.

Derivation: Section 503 of RULPA.

Library References

Partnership 364, 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 75, Sharing of Profits and Losses.

**SECTION 33‑42‑840.** Sharing of distributions.

Distributions of cash or other assets of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value (as stated in the partnership records required to be kept pursuant to Section 33‑42‑60) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. The 1916 Uniform Act did not provide for the basis on which partners share distributions in the absence of agreement. As amended by the 1985 RULPA Amendments, this section also amends the 1976 Uniform Act Official Text by requiring that any agreement allocating distributions be in writing; previously, such information was required to be described in the certificate of limited partnership. This section also recognizes that partners may choose to share in distributions on a different basis than they share in profits and losses.

Derivation: Section 504 of RULPA.

Library References

Partnership 364, 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 76, Sharing of Distributions.

Forms

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

ARTICLE 6

Distributions and Withdrawal

**SECTION 33‑42‑1010.** Interim distributions.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section has no counterpart in the 1916 Uniform Act. The 1976 Uniform Act Official Text has been amended by the 1985 RULPA Amendments to reflect the changes made in RULPA Section 201 (Section 33‑42‑210).

Derivation: Section 601 of RULPA.

CROSS REFERENCES

Liability of an assignee who becomes a limited partner for the obligations of his assignor to make and return contributions as provided in this Article and Article 5, see Section 33‑42‑1240.

Provisions for distribution of assets upon the winding up of a limited partnership, see Section 33‑42‑1440.

Library References

Partnership 364, 376.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 439 to 440.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 76, Sharing of Distributions.

**SECTION 33‑42‑1020.** Withdrawal of general partner.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new but is generally derived from Section 38 of the Uniform Partnership Act (Section 33‑41‑1040).

Derivation: Section 602 of RULPA.

CROSS REFERENCES

Events which result in termination of status of general partner, see Section 33‑42‑620.

Library References

Partnership 363, 366.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 62, Withdrawal of General Partner.

**SECTION 33‑42‑1030.** Withdrawal of limited partner.

(A) A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in the partnership agreement, if:

(1) the limited partnership was formed on or after July 1, 1998; or

(2) the limited partnership was formed before July 1, 1998, and the partnership agreement governing the limited partnership specifies in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership.

(B) If the partnership agreement governing a limited partnership formed before July 1, 1998, does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months’ prior written notice to each general partner at his address on the books of the limited partnership at its office required to be maintained pursuant to Section 33‑42‑50(1) in this State. If the partnership agreement of the limited partnership is amended on or after July 1, 1998, to specify the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, the amendment shall apply retroactively to the date of the formation of the limited partnership, and the limited partnership is deemed to be a limited partnership described in subsection (A)(2).

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1; 1998 Act No. 344, Section 1.

COMMENTS

This section is derived from Section 16 (c) of the 1916 Uniform Act. The 1976 Uniform Act Official Text has been amended by the 1976 RULPA Amendment to reflect the changes made in RULPA Section 201 (Section 33‑42‑210).

Derivation: Section 603 of RULPA.

Library References

Partnership 363.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 70, Withdrawal of Limited Partner.

**SECTION 33‑42‑1040.** Distribution upon withdrawal.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section has no counterpart in the 1916 Uniform Act. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

Derivation: Section 604 of RULPA.

CROSS REFERENCES

Provisions for distribution of assets upon the winding up of a limited partnership, see Section 33‑42‑1440.

Library References

Partnership 363, 364.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 70, Withdrawal of Limited Partner.

S.C. Jur. Partnerships and Joint Ventures Section 76, Sharing of Distributions.

**SECTION 33‑42‑1050.** Distribution in kind.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

The first sentence of this section is derived from Section 16 (3) of the 1916 Uniform Act. The 1976 Uniform Act Official Text has been amended by the 1985 RULPA Amendments to reflect the changes made in RULPA Section 201 (Section 33‑42‑210). The second sentence is new, and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

Derivation: Section 605 of RULPA.

Library References

Partnership 364.

Westlaw Topic No. 289.

C.J.S. Partnership Section 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 70, Withdrawal of Limited Partner.

**SECTION 33‑42‑1060.** Right to distribution.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section, which has no counterpart in the 1916 Uniform Act, is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16 (4) of the 1916 Uniform Act which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

Derivation: Section 606 of RULPA.

Library References

Partnership 364, 370.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 437.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 70, Withdrawal of Limited Partner.

**SECTION 33‑42‑1070.** Limitations on distribution.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 16 (1) (a) of the 1916 Uniform Act.

Derivation: Section 607 of RULPA.

Library References

Partnership 364.

Westlaw Topic No. 289.

C.J.S. Partnership Section 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 76, Sharing of Distributions.

**SECTION 33‑42‑1080.** Liability upon return of contribution.

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

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

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his shares of the fair value of the net assets of the limited partnership below the value (as set forth in the partnership records required to be kept pursuant to Section 33‑42‑60) of his contribution which has not been distributed to him.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

Paragraph (a) is derived from Section 17 (4) of the 1916 Uniform Act, but the one‑year statute of limitations has been added. Paragraph (b) is derived from Section 17 (2) (b) of the 1916 Uniform Act but, again, a statute of limitations has been added. Paragraph (c) is new. The provisions of Section 17 (2) of the 1916 Uniform Act that referred to the partner holding as “trustee” any money or specific property wrongfully returned to him have been eliminated. Paragraph (c) of the 1976 Uniform Act Official Text has been amended by the 1985 RULPA Amendments to reflect the changes made in RULPA Section 201 (Section 33‑42‑210).

Derivation: Section 608 of RULPA.

Library References

Partnership 364, 373.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 74, Partnership Contributions.

ARTICLE 7

Assignment of Partnership Interests

**SECTION 33‑42‑1210.** Nature of partnership interest.

A partnership interest is personal property.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 18 of the 1916 Uniform Act.

Derivation: Section 701 of RULPA.

Library References

Partnership 349, 366, 367.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 402 to 403, 422 to 429.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 65, Property Rights.

**SECTION 33‑42‑1220.** Assignment of partnership interest.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

Section 19 (1) of the 1916 Uniform Act provided simply that “a limited partner’s interest is assignable”, raising a question whether any limitations on the right of assignment were permitted. While the first sentence of this section recognizes that the power to assign may be restricted in the partnership agreement, there is no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of this section are derived from Section 19 (3) of the 1916 Uniform Act. The last sentence is new.

Derivation: Section 702 of RULPA.

CROSS REFERENCES

Events which result in termination of status of general partner, see Section 33‑42‑620.

Library References

Partnership 363.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 65, Property Rights.

S.C. Jur. Partnerships and Joint Ventures Section 71, Assignment of Limited Partnership Interest.

Forms

South Carolina Legal and Business Forms Section 4:5 , Checklist‑Drafting Limited Partnership Agreement.

South Carolina Legal and Business Forms Section 4:20 , Limited Partnership Agreement.

South Carolina Legal and Business Forms Section 4:85 , Retirement, Withdrawal or Death of Partner‑Restriction on Transfer of Partner’s Interest.

South Carolina Legal and Business Forms Section 4:95 , Assignment of Portion of One Partner’s Interest in Partnership to Another Partner.

**SECTION 33‑42‑1230.** Rights of creditor.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 22 of the 1916 Uniform Act but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22 (1) to specific remedies have been omitted, as has a prohibition in Section 22 (2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine these matters.

Derivation: Section 703 of RULPA.

Library References

Partnership 371, 374.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 429, 438.

**SECTION 33‑42‑1240.** Right of assignee to become limited partner.

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

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Section 33‑42‑270 and Section 33‑42‑820.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 19 of the 1916 Uniform Act but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee. The 1976 Uniform Act Official Text has been amended by the 1985 RULPA Amendments to reflect the changes made in RULPA Section 201 (Section 33‑42‑210).

CROSS REFERENCES

Admission of additional limited partner generally, see Section 33‑42‑410.

Library References

Partnership 363.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 416, 422.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 71, Assignment of Limited Partnership Interest.

**SECTION 33‑42‑1250.** Power of estate of deceased or incompetent partner.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 21 (1) of the 1916 Uniform Act. Former Section 21 (2), making a deceased limited partner’s estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

Derivation: Section 705 of RULPA.

Library References

Executors and Administrators 94.

Guardian and Ward 37.

Partnership 363.

Westlaw Topic Nos. 162, 196, 289.

C.J.S. Executors and Administrators Section 216.

C.J.S. Partnership Sections 416, 422.

ARTICLE 8

Dissolution

**SECTION 33‑42‑1410.** Nonjudicial dissolution.

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

(1) at the time specified in the certificate of limited partnership;

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

(3) written consent of all partners;

(4) an event of withdrawal of a general partner unless (a) at the time there is at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, or (b) within ninety days after the withdrawal, all remaining partners agree in writing to continue the business of the limited partnership and pursuant to Section 33‑42‑610 to the admission of one or more additional or substitute general partners if necessary or desired; or

(5) entry of a decree of judicial dissolution under Section 33‑42‑1420.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section merely collects in one place all of the events causing nonjudicial dissolution. Paragraph (3) is derived from Sections 9 (1) (g) and 20 of the 1916 Uniform Act, but adds the ninety‑day grace period. The 1976 Uniform Act Official Text has been amended by the 1985 RULPA Amendments to reflect the changes made in RULPA Section 201 (Section 33‑42‑21). See also Comment 2 to Section 33‑42‑210.

Derivation: Section 801 of RULPA.

CROSS REFERENCES

Provisions requiring that an amendment to a certificate of limited partnership be filed in the event of continuation of business after withdrawal of a general partner, see Section 33‑42‑220.

Library References

Partnership 376.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 439 to 440.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 77, Nonjudicial Dissolution.

**SECTION 33‑42‑1420.** Judicial dissolution.

On application by or for a partner the circuit court of the county in which the limited partnership’s office designated pursuant to Section 33‑42‑50 (1) is located may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section has no counterpart in the 1916 Uniform Act. Cf. Section 33‑42‑250, which establishes the venue for suits to compel execution of a certificate of limited partnership, and Section 33‑42‑1430, which establishes the venue in a winding‑up case. All three sections set the venue as the circuit court of the county in which the partnership’s registered office in this State is located.

Derivation: Section 802 of RULPA.

CROSS REFERENCES

Provision that a limited partnership is dissolved and its affairs must be wound up upon entry of a decree of judicial dissolution under this section, see Section 33‑42‑1410.

Library References

Partnership 376.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 439 to 440.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 78, Judicial Dissolution.

**SECTION 33‑42‑1430.** Winding up.

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership’s affairs; but the circuit court of the county in which the limited partnership’s office designated pursuant to Section 33‑42‑50 (1) is located may wind up the limited partnership’s affairs upon application of any partner, his legal representative, or assignee.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new and is derived in part from Section 37 of the Uniform Partnership Act (Section 33‑41‑1030).

Derivation: Section 803 of RULPA.

CROSS REFERENCES

Provision that a limited partner who winds up the limited partnership does not thereby participate in the control of the business so as to render himself liable for its obligations, see Section 33‑42‑430.

Library References

Partnership 376.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 439 to 440.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 69, “Safe Harbor” With Respect to Revocation or Loss of Limited Liability Status.

S.C. Jur. Partnerships and Joint Ventures Section 79, Winding Up Upon Dissolution.

**SECTION 33‑42‑1440.** Distribution of assets.

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

(1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 33‑42‑1010 or Section 33‑42‑1040;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 33‑42‑1010 or Section 33‑42‑1040; and

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section revises Section 23 of the 1916 Uniform Act by providing that (1) to the extent partners are also creditors, other than in respect to their interests in the partnership, they share with other creditors, (2) once the partnership’s obligation to make a distribution accrues, it must be paid before any other distributions of an “equity” nature are made, and (3) general and limited partners rank on the same level except as otherwise provided in the partnership agreement.

Derivation: Section 804 of RULPA.

Library References

Partnership 376.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 439 to 440.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 80, Winding Up Upon Dissolution‑Distribution of Partnership Assets.

ARTICLE 9

Foreign Limited Partnerships

**SECTION 33‑42‑1610.** Law governing.

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

(b) A foreign limited partnership may transact any business in this State that a limited partnership formed in this State may carry on.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section and the remaining sections in this article have no counterparts in the 1916 Uniform Act. Their purpose is to require registration of limited partnerships formed in another state that are transacting business in this State along the lines of foreign corporation registration statutes in business corporation statutes. See Section 33‑23‑10 [see Section 33‑15‑101] through Section 33‑23‑150 [see Section 33‑15‑3207] of the 1976 South Carolina Code. Most of the provisions in this article were first enacted in South Carolina in Act 306 of 1982, two years before the passage of Act 491 of 1984, which enacted the entire 1976 Uniform Act.

Derivation: Section 901 of RULPA.

Library References

Partnership 350.

Westlaw Topic No. 289.

C.J.S. Partnership Section 404.

**SECTION 33‑42‑1620.** Registration.

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

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;

(2) the state and date of its formation;

(3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this State;

(4) a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subsection (3) or, if appointed, the agent’s authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

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

(6) the name and a mailing address of each general partner; and

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

By registering, the foreign limited partnership agrees to be subject to the jurisdiction of the Department of Revenue and the courts of this State to determine its South Carolina tax liability, including withholding and estimated taxes, together with related interest and penalties, if any. Registering is not an admission of tax liability.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1; 1994 Act No. 497, Part II, Section 49C.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610. It was thought that requiring a full copy of the certificate of limited partnership and all amendments thereto to be filed in each state in which the partnership does business would impose an unreasonable burden on interstate limited partnerships and that the information on file was sufficient to tell interested persons where they could write to obtain copies of those basic documents. As amended by the 1985 RULPA Amendments, subsections (6) and (7) vary from the 1976 Uniform Act Official Text in that, as is the case with a certificate of limited partnership for a domestic partnership, the application for registration of a foreign limited partnership need not set out the names, addresses, or capital contributions of the limited partners provided an appropriate undertaking is made by the general partners to maintain adequate records of such information while the partnership’s registration is in effect.

Derivation: Section 902 of RULPA.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 12, Capacity of Parties.

S.C. Jur. Partnerships and Joint Ventures Section 85, Registration.

**SECTION 33‑42‑1630.** Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(1) endorse on the application the word “Filed”, and the month, day, and year of the filing thereof;

(2) file in his office a duplicate original of the application; and

(3) issue a certificate of registration to transact business in this State.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610.

Derivation: Section 903 of RULPA.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

**SECTION 33‑42‑1640.** Name.

(a) A foreign limited partnership may register with the Secretary of State under any name (whether or not it is the name under which it is registered in its state of organization) that could be registered by a domestic limited partnership under Section 33‑42‑30.

(b) A foreign limited partnership transacting business in this State under a name other than the name shown on the certificate of registration shall comply with provisions of Section 33‑42‑45.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610. Paragraph (b), which requires foreign limited partnerships transacting business in South Carolina under an assumed name to comply with the assumed name filing requirement applicable to limited partnerships formed in South Carolina, is not part of the RULPA Official Text. See also Comment 2 to Section 33‑42‑30.

Derivation: Section 904 of RULPA.

Library References

Partnership 358.

Westlaw Topic No. 289.

C.J.S. Partnership Section 415.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 84, Name.

Attorney General’s Opinions

There is no statutory requirement that assumed name adopted for use by limited partnership include words “limited partnership” or abbreviation “L.P.” or “LP”. 1990 Op Atty Gen No. 90‑2.

Limited partnership is not limited to registration of only one assumed name. 1990 Op Atty Gen No. 90‑2.

**SECTION 33‑42‑1650.** Changes and amendments.

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

HISTORY: 1985 Act No. 491, Section 15; 1984 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610.

Derivation: Section 905 of RULPA.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 85, Registration.

**SECTION 33‑42‑1660.** Cancellation of registration.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610.

Derivation: Section 906 of RULPA.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 85, Registration.

**SECTION 33‑42‑1670.** Transaction of business without registration.

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

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

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

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610. See also Section 33‑42‑1690 for a nonexclusive list of activities that are not deemed to involve the “transaction of business”.

Derivation: Section 907 of RULPA.

Library References

Partnership 362, 375.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 429 to 437.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 86, Transaction of Business Without Registration.

**SECTION 33‑42‑1680.** Action of Attorney General.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1610.

Derivation: Section 907 of RULPA.

Library References

Injunction 89(5).

Westlaw Topic No. 212.

C.J.S. Injunctions Sections 133 to 135, 137.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 86, Transaction of Business Without Registration.

**SECTION 33‑42‑1690.** Activities not deemed transacting business.

(a) Without excluding other activities that do not constitute transacting business in this State, a foreign limited partnership is considered not to be transacting business in this State, for purposes of this chapter, solely by reason of carrying on in this State any one or more of the following activities:

(1) maintaining, defending, or participating in any action, suit, or proceeding whether judicial, administrative, arbitrative, or otherwise, or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its partners or of committees of its partners or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees;

(5) borrowing or lending or acquiring indebtedness or mortgages or other security interests in real or personal property;

(6) securing or collecting debts or enforcing rights in property securing the same;

(7) effecting a transaction in interstate or foreign commerce;

(8) owning or controlling a corporation incorporated in or transacting business within this State;

(9) conducting within this State an isolated transaction that is completed within a period of one hundred and eighty days and that is not in the course of a series or number of repeated transactions;

(10) effecting sales through independent contractors;

(11) soliciting or procuring orders, by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before becoming binding contracts; or

(12) owning, without more, an interest in a limited liability company organized or transacting business in this State.

(b) The provisions of this section shall not be deemed to establish a standard for activities which may subject a foreign limited partnership to service of process, suit, taxation, or regulation under this chapter or any other statute of this State.

HISTORY: 1986 Act No. 533, Section 1; 2004 Act No. 221, Section 26.

COMMENTS

Derivation: There is no RULPA counterpart to this section. See the Comment.

Library References

Partnership 362.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 12, Capacity of Parties.

S.C. Jur. Partnerships and Joint Ventures Section 87, Transaction of Business Without Registration‑Activities Not Deemed Transacting Business.

ARTICLE 10

Derivative Actions

**SECTION 33‑42‑1810.** Right of action.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section and the remaining sections in this article have no counterpart in the 1916 Uniform Act. The uncertainty in the case law concerning the legal authority of a limited partner to bring a derivative action justifies these provisions, which are modeled on corporate derivative action statutes. See Section 33‑11‑290 [see Section 33‑7‑400] of the 1976 South Carolina Code.

Derivation: Section 1001 of RULPA.

Library References

Partnership 370, 375.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429 to 437.

NOTES OF DECISIONS

In general 1

1. In general

In an action by limited partners against the general partners alleging that the conduct of the general partners caused the assets of the partnership to be sacrificed, the limited partners could only properly pursue a derivative remedy on behalf of the partnership; as a derivative action, the Court of Appeals’ scope of review was in equity, and thus the appellate court could find facts in accordance with its view of the preponderance of the evidence. Anthony v. Padmar, Inc. (S.C.App. 1995) 320 S.C. 436, 465 S.E.2d 745, rehearing denied.

One limited partner may bring an action for an accounting. Boardman v. Lovett Enterprises, Inc. (S.C.App. 1986) 288 S.C. 387, 342 S.E.2d 634.

**SECTION 33‑42‑1820.** Proper plaintiff.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1810.

Derivation: Section 1002 of RULPA.

Library References

Partnership 370, 375.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429 to 437.

**SECTION 33‑42‑1830.** Pleading.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1810.

Derivation: Section 1003 of RULPA.

Library References

Partnership 370, 375.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 422, 429 to 437.

**SECTION 33‑42‑1840.** Expenses.

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

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is new. See the Comment to Section 33‑42‑1810.

Derivation: Section 1004 of RULPA.

Library References

Costs 194.25, 195.

Federal Civil Procedure 2742.

Westlaw Topic Nos. 102, 170A.

C.J.S. Costs Sections 125, 142.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Attorney Fees Section 37, Partnerships.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

ARTICLE 11

Miscellaneous

**SECTION 33‑42‑2010.** Construction and application.

This chapter must be so 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.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

The rule that statutes in derogation of the common law are to be strictly construed has no application to this chapter.

Derivation: Section 1101 of RULPA.

Library References

Partnership 351.

Westlaw Topic No. 289.

C.J.S. Partnership Section 404.

**SECTION 33‑42‑2020.** Rules for cases not provided for in this chapter.

In any case not provided for in this chapter the provisions of the Uniform Partnership Act govern.

HISTORY: 1984 Act No. 491, Section 1; 1985 Act No. 11, Sections 3, 4; 1986 Act No. 533, Section 1.

COMMENTS

This section is derived from Section 6 (2) of the Uniform Partnership Act, Section 33‑41‑210 of the 1976 South Carolina Code.

Derivation: Section 1105 of RULPA.

Library References

Partnership 351.

Westlaw Topic No. 289.

C.J.S. Partnership Section 404.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Partnerships and Joint Ventures Section 49, Extent to Which General Partnership Law Governs.

NOTES OF DECISIONS

In general 1

1. In general

Partner who personally guaranteed promissory note accompanying mortgage on real property did not have claim, under Uniform Limited Partnership Act (ULPA), for general partnership’s breaching its fiduciary duty by deciding to default on the note, as particular partnership was not subject to the ULPA. Kuznik v. Bees Ferry Associates (S.C.App. 2000) 342 S.C. 579, 538 S.E.2d 15, rehearing denied, certiorari granted, certiorari dismissed. Partnership 579

**SECTION 33‑42‑2030.** Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 1986 Act No. 533, Section 1.

COMMENTS

This section is a standard boilerplate statutory provision that expresses legislative intent to guard against a court order holding an entire statute invalid just because one of its provisions is invalid.

Derivation: Section 1103 of RULPA.

Library References

Statutes 64(2).

Westlaw Topic No. 361.

C.J.S. Statutes Sections 83, 87, 89 to 90, 94 to 97, 99, 102 to 104, 107.

**SECTION 33‑42‑2040.** Filing fees.

(a) The Secretary of State shall charge ten dollars for filing any document required to be filed pursuant to this chapter. This charge shall include the cost of sending to the person requesting the filing, or that person’s designee, a duplicate copy of the document submitted with the original showing the date of filing.

(b) In all other cases of requests for copies of documents filed pursuant to this chapter, the Secretary of State shall charge one dollar for the first page, fifty cents for each additional page, and two dollars for furnishing a certificate under seal.

HISTORY: 1986 Act No. 533, Section 1.

COMMENTS

This section, which has no counterpart in the RULPA Official Text, supercedes Section 8‑21‑110 of the 1976 South Carolina Code as far as limited partnership filing fees are concerned.

Derivation: There is no RULPA counterpart to this section. See the Comment.

Library References

Partnership 357.

Westlaw Topic No. 289.

C.J.S. Partnership Section 406.

ARTICLE 12

Mergers

**SECTION 33‑42‑2110.** Plan of merger; contents; approval; filing; notice of name change as to real property.

(a) Pursuant to a plan of merger approved pursuant to subsection (c), a limited partnership may be merged with or into one or more partnerships, foreign partnerships, corporations, foreign corporations, limited liability companies, foreign limited liability companies, limited partnerships, foreign limited partnerships, or other domestic or foreign entities.

(b) A plan of merger includes the:

(1) name of each entity that is a party to the merger;

(2) name of the surviving entity into which the other entities are to merge;

(3) type of organization of the surviving entity;

(4) terms and conditions of the merger;

(5) 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; and

(6) street address of the surviving entity’s principal place of business.

(c) A plan of merger must be approved by:

(1) all the partners or the number or percentage of the partners required for merger in the partnership agreement, in the case of a partnership or a domestic limited partnership that is a party to the merger;

(2) all the members or the number or percentage of members specified in the operating agreement, in the case of a limited liability company that is a party to the merger;

(3) the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized, in the case of a foreign limited liability company that is a party to the merger; or

(4) the vote required for approval of a merger by the law of this State or of the state or foreign jurisdiction in which the entity is organized and, in the absence of that requirement, by all the owners of interests in the entity, in the case of any other entities that are parties to the merger.

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

(e) The merger is effective upon the filing of the articles of merger with the Secretary of State or at a later date the articles may provide.

(f)(1) If a limited partnership that owns real property in South Carolina is converted to another entity by articles of merger, the newly‑named surviving, acquiring, or reorganizing partnership must file a notice of that name change in the office of the register of deeds of the county in South Carolina in which the real property is located. If there is no office in that county, the notice of name change must be filed with the clerk of court of the county in which that real property is located.

(2) The filing must be by:

(i) affidavit executed in accordance with the provisions in Section 33‑1‑200 and containing the old and new names of the limited partnership and describing the real property owned by that limited partnership; or

(ii) filing a certified copy of the articles of merger including a description of the real property; or

(iii) a duly recorded deed of conveyance to the newly‑named surviving, acquiring, or reorganizing partnership.

(3) The affidavit or filed articles must be duly indexed in the index of deeds.

(4) The purpose of this subitem is to establish record notice pursuant to Chapter 7 of Title 30. Failure to make the required filing of a limited partnership name change does not affect the legality, force, effect, or enforceability as between the parties of any conveyance or other transaction involving real estate owned by the affected limited partnership that is made after the change in name.

HISTORY: 2004 Act No. 221, Section 3.

Library References

Partnership 352, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 418.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 2:2 , Formation‑Content of Articles of Organization.

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 1:22 , Merger, Consolidation, and Conversion.

**SECTION 33‑42‑2120.** Articles of merger; contents; filing.

(a) After approval of the plan of merger pursuant to Section 33‑42‑2110(c), unless the merger is abandoned pursuant to Section 33‑42‑2110(d), articles of merger must be signed on behalf of each limited partnership or other entity that is a party to the merger and delivered to the Secretary of State for filing. The articles must include:

(1) the name and jurisdiction of formation or organization of each of the limited partnerships and other entities that are parties to the merger;

(2) for each limited partnership that is to merge, the date its certificate of limited partnership was filed with the Secretary of State;

(3) that a plan of merger has been approved by the required votes and signed by each limited partnership or other entity that is to merge;

(4) the name and address of the surviving limited partnership or other surviving entity;

(5) the effective date of the merger;

(6) if a limited partnership is the surviving entity, changes in its certificate of limited partnership necessary by reason of the merger;

(7) if a foreign entity is a party to the merger, the jurisdiction and date of filing of its articles of incorporation, articles of organization, certificate of limited partnership, or other organizational document, if any, and the date its application for authority was filed by the Secretary of State or, if an application has not been filed, a statement to that effect; and

(8) if the surviving entity is a foreign entity, an agreement that the surviving entity may be served with process in this State and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of a merging limited partnership previously subject to suit in this State, and for the enforcement, as provided in this chapter, of the right of partners of the limited partnership to receive payment for their interests against the surviving entity.

(b) If a foreign corporation, limited liability company, or partnership is the surviving entity of a merger, it shall not do business in this State until an application for authority is filed with the Secretary of State.

(c) The surviving limited partnership or other entity shall furnish a copy of the plan of merger, on request and without cost, to a partner of a limited partnership or person holding an interest in another entity that is to merge.

(d) Articles of merger operate as an amendment to the limited partnership’s certificate of limited partnership.

HISTORY: 2004 Act No. 221, Section 3.

Library References

Partnership 352, 357.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 418.

**SECTION 33‑42‑2130.** Effect of merger; service of process; liability for partnership obligations.

(a) When a merger takes effect:

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

(2) all property owned by each of the limited partnerships and other entities that are party to the merger vests in the surviving entity;

(3) all debts, liabilities, and other obligations of each limited partnership or other entity that is party to the merger become the obligations of the surviving entity;

(4) an action or proceeding pending by or against a limited partnership or other 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 the rights, privileges, immunities, powers, and purposes of every limited partnership or other entity that is a party to the merger vest in the surviving entity.

(b) Unless the surviving entity is a partnership, the Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign 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 registered office. Upon receipt of process, the Secretary of State shall send 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 pursuant to this subsection at the earliest of:

(1) the date the entity receives the process, notice, or demand;

(2) the date shown on the return receipt, if signed on behalf of the entity; or

(3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A partner of a merging limited partnership is liable for all obligations as a party to the merger for which the partner was personally liable before the merger.

(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger does not require the limited partnership to wind up its business or pay its liabilities and distribute its assets pursuant to this chapter.

HISTORY: 2004 Act No. 221, Section 3.

Library References

Partnership 352.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 418.

**SECTION 33‑42‑2140.** Merger pursuant to other law.

This article does not preclude a limited partnership from being merged pursuant to other law.

HISTORY: 2004 Act No. 221, Section 3.

Library References

Partnership 352.

Westlaw Topic No. 289.

C.J.S. Partnership Sections 406, 418.

RESEARCH REFERENCES

Forms

South Carolina Legal and Business Forms Section 2:2 , Formation‑Content of Articles of Organization.

South Carolina Legal and Business Forms Section 4:1 , Legal Principles.

South Carolina Legal and Business Forms Section 1:22 , Merger, Consolidation, and Conversion.