

CHAPTER 322A

1976 UNIFORM LIMITED PARTNERSHIP ACT

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NOTE: This chapter is repealed by Laws 2004, chapter 199, article 12, section 107, effective June 1, 2007.

322A.01 DEFINITIONS.

As used in sections 322A.01 to 322A.87, unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in section 322A.11, and the 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 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 322A.32.

(4) "Executed" means signed.

(5) "Filed with the secretary of state" means that a document meeting the applicable requirements of this chapter, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state.

(6) "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.

(7) "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.

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

(9) "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.

(10) "Partner" means a limited or general partner.

(11) "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.

(12) "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.

(13) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, limited liability company (whether domestic or foreign), or corporation.

(14)(a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or by a resolution approved by the partners.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

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

History: 1980 c 582 art 5 s 1; 1986 c 430 s 1; 1986 c 444; 1992 c 517 art 1 s 30; 1997 c 10 art 4 s 5

322A.02 NAME.

(a) 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." or in the case of a limited liability limited partnership shall contain:

(i) the words "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."; or

(ii) the words "limited partnership" or the abbreviation "LP" or "L.P." plus the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

(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 that name before the admission of that limited partner;

(3) must be distinguishable from the name of a domestic corporation or limited partnership, whether profit or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, a limited liability company, whether domestic or foreign, a limited liability partnership, whether domestic or foreign, or a name the right to which is reserved or provided for in the manner provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuse, of the kind required by section 302A.115, subdivision 1, paragraph (d); and

(4) may not contain the following words: corporation, incorporated.

The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 322A.03. This section does not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or principles of equity.

(b) A person doing business in this state may contest the subsequent registration of a name with the Office of the Secretary of State as provided in section 5.22.

History: 1980 c 582 art 5 s 2; 1984 c 618 s 32; 1986 c 430 s 2; 1989 c 292 s 15; 1992 c 517 art 1 s 31; 1995 c 58 s 4; 1995 c 128 art 2 s 4; 1999 c 85 art 3 s 12

322A.03 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 sections 322A.01 to 322A.87 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; and

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

(b) The reservation shall be made according to section 302A.117.

History: 1980 c 582 art 5 s 3; 1986 c 444; 1997 c 137 s 12; 2002 c 311 art 4 s 2

322A.04 SPECIFIED OFFICE AND AGENT.

Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which shall be kept the records required by section 322A.05 to be maintained; and

(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: 1980 c 582 art 5 s 4

322A.05 RECORDS TO BE KEPT.

(a) Each limited partnership shall keep at the office referred to in section 322A.04, clause (1), the following:

(1) a current list of the full name and last known business 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 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.

History: 1980 c 582 art 5 s 5; 1986 c 430 s 3

322A.06 NATURE OF BUSINESS.

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

History: 1980 c 582 art 5 s 6

322A.07 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: 1980 c 582 art 5 s 7

322A.11 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 322A.04;
- (3) the name and the business 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: 1980 c 582 art 5 s 8; 1986 c 430 s 4

322A.12 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; and
- (2) the amendment to the certificate.

(b) Within 30 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 322A.63 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) if the amendment is filed within the 30-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.

History: 1980 c 582 art 5 s 9; 1986 c 430 s 5; 1988 c 682 s 37

322A.13 CANCELLATION OF CERTIFICATE.

A certificate of limited partnership shall be canceled 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 shall 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: 1980 c 582 art 5 s 10

322A.14 EXECUTION OF CERTIFICATES.

(a) Each certificate required by sections 322A.11 to 322A.19 to be filed in the Office of the Secretary of State shall be executed in the following manner:

(1) an original certificate of limited partnership must be signed by one of the general partners;

(2) a certificate of amendment must be signed by one of the general partners; and

(3) a certificate of cancellation must be signed by one of the 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: 1980 c 582 art 5 s 11; 1986 c 430 s 6; 1988 c 682 s 38

322A.15 EXECUTION BY JUDICIAL ACT.

If a person required by section 322A.14 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 district court 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 so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

History: 1980 c 582 art 5 s 12; 1986 c 430 s 7

322A.16 FILING IN OFFICE OF SECRETARY OF STATE.

(a) A signed copy of the certificate of limited partnership, of any certificates of amendment or cancellation or of any judicial decree of amendment or cancellation shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the executor's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of a \$50 filing fee and, in the case of a certificate of limited partnership, a \$50 initial fee, the secretary shall:

(1) endorse on the original the word "Filed" and the day, month and year of the filing; and

(2) return the original to the person who filed it or a 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 in the amendment, and upon the effective date of a certificate of cancellation or a judicial decree of it, the certificate of limited partnership is canceled.

History: 1980 c 582 art 5 s 13; 1981 c 356 s 345; 1982 c 496 s 5; 1983 c 301 s 187; 1986 c 444; 1987 c 404 s 170; 1989 c 335 art 1 s 208; 1993 c 369 s 115

322A.17 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 the person's 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 322A.15.

History: 1980 c 582 art 5 s 14; 1986 c 444

322A.18 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: 1980 c 582 art 5 s 15; 1986 c 430 s 8

322A.19 DELIVERY OF CERTIFICATES TO LIMITED PARTNERS.

Upon the return by the secretary of state pursuant to section 322A.16 of a certificate marked "Filed," the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate to each limited partner unless the partnership agreement provides otherwise.

History: 1980 c 582 art 5 s 16

322A.24 ADMISSION OF 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 so 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 322A.58, 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: 1980 c 582 art 5 s 17; 1986 c 430 s 9

322A.25 VOTING.

Subject to section 322A.26, 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: 1980 c 582 art 5 s 18

322A.26 LIABILITY TO THIRD PARTIES.

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless that partner is also a general partner or takes part in the control of the business in addition to the exercise of a limited partner's rights and powers. However, if the limited partner participates in the control of the business, that limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(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; or

(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection, which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) winding up the limited partnership pursuant to section 322A.65; or

(8) exercising any right or power permitted to limited partners under sections 322A.01 to 322A.87 and not specifically enumerated in this subsection.

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

(d) The use of a limited partner's name, with the limited partner's permission and knowledge, in the name of the limited partnership, except under circumstances permitted by section 322A.02, clause (2)(i), makes the limited partner liable to

creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History: 1980 c 582 art 5 s 19; 1986 c 430 s 10; 1986 c 444

322A.27 ERRONEOUS BELIEF THAT ONE IS A 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 the person 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, the person:

(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 the person 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: 1980 c 582 art 5 s 20; 1984 c 448 s 1; 1986 c 430 s 11; 1986 c 444

322A.28 INFORMATION.

Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by section 322A.05; and

(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 for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

History: 1980 c 582 art 5 s 21

322A.31 ADMISSION OF ADDITIONAL GENERAL PARTNERS.

After the filing of a limited partnership's original certificate of limited partnership, additional 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 general partners, with the written consent of all partners.

History: 1980 c 582 art 5 s 22; 1986 c 430 s 12

322A.32 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 322A.46;

(2) the general partner ceases to be a member of the limited partnership as provided in section 322A.56;

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

(4) unless otherwise provided in writing in the 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 as general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or rule;
 - (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner 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 the general partner's properties;
- (5) unless otherwise provided in writing in the partnership agreement, 120 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 rule, the proceeding has not been dismissed, or if within 90 days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed or within 90 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) the general partner's death; or
 - (ii) the entry by a court of competent jurisdiction adjudicating the general partner incompetent as to person or 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: 1980 c 582 art 5 s 23; 1985 c 248 s 70; 1986 c 430 s 13; 1986 c 444

322A.33 GENERAL POWERS AND LIABILITIES.

- (a) Except as provided in sections 322A.01 to 322A.87 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 sections 322A.01 to 322A.87, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the other partners and the partnership. Except as provided in sections 322A.01 to 322A.87 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: 1980 c 582 art 5 s 24; 1984 c 448 s 2

322A.34 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 the person's participation in the partnership as a limited partner.

History: 1980 c 582 art 5 s 25; 1986 c 444

322A.35 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: 1980 c 582 art 5 s 26

322A.38 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: 1980 c 582 art 5 s 27

322A.39 LIABILITY FOR CONTRIBUTION.

(a) No promise by a limited partner to contribute to the limited partnership is 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 the partner 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, that partner 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 322A.05) 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 sections 322A.01 to 322A.87 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: 1980 c 582 art 5 s 28; 1986 c 430 s 14; 1986 c 444

322A.40 SHARING OF PROFITS AND LOSSES.

The profits and losses of a limited partnership shall 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 322A.05) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

History: 1980 c 582 art 5 s 29; 1986 c 430 s 15

322A.41 SHARING OF DISTRIBUTIONS.

Distributions of cash or other assets of a limited partnership shall 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 322A.05) of the contribu-

tions made by each partner to the extent they have been received by the partnership and have not been returned.

History: 1980 c 582 art 5 s 30; 1986 c 430 s 16

322A.45 INTERIM DISTRIBUTIONS.

Except as provided in sections 322A.45 to 322A.52, a partner is entitled to receive distributions from a limited partnership before withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

History: 1980 c 582 art 5 s 31; 1986 c 430 s 17; 1986 c 444

322A.46 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 the withdrawing general partner.

History: 1980 c 582 art 5 s 32; 1986 c 444

322A.47 WITHDRAWAL OF LIMITED PARTNER.

Subdivision 1. **When agreement does not specify.** If the partnership agreement 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 each's address on the books of the limited partnership at its office in this state.

This subdivision applies to limited partnerships formed before August 1, 1998.

Subd. 2. **When agreement specifies.** A limited partner may not withdraw from a limited partnership except at the time or upon the happening of events specified in writing in the partnership agreement.

This subdivision applies to all limited partnerships formed on or after August 1, 1998, and to all limited partnerships formed before August 1, 1998, in which the partnership agreement specified in writing a time or events upon the happening of which a limited partner could withdraw.

History: 1980 c 582 art 5 s 33; 1986 c 430 s 18; 1986 c 444; 1998 c 320 s 1

322A.48 DISTRIBUTION UPON WITHDRAWAL.

Except as provided in sections 322A.45 to 322A.52, upon withdrawal any withdrawing partner is entitled to receive any distribution to which entitled under the partnership agreement and, if not otherwise provided in the agreement, the withdrawing partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the withdrawing partner's interest in the limited partnership as of the date of withdrawal based upon that partner's right to share in distributions from the limited partnership.

History: 1980 c 582 art 5 s 34; 1986 c 444

322A.49 DISTRIBUTION IN KIND.

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of 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 that partner exceeds a percentage of that asset which is equal to the percentage in which that partner shares in distributions from the limited partnership.

History: 1980 c 582 art 5 s 35; 1986 c 430 s 19; 1986 c 444

322A.50 RIGHT TO DISTRIBUTION.

On becoming entitled to receive a distribution, a partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

History: 1980 c 582 art 5 s 36; 1986 c 444

322A.51 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: 1980 c 582 art 5 s 37

322A.52 LIABILITY UPON RETURN OF CONTRIBUTION.

(a) If a partner has received the return of any part of a contribution without violation of the partnership agreement or sections 322A.01 to 322A.87, that partner 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 a contribution in violation of the partnership agreement or sections 322A.01 to 322A.87, that partner 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 a contribution to the extent that a distribution reduces that partner's share 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 322A.05) of the contribution which has not been distributed to that partner.

History: 1980 c 582 art 5 s 38; 1986 c 430 s 20; 1986 c 444

322A.55 NATURE OF PARTNERSHIP INTEREST.

A partnership interest is personal property.

History: 1980 c 582 art 5 s 39

322A.56 ASSIGNMENT OF PARTNERSHIP INTEREST.

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in 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 the partner's partnership interest.

History: 1980 c 582 art 5 s 40; 1986 c 444

322A.57 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. Sections 322A.01 to 322A.87 do not deprive any partner of the benefit of any exemption laws applicable to that partner's partnership interest.

History: 1980 c 582 art 5 s 41; 1986 c 444

322A.58 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 (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (2) 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 sections 322A.01 to 322A.87. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in sections 322A.38 to 322A.52. However, the assignee is not obligated for liabilities unknown to the assignee at the time of becoming a limited partner and which could not be ascertained from the certificate of limited partnership.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from liability to the limited partnership under sections 322A.17 and 322A.39.

History: 1980 c 582 art 5 s 42; 1986 c 430 s 21; 1986 c 444

322A.59 POWER OF ESTATE OF DECEASED OR INCOMPETENT PARTNER.

If a partner who is an individual dies or a court of competent jurisdiction adjudges that partner to be incompetent to manage person or property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling the estate or administering the 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: 1980 c 582 art 5 s 43; 1986 c 444

322A.63 NONJUDICIAL DISSOLUTION.

A limited partnership is dissolved and its affairs shall 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 at the time there is at least one other general partner and the written provisions of the partnership permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

- (5) entry of a decree of judicial dissolution under section 322A.64.

History: 1980 c 582 art 5 s 44; 1986 c 430 s 22

322A.64 JUDICIAL DISSOLUTION.

On application by or for a partner the district court 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: 1980 c 582 art 5 s 45

322A.65 WINDING UP.

(a) 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 district court may wind up the limited partnership's affairs upon application of any partner, a legal representative, or assignee.

(b) Where a limited partnership has by its own terms terminated, or it has been dissolved or otherwise terminated, the general partners or any general partner last acting in that capacity has authority, without court approval, to execute necessary or appropriate instruments of conveyance of real estate and mortgage satisfactions.

History: 1980 c 582 art 5 s 46; 1986 c 430 s 23; 1986 c 444

322A.66 DISTRIBUTION OF ASSETS.

Upon the winding up of a limited partnership, the assets shall 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 322A.45 or 322A.48;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 322A.45 or 322A.48; 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: 1980 c 582 art 5 s 47

322A.69 LAW GOVERNING.

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.

History: 1980 c 582 art 5 s 48

322A.70 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 a certificate of status from the filing office in the jurisdiction in which the foreign limited partnership is organized, and an application for registration as a foreign limited partnership, signed 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 the agent for service of process on the foreign limited partnership; 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 the appointed agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(5) the principal office of the foreign limited partnership;

(6) the name and business 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 canceled or withdrawn.

History: 1980 c 582 art 5 s 49; 1986 c 430 s 24; 1987 c 384 art 1 s 29; 1988 c 682 s 39; 1993 c 48 s 6

322A.71 ISSUANCE OF REGISTRATION.

(a) If the secretary of state finds that an application for registration conforms to law and a \$25 filing fee and a \$60 initial registration fee has been paid, the secretary shall:

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

(2) file 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 a representative of that person.

History: 1980 c 582 art 5 s 50; 1981 c 356 s 346; 1983 c 301 s 188; 1986 c 444; 1987 c 404 s 171

322A.72 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 includes the words "limited partnership" or the abbreviation "LP" and that could be registered by a domestic limited partnership.

(b) A person doing business in this state may contest the subsequent registration of a name with the Office of the Secretary of State as provided in section 5.22.

History: 1980 c 582 art 5 s 51; 1989 c 292 s 16; 1995 c 58 s 5

322A.73 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 to by a general partner, correcting such statement.

History: 1980 c 582 art 5 s 52; 1988 c 682 s 40

322A.74 CANCELLATION OF REGISTRATION.

A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed 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: 1980 c 582 art 5 s 53; 1988 c 682 s 41

322A.75 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: 1980 c 582 art 5 s 54

322A.76 ACTION BY ATTORNEY GENERAL.

The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of sections 322A.69 to 322A.76.

History: 1980 c 582 art 5 s 55

322A.761 SERVICE OF PROCESS ON LIMITED PARTNERSHIP OR FOREIGN LIMITED PARTNERSHIP.

A process, notice, or demand required or permitted by law to be served upon a limited partnership or foreign limited partnership may be served either upon the registered agent, if any, of the limited partnership or foreign limited partnership named in the certificate or registration, or upon a general partner of the limited partnership or foreign limited partnership, or upon the secretary of state as provided in section 5.25.

History: 1994 c 438 s 10; 1995 c 128 art 1 s 12

322A.79 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: 1980 c 582 art 5 s 56

322A.80 PROPER PLAINTIFF.

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which complaint is made or (2) plaintiff's status as a partner had devolved 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: 1980 c 582 art 5 s 57; 1986 c 444

322A.81 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: 1980 c 582 art 5 s 58

322A.82 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 the plaintiff to remit to the limited partnership the remainder of the proceeds received.

History: 1980 c 582 art 5 s 59; 1986 c 444

322A.85 SHORT TITLE.

Sections 322A.01 to 322A.87 may be cited as the 1976 Uniform Limited Partnership Act.

History: 1980 c 582 art 5 s 60

322A.86 RELATIONSHIP TO SECTIONS 322.01 TO 322.31.

A domestic limited partnership existing on January 1, 1981, shall be governed by sections 322.01 to 322.31 unless (1) the limited partnership elects to come under the provisions of sections 322A.01 to 322A.85, and the certificate of limited partnership is amended to reflect the intention, the election and a certified copy of all previously filed limited partnership documents is filed with the secretary of state, and the election is filed with the county recorder; and (2) to so elect is not prohibited by the terms of the certificate of limited partnership in effect prior to January 1, 1981. A domestic limited partnership formed after December 31, 1980 shall be governed by sections 322A.01 to 322A.85.

History: 1980 c 582 art 5 s 61; 1984 c 618 s 33

322A.87 RULES FOR CASES NOT PROVIDED FOR IN SECTIONS 322A.01 TO 322A.87.

(a) Before January 1, 2002, for any case not provided for in sections 322A.01 to 322A.87 the governing law is as follows:

(1) for limited partnerships formed after December 31, 1998, chapter 323A governs;

(2) for limited partnerships formed before January 1, 1999;

(i) if the limited partnership has filed a statement of qualification under section 322A.88 or has amended its certificate of limited partnership to state that the limited partnership is subject to chapter 323A, chapter 323A governs;

(ii) if subparagraph (i) does not apply, chapter 323 governs.

(b) Beginning January 1, 2002, for any case not provided for in sections 322A.01 to 322A.87, chapter 323A governs.

History: 1980 c 582 art 5 s 62; 1999 c 85 art 3 s 13

322A.88 LIMITED LIABILITY LIMITED PARTNERSHIP.

(a) A limited partnership may become a limited liability limited partnership by:

(1) obtaining approval of the terms and conditions under which the limited partnership elects limited liability limited partnership status by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;

(2) filing a statement of qualification under section 323A.1001(c) of the Uniform Partnership Act (1994); and

(3) complying with the name requirements of section 322A.02, paragraph (a), clause (1), as those requirements pertain to a limited liability limited partnership.

(b) A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification under section 323A.1001(c) of the Uniform Partnership Act (1994).

(c) Sections 323A.0306(c) and 323A.0307(d) of the Uniform Partnership Act (1994) apply to both general and limited partners of a limited liability limited partnership.

History: 1997 c 174 art 12 s 61; 1998 c 262 s 2; 1999 c 85 art 3 s 14