

# CHAPTER 54

## Partnerships

### ARTICLE 1

#### Uniform Partnerships

#### 54-1-1 to 54-1-46. Repealed.

#### ANNOTATIONS

**Repeals.** — Laws 1996, ch. 53, § 1004 repeals 54-1-1 to 54-1-43 NMSA 1978, as enacted by Laws 1947, ch. 37, §§ 1 to 43, and as amended by Laws 1967, ch. 76, § 1 and by Laws 1995, ch. 185, §§ 1 to 8, effective July 1, 1997. For provisions of former sections, see 1996 Replacement Pamphlet. For present comparable provisions, see Chapter 54, Article 1A NMSA 1978.

Laws 1997, ch. 76, § 23 repeals 54-1-44 to 54-1-46 NMSA 1978, as enacted by Laws 1995, ch. 185, §§ 9 to 11, relating to registered limited liability partnerships, name of registered limited liability partnership, and applicability of act to foreign and interstate commerce, effective July 1, 1997. For provisions of former sections, see 1996 Replacement Pamphlet. For present comparable provisions, see 54-1A-1101 NMSA 1978 et seq.

#### **54-1-47. Insurance or financial responsibility of registered limited liability partnerships.**

A. A registered limited liability partnership shall carry at least five hundred thousand dollars (\$500,000) per occurrence and one million dollars (\$1,000,000) in the aggregate per year of liability insurance, beyond the amount of any applicable deductible, covering the partnership for errors, omissions, negligence, wrongful acts, misconduct and malpractice for which the liability of partners is limited by Section 54-1A-306 NMSA 1978. Such an insurance policy may contain reasonable provisions with respect to policy periods, deductibles, territory, claims, conditions, exclusions and other usual matters.

B. If a registered limited liability partnership is in substantial compliance with the requirements of Subsection A of this section, the requirements of this section shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

C. A registered limited liability partnership is considered to be in substantial compliance with Subsection A of this section if the partnership provides an amount of funds equal to the amount of insurance required by that subsection specifically designated and segregated for the satisfaction of judgments against the partnership or

its partners based on errors, omissions, negligence, wrongful acts, misconduct and malpractice for which liability is limited by Section 54-1A-306 NMSA 1978 as follows:

(1) a deposit in trust or bank escrow or cash, bank certificates of deposit or United States treasury obligations; or

(2) a bank letter of credit or insurance company surety bond.

**History:** 1978 Comp., § 54-1-47, enacted by Laws 1995, ch. 185, § 12; 1998, ch. 31, § 1.

## ANNOTATIONS

**The 1998 amendment,** in Subsection A, inserted "and one million dollars (\$1,000,000) in the aggregate per year", and substituted "54-1A-306" for "54-1-15" in the first sentence; substituted "54-1A-306" for "54-1-15" near the end of Subsection C; and in Paragraph D(1), deleted "on January 1 of the second year following enactment of this section, and" preceding "on January 1" and "thereafter" following "of each year,".

**Effective dates.** — Laws 1998, ch. 31 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature.

**Effective dates.** — Laws 1995, ch. 185 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 16, 1995, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### 54-1-48. Repealed.

## ANNOTATIONS

**Repeals.** — Laws 1997, ch. 76, § 23 repeals 54-1-48 NMSA 1978, as enacted by Laws 1995, ch. 185, § 13, relating to registered limited liability partnership partner's liability, effective July 1, 1997. For former section, see 1996 Replacement Pamphlet.

## ARTICLE 1A Uniform Partnerships

### ARTICLE 1 General Provisions.

#### 54-1A-101. Definitions.

As used in the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978]:

- (1) "business" includes every trade, occupation and profession;
- (2) "debtor in bankruptcy" means a person who is the subject of:
  - (i) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - (ii) a comparable order under federal, state or foreign law governing insolvency;
- (3) "distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee;
- (4) "foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws;
- (5) "limited liability partnership" means a partnership that has filed a statement of qualification under Section 54-1A-1001 NMSA 1978 and does not have a similar statement in effect in any other jurisdiction;
- (6) "partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under Section 54-1A-202 NMSA 1978, predecessor law, or comparable law of another jurisdiction, and includes a registered limited liability partnership;
- (7) "partnership agreement" means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement;
- (8) "partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;
- (9) "partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;
- (10) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity;

(11) "property" means all property, real, personal or mixed, tangible or intangible, or any interest therein;

(12) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States;

(13) "statement" means a statement of partnership authority under Section 54-1A-303 NMSA 1978, a statement of denial under Section 54-1A-304 NMSA 1978, a statement of dissociation under Section 54-1A-704 NMSA 1978, a statement of dissolution under Section 54-1A-805 NMSA 1978, a statement of merger under Section 54-1A-907 NMSA 1978, a statement of qualification under Section 54-1A-1001 NMSA 1978, a statement of foreign qualification under Section 54-1A-1102 NMSA 1978 or an amendment or cancellation of any of the foregoing; and

(14) "transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance.

**History:** Laws 1996, ch. 53, § 101; 1997, ch. 76, § 1.

## ANNOTATIONS

**Cross references.** — For Uniform Unclaimed Property Act, see Chapter 7, Article 8A NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, rewrote Paragraph (4); added Paragraph (5); redesignated former Paragraphs (5) to (10) as Paragraphs (6) to (11); in Paragraph (6), substituted "Section 54-1A-202 NMSA 1978" for "Section 202"; deleted former Paragraph (11), relating to "registered limited liability partnerships"; and rewrote Paragraph (13).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Obligations joint and general.** — Even though the Uniform Partnership Act makes all partnership debts joint, except for two classes of debts not involved in this discussion, the former New Mexico law made all partnership obligations joint and general. 1953-54 Op. Att'y Gen. No. 5625.

**Partnership as entity.** — The Uniform Partnership Act has adopted the theory that a partnership is not a legal entity separate and distinct from its membership except for such purposes as keeping partnership accounts, marshalling assets and conveyancing. 1957-58 Op. Att'y Gen. No. 58-199.

**Law reviews.** — For comment on *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966), see 8 Nat. Resources J. 169 (1968).

For note, "Employment Discrimination - Partnership Employment Decisions and a Forecast of Impact: *Hishon v. King & Spalding*," see 16 N.M.L. Rev. 101 (1986).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 1 et seq.

Construction and application of expulsion provision in medical partnership agreement, 87 A.L.R.3d 328.

Partnership or joint venture exclusion in contractor's or other similar comprehensive general liability insurance policy, 57 A.L.R.4th 1155.

Determination of citizenship of partnership, for purposes of diversity jurisdiction under 28 USCS § 1332(a), 83 A.L.R. Fed. 136.

68 C.J.S. Partnership § 1 et seq.

### **54-1A-102. Knowledge and notice.**

(a) A person knows a fact if the person has actual knowledge of it.

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

(1) knows of it;

(2) has received a notification of it; or

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

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

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

(1) comes to the person's attention; or

(2) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in Subsection (f), a person other than an individual knows, has notice or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention, if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for

communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

**History:** Laws 1996, ch. 53, § 102.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-103. Effect of partnership agreement; nonwaivable provisions.**

(a) Except as otherwise provided in Subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not:

(1) vary the rights and duties under Section 54-1A-105 NMSA 1978, except to eliminate the duty to provide copies of statements to all of the partners;

(2) unreasonably restrict the right of access to books and records under Section 54-1A-403(b) NMSA 1978;

(3) eliminate the duty of loyalty under Section 54-1A-404(b) or 54-1A-603(b)(3) NMSA 1978, but:

(i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that would violate the duty of loyalty;

(4) unreasonably reduce the duty of care under Section 54-1A-404(c) or 54-1A-603(b)(3) NMSA 1978;

(5) eliminate the obligation of good faith and fair dealing under Section 54-1A-404(d) NMSA 1978, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) vary the power to dissociate as a partner under Section 54-1A-602(a) NMSA 1978, except to require the notice under Section 54-1A-601(1) NMSA 1978 to be in writing;

(7) vary the right of a court to expel a partner in the events specified in Section 54-1A-601(5) NMSA 1978;

(8) vary the requirement to wind up the partnership business in cases specified in Section 54-1A-801(4), (5) or (6) NMSA 1978;

(9) vary the law applicable to a limited liability partnership under Section 54-1A-106(b) NMSA 1978; or

(10) restrict rights of third parties under the Uniform Partnership Act (1994).

**History:** Laws 1996, ch. 53, § 103; 1997, ch. 76, § 2.

### ANNOTATIONS

**The 1997 amendment**, effective July 1, 1997, inserted "of this section" in the first sentence in Subsection (a); and, in Subsection (b), made section reference substitutions throughout, added Paragraph (9) and made a related stylistic change, and redesignated former Paragraph (9) as Paragraph (10).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-104. Supplemental principles of law.**

(a) Unless displaced by particular provisions of the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978], the principles of law and equity supplement that act.

(b) If an obligation to pay interest arises under the Uniform Partnership Act (1994) and the rate is not specified, the rate is that specified in Section 56-8-4 NMSA 1978.

**History:** Laws 1996, ch. 53, § 104.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-105. Execution, filing and recording of statements.**

(a) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] with respect to partnership property located in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in the Uniform Partnership Act (1994). A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in that act.

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by the Uniform Partnership Act (1994). An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by the Uniform Partnership Act (1994) to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The secretary of state may collect a fee for filing or providing a certified copy of a statement. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

**History:** Laws 1996, ch. 53, § 105.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.



## **54-1A-106. Governing law.**

(a) Except as otherwise provided in Subsection (b) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs the relations among the partners and the partnership.

(b) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

**History:** Laws 1996, ch. 53, § 106; 1997, ch. 76, § 3.

### **ANNOTATIONS**

**The 1997 amendment**, effective July 1, 1997, substituted the section heading for "Law governing internal relations", added the Subsection (a) designation and, in Subsection (a), added the exception at the beginning, and added Subsection (b).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **54-1A-107. Partnership subject to amendment or repeal of the Uniform Partnership Act (1994).**

A partnership governed by the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] is subject to any amendment to or repeal of that act.

**History:** Laws 1996, ch. 53, § 107.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **ARTICLE 2**

### **Nature of Partnership.**

#### **54-1A-201. Partnership as entity.**

(a) A partnership is an entity distinct from its partners.

(b) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under Section 54-1A-1001 NMSA 1978.

**History:** Laws 1996, ch. 53, § 201; 1997, ch. 76, § 4.

## ANNOTATIONS

**The 1997 amendment,** effective July 1, 1997, added the Subsection (a) designation and added Subsection (b).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Partnership by estoppel.** — Before an individual can be held a partner by estoppel and thus subject to the unique liabilities of the partnership relationship, the sum total of the acts must be that there was a relationship of some sort between the individuals which shows a representation of the essential elements of a partnership relationship. Isolated acts and statements may be treated as such representations. *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

Actions in and of themselves or when considered cumulatively as establishing a pattern of conduct must show a representation of an association of two or more persons to carry on as co-owners a business for profit, as that is the statutory definition of a partnership. *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

**Partnership as entity, modern tendency.** — While a partnership at common law was not considered a distinct entity from the partners composing it, the modern tendency is the other way, i.e., to treat a partnership as an entity distinct from and independent of the individuals composing it. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

**Right to sue and be sued.** — A partnership is a distinct legal entity to the extent that it may sue or be sued in the partnership name. *Salswedel v. Enerpharm, Ltd*, 107 N.M. 728, 764 P.2d 499 (Ct. App. 1988).

**Partnership treated as customer.** — Pursuant to 55-1-201 NMSA 1978, a partnership may be a customer to whom the bank is required to respond in damages for any wrongful dishonor. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

**Residence requirements for partners.** — Under New Mexico law, a partnership may not have a residence separate and distinct from that of its partners. If all the partners of a partnership organized under New Mexico law and doing business within this state reside without the state, such partnership cannot qualify for an agent's license to conduct an insurance business in New Mexico. If, however, one or more of the partners reside within the state then such a partnership meets all the residence requirements found in 59-5-20 NMSA 1978 (now see 59A-12-12 NMSA 1978). 1957-58 Op. Att'y Gen. No. 58-199.

**Law reviews.** — For note, "Employment Discrimination - Partnership Employment Decisions and a Forecast of Impact: Hishon v. King & Spalding," see 16 N.M.L. Rev. 101 (1986).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 2 et seq.

Validity of partnership agreement between husband and wife, 20 A.L.R. 1364, 157 A.L.R. 652.

Partnership as permissible basis of classification for purposes of license or privilege tax, 106 A.L.R. 662.

Lease or tenancy agreement as creating partnership relationship between lessor and lessee, 131 A.L.R. 508.

Partnership as distinguished from employment, 137 A.L.R. 6

What creates partnership relation between cotenants of property, 150 A.L.R. 1003.

Residence of partnership for purposes of statutes authorizing attachment or garnishment on ground of nonresidence, 9 A.L.R.2d 471.

Delay as defense in action for accounting between joint adventurers, 13 A.L.R.2d 765.

Corporation's power to enter into partnership or joint venture, 60 A.L.R.2d 917.

Mining grubstake contracts, 70 A.L.R.2d 904.

68 C.J.S. Partnership § 1 et seq.

## **54-1A-202. Formation of partnership.**

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

(b) An association formed under a statute other than the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978], a predecessor statute or a comparable statute of another jurisdiction is not a partnership under that act.

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

(1) joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

(2) the sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived; and

(3) a person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

**History:** Laws 1996, ch. 53, § 202.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Articles of partnership necessary.** — Under former law, when a truck operator and a service station operator applied to gasoline company for credit to be given the latter, and were told such credit could be given only if they were partners, to which they agreed, they were not general partners without any written articles of partnership. *Texas Co. v. Dickson*, 39 N.M. 371, 47 P.2d 899 (1935).

**Lease as partnership agreement.** — A contract, whereby one leased to another a mill on agreement of other to conduct business, hire and pay employees, keep mill in repair, furnish accounts of receipts and expenditures and pay to lessor one-half of the net receipts, the stock on hand at the termination of the lease to be the property of the lessor, who was to pay the lessee one-half of its value, was a partnership agreement. *Willey v. Renner*, 8 N.M. 641, 45 P. 1132 (1896).

**Name of one of the partners may be used as a firm name**, and parol evidence may be admitted to show that the name of a party, mentioned as grantee in a deed, is a partnership name. *de Cordova v. Korte*, 7 N.M. 678, 41 P. 526 (1895), *aff'd sum nom.* *Naeglin v. De Cordoba*, 171 U.S. 638, 19 S. Ct. 35, 43 L. Ed. 315 (1898).

**Pattern of conduct sufficient to show partnership.** — A pattern of conduct, such as the sharing of profits and expenses of the business, filing of partnership tax forms, previous execution of contracts on behalf of the partnership and control of a partnership bank account will suffice to show the creation of a partnership relationship even in the absence of a written agreement. *Dotson v. Grice*, 98 N.M. 207, 647 P.2d 409 (1982).

**Pattern of conduct indicating that partnership relationship never existed.** — See *Armstrong v. Reynolds*, 102 N.M. 261, 694 P.2d 517 (1985).

**Acts, circumstances indicating partnership.** — Had the parties to the contract not treated it as constituting a partnership agreement, it might have been at most a brokerage agreement, but all of the acts of the parties, and circumstances in evidence, from the time of making the contract until the conclusion of the sale, plainly showed that the parties all recognized that a partnership existed between them, by virtue of the contract, and treated each other accordingly. *Fraser v. State Sav. Bank*, 18 N.M. 340, 137 P. 592 (1913).

Receipt by a person of a share of profits in a business is prima facie evidence of the existence of a partnership. *Vaughan v. Wolfe*, 80 N.M. 141, 452 P.2d 475 (1969).

Evidence was sufficient to establish existence of partnership where party denying relationship had knowledge of filing of partnership income tax returns, claimed loss attributable to partnership on personal income tax return, signed documents executed on behalf of partnership and exercised some control over company bank account. *Goodpasture Grain & Milling Co. v. Buck*, 77 N.M. 609, 426 P.2d 586 (1967).

**Sharing of profits element applicable to joint ventures.** — Although Subsection D of 54-1-7 NMSA 1978 (see now Subsection C(3)) to partnerships, it was related equally applicable to a joint venture, since the latter is generally considered to be a partnership for a single transaction. *Hansler v. Bass*, 106 N.M. 382, 743 P.2d 1031 (Ct. App. 1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 15A Am. Jur. 2d Community Property § 4; 59A Am. Jur. 2d Partnership § 142 et seq.

Lease or tenancy agreement as creating partnership relationship between lessor and lessee, 131 A.L.R. 508.

Partnership as distinguished from employment (where rights of parties inter se or their privies are concerned), 137 A.L.R. 6

What creates partnership relation between cotenants of property, 150 A.L.R. 1003.

Salaries of partners, contract as to, 66 A.L.R.2d 1023.

68 C.J.S. Partnership § 1.

### **54-1A-203. Partnership property.**

Property acquired by a partnership is property of the partnership and not of the partners individually.

**History:** Laws 1996, ch. 53, § 203.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Oral partnership agreement involving land is enforceable.** Citizens Bank v. Williams, 96 N.M. 373, 630 P.2d 1228 (1981).

**Property found to be partnership asset.** — When two brothers equally were engaged in maintaining a business, and they likewise were engaged equally in retiring the indebtedness on properties ostensibly purchased for the partnership, but held in only one brother's name, the jury was entitled to conclude that the properties were an asset of the partnership. Bassett v. Bassett, 110 N.M. 559, 798 P.2d 160 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 329 et seq.

Partition of partnership real property, 77 A.L.R. 300.

Powers, duties and accounting responsibilities of managing partner of mining partnership, 24 A.L.R.2d 1359.

Lessee interest of individual as becoming partnership asset of firm subsequently formed, 37 A.L.R.2d 1076.

When real estate owned by partner before formation of partnership will be deemed to have become assets of the firm, 45 A.L.R.2d 1009.

Meaning and coverage of "book value" in partnership agreement in determining value of partner's interest, 47 A.L.R.2d 1425.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership, 37 A.L.R.4th 494.

68 C.J.S. Partnership § 69 et seq.

## **54-1A-204. When property is partnership property.**

(a) Property is partnership property if acquired in the name of:

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

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

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

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

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

**History:** Laws 1996, ch. 53, § 204.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **ARTICLE 3**

### **Relations of Partners to Persons Dealing with Partnership.**

#### **54-1A-301. Partner agent of partnership.**

Subject to the effect of a statement of partnership authority under Section 303 [54-1A-303 NMSA 1978]:

(1) each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority; and

(2) an act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

**History:** Laws 1996, ch. 53, § 301.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Partner not to bring partnership suit alone.** — Although a partner is a general agent of the partnership, a partner may not sue alone on a cause of action belonging to a partnership; instead, the action must be brought in the names of all the partners. *Daniels Ins., Inc. v. Daon Corp.*, 106 N.M. 328, 742 P.2d 540 (Ct. App. 1987).

**Individual partner settling claim not usual to the business.** — While a partner acting within his or her actual authority may execute a valid release of a partnership claim, it is questionable whether there could be implied actual authority or apparent authority for a partner to settle any part of a partnership claim that was not usual to the business. Of course, an individual partner may release personal claims based upon damage to personal property and interests. *First Nat'l Bank v. Sanchez*, 112 N.M. 317, 815 P.2d 613 (1991).

**Partnership as customer of bank.** — The relationship between a bank and its depositor is a contractual relationship of debtor and creditor and a partnership can enter into the contractual relationship of debtor and creditor, as a customer of the bank, in accordance with the express provisions of the Uniform Commercial Code. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

**No note liability.** — The partnership is not liable on a note executed by one partner in an individual's name, even though the note execution was for partnership purposes. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

**Partnership bound by land purchase agreement.** — When a partner, authorized to act for the partnership, enters into a purchase agreement for land, and the partner acted on the partnership's account in the usual way, even though the partner's actions in this particular transaction were without the consent of one of the other partners, the



partnership is bound by the agreement. *Dotson v. Grice*, 98 N.M. 207, 647 P.2d 409 (1982).

**Conversion of partnership property dismissed with prejudice.** — When a partner sought possession of certain disputed property, purchased by the partnership, without the consent of the partners and for other than partnership purposes, that partner's conversion claim against the seller, seeking individual damages, was properly dismissed with prejudice. *Stephen v. Phillips*, 101 N.M. 790, 689 P.2d 939 (Ct. App. 1984).

**Law reviews.** — For note, "Commercial Law - The New Mexico Supreme Court Answers a Moot Question of Partnership Law: *First National Bank in Albuquerque v. Sanchez*," see 23 N.M.L. Rev. 251 (1993).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 Am. Jur. 2d Assignment for Benefit of Creditors § 13; 59A Am. Jur. 2d Partnership § 247 et seq.

Personal liability to other party to contract of member of firm who, without authority, attempts to bind a firm, 4 A.L.R. 258.

Power of partner to dispose of good will of business, 5 A.L.R. 1182.

Authority of member of farming partnership to execute negotiable paper, 9 A.L.R. 372.

Power of partner to bind firm by bonus agreement, 49 A.L.R. 1315.

Right of one who accepts firm assets or obligation upon account of an individual indebtedness of, or transaction with, a partner, 50 A.L.R. 432.

Admission of partner as to past transactions or events as evidence against firm or other partner, 73 A.L.R. 447.

Discharge or settlement by, or payment to, one partner as affecting rights of others, 142 A.L.R. 371.

Agency conferred upon partner as affected by dissolution of partnership, 170 A.L.R. 512.

Duty of former partner, acquiring property occupied by partnership business, to renew lease, 4 A.L.R.2d 102.

Powers and duties of managing partner of mining partnership, 24 A.L.R.2d 1359.

Authority of agent to borrow money for principal, 55 A.L.R.2d 1215.

68 C.J.S. Partnership §§ 136, 139.

## **54-1A-302. Transfer of partnership property.**

(a) Partnership property may be transferred as follows:

(1) subject to the effect of a statement of partnership authority under Section 303 [54-1A-303 NMSA 1978], partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(2) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(3) partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 301 [54-1A-301 NMSA 1978] and:

(1) as to a subsequent transferee who gave value for property transferred under Subsection (a)(1) and (2), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

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

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

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

**History:** Laws 1996, ch. 53, § 302.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 304 et seq.

Personal liability to other party on contract of partner who, without authority, attempts to convey land in firm name, 4 A.L.R. 261.

Who must sign and form of signature in case of partnership, in order to comply with statute of frauds, 114 A.L.R. 1005.

Attorneys: vicarious liability of attorney for tort of partner in law firm, 70 A.L.R.3d 1298.

68 C.J.S. Partnership §§ 152, 154.

### **54-1A-303. Statement of partnership authority.**

(a) A partnership may file a statement of partnership authority which:

(1) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of Subsection (b); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(2) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to Section 105(c) [54-1A-105(c) NMSA 1978] and states the name of the partnership but does not contain all of the other information required by Subsection (a), the statement

nevertheless operates with respect to a person not a partner as provided in Subsections (d) and (e).

(d) Except as otherwise provided in Subsection (g), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority; and

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

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in Subsections (d) and (e) and Sections 704 [54-1A-704 NMSA 1978] and 805 [54-1A-805 NMSA 1978], a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the secretary of state.

**History:** Laws 1996, ch. 53, § 303.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 247 et seq.

Admissions of partner as to past transactions or events as evidence against firm or other partner, 73 A.L.R. 447.

Right of partners to assert personal privilege against self-incrimination with respect to production of partnership books or records, 17 A.L.R.4th 1039.

68 C.J.S. Partnership § 167.

### **54-1A-304. Statement of denial.**

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Section 303(b) [54-1A-303(b) NMSA 1978] may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in Section 303(d) and (e) [54-1A-303(d) and (e) NMSA 1978].

**History:** Laws 1996, ch. 53, § 304.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-305. Partnership liable for partner's actionable conduct.**

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

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

**History:** Laws 1996, ch. 53, § 305.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Release of partnership destroys vicarious liability.** — Since tort liability of partners is vicarious, that is, imputed from the partnership, when the partnership is released, the

means by which liability is imputed to the partners is destroyed. *Kinetics, Inc. v. El Paso Prods. Co.*, 99 N.M. 22, 653 P.2d 522 (Ct. App. 1982).

**Liability of partner for punitive damages.** — Absent a finding of ratification, authorization, or participation in the fraudulent conduct, punitive damages may not be recovered from partners for one partner's fraudulent conduct. *Duncan v. Henington*, 114 N.M. 100, 835 P.2d 816 (1992).

Partners of partner found liable for fraud were liable to plaintiff jointly and severally for the award of compensatory damages, attorney fees, and costs; however, only partner committing fraudulent acts was liable to plaintiff for the award of punitive damages. *Duncan v. Henington*, 114 N.M. 100, 835 P.2d 816 (1992).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 247 et seq.

Intoxicated partner, liability for negligence, 55 A.L.R. 1225.

Marital or parental relationship between plaintiff and member of partnership as affecting right to maintain action in tort against partnership, 101 A.L.R. 1231.

Personal services, liability of partner for failure to perform, 165 A.L.R. 981.

Tort: liability of partners in tort as joint and several, 175 A.L.R. 1310.

Liability of attorney for loss of client's money or personal property in his possession or entrusted to him, 26 A.L.R.2d 1340.

Assault by partner or joint adventurer, liability for, 30 A.L.R.2d 859.

Libel, liability of partners or partnership for, 88 A.L.R.2d 474.

Derivative liability of partner for punitive damages for wrongful act of copartner, 14 A.L.R.4th 1335.

68 C.J.S. Partnership §§ 168, 171.

### **54-1A-306. Partner's liability.**

(a) Except as otherwise provided in Subsections (b) and (c) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

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

(c) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution, indemnification or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Section 54-1A-1001(b) NMSA 1978.

(d) Subsection (c) of this section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own tort, including any omission, negligence, wrongful act, misconduct or malpractice, or that of any person under the partner's direct supervision and control.

(e) A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce the obligations arising out of any tort, including omissions, negligence, wrongful acts, misconduct or malpractice, of the type described in Subsection (c) of this section unless such partner is personally liable under Subsection (d) of this section.

**History:** Laws 1996, ch. 53, § 306; 1997, ch. 76, § 5.

## ANNOTATIONS

**Cross references.** — For suit against one or more partners on joint obligations, see 38-4-3 NMSA 1978.

For suits against partners, see 38-4-5 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, inserted "of this section" in Subsections (a), (d), and (e); rewrote Subsection (c); and inserted "tort, including any" in Subsection (d) and "any tort, including" in Subsection (e).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Individual partners may enter into separate obligations** to perform a partnership contract, and the effect of these separate obligations is to make the partners also severally liable on their individual guarantees. *First Nat'l Bank v. Sanchez*, 112 N.M. 317, 815 P.2d 613 (1991).

**No liability on note.** — The partnership is not liable on a note executed by one partner in individual name, even though the note's execution was for partnership purposes. *Loucks v. Albuquerque Nat'l Bank*, 76 N.M. 735, 418 P.2d 191 (1966).

**Release of partnership destroys vicarious liability.** — Where tort liability of partners is vicarious, that is, imputed from the partnership, where the partnership is released, the means by which liability is imputed to the partners is destroyed. *Kinetics, Inc. v. El Paso Prods. Co.*, 99 N.M. 22, 653 P.2d 522 (Ct. App. 1982).

**Liability of partner for punitive damages.** — Absent a finding of ratification, authorization, or participation in the fraudulent conduct, punitive damages may not be recovered from partners for one partner's fraudulent conduct. *Duncan v. Henington*, 114 N.M. 100, 835 P.2d 816 (1992).

Partners of partner found liable for fraud were liable to plaintiff jointly and severally for the award of compensatory damages, attorney fees, and costs; however, only partner committing fraudulent acts was liable to plaintiff for the award of punitive damages. *Duncan v. Henington*, 114 N.M. 100, 835 P.2d 816 (1992).

**Law reviews.** — For note, "Commercial Law - The New Mexico Supreme Court Answers a Moot Question of Partnership Law: First National Bank in Albuquerque v. Sanchez," see 23 N.M.L. Rev. 251 (1993).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 247 et seq.

Personal liability to other party to contract of member of firm who, without authority, attempts to bind the firm, 4 A.L.R. 258.

Right to set off claim of individual partner against claim against partnership, 5 A.L.R. 1541, 55 A.L.R. 566.

Right to set off claim of firm against indebtedness of individual partner, 60 A.L.R. 584.

Right of partnership creditor to proceed against estate of deceased partner, 61 A.L.R. 1410.

What amounts to joint adventure, 138 A.L.R. 968.

Liability of partner for failure to perform personal services, 165 A.L.R. 981.

Liability of partners in tort as joint and several, 175 A.L.R. 1310.

Tort action for personal injury or property damage by partner against another partner or the partnership, 39 A.L.R.4th 139.

68 C.J.S. Partnership § 180.

**54-1A-307. Actions by and against partnership and partners.**



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

(b) An action may be brought against the partnership and, to the extent not inconsistent with Section 54-1A-306 NMSA 1978, any or all of the partners in the same action or in separate actions.

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

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 54-1A-306 NMSA 1978 and:

(1) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(2) the partnership is a debtor in bankruptcy;

(3) the partner has agreed that the creditor need not exhaust partnership assets;

(4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(5) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 54-1A-308 NMSA 1978.

**History:** Laws 1996, ch. 53, § 307; 1997, ch. 76, § 6.

### **ANNOTATIONS**

**The 1997 amendment**, effective July 1, 1997, inserted "to the extent not inconsistent with Section 54-1A-306 NMSA 1978" in Subsection (b); added "the partner is personally liable for the claim under section 54-1A-306 NMSA 1978 and" at the end of the introductory language in Subsection (d); and made a section reference substitution in Subsection (e).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-308. Liability of purported partner.**

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

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

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in Subsections (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

**History:** Laws 1996, ch. 53, § 308.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Partnership by estoppel.** — Former 54-1-16 NMSA 1978 extended liability beyond the common-law test of reliance so that when one has by acts or consent to the acts of others allowed or caused the general community to believe that he or she is a partner, then that individual is such by estoppel even though this particular creditor may not have heard the representation. This relieves the creditor of the task of proving that he actually knew of such representation and makes the representation itself an offense without the added factor of reliance. However, this test demands that the representations have been made in a "public manner" at the time that credit was extended so that at that time it was general community knowledge even though the representations might not have been communicated to this particular creditor. *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

The statutory tests for partnership by estoppel require (1) that credit must have been extended on the basis of partnership representations; or (2) that the alleged partner must have made or consented to representations being made in a public manner, whether or not such representations were actually communicated to the person extending credit. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970); *Gilbert v. Howard*, 64 N.M. 200, 326 P.2d 1085 (1958).

As defendant conducted himself so as to induce appellant to deal with him in the belief that he was a partner, by so doing he created a partnership by estoppel. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

Under former 54-1-16 NMSA 1978 (repealed in 1997), relating to partnership by estoppel, reliance upon a purported partner's representations was required to establish that person's liability for credit extended to the partnership; reliance was established by creditor's testimony that it would not have extended the credit but for the purported partner's misrepresentation of himself as a partner in the venture. *Cheesecake Factory, Inc. v. Baines*, 1998-NMCA-120, 125 N.M. 622, 964 P.2d 183.

**Partnership intent implied.** — It is immaterial that the parties do not designate the relationship as a partnership, or realize that they are partners, for the intent may be implied from their acts. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

Consent can be implied by conduct. Therefore, holding out as a partner may be construed from acts and conduct and it is sufficient if the course of conduct is such as to induce a reasonable and prudent man to believe that which the conduct would imply. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

**Evidence of partnership.** — Codefendant by conduct, actions and words, furnished substantial evidence of partnership with other codefendants. *Anderson Hay & Grain Co. v. Dunn*, 81 N.M. 339, 467 P.2d 5 (1970).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 142 et seq.

## **ARTICLE 4**

### **Relations of Partners to Each Other and to Partnership.**

#### **54-1A-401. Partner's rights and duties.**

(a) Each partner is deemed to have an account that is:

(1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and, except as otherwise provided in Section 306 [54-1A-306 NMSA 1978] and Section 54-1-48 NMSA 1978, is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

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

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

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

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

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

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

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

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

(k) This section does not affect the obligations of a partnership to other persons under Section 301 [54-1A-301 NMSA 1978].

**History:** Laws 1996, ch. 53, § 401.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Compiler's notes.** — Section 54-1-48 NMSA 1978, referred to in Subsection (b), was repealed in 1997.

**Former 54-1-18 NMSA 1978 was merely a declaration of common law.** Dale v. Dale, 57 N.M. 593, 261 P.2d 438 (1953).

**Agreement to divide assets of partnership upon dissolution** need not be formally expressed in writing, but may be inferred or established, in whole or in part, from the acts of the parties. Citizens Bank v. Williams, 96 N.M. 373, 630 P.2d 1228 (1981).

**Neither partner may impose his will upon the other.** — Under former 54-1-18 NMSA 1978, when a partnership consists of two partners, neither partner had the right to impose his will concerning the operation of the partnership upon the other. Covalt v. High, 100 N.M. 700, 675 P.2d 999 (Ct. App. 1983).

**Partner entitled to personal judgment.** — The court, acting under equitable principles, properly disregarded a corporation's corporate form and entered a personal judgment in favor of the liquidating partner who, through the corporation of which that partner was the majority stockholder, had paid the partnership's obligations and incurred costs for the preservation of partnership property. Levy v. Disharoon, 106 N.M. 699, 749 P.2d 84 (1988).

**Proof of partnership agreements.** — The fiduciary duties between partners do not necessarily raise the level of proof of partnership agreements from ordinary proof to one of clear and convincing proof. Citizens Bank v. Williams, 96 N.M. 373, 630 P.2d 1228 (1981).

**Partner may not recover damages for copartner's failure to negotiate and execute transaction.** — When a partnership consists of two partners, in the absence of a mutual agreement, one partner may not recover damages for the failure of a copartner to negotiate and execute a transaction, the remedy for such an impasse being

dissolution of the partnership. *Covalt v. High*, 100 N.M. 700, 675 P.2d 999 (Ct. App. 1983).

**A managing partner is not entitled to compensation for individual services rendered** in the absence of an agreement therefor. *Dale v. Dale*, 57 N.M. 593, 261 P.2d 438 (1953).

A managing partner, whose wife's earnings were community property, was not receiving compensation in absence of an agreement where the wife had been employed by agreement of the partners. *Dale v. Dale*, 57 N.M. 593, 261 P.2d 438 (1953).

**Law reviews.** — For note, “The Fiduciary Duties Owed in a New Mexico Closely Held Corporation: *Walta v. Gallegos Law Firm, P.C.*,” see 34 N.M.L. Rev. 181 (2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 409 et seq.

Actions at law between partners and partnerships, 58 A.L.R. 621, 168 A.L.R. 1088.

Right of partners inter se in respect of interest, 66 A.L.R. 3

Accountability of partners for profits earned subsequent to death or dissolution, 80 A.L.R. 12, 55 A.L.R.2d 1391.

Right of partner or member of joint adventure to share in misappropriated money, property or secret profits for which that partner is required to account, 118 A.L.R. 640.

Duty of one who joins with others as partners or members of a joint adventure in the purchase of property from a third person to share with them the benefit of an existing option or executory contract for the property, 152 A.L.R. 1001.

Provision of partnership agreement giving one partner option to buy out the other, 160 A.L.R. 523.

Duty of former partner, acquiring property occupied by partnership business, to renew lease, 4 A.L.R.2d 102.

Powers, duties and accounting responsibilities of managing partner of mining partnership, 24 A.L.R.2d 1359.

Right of partner to account where firm business or transactions are illegal, 32 A.L.R.2d 1345.

Lessee interest of individual as becoming partnership asset of firm subsequently formed, 37 A.L.R.2d 1076.

Meaning and coverage of "book value" in partnership agreement in determining value of partner's interest, 47 A.L.R.2d 1425.

Unemployment compensation for partner, 65 A.L.R.2d 1185.

Salaries of partners, contract as to, 66 A.L.R.2d 1023.

Winding up: construction and application of section 18(f) of Uniform Partnership Act as to surviving partner's right to compensation for services in winding up partnership, 81 A.L.R.2d 445.

Relative rights of surviving partner and the estate of the deceased partner in proceeds of life insurance acquired pursuant to partnership agreement, 83 A.L.R.2d 1347.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership, 37 A.L.R.4th 494.

Joint venturers' comparative liability for losses, in absence of express agreement, 51 A.L.R.4th 371.

68 C.J.S. Partnership § 76.

### **54-1A-402. Distributions in kind.**

A partner has no right to receive, and may not be required to accept, a distribution in kind.

**History:** Laws 1996, ch. 53, § 402.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-403. Partner's rights and duties with respect to information.**

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records

during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

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

(1) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978]; and

(2) on demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

**History:** Laws 1996, ch. 53, § 403.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Duty imposed by law.** — There is an underlying duty imposed by law upon all partners because of their confidential relationship to be completely honest, open and fair. *Rogers v. Stacy*, 63 N.M. 317, 318 P.2d 1116 (1957).

**Partners bear fiduciary relationship to each other.** — Former 54-1-20 NMSA 1978 did not limit a partner's duty of affirmative disclosure in transactions between partners. Implicit in the resolution of disputes between partners must be the special responsibilities partners bear to each other. In connection with their partnership affairs, they bear a fiduciary relationship to each other. *C.B. & T. Co. v. Hefner*, 98 N.M. 594, 651 P.2d 1029 (Ct. App. 1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership §§ 409, 968 et seq.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership § 76.

### **54-1A-404. General standards of partner's conduct.**

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in Subsections (b) and (c).



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

(1) to account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

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

(d) A partner shall discharge the duties to the partnership and the other partners under the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under the Uniform Partnership Act (1994) or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

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

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

**History:** Laws 1996, ch. 53, § 404.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**General partner as fiduciary.** — The general partner has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited

partners and, hence, is accountable to the other partners as a fiduciary. *Homestake Mining Co. v. Mid-Continent Exploration Co.*, 282 F.2d 787 (10th Cir. 1960).

**Good faith requirement.** — It follows from the general requirement of good faith in partnership dealings that a partner is not allowed to gain any advantage over a co-partner by fraud, misrepresentation or concealment, and for any advantage so obtained he must account to the co-partner. *Levy v. Disharoon*, 106 N.M. 699, 749 P.2d 84 (1988).

**Constructive trust for limited partners inequitable.** — When a general partner, without notice to its limited partners, utilized assets and facilities of the partnership for a new venture obvious to all, and the limited partners did nothing to claim the right of participation in the venture, because of the mining hazard, and waited until the enterprise was successful and then swarmed in to recover the windfall which their associate made possible by its skill, ingenuity and daring, the imposition of a constructive trust on the profits would not be equity, but injustice, and the doctrine of laches would be enforced. *Homestake Mining Co. v. Mid-Continent Exploration Co.*, 282 F.2d 787 (10th Cir. 1960).

**Derivative claims against general partners may be brought by limited partners individually.** — When the general partner has an ownership interest in another entity that is a party to a proposed partnership transaction, the general partner is required to disclose the interest and the details of the transaction to the limited partners and to obtain the consent of all the limited partners to the transaction before entering into it; a limited partner who was not fully informed or who did not consent to the transaction may bring an individual action for accounting or dissolution or both and, in the context of that action, pursue the claim against the general partner and obtain a judgment for any damages caused by the breach of the general partner's fiduciary duty. *Fate v. Owens*, 2001-NMCA-040, 130 N.M. 503, 27 P.3d 990, cert. denied, 130 N.M. 484, 27 P.3d 476 (2001) (decided under former law).

**Attorney's fees.** — When one partner breaches the fiduciary duty owed another partner, on dissolution of the partnership and accounting of assets it is within the equitable jurisdiction of the court to consider an award of attorney fees to the aggrieved partner. *Bassett v. Bassett*, 110 N.M. 559, 798 P.2d 160 (1990).

**Law reviews.** — For note, "The Fiduciary Duties Owed in a New Mexico Closely Held Corporation: *Walta v. Gallegos Law Firm, P.C.*," see 34 N.M.L. Rev. 181 (2004).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 420 et seq.

Right of partner or member of joint adventure to share in misappropriated money or property or secret profits, for which partner is required to account, 118 A.L.R. 640.

Duty of one who with others as partners or members of a joint adventure in the purchase of property from a third person to share with them the benefit of an existing option or executory contract for the property, 152 A.L.R. 1001.

Duty of former partner, acquiring property occupied by partnership business, to renew lease, 4 A.L.R.2d 102.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

Civil liability of one partner to another or to the partnership based on partner's personal purchase of partnership property during existence of partnership, 37 A.L.R.4th 494.

68 C.J.S. Partnership §§ 76, 99.

### **54-1A-405. Actions by partnership and partners.**

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

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

(1) enforce the partner's rights under the partnership agreement;

(2) enforce the partner's rights under the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978], including:

(i) the partner's rights under Section 401 [54-1A-401 NMSA 1978], 403 [54-1A-403 NMSA 1978] or 404 [54-1A-404 NMSA 1978];

(ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 701 [54-1A-701 NMSA 1978] or enforce any other right under Article 6 or 7; or

(iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 801 [54-1A-801 NMSA 1978] or enforce any other right under Article 8; or

(3) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

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

**History:** Laws 1996, ch. 53, § 405.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Lack of partnership salary funds.** — When, under an oral partnership agreement, a salary was to be paid after operating expenses and equipment payments had been made, but there were not sufficient funds remaining to make machinery payments, neither could there have been any funds remaining from which plaintiff could have been paid a salary. *Watson v. Lunt*, 75 N.M. 734, 410 P.2d 954 (1966).

**Between partners, an accounting should be based on the market value** of the equipment at the time of the dissolution of the partnership. *Watson v. Lunt*, 75 N.M. 734, 410 P.2d 954 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership §§ 409, 968 et seq.

Bankrupt or insolvent partner, or assignee or trustee, as entitled to accounting from solvent partner, 29 A.L.R. 46.

Actions at law between partners and partnerships, 58 A.L.R. 621, 168 A.L.R. 1088.

Lack of partnership accounting as tolling statute of limitations against actions at law between partners, 77 A.L.R. 426.

Accountability of partners for profits earned subsequent to death or dissolution, 80 A.L.R. 12, 55 A.L.R.2d 1391.

Right of one partner in action at law against him by another partner on a personal claim to set up by a counterclaim or otherwise claim arising out of partnership transactions, 93 A.L.R. 293.

Right of partner to accounting where firm business or transactions are illegal, 32 A.L.R.2d 1345.

Rights in profits earned by partnership or joint adventure after death or dissolution, 55 A.L.R.2d 1391.

Good will, accounting for, on dissolution, 65 A.L.R.2d 521.

When statute of limitations commences to run on right of partnership accounting, 44 A.L.R.4th 678.

68 C.J.S. Partnership §§ 92, 378, 384.

### **54-1A-406. Continuation of partnership beyond definite term or particular undertaking.**

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

**History:** Laws 1996, ch. 53, § 406.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **ARTICLE 5**

### **Transferees and Creditors of Partner.**

#### **54-1A-501. Partner not co-owner of partnership property.**

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

**History:** Laws 1996, ch. 53, § 501.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Cross references.** — For form for claim of exemptions on executions, see Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, see Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, see Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, see Rule 4-808A NMRA.

For form for claim of exemption from garnishment, see Rule 4-809 NMRA.

**Partnership treated as separate entity.** — The Uniform Partnership Act treats the partnership and its assets and liabilities as a separate entity, distinct from the assets and liabilities of its owners. This scheme is necessary to prevent disruption of, and facilitate credit for, the partnership business. It is equally necessary in the context of joint ventures. *Agri-Tech Servs., Inc. v. Citizens Bank*, 898 F.2d 1475 (10th Cir. 1990).

**Property rights remain during termination.** — The fact that a limited partnership had been dissolved and was in the process of being terminated did not ameliorate the requirements of former 54-1-25 NMSA 1978 relating to assignment of partnership property. *Daniels Ins., Inc. v. Daon Corp.*, 106 N.M. 328, 742 P.2d 540 (Ct. App. 1987).

**There is no ownership of individual interest in partnership property prior to dissolution.** 1963-64 Op. Att'y Gen. No. 63-148.

**No exemption for property tax.** — Partnership property, not being either joint or community property, and not being individually owned, and no portion thereof being individually owned under this section, does not come with any exemption for property tax granted by statute or authorized by the constitution. 1963-64 Op. Att'y Gen. No. 63-148.

**Assignment necessary for substitution of parties.** — Under Rule 1-025C NMRA, as a matter of law, substitution of parties cannot be predicated upon the written assignment by one limited partner in the cause of action (the rights in the cause of action) owned by the partnership without joinder or consent of the remaining partner in the same partnership property, but an invalid or ineffective assignment may be validated by ratification. *Daniels Ins., Inc. v. Daon Corp.*, 106 N.M. 328, 742 P.2d 540 (Ct. App. 1987).

**Conversion of partnership property dismissed with prejudice.** — When a partner sought possession of certain disputed property, purchased by the partnership, without the consent of his partners and for other than partnership purposes, his conversion claim against the seller, seeking individual damages, was properly dismissed with prejudice. *Stephen v. Phillips*, 101 N.M. 790, 689 P.2d 939 (Ct. App. 1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 Am. Jur. 2d Attachment and Garnishment § 187; 25 Am. Jur. 2d Dower and Curtesy § 14; 40 Am. Jur. 2d Homestead § 61; 59A Am. Jur. 2d Partnership § 329 et seq.

Right of individual partner to exemption in partnership property, 4 A.L.R. 300.

Right of partner to preference over creditors of copartner, 6 A.L.R. 160.

Community character of interest of a partner in partnership real property, 20 A.L.R. 374.

Partnership land as real or personal property for purposes of descent and distribution, 25 A.L.R. 389.

Validity and effect of chattel mortgage on partner's interest in firm, 54 A.L.R. 534.

Right of other partners or partnership creditors in respect of insurance on interest of one of the partners, 61 A.L.R. 1201.

Indebtedness to partnership as subject of attachment or garnishment by creditor of individual partner, 71 A.L.R. 7, 105 A.L.R. 326.

Relative rank of judgment, attachment or execution based on partnership liability and judgment, attachment or execution based on liability of individual partner, 75 A.L.R. 997.

Partition of partnership real property, 77 A.L.R. 300.

Power of surviving partner or member of joint adventure to grant or sell oil and gas lease for other mineral rights covering land belonging to partnership or joint adventure, 89 A.L.R. 588.

Death of one or two or more judgment creditors under a joint or partnership judgment as affecting judgment, 122 A.L.R. 752.

Waiver or estoppel predicated upon surviving partner's surrender of possession of partnership property to personal representative of deceased partner, 137 A.L.R. 1024.

Ex parte appointment of receiver for partnership, 169 A.L.R. 127.

Lessee interest of individual as becoming partnership asset of firm subsequently formed, 37 A.L.R.2d 1076.

Nonassignability of partner's right in specific partnership property, construction, application and effect of Uniform Partnership Act § 25 (2) (b) (54-1-1 NMSA 1978 et seq.) relating to, 39 A.L.R.2d 1365.

Real estate owned by partner before formation of partnership, when deemed to have become asset of firm, 45 A.L.R.2d 1009.

Partnership matters as affecting estate by entireties in personal property, 64 A.L.R.2d 8, 22 A.L.R.4th 459.

Relative rights of surviving partner and the estate of the deceased partner in proceeds of life insurance acquired pursuant to partnership agreement, 83 A.L.R.2d 1347.

68 C.J.S. Partnership §§ 85, 86.

## **54-1A-502. Partner's transferable interest in partnership.**

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

**History:** Laws 1996, ch. 53, § 502.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Interest in partnership realty is personal property.** — An interest of a partner in a partnership is personal property and not real property, even if land is one of the assets. *Citizens Bank v. Williams*, 96 N.M. 373, 630 P.2d 1228 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Am. Jur. 2d Partnership § 409 et seq.

Right to set off claim of firm against indebtedness of individual partner, 60 A.L.R. 584.

Profits after death or dissolution, 55 A.L.R.2d 1391.

Effect of Uniform Partnership Act, § 26 as converting realty into personalty, 80 A.L.R.2d 1107.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership §§ 85, 86.

## **54-1A-503. Transfer of partner's transferable interest.**

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

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



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

(1) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(3) to seek under Section 801(6) [54-1A-801(6) NMSA 1978] a judicial determination that it is equitable to wind up the partnership business.

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

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

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

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

**History:** Laws 1996, ch. 53, § 503.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Withdrawal by assignment leads to termination of partnership.** — While the assignment itself would not cause a dissolution of the partnership, it is a basic tenet of partnership law that a general partnership requires two or more partners to be considered a partnership. Thus, the withdrawal of one of the partners, without the substitution of a new partner, would lead to a dissolution of the partnership. *Resolution Trust Corp. v. Ocotillo W. Joint Venture*, 840 F. Supp. 1463 (D.N.M. 1993).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 833 et seq.

Rights of creditors where partnership is continued without liquidation upon retirement or death of partners, under provision of Uniform Partnership Act, 111 A.L.R. 1093.

Provision of partnership agreement giving one partner option to buy out the other, 160 A.L.R. 523.

Construction, application and effect of Uniform Partnership Act, § 25 (2) (b) (54-1-1 NMSA 1978 et seq.), relating to nonassignability of partner's right in specific partnership property. 39 A.L.R.2d 1365.

Sale or transfer of interest by partner as dissolving partnership, 75 A.L.R.2d 1036.

Partner's breach of fiduciary duty to copartner on sale of partnership interest to another partner, 4 A.L.R.4th 1122.

68 C.J.S. Partnership §§ 103, 245.

### **54-1A-504. Partner's transferable interest subject to charging order.**

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

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

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

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

(d) The Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

**History:** Laws 1996, ch. 53, § 504.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Limits of partnership insurance coverage.** — The obligation of a liability insurer is contractual and is to be determined by the terms of the policy. Where neither the partners nor the insurance company intended to protect the partners individually from their own tortious acts which were outside the scope of the partnership business, nor did they intend to create a new liability in the partnership when none previously existed, but intended protection only from liability because of accidents arising out of partnership operation, there is no coverage for claim for unlawful and malicious assault committed by one partner personally. *Jones v. Harper*, 75 N.M. 557, 408 P.2d 56 (1965).

**Garnishment** proceedings may be used to attach an individual partner's interest, which is profits remaining after partnership debts are paid, and the accounts are settled between the partners. *Behles v. Ellermeyer (In re Lucas)*, 107 Bankr. 332 (Bankr. D.N.M. 1989).

A charging order is not the exclusive method of levy for the debt of a partner where the state law provides for garnishment. Service of a writ of garnishment on any general partner, other than the debtor partner, would require only that profits payable to the debtor partner be paid to the garnishor instead. *Behles v. Ellermeyer (In re Lucas)*, 107 Bankr. 332 (Bankr. D.N.M. 1989).

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources J. 75 (1962).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 790 et seq.

Right of individual partner to exemption in partnership property, 4 A.L.R. 300.

Right of partner to preference over creditors of copartner, 6 A.L.R. 160.

Chattel mortgage on partner's interest in firm, 54 A.L.R. 534.

Relative rank of judgment, attachment or execution based on partnership liability, and judgment, attachment or execution based on liability of individual partner, 75 A.L.R. 997.

Appointment of receiver of property of individual debtor or partnership on application of simple contract creditor without lien, 109 A.L.R. 279.

Ex parte appointment of receiver for partnership, 169 A.L.R. 1127.

68 C.J.S. Partnership §§ 194, 218.

## **ARTICLE 6**

### **Partner's Dissociation.**

#### **54-1A-601. Events causing partner's dissociation.**

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) the partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(i) it is unlawful to carry on the partnership business with that partner;

(ii) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(iii) within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) a partnership that is a partner has been dissolved and its business is being wound up;

(5) on application by the partnership or another partner, the partner's expulsion by judicial determination because:

(i) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(ii) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 404 [54-1A-404 NMSA 1978]; or

(iii) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) the partner's:

(i) becoming a debtor in bankruptcy;

(ii) executing an assignment for the benefit of creditors;

(iii) seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of that partner or of all or substantially all of that partner's property; or

(iv) failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(i) the partner's death;

(ii) the appointment of a guardian or general conservator for the partner; or

(iii) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust or estate.

**History:** Laws 1996, ch. 53, § 601.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **54-1A-602. Partner's power to dissociate; wrongful dissociation.**

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Section 601(1) [54-1A-601(1) NMSA 1978].

(b) A partner's dissociation is wrongful only if:

- (1) it is in breach of an express provision of the partnership agreement; or
- (2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:
  - (i) the partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under Section 601(6) through (10) [54-1A-601(6) through (10) NMSA 1978] or wrongful dissociation under Section 602(b) [54-1A-602(b) NMSA 1978];
  - (ii) the partner is expelled by judicial determination under Section 601(5) [54-1A-601(5) NMSA 1978];
  - (iii) the partner is dissociated by becoming a debtor in bankruptcy; or
  - (iv) in the case of a partner who is not an individual, trust other than a business trust or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

**History:** Laws 1996, ch. 53, § 602.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **54-1A-603. Effect of partner's dissociation.**

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Article 8 applies; otherwise, Article 7 applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 803 [54-1A-803 NMSA 1978];

(2) the partner's duty of loyalty under Section 404(b)(3) [54-1A-404(b)(3) NMSA 1978] terminates; and

(3) the partner's duty of loyalty under Section 404(b)(1) and (2) [54-1A-404(b)(1) and (2) NMSA 1978] and duty of care under Section 404(c) [54-1A-404(c) NMSA 1978] continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 803.

**History:** Laws 1996, ch. 53, § 603.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **ARTICLE 7**

### **Partner's Dissociation When Business Not Wound Up.**

#### **54-1A-701. Purchase of dissociated partner's interest.**

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 801 [54-1A-801 NMSA 1978], the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to Subsection (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Section 807(b) [54-1A-807(b) NMSA 1978] if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under Section 602(b) [54-1A-602(b) NMSA 1978], and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the

dissociation, except liabilities incurred by an act of the dissociated partner under Section 702 [54-1A-702 NMSA 1978].

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

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

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

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

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

(i) A dissociated partner may maintain an action against the partnership, pursuant to Section 405(b)(2)(ii) [54-1A-405(b)(2)(ii) NMSA 1978], to determine the buyout price of that partner's interest, any offsets under Subsection (c), or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due



under Subsection (c), and accrued interest and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorneys' fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (g).

**History:** Laws 1996, ch. 53, § 701.

### ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

#### **54-1A-702. Dissociated partner's power to bind and liability to partnership.**

(a) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Article 9, is bound by an act of the dissociated partner which would have bound the partnership under Section 301 [54-1A-301 NMSA 1978] before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under Section 303(e) [54-1A-303(e) NMSA 1978] or notice under Section 704(c) [54-1A-704(c) NMSA 1978].

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

**History:** Laws 1996, ch. 53, § 702.

### ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

#### **54-1A-703. Dissociated partner's liability to other persons.**

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

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9 of the Uniform Partnership Act (1994), within two years after the partner's dissociation, only if the partner is liable for the obligation under Section 54-1A-306 NMSA 1978 and at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated partner was then a partner;

(2) did not have notice of the partner's dissociation; and

(3) is not deemed to have had knowledge under Section 54-1A-303(e) NMSA 1978 or notice under Section 54-1A-704(c) NMSA 1978.

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

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

**History:** Laws 1996, ch. 53, § 703; 1997, ch. 76, § 7.

## ANNOTATIONS

**The 1997 amendment**, effective July 1, 1997, inserted "of this section" in Subsection (a) and, in Subsection (b), near the middle, inserted "of the Uniform Partnership Act (1994)" and deleted "the liability is owed for which" following "only if", and made section reference substitutions.

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-704. Statement of dissociation.**

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Section 303(d) and (e) [54-1A-303(d) and (e) NMSA 1978].

(c) For the purposes of Sections 702(a)(3) [54-1A-702(a)(3) NMSA 1978] and 703(b)(3) [54-1A-703(b)(3) NMSA 1978], a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

**History:** Laws 1996, ch. 53, § 704.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-705. Continued use of partnership name.**

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

**History:** Laws 1996, ch. 53, § 705.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## ARTICLE 8

### **Winding Up Partnership Business.**

#### **54-1A-801. Events causing dissolution and winding up of partnership business.**

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 601(2) through (10) [54-1A-601(2) through (10) NMSA 1978], of that partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) in a partnership for a definite term or particular undertaking:

(i) the expiration of ninety days after a partner's dissociation by death or otherwise under Section 601(6) through (10) or wrongful dissociation under Section 602(b) [54-1A-602(b) NMSA 1978], unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to Section 601(b)(i) [54-1A-601(b)(i) NMSA 1978], agree to continue the partnership;

(ii) the express will of all of the partners to wind up the partnership business;  
or

(iii) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) on application by a partner, a judicial determination that:

(i) the economic purpose of the partnership is likely to be unreasonably frustrated;

(ii) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(iii) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(i) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(ii) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

**History:** Laws 1996, ch. 53, § 801.

## **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 810 et seq.

Bankruptcy or insolvency of individual partner as dissolving copartnership, 29 A.L.R. 45.

Agreement for dissolution as affecting partner's lien on or interest in assets of partnership, 43 A.L.R. 95.

Debt or liability arising from withdrawal or misappropriation of partnership funds by member of firm as dischargeable in his bankruptcy, 16 A.L.R.2d 1151.

Powers of liquidating partners with respect to incurring of obligations, 60 A.L.R.2d 826.

Sale or transfer of interest by partner as dissolving partnership, 75 A.L.R.2d 1036.

68 C.J.S. Partnership § 331 et seq.

### **54-1A-802. Partnership continues after dissolution.**

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

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

(1) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(2) the rights of a third party accruing under Section 804(1) [54-1A-804(1) NMSA 1978] or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

**History:** Laws 1996, ch. 53, § 802.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-803. Right to wind up partnership business.**

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

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

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 807 [54-1A-807 NMSA 1978], settle disputes by mediation or arbitration and perform other necessary acts.

**History:** Laws 1996, ch. 53, § 803.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-804. Partner's power to bind partnership after dissolution.**

Subject to Section 805 [54-1A-805 NMSA 1978], a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under Section 301 [54-1A-301 NMSA 1978] before dissolution, if the other party to the transaction did not have notice of the dissolution.

**History:** Laws 1996, ch. 53, § 804.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership § 877 et seq.

Nonuse of trade name as affecting rights of partners inter se after dissolution of firm, 48 A.L.R. 1263.

Agency conferred upon partners as affected by dissolution of the partnership, 170 A.L.R. 512.

Powers of liquidating partner with respect to incurring obligations, 60 A.L.R.2d 826.

68 C.J.S. Partnership § 354.

### **54-1A-805. Statement of dissolution.**

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

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of Section 303(d) [54-1A-303(d) NMSA 1978] and is a limitation on authority for the purposes of Section 303(e) [54-1A-303(e) NMSA 1978].

(c) For the purposes of Sections 301 [54-1A-301 NMSA 1978] and 804 [54-1A-804 NMSA 1978], a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in Section 303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

**History:** Laws 1996, ch. 53, § 805.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-806. Partner's liability to other partners after dissolution.**

(a) Except as otherwise provided in Subsection (b) of this section and Section 54-1A-306 NMSA 1978, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 54-1A-804 NMSA 1978.

(b) A partner who, with knowledge of the dissolution, incurs a partnership liability under Section 54-1A-804(2) NMSA 1978 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

**History:** Laws 1996, ch. 53, § 806; 1997, ch. 76, § 8.

### ANNOTATIONS

**The 1997 amendment**, effective July 1, 1997, made section reference substitutions in Subsections (a) and (b), and, in Subsection (a), inserted "of this section and Section 54-1A-306 NMSA 1978" near the beginning and deleted "unless the liability is not one for which the partner is liable under Section 306 and Section 54-1-48 NMSA 1978" at the end.

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-807. Settlement of accounts and contributions among partners.**

(a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partner's accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. Except as otherwise provided in Section 54-1A-306 NMSA 1978, a partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 54-1A-306 NMSA 1978.

(c) If a partner fails to contribute the full amount required under Subsection (b) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 54-1A-306 NMSA 1978. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed



exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 54-1A-306 NMSA 1978.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 54-1A-306 NMSA 1978.

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

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

**History:** Laws 1996, ch. 53, § 807; 1997, ch. 76, § 9.

## ANNOTATIONS

**The 1997 amendment**, effective July 1, 1997, in Subsection (a), added "of this section" at the end; in Subsection (b), made a section reference substitution and added "but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 54-1A-306 NMSA 1978" at the end; in Subsection (c), in the first sentence, inserted "the full amount required under Subsection (b) of this section" near the beginning and added "for which they are personally liable under Section 54-1A-306 NMSA 1978" at the end, and, in the second sentence, added "for which the partner is personally liable under Section 54-1A-306 NMSA 1978" at the end; and, in Subsection (d), deleted "Except as otherwise provided in Section 306 and Section 54-1-48 NMSA 1978" from the beginning and added "and for which the partner is personally liable under Section 54-1A-306 NMSA 1978" at the end.

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## ARTICLE 9

### Conversions and Mergers.

#### 54-1A-901. Definitions.

As used in this article:

(1) "general partner" means a partner in a partnership and a general partner in a limited partnership;

(2) "limited partner" means a limited partner in a limited partnership;

(3) "limited partnership" means a limited partnership created under the Uniform Limited Partnership Act [Chapter 54, Article 2 NMSA 1978], predecessor law or comparable law of another jurisdiction; and

(4) "partner" includes both a general partner and a limited partner.

**History:** Laws 1996, ch. 53, § 901.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-902. Conversion of partnership to limited partnership.**

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(1) a statement that the partnership was converted to a limited partnership from a partnership;

(2) its former name; and

(3) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Uniform Limited Partnership Act [Chapter 54, Article 2 NMSA 1978].

**History:** Laws 1996, ch. 53, § 902.

### ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

#### **54-1A-903. Conversion of limited partnership to partnership.**

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in Section 54-1A-306 NMSA 1978, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

**History:** Laws 1996, ch. 53, § 903; 1997, ch. 76, § 10.

### ANNOTATIONS

**The 1997 amendment,** effective July 1, 1997, added "Except as otherwise provided in Section 54-1A-306 NMSA 1978" at the beginning of the second sentence in Subsection (e).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

#### **54-1A-904. Effect of conversion; entity unchanged.**

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(2) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(3) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

**History:** Laws 1996, ch. 53, § 904.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-905. Merger of partnerships.**

(a) Pursuant to a plan of merger approved as provided in Subsection (c), a partnership may be merged with one or more partnerships or limited partnerships.

(b) The plan of merger must set forth:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(3) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(4) the terms and conditions of the merger;

(5) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

(6) the street address of the surviving entity's chief executive office.

(c) The plan of merger must be approved:

(1) in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(2) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

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

(e) The merger takes effect on the later of:

(1) the approval of the plan of merger by all parties to the merger, as provided in Subsection (c);

(2) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(3) any effective date specified in the plan of merger.

**History:** Laws 1996, ch. 53, § 905.

## ANNOTATIONS

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-906. Effect of merger.**

(a) When a merger takes effect:

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

(2) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(3) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(4) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(b) The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce

an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(1) all obligations of a party to the merger for which the partner was personally liable before the merger;

(2) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(3) except as otherwise provided in Section 54-1A-306 NMSA 1978, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 54-1A-807 NMSA 1978 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under Section 54-1A-701 NMSA 1978 or another statute specifically applicable to that party's interest with respect to a merger. The surviving entity is bound under Section 54-1A-702 NMSA 1978 by an act of a general partner dissociated under this subsection, and the partner is liable under Section 54-1A-703 NMSA 1978 for transactions entered into by the surviving entity after the merger takes effect.

**History:** Laws 1996, ch. 53, § 906; 1997, ch. 76, § 11.

## ANNOTATIONS

**The 1997 amendment**, effective July 1, 1997, in Subsection (c), added "except as otherwise provided in Section 54-1A-306 NMSA 1978" at the beginning of Paragraph (3); and made section reference substitutions in Subsections (d) and (e).

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-907. Statement of merger.**

(a) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger must contain:

(1) the name of each partnership or limited partnership that is a party to the merger;

(2) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(3) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(4) whether the surviving entity is a partnership or a limited partnership.

(c) Except as otherwise provided in Subsection (d), for the purposes of Section 302 [54-1A-302 NMSA 1978], property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For the purposes of Section 302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(e) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Section 105(c) [54-1A-105(c) NMSA 1978], stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Subsection (b), operates with respect to the partnerships or limited partnerships named to the extent provided in Subsections (c) and (d).

**History:** Laws 1996, ch. 53, § 907.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **54-1A-908. Nonexclusive.**

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

**History:** Laws 1996, ch. 53, § 908.

### **ANNOTATIONS**

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

## **ARTICLE 10**

### **Conversion to Limited Partnership.**

#### **54-1A-1001. Statement of qualification.**

(a) A partnership may become a limited liability partnership pursuant to this section.

(b) The terms and conditions on which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(c) After the approval required by Subsection (b) of this section, a partnership may become a limited liability partnership by filing a statement of qualification. The statement shall contain:

- (1) the name of the partnership;
  - (2) the street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;
  - (3) if the partnership does not have an office in this state, the name and street address of the partnership's agent for service of process;
  - (4) a statement that the partnership elects to be a limited liability partnership;
- and
- (5) a deferred effective date, if any.

(d) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.



(e) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 54-1A-105(d) NMSA 1978 or revoked pursuant to Section 54-1A-1003 NMSA 1978.

(f) The status of a partnership as a 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 statement of qualification under Subsection (c) of this section.

(g) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(h) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**History:** 1978 Comp., § 54-1A-1001, enacted by Laws 1997, ch. 76, § 14.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles former 54-1A-1001 NMSA 1978, relating to uniformity of application and construction, as 54-1A-1201 NMSA 1978, effective July 1, 1997.

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

#### **54-1A-1002. Statement of qualification; name.**

The name of a limited liability partnership must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP" or "LLP".

**History:** 1978 Comp., § 54-1A-1002, enacted by Laws 1997, ch. 76, § 15.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles former 54-1A-1002 NMSA 1978, relating to short title, as 54-1A-1202 NMSA 1978, effective July 1, 1997.

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

#### **54-1A-1003. Annual report.**

(a) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the secretary of state which contains:

- (1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;
- (2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and
- (3) if the partnership does not have an office in this state, the name and street address of the partnership's current agent for service of process.

(b) An annual report must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(c) The secretary of state may revoke the statement of qualification of a partnership that fails to file an annual report when due or pay the required filing fee. To do so, the secretary of state shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(d) A revocation under Subsection (c) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(e) A partnership whose statement of qualification has been revoked may apply to the secretary of state for reinstatement within two years after the effective date of the revocation. The application must state:

- (1) the name of the partnership and the effective date of the revocation; and
- (2) that the ground for revocation either did not exist or has been corrected.

(f) A reinstatement under Subsection (e) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

**History:** 1978 Comp., § 54-1A-1003, enacted by Laws 1997, ch. 76, § 16.

## **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles former 54-1A-1003 NMSA 1978, relating to savings clause, as 54-1A-1203 NMSA 1978, effective July 1, 1997.

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

## **54-1A-1004, 54-1A-1005. Recompiled.**

### **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, §§ 12 and 13 recompile former 54-1A-1004 and 54-1A-1005 NMSA 1978 as 54-1A-1204 and 54-1A-1205 NMSA 1978, respectively, effective July 1, 1997.

## **ARTICLE 11**

### **Foreign Limited Partnership.**

#### **54-1A-1101. Law governing foreign limited liability partnership.**

(a) The law 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 qualification 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 qualification 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 limited liability partnership.

**History:** Laws 1997, ch. 76, § 17.

### **ANNOTATIONS**

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

#### **54-1A-1102. Statement of foreign qualification.**

(a) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(1) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP" or "LLP";

(2) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(3) if there is no office of the partnership in this state, the name and street address of the partnership's agent for service of process; and

(4) a deferred effective date, if any.

(b) The agent of a foreign limited liability company for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(c) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Section 54-1A-105(d) NMSA 1978 or revoked pursuant to Section 54-1A-1003 NMSA 1978.

(d) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

**History:** Laws 1997, ch. 76, § 18.

## ANNOTATIONS

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

### **54-1A-1103. Effect of failure to qualify.**

(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 statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification 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 statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the secretary of state is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

**History:** Laws 1997, ch. 76, § 19.

## ANNOTATIONS

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

#### **54-1A-1104. Activities not constituting transacting business.**

(a) Activities of a foreign limited liability partnership, which do not constitute transacting business for the purpose of the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978], include:

- (1) maintaining, defending or settling an action or proceeding whether judicial, administrative, arbitration or mediation;
- (2) holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange and registration of the partnership's own securities or appointing and maintaining trustees or depositories with respect to those securities;
- (5) selling through independent contractors;
- (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) creating as borrower or lender or acquiring indebtedness, with or without a mortgage or other security interest in real or personal property;
- (8) securing or collecting debts or foreclosure mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;
- (9) investing in or acquiring, in transactions outside New Mexico, royalties and other non-operating mineral interests; executing division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests;
- (10) owning or controlling an interest in a corporation that transacts business in this state or is organized under the laws of this state;
- (11) being a partner in a partnership, including a limited liability partnership, that transacts business in this state or is organized under the laws of this state;
- (12) being a member or manager of a limited liability company that transacts business in this state or is organized under the laws of this state;

(13) conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and

(14) transacting business in interstate commerce.

(b) For purposes of the Uniform Partnership Act (1994), the ownership in this state of income-producing real property or tangible personal property, other than property excluded under Subsection (a) of this section constitutes transacting business in this state.

(c) This section does not apply in determining the contracts or activities that may subject a foreign limited liability partnership to service of process, taxation or regulation under any other law of this state.

**History:** Laws 1997, ch. 76, § 20.

### **ANNOTATIONS**

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

#### **54-1A-1105. Action by attorney general.**

The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of the Uniform Limited Partnership Act [Chapter 54, Article 2 NMSA 1978].

**History:** Laws 1997, ch. 76, § 21.

### **ANNOTATIONS**

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

## **ARTICLE 12**

### **Miscellaneous Provisions.**

#### **54-1A-1201. Uniformity of application and construction.**

The Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of that act among states enacting it.

**History:** Laws 1996, ch. 53, § 1001; 1978 Comp., 54-1A-1001, recompiled as 1978 Comp., § 54-1A-1201 by Laws 1997, ch. 76, § 12.

### **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles 54-1A-1001 NMSA 1978 as 54-1A-1201 NMSA 1978, effective July 1, 1997.

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-1202. Short title.**

This act [54-1A-101 to 54-1A-1206 NMSA 1978] may be cited as the "Uniform Partnership Act (1994)".

**History:** Laws 1996, ch. 53, § 1002; 1978 Comp., 54-1A-1002, recompiled as 1978 Comp., § 54-1A-1202 by Laws 1997, ch. 76, § 12.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles 54-1A-1002 NMSA 1978 as 54-1A-1202 NMSA 1978, effective July 1, 1997.

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-1203. Savings clause.**

The Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] does not affect an action or proceeding commenced or right accrued before that act takes effect.

**History:** Laws 1996, ch. 53, § 1003; 1978 Comp., 54-1A-1003, recompiled as 1978 Comp., § 54-1A-1203 by Laws 1997, ch. 76, § 12.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles 54-1A-1003 NMSA 1978 as 54-1A-1203 NMSA 1978, effective July 1, 1997.

**Effective dates.** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act effective on July 1, 1997.

### **54-1A-1204. Severability.**

If any provision of the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

**History:** Laws 1996, ch. 53, § 1004; 1978 Comp., 54-1A-1004, recompiled as 1978 Comp., § 54-1A-1204 by Laws 1997, ch. 76, § 12.

## ANNOTATIONS

**Recompilations.** — Laws 1997, ch. 76, § 12, recompiles 54-1A-1004 NMSA 1978 as 54-1A-1204 NMSA 1978, effective July 1, 1997.

### **54-1A-1205. Applicability.**

(a) The Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] governs only a partnership formed under the laws of this state:

(1) after the effective date of that act, unless that partnership is continuing the business of a dissolved partnership under Section 54-1-41 NMSA 1978, a part of the prior Uniform Partnership Act; and

(2) before the effective date of that act, that elects, as provided by Subsection (b) of this section, to be governed by that act.

(b) A partnership formed under the laws of this state before the effective date of the Uniform Partnership Act voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by the Uniform Partnership Act (1994). Except as otherwise provided in Section 54-1A-306 NMSA 1978, the provisions of that act relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by that act, only if the third party knows or has received a notification of the partnership's election to be governed by that act.

(c) Until a partnership formed under the laws of this state before the effective date of the Uniform Partnership Act (1994) elects voluntarily to be governed by that act, the partnership shall continue to be governed by the provisions of the prior Uniform Partnership Act.

(d) Subsections (a) and (b) of this section shall not relieve a partnership formed under the laws of this state that elects to be governed by the Uniform Partnership Act (1994) from filing any statement of qualification required by Section 54-1A-1001 NMSA 1978.

(e) The Uniform Partnership Act (1994) governs any partnership formed at any time under laws other than the laws of this state which shall file any statement of foreign qualification required by Section 54-1A-1102 [NMSA 1978].

**History:** Laws 1996, ch. 53, § 1005; 1978 Comp., 54-1A-1005, recompiled and amended as 1978 Comp., § 54-1A-1205 by Laws 1997, ch. 76, § 13.



## ANNOTATIONS

**Bracketed material.** — The bracketed material in Subsection (e) was inserted by the compiler. It was not enacted by the legislature, and it is not part of the law.

**The 1997 amendment,** effective July 1, 1997, recompiled this section, which was formerly compiled as 54-1A-1005 NMSA 1978, and, in Subsection (a), in the introductory language, deleted "Before January 1, 2000" from the beginning and added "under the laws of this state" from the end and, in Paragraph (2), substituted "Subsection (b) of this section" for "Subsection (c)"; rewrote Subsections (b) and (c); and added Subsections (d) and (e).

**Effective date of Uniform Partnership Act (1994).** — Laws 1996, ch. 53, § 1007 makes the Uniform Partnership Act (1994) effective July 1, 1997.

### **54-1A-1206. Filing fees.**

The filing fee for any statement, annual report or other document filed with the secretary of state under the Uniform Partnership Act (1994) [54-1A-101 to 54-1A-1206 NMSA 1978] is fifty dollars (\$50.00).

**History:** Laws 1997, ch. 76, § 22.

## ANNOTATIONS

**Effective dates.** — Laws 1997, ch. 76, § 24 makes the act effective on July 1, 1997.

## **ARTICLE 2**

### **Uniform Limited Partnerships**

#### **54-2-1. Short title.**

Chapter 54, Article 2 NMSA 1978 may be cited as the "Uniform Limited Partnership Act".

**History:** 1978 Comp., § 54-2-1, enacted by Laws 1988, ch. 90, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 1 repeals 54-2-1 NMSA 1978, as enacted by Laws 1947, ch. 120, § 1, and enacts the above section, effective September 1, 1989.

**Severability clauses.** — Laws 1988, ch. 90, § 64, effective September 1, 1989, provides for the severability of the Uniform Limited Partnership Act (Chapter 54, Article 2 NMSA 1978) if any part or application thereof is held invalid.

**Object of limited partnership.** — A limited partnership is strictly a creature of statute, its object being to enable persons not desiring to engage in a particular business to invest capital in it and to share in the profits which might be expected to result from its use, without becoming liable as general partners for all partnership debts. *Hoefer v. Hall*, 75 N.M. 751, 411 P.2d 230 (1965).

**Partnership upon execution of agreement.** — Where a written agreement is clear and unambiguous that the parties agreed to form a limited partnership pursuant to statute and to execute a certificate setting forth its duration and specifically providing that a partnership was to begin upon the execution of the certificate, a limited partnership as between the parties came into existence upon their execution of the certificate of limited partnership. *Hoefer v. Hall*, 75 N.M. 751, 411 P.2d 230 (1965).

**Law reviews.** — For article, "The Use (or Abuse) of the Limited Partnership in Financing Real Estate Ventures in New Mexico," see 3 N.M. L. Rev. 251 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 59A Am. Jur. 2d Partnership §§ 1237, 1238.

Liability of special partner who has withdrawn his capital, to creditors of the firm, 67 A.L.R. 1096.

Constitutionality. 18 A.L.R.2d 1360.

Construction and effect of statute as to doing business under an assumed or fictitious name or designation not showing the names of the persons interested, 42 A.L.R.2d 516.

68 C.J.S. Partnership § 449.

## **54-2-2. Definitions.**

As used in the Uniform Limited Partnership Act [this article]:

A. "certificate of limited partnership" means the certificate referred to in Section 54-2-9 NMSA 1978 and the certificate as amended or restated;

B. "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;

C. "event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 54-2-24 NMSA 1978;

D. "foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners;

E. "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;

F. "limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

G. "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;

H. "partner" means a limited or general partner;

I. "partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

J. "partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets; and

K. "person" means a natural person, partnership, domestic or foreign limited partnership, trust, estate, association, limited liability company, foreign limited liability company or corporation.

**History:** 1978 Comp., § 54-2-2, enacted by Laws 1988, ch. 90, § 2; 1993, ch. 280, § 78.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 2 repeals 54-2-2 NMSA 1978, as amended by Laws 1951, ch. 23, § 1, and enacts the above section, effective September 1, 1989.

**The 1993 amendment,** effective June 18, 1993, inserted "limited liability company, foreign limited liability company" in Subsection K.

### 54-2-3. Name.

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

A. shall contain without abbreviation the words "limited partnership";

B. may not contain the name of a limited partner unless:

(1) it is also the name of a general partner or the corporate name or a corporate general partner; or

(2) the business of the limited partnership had been carried on under that name before the admission of that limited partner; and

C. may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

**History:** 1978 Comp., § 54-2-3, enacted by Laws 1988, ch. 90, § 3.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 3 repeals 54-2-3 NMSA 1978, as enacted by Laws 1947, ch. 120, § 3, and enacts the above section, effective September 1, 1989.

#### **54-2-4. Reservation of name.**

A. The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited partnership under the Uniform Limited Partnership Act [this article] and to adopt that name;

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

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

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

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

C. The fee for filing an application to reserve a specified name or filing a notice of transfer or a reserved name shall be twenty-five dollars (\$25.00).

**History:** 1978 Comp., § 54-2-4, enacted by Laws 1988, ch. 90, § 4.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 4 repeals 54-2-4 NMSA 1978, as enacted by Laws 1947, ch. 120, § 4, and enacts the above section, effective September 1, 1989.

### **54-2-5. Specified office and agent.**

Each limited partnership shall maintain continuously in this state:

A. an office, which may be a place of its business in this state, at which shall be kept the records required by Section 54-2-6 NMSA 1978; and

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

**History:** 1978 Comp., § 54-2-5, enacted by Laws 1988, ch. 90, § 5.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 5 repeals 54-2-5 NMSA 1978, as enacted by Laws 1947, ch. 120, § 5, and enacts the above section, effective September 1, 1989.

### **54-2-6. Records to be kept.**

A. Each limited partnership shall keep at the office referred to in Subsection A of Section 54-2-5 NMSA 1978 the following:

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

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

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

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

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

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

(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 or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution; and

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

B. Records kept under this section are subject to inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

**History:** 1978 Comp., § 54-2-6, enacted by Laws 1988, ch. 90, § 6.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 6 repeals 54-2-6 NMSA 1978, as enacted by Laws 1947, ch. 120, § 6, and enacts the above section, effective September 1, 1989.

#### **54-2-7. Nature of business.**

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

**History:** 1978 Comp., § 54-2-7, enacted by Laws 1988, ch. 90, § 7.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 7 repeals 54-2-7 NMSA 1978, as enacted by Laws 1947, ch. 120, § 7, and enacts the above section, effective September 1, 1989.

#### **54-2-8. Business transactions of partner with partnership.**

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

**History:** 1978 Comp., § 54-2-8, enacted by Laws 1988, ch. 90, § 8.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 8 repeals 54-2-8 NMSA 1978, as enacted by Laws 1947, ch. 120, § 8, and enacts the above section, effective September 1, 1989.

### **54-2-9. Certificate of limited partnership.**

A. In order to form a limited partnership, a certificate of limited partnership shall be executed and filed in the office of the secretary of state. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the address of the office and the name and address of the agent for service of process required to be maintained by Section 54-2-5 NMSA 1978;
- (3) the name and the business address of each general partner;
- (4) the latest date upon which the limited partnership is to dissolve; and
- (5) any other matters the general partners determine to include therein.

B. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

C. Certificates of limited partnership filed with a county clerk before July 1, 1993 may be refiled with the secretary of state. Such a refiling supersedes the filing in the county clerk's office. Certificates of limited partnership not refiled with the secretary of state shall remain valid until expiration or until cancellation pursuant to a certificate of cancellation filed with the county clerk.

**History:** 1978 Comp., § 54-2-9, enacted by Laws 1988, ch. 90, § 9; 1993, ch. 141, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 9 repeals 54-2-9 NMSA 1978, as enacted by Laws 1947, ch. 120, § 9, and enacts the above section, effective September 1, 1989.

**The 1993 amendment,** effective July 1, 1993, made a stylistic change in the first sentence of Subsection A; deleted the former second sentence of Subsection B, which provided for filing with the county clerk for certain limited partnerships; and added Subsection C.

## **54-2-10. Amendment to certificate.**

A. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

- (1) the name of the limited partnership;
- (2) the date of filing the certificate; and
- (3) the amendment to the certificate.

B. Within 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 and shall set forth:

- (1) the admission of a new general partner;
- (2) the withdrawal of a general partner; or
- (3) the continuation of the business pursuant to Section 52-2-45 NMSA 1978 after an event of withdrawal of a general partner.

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

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

E. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in Subsection B of this section if the amendment is filed within the thirty-day period specified in Subsection B.

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



**History:** 1978 Comp., § 54-2-10, enacted by Laws 1988, ch. 90, § 10.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 10 repeals 54-2-10 NMSA 1978, as enacted by Laws 1947, ch. 120, § 10, and enacts the above section, effective September 1, 1989.

**Compiler's notes.** — The reference to 52-2-45 NMSA 1978 in Subsection B(3) appears to be erroneous. The apparent intended reference is to 54-2-45 NMSA 1978.

### 54-2-11. Cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and set forth:

- A. the name of the limited partnership;
- B. the date of filing of its certificate of limited partnership;
- C. the reason for filing the certificate of cancellation;
- D. the effective date of cancellation if it is not to be effective upon the filing of the certificate; and
- E. any other information the general partners filing the certificate determine.

**History:** 1978 Comp., § 54-2-11, enacted by Laws 1988, ch. 90, § 11.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 11 repeals 54-2-11 NMSA 1978, as enacted by Laws 1947, ch. 120, § 11, and enacts the above section, effective September 1, 1989.

### 54-2-12. Execution of certificates.

A. Each certificate required by the Uniform Limited Partnership Act [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 general partner designated in the certificate as a new general partner; and

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

B. Any person may sign a certificate under a power of attorney but a power of attorney relating to the admission of a general partner must specifically describe the admission.

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

**History:** 1978 Comp., § 54-2-12, enacted by Laws 1988, ch. 90, § 12.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 12 repeals 54-2-12 NMSA 1978, as enacted by Laws 1947, ch. 120, § 12, and enacts the above section, effective September 1, 1989.

#### **54-2-13. Execution by judicial act.**

If a person required by Section 54-2-12 NMSA 1978 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

**History:** 1978 Comp., § 54-2-13, enacted by Laws 1988, ch. 90, § 13.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 13 repeals 54-2-13 NMSA 1978, as enacted by Laws 1947, ch. 120, § 13, and enacts the above section, effective September 1, 1989.

#### **54-2-14. Filing with the secretary of state.**

A. Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation or of any judicial decree of amendment or cancellation shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Upon receipt of the certificate and all filing fees required by law he shall:

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

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

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

B. Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership shall be amended as set for therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

C. The fee for filing a certificate of limited partnership shall be one hundred dollars (\$100). The fee for filing any other document permitted to be filed by this section shall be twenty-five dollars (\$25.00).

**History:** 1978 Comp., § 54-2-14, enacted by Laws 1988, ch. 90, § 14.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 14 repeals 54-2-14 NMSA 1978, as enacted by Laws 1947, ch. 120, § 14, and enacts the above section, effective September 1, 1989.

### **54-2-15. 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:

A. 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

B. any general partner who, within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment under Section 54-2-13 NMSA 1978, knows or should have known that any arrangement or other fact described in the certificate has changed making the statement inaccurate in any respect.

**History:** 1978 Comp., § 54-2-15, enacted by Laws 1988, ch. 90, § 15.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 15 repeals 54-2-15 NMSA 1978, as enacted by Laws 1947, ch. 120, § 15, and enacts the above section, effective September 1, 1989.

### **54-2-16. Scope of notice.**

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

**History:** 1978 Comp., § 54-2-16, enacted by Laws 1988, ch. 90, § 16.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 16 repeals 54-2-16 NMSA 1978, as enacted by Laws 1947, ch. 120, § 16, and enacts the above section, effective September 1, 1989.

### **54-2-17. Delivery of certificates to limited partners.**

Upon the return by the secretary of state pursuant to Section 54-2-14 NMSA 1978 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

**History:** 1978 Comp., § 54-2-17, enacted by Laws 1988, ch. 90, § 17.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 17 repeals 54-2-17 NMSA 1978, as enacted by Laws 1947, ch. 120, § 17, and enacts the above section, effective September 1, 1989.

### **54-2-18. Admission of limited partners.**

A. A person becomes a limited partner:

- (1) at the time the limited partnership is formed; or
- (2) at any later time specified in the records of the limited partnership for becoming a limited partner.

B. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

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

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 54-2-43 NMSA 1978, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

**History:** 1978 Comp., § 54-2-18, enacted by Laws 1988, ch. 90, § 18.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 18 repeals 54-2-18 NMSA 1978, as enacted by Laws 1947, ch. 120, § 18, and enacts the above section, effective September 1, 1989.

### **54-2-19. Voting.**

Subject to Section 54-2-20 NMSA 1978, the partnership agreement may grant to all or a specified group of the limited partners the right to vote upon any matter.

**History:** 1978 Comp., § 54-2-19, enacted by Laws 1988, ch. 90, § 19.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 19 repeals 54-2-19 NMSA 1978, as enacted by Laws 1947, ch. 120, § 19, and enacts the above section, effective September 1, 1989.

### **54-2-20. Liability to third parties.**

A. Except as provided in Subsection D of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

B. A limited partner does not participate in the control of the business within the meaning of Subsection A of this section solely by doing one or more of the following:

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

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

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

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

(5) requesting or attending a meeting of partners;

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

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

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

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

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

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

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

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

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

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

(7) winding up the limited partnership pursuant to Section 54-2-47 NMSA 1978; or

(8) exercising any right or power permitted to limited partners under the Uniform Limited Partnership Act [this article] and not specifically enumerated in this subsection.

C. The enumeration in Subsection B of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

D. A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by Section 54-2-3 NMSA 1978, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

**History:** 1978 Comp., § 54-2-20, created by Laws 1988, ch. 90, § 20.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 20 repeals 54-2-20 NMSA 1978, as enacted by Laws 1947, ch. 120, § 20, and enacts the above section, effective September 1, 1989.

**Receipt of IRS notice constituted actual injury to limited partner.** — Where plaintiff invested in a limited partnership based on accountant's advice, her cause of action for accountant malpractice based on the investment accrued when she received notice of Final Partnership Administrative Adjustment (FPAA) from the Internal Revenue Service; the FPAA is the functional equivalent of an individual IRS tax deficiency notice and constitutes actual injury to a partner in a limited partnership. *Wiste v. Neff & Co.*, 1998-NMCA-165, 126 N.M. 232, 967 P.2d 1172, cert. denied, 126 N.M. 534, 972 P.2d 353 (1998).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of limited partner arising from taking part in control of business under Uniform Limited Partnership Act, 79 A.L.R.4th 427.

### **54-2-21. Person erroneously believing himself a limited partner.**

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

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

(2) withdraws from future equity participation in the enterprise by executing and filing with the secretary of state a certificate declaring withdrawal under this section. The fee for filing such a certificate shall be twenty-five dollars (\$25.00).

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:

(1) before the person withdraws and an appropriate certificate is filed to show withdrawal; or

(2) before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

**History:** 1978 Comp., § 54-2-21, enacted by Laws 1988, ch. 90, § 21.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1988, ch. 90, § 21 repeals 54-2-21 NMSA 1978, as enacted by Laws 1947, ch. 120, § 21, and enacts the above section, effective September 1, 1989.

### 54-2-22. Information.

Each limited partner has the right to:

A. inspect and copy any of the partnership records required to be maintained by Section 54-2-6 NMSA 1978; and

B. obtain from the general partners from time to time upon reasonable demand:

(1) true and full information regarding the state of the business and financial condition of the limited partnership;

(2) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and

(3) other information regarding the affairs of the limited partnership as is just and reasonable.

**History:** 1978 Comp., § 54-2-22, enacted by Laws 1988, ch. 90, § 22.

### ANNOTATIONS



**Repeals and reenactments.** — Laws 1988, ch. 90, § 22 repeals 54-2-22 NMSA 1978, as enacted by Laws 1947, ch. 120, § 22, and enacts the above section, effective September 1, 1989.

### **54-2-23. Admission of additional general partners.**

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

**History:** 1978 Comp., § 54-2-23, enacted by Laws 1988, ch. 90, § 23.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 23 repeals 54-2-23 NMSA 1978, as enacted by Laws 1947, ch. 120, § 23, and enacts the above section, effective September 1, 1989.

**Indemnification of general partner by limited partners.** — Indemnifying a general partner for partnership debts by essentially forcing limited partners to pay for them violates the general public policy of limited partnership law. *Acacia Mut. Life Ins. Co. v. American Gen. Life Ins. Co.*, 111 N.M. 106, 802 P.2d 11 (1990).

An indemnification clause in the partnership agreement which would have the general partners paid off by the limited partners clearly contravenes the order of priority in the distribution of assets of a dissolved limited partnership as set out by the legislature. *Acacia Mut. Life Ins. Co. v. American Gen. Life Ins. Co.*, 111 N.M. 106, 802 P.2d 11 (1990).

**Dissolution of limited partnership.** — The law of New Mexico mandates that in a dissolution of a limited partnership, the limited partners are to be paid off before the general partners. *Acacia Mut. Life Ins. Co. v. American Gen. Life Ins. Co.*, 111 N.M. 106, 802 P.2d 11 (1990).

### **54-2-24. 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:

A. the general partner withdraws from the limited partnership as provided in Section 54-2-33 NMSA 1978;

B. the general partner ceases to be a member of the limited partnership as provided in Section 54-2-41 NMSA 1978;

C. the general partner is removed as a general partner in accordance with the partnership agreement;

D. unless otherwise provided in writing in the partnership agreement, the general partner:

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

(2) files a voluntary petition in bankruptcy;

(3) is adjudicated as bankrupt or insolvent;

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

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

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

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

F. in the case of a general partner who is a natural person:

(1) his death; or

(2) the entry of an order by a court of competent jurisdiction adjudicating him incompetent;

G. 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;

H. in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

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

J. in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

**History:** 1978 Comp., § 54-2-24, enacted by Laws 1988, ch. 90, § 24.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 24 repeals 54-2-24 NMSA 1978, as enacted by Laws 1947, ch. 120, § 24, and enacts the above section, effective September 1, 1989.

### **54-2-25. General powers and liabilities.**

A. Except as provided in the Uniform Limited Partnership Act [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 of a partner in a partnership without limited partners.

B. Except as provided in the Uniform Limited Partnership Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners, and except as provided in the Uniform Limited Partnership Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

**History:** 1978 Comp., § 54-2-25, enacted by Laws 1988, ch. 90, § 25.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 25 repeals 54-2-25 NMSA 1978, as enacted by Laws 1947, ch. 120, § 25, and enacts the above section, effective September 1, 1989.

**Effect of repeal and reenactment.** — When this section was repealed and rewritten in 1987 to delete the requirement that all limited partners approve a change in the partnership term, the old law no longer applied to a partnership formed thereunder. *Vidal v. Head*, 234 Bankr. 114 (Bankr. D.N.M. 1999).

### **54-2-26. Contributions by general partner.**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of and in distributions from the limited partnership as

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

**History:** 1978 Comp., § 54-2-26, enacted by Laws 1988, ch. 90, § 26.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 26 repeals 54-2-26 NMSA 1978, as enacted by Laws 1947, ch. 120, § 26, and enacts the above section, effective September 1, 1989.

#### **54-2-27. Voting.**

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

**History:** 1978 Comp., § 54-2-27, enacted by Laws 1988, ch. 90, § 27.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 27 repeals 54-2-27 NMSA 1978, as enacted by Laws 1947, ch. 120, § 27, and enacts the above section, effective September 1, 1989.

#### **54-2-28. Form of contribution.**

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

**History:** 1978 Comp., § 54-2-28, enacted by Laws 1988, ch. 90, § 28.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 28 repeals 54-2-28 NMSA 1978, as enacted by Laws 1947, ch. 120, § 28, and enacts the above section, effective September 1, 1989.

#### **54-2-29. Liability for contribution.**

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

B. Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of the stated contribution which has not been made.

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

**History:** 1978 Comp., § 54-2-29, enacted by Laws 1988, ch. 90, § 29.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 29 repeals 54-2-29 NMSA 1978, as enacted by Laws 1947, ch. 120, § 29, and enacts the above section, effective September 1, 1989.

#### **54-2-30. Sharing of profits and losses.**

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**History:** 1978 Comp., § 54-2-30, enacted by Laws 1988, ch. 90, § 30.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1988, ch. 90, § 30 repeals 54-2-30 NMSA 1978, as enacted by Laws 1947, ch. 120, § 30, and enacts the above section, effective September 1, 1989.

#### **54-2-31. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**History:** 1978 Comp., § 54-2-31, enacted by Laws 1988, ch. 90, § 31.

### **54-2-32. Interim distributions.**

Except as provided in the Uniform Limited Partnership Act [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.

**History:** 1978 Comp., § 54-2-32, enacted by Laws 1988, ch. 90, § 32.

### **54-2-33. Withdrawal of general partner.**

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

**History:** 1978 Comp., § 54-2-33, enacted by Laws 1988, ch. 90, § 33.

### **54-2-34. Withdrawal of limited partner.**

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

**History:** 1978 Comp., § 54-2-34, enacted by Laws 1988, ch. 90, § 34.

### **54-2-35. Distribution upon withdrawal.**

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

**History:** 1978 Comp., § 54-2-35, enacted by Laws 1988, ch. 90, § 35.

### **54-2-36. Distribution in kind.**

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

**History:** 1978 Comp., § 54-2-36, enacted by Laws 1988, ch. 90, § 36.

### **54-2-37. Right to distribution.**

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

**History:** 1978 Comp., § 54-2-37, enacted by Laws 1988, ch. 90, § 37.

### **54-2-38. Limitations on distribution.**

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

**History:** 1978 Comp., § 54-2-38, enacted by Laws 1988, ch. 90, § 38.

### **54-2-39. 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 the Uniform Limited Partnership Act [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 the Uniform Limited Partnership Act, he is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

C. A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value, as set forth in the partnership records required to be kept pursuant to Section 54-2-6 NMSA 1978, of his contribution which has not been distributed to him.

**History:** 1978 Comp., § 54-2-39, enacted by Laws 1988, ch. 90, § 39.

#### **54-2-40. Nature of partnership interest.**

A partnership interest is personal property.

**History:** 1978 Comp., § 54-2-40, enacted by Laws 1988, ch. 90, § 40.

#### **54-2-41. Assignment of partnership interest.**

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

**History:** 1978 Comp., § 54-2-41, enacted by Laws 1988, ch. 90, § 41.

#### **54-2-42. Rights of creditor.**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. The Uniform Limited Partnership Act [this article] does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

**History:** 1978 Comp., § 54-2-42, enacted by Laws 1988, ch. 90, § 42.

#### **54-2-43. 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 the Uniform Limited Partnership Act [this article]. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.

C. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under Sections 54-2-15 and 54-2-29 NMSA 1978.

**History:** 1978 Comp., § 54-2-43, enacted by Laws 1988, ch. 90, § 43.

#### **54-2-44. 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, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

**History:** 1978 Comp., § 54-2-44, enacted by Laws 1988, ch. 90, § 44.

#### **54-2-45. Nonjudicial dissolution.**

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the following occurrences:

A. the certificate of limited partnership specifies a certain time;

B. events specified in writing in the partnership agreement happen;

C. there is written consent of all partners;

D. a general partner withdraws, unless at the time there is at least one other general partner and the written provisions of the partnership agreement permit the

business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

E. a decree of judicial dissolution under Section 54-2-46 NMSA 1978 is entered.

**History:** 1978 Comp., § 54-2-45, enacted by Laws 1988, ch. 90, § 45.

### **54-2-46. Judicial dissolution.**

On application by or for a partner, the district court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

**History:** 1978 Comp., § 54-2-46, enacted by Laws 1988, ch. 90, § 46.

### **54-2-47. 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 district court may wind up the limited partnership's affairs upon application of any partner, his legal representative or assignee.

**History:** 1978 Comp., § 54-2-47, enacted by Laws 1988, ch. 90, § 47.

### **54-2-48. Distribution of assets.**

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

A. to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 54-2-32 or 54-2-35 NMSA 1978;

B. except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 54-2-32 or 54-2-35 NMSA 1978; and

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

**History:** 1978 Comp., § 54-2-48, enacted by Laws 1988, ch. 90, § 48.

### **54-2-49. Law governing.**

Subject to the New Mexico constitution, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration under Sections 54-3-1 through 54-3-7 [54-2-49 to 54-2-56] NMSA 1978 for the purpose of doing business in this state by reason of any difference between those laws and the laws of New Mexico.

**History:** 1978 Comp., § 54-3-1, enacted by Laws 1979, ch. 85, § 1; recompiled as 1978 Comp., § 54-2-49 by Laws 1988, ch. 90, § 49.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1988, ch. 90, § 49 recompiles 54-3-1 NMSA 1978 as 54-2-49 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Laws 1979, ch. 85, enacted New Mexico's version of Article 9 (Foreign Limited Partnerships), §§ 901 to 908, of the Uniform Limited Partnership Act, as amended in 1976. Section 54-2-50 NMSA 1978 has no parallel uniform act section. Section 903 ("Issuance of registration") of the uniform act was not adopted by New Mexico. See notes following 54-3-7 NMSA 1978.

### **54-2-50. Definition.**

As used in this act [54-2-49 to 54-2-56 NMSA 1978], "foreign limited partnership" means a partnership formed under the limited partnership laws of any territory, possession, commonwealth or state of the United States other than New Mexico, having as members one or more general partners and one or more limited partners.

**History:** 1978 Comp., § 54-3-1.1, enacted by Laws 1979, ch. 85, § 2; recompiled as 1978 Comp., § 54-2-50 by Laws 1988, ch. 90, § 50.

#### **ANNOTATIONS**

**Recompilations.** — Laws 1988, ch. 90, § 50 recompiles 54-3-1.1 NMSA 1978 as 54-2-50 NMSA 1978, effective September 1, 1989.

### **54-2-51. Registration.**

A. Before transacting business in New Mexico, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall file with the secretary of state a statement of registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

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

(2) the state and date of its formation;

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

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

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

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

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

B. The fee for filing the statement of registration and preparing a certified copy thereof shall be one hundred dollars (\$100).

C. Upon receiving a statement of registration and the filing fee, the secretary of state shall:

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

(2) file the statement of registration in his office; and

(3) at the request of the person who filed the statement of registration or his representative, prepare and deliver a certified copy of the statement of registration to such person or his representative.

**History:** 1978 Comp., § 54-3-2, enacted by Laws 1979, ch. 85, § 3; recompiled as 1978 Comp., § 54-2-51 by Laws 1988, ch. 90, § 51.

## ANNOTATIONS

**The 1988 amendment**, effective September 1, 1989, deleted former Subsection A(3), which read "the general character of the business it proposes to transact in New Mexico" and redesignated former Subsections A(5) and A(6) as present Subsections A(4) and A(5); deleted former Subsection (7), which read "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"; and added present Subsections A(6) and A(7).

**Recompilations.** — Laws 1988, ch. 90, § 51 recompiles 54-3-2 NMSA 1978 as 54-2-51 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Section 54-2-51 NMSA 1978 is similar to § 902 of the uniform act, with the following main exceptions: the state act substitutes "file with" for "submit to" and "a statement of" for "in duplicate, an application for" in the second sentence in the introductory paragraph of Subsection A and the state act adds Subsections B and C.

### **54-2-52. Name.**

A foreign limited partnership may register with the secretary of state under any name, as long as it includes the words "limited partnership", whether or not it is the name under which it is registered in its state of organization, that could be registered by a domestic limited partnership.

**History:** 1978 Comp., § 54-3-3, enacted by Laws 1979, ch. 85, § 4; compiled as 1978 Comp., § 54-2-52 by Laws 1988, ch. 90, § 52.

## **ANNOTATIONS**

**The 1988 amendment**, effective September 1, 1989, inserted "as long as it includes the words 'limited partnership'".

**Recompilations.** — Laws 1988, ch. 90, § 52 recompiles 54-3-3 NMSA 1978 as 54-2-52 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Section 54-2-52 NMSA 1978 is similar to § 904 of the uniform act, with the following main exception: this section of the state act deletes "includes without abbreviation the words 'limited partnership' and," as it appears preceding "that could be registered" in § 904 of the uniform act.

### **54-2-53. Changes and amendments.**

If any statement in the statement of registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the statement inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general

partner, correcting such statement. The fee for filing such a certificate shall be ten dollars (\$10.00).

**History:** 1978 Comp., § 54-3-4, enacted by Laws 1979, ch. 85, § 5; recompiled as 1978 Comp., § 54-2-53 by Laws 1988, ch. 90, § 53.

### ANNOTATIONS

**Recompilations.** — Laws 1988, ch. 90, § 53 recompiles 54-3-4 NMSA 1978 as 54-2-53 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Section 54-2-53 NMSA 1978 is similar to § 905 of the uniform act, with the following main exceptions: this section of the state act added the second sentence; and, in the first sentence, this section of the state act refers to "statement," while § 905 of the uniform act refers to "application."

### 54-2-54. Cancellation of registration.

A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in New Mexico. The fee for filing such a certificate of cancellation shall be ten dollars (\$10.00).

**History:** 1978 Comp., § 54-3-5, enacted by Laws 1979, ch. 85, § 6; recompiled as 1978 Comp., § 54-2-54 by Laws 1988, ch. 90, § 54.

### ANNOTATIONS

**Recompilations.** — Laws 1988, ch. 90, § 54 recompiles 54-3-5 NMSA 1978 as 54-2-54 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Section 54-2-54 NMSA 1978 is similar to § 906 of the uniform act, with the following main exceptions: this section of the state act adds the last sentence; and, in the second sentence, this section of the state act chooses the bracketed alternative "[causes of action]," instead of the other bracketed alternative "[claims for relief]," as provided for in § 906 of the uniform act.

### 54-2-55. Transaction of business without registration.

A. A foreign limited partnership transacting business in New Mexico may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.

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

C. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the limited partnership having transacted business in New Mexico without registration.

D. A foreign limited partnership, by transacting business in New Mexico 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 New Mexico.

**History:** 1978 Comp., § 54-3-6, enacted by Laws 1979, ch. 85, § 7; recompiled as 1978 Comp., § 54-2-55 by Laws 1988, ch. 90, § 55.

### ANNOTATIONS

**Recompilations.** — Laws 1988, ch. 90, § 55 recompiles 54-3-6 NMSA 1978 as 54-2-55 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Section 54-2-55 NMSA 1978 is similar to § 907 of the uniform act, with the following main exceptions: Subsection C of the state act inserts "the limited partnership"; and, in Subsection D, the state act chooses the bracketed alternative "[causes of action]," instead of the other bracketed alternative "[claims for relief]," as provided for in subsection (d) of the uniform act.

### 54-2-56. Action by attorney general.

The attorney general may bring an action to restrain a foreign limited partnership from transacting business in New Mexico in violation of the Uniform Limited Partnership Act [this article].

**History:** 1978 Comp., § 54-3-7, enacted by Laws 1979, ch. 85, § 8; recompiled as 1978 Comp., § 54-2-56 by Laws 1988, ch. 90, § 56.

### ANNOTATIONS

**The 1988 amendment,** effective September 1, 1989, substituted "the Uniform Limited Partnership Act" for "Sections 54-3-1 through 54-3-7 NMSA 1978".

**Recompilations.** — Laws 1988, ch. 90, § 56 recompiles 54-3-7 NMSA 1978 as 54-2-56 NMSA 1978, effective September 1, 1989.

**Compiler's notes.** — Section 54-2-56 NMSA 1978 is similar to § 908 of the uniform act, with the following main exception: this section of the state act, carrying out the

instructional bracketed language in § 908 of the uniform act, designates the attorney general as the appropriate official to bring a restraining action.

### **54-2-57. Right of action.**

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

**History:** Laws 1978 Comp., § 54-2-57, enacted by Laws 1988, ch. 90, § 57.

### **54-2-58. Proper plaintiff.**

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

**History:** Laws 1978 Comp., § 54-2-58, enacted by Laws 1988, ch. 90, § 58.

### **54-2-59. Pleading.**

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

**History:** Laws 1978 Comp., § 54-2-59, enacted by Laws 1988, ch. 90, § 59.

### **54-2-60. Expenses.**

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

**History:** Laws 1978 Comp., § 54-2-60, enacted by Laws 1988, ch. 90, § 60.

### **54-2-61. Construction and application.**

The Uniform Limited Partnership Act [this article] shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to its subject among states enacting it.



**History:** Laws 1978 Comp., § 54-2-61, enacted by Laws 1988, ch. 90, § 61.

### **54-2-62. Rules for cases not provided for.**

In any case not provided for in the Uniform Limited Partnership Act [this article], the provisions of the Uniform Partnership Act [Chapter 54, Article 1 NMSA 1978] shall govern.

**History:** Laws 1978 Comp., § 54-2-62, enacted by Laws 1988, ch. 90, § 62.

### **54-2-63. Provisions for existing limited partnership.**

A. A limited partnership formed under any statute of this state prior to the adoption of the Uniform Limited Partnership Act [this article] may become a limited partnership under that act by complying with the provisions of Section 54-2-9 NMSA 1978.

B. A limited partnership formed under any statute of this state prior to the adoption of the Uniform Limited Partnership Act, until or unless it becomes a limited partnership under that act, shall continue to be governed by the provisions of the existing limited partnership act or acts, except that that partnership shall not be renewed unless so provided in the original agreement.

**History:** Laws 1978 Comp., § 54-2-63, enacted by Laws 1988, ch. 90, § 63.

#### **ANNOTATIONS**

**Severability clauses.** — Laws 1988, ch. 90, § 64, effective September 1, 1989, provides for the severability of the Uniform Limited Partnership Act if any part or application thereof is held invalid.

## **ARTICLE 3**

### **Foreign Limited Partnerships**

#### **54-3-1 to 54-3-7. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** — Laws 1988, ch. 90, § 49 recompiles 54-3-1 to 54-3-7 NMSA 1978 as 54-2-49 to 54-2-56 NMSA 1978, effective September 1, 1989.