

## Article 5.

### Revised Uniform Limited Partnership Act.

#### Part 1. General Provisions.

##### **§ 59-101. Short title.**

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

##### **§ 59-102. Definitions.**

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

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

includes, for all purposes of the laws of the State of North Carolina, a limited liability limited partnership.

(5a) "Foreign nonprofit corporation" means a foreign corporation as defined in G.S. 55A-1-40.

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

(6a) "Limited liability limited partnership" and "registered limited liability limited partnership" mean a limited partnership that is registered under and complies with G.S. 59-210.

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

(8) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners, and includes, for all purposes of the laws of the State of North Carolina, a limited liability limited partnership.

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

(10) "Partnership agreement" means any valid agreement of the partners as to the affairs of a limited partnership, the conduct of its business, and the responsibilities and rights of its partners. The term "partnership agreement" includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a "partnership agreement", and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.

(11) "Partnership interest" means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.

(12) "Person" means a natural person, domestic or foreign partnership, domestic or foreign limited partnership, domestic or foreign limited liability company, trust, estate, unincorporated association, domestic or foreign corporation, domestic or foreign nonprofit corporation, or another entity.

(12a) "Principal office" means the office (in or out of this State) where the principal executive offices of a limited liability limited partnership or foreign limited partnership are located, in the case of a limited liability limited partnership as designated in its most recent annual report filed with the Secretary of State or, if no annual report has yet been filed, in its application for registration as a limited liability limited partnership, or in the case of a foreign limited partnership as most recently designated in its application for registration as a foreign limited partnership or a certificate filed pursuant to G.S. 59-905.

(13) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. (1985 (Reg. Sess., 1986), c.

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

### **§ 59-103. Name.**

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

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

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

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

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

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

### **§ 59-106. Records to be kept.**

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

- (1) A current list of the full name and last known mailing address of each partner set forth in alphabetical order;
- (2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
- (3) Copies of the limited partnership's federal, State and local income tax returns and reports, if any, for the three most recent years;
- (4) Copies of any then effective written partnership agreements and copies of any financial statements of the limited partnership for the three most recent years; and
- (5) A written record that contains:
  - a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;
  - b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
  - c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and
  - d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

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

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

### **§ 59-107. Nature of business.**

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

### **§ 59-108. Business transactions of partner with the partnership.**

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to G.S. 59-804 and other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

Part 2. Formation; Certificate of Limited Partnership.

#### **§ 59-201. Certificate of limited partnership.**

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

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

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

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

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

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

#### **§ 59-202. Amendment to certificate.**

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

- (1) The name of the limited partnership;
- (2) The date of filing of the certificate; and
- (3) The amendment to the certificate.

(b) Within 30 days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (1) The admission of a new general partner;
- (2) The withdrawal of a general partner; or
- (3) The continuation of the business under G.S. 59-801 after an event of withdrawal of a general partner.

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

(d) Repealed by Session Laws 1987, c. 531, s. 4. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1987, c. 531, s. 4.)

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

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

- (1) The name of the limited partnership;
- (2) The date of filing of its certificate of limited partnership;
- (3) The reason for filing the certificate of cancellation;
- (4) The effective date of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the partners filing the certificate determine. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1997-485, s. 25.)

#### **§ 59-204. Execution of documents.**

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

- (1) An original certificate of limited partnership must be signed by all general partners;
- (2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and
- (3) A certificate of cancellation must be signed by all general partners.

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

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

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

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

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

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

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

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

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

#### **§ 59-207. Liability for false statement in certificate.**

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

- (1) Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and
- (2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under G.S. 59-205. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-208. Notice.**

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Part 3. Limited Partners.**

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

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

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

(b) After the formation of a limited partnership, a person may be admitted as an additional limited partner:

- (1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance with, the partnership agreement; and
- (2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 16.)

##### **§ 59-302. Voting.**

The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 17.)

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

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

#### **§ 59-304. Person erroneously believing himself limited partner.**

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

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

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

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

#### **§ 59-305. Information.**

Each limited partner has the right to:

- (1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and
- (2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 20.)

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

#### **Part 4. General Partners.**

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

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

## **§ 59-402. Events of withdrawal.**

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

- (1) The general partner withdraws from the limited partnership as provided in G.S. 59-602;
- (2) The general partner ceases to be a member of the limited partnership as provided in G.S. 59-702;
- (3) The general partner is removed as a general partner in accordance with the partnership agreement;
- (4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;
- (5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;
- (6) In the case of a general partner who is a natural person,
  - a. The general partner's death; or
  - b. The entry of an order by a court of competent jurisdiction adjudicating the general partner incompetent to manage his or her person or property;
- (7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;
- (9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter;
- (10) Unless otherwise provided in the partnership agreement, or with the consent of all partners, in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership;
- (11) In the case of a general partner that is a limited liability company, the dissolution and commencement of winding up of the limited liability company; or

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

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

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

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

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

#### **§ 59-404. Contributions by a general partner.**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-405. Voting.**

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

Part 5. Finance.

**§ 59-501. Form of contribution.**

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

(a) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term "agreed value" means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this Article may be compromised only by consent of all the partners. Any such compromise, however, shall not affect the rights of a creditor whose claim arose prior to the date of the compromise.

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

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

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

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

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

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

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

### Part 6. Distribution and Withdrawal.

#### **§ 59-601. Interim distributions.**

Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

After filing of the original certificate of limited partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, any damages for breach of the partnership agreement and may offset the damages against the amount otherwise distributable or payable to the partner. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 26.)

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

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

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

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

#### **§ 59-605. Distribution in kind.**

Except as provided in writing in the limited partnership agreement, (1) a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash; and (2) a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the

asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-606. Right to distribution.**

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

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

A partner shall not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

**§ 59-608. Liability upon return of contribution.**

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

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

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

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

Part 7. Assignment of Partnership Interest.

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

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

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

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner and to have the power to exercise any rights and powers of a partner upon assignment of all of the partner's partnership interest. Except as provided in the

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

### **§ 59-703. Rights of creditor.**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. The general partners shall have no liability to a partner for payments to a judgment creditor pursuant to this provision. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This Article does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

### **§ 59-704. Right of assignee to become limited partner.**

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (2) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of the assignee's assignor to make and return contributions as provided in Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time the assignee became a limited partner and (ii) could not be ascertained from the written provisions of the partnership agreement.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under G.S. 59-207, 59-502, and 59-608. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 32.)

### **§ 59-705. Power of estate of deceased or incompetent partner.**

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

#### **Part 8. Dissolution.**

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

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

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

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

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

On application by or for a partner the court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement. The limited partnership's name becomes available for use by another entity as provided in 55D-21. (1985 (Reg. Sess., 1986), c. 989, s. 2; 2001-358, s. 36; 2001-387, ss. 173, 175(a); 2001-413, s. 6.)

#### **§ 59-803. Winding up.**

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

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

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

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

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

Part 9. Foreign Limited Partnerships.

**§ 59-901. Law governing.**

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

**§ 59-902. Registration.**

(a) Before transacting business in this State, a foreign limited partnership shall procure a certificate of authority to transact business in this State from the Secretary of State. No foreign limited partnership shall be entitled to transact in this State any business which a limited partnership organized under this Article is not permitted to transact. In order to register, a foreign limited partnership shall deliver to the Secretary of State an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

- (1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;
- (2) The jurisdiction and date of its formation;
- (3) The date of formation and the period of duration;
- (4) The street address, and the mailing address if different from the street address, of the principal office of the foreign limited partnership, and the county in which the principal office is located;
- (5) The street address, and the mailing address if different from the street address, of the registered office of the foreign limited partnership in this State, the county in which the registered office is located, and the name of its proposed registered agent in this State;
- (6) If the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and addresses of the partners, a list of the names and addresses or, at the election of the foreign limited partnership, a list of the names and addresses of the general partners and the address, including county and city or town, and street and number, of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign

limited partnership to keep such records until such foreign limited partnership's registration in this State is cancelled;

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

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

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

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

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

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

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

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

### **§ 59-904. Name.**

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

### **§ 59-905. Changes and amendments.**

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State an original and one conformed copy of a certificate, signed by a general partner, correcting such statement. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

### **§ 59-906. Cancellation of registration.**

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this State. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

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

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

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

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

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

(f) A foreign limited partnership, by transacting business in this State without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this State. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 36; 2000-140, s. 101(r).)

#### **§ 59-908. Action by Attorney General.**

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this State in violation of this Article. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

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

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

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

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

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

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

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

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

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

### **Part 10. Derivative Actions.**

#### **§ 59-1001. Right of action.**

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-1002. Proper plaintiff.**

In a derivative action, the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction that is the subject of the complaint or (ii) the plaintiff's status as a partner must have devolved upon the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction. (1985 (Reg. Sess., 1986), c. 989, s. 2; 1999-362, s. 37.)

#### **§ 59-1003. Pleading.**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort. (1985 (Reg. Sess., 1986), c. 989, s. 2.)

#### **§ 59-1004. Expenses.**

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

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

#### **§ 59-1005. Dismissal of action.**

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

#### **§ 59-1006. Construction.**

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

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

#### Part 10A. Conversion to Limited Partnership.

#### **§ 59-1050. Conversion.**

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

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

#### **§ 59-1051. Plan of conversion.**

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

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

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

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

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

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

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

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

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

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

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

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

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

When the conversion takes effect:

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

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

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

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

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

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

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

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

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

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

**§ 59-1060. Conversion.**

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

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

**§ 59-1061. Plan of conversion.**

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

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

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

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

- (a) After a plan of conversion has been approved by the converting domestic limited partnership as provided in G.S. 59-1061, the converting domestic limited partnership shall deliver articles of conversion to the Secretary of State for filing. The articles of conversion shall state:

- (1) The name of the converting domestic limited partnership;
- (2) The name of the resulting business entity, its type of business entity, the state or country whose laws govern its organization and internal affairs, and, if the resulting business entity is not authorized to transact business or conduct affairs in this State, a designation of its mailing address and a commitment to file with

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

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

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

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

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

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

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

(a) When the conversion takes effect:

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

(2) The title to all real estate and other property owned by the converting domestic limited partnership continues vested in the resulting business entity without reversion or impairment;

(3) All liabilities of the converting domestic limited partnership continue as liabilities of the resulting business entity;

(4) A proceeding pending by or against the converting domestic limited partnership may be continued as if the conversion did not occur; and

(5) The interests in the converting domestic limited partnership that are to be converted into interests, obligations, or securities of the resulting business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting domestic limited partnership are entitled only to the rights provided in the plan of conversion.

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

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

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

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

Part 10C. Merger.

**§ 59-1070. Merger.**

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

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

**§ 59-1071. Plan of merger.**

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

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

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

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

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

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

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

## **§ 59-1072. Articles of merger.**

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

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

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

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

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

### **§ 59-1073. Effects of merger.**

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

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

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

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

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

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

### **Part 11. Miscellaneous.**

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

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

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

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

**§ 59-1103. Severability.**

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

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

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

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

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

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

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

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

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

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

(20)	Certificate of amendment of registration as a limited liability limited partnership .....	25.00
(21)	Certificate of cancellation of registration as a limited liability limited partnership .....	25.00
(22)	Annual report for a limited liability limited partnership .....	200.00
(23)	Any other document required or permitted to be filed under this Article.....	10.00

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

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

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

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

### **§ 59-1107. Income taxation.**

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