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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

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.

**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.

**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.

**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.

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.

**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.

**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.

**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.