

**Chapter 59.**  
**Partnership.**

Article 1.

Uniform Limited Partnership Act.

**§§ 59-1 through 59-30.1: Repealed by Session Laws 1985 (Regular Session, 1986), c. 989, s. 2.**

Article 2.

Uniform Partnership Act.

Part 1. Preliminary Provisions.

**§ 59-31. North Carolina Uniform Partnership Act.**

Articles 2 through 4A, inclusive, of this Chapter shall be known and may be cited as the North Carolina Uniform Partnership Act. (1941, c. 374, s. 1; 2000-140, s. 101(j); 2001-487, s. 20.)

**§ 59-32. Definition of terms.**

As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, the following definitions apply:

- (1) Act. – The North Carolina Uniform Partnership Act and refers to all provisions therein.
- (1a) Bankrupt. – Bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.
- (2) Business. – Every trade, occupation, or profession.
- (3) Conveyance. – Every assignment, lease, mortgage, or encumbrance.
- (4) Court. – Every court and judge having jurisdiction in the case.
- (4a) Domestic corporation. – Has the same meaning as in G.S. 55-1-40.
- (4b) Domestic limited liability company. – Has the same meaning as the term "LLC" in G.S. 57D-1-03.
- (4c) Domestic limited partnership. – Has the same meaning as in G.S. 59-102.
- (4d) Domestic nonprofit corporation. – A corporation as defined in G.S. 55A-1-40.
- (4e) Foreign corporation. – Has the same meaning as in G.S. 55-1-40.
- (4f) Foreign limited liability company. – Has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- (4g) Foreign limited liability partnership. – A partnership that is formed under laws other than the laws of this State and has the status of a limited liability partnership or registered limited liability partnership under those laws.
- (4h) Foreign limited partnership. – Has the same meaning as in G.S. 59-102.
- (4i) Foreign nonprofit corporation. – A foreign corporation as defined in G.S. 55A-1-40.
- (5) Person. – Individuals, partnerships, corporations, limited liability companies, and other associations.
- (5a) Principal office. – The office (in or out of this State) where the principal executive offices of a registered limited liability partnership or a foreign limited

liability partnership are located, as designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as a registered limited liability partnership or foreign limited liability partnership.

- (6) Real property. – Land and any interest or estate in land.
- (7) Registered limited liability partnership. – A partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3.
- (8) Service-disabled veteran. – A veteran with a disability that was incurred or aggravated during the veteran's service in the Armed Forces of the United States.
- (9) Service-disabled veteran-owned small business. – A business that satisfies all of the following requirements:
  - a. The business's net annual receipts do not exceed one million dollars (\$1,000,000).
  - b. One or more service-disabled veterans own more than fifty percent (50%) of the business.
- (10) Veteran. – An individual entitled to any benefits or rights under the laws of the United States by reason of service in the Armed Forces of the United States.
- (11) Veteran-owned small business. – A business that satisfies all of the following requirements:
  - a. The business's net annual receipts do not exceed one million dollars (\$1,000,000).
  - b. One or more veterans own more than fifty percent (50%) of the business. (1941, c. 374, s. 2; 1993, c. 354, s. 3; 1999-362, s. 4; 2000-140, s. 101(k); 2001-387, s. 103; 2013-157, s. 15; 2017-90, s. 5; 2018-142, s. 11.)

**§ 59-33. Interpretation of knowledge and notice.**

(a) A person has "knowledge" of a fact within the meaning of this Act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances show bad faith.

(b) A person has "notice" of a fact within the meaning of this Act when the person who claims the benefit of the notice:

- (1) States the fact to such person, or
- (2) Delivers through the mail, or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence. (1941, c. 374, s. 3; 2000-140, s. 101(n).)

**§ 59-34. Rules of construction.**

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

(b) The law of estoppel shall apply under this Act.

(c) The law of agency shall apply under this Act.

(d) This Article shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(e) This Article and the other provisions of this Act shall not be construed so as to impair the obligations of any contract existing when the Article or any other provision of this Act, as applicable, goes into effect, nor to affect any action or proceedings begun or right accrued before this Article or any other provision of this Act, as applicable, takes effect. (1941, c. 374, s. 4; 2000-140, s. 101(l).)

**§ 59-35. Rules for cases not provided for in this Act.**

In any case not provided for in this Act, the rules of law and equity, including the law merchant, shall govern. (1941, c. 374, s. 5; 2000-140, s. 101(m).)

**§ 59-35.1. Filing of documents.**

(a) A document required or permitted by this Act to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes.

(b) A document submitted for filing by the Secretary of State on behalf of a general partnership must be executed by a general partner of the partnership.

(c) The Secretary of State may adopt and furnish on request forms for:

- (1) An application for registration as a registered limited liability partnership;
- (2) Cancellation of registration as a registered limited liability partnership;
- (3) Application for registration as a foreign limited liability partnership; and
- (4) Cancellation of registration as a foreign limited liability partnership.

If the Secretary of State so requires, use of these forms is mandatory.

(d) The Secretary of State may adopt and furnish on request forms for other documents required or permitted to be filed by this Act, but their use is not mandatory. (1999-369, s. 4.1; 2001-358, ss. 9, 38, 51(c); 2001-387, ss. 104, 105(c), 155, 170(a), 173, 175(a); 2001-413, s. 6; 2002-58, s. 4.)

**§ 59-35.2. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

Document	Fee
(1) Application for reserved name .....	\$10.00
(2) Notice of transfer of reserved name .....	10.00
(3) Application for registered name .....	10.00
(4) Application for renewal of registered name .....	10.00
(5) Registered limited liability partnership's or foreign limited liability partnership's statement of change of registered agent or registered office or both .....	5.00
(6) Agent's statement of change of registered office for each affected registered limited liability partnership or foreign limited liability partnership .....	5.00
(7) Agent's statement of resignation .....	No Fee
(8) Designation of registered agent or registered office or both .....	5.00
(9) Articles of conversion (other than articles of conversion included as part of another document).....	50.00
(10) Articles of merger .....	50.00

(11)	Application for registration as a registered limited liability partnership .....	125.00
(12)	Certificate of amendment of registration as a registered limited liability partnership .....	25.00
(13)	Cancellation of registration as a registered limited liability partnership .....	25.00
(14)	Application for registration as a foreign limited liability partnership .	125.00
(15)	Certificate of amendment of registration as a foreign limited liability partnership .....	25.00
(16)	Cancellation of registration as a foreign limited liability partnership .	25.00
(17)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion .....	10.00
(18)	Annual report .....	200.00
(19)	Articles of correction .....	10.00
(20)	Any other document required or permitted to be filed pursuant to this Act .....	10.00

(b) Whenever the Secretary of State is deemed appointed as a registered agent under this Act or under Chapter 55D of the General Statutes, the Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary of State under this Act. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a filed partnership document:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original.
- (2) Fifteen dollars (\$15.00) for a paper certificate.
- (3) Ten dollars (\$10.00) for an electronic certificate. (2001-387, s. 170(b); 2001-487, s. 62(q); 2005-435, s. 46.)

## Part 2. Nature of a Partnership.

### § 59-36. Partnership defined.

(a) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(b) But any association formed under any other statute of this State, or any statute adopted by authority, other than the authority of this State, is not a partnership under this Article, unless such association would have been a partnership in this State prior to the adoption of this Article; but this Article shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith. (1941, c. 374, s. 6.)

### § 59-37. Rules for determining the existence of a partnership.

In determining whether a partnership exists, these rules shall apply:

- (1) Except as provided by G.S. 59-46 persons who are not partners as to each other are not partners as to third persons.
- (2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

- (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.
- (4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:
  - a. As a debt by installments or otherwise,
  - b. As wages of an employee or rent to a landlord,
  - c. As an annuity to a widow or representative of a deceased partner,
  - d. As interest on a loan, though the amount of payment vary with the profits of the business,
  - e. As the consideration for the sale of a goodwill of a business or other property by installments or otherwise. (1941, c. 374, s. 7.)

**§ 59-38. Partnership property.**

- (a) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.
- (b) Unless the contrary intention appears, property acquired with partnership funds is partnership property.
- (c) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.
- (d) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. (1941, c. 374, s. 8.)

Part 3. Relations of Partners to Persons Dealing with the Partnership.

**§ 59-39. Partner agent of partnership as to partnership business.**

- (a) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.
- (b) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.
- (c) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:
  - (1) Assign the partnership property in trust for creditors, or on the assignee's promise to pay the debts of the partnership,
  - (2) Dispose of the goodwill of the business,
  - (3) Do any other act which would make it impossible to carry on the ordinary business of a partnership,
  - (4) Confess a judgment,
  - (5) Submit a partnership claim or liability to arbitration or reference.
- (d) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. (1941, c. 374, s. 9.)

**§ 59-39.1. Act, admission or acknowledgment by partner.**

After a cause of action has accrued on any obligation of a partnership, any act, admission or acknowledgment by any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners which removes the bar of the statute of limitations or causes the statutes to begin running anew with respect to the partner doing such act or making such admission or acknowledgment has a like effect with respect to all of the partners and with respect to partnership liability, but when any partner is not so acting and does not have the authority of his copartners, any act, admission or acknowledgment by such partner which removes the bar of the statute of limitations or causes the statute to begin running anew has such effect only as to the partner doing such act or making such admission or acknowledgment, and shall not renew, extend or in any manner impose liability of any kind against any partner who has not authorized or ratified the same nor against the partnership. (1953, c. 1076, s. 2.)

**§ 59-40. Conveyance of real property of the partnership.**

(a) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of subsection (a) of G.S. 59-39, or unless such property has been conveyed by the grantee or a person claiming through such grantee to holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(b) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of G.S. 59-39.

(c) Where title to real property is in the name of one or more, but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of subsection (a) of G.S. 59-39, unless the purchaser or his assignee, is a holder for value, without knowledge.

(d) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (a) of G.S. 59-39.

(e) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property. (1941, c. 374, s. 10; 1959, c. 1161, s. 3.)

**§ 59-41. Partnership bound by admission of partner.**

An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this Act is evidence against the partnership. (1941, c. 374, s. 11; 2000-140, s. 101(n).)

**§ 59-42. Partnership charged with knowledge of or notice to partner.**

Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the

acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (1941, c. 374, s. 12.)

**§ 59-43. Partnership bound by partner's wrongful act.**

Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. (1941, c. 374, s. 13.)

**§ 59-44. Partnership bound by partner's breach of trust.**

The partnership is bound to make good the loss:

- (1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and
- (2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. (1941, c. 374, s. 14.)

**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.**

(a) Except as provided by subsections (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another partner or by an employee, agent, or other representative of the partnership; provided, however, nothing in this Chapter shall affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services.

(c) Repealed by Session Laws 1999-362, s. 5.

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability. (1941, c. 374, s. 15; 1953, c. 881; 1993, c. 354, s. 4; 1999-362, s. 5.)

**§ 59-46. Partner by estoppel.**

(a) When a person, by words spoken or written, by conduct, or by contract, represents himself, or consents to another representing him to anyone, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

- (1) When a partnership liability results, he is liable as though he were an actual member of the partnership.
- (2) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(b) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. (1941, c. 374, s. 16; 1975, c. 732.)

**§ 59-47. Liability of incoming partner.**

A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property. (1941, c. 374, s. 17.)

Part 4. Relations of Partners to One Another.

**§ 59-48. Rules determining rights and duties of partners.**

The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

- (1) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.
- (2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.



- (3) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.
- (4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.
- (5) All partners have equal rights in the management and conduct of the partnership business.
- (6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.
- (7) No person can become a member of a partnership without the consent of all the partners.
- (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. (1941, c. 374, s. 18.)

**§ 59-49. Partnership books.**

The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them. (1941, c. 374, s. 19.)

**§ 59-50. Duty of partners to render information.**

Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. (1941, c. 374, s. 20.)

**§ 59-51. Partner accountable as a fiduciary.**

(a) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

(b) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. (1941, c. 374, s. 21.)

**§ 59-52. Right to an account.**

Any partner shall have the right to a formal account as to partnership affairs:

- (1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,
- (2) If the right exists under the terms of any agreement,
- (3) As provided by G.S. 59-51,
- (4) Whenever other circumstances render it just and reasonable. (1941, c. 374, s. 22.)

**§ 59-53. Continuation of partnership beyond fixed term.**

(a) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(b) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. (1941, c. 374, s. 23.)

#### Part 5. Property Rights of a Partner.

##### **§ 59-54. Extent of property rights of a partner.**

The property rights of a partner are:

- (1) His right in specific partnership property,
- (2) His interest in the partnership, and
- (3) His right to participate in the management. (1941, c. 374, s. 24.)

##### **§ 59-55. Nature of a partner's right in specific partnership property.**

(a) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(b) The incidents of this tenancy are such that:

- (1) A partner, subject to the provisions of this Act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.
- (2) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.
- (3) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.
- (4) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner, or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.
- (5) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin. (1941, c. 374, s. 25; 2000-140, s. 101(n).)

##### **§ 59-56. Nature of partner's interest in the partnership.**

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property. (1941, c. 374, s. 26.)

##### **§ 59-57. Assignment of partner's interest.**

(a) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(b) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. (1941, c. 374, s. 27.)

**§ 59-58. Partner's interest subject to charging order.**

(a) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(b) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

- (1) With separate property, by any one or more of the partners, or
- (2) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(c) Nothing in this Act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. (1941, c. 374, s. 28; 2000-140, s. 101(n).)

Part 6. Dissolution and Winding Up.

**§ 59-59. Dissolution defined.**

The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. (1941, c. 374, s. 29.)

**§ 59-60. Partnership not terminated by dissolution.**

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. (1941, c. 374, s. 30.)

**§ 59-61. Causes of dissolution.**

Dissolution is caused:

- (1) Without violation of the agreement between the partners,
  - a. By the termination of the definite term or particular undertaking specified in the agreement,
  - b. By the express will of any partner when no definite term or particular undertaking is specified,
  - c. By the express will of all partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specific term or particular undertaking,

- d. By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;
- (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;
- (3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;
- (4) By the death of any partner, unless the partnership agreement provides otherwise;
- (5) By the bankruptcy of any partner or the partnership;
- (6) By decree of court under G.S. 59-62. (1941, c. 374, s. 31; 1943, c. 384.)

**§ 59-62. Dissolution by decree of court.**

- (a) On application by or for a partner the court shall decree a dissolution whenever:
  - (1) A partner has been adjudicated incompetent or is shown to be of unsound mind,
  - (2) A partner becomes in any other way incapable of performing his part of the partnership contract,
  - (3) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,
  - (4) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
  - (5) The business of the partnership can only be carried on at a loss,
  - (6) Other circumstances render a dissolution equitable.
- (b) On the application of the purchaser of a partner's interest under G.S. 59-57 and 59-58:
  - (1) After the termination of the specified term or particular undertaking,
  - (2) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.
- (c) The name of a registered limited liability partnership becomes available for use by another entity as provided in G.S. 55D-21. (1941, c. 374, s. 32; 1985, c. 589, s. 29; 2001-358, s. 41; 2001-387, ss. 173, 175(a); 2001-413, s. 6; 2001-487, s. 107(b).)

**§ 59-63. General effect of dissolution on authority of partner.**

Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

- (1) With respect to the partners,
  - a. When the dissolution is not by the act, bankruptcy or death of a partner; or
  - b. When the dissolution is by such act, bankruptcy or death of a partner, in cases where G.S. 59-64 so requires,
- (2) With respect to persons not partners, as declared in G.S. 59-65. (1941, c. 374, s. 33.)

**§ 59-64. Right of partner to contribution from copartners after dissolution.**

Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless

- (1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or
- (2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy. (1941, c. 374, s. 34.)

**§ 59-65. Power of partner to bind partnership to third persons after dissolution; publication of notice of dissolution.**

(a) After dissolution a partner can bind the partnership except as provided in subsection (c)

- (1) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;
- (2) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction
  - a. Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or
  - b. Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been published at least once a week for four successive weeks in some newspaper qualified for legal advertising in each county in which the partnership business was regularly carried on, or if no such newspaper is published in the county, posted for 30 days at the courthouse and three other public places in the county.

(b) The liability of a partner under subdivision (a)(2) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution

- (1) Unknown as a partner to the person with whom the contract is made; and
- (2) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(c) The partnership is in no case bound by any act of a partner after dissolution

- (1) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or
- (2) Where the partner has become bankrupt; or
- (3) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who
  - a. Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or
  - b. Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subdivision (a)(2)b.

(d) Nothing in this section shall affect the liability under G.S. 59-46 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. (1941, c. 374, s. 35; 1951, c. 381, s. 1.)

**§ 59-66. Effect of dissolution on partner's existing liability.**

(a) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(b) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(c) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(d) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. (1941, c. 374, s. 36.)

**§ 59-67. Right to wind up.**

Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs; provided, however, that any partner, his legal representative or his assignee, upon cause shown, may obtain winding up by the court. (1941, c. 374, s. 37.)

**§ 59-68. Rights of partners to application of partnership property.**

(a) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interest in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under G.S. 59-66, subsection (b), he shall receive in cash only the net amount due him from the partnership.

(b) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

- (1) Each partner who has not caused dissolution wrongfully shall have:
  - a. All the rights specified in subsection (a) of this section, and
  - b. The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.
- (2) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused

the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (b)(1)b of this section, and in like manner indemnify him against all present or future partnership liabilities.

- (3) A partner who has caused the dissolution wrongfully shall have:
  - a. If the business is not continued under the provisions of subdivision (b)(2) all the rights of a partner under subsection (a), subject to clause (b)(1)b, of this section,
  - b. If the business is continued under subdivision (b)(2) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the goodwill of the business shall not be considered. (1941, c. 374, s. 38.)

**§ 59-69. Rights where partnership is dissolved for fraud or misrepresentation.**

Where partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

- (1) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and
- (2) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and
- (3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (1941, c. 374, s. 39.)

**§ 59-70. Rules for distribution.**

In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

- (1) The assets of the partnership are
  - a. The partnership property,
  - b. The contributions of the partners necessary for the payment of all the liabilities specified in subdivision (2) of this section.
- (2) The liabilities of the partnership shall rank in order of payment, as follows:
  - a. Those owing to creditors other than partners,
  - b. Those owing to partners other than for capital and profits,
  - c. Those owing to partners in respect of capital,
  - d. Those owing to partners in respect of profits.
- (3) The assets shall be applied in the order of their declaration in subdivision (1) of this section to the satisfaction of the liabilities.

- (4) The partners shall contribute, as provided by G.S. 59-48, subdivision (1) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.
- (5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subdivision (4) of this section.
- (6) Any partner or his legal representative shall have the right to enforce the contributions specified in subdivision (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.
- (7) The individual property of a deceased partner shall be liable for the contributions specified in subdivision (4) of this section.
- (8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.
- (9) Where a partner has become bankrupt or his estate is insolvent the claims against the separate property shall rank in the following order:
  - a. Those owing to separate creditors,
  - b. Those owing to partnership creditors,
  - c. Those owing to partners by way of contribution. (1941, c. 374, s. 40.)

**§ 59-71. Liability of persons continuing the business in certain cases.**

(a) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(b) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(c) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (a) and (b) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(d) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(e) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of G.S. 59-68, subdivision (b)(2), either alone or with others,



and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(f) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(g) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of the partnership property only.

(h) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(i) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(j) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. (1941, c. 374, s. 41.)

#### **§ 59-72. Rights of retiring partner or estate of deceased partner when the business is continued.**

When any partner retires or dies, and the business is continued under any of the conditions set forth in G.S. 59-71, subsections (a), (b), (c), (e), (f), or G.S. 59-68, subdivision (b)(2), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by G.S. 59-71, subsection (h). (1941, c. 374, s. 42.)

#### **§ 59-73. Accrual of actions.**

The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (1941, c. 374, s. 43.)

### Article 2A.

#### Conversion and Merger.

## Part 1. General Provisions.

### § 59-73.1. Definitions.

As used in this Article:

- (1) "Business entity" means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a domestic partnership, or any other partnership.
- (2) "Domestic partnership" means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability partnership, but excluding a domestic limited partnership.
- (3) "Partnership" means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and a foreign limited liability partnership, but excluding a domestic limited partnership and a foreign limited partnership. (1999-369, s. 4.1; 2001-387, ss. 106, 107.)

§ 59-73.2: Recodified as § 59-73.20 by Session Laws 2001-387, s. 105(b).

§ 59-73.3: Recodified as § 59-73.30 by Session Laws 2001-387, s. 105(b).

§ 59-73.4: Recodified as § 59-73.31 by Session Laws 2001-387, s. 105(b).

§ 59-73.5: Recodified as § 59-73.32 by Session Laws 2001-387, s. 105(b).

§ 59-73.6: Recodified as § 59-73.33 by Session Laws 2001-387, s. 105(b).

§ 59-73.7: Recodified as § 59-35.1 by Session Laws 2001-358, s. 9.

§ 59-73.8. Reserved for future codification purposes.

§ 59-73.9. Reserved for future codification purposes.

## Part 2. Conversion to Domestic Partnership.

### § 59-73.10. Conversion.

A business entity other than a domestic partnership may convert to a domestic partnership if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and
- (2) The converting business entity complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (2001-387, s. 108.)

### § 59-73.11. Plan of conversion.

(a) The converting business entity shall approve a written plan of conversion containing:

- (1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
  - (2) The name of the resulting domestic partnership into which the converting business entity shall convert;
  - (3) The terms and conditions of the conversion; and
  - (4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic partnership or into cash or other property in whole or in part.
- (a1) The plan of conversion may contain other provisions relating to the conversion.
- (a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:
- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
  - (2) A determination or action by the converting business entity or by any other person, group.
  - (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.
- (b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.
- (c) After a plan of conversion has been approved as provided in subsection (b) of this section but before the articles of conversion become effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity. (2001-387, s. 108; 2001-487, s. 62(r); 2005-268, s. 52.)

**§ 59-73.12. Filing of articles of conversion by converting business entity.**

- (a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-73.11, the converting business entity shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:
- (1) That the domestic partnership is being formed pursuant to a conversion of another business entity;
  - (2) The name of the resulting domestic partnership, a designation of its mailing address, and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address;
  - (3) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and
  - (4) That a plan of conversion has been approved by the converting business entity as required by law.

If the resulting domestic partnership is to be a registered limited liability partnership when the conversion takes effect, then instead of the converting business entity delivering the articles of conversion to the Secretary of State for filing, the articles of conversion shall be included as part of the application for registration filed pursuant to G.S. 59-84.2 in addition to the matters otherwise required or permitted by law.

If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, an amendment to the articles of conversion withdrawing the articles of conversion shall be delivered to the Secretary of State for filing prior to the time the articles of conversion become effective.

(b) The conversion takes effect when the articles of conversion become effective.

(c) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 108; 2001-487, s. 62(s); 2002-159, s. 34(a).)

### **§ 59-73.13. Effects of conversion.**

(a) When the conversion takes effect:

- (1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic partnership;
- (2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic partnership without reversion or impairment;
- (3) All liabilities of the converting business entity continue as liabilities of the resulting domestic partnership;
- (4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and
- (5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

(b) When the conversion takes effect, the resulting domestic partnership is deemed:

- (1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting business entity and (ii) any obligation of the resulting domestic partnership arising from the conversion; and
- (2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-35.2. Upon receipt of service of process on behalf of a resulting domestic partnership in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting domestic partnership. If the resulting domestic partnership is a registered limited liability partnership, the address for mailing shall be its principal office or, if there is no principal office on file, its registered office. If the resulting domestic partnership is not a registered limited liability

partnership, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.12(a)(2). (2001-387, s. 108; 2001-387, s. 170(c).)

**§§ 59-73.14 through 59-73.19. Reserved for future codification purposes.**

Part 3. Conversion of Domestic Partnership.

**§ 59-73.20. Conversion.**

A domestic partnership may convert to a different business entity if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and
- (2) The converting domestic partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999-369, s. 4.1; 2001-387, ss. 105(b), 109, 110.)

**§ 59-73.21. Plan of conversion.**

(a) The converting domestic partnership shall approve a written plan of conversion containing:

- (1) The name of the converting domestic partnership;
- (2) The name of the resulting business entity into which the domestic partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The terms and conditions of the conversion; and
- (4) The manner and basis for converting the interests in the domestic partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.

(a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting domestic partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting domestic partnership is a party, or any other agreement or document.

(b) The plan of conversion shall be approved by the domestic partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no such provision, by the unanimous consent of its partners. If any partner of the converting domestic partnership has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic partnership shall require the consent of that partner. The converting domestic partnership shall provide a copy of the plan of conversion to each partner of the converting domestic

partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.

(c) After a plan of conversion has been approved by a domestic partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned, subject to any contractual rights, as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined in the manner necessary for approval of the plan of conversion. (2001-387, s. 111; 2001-487, s. 62(t); 2005-268, s. 53.)

#### **§ 59-73.22. Articles of conversion.**

(a) After a plan of conversion has been approved by the converting domestic partnership as provided in G.S. 59-73.21, the converting domestic partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

- (1) The name of the converting domestic partnership;
- (2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and
- (3) That a plan of conversion has been approved by the domestic partnership as required by law.

(b) If the domestic partnership is converting to a business entity whose formation requires the filing of a document with the Secretary of State, then notwithstanding subsection (a) of this section the articles of conversion shall be included as part of that document and shall contain the information required by the laws governing the organization and internal affairs of the resulting business entity.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect when the articles of conversion become effective.

(e) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 111; 2001-487, s. 62(u).)

#### **§ 59-73.23. Effects of conversion.**

(a) When the conversion takes effect:

- (1) The converting domestic partnership ceases its prior form of organization and continues in existence as the resulting business entity;
- (2) The title to all real estate and other property owned by the converting domestic partnership continues vested in the resulting business entity without reversion or impairment;
- (3) All liabilities of the converting domestic partnership continue as liabilities of the resulting business entity;

- (4) A proceeding pending by or against the converting domestic partnership may be continued as if the conversion did not occur; and
- (5) The interests in the converting domestic partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic partnership for any acts, omissions, or obligations of the converting domestic partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic partnership in its form of organization as a domestic partnership in the conversion shall not constitute a dissolution or termination of the converting domestic partnership.

(b) If the resulting business entity is not a domestic corporation, a domestic limited partnership, or a domestic limited liability company, when the conversion takes effect the resulting business entity is deemed:

- (1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic partnership and (ii) any obligation of the resulting business entity arising from the conversion; and
- (2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-35.2. Upon receipt of service of process on behalf of a resulting business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.22(a)(2). (2001-387, ss. 111, 170(c); 2001-487, s. 62(v).)

**§§ 59-73.24 through 59-73.29. Reserved for future codification purposes.**

#### Part 4. Merger.

##### **§ 59-73.30. Merger.**

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

- (1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and
- (2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws

referred to in subdivision (1) of this section. (1999-369, s. 4.1; 2001-387, ss. 105(b), 112.)

**§ 59-73.31. Plan of merger.**

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing all of the following:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (2) The name of the merging business entity that shall survive the merger.
- (3) The terms and conditions of the merger.
- (4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.

(a1) The plan of merger may contain other provisions relating to the merger.

(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic partnership is a party, or any other agreement or document.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the unanimous consent of the partners. (1999-369, s. 4.1; 2001-387, ss. 105(b), 112, 113; 2005-268, s. 54; 2018-45, s. 31.)



**§ 59-73.32. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.31, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) Repealed by Session Laws 2005-268, s. 55, effective October 1, 2005.
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (3) The name of the merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.
- (5) Repealed by Session Laws 2005-268, s. 55, effective October 1, 2005.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting the abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1. (1999-369, s. 4.1; 2001-387, ss. 105(b), 112, 114; 2005-268, s. 55.)

**§ 59-73.33. Effects of merger.**

(a) When a merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic

corporation, as defined in G.S. 55-1-40, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and

- (6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) To have appointed the Secretary of State as its registered agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59-35.2. Upon receipt of service of process on behalf of a surviving business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-73.32(a)(3). (1999-369, s. 4.1; 2000-140, s. 52; 2001-358, s. 10(a); 2001-387, ss. 105(b), 112, 115, 170(c), 173, 175(a); 2002-159, s. 17; 2007-385, s. 5; 2011-347, ss. 17, 18.)

### Article 3.

## Surviving Partners.

### **§ 59-74. Surviving partner to give bond.**

Upon the death of any member of a partnership, the surviving partner shall, within 30 days, execute before the clerk of the superior court of the county where the partnership business was conducted, a bond payable to the State of North Carolina, with sufficient surety conditioned upon the faithful performance of his duties in the settlement of the partnership affairs. The amount of such bond shall be fixed by the clerk of the court; and the settlement of the estate and the liability of the bond shall be the same as under the law governing administrators and their bonds. (1915, c. 227, ss. 1, 2, 3; C.S., s. 3277.)

### **§ 59-75. Effect of failure to give bond.**

Upon the failure of the surviving partner to execute the bond provided for in G.S. 59-74, the clerk of the superior court shall, upon application of any person interested in the estate of the deceased partner, appoint a collector of the partnership, who shall be governed by the same law governing an administrator of a deceased person. (1915, c. 227, s. 4; C.S., s. 3278.)

### **§ 59-76. Surviving partner and personal representative to make inventory.**

When a member of any partnership dies the surviving partner, within 60 days after the death of the deceased partner, together with the personal representative of the deceased partner, shall make out a full and complete inventory of the assets of the partnership, including real estate, if there be any, together with a schedule of the debts and liabilities thereof, a copy of which inventory and schedule shall be retained by the surviving partner, and a copy thereof shall be furnished to the personal representative of the deceased partner. (1901, c. 640; Rev., s. 2540; C.S., s. 3279.)

### **§ 59-77. When personal representative may take inventory; receiver.**

If the surviving partner should neglect or refuse to have such inventory made, the personal representative of the deceased partner may have the same made in accordance with the provisions of G.S. 59-76. Should any surviving partner fail to take such an inventory or refuse to allow the personal representative of the deceased partner's estate to do so, such personal representative of the deceased partner's estate may forthwith apply to a court of competent jurisdiction for the appointment of a receiver for such partnership, who shall thereupon proceed to wind up the same and dispose of the assets thereof in accordance with law. (1901, c. 640, s. 2; Rev., s. 2541; C.S., s. 3280; 2000-140, s. 101(o); 2001-387, s. 116.)

### **§ 59-78. Notice to creditors.**

Every surviving partner, within 30 days after the death of the deceased partner, shall notify all persons having claims against the partnership which were in existence at the time of the death of the deceased partner, to exhibit the same to the surviving partner within six months from the date of first publication of such notice. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper published in the county, but there is a newspaper having general circulation in the county, then at the option of the surviving partner the notice shall be published in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. (1901, c. 640, s. 3; Rev., s. 2542; C.S., s. 3281; 1951, c. 381, s. 2; 1973, c. 1410, ss. 1, 2.)

**§ 59-79. Debts paid pro rata; liens.**

All debts and demands against a copartnership, where one partner has died, shall be paid pro rata, except debts which are a specific lien on property belonging to the partnership. (1901, c. 640, s. 4; Rev., s. 2543; C.S., s. 3282.)

**§ 59-80. Effect of failure to present claim in six months.**

In an action brought on a claim which was not presented within six months from the first publication of the general notice to creditors, the surviving partner shall not be chargeable for any assets that he may have paid in satisfaction of any debts before such action was commenced, nor shall any costs be recovered in such action against the surviving partner. (1901, c. 640, s. 5; Rev., s. 2544; C.S., s. 3283; 1973, c. 1410, s. 3.)

**§ 59-81. Procedure for purchase by surviving partner.**

(a) Appraisal of Property. – The surviving partner may, if he so desire, make application to the clerk of the superior court of the county in which the partnership existed, after first giving notice to the executor or administrator of the time of the hearing of such application, for the appointment of three judicious, disinterested appraisers, one of whom may be named by the surviving partner, one by the representative of the deceased partner's estate, and the third named by the two appraisers selected, whose duty it shall be to make out under oath a full and complete inventory and appraisal of the entire assets of the partnership, including real estate if there be any, together with a schedule of the debts and liabilities thereof, and to deliver the same to the surviving partner; they shall also deliver a copy to the executor or administrator, and file a copy with the clerk of the court.

(b) Surviving Partner May Purchase. – The surviving partner may, with the consent of the executor or administrator of the deceased partner and the approval of the clerk of the superior court by whom such executor or administrator was appointed, purchase the interest of such deceased partner in the partnership assets at the appraised value thereof, including the good will of the business, first deducting therefrom the debts and liabilities of the partnership, for cash or upon giving to the executor or administrator his promissory note or notes, with good approved security, and satisfactory to the executor or administrator, for the payment of the interest of such deceased partner in the partnership assets.

(c) Surviving Partner to Give Bond. – In case the surviving partner shall avail himself of the privilege of purchasing such interest as provided for in this section, he shall give bond to the executor or administrator with surety for the payment of the debts and liabilities of the partnership, and for the performance of all contracts for which the partnership is liable.

(d) Sale of Real Estate. – In case of such sale of the real estate belonging to the partnership, the title to the real estate so purchased shall not pass until the sale thereof has been reported to and confirmed by the clerk of the superior court of the county in which the partnership was located, in a special proceeding to which the widow and heirs at law or devisees of the deceased partner are duly made parties. (1901, c. 640, s. 6; Rev., s. 2545; 1911, c. 12; C.S., s. 3284.)

**§ 59-82. Surviving partner to account and settle.**

In case the surviving partner shall not avail himself of the privilege of purchasing the interest of the deceased partner, he shall, within six months from the date of the first publication of notice to creditors, file with the clerk of the superior court of the county where the partnership was

located, an account, under oath, stating his action as surviving partner, and shall come to a settlement with the executor or administrator of the deceased partner: Provided, that the clerk of the superior court shall have power, upon good cause shown, to extend the time within which said final settlement shall be made. The surviving partner for his services in settling the partnership estate shall receive commissions to be allowed by the court. (1901, c. 640, s. 7; Rev., s. 2546; C.S., s. 3285; 1947, c. 781; 1957, c. 783, s. 6; 1973, c. 1410, s. 4.)

**§ 59-83. Accounting compelled.**

In case any surviving partner fails to come to a settlement with the executor or administrator of the deceased partner within the time prescribed by law, the clerk of the superior court may, at the instance of such executor, administrator or other person interested in such deceased partnership estate, cite the surviving partners to a final settlement as provided for by law in the case of executors and administrators. (1901, c. 640, s. 8; Rev., s. 2547; C.S., s. 3286.)

**§ 59-84. Settlement otherwise provided for.**

When the original articles of partnership in force at the death of any partner or the will of a deceased partner make provision for the settlement of the deceased partner's interest in the partnership, and for a disposition thereof different from that provided for in this Chapter, the interest of such deceased partner in the partnership shall be settled and disposed of in accordance with the provisions of such articles of partnership or of such will. (1901, c. 640, s. 6; Rev., s. 2545; C.S., s. 3287.)

Article 3A.

Miscellaneous Provisions.

**§ 59-84.1. Partnership to comply with Assumed Business Name Act; income taxation.**

(a) Every partnership other than a limited partnership shall comply with, and be subject to, the provisions of Articles 14A and 15 of Chapter 66 of the General Statutes in all cases in which the Articles are applicable.

(b) A partnership, including a registered limited liability partnership and a foreign limited liability partnership, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if any such partnership is classified for federal income tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If any such partnership is classified for federal income tax purposes as a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If any such partnership is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a partnership,

including any registered limited liability partnership or foreign limited liability partnership authorized to transact business in this State, to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code. (1951, c. 381, s. 9; 1993, c. 354, s. 5; 2001-387, s. 117; 2016-100, s. 7.)

### Article 3B.

#### Registered Limited Liability Partnerships.

##### **§ 59-84.2. Registered limited liability partnerships.**

(a) A partnership whose internal affairs are governed by the laws of this State, other than a limited partnership, may become a registered limited liability partnership by filing with the Secretary of State an application stating all of the following:

- (1) The name of the partnership.
- (2) The street address, and the mailing address if different from the street address, of its principal office and the county in which the principal office is located.
- (3) The name and street address, and the mailing address if different from the street address, of the partnership's registered agent and registered office for service of process.
- (4) The county in this State in which the registered office is located.
- (5) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.
- (6) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.
- (7) The fiscal year end of the partnership.

(a1) The terms and conditions on which a partnership becomes a limited liability partnership must be approved in the manner provided in the partnership agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions shall be approved (i) in the case of a partnership having a partnership agreement that expressly considers obligations to contribute to the partnership, in the manner necessary to amend those provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

(b) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.

(c) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.

(d) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.

(e) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.

(f) Repealed by Session Laws 2001-387, s. 156(b), effective January 1, 2002.

(f1) A partnership becomes a registered limited liability partnership when its application for registration becomes effective.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) A partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

- (1) The name of the partnership as reflected on the application for registration.
- (2) The date of filing of the application for registration.
- (3) The amendment to the application for registration.

(i) Each registered limited liability partnership must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(j) A partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

- (1) The name of the partnership as reflected on the application for registration;
- (2) The date of filing of the application for registration;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;
- (4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and
- (5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the partnership's registered agent to accept service of process, notice, or demand, and appoints the Secretary of State as agent to accept service on behalf of the partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the partnership was registered as a registered limited liability partnership. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.2. Upon receipt of process, notice, or demand in the manner provided in this section, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the partnership at the mailing address designated pursuant to this subsection.

(k) If a registered limited liability partnership is dissolved but its business is continued by some of its partners with or without others in a new partnership under the same name, then (i) the new partnership shall automatically succeed to the registration of the dissolved original partnership as a registered limited liability partnership and (ii) the dissolved original partnership shall be deemed to be registered as a registered limited liability partnership until the winding up of its affairs is completed. (1993, c. 354, s. 5; 1999-362, ss. 6, 7; 2000-140, ss. 53, 101(p); 2001-358, s. 51(a); 2001-387, ss. 118, 156, 173, 175(a); 2001-413, s. 6; 2002-58, s. 5.)

#### **§ 59-84.3. Name of registered limited liability partnerships.**

A registered limited liability partnership's name must meet the requirements of G.S. 55D-20 and G.S. 55D-21. (1993, c. 354, s. 5; 1999-362, ss. 6, 8; 2001-358, s. 39; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

#### **§ 59-84.4. Annual report for Secretary of State.**

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

- (1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.

- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.
- (3) The street address and telephone number of its principal office.
- (4) A brief description of the nature of its business.
- (5) The fiscal year end of the partnership.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(a1) The Secretary of State shall also provide appropriate space and instructions on the annual report form for a registered limited liability partnership or foreign limited liability partnership to voluntarily indicate whether or not it is a veteran-owned small business or a service-disabled veteran-owned small business.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year.

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

- (1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;
- (2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;
- (3) The registered limited liability partnership or foreign limited liability partnership has been without a registered agent or registered office in this State for 60 days or more; or
- (4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has



been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement. If, at the time the registered limited liability partnership applies for reinstatement, the name of the registered limited liability partnership is not distinguishable from the name of another entity authorized to be used under G.S. 55D-21, then the registered limited liability partnership must change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the other entity before the Secretary of State may prepare a certificate of reinstatement. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24. The effect of reinstatement of a limited liability partnership shall be the same as for a corporation under G.S. 55-14-22. (1999-362, s. 9; 2001-387, s. 119; 2001-390, s. 13; 2017-90, s. 3(a).)

**§ 59-84.5. Report of veteran-owned small businesses and service-disabled veteran-owned small businesses.**

Using the information reported pursuant to G.S. 59-84.4(a1), the Secretary of State shall compile summary information on an aggregate basis about the number of veteran-owned small businesses and the number of service-disabled veteran-owned small businesses reporting in this State. The Secretary of State shall annually report this summary information to the Department of Military and Veterans Affairs by March 1 of each year. (2017-90, s. 3(b).)

Article 4.

Business under Assumed Name Regulated.

**§§ 59-85 through 59-88: Transferred to §§ 66-68 to 66-71 by Session Laws 1951, c. 381, s. 7.**

**§ 59-89. Transferred to § 66-72 by Session Laws 1951, c. 381, s. 8.**

Article 4A.

Foreign Limited Liability Partnerships.

**§ 59-90. Law governing foreign limited liability partnership.**

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership. (1999-362, s. 10.)

**§ 59-91. Statement of foreign registration.**

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

- (1) The name of the foreign limited liability partnership that satisfies the requirements of the state or other jurisdiction under whose law it is formed and meets the requirements of Article 3 of Chapter 55D of the General Statutes.
- (2) The street address, and the mailing address if different from the street address, of the partnership's principal office, and the county in which the principal office is located.
- (3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.
- (4), (5) Repealed by Session Laws 2001-387, s. 157(b).
- (6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the Secretary of State or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) Each foreign limited liability partnership maintaining a statement of foreign registration in this State must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(c) through (g) Repealed by Session Laws 2001-387, s. 157(b).

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

(i) A foreign limited liability partnership becomes registered as a foreign limited liability partnership when its application for registration becomes effective.

(j) A foreign limited liability partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

- (1) The name of the foreign limited liability partnership under which it is registered in this State;
- (2) The date of filing of the application for registration; and
- (3) The amendment to the application for registration.

(k) A foreign limited liability partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

- (1) The name of the foreign limited liability partnership under which it is registered in this State;
- (2) The date of filing of the application for registration;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under this subsection;
- (4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address; and
- (5) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

Cancellation of registration terminates the authority of the foreign limited liability partnership's registered agent to accept service of process, notice, or demand and appoints the Secretary of State as agent to accept such service on behalf of the foreign limited liability partnership with respect to any action or proceeding based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was registered in this State. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process, notice, or demand and the fee required by G.S. 59-35.2. Upon receipt of process, notice, or demand in the manner herein provided, the Secretary of State shall immediately mail a copy of the process, notice, or demand by registered or certified mail, return receipt requested, to the foreign limited liability partnership at the mailing address designated pursuant to this subsection.

(l) Whenever a foreign limited liability partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited liability partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability partnership records in the state or country under the laws of which the foreign limited liability partnership was organized. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State, the articles or certificate must be accompanied by an application which must set forth:

- (1) The name of the foreign liability limited partnership [sic] authorized to transact business in this State, the type of entity and name of the surviving or resulting

entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;

- (2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited liability partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (2) of this subsection; and
- (4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(m) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

- (1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;
- (2) File the articles or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with a copy of the application, if required, affixed thereto.

(n) After the withdrawal of the foreign limited liability partnership is effective, service of process on the Secretary of State in accordance with subsection (l) of this section shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process and the fee required by G.S. 59-35.2. Upon receipt of process in the manner herein provided, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (l) of this section. (1999-362, s. 10; 2000-140, s. 54; 2001-358, ss. 40, 51(b); 2001-387, ss. 120, 157, 173, 175(a); 2001-413, s. 6.)

#### **§ 59-92. Effect of failure to register.**

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

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

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part thereof, it transacts business in this

State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection. (1999-362, s. 10.)

**§ 59-93. Activities not constituting transacting business.**

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

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;
- (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) Transacting business in interstate commerce;
- (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;
- (10) Selling through independent contractors; and
- (11) Owning, without more, real or personal property.

(b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State. (1999-362, s. 10.)

**§ 59-94. Action by Attorney General.**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article. (1999-362, s. 10.)

**§§ 59-95 through 59-100. Reserved for future codification purposes.**

Article 5.

Revised Uniform Limited Partnership Act.

Part 1. General Provisions.

**§ 59-101. Short title.**

This Article may be cited as the Revised Uniform Limited Partnership Act. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-102. Definitions.**

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

- (1) "Business" means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.
- (1a) "Business entity" means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic limited partnership, a foreign limited partnership, a registered limited liability partnership, a foreign limited liability partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.
- (1b) "Certificate of limited partnership" means the certificate referred to in G.S. 59-201, and the certificate as amended.
- (2) "Conformed copy" shall include a photostatic or other photographic copy of the original document.
- (3) "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.
- (3a) "Domestic corporation" has the same meaning as in G.S. 55-1-40.
- (3b) "Domestic limited liability company" has the same meaning as the term "LLC" in G.S. 57D-1-03.
- (3c) "Domestic nonprofit corporation" means a corporation as defined in G.S. 55A-1-40.
- (4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.
- (4a) "Foreign corporation" has the same meaning as in G.S. 55-1-40.
- (4b) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- (4c) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to the provisions of G.S. 59-403(b) pertaining to general partners in limited liability limited partnerships.
- (5) "Foreign limited partnership" means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners, and

- includes, for all purposes of the laws of the State of North Carolina, a limited liability limited partnership.
- (5a) "Foreign nonprofit corporation" means a foreign corporation as defined in G.S. 55A-1-40.
  - (6) "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.
  - (6a) "Limited liability limited partnership" and "registered limited liability limited partnership" mean a limited partnership that is registered under and complies with G.S. 59-210.
  - (7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
  - (8) "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, and includes, for all purposes of the laws of the State of North Carolina, a limited liability limited partnership.
  - (9) "Partner" means a limited or general partner.
  - (10) "Partnership agreement" means any valid agreement of the partners as to the affairs of a limited partnership, the conduct of its business, and the responsibilities and rights of its partners. The term "partnership agreement" includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a "partnership agreement", and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.
  - (11) "Partnership interest" means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.
  - (12) "Person" means a natural person, domestic or foreign partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, trust, estate, unincorporated association, domestic or foreign corporation, domestic or foreign nonprofit corporation, or another entity.
  - (12a) "Principal office" means the office (in or out of this State) where the principal executive offices of a limited liability limited partnership or foreign limited partnership are located, in the case of a limited liability limited partnership as designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as a limited liability limited partnership, or in the case of a foreign limited partnership as most recently designated in its application for registration as a foreign limited partnership or a certificate filed pursuant to G.S. 59-905.
  - (13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. (1985 (Reg. Sess.,

1986), c. 989, s. 2; 1999-362, s. 11; 1999-369, s. 4.2; 2001-387, s. 121; 2001-487, ss. 62(w), (x); 2013-157, s. 16.)

**§ 59-103. Name.**

The name of the limited partnership must meet any requirements of Article 3 of Chapter 55D of the General Statutes. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 1; 1995, c. 539, s. 34; 2001-358, s. 32; 2001-387, ss. 122, 155, 172, 173, 175(a); 2001-413, s. 6.)

**§ 59-104:** Repealed by Session Laws 2001-358, s. 33.

**§ 59-105. Registered office and registered agent.**

(a) Each limited partnership must maintain a registered office and registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(b) Limited partnerships formed prior to October 1, 1986, shall file a certificate of limited partnership with the Office of the Secretary of State pursuant to G.S. 59-201(a) designating the address of the registered office of the limited partnership and the identity of the registered agent at such address.

(b1) through (e) Repealed by Session Laws 2001-358, s. 50(a). (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 2; 1989, c. 209; 2000-140, s. 101(q); 2001-358, s. 50(a); 2001-387, ss. 123, 155, 173, 175(a); 2001-413, s. 6.)

**§ 59-106. Records to be kept.**

(a) Each limited partnership shall keep in this State at an office in this State:

- (1) A current list of the full name and last known mailing address of each partner set forth 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 copies of any financial statements of the limited partnership for the three most recent years; and
- (5) A written record that contains:
  - a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;
  - b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
  - c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and
  - d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.



The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records.

(b) The books and records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987 (Reg. Sess., 1988), c. 1031, s. 2; 1997-456, s. 27; 1999-362, s. 12.)

**§ 59-107. Nature of business.**

A limited partnership may be formed for and carry on any lawful business. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 13.)

**§ 59-108. Business transactions of partner with the 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 G.S. 59-804 and other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§§ 59-109 through 59-200. Reserved for future codification purposes.**

Part 2. Formation; Certificate of Limited Partnership.

**§ 59-201. 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 and set forth:

- (1) The name of the limited partnership.
- (2) The address, including county and city or town, and street and number, if any, of the registered office and the name of the registered agent at such address for service of process required to be maintained by G.S. 55D-30.
- (3) If the limited partnership is to dissolve by a specific date, the latest date upon which the limited partnership is to dissolve. If no date for dissolution is specified, there shall be no limit on the duration of the limited partnership.
- (4) The name and the address, including county and city or town, and street and number, if any, of each general partner.
- (5) The address, including county and city or town, and street and number, if any, of the office at which the records referred to in G.S. 59-106 are kept, if such records are not kept at the registered office.

(b) Unless a delayed effective date is specified in the certificate of limited partnership, a limited partnership is formed at the effective time and date of the filing of the certificate of limited partnership in the office of the Secretary of State if there has been substantial compliance with the requirements of this section.

(c) Domestic limited partnership filings filed prior to October 1, 1986, with the Office of Register of Deeds pursuant to G.S. 59-2(a)(2) shall evidence the existence of limited partnerships formed prior to October 1, 1986, and shall be public notice of only those matters contained in G.S. 59-201(a) and shall be used for no other purpose.

(d) A limited partnership may also be formed through the conversion of another business entity in accordance with Part 10A of this Article.

(e) If the limited partnership is to be a limited liability limited partnership at its formation, then instead of separately filing the application for registration as a limited liability limited partnership, the application for registration shall be included as part of the certificate of limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 3; 1987 (Reg. Sess., 1988), c. 1031, s. 3; 1997-485, s. 24; 1999-369, s. 4.3; 2000-140, s. 17; 2001-358, s. 50(b); 2001-387, ss. 124, 124A, 173, 175(a); 2001-413, s. 6.)

**§ 59-202. 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 of the certificate; and
- (3) 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 G.S. 59-801 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) Repealed by Session Laws 1987, c. 531, s. 4. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 4.)

**§ 59-203. Cancellation of certificate.**

A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time that 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 of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the partners filing the certificate determine. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1997-485, s. 25.)

**§ 59-204. Execution of documents.**

(a) Each certificate required by this Article 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 all general partners;
- (2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and
- (3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner.

(b) Any person may sign a certificate by an attorney-in-fact.

(b1) Repealed by Session Laws 2001-358, s. 10(c).

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1991, c. 153, s. 1; 1997-485, s. 22; 1999-369, s. 4.4; 2001-358, ss. 10(b), (c); 2001-387, ss. 125, 155, 173, 175(a); 2001-413, s. 6.)

#### **§ 59-205. Execution by judicial act.**

If a person fails or refuses to execute a certificate pursuant to G.S. 59-204, any other person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office 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 so designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to record, an appropriate certificate. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 14.)

#### **§ 59-206. Filing requirements.**

A document required or permitted by this Article to be filed by the Secretary of State must be filed under Chapter 55D of the General Statutes. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 5; 1991, c. 153, s. 2; 1995, c. 539, s. 35; 1997-485, ss. 17, 26; 1999-362, s. 15; 1999-369, ss. 4.5, 4.6; 2001-358, ss. 10(d), 34; 2001-387, ss. 126, 155, 173, 175(a); 2001-413, s. 6.)

**§§ 59-206.1 through 59-206.2:** Repealed by Session Laws 2001-358, s. 10(e), effective January 1, 2002.

#### **§ 59-207. 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 G.S. 59-205. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-208. 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-209. Certificate of existence.**

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic limited partnership or a certificate of authorization for a foreign limited partnership.

(b) A certificate of existence or authorization sets forth:

- (1) The domestic limited partnership's name or the foreign limited partnership's name used in this State;
- (2) That (i) the domestic limited partnership has filed a certificate of limited partnership under the law of this State, the effective date of the filing, and the period of the domestic limited partnership's duration, or (ii) the foreign limited partnership is authorized to transact business in this State;
- (3) If the limited partnership has registered as a limited liability limited partnership, that the registration has not been cancelled or revoked;
- (4) That a certificate of cancellation of the certificate of limited partnership has not been filed; and
- (5) Other facts of record in the office of the Secretary of State that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic limited partnership has filed a certificate of limited partnership and has not filed a certificate of cancellation or that the foreign limited partnership is authorized to transact business in this State, and, if applicable, that the domestic limited partnership has registered as a limited liability limited partnership and that such registration has not been cancelled or revoked. (2001-387, s. 127.)

**§ 59-210. Limited liability limited partnerships.**

(a) To become a limited liability limited partnership, a limited partnership shall file with the Secretary of State an application stating:

- (1) The name of the limited liability limited partnership, which must satisfy the requirements of Article 3 of Chapter 55D of the General Statutes.
- (2) The street address, and mailing address if different from the street address, of its principal office, and the county in which the principal office is located.
- (3) The fiscal year end of the limited liability limited partnership.

(b) The terms and conditions on which a limited partnership becomes a limited liability limited partnership shall be approved in the manner provided in the partnership agreement; provided, however, if the partnership agreement does not contain any such provision, the terms and conditions must be approved (i) in the case of a limited partnership having a partnership agreement that expressly considers obligations to contribute to the partnership, in the manner necessary to amend those provisions, or (ii) in any other case, in the manner necessary to amend the partnership agreement.

(c) A limited partnership becomes a limited liability limited partnership when its application for registration becomes effective.

(d) The status of a limited liability limited partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(e) A limited liability limited partnership shall promptly amend its registration to reflect any change in the information contained in its application for registration, other than changes that are properly included in other documents filed with the Secretary of State. A registration is amended by filing a certificate of amendment with the Secretary of State. The certificate of amendment shall set forth:

- (1) The name of the limited liability limited partnership as reflected on the application for registration;
- (2) The date of filing of the application for registration; and
- (3) The amendment to the application for registration.

(f) A limited liability limited partnership may cancel its registration by filing a certificate of cancellation with the Secretary of State. The certificate of cancellation shall set forth:

- (1) The name of the limited liability limited partnership as reflected on the application for registration;
- (2) The date of filing of the application for registration; and
- (3) The effective date and time of cancellation if it is not to be effective at the time of filing the certificate.

(g) A limited liability limited partnership shall be subject to the provisions of G.S. 59-84.4 as if it were a registered limited liability partnership. (2001-387, ss. 127, 158; 2001-413, s. 8.)

**§§ 59-211 through 59-300. Reserved for future codification purposes.**

Part 3. Limited Partners.

**§ 59-301. Admission of limited partners.**

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

- (1) The formation of the limited partnership; or
- (2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) After the formation of a 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, at the time provided pursuant to, and upon the compliance with, the partnership agreement; and
- (2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, 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. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 16.)

**§ 59-302. Voting.**

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. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 17.)

**§ 59-303. Liability to third parties.**

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1997-456, s. 27; 1999-362, s. 18.)

**§ 59-304. 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 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, he:

- (1) Causes an appropriate certificate of limited partnership [or] certificate of amendment to be executed and filed; or
- (2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise in the case in which:

- (1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and
- (2) The third party transacted business with the enterprise before either:
  - a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or
  - b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 19.)

**§ 59-305. Information.**

Each limited partner has the right to:

- (1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; 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. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 20.)

**§§ 59-306 through 59-400. Reserved for future codification purposes.**

Part 4. General Partners.

**§ 59-401. Admission of additional general partners.**

Unless otherwise provided in the partnership agreement, after the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-402. 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 G.S. 59-602;
- (2) The general partner ceases to be a member of the limited partnership as provided in G.S. 59-702;
- (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 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 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 regulation, 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 his 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,
  - a. The general partner's death; or
  - b. The entry of an order by a court of competent jurisdiction adjudicating the general partner incompetent to manage his or her person or property;
- (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;
- (10) Unless otherwise provided in the partnership agreement, or with the consent of all partners, in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership;
- (11) In the case of a general partner that is a limited liability company, the dissolution and commencement of winding up of the limited liability company; or

- (12) In the case of a general partner that is not a natural person, trust, separate partnership, corporation, estate, or limited liability company, the termination of the general partner. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1997-456, s. 27; 1999-362, ss. 21, 22; 2001-387, ss. 128, 129, 130, 131.)

**§ 59-403. General powers and liabilities.**

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

(b) Except as provided in this Article, a general partner of a limited partnership that is not a limited liability limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners, and a general partner of a limited liability limited partnership has the liabilities of, and has the limitation on liability afforded to, a partner in a registered limited liability partnership under the North Carolina Uniform Partnership Act to persons other than the partnership and the other partners with respect to debts and obligations of the limited partnership incurred while it is a limited liability limited partnership. Except as provided in this Article or in the partnership agreement, a general partner of a limited partnership that is not a limited liability limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners, and a general partner of a limited liability limited partnership has the liabilities of, and has the limitation on liability afforded to, a partner in a registered limited liability partnership under the North Carolina Uniform Partnership Act to the partnership and to the other partners.

(c) Unless otherwise provided in the partnership agreement, a general partner of a limited partnership has the power and authority to delegate to one or more other persons the general partner's rights and powers to manage and control the business and affairs of the limited partnership, including to delegate to agents, officers, and employees of the general partner or the limited partnership, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Unless otherwise provided in the partnership agreement, a delegation by a general partner of a limited partnership shall not cause the general partner to cease to be a general partner of the limited partnership and shall not reduce or absolve the general partner of the general partner's duties or obligations to the limited partnership or its other partners. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 6; 2001-387, ss. 132, 133.)

**§ 59-404. Contributions by a 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-405. 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§§ 59-406 through 59-500. Reserved for future codification purposes.**

Part 5. Finance.

**§ 59-501. 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-502. Liability for contributions.**

(a) 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, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term "agreed value" means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106.

(b) 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 Article may be compromised only by consent of all the partners. Any such compromise, however, shall not affect the rights of a creditor whose claim arose prior to the date of the compromise.

(c) No promise by a limited partner to contribute to the limited partnership is enforceable unless in a writing signed by the limited partner. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 23.)

**§ 59-503. Sharing income, gain, loss, deduction or credit.**

Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term "agreed value" means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 24.)

**§ 59-504. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. To the extent the partnership agreement does not provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions

made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term "agreed value" means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 25.)

**§§ 59-505 through 59-600. Reserved for future codification purposes.**

Part 6. Distribution and Withdrawal.

**§ 59-601. Interim distributions.**

Except as provided in this Article, 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 happening of the events specified in the partnership agreement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-602. Withdrawal of general partner.**

After filing of the original certificate of limited partnership, 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, in addition to its other remedies, any damages for breach of the partnership agreement and may offset the damages against the amount otherwise distributable or payable to the partner. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 26.)

**§ 59-603. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw, a limited partner may not withdraw prior to the time for the dissolution and winding up of the limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 27.)

**§ 59-604. Distribution upon withdrawal.**

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of the partner's partnership interest in the limited partnership as of the date of withdrawal, based upon the partner's right to share in distributions from the limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 28.)

**§ 59-605. Distribution in kind.**

Except as provided in writing in the limited partnership agreement, (1) 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; and (2) 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-606. Right to distribution.**

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 29.)

**§ 59-607. Limitations on distribution.**

A partner shall 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-608. 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 Article, 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 Article, 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 the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the agreed value of the partner's contribution which has not been distributed to the partner. As used in this section, the term "agreed value" means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 30.)

**§§ 59-609 through 59-700. Reserved for future codification purposes.**

Part 7. Assignment of Partnership Interest.

**§ 59-701. Nature of partnership interest.**

A partnership interest is personal property. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-702. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) 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 allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner and to have the power to exercise any rights and powers of a partner upon assignment of all of the partner's partnership interest. Except as provided in the

partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 7; 1999-362, s. 31.)

**§ 59-703. 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. The general partners shall have no liability to a partner for payments to a judgment creditor pursuant to this provision. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This Article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-704. 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 this Article. An assignee who becomes a limited partner also is liable for the obligations of the assignee's assignor to make and return contributions as provided in Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time the assignee became a limited partner and (ii) could not be ascertained from the written provisions of the partnership agreement.

(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 G.S. 59-207, 59-502, and 59-608. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 32.)

**§ 59-705. 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 of 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§§ 59-706 through 59-800. Reserved for future codification purposes.**

Part 8. Dissolution.

**§ 59-801. Nonjudicial dissolution.**

(a) 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 or upon the happening of events specified in writing in the partnership agreement;
- (2) Written consent of all partners;
- (3) An event of withdrawal of a general partner unless:
  - a. At the time there is at least one other general partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership shall be continued by the remaining general partners; or
  - b. Within 90 days after the withdrawal, all remaining partners, or a lesser number or portion of the partners provided in the partnership agreement, 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, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;
- (3a) Ninety days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or
- (4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 33.)

#### **§ 59-802. Judicial dissolution.**

On application by or for a partner the 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. The limited partnership's name becomes available for use by another entity as provided in 55D-21. (1985 (Reg. Sess., 1986), c. 989, s. 2; 2001-358, s. 36; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

#### **§ 59-803. 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 court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-804. Distribution of assets.**

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

- (1) To creditors, including limited partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under G.S. 59-601 or G.S. 59-604;

- (2) To general partners who are creditors to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under G.S. 59-601 or G.S. 59-604;
- (3) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under G.S. 59-601 or G.S. 59-604; and
- (4) 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§§ 59-805 through 59-900. Reserved for future codification purposes.**

Part 9. Foreign Limited Partnerships.

**§ 59-901. Law governing.**

Subject to the Constitution of this State, (i) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its partners, and (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 34.)

**§ 59-902. Registration.**

(a) Before transacting business in this State, a foreign limited partnership shall procure a certificate of authority to transact business in this State from the Secretary of State. No foreign limited partnership shall be entitled to transact in this State any business which a limited partnership organized under this Article is not permitted to transact. In order to register, a foreign limited partnership shall deliver to the Secretary of State 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 jurisdiction and date of its formation;
- (3) The date of formation and the period of duration;
- (4) The street address, and the mailing address if different from the street address, of the principal office of the foreign limited partnership, and the county in which the principal office is located;
- (5) The street address, and the mailing address if different from the street address, of the registered office of the foreign limited partnership in this State, the county in which the registered office is located, and the name of its proposed registered agent in this State;
- (6) If the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and addresses of the partners, a list of the names and addresses or, at the election of the foreign limited partnership, a list of the names and addresses of the general partners and the address, including county and city or town, and street and number, 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 such records until such foreign limited partnership's registration in this State is cancelled;

- (7) A statement that in consideration of the issuance of a certificate of authority to transact business in this State, the foreign limited partnership appoints the Secretary of State of North Carolina as the agent to receive service of process, notice, or demand, whenever the foreign limited partnership fails to appoint or maintain a registered agent in this State or whenever any such registered agent cannot with reasonable diligence be found at the registered office;
- (8) The names and addresses including county and city or town, and street and number, if any, of all of the general partners;
- (8a) Whether the foreign limited partnership is a foreign limited liability partnership; and
- (9) The effective date and time of the registration if it is not to be effective at the time of filing of the application.

(b) Without excluding other activities which shall not constitute transacting business in this State, a foreign limited partnership shall not be considered to be transacting business in this State, for the purpose of this Article, by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;
- (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
- (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this State before becoming binding contracts;
- (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sale, the acquiring of property at foreclosure sale and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
- (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
- (8) Transacting business in interstate commerce; and
- (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature.

(c) Each foreign limited partnership authorized to transact business in this State must maintain a registered agent as required by Article 4 of Chapter 55D of the General Statutes and is subject to service on the Secretary of State under that Article.

(d) through (e) Repealed by Session Laws 2001-358, s. 50(b). (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 8.1; 2000-140, s. 55; 2001-358, s. 50(c); 2001-387, ss. 134, 159, 173, 175(a); 2001-413, s. 6; 2001-487, s. 62(y).)

**§ 59-903. Issuance of registration.**

If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

- (1) Endorse on the application the word "filed", and the hour, day, month and year of the filing thereof;
- (2) File in the office of the Secretary of State the application;
- (3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and
- (4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 8; 1997-485, s. 27; 1999-362, s. 35.)

**§ 59-904. Name.**

A foreign limited partnership may register with the Secretary of State under any name that meets the requirements of Article 3 of Chapter 55D of the General Statutes. (1985 (Reg. Sess., 1986), c. 989, s. 2; 2001-358, s. 35; 2001-387, ss. 135, 155, 173, 175(a); 2001-413, s. 6.)

**§ 59-905. 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 an original and one conformed copy of a certificate, signed by a general partner, correcting such statement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-906. 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-907. Transaction of business without registration.**

(a) No foreign limited partnership transacting business in this State without permission obtained through a certificate of authority under this Article shall be permitted to maintain any action or proceeding in any court of this State unless such foreign limited partnership shall have obtained a certificate of authority prior to trial.

(b) The failure of a foreign limited partnership to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of the foreign limited partnership and shall not prevent the foreign limited partnership from defending any action or proceeding in any court of this State.



(c) A foreign limited partnership failing to obtain permission to transact business in this State as required by this Article or by prior statutes then applicable shall be liable to the State for the years or parts thereof during which it transacted business in this State without such permission in an amount equal to all fees and taxes which would have been imposed by law upon such foreign limited partnership had it duly applied for and received such permission plus interest and all penalties imposed by law for failure to pay such fees and taxes, plus five hundred dollars (\$500.00) and costs. The Attorney General shall bring actions to recover all amounts due the State under the provisions of this section.

(d) The Secretary of State is hereby directed to require that every foreign limited partnership transacting business in this State comply with the provisions of this Article. The Secretary of State is authorized to employ such assistants as shall be deemed necessary in his office for the purpose of enforcing the provisions of this Article and for making such investigations as shall be necessary to ascertain foreign limited partnerships now transacting business in this State which may have failed to comply with the provisions of this Article.

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

(f) 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. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 36; 2000-140, s. 101(r).)

#### **§ 59-908. 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 this Article. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-909. Withdrawal of foreign limited partnership by reason of a merger, consolidation, or conversion.**

(a) Whenever a foreign limited partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited partnership by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or country under the laws of which the foreign limited partnership was organized. If the surviving or resulting entity is not authorized to transact business or conduct affairs in this State, the articles or certificate must be accompanied by an application which must set forth:

- (1) The name of the foreign limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business or conduct affairs in this State;
- (2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited partnership

was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;

- (3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (a)(2) of this section; and
- (4) A commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

(b) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

- (1) Endorse on the articles or certificate and the application for withdrawal, if required, the word "filed" and the hour, day, month, and year of filing thereof;
- (2) File the articles or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto.

(c) After the withdrawal of the foreign limited partnership is effective, service of process on the Secretary of State in accordance with subsection (a) of this section shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-1106(b). Upon receipt of process in the manner provided in this subsection, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving or resulting entity at the mailing address designated pursuant to subsection (a) of this section. (1999-369, s. 4.7; 2001-387, ss. 136, 137; 2001-487, s. 62(z).)

**§§ 59-910 through 59-1000. Reserved for future codification purposes.**

Part 10. Derivative Actions.

**§ 59-1001. 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction that is the subject of the complaint or (ii) the plaintiff's status as a partner must have devolved upon the partner 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. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 37.)

**§ 59-1003. 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. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-1004. Expenses.**

(a) 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 any 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.

(b) In any such action, the court, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the defendant or defendants the reasonable expenses, including attorneys' fees, incurred by them in defense of the action. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-1005. Dismissal of action.**

Such action shall not be discontinued, dismissed, compromised or settled without the approval of the court. If the court shall determine that the interest of the partners or of the creditors of the partnership will be substantially affected by such discontinuance, dismissal, compromise, or settlement, the court, in its discretion, may direct that notice, by publication or otherwise, shall be given to such partners or creditors whose interest it determines will be so affected. If notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same, in such amount as the court shall be awarded as costs of the action. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-1006. Construction.**

The provisions of this Article shall not be construed to deprive a partner of whatever rights of action he may possess in his individual capacity. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§§ 59-1007 through 59-1049. Reserved for future codification purposes.**

Part 10A. Conversion to Limited Partnership.

**§ 59-1050. Conversion.**

A business entity other than a domestic limited partnership may convert to a domestic limited partnership if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity; and
- (2) The converting business entity complies with the requirements of this part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999-369, s. 4.8; 2001-387, s. 139.)

**§ 59-1051. Plan of conversion.**

- (a) The converting business entity shall approve a written plan of conversion containing:
  - (1) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
  - (2) The name of the resulting domestic limited partnership into which the converting business entity shall convert;
  - (3) The terms and conditions of the conversion; and
  - (4) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.
- (a1) The plan of conversion may contain other provisions relating to the conversion.

(a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the converting business entity or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the converting business entity is a party, or any other agreement or document.

(b) The plan of conversion shall be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited partnership becomes effective, the plan of conversion may be amended or abandoned to the extent permitted by the laws that govern the organization and internal affairs of the converting business entity. (1999-369, s. 4.8; 2001-387, s. 140; 2005-268, s. 56.)

#### **§ 59-1052. Filing of certificate of limited partnership.**

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1051, a certificate of limited partnership shall be delivered to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall contain articles of conversion stating:

- (1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;
- (2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and
- (3) That a plan of conversion has been approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned after the certificate of limited partnership has been filed with the Secretary of State but before the certificate of limited partnership becomes effective, an amendment withdrawing the certificate of limited partnership shall be delivered to the Secretary of State for filing prior to the time the articles of organization become effective.

(b) The conversion takes effect when the certificate of limited partnership becomes effective.

(c) Repealed by Session Laws 2001-387, s. 141.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (1999-369, s. 4.8; 2001-387, s. 141; 2002-159, s. 34(b).)

#### **§ 59-1053. Effects of conversion.**

When the conversion takes effect:

- (1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited partnership;

- (2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited partnership without reversion or impairment;
- (3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited partnership;
- (4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and
- (5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic limited partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity. (1999-369, s. 4.8; 2000-140, s. 101(s).)

**§ 59-1054:** Recodified as § 59-1070 by Session Laws 2001-387, s. 143.

**§ 59-1055:** Recodified as § 59-1071 by Session Laws 2001-387, s. 143.

**§ 59-1056:** Recodified as § 59-1072 by Session Laws 2001-387, s. 143.

**§ 59-1057:** Recodified as § 59-1073 by Session Laws 2001-387, s. 143.

**§ 59-1058. Reserved for future codification purposes.**

**§ 59-1059. Reserved for future codification purposes.**

#### Part 10B. Conversion of Limited Partnership.

**§ 59-1060. Conversion.**

A domestic limited partnership may convert to a different business entity if:

- (1) The conversion is permitted by the laws of the state or country governing the organization and internal affairs of such other business entity; and
- (2) The converting domestic limited partnership complies with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section. (2001-387, s. 142.)

**§ 59-1061. Plan of conversion.**

(a) The converting domestic limited partnership shall approve a written plan of conversion containing:

- (1) The name of the converting domestic limited partnership;

- (2) The name of the resulting business entity into which the domestic limited partnership shall convert, its type of business entity, and the state or country whose laws govern its organization and internal affairs;
  - (3) The terms and conditions of the conversion; and
  - (4) The manner and basis for converting the interests in the domestic limited partnership into interests, obligations, or securities of the resulting business entity or into cash or other property in whole or in part.
- (a1) The plan of conversion may contain other provisions relating to the conversion.
- (a2) The provisions of the plan of conversion, other than the provisions required by subdivisions (1) and (2) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of conversion if the plan of conversion sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:
- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
  - (2) A determination or action by the converting domestic limited partnership or by any other person, group, or body.
  - (3) The terms of, or actions taken under, an agreement to which the converting domestic limited partnership is a party, or any other agreement or document.
- (b) The plan of conversion shall be approved by the domestic limited partnership in the manner provided for the approval of the conversion in a written partnership agreement or, if there is no provision, by the unanimous consent of its partners. If any partner of the converting domestic limited partnership has or will have personal liability for any existing or future obligation of the resulting business entity solely as a result of holding an interest in the resulting business entity, then in addition to the requirements of the preceding sentence, approval of the plan of conversion by the domestic limited partnership shall require the consent of each such partner. The converting domestic limited partnership shall provide a copy of the plan of conversion to each partner of the converting domestic limited partnership at the time provided in a written partnership agreement or, if there is no such provision, prior to its approval of the plan of conversion.
- (c) After a plan of conversion has been approved by a domestic limited partnership but before the articles of conversion become effective, the plan of conversion (i) may be amended as provided in the plan of conversion, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of conversion or written partnership agreement or, if not so provided, as determined by the general partners of the domestic limited partnership in accordance with G.S. 59-403. (2001-387, s. 142; 2001-487, s. 62(aa); 2005-268, s. 57.)

**§ 59-1062. Articles of conversion.**

- (a) After a plan of conversion has been approved by the converting domestic limited partnership as provided in G.S. 59-1061, the converting domestic limited partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:
- (1) The name of the converting domestic limited partnership;
  - (2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with

the Secretary of State a statement of any subsequent change in its mailing address; and

- (3) That a plan of conversion has been approved by the domestic limited partnership as required by law.

(b) If the domestic limited partnership is converting to a business entity whose formation, or whose status as a registered limited liability partnership as defined in G.S. 59-32, requires the filing of a document with the Secretary of State, then, notwithstanding subsection (a) of this section, the articles of conversion shall be included as part of that document and shall contain the information required by the laws governing the organization and internal affairs of the resulting business entity.

(c) If the plan of conversion is abandoned after the articles of conversion have been filed with the Secretary of State but before the articles of conversion become effective, the converting domestic limited partnership shall deliver to the Secretary of State for filing prior to the time the articles of conversion become effective an amendment of the articles of conversion withdrawing the articles of conversion.

(d) The conversion takes effect when the articles of conversion become effective.

(e) Certificates of conversion shall also be registered as provided in G.S. 47-18.1. (2001-387, s. 142; 2001-487, s. 62(bb).)

### **§ 59-1063. Effects of conversion.**

(a) When the conversion takes effect:

- (1) The converting domestic limited partnership ceases its prior form of organization and continues in existence as the resulting business entity;
- (2) The title to all real estate and other property owned by the converting domestic limited partnership continues vested in the resulting business entity without reversion or impairment;
- (3) All liabilities of the converting domestic limited partnership continue as liabilities of the resulting business entity;
- (4) A proceeding pending by or against the converting domestic limited partnership may be continued as if the conversion did not occur; and
- (5) The interests in the converting domestic limited partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic limited partnership are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting domestic limited partnership for any acts, omissions, or obligations of the converting domestic limited partnership made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting domestic limited partnership in its form of organization as a domestic limited partnership in the conversion shall not constitute a dissolution or termination of the converting domestic limited partnership.

(b) If the resulting business entity is not a domestic corporation or a domestic limited liability company when the conversion takes effect, the resulting business entity is deemed:

- (1) To agree that it may be served with process in this State for enforcement of (i) any obligation of the converting domestic limited partnership, and (ii) any obligation of the resulting business entity arising from the conversion; and

- (2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-1106(b). Upon receipt of service of process on behalf of a resulting business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the resulting business entity. If the resulting business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the resulting business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1062(a)(2). (2001-387, s. 142.)

**§§ 59-1064 through 59-1069. Reserved for future codification purposes.**

Part 10C. Merger.

**§ 59-1070. Merger.**

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and
- (2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of this Part, and, to the extent applicable, the laws referred to in subdivision (1) of this section. (1999-369, s. 4.8; 2001-387, ss. 143, 144.)

**§ 59-1071. Plan of merger.**

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing all of the following:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
  - (2) The name of the merging business entity that shall survive the merger.
  - (3) The terms and conditions of the merger.
  - (4) The manner and basis of converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity, or into cash or other property in whole or in part, or of cancelling the interests.
  - (5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.
- (a1) The plan of merger may contain other provisions relating to the merger.



(a2) The provisions of the plan of merger, other than the provisions referred to in subdivisions (1), (2), and (5) of subsection (a) of this section, may be made dependent on facts objectively ascertainable outside the plan of merger if the plan of merger sets forth the manner in which the facts will operate upon the affected provisions. The facts may include any of the following:

- (1) Statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.
- (2) A determination or action by the domestic limited partnership or by any other person, group, or body.
- (3) The terms of, or actions taken under, an agreement to which the domestic limited partnership is a party, or any other agreement or document.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its partners. If any partner of a merging domestic limited partnership has or will have personal liability for any existing or future obligation of the surviving business entity solely as a result of holding an interest in the surviving business entity, then in addition to the requirements of the preceding sentence, approval of the plan of merger by the domestic limited partnership shall require the consent of that partner. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if there is no such provision, as determined by the unanimous consent of the partners. (1999-369, s. 4.8; 2001-387, ss. 143, 145; 2005-268, s. 58; 2018-45, s. 32.)

#### **§ 59-1072. Articles of merger.**

(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1071, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) Repealed by Session Laws 2005-268, s. 59, effective October 1, 2005.
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs.
- (3) The name of the merging business entity that will survive the merger and, if the surviving business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with the Secretary of State a statement of any subsequent change in its mailing address.

- (3a) If the surviving business entity is a domestic limited partnership, any amendment to its certificate of limited partnership as provided in the plan of merger.
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law.
- (5) Repealed by Session Laws 2005-268, s. 59, effective October 1, 2005.

If the plan of merger is amended after the articles of merger have been filed but before the articles of merger become effective, and any statement in the articles of merger becomes incorrect as a result of the amendment, the surviving business entity promptly shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment to the articles of merger correcting the incorrect statement. If the articles of merger are abandoned after the articles of merger are filed but before the articles of merger become effective, the surviving business entity shall deliver to the Secretary of State for filing prior to the time the articles of merger become effective an amendment reflecting abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1. (1999-369, s. 4.8; 2001-387, ss. 143, 146; 2001-487, s. 62(cc); 2005-268, s. 59.)

**§ 59-1073. Effects of merger.**

(a) When the merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the articles of merger;
- (6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the plan of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes; and
- (7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the shareholders of any merging domestic corporation exercising appraisal rights the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General

Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of such merging business entity.

(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the appraisal rights of shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) To have appointed the Secretary of State as its agent for service of process in any such proceeding. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State, or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of the process and the fee required by G.S. 59-1106(b). Upon receipt of service of process on behalf of a surviving business entity in the manner provided for in this section, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity. If the surviving business entity is authorized to transact business or conduct affairs in this State, the address for mailing shall be its principal office designated in the latest document filed with the Secretary of State that is authorized by law to designate the principal office or, if there is no principal office on file, its registered office. If the surviving business entity is not authorized to transact business or conduct affairs in this State, the address for mailing shall be the mailing address designated pursuant to G.S. 59-1072(a)(3). (1999-369, s. 4.8; 2001-387, ss. 143, 147; 2005-268, s. 60; 2007-385, s. 6.; 2011-347, ss. 19, 20.)

**§§ 59-1074 through 59-1100. Reserved for future codification purposes.**

#### Part 11. Miscellaneous.

##### **§ 59-1101. Construction and application.**

This Article shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

##### **§ 59-1102. Rules for cases not provided for in this Article.**

In any case not provided for in this Article the provisions of Article 2 of this Chapter govern. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-1103. Severability.**

If any provision of this Article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-1104. Effective date and repeal.**

(a) Except as set forth below, the effective date of this Article is October 1, 1986, and Article 1 of Chapter 59 of the North Carolina General Statutes is hereby repealed subject to the following:

- (1) G.S. 59-501, 59-502, and 59-608 shall apply only to contributions and distributions made after the effective date;
- (2) G.S. 59-704 applies only to assignments made after the effective date;
- (3) G.S. 59-804 shall not be construed so as to change the priority of creditors for transactions entered into prior to the effective date;
- (4) Unless agreed otherwise by the partners, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of G.S. 59-503), distribution to a withdrawing partner (rather than the provisions of G.S. 59-604), and the distribution of assets upon the winding up of a limited partnership (rather than the provisions of G.S. 59-804) shall govern limited partnerships formed before the effective date of this Article herein.[:]
- (5) The repeal of any prior statutory provision by this Article shall not impair, or otherwise affect, the organization or continued existence of a limited partnership existing at the effective date of this Article, nor shall the repeal by this Article of any such prior provision be construed so as to impair any contract or to affect any right accrued prior to the effective date of this Article; but such limited partnerships shall be subject to the procedural and other requirements of this Article except as otherwise specified in G.S. 59-1104(a). Provided, that failure to comply with the requirements of this Article by such limited partnerships shall not cause loss of limited liability.

(b) Any foreign limited partnership formed under the laws of another jurisdiction doing business in this State prior to the effective date shall within two years thereafter comply with Part 9 of Article 5 of Chapter 59. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, ss. 9, 10.)

**§ 59-1105:** Repealed by Session Laws 2001-387, s. 148, effective January 1, 2002.

**§ 59-1106. Filing, service, and copying fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

Document	Fee
(1) Certificate of limited partnership which does not include an application for registration as a limited liability limited partnership .....	\$50.00

(2)	Certificate of limited partnership which includes an application for registration as a limited liability limited partnership .....	125.00
(3)	Certificate of amendment .....	25.00
(4)	Certificate of cancellation .....	25.00
(5)	Application for reservation of name .....	10.00
(6)	Notice of transfer of reserved name .....	10.00
(7)	Application for registration of name .....	10.00
(8)	Application for renewal of registration name .....	10.00
(9)	Limited partnership's or foreign limited partnership's statement of change of registered agent or registered office or both .....	5.00
(10)	Agent's statement of change of registered office for each affected partnership .....	5.00
(11)	Agent's statement of resignation .....	No Fee
(12)	Designation of registered agent or registered office or both .....	5.00
(13)	Application for registration as foreign limited partnership .....	50.00
(14)	Certificate of amendment of registration as foreign limited partnership .....	25.00
(15)	Cancellation of registration as foreign limited partnership .....	25.00
(16)	Application for certificate of withdrawal by reason of merger, consolidation, or conversion .....	10.00
(17)	Articles of merger .....	50.00
(18)	Articles of conversion (other than articles of conversion included as part of another document) .....	50.00
(19)	Application for registration as a limited liability limited partnership (other than an application included in the certificate of limited partnership) .....	125.00
(20)	Certificate of amendment of registration as a limited liability limited partnership .....	25.00
(21)	Certificate of cancellation of registration as a limited liability limited partnership .....	25.00
(22)	Annual report for a limited liability limited partnership .....	200.00
(23)	Any other document required or permitted to be filed under this Article .....	10.00

(b) The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary under this Article. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited partnership:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Fifteen dollars (\$15.00) for a paper certificate.
- (3) Ten dollars (\$10.00) for an electronic certificate.

(d) Repealed by Session Laws 2001-387, s. 171(b), effective January 1, 2002. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1991, c. 574, s. 3; 1995, c. 539, s. 37; 1997-485, s. 13; 2001-358, ss. 10(f), 37; 2001-387, ss. 149, 171(a), 171(b), 173, 175(a); 2001-413, s. 6; 2002-126, s. 29A.31.)

**§ 59-1107. Income taxation.**

A limited partnership, a foreign limited partnership authorized to transact business in this State, and a partner of one of these partnerships are subject to taxation under Article 4 of Chapter 105 of the General Statutes in accordance with their classification for federal income tax purposes. Accordingly, if a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as a C corporation as defined in G.S. 105-131(b)(2) or an S corporation as defined in G.S. 105-131(b)(8), the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes to the same extent as a C corporation or an S corporation, as the case may be, and its shareholders. If a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes accordingly. If a limited partnership or a foreign limited partnership authorized to transact business in this State is classified for federal income tax purposes as other than a corporation or a partnership, the partnership and its partners are subject to tax under Article 4 of Chapter 105 of the General Statutes in a manner consistent with that classification. This section does not require a limited partnership or a foreign limited partnership to obtain an administrative ruling from the Internal Revenue Service on its classification under the Internal Revenue Code. (2001-387, s. 150.)