

TITLE 4. PARTNERSHIPS

CHAPTER 151. GENERAL PROVISIONS

Revised Law:

Sec. 151.001. DEFINITIONS. In this title:

(1) "Capital account" means the amount computed by:

(A) adding the amount of a partner's original and additional contributions of cash to a partnership, the agreed value of any other property that that partner originally or additionally contributed to the partnership, and allocations of partnership profits to that partner; and

(B) subtracting the amount of distributions to that partner and allocations of partnership losses to that partner.

(2) "Foreign limited partnership" means a partnership formed under the laws of another state that has one or more general partners and one or more limited partners.

(3) "Majority-in-interest," with respect to all or a specified group of partners, means partners who own more than 50 percent of the current percentage or other interest in the profits of the partnership that is owned by all of the partners or by the partners in the specified group, as appropriate.

(4) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership.

Source Law:

TRPA 1.01(2), (8), (10) and (12)

(2) "Capital account" means the amount of a partner's original contribution to a partnership, which consists of cash and the agreed value of any other contribution to the partnership, increased by the amount of additional contributions made by that partner and by profits credited to that partner under Section 4.01(b), and decreased by the amount of distributions to that partner and by losses charged to that partner under Section 4.01(b).

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(8) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

* * *

(10) "Majority-in-interest" means, as to all of or a specified group of partners, partners owning more than 50 percent of the current interest in the profits of the partnership owned by all of the partners or by the partners in the specified group, as appropriate.

* * *

(12) "Partnership agreement" means any agreement, written or oral, of the partners concerning a partnership.

TRLPA 1.02(1), (3), (7) and (10)

(1) "Capital account" means, unless otherwise provided in a written partnership agreement, the amount of a partner's original contribution to a limited partnership, which consists of cash and the agreed value of any other contribution to the partnership, increased by the amount of additional contributions made by that partner and allocations to that partner of partnership profits and decreased by the amount of distributions to that partner and allocations to that partner of partnership losses.

* * *

(3) "Foreign limited partnership" means a partnership formed under the laws of another state and having as partners one or more general partners and one or more limited partners.

* * *

(7) "Majority in interest," unless otherwise provided in a written partnership agreement, means, as to all or any specified group of limited partners, partners who own more than 50 percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in the specified group, as appropriate.

* * *

(10) "Partnership agreement" means any agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

Revisor's Note:

No substantive change is intended for this portion of the revised law.

As a general comment on Title 4, Chapter 152 of the Code applies to general partnerships and Chapter 153 of the Code applies to limited partnerships. Chapters 151 and 154 are applicable to both general partnerships and limited partnerships and contain definitions and other provisions that are common to both TRPA and TRLPA.

Revised Law:

Sec. 151.002. KNOWLEDGE OF FACT. For purposes of this title, a person has knowledge of a fact only if the person has actual knowledge of the fact.

Source Law:

TRPA 1.02(a)

(a) Definition of Knowledge. "Knowledge" means actual knowledge. A person knows of a fact only if the person has knowledge of it.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 151.003. NOTICE OF FACT. (a) For purposes of this title, a person has notice of a fact if the person:

- (1) has knowledge of the fact;
- (2) has received a communication of the fact as provided by Subsection (c); or
- (3) reasonably should have concluded, from all facts then known to that person, that the fact exists.

(b) A person notifies or gives notice to another person of a fact by taking actions reasonably required to inform the other person of the fact in the ordinary course of business, regardless of whether the other person actually has knowledge of the fact.

(c) A person is notified or receives notice of a fact when the fact is communicated to:

- (1) the person;
- (2) the person's place of business; or
- (3) another place held out by the person as the place for receipt of communications.

(d) Receipt of notice by a partner of a fact relating to the partnership is effective immediately as notice to the partnership unless fraud against the partnership is committed by or with the consent of the partner receiving the notice.

Source Law:

TRPA 1.02(b), (c), (d) and (e)

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

- (1) knows of the fact;
- (2) has received a communication of the fact as provided by Subsection (d); or
- (3) reasonably should have concluded, from all facts known to that person at the time in question, that the fact exists.

(c) Giving Notice. A person notifies or gives a notice to another person of a fact by taking steps reasonably required to inform the other person of the fact in the ordinary course of business, regardless of whether the other person actually comes to know of the fact.

(d) Receiving Notice. A person is notified or receives a notice of a fact when the fact is communicated to:

- (1) the person;
- (2) the person's place of business; or
- (3) another place held out by the person as the place for receipt of communications.

(e) Notice to Partner as Notice to Partnership. Receipt of notice by a partner of a fact relating to the partnership is effective immediately as notice to the partnership except in the case of fraud on the partnership committed by or with the consent of the partner receiving the notice.

Revisor's Note:

No substantive change is intended.

CHAPTER 152. GENERAL PARTNERSHIPS
SUBCHAPTER A. GENERAL PROVISIONS

Revised Law:

Sec. 152.001. DEFINITIONS. In this chapter:

(1) "Event of withdrawal" or "withdrawal" means an event specified by Section 152.501(b).

(2) "Event requiring a winding up" means an event specified by Section 11.051 or 11.057.

(3) "Foreign limited liability partnership" means a partnership that:

(A) is foreign; and

(B) has the status of a limited liability partnership pursuant to the laws of the jurisdiction of formation.

(4) "Other partnership provisions" means the provisions of Chapters 151 and 154 and Title 1 to the extent applicable to partnerships.

(5) "Transfer" includes:

(A) an assignment;

(B) a conveyance;

(C) a lease;

(D) a mortgage;

(E) a deed;

(F) an encumbrance; and

(G) the creation of a security interest.

(6) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred.

Source Law:

TRPA 1.01(6), (7), (9), (18), (19)

(6) "Event of withdrawal" or "withdrawal" means an event specified by Section 6.01(b).

(7) "Event requiring a winding up" means an event specified by Section 8.01.

* * *

(9) "Foreign limited liability partnership" means a partnership that:

(A) is formed under laws other than the laws of Texas; and

(B) has the status of a registered limited liability partnership under those laws.

* * *

(14) "Person" includes an individual, corporation, business trust, estate, trust, custodian, trustee, executor, administrator, nominee, partnership (including a registered limited liability partnership and a limited partnership), association, limited liability company, government, governmental subdivision, governmental agency, governmental instrumentality, and any other legal or commercial entity, in its own or representative capacity.

* * *

(17) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(18) "Transfer" includes:

(A) an assignment;

(B) a conveyance;

(C) a lease;

(D) a mortgage;

(E) a deed;

(F) an encumbrance; and

(G) the creation of a security interest.

(19) "Withdrawn partner" means a partner with respect to whom an event of withdrawal has occurred. A partner withdraws if an event of withdrawal has occurred with respect to that partner under Section 6.01.

Revisor's Note:

No substantive change is intended. Certain of the definitions in TRPA 1.01 have been incorporated into Section 151.001 and Chapter 1. The defined term "other partnership provisions" is new. The source law definitions of "state" and "person" are not needed in the Code and have been omitted due to the Code Construction Act, Chapter 311, Government Code. That Act contains definitions of "person" and "state" that apply to all of the Texas Codes, including the revised law.

Revised Law:

Sec. 152.002. EFFECT OF PARTNERSHIP AGREEMENT; NONWAIVABLE AND VARIABLE PROVISIONS. (a) Except as provided by Subsection (b), a partnership agreement governs the relations of the partners and between the partners and

the partnership. To the extent that the partnership agreement does not otherwise provide, this chapter and the other partnership provisions govern the relationship of the partners and between the partners and the partnership.

(b) A partnership agreement or the partners may not:

(1) unreasonably restrict a partner's right of access to books and records under Section 152.212;

(2) eliminate the duty of loyalty under Section 152.205, except that the partners by agreement may identify specific types of activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable;

(3) eliminate the duty of care under Section 152.206, except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(4) eliminate the obligation of good faith under Section 152.204(b), except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(5) vary the power to withdraw as a partner under Section 152.501(b)(1), (7), or (8), except for the requirement that notice be in writing;

(6) vary the right to expel a partner by a court in an event specified by Section 152.501(b)(5);

(7) restrict rights of a third party under this chapter or the other partnership provisions, except for a limitation on an individual partner's liability in a limited liability partnership as provided by this chapter;

(8) select a governing law not permitted under Sections 1.103 and 1.002(47)(C); or

(9) except as provided in Subsections (c) and (d), waive or modify the following provisions of Title 1:

(A) Chapter 1, if the provision is used to interpret a provision or to define a word or phrase contained in a section listed in this subsection;

(B) Chapter 2, other than Sections 2.104(c)(2), 2.104(c)(3), and 2.113;

(C) Chapter 3, other than Subchapters C and E of that chapter; or

(D) Chapters 4, 5, 10, 11, and 12, other than Sections 11.057(a)(1), (2), (5), and (6) and 11.057(b).

(c) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is waived or modified authorizes the partnership to waive or modify the provision in the partnership's governing documents.

(d) A provision listed in Subsection (b)(9) may be waived or modified in a partnership agreement if the provision that is modified specifies:

(1) the person or group of persons entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved.

Source Law:

TRPA 1.03(a)

(a) Partnership Agreement Controls. Except as provided by Subsection (b), a partnership agreement governs the relations of the partners and between the partners and the partnership. To the extent that the partnership agreement does not otherwise provide, this Act governs the relations of the partners and between the partners and the partnership.

TRPA 1.03(b)(1)-(9)

(b) Statutory Provisions that may not be Varied by Agreement. A partnership agreement or the partners may not:

(1) unreasonably restrict a partner's right of access to books and records under Section 4.03(b);

(2) eliminate the duty of loyalty under Section 4.04(b), but the partners may by agreement identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable;

(3) eliminate the duty of care under Section 4.04(c), but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(4) eliminate the obligation of good faith under Section 4.04(d), but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(5) vary the power to withdraw as a partner under Section 6.01(b)(1), (7), or (8), except to require the notice to be in writing;

(6) vary the right to expel a partner by a court in the events specified by Section 6.01(b)(5);

(7) vary the requirement to wind up the partnership business in the events specified by Section 8.01(c), (d), or (e);

(8) restrict rights of third parties under this Act, except for limitations on individual partners' liability in a registered limited liability partnership as provided or permitted by Section 3.08; or

(9) select a governing law not permitted under Section 1.05(a)(1).

Revisor's Note:

No substantive change is intended as to subsection (a) of the revised law. Section 152.002(b) lists certain statutory provisions that cannot be waived or modified by the partners in a partnership agreement and is based on TRPA Article 1.03(b). Section 152.002(b), however, reflects the move of certain provisions of TRPA to Title 1. Specifically, Section

152.002(b)(9) provides that, with certain exceptions noted below, a partnership agreement or the partners may not waive or modify specific chapters in Title 1.

Section 152.002(c) is new and provides that a partnership agreement or the partners may waive or modify a statutory provision listed in Section 152.002(b)(9) if the statutory provision expressly permits a waiver or modification in the partnership's governing documents.

Section 152.002(d) is new and provides that a partnership agreement or the partners may modify a statutory provision listed in Section 152.002(b)(9) to the extent that the statutory provision specifies the persons or group of persons entitled to approve an action of the partnership or the vote or other method by which such action is to be approved.

Revised Law:

Sec. 152.003. SUPPLEMENTAL PRINCIPLES OF LAW. The principles of law and equity and the other partnership provisions supplement this chapter unless otherwise provided by this chapter or the other partnership provisions.

Source Law:

TRPA 1.04(a)

(a) Supplemented by Law and Equity. Unless displaced by a particular provision of this Act, the principles of law and equity supplement this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.004. RULE OF STATUTORY CONSTRUCTION NOT APPLICABLE. The rule that a statute in derogation of the common law is to be strictly construed does not apply to this chapter or the other partnership provisions.

Source Law:

TRPA 1.04(b)

(b) Strict Construction not Applicable. The rule that a statute in derogation of the common law is to be strictly construed does not apply to this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.005. APPLICABLE INTEREST RATE. If an obligation to pay interest arises under this chapter and the rate is not specified, the interest rate is the rate specified by Section 302.002, Finance Code.

Source Law:

TRPA 1.04(c)

(c) Interest Rate. If an obligation to pay interest arises under this Act and the rate is not specified, the rate is the rate specified by Section 302.002, Finance Code, or a successor statute.

Revisor's Note:

No substantive change is intended.

(Sections 152.006-152.050 reserved for expansion)

SUBCHAPTER B. NATURE AND CREATION OF PARTNERSHIP

Revised Law:

Sec. 152.051. PARTNERSHIP DEFINED. (a) In this section, "association" does not have the meaning of the term "association" under Section 1.002.

(b) Except as provided by Subsection (c) and Section 152.053(a), an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether:

(1) the persons intend to create a partnership; or

(2) the association is called a "partnership," "joint venture," or other name.

(c) An association or organization is not a partnership if it was created under a statute other than:

(1) this title and the provisions of Title 1 applicable to partnerships and limited partnerships;

(2) a predecessor to a statute referred to in Subdivision (1); or

(3) a comparable statute of another jurisdiction.

(d) The provisions of this chapter govern limited partnerships only to the extent provided by Sections 153.003 and 153.152 and Subchapter H, Chapter 153.

Source Law:

TRPA 2.02(a) and (b)

(a) Association to Carry on Business for Profit. Except as provided by Subsections (b) and (c), an association of two or more persons to carry on a business for profit as owners creates a partnership, whether the persons intend to create a partnership and whether the association is called a "partnership," "joint venture," or other name. A partnership may be created under:

(1) this Act;

(2) the Texas Uniform Partnership Act (Article 6132b, Vernon's Texas Civil Statutes) and its subsequent amendments;

(3) the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments; or

(4) a statute of another jurisdiction comparable to this Act or the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments.

(b) Entity Not a Partnership. An association or entity created under a law other than the laws described in Subsection (a) is not a partnership.

Revisor's Note:

Section 152.051(a) is new and has been added to clarify that, in this section, "association" has the plain English meaning, not the meaning used in Chapter 1 of the Code. Section 152.051(d) is new and has been added as an appropriate cross reference to the provisions in Chapter 153 dealing with "linkage" between the general partnership provisions and the limited partnership provisions.

Revised Law:

Sec. 152.052. RULES FOR DETERMINING IF PARTNERSHIP IS CREATED. (a) Factors indicating that persons have created a partnership include the persons':

- business; (1) receipt or right to receive a share of profits of the
- (2) expression of an intent to be partners in the business;
- business; (3) participation or right to participate in control of the
- (4) agreement to share or sharing:
 - (A) losses of the business; or
 - (B) liability for claims by third parties against the business; and
- (5) agreement to contribute or contributing money or property to the business.

(b) One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

- payment: (1) the receipt or right to receive a share of profits as
 - (A) of a debt, including repayment by installments;
 - (B) of wages or other compensation to an employee or independent contractor;
 - (C) of rent;
 - (D) to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;
 - (E) of interest or other charge on a loan, regardless of whether the amount varies with the profits of the business, including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or
 - (F) of consideration for the sale of a business or other property, including payment by installments;

(2) co-ownership of property, regardless of whether the co-ownership is:

(A) a joint tenancy, tenancy in common, tenancy by the entirety, joint property, community property, or part ownership; or

(B) combined with sharing of profits from the property;

(3) the right to share or sharing gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) An agreement by the owners of a business to share losses is not necessary to create a partnership.

Source Law:

TRPA 2.03(a), (b) and (c)

(a) Factors Indicating Creation of Partnership. Factors indicating that persons have created a partnership include their:

(1) receipt or right to receive a share of profits of the business;

(2) expression of an intent to be partners in the business;

(3) participation or right to participate in control of the business;

(4) sharing or agreeing to share:

(A) losses of the business; or

(B) liability for claims by third parties against the business; and

(5) contributing or agreeing to contribute money or property to the business.

(b) Factors Not Indicating Creation of Partnership. One of the following circumstances, by itself, does not indicate that a person is a partner in the business:

(1) the receipt or right to receive a share of profits:

(A) as repayment of a debt, by installments or otherwise;

(B) as payment of wages or other compensation to an employee or independent contractor;

(C) as payment of rent;

(D) as payment to a former partner, surviving spouse or representative of a deceased or disabled partner, or transferee of a partnership interest;

(E) as payment of interest or other charge on a loan, regardless of whether the amount of payment varies with the

profits of the business, and including a direct or indirect present or future ownership interest in collateral or rights to income, proceeds, or increase in value derived from collateral; or

(F) as payment of consideration for the sale of a business or other property by installments or otherwise;

(2) co-ownership of property, whether in the form of joint tenancy, tenancy in common, tenancy by the entireties, joint property, community property, or part ownership, whether combined with sharing of profits from the property;

(3) sharing or having a right to share gross returns or revenues, regardless of whether the persons sharing the gross returns or revenues have a common or joint interest in the property from which the returns or revenues are derived; or

(4) ownership of mineral property under a joint operating agreement.

(c) Additional Rules. An agreement to share losses by the owners of a business is not necessary to create a partnership. . . .

Revisor's Note:

No substantive change is intended. The last sentence of TRPA 2.03(c) is included in Section 152.053(b).

Revised Law:

Sec. 152.053. QUALIFICATIONS TO BE PARTNER; NONPARTNER'S LIABILITY TO THIRD PERSON. (a) A person may be a partner unless the person lacks capacity apart from this chapter.

(b) Except as provided by Section 152.307, a person who is not a partner in a partnership under Section 152.051 is not a partner as to a third person and is not liable to a third person under this chapter.

Source Law:

TRPA 2.02(c)

(c) Person with Capacity as Partner. A person may be a partner unless the person lacks capacity apart from this Act.

TRPA 2.03(c)

(c) Additional Rules. Except as provided by Sections 3.06 and 7.03, a person who is not a partner in a partnership under Section 2.02 is not a partner as to a third person and is not liable to a third person under this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.054. FALSE REPRESENTATION OF PARTNERSHIP OR PARTNER. (a) A false representation or other conduct falsely indicating that a person is a partner with another person does not of itself create a partnership.

(b) A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership.

Source Law:

TRPA 3.06(a) and (b)

(a) Representation of Partnership. A representation or other conduct indicating that a person is a partner with another person, if that is not the case, does not of itself create a partnership.

(b) Representation of Membership in Partnership. A representation or other conduct indicating that a person is a partner in an existing partnership, if that is not the case, does not of itself make that person a partner in the partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.055. AUTHORITY OF CERTAIN PROFESSIONALS TO CREATE PARTNERSHIP. (a) Persons licensed as doctors of medicine and persons licensed as doctors of osteopathy by the Texas State Board of Medical Examiners and persons licensed as podiatrists by the Texas State Board of Podiatric Medical Examiners may create a partnership that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners.

(b) When doctors of medicine, osteopathy, and podiatry create a partnership that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner.

(c) The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

Source Law:

TRPA 2.02(e)

(e) Authority of Doctors of Medicine and Osteopathy and Podiatrists to Create Partnership. Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may create a partnership that is jointly owned by those practitioners to perform a professional service that falls within the scope of practice of those practitioners. When doctors of medicine, osteopathy, and podiatry create a partnership that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and non can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of medical Examiners and the Texas State Board of Podiatric

Medical Examiners continue to exercise regulatory authority over their respective licenses.

Revisor's Note:

No substantive change is intended.

(Sections 152.056-152.100 reserved for expansion)

SUBCHAPTER C. PARTNERSHIP PROPERTY

Revised Law:

Sec. 152.101. NATURE OF PARTNERSHIP PROPERTY. Partnership property is not property of the partners. A partner or a partner's spouse does not have an interest in partnership property.

Source Law:

TRPA 2.04

Art. 6132b-2.04. Partnership Property not Property of Partners

Partnership property is not property of the partners. Neither a partner nor a partner's spouse has an interest in partnership property.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.102. CLASSIFICATION AS PARTNERSHIP PROPERTY. (a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners, regardless of whether or not the name of the partnership is indicated, if the instrument transferring title to the property indicates:

(A) the person's capacity as a partner; or

(B) the existence of a partnership.

(b) Property is presumed to be partnership property if acquired with partnership property, regardless of whether the property is acquired as provided by Subsection (a).

(c) Property acquired in the name of one or more partners is presumed to be the partner's property, regardless of whether the property is used for partnership purposes, if the instrument transferring title to the property does not indicate the person's capacity as a partner or the existence of a partnership, and if the property is not acquired with partnership property.

(d) For purposes of this section, property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

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

Source Law:

TRPA 2.05(a), (b), (c) and (d)

(a) Acquisition in Certain Names. Property is partnership property if acquired:

(1) in the name of the partnership; or

(2) in the name of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership, regardless of whether the name of the partnership is indicated.

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

(1) the partnership in its name; or

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

(c) Property Acquired with Partnership Property. Property is presumed to be partnership property if acquired with partnership property, whether acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

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

Revisor's Note:

No substantive change is intended.

(Sections 152.103-152.200 reserved for expansion)

SUBCHAPTER D. RELATIONSHIP BETWEEN PARTNERS AND BETWEEN PARTNERS AND PARTNERSHIPS

Revised Law:

Sec. 152.201. ADMISSION AS PARTNER. A person may become a partner only with the consent of all partners.

Source Law:

TRPA 4.01(g)

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

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.202. CREDITS OF AND CHARGES TO PARTNER. (a) Each partner is credited with an amount equal to:

(1) the cash and the value of property the partner contributes to a partnership; and

(2) the partner's share of the partnership's profits.

(b) Each partner is charged with an amount equal to:

(1) the cash and the value of other property distributed by the partnership to the partner; and

(2) the partner's share of the partnership's losses.

(c) Each partner is entitled to be credited with an equal share of the partnership's profits and is chargeable with a share of the partnership's capital or operating losses in proportion to the partner's share of the profits.

Source Law:

TRPA 4.01(a) and (b)

(a) Capital Credits and Charges. Each partner is credited with an amount equal to the cash plus the value of property the partner contributes to a partnership and the partner's share of the partnership's profits. Each partner is charged with an amount equal to the cash plus the value of other property distributed by the partnership to the partner and the partner's share of the partnership's losses.

(b) Profits and Losses. Each partner is entitled to be credited with an equal share of the partnership's profits and is chargeable with a share of the partnership's losses, whether capital or operating, in proportion to the partner's share of the profits.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.203. RIGHTS AND DUTIES OF PARTNER. (a) Each partner has equal rights in the management and conduct of the business of a partnership. A partner's right to participate in the management and conduct of the business is not community property.

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

(c) A partner is not entitled to receive compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.

(d) A partner who, in the proper conduct of the business of the partnership or for the preservation of its business or property, reasonably makes a payment or advance beyond the amount the partner agreed to contribute, or who reasonably incurs a liability, is entitled to be repaid and to receive interest from the date of the:

(1) payment or advance; or

(2) incurrence of the liability.

Source Law:

TRPA 4.01(c), (d), (e) and (f)

(c) Disproportionate Payment or Advance. A partner who, in the proper conduct of the business of the partnership or for the preservation of its business or property, reasonably makes a payment or advance beyond the amount the partner agreed to contribute, or who reasonably incurs a liability, is entitled to be repaid by the partnership and to receive interest from the partnership from the date of the payment or advance or the incurrence of the liability.

(d) Participation in Management. Each partner has equal rights in the management and conduct of the business of a partnership. A partner's right to participate in the management and conduct of the business is not community property.

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

(f) Compensation. A partner is not entitled to compensation for services performed for a partnership other than reasonable compensation for services rendered in winding up the business of the partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.204. GENERAL STANDARDS OF PARTNER'S CONDUCT. (a) A partner owes to the partnership and the other partners:

- (1) a duty of loyalty; and
- (2) a duty of care.

(b) A partner shall discharge the partner's duties to the partnership and the other partners under this code or under the partnership agreement and exercise any rights and powers in the conduct or winding up of the partnership business:

- (1) in good faith; and
- (2) in a manner the partner reasonably believes to be in the best interest of the partnership.

(c) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(d) A partner, in the partner's capacity as partner, is not a trustee and is not held to the standards of a trustee.

Source Law:

TRPA 4.04(a), (d), (e) and (f)

(a) Duties. A partner owes to the partnership and the other partners:

(1) a duty of loyalty; and

(2) a duty of care.

* * *

(d) Method of Discharge. A partner shall discharge the partner's duties to the partnership and the other partners under this Act or under the partnership agreement, and exercise any rights and powers in the conduct or winding up of the partnership business:

(1) in good faith; and

(2) in a manner the partner reasonably believes to be in the best interest of the partnership.

(e) Effect of Partner Benefit. A partner does not violate a duty or obligation under this Act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) Trustee Standard Inapplicable. A partner, in that capacity, is not a trustee and is not held to the same standards as a trustee.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.205. PARTNER'S DUTY OF LOYALTY. A partner's duty of loyalty includes:

(1) accounting to and holding for the partnership property, profit, or benefit derived by the partner:

(A) in the conduct and winding up of the partnership business; or

(B) from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a person who has an interest adverse to the partnership; and

(3) refraining from competing or dealing with the partnership in a manner adverse to the partnership.

Source Law:

TRPA 4.04(b)

(b) Loyalty. A partner's duty of loyalty includes:

(1) accounting to the partnership and holding for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or from use by the partner of partnership property;

(2) refraining from dealing with the partnership on behalf of a party having an interest adverse to the partnership; and

(3) refraining from competing with the partnership or dealing with the partnership in a manner adverse to the partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.206. PARTNER'S DUTY OF CARE. (a) A partner's duty of care to the partnership and the other partners is to act in the conduct and winding up of the partnership business with the care an ordinarily prudent person would exercise in similar circumstances.

(b) An error in judgment does not by itself constitute a breach of the duty of care.

(c) A partner is presumed to satisfy the duty of care if the partner acts on an informed basis and in compliance with Section 152.204(b).

Source Law:

TRPA 4.04(c)

(c) Care. A partner's duty of care to the partnership and the other partners is to act in the conduct and winding up of the partnership business with the care an ordinarily prudent person would exercise in similar circumstances. An error in judgment does not by itself constitute a breach of this duty of care. A partner is presumed to satisfy this duty if the partner acts on an informed basis and in compliance with Subsection (d).

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.207. STANDARDS OF CONDUCT APPLICABLE TO PERSON WINDING UP PARTNERSHIP BUSINESS. Sections 152.204-152.206 apply to a person winding up the partnership business as the personal or legal representative of the last surviving partner to the same extent as those sections apply to a partner.

Source Law:

TRPA 4.04(g)

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

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.208. AMENDMENT TO PARTNERSHIP AGREEMENT. A partnership agreement may be amended only with the consent of all partners.

Source Law:

TRPA 4.01(i)

(i) Amendment of Agreement. An amendment to a partnership agreement may be effected only with the consent of all partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.209. DECISION-MAKING REQUIREMENT. (a) A difference arising in a matter in the ordinary course of the partnership business may be decided by a majority-in-interest of the partners.

(b) An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all partners.

Source Law:

TRPA 4.01(h)

(h) Majority Decision on Ordinary Matter. A difference arising as to a matter in the ordinary course of the business of the partnership may be decided by a majority-in-interest of the partners. An act outside the ordinary course of business of a partnership may be undertaken only with the consent of all partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.210. PARTNER'S LIABILITY TO PARTNERSHIP AND OTHER PARTNERS. A partner is liable to a partnership and the other partners for:

- (1) a breach of the partnership agreement; or
- (2) a violation of a duty to the partnership or other partners under this chapter that causes harm to the partnership or the other partners.

Source Law:

TRPA 4.05

Art. 6132b-4.05. Partner's Liability to Partnership

A partner is liable to a partnership and the other partners for a breach of the partnership agreement or for a violation of a duty to the partnership or the other partners under this Act that causes harm to the partnership or the other partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.211. REMEDIES OF PARTNERSHIP AND PARTNERS. (a) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting of partnership business, to:

- (1) enforce a right under the partnership agreement;

(2) enforce a right under this chapter, including:

(A) the partner's rights under Sections 152.201-152.209, 152.212, and 152.213;

(B) the partner's right on withdrawal to have the partner's interest in the partnership redeemed under Subchapter H or to enforce any other right under Subchapters G and H; and

(C) the partner's rights under Subchapter I;

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

(4) enforce a right under Chapter 11.

(c) The accrual of and a time limitation on a right of action for a remedy under this section is governed by other applicable law.

(d) A right to an accounting does not revive a claim barred by law.

Source Law:

TRPA 4.06(a), (b), (c) and (d)

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

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

(1) enforce a right under the partnership agreement;

(2) enforce a right under this Act, including:

(A) the partner's rights under Sections 4.01, 4.03, and 4.04;

(B) the partner's right on withdrawal to have the partner's interest in the partnership redeemed under Section 7.01 or enforce any other right under Article 6 or 7; and

(C) the partner's rights under Article 8; or

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

(c) Accrual of Action. The accrual of and a time limitation on a right of action for a remedy under this section is governed by other law.

(d) No Revival by Accounting. A right to an accounting does not revive a claim barred by law.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.212. BOOKS AND RECORDS OF PARTNERSHIP. (a) In this section, "access" includes the opportunity to inspect and copy books and records during ordinary business hours.

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

(c) A partnership shall provide access to its books and records to a partner or an agent or attorney of a partner.

(d) The partnership shall provide a former partner or an agent or attorney of a former partner access to books and records pertaining to the period during which the former partner was a partner or for any other proper purpose with respect to another period.

(e) A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished under this section.

Source Law:

TRPA 4.03(a) and (b)

(a) Books and Records at Chief Executive Office. A partnership shall keep its books and records, if any, at its chief executive office.

(b) Access to Books and Records. A partnership shall provide access to its books and records to partners and their agents and attorneys. The partnership shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which the former partners were partners or for any other proper purpose with respect to another period. The right of access includes the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.213. INFORMATION REGARDING PARTNERSHIP. (a) On request and to the extent just and reasonable, each partner and the partnership shall furnish complete and accurate information concerning the partnership to:

- (1) a partner;
- (2) the legal representative of a deceased partner or a partner who has a legal disability; or
- (3) an assignee.

(b) A legal representative of a deceased partner or a partner who has a legal disability and an assignee are subject to the duties of a partner with respect to information made available.

Source Law:

TRPA 4.03(c)

(c) Information Concerning the Partnership. Each partner and the partnership shall furnish, on request and to the extent just and reasonable, to a partner, the legal representative of a deceased partner or a partner under legal disability, or an assignee, complete and accurate information concerning the partnership. A legal representative of a deceased partner or a partner under legal disability and an assignee are subject to the same duties as a partner with respect to information made available.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.214. CERTAIN THIRD-PARTY OBLIGATIONS NOT AFFECTED. Sections 152.203, 152.208, and 152.209 do not limit a partnership's obligations to another person under Sections 152.301 and 152.302.

Source Law:

TRPA 4.01(j)

(j) Partnership Obligation. This section does not limit a partnership's obligation to another person under Section 3.02.

Revisor's Note:

No substantive change is intended.

(Sections 152.215-152.300 reserved for expansion)

SUBCHAPTER E. RELATIONSHIP BETWEEN PARTNERS AND OTHER PERSONS

Revised Law:

Sec. 152.301. PARTNER AS AGENT. Each partner is an agent of the partnership for the purpose of its business.

Source Law:

TRPA 3.02(a)

(a) Partner Agent of Partnership as to Partnership Business. Each partner is an agent of the partnership for the purpose of its business. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.302. BINDING EFFECT OF PARTNER'S ACTION. (a) Unless a partner does not have authority to act for the partnership in a particular matter and the person with whom the partner is dealing knows that the partner lacks authority, an act of a partner, including the execution of an instrument in the partnership name, binds the partnership if the act is apparently for carrying on in the ordinary course:

- (1) the partnership business; or

(2) business of the kind carried on by the partnership.

(b) An act of a partner that is not apparently for carrying on in the ordinary course a business described by Subsection (a) binds the partnership only if authorized by the other partners.

(c) A conveyance of real property by a partner on behalf of the partnership not otherwise binding on the partnership binds the partnership if the property has been conveyed by the grantee or a person claiming through the grantee to be a holder for value without knowledge that the partner exceeded that partner's authority in making the conveyance.

Source Law:

TRPA 3.02(a), (b) and (c)

(a) Partner Agent of Partnership as to Partnership Business.

. . . Unless the partner does not have authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows that the partner lacks authority, an act of a partner, including the execution of an instrument in the partnership name, binds the partnership if the act is for apparently carrying on in the ordinary course:

- (1) the partnership business; or
- (2) business of the kind carried on by the partnership.

(b) Act Outside Scope of Business. An act of a partner binds the partnership only if authorized by the other partners if the act is not apparently for carrying on in the ordinary course:

- (1) the partnership business; or
- (2) business of the kind carried on by the partnership.

(c) Conveyance of Real Property. A conveyance of real property by the partner on behalf of the partnership not otherwise binding on the partnership does bind the partnership if the partnership real property has been conveyed by the grantee or a person claiming through the grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded that partner's authority.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.303. LIABILITY OF PARTNERSHIP FOR CONDUCT OF PARTNER. (a) A partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting:

- (1) in the ordinary course of business of the partnership; or
- (2) with the authority of the partnership.

(b) A partnership is liable for the loss of money or property of a person who is not a partner that is:

- (1) received in the course of the partnership's business; and

(2) misapplied by a partner while in the custody of the partnership.

Source Law:

TRPA 3.03(a) and (b)

(a) A partnership is liable for loss or injury to a person, including a partner, or for a penalty caused by or incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting:

- (1) in the ordinary course of business of the partnership; or
- (2) with the authority of the partnership.

(b) A partnership is liable for the loss of money or property of a person not a partner that is received in the course of the partnership's business and misapplied by a partner while in the custody of the partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.304. NATURE OF PARTNER'S LIABILITY. (a) Except as provided by Subsection (b) or Section 152.801(b), all partners are liable jointly and severally for a debt or obligation of the partnership unless otherwise:

- (1) agreed by the claimant; or
- (2) provided by law.

(b) A person who is admitted as a partner into an existing partnership does not have personal liability under Subsection (a) for an obligation of the partnership that:

- (1) arises before the partner's admission to the partnership;
- (2) relates to an action taken or omission occurring before the partner's admission to the partnership; or
- (3) arises before or after the partner's admission to the partnership under a contract or commitment entered into before the partner's admission.

Source Law:

TRPA 3.04

Art. 6132b-3.04. Partner's Liability

Except as provided by Section 3.07 or 3.08(a), all partners are liable jointly and severally for all debts and obligations of the partnership unless otherwise agreed by the claimant or provided by law.

TRPA 3.07

Art. 6132b-3.07. Liability of Incoming Partner

A person admitted as a partner into an existing partnership does not have personal liability under Section 3.04 for an obligation of the partnership that:

- (1) arose before the partner's admission to the partnership;
- (2) relates to an action taken or omissions occurring before the partner's admission to the partnership; or
- (3) arises before or after the partner's admission under a contract or commitment entered into before the partner's admission to the partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.305. REMEDY. An action may be brought against a partnership and any or all of the partners in the same action or in separate actions.

Source Law:

TRPA 3.05(b)

(b) Action Against Partnership and Partners. An action may be brought against a partnership and any or all of the partners in the same action or in separate actions.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.306. ENFORCEMENT OF REMEDY. (a) A judgment against a partnership is not by itself a judgment against a partner. A judgment may be entered against a partner who has been served with process in a suit against the partnership.

(b) Except as provided by Subsection (c), a creditor may proceed against one or more partners or the property of the partners to satisfy a judgment based on a claim against the partnership only if a judgment:

- (1) is also obtained against the partner; and
- (2) based on the same claim:

- (A) is obtained against the partnership;
- (B) has not been reversed or vacated; and
- (C) remains unsatisfied for 90 days after:

(i) the date on which the judgment is entered; or

(ii) the date on which the stay expires, if the judgment is contested by appropriate proceedings and execution on the judgment is stayed.

(c) Subsection (b) does not prohibit a creditor from proceeding directly against one or more partners or the property of the partners without first seeking satisfaction from partnership property if:

- (1) the partnership is a debtor in bankruptcy;

(2) the creditor and the partnership agreed that the creditor is not required to comply with Subsection (b);

(3) a court orders otherwise, based on a finding that partnership property subject to execution in the state is clearly insufficient to satisfy the judgment or that compliance with Subsection (b) is excessively burdensome; or

(4) liability is imposed on the partner by law independently of the person's status as a partner.

(d) This section does not limit the effect of Section 152.801 with respect to a limited liability partnership.

Source Law:

TRPA 3.05(c), (d), (e) and (f)

(c) Judgment Against Partner. A judgment against a partnership is not by itself a judgment against a partner, but a judgment may be entered against a partner who has been served with process in a suit against the partnership.

(d) Limitation on Creditor's Pursuit of Partner's Property. Except as provided by Subsection (e), a creditor may proceed against one or more partners or their property to satisfy a judgment based on a claim that could have been successfully asserted against the partnership only if:

(1) a judgment is also obtained against the partner; and

(2) a judgment based on the same claim is obtained against the partnership that:

(A) has not been reversed or vacated; and

(B) remains unsatisfied for 90 days after:

(i) the date of entry of the judgment; or

(ii) the date of expiration or termination of the stay, if the judgment is contested by appropriate proceedings and execution on the judgment has been stayed.

(e) Creditor's Direct Pursuit of Partner's Property. Subsection (d) does not prohibit a creditor from proceeding directly against one or more partners or their property without first seeking satisfaction from partnership property if:

(1) the partnership is a debtor in bankruptcy;

(2) the creditor and the partnership agreed that the creditor is not required to comply with Subsection (d);

(3) a court orders otherwise, based on a finding that partnership property subject to execution within the state is clearly insufficient to satisfy the judgment or that compliance with Subsection (d) is excessively burdensome; or

(4) liability is imposed on the partner by law independently of the person's status as a partner.

(f) Registered Limited Liability Partnership. This section does not limit the effect of Section 3.08(a) in the case of a registered limited liability partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.307. EXTENSION OF CREDIT IN RELIANCE ON FALSE REPRESENTATION. (a) The rights of a person extending credit in reliance on a representation described by Section 152.054 are determined by applicable law other than this chapter and the other partnership provisions, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

(b) The rights and duties of a person held liable under Subsection (a) are also determined by law other than the law described by Subsection (a).

Source Law:

TRPA 3.06(c) and (d)

(c) Creditor's Rights Governed by Other Law. The rights of a person extending credit in reliance on a representation described by Subsections (a) or (b) are determined by law other than this Act, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

(d) Legal Status of Person Making Misrepresentation. The rights and duties of a person held liable under Subsection (c) are also determined by law other than this Act, including the law of estoppel, agency, negligence, fraud, and unjust enrichment.

Revisor's Note:

No substantive change is intended.

(Sections 152.308-152.400 reserved for expansion)

SUBCHAPTER F. TRANSFER OF PARTNERSHIP INTERESTS

Revised Law:

Sec. 152.401. TRANSFER OF PARTNERSHIP INTEREST. A partner may transfer all or part of the partner's partnership interest.

Source Law:

TRPA 5.03(a)(1)

(a) Act of Transfer. A transfer of a partner's partnership interest:

(1) is permissible, in whole or in part;

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.402. GENERAL EFFECT OF TRANSFER. A transfer of all or part of a partner's partnership interest:

(1) is not an event of withdrawal;

(2) does not by itself cause a winding up of the partnership business; and

(3) against the other partners or the partnership, does not entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business.

Source Law:

TRPA 5.03(a)(2), (3) & (4)

(a) Act of Transfer. A transfer of a partner's partnership interest:

* * *

(2) is not an event of withdrawal;

(3) does not by itself cause a winding up of the partnership business; and

(4) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.403. EFFECT OF TRANSFER ON TRANSFEROR. After transfer, the transferor continues to have the rights and duties of a partner other than the interest transferred.

Source Law:

TRPA 5.03(b)

(b) Basic Rights of Transferee. . . . After transfer, the transferor continues to have the rights and duties of a partner other than the interest transferred. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.404. RIGHTS AND DUTIES OF TRANSFEREE. (a) A transferee of a partner's partnership interest is entitled to receive, to the extent transferred, distributions to which the transferor otherwise would be entitled.

(b) If an event requires a winding up of partnership business under Subchapter I, a transferee is entitled to receive, to the extent transferred, the net amount otherwise distributable to the transferor.

(c) Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer.

(d) For a proper purpose the transferee may require reasonable information or an account of a partnership transaction and make reasonable inspection of the partnership books. In a winding up of partnership business,

a transferee may require an accounting only from the date of the latest account agreed to by all of the partners.

(e) Until receipt of notice of a transfer, a partnership is not required to give effect to a transferee's rights under this section and Sections 152.401-152.403.

Source Law:

TRPA 5.03(b), (c) and (d)

(b) Basic Rights of Transferee. A transferee of a partner's partnership interest is entitled to receive, to the extent transferred, distributions to which the transferor otherwise would be entitled. . . . Until a transferee becomes a partner, the transferee does not have liability as a partner solely as a result of the transfer. For a proper purpose the transferee may require reasonable information or an account of partnership transactions and make reasonable inspection of the partnership books.

(c) Rights of Transferee on Winding Up. If an event requires a winding up of partnership business under Section 8.01, a transferee is entitled to receive, to the extent transferred, the net amount otherwise distributable to the transferor. In a winding up a transferee may require an accounting only from the date of the latest account agreed to by all of the partners.

(d) Notice to Partnership. Until receipt of notice of a transfer, a partnership does not have a duty to give effect to a transferee's rights under this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.405. POWER TO EFFECT TRANSFER OR GRANT OF SECURITY INTEREST. A partnership is not required to give effect to a transfer prohibited by a partnership agreement.

Source Law:

TRPA 5.03(e)

(e) No Effect if Prohibited. A partnership does not have a duty to give effect to a transfer, assignment, or grant of a security interest prohibited by a partnership agreement.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.406. EFFECT OF DEATH OR DIVORCE ON PARTNERSHIP INTEREST. (a) For purposes of this code:

(1) on the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, is a transferee of the partnership interest from the partner;

(2) on the death of a partner, the partner's surviving spouse, if any, and an heir, legatee, or personal representative of the

partner, to the extent of their respective partnership interest, is a transferee of the partnership interest from the partner; and

(3) on the death of a partner's spouse, an heir, legatee, or personal representative of the spouse, to the extent of their respective partnership interest, is a transferee of the partnership interest from the partner.

(b) An event of the type described by Section 152.501 occurring with respect to a partner's spouse is not an event of withdrawal.

(c) This chapter does not impair an agreement for the purchase or sale of a partnership interest at any time, including the death of an owner of the partnership interest.

Source Law:

TRPA 5.04(a), (b), (c), (d) and (e)

(a) Divorce. On the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, shall be regarded for purposes of this Act as a transferee of the partnership interest from the partner.

(b) Death of Partner. On the death of a partner, the partner's surviving spouse, if any, and the partner's heirs, legatees, or personal representative, to the extent of their respective partnership interests, shall be regarded for purposes of this Act as transferees of the partnership interests from the partner.

(c) Death of Partner's Spouse. On the death of a partner's spouse, the spouse's heirs, legatees or personal representative, to the extent of their respective partnership interests, shall be regarded for purposes of this Act as transferees of the partnership interest from the partner.

(d) Event Involving Partner's Spouse not Withdrawal. An event of the type described in Section 6.01 occurring with respect to a partner's spouse is not an event of withdrawal.

(e) No Impairment of Purchase Rights. This Act does not impair an agreement for the purchase or sale of a partnership interest at the time of death of the owner of the partnership interest or at any other time.

Revisor's Note:

No substantive change is intended.

(Sections 152.407-152.500 reserved for expansion)

SUBCHAPTER G. WITHDRAWAL OF PARTNER

Revised Law:

Sec. 152.501. EVENTS OF WITHDRAWAL. (a) A person ceases to be a partner on the occurrence of an event of withdrawal.

(b) An event of withdrawal of a partner occurs on:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner on:

(A) the date on which the notice is received; or

(B) a later date specified by the notice;

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided by the partnership agreement;

(4) the partner's expulsion by vote of a majority-in-interest of the other partners if:

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

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) not later than the 90th day after the date on which the partnership notifies an entity partner, other than a nonfiling entity or foreign nonfiling entity partner, that it will be expelled because it has filed a certificate of termination or the equivalent, its existence has been involuntarily terminated or its charter has been revoked, or its right to conduct business has been terminated or suspended by the jurisdiction of its formation, if the certificate of termination or the equivalent is not revoked or its existence, charter, or right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a nonfiling entity or foreign nonfiling entity that is a partner;

(5) application by the partnership or another partner for the partner's expulsion by judicial decree because the partner:

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

(B) wilfully or persistently committed a material breach of:

(i) the partnership agreement; or

(ii) a duty owed to the partnership or the other partners under Sections 152.204-152.206; or

(C) engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner's:

(A) becoming a debtor in bankruptcy;

(B) executing an assignment for the benefit of a creditor;

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

(D) failing, not later than the 90th day after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or not later than the 90th day after the date of expiration of a stay, failing to have the appointment vacated;

(7) if a partner is an individual:

(A) the partner's death;

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

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

(8) termination of a partner's existence;

(9) if a partner has transferred all of the partner's partnership interest, redemption of the transferee's interest under Section 152.611;

(10) an agreement to continue the partnership under Section 11.057(b) if the partnership has received a notice from the partner under Section 11.057(a)(6) requesting that the partnership be wound up;

(11) a conversion of the partnership if the partner:

(A) did not consent to the conversion; and

(B) failed to notify the partnership in writing of the partner's desire not to withdraw within 60 days after the later of:

(i) the effective date of the conversion; or

(ii) the date the partner receives actual notice of the conversion.

(c) A withdrawal of a partner under the circumstances described in Subsection (b)(11) is effective immediately before the effective date of the conversion and is not considered a wrongful withdrawal under Section 152.503.

Source Law:

TRPA 6.01(a) and (b)

(a) No Longer a Partner. A person ceases to be a partner on the occurrence of an event of withdrawal.

(b) Event of Withdrawal. An event of withdrawal of a partner occurs on:

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

(2) an event specified in the partnership agreement as causing the partner's withdrawal;

(3) the partner's expulsion as provided in the partnership agreement;

(4) the partner's expulsion by the vote of a majority-in-interest of the other partners if:

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

(B) there has been a transfer of all or substantially all of that partner's partnership interest, other than:

(i) a transfer for security purposes that has not been foreclosed; or

(ii) the substitution of a successor trustee or successor personal representative;

(C) within 90 days after the date the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution is not revoked or its charter or its right to conduct business is not reinstated; or

(D) an event requiring a winding up has occurred with respect to a partnership that is a partner;

(5) application by the partnership or another partner for the partner's expulsion by judicial decree because:

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

(B) the partner wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 4.04; or

(C) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner:

(A) becoming a debtor in bankruptcy;

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

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

(D) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the date of expiration of a stay to have the appointment vacated;

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

(A) the partner's death;

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

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

(8) termination of a partner's existence;

(9) in the case of a partner that has transferred all of the partner's partnership interest, redemption of the transferee's interest under Sections 7.01(n)-(r);

(10) an agreement to continue the partnership under Section 8.01(g) if the partnership has received a notice from the partner under Section 8.01(g) requesting that the partnership be wound up; or

(11) a conversion of the partnership if the partner:

(A) did not consent to the conversion; and

(B) failed to notify the partnership in writing of the partner's desire not to withdraw within 60 days after the later of:

(i) the effective date of the conversion;

(ii) the date the partner receives actual notice of the conversion.

Revisor's Note:

Section 152.501 of the revised law lists events the occurrence of which constitute an event of withdrawal and is the corresponding provision to Article 6.01 of TRPA. Several changes should be noted:

(1) Section 152.501(b)(4)(C) provides that an event of withdrawal occurs upon a partner's expulsion by a vote of a majority in interest of the other partners if, not later than 90 days after the date on which the partnership notifies an entity partner (other than a nonfiling entity or a foreign nonfiling entity partner) that it will be expelled because it filed a certificate of termination or equivalent, its existence has been involuntarily terminated or its charter revoked or its right to conduct business has been terminated or suspended, the certificate of termination or equivalent is not revoked or its existence, charter or right to conduct business is not reinstated. Section 152.501(b)(4)(C) is broader than Article 6.01(b)(4)(C) of TRPA in that such Article only referenced a "corporate partner." As noted above, Section 152.501(b)(4)(C) references an entity partner other than a nonfiling entity or foreign nonfiling entity partner; as defined, a filing entity includes a corporation, limited partnership, limited liability company, professional association, cooperative or real estate investment trust.

(2) Section 152.501(b)(4)(D) provides that an event of withdrawal occurs when an event requiring a winding up has occurred with respect to a nonfiling entity or a foreign nonfiling entity that is a partner. This section is broader than TRPA Article 6.01(b)(4)(D) which references an event of withdrawal occurring with respect to a "partnership" that is a partner.

Revised Law:

Sec. 152.502. EFFECT OF EVENT OF WITHDRAWAL ON PARTNERSHIP AND OTHER PARTNERS. A partnership continues after an event of withdrawal. The event of withdrawal affects the relationships among the withdrawn partner, the partnership, and the continuing partners as provided by Sections 152.503-152.506 and Subchapter H.

Source Law:

TRPA 2.06(a)

(a) Continuation of Partnership After Event of Withdrawal. A partnership continues after an event of withdrawal, but the event of withdrawal affects the relationships among the withdrawn partner, the partnership, and the continuing partners as provided by Sections 6.02, 7.01, 7.02, and 7.03.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.503. WRONGFUL WITHDRAWAL; LIABILITY. (a) At any time before the occurrence of an event requiring a winding up of partnership business, a partner may withdraw from the partnership and cease to be a partner as provided by Section 152.501.

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

(1) the withdrawal breaches an express provision of the partnership agreement;

(2) in the case of a partnership for a definite term or particular undertaking or for which the partnership agreement provides for winding up on a specified event, before the expiration of the term, the completion of the undertaking, or the occurrence of the event, as appropriate:

(A) the partner withdraws by express will;

(B) the partner withdraws by becoming a debtor in bankruptcy; or

(C) in the case of a partner that is not an individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise withdraws because the partner wilfully dissolved or terminated; or

(3) the partner is expelled by judicial decree under Section 152.501(b)(5).

(c) In addition to other liability of the partner to the partnership or to the other partners, a wrongfully withdrawing partner is liable to the partnership and to the other partners for damages caused by the withdrawal.

Source Law:

TRPA 6.02(a), (b) and (c)

(a) Power to Withdraw. A partner at any time before the occurrence of an event requiring a winding up has the power to withdraw from the partnership and cease to be a partner as provided by Section 6.01.

(b) Wrongful Withdrawal. A partner's withdrawal is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement;

(2) in the case of a partnership for a definite term or particular undertaking or for which the partnership agreement provides for winding up on a specified event, before the expiration of the term, the completion of the undertaking, or the occurrence of the event:

(A) the partner withdraws by express will;

(B) the partner withdraws by becoming a debtor in bankruptcy; or

(C) in the case of a partner that is not an individual, a trust other than a business trust, or an estate, the partner is expelled or otherwise withdraws because the partner wilfully dissolved or terminated; or

(3) the partner is expelled by judicial decree under Section 6.01(b)(5).

(c) Liability for Damages. A wrongfully withdrawing partner is liable to the partnership and to the other partners for damages caused by the withdrawal, in addition to other liability of the partner to the partnership or to the other partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.504. WITHDRAWN PARTNER'S POWER TO BIND PARTNERSHIP. (a) The action of a withdrawn partner occurring not later than the first anniversary of the date of the person's withdrawal binds the partnership if the transaction would bind the partnership before the person's withdrawal and the other party to the transaction:

(1) does not have notice of the person's withdrawal as a partner;

(2) had done business with the partnership within one year preceding the date of withdrawal; and

(3) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

(b) A withdrawn partner is liable to the partnership for loss caused to the partnership arising from an obligation incurred by the withdrawn partner after the withdrawal date and for which the partnership is liable under Subsection (a).

Source Law:

TRPA 7.02(a) and (b)

(a) Power to Bind for One Year. The action of a withdrawn partner within one year after the date of the person's withdrawal binds the partnership if the transaction is one that would bind the partnership before the person's withdrawal and the other party to the transaction:

(1) does not have notice of the person's withdrawal as a partner;

(2) had done business with the partnership within one year preceding the date of withdrawal; and

(3) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

(b) Withdrawn Partner's Liability for Loss. A withdrawn partner is liable to the partnership for loss caused to the partnership arising from an obligation incurred by the withdrawn partner after withdrawal and for which the partnership is liable under Subsection (a).

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.505. EFFECT OF WITHDRAWAL ON PARTNER'S EXISTING LIABILITY.

(a) Withdrawal of a partner does not by itself discharge the partner's liability for an obligation of the partnership incurred before the date of withdrawal.

(b) The estate of a deceased partner is liable for an obligation of the partnership incurred while the deceased was a partner to the same extent that a withdrawn partner is liable for an obligation of the partnership incurred before the date of withdrawal.

(c) A withdrawn partner is discharged from liability incurred before the date of withdrawal by an agreement to that effect between the partner and a partnership creditor.

(d) If a creditor of a partnership has notice of a partner's withdrawal and without the consent of the withdrawn partner agrees to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the date of withdrawal, the withdrawn partner is discharged from the obligation.

Source Law:

TRPA 7.03(a), (b), (c) and (d)

(a) Withdrawal Does Not Discharge Liability. Withdrawal of a partner does not of itself discharge the partner's liability for an obligation of the partnership incurred before withdrawal.

(b) Liability of Deceased Partner's Estate. The estate of a deceased partner is liable for an obligation of the partnership incurred while the deceased was a partner to the same extent that a withdrawn partner is liable for an obligation of the partnership incurred before withdrawal.

(c) Discharge of Withdrawn Partner by Agreement of Creditor. A withdrawn partner is discharged from liability incurred before the withdrawal by an agreement to that effect between the partner and a partnership creditor.

(d) Material Alteration of Obligation Without Consent Discharges Withdrawn Partner. If a creditor of a partnership has notice of a partner's withdrawal and without the consent of

the withdrawn partner agrees to a material alteration in the nature or time of payment of an obligation of the partnership incurred before the withdrawal, the withdrawn partner is discharged from the obligation.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.506. LIABILITY OF WITHDRAWN PARTNER TO THIRD PARTY. A person who withdraws as a partner in a circumstance that is not an event requiring a winding up of partnership business under Section 11.051 or 11.057 is liable to another party as a partner in a transaction entered into by the partnership or a surviving partnership under Section 10.001 not later than the second anniversary of the date of the partner's withdrawal only if the other party to the transaction:

- (1) does not have notice of the partner's withdrawal; and
- (2) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

Source Law:

TRPA 7.03(e)

(e) Liability of Withdrawn Partner to Creditor. A person who withdraws as a partner in a circumstance that does not constitute an event requiring a winding up under Section 8.01 is liable as a partner to another party in a transaction entered into by the partnership or a surviving partnership under Section 9.02 within two years after the date of the partner's withdrawal only if the other party to the transaction:

- (1) does not have notice of the partner's withdrawal; and
- (2) reasonably believed that the withdrawn partner was a partner at the time of the transaction.

Revisor's Note:

No substantive change is intended.

(Sections 152.507-152.600 reserved for expansion)

SUBCHAPTER H. REDEMPTION OF WITHDRAWING PARTNER OR
TRANSFEREE'S INTEREST

Revised Law:

Sec. 152.601. REDEMPTION IF PARTNERSHIP NOT WOUND UP. The partnership interest of a withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this subchapter if:

- (1) the event of withdrawal occurs under Sections 152.501(b)(1)-(9) and an event requiring a winding up of partnership business does not occur before the 61st day after the date of the withdrawal; or
- (2) the event of a withdrawal occurs under Section 152.501(b)(10).

Source Law:

TRPA 7.01(a)

(a) Redemption. If an event of withdrawal occurs under Sections 6.01(b)(1)- (9) and an event requiring a winding up does not occur within 60 days after the date of the withdrawal, or on a partner's withdrawal under Section 6.01(b)(10), or Section 6.01(b)(11), the partnership interest of the withdrawn partner automatically is redeemed by the partnership as of the date of withdrawal in accordance with this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.602. REDEMPTION PRICE. (a) Except as provided by Subsection (b), the redemption price of a withdrawn partner's partnership interest is the fair value of the interest on the date of withdrawal.

(b) The redemption price of the partnership interest of a partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up of partnership business is the lesser of:

(1) the fair value of the withdrawn partner's partnership interest on the date of withdrawal; or

(2) the amount that the withdrawn partner would have received if an event requiring a winding up of partnership business had occurred at the time of the partner's withdrawal.

(c) Interest is payable on the amount owed under this section.

Source Law:

TRPA 7.01(b)

(b) Redemption Price. (1) The redemption price of a withdrawn partner's partnership interest is the fair value of the interest as of the date of withdrawal, except that the redemption price of the partnership interest of a partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up is the lesser of:

(A) the fair value of the withdrawn partner's partnership interest as of the date of withdrawal; or

(B) the amount that the withdrawn partner would have received if an event requiring a winding up had occurred at the time of the partner's withdrawal.

(2) Interest is payable on the amount owed under this subsection.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.603. CONTRIBUTION OBLIGATION. If a wrongfully withdrawing partner would have been required to make contributions to the partnership

under Section 152.707 or 152.708 if an event requiring winding up of the partnership business had occurred at the time of withdrawal, the withdrawn partner is liable to the partnership to make contributions to the partnership in that amount and pay interest on the amount owed.

Source Law:

TRPA 7.01(c)

(c) Contributions from Wrongfully Withdrawing Partner. If a wrongfully withdrawing partner would have been liable to make contributions to the partnership under Section 8.06(b) or (c) if an event requiring winding up had occurred at the time of withdrawal, the withdrawn partner is liable to the partnership to make contributions in that amount to the partnership, plus interest on the amount owed.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.604. SETOFF FOR CERTAIN DAMAGES. The partnership may set off against the redemption price payable to the withdrawn partner the damages for wrongful withdrawal under Section 152.503(b) and all other amounts owed by the withdrawn partner to the partnership, whether currently due, including interest.

Source Law:

TRPA 7.01(d)

(d) Setoff. The partnership may set off the damages for wrongful withdrawal under Section 6.02(b) and all other amounts owed by the withdrawn partner to the partnership, whether currently due, including interest, against the redemption price payable to the withdrawn partner.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.605. ACCRUAL OF INTEREST. Interest payable under Sections 152.602-152.604 accrues from the date of the withdrawal to the date of payment.

Source Law:

TRPA 7.01(e)

(e) Interest. Interest owed under Subsection (b), (c), or (d) accrues from the date of the withdrawal to the date of payment.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.606. INDEMNIFICATION FOR CERTAIN LIABILITY. (a) A partnership shall indemnify a withdrawn partner against a partnership liability incurred before the date of withdrawal, except for a liability:

- (1) that is unknown to the partnership at the time; or

(2) incurred by an act of the withdrawn partner under Section 152.504.

(b) For purposes of this section, a liability is unknown to the partnership if it is not known to a partner other than the withdrawn partner.

Source Law:

TRPA 7.01(f)

(f) Indemnity. (1) A partnership shall indemnify a withdrawn partner against a partnership liability incurred before the withdrawal except a liability:

(A) then unknown to the partnership; or

(B) incurred by an act of the withdrawn partner under Section 7.02.

(2) For purposes of this subsection, a liability not known to a partner other than the withdrawn partner is not known to the partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.607. DEMAND OR PAYMENT OF ESTIMATED REDEMPTION. (a) If a deferred payment is not authorized under Section 152.608 and an agreement on the redemption price of a withdrawn partner's interest is not reached before the 121st day after the date of a written demand for payment is made by either party, not later than the 30th day after the expiration of the period, the partnership shall:

(1) pay to the withdrawn partner in cash the amount the partnership estimates to be the redemption price and any accrued interest, reduced by any setoffs and accrued interest under Section 152.604; or

(2) make written demand for payment of its estimate of the amount owed by the withdrawn partner to the partnership, minus any amount owed to the withdrawn partner by the partnership.

(b) If a deferred payment is authorized under Section 152.608 or a contribution or other amount is owed by the withdrawn partner to the partnership, the partnership may offer in writing to pay, or deliver a written statement of demand for, the amount it estimates to be the net amount owed, stating the amount and other terms of the obligation.

(c) On request of the other party, the payment, tender, offer, or demand required or allowed by Subsection (a) or (b) must be accompanied or followed promptly by:

(1) if payment, tender, offer, or demand is made or delivered by the partnership, a statement of partnership property and liabilities from the date of the partner's withdrawal and the most recent available partnership balance sheet and income statement, if any; and

(2) an explanation of the computation of the estimated payment obligation.

(d) The terms of a payment, tender, offer, or demand under Subsection (a) or (b) govern a redemption if:

(1) accompanied by written notice that:

(A) the payment or tendered amount, if made, fully satisfies a party's obligations relating to the redemption of the withdrawn partner's partnership interest; and

(B) an action to determine the redemption price, a contribution obligation or setoff under Section 152.603 or 152.604, or other terms of the redemption obligation must be commenced not later than the first anniversary of the later of:

(i) the date on which the written notice is given; or

(ii) the date on which the information required by Subsection (c) is delivered; and

(2) the party receiving the payment, tender, offer, or demand does not commence an action in the period described by Subdivision (1)(B).

Source Law:

TRPA 7.01(g), (h), (i) and (j)

(g) Tender of Redemption Price. If a deferred payment is not authorized under Subsection (k) and an agreement on the redemption price of a withdrawn partner's interest is not reached within 120 days after the date of a written demand for payment by either party, within 30 days after the expiration of the 120-day period the partnership shall:

(1) pay in cash to the withdrawn partner the amount the partnership estimates to be the redemption price plus accrued interest, reduced by any setoffs and accrued interest under Subsection (d); or

(2) make written demand for payment of its estimate of the amount owed by the withdrawn partner, net of amounts owed to the partner, to the partnership.

(h) Written Offer to Pay or Demand for Payment. If a deferred payment is authorized under Subsection (k) or a contribution or other amount is owed by the withdrawn partner to the partnership, the partnership may tender a written offer to pay or deliver a written statement of demand for the amount that it estimates to be the net amount owed to it, stating the amount and other terms and conditions of the obligation.

(i) Explanatory Statement Accompanying or Following Tender. On request of the other party, the payment, tender, or demand required or allowed by Subsection (g) or (h) must be accompanied or followed promptly by:

(1) a statement of partnership property and liabilities as of the date of the partner's withdrawal and the latest available partnership balance sheet and income statement, if any, if payment, tender, or demand is made or delivered by the partnership; and

(2) an explanation of the computation of the estimated payment obligation.

(j) Tender in Full Satisfaction. The terms of a payment or tender under Subsection (g) or (h) govern a redemption if:

(1) the payment or tender is accompanied by written notice that:

(A) the payment or tendered amount, if made, is in full satisfaction of a party's obligations relating to the redemption of the withdrawn partner's partnership interest; and

(B) an action to determine the redemption price, a contribution obligation or setoff under Subsection (c) or (d), or other terms of the redemption obligation must be commenced within one year after the later of:

(i) the date the written notice is given; or

(ii) the date of delivery of the information required by Subsection (i); and

(2) the party receiving the payment or tender does not commence an action within that one-year period.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.608. DEFERRED PAYMENT ON WRONGFUL WITHDRAWAL. (a) A partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up of partnership business is not entitled to receive any portion of the redemption price until the expiration of the term, the completion of the undertaking, or the occurrence of the specified event, as appropriate, unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the partnership.

(b) A deferred payment accrues interest.

(c) The withdrawn partner may seek to demonstrate to the satisfaction of the court that security for a deferred payment is appropriate.

Source Law:

TRPA 7.01(k)

(k) Deferral of Payment to Wrongfully Withdrawing Partner. A partner who wrongfully withdraws before the expiration of a definite term, the completion of a particular undertaking, or the occurrence of a specified event requiring a winding up is not entitled to receive any portion of the redemption price until the expiration of the term, the completion of the undertaking, or the occurrence of the specified event unless the partner establishes to the satisfaction of a court that earlier payment will not cause undue hardship to the partnership. A deferred payment bears interest. The withdrawn partner may seek to demonstrate to the satisfaction of the court that security for a deferred payment is appropriate.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.609. ACTION TO DETERMINE TERMS OF REDEMPTION. (a) A withdrawn partner or the partnership may maintain an action against the other party under Section 152.211 to determine:

(1) the terms of redemption of that partner's interest, including a contribution obligation or setoff under Section 152.603 or 152.604; or

(2) other terms of the redemption obligations of either party.

(b) The action must be commenced not later than the first anniversary of the later of:

(1) the date of delivery of information required by Section 152.607(c); or

(2) the date written notice is given under Section 152.607(d).

(c) The court shall determine the terms of the redemption of the withdrawn partner's interest, any contribution obligation or setoff due under Section 152.603 or 152.604, and accrued interest and shall enter judgment for an additional payment or refund.

(d) If deferred payment is authorized under Section 152.608, the court shall also determine the security for payment if requested to consider whether security is appropriate.

(e) If the court finds that a party failed to tender payment or make an offer to pay or to comply with the requirements of Section 152.607(c) or otherwise acted arbitrarily, vexatiously, or not in good faith, the court may assess damages against the party, including, if appropriate, in an amount the court finds equitable:

(1) a share of the profits of the continuing business;

(2) reasonable attorney's fees; and

(3) fees and expenses of appraisers or other experts for a party to the action.

Source Law:

TRPA 7.01(1)

(1) Action to Determine Redemption Terms. A withdrawn partner or the partnership may maintain an action against the other party under Section 4.06 to determine the terms of redemption of that partner's interest, including a contribution obligation or setoff under Subsection (c) or (d) or other terms of the redemption obligations of either party. The action must be commenced within one year after the later of the date of delivery of information required by Subsection (i) or the date written notice is given under Subsection (j). The court shall determine the terms of the redemption of the withdrawn partner's interest, any contribution obligation or setoff due under Subsection (c) or (d), and accrued interest and enter judgment for an additional payment or refund. If deferred payment is authorized under Subsection (k), the court shall also determine the security for payment if requested to consider whether security is appropriate. If the court finds that a party acted arbitrarily, vexatiously, or not in good

faith, including failure to tender payment or make an offer to pay or to comply with the requirements of Subsection (i), the court may assess damages against the party, including if appropriate a share of the profits of the continuing business, reasonable attorney's fees, and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.610. DEFERRED PAYMENT ON WINDING UP PARTNERSHIP. If a partner withdraws under Section 152.501 and not later than the 60th day after the date of withdrawal an event requiring winding up occurs under Section 11.051 or 11.057:

(1) the partnership may defer paying the redemption price to the withdrawn partner until the partnership makes a winding up distribution to the remaining partners; and

(2) the redemption price or contribution obligation is the amount the withdrawn partner would have received or contributed if the event requiring winding up had occurred at the time of the partner's withdrawal.

Source Law:

TRPA 7.01(m)

(m) Deferral of Payment on Occurrence of Event Requiring Winding Up. If a partner withdraws under Section 6.01 and an event occurs within 60 days of the date of withdrawal that requires a winding up of the partnership under Section 8.01:

(1) the partnership may defer paying the redemption price to the withdrawn partner until the partnership first makes a winding up distribution to the remaining partners; and

(2) the redemption price or contribution obligation is the amount the withdrawn partner would have received or contributed if the event requiring a winding up had occurred at the time of the partner's withdrawal.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.611. REDEMPTION OF TRANSFEREE'S PARTNERSHIP INTEREST. (a) A partnership must redeem the partnership interest of a transferee for its fair value if:

(1) the interest was transferred when:

(A) the partnership was for a definite term not yet expired;

(B) the partnership was for a particular undertaking not yet completed; or

(C) the partnership agreement provided for winding up of the partnership business on a specified event that had not yet occurred;

(2) the definite term of the partnership has expired, the particular undertaking has been completed, or the specified event has occurred; and

(3) the transferee makes a written demand for redemption.

(b) If an agreement for the redemption price of a transferee's interest is not reached before the 121st day after the date a written demand for redemption is made, the partnership must pay to the transferee in cash the amount the partnership estimates to be the redemption price and any accrued interest from the date of demand not later than the 30th day after the expiration of the period.

(c) On request of the transferee, the payment required by Subsection (b) must be accompanied or followed by:

(1) a statement of partnership property and liabilities from the date of the demand for redemption;

(2) the most recent available partnership balance sheet and income statement, if any; and

(3) an explanation of the computation of the estimated payment obligation.

(d) If the payment required by Subsection (b) is accompanied by written notice that the payment is in full satisfaction of the partnership's obligations relating to the redemption of the transferee's interest, the payment, less interest, is the redemption price unless the transferee, not later than the first anniversary of the written notice, commences an action to determine the redemption price.

Source Law:

TRPA 7.01(n), (o), (p) and (q)

(n) Obligation to Redeem Transferee. A partnership must redeem the partnership interest of a transferee for its fair value if:

(1) the interest was transferred when:

(A) the partnership was for a definite term not then expired or a particular undertaking not then completed; or

(B) the partnership agreement provided for winding up on a specified event that has not yet occurred;

(2) the definite term has expired, the particular undertaking has been completed, or the specified event has occurred; and

(3) the transferee makes a written demand for redemption.

(o) Payment to Transferee. If an agreement for the redemption price of a transferee's interest is not reached within 120 days after the date of a written demand for redemption, within 30 days after the expiration of the 120- day period the partnership must pay in cash to the transferee the amount the partnership estimates to be the redemption price, plus accrued interest from the date of demand.

(p) Information to Transferee. On request of the transferee, the payment required by Subsection (o) must be accompanied or followed by:

(1) a statement of partnership property and liabilities as of the date of the demand for redemption;

(2) the latest available partnership balance sheet and income statement, if any; and

(3) an explanation of the computation of the estimated payment obligation.

(q) Price for Transferee. If payment required by Subsection (o) is accompanied by written notice that the payment is in full satisfaction of the partnership's obligations relating to the redemption of the transferee's interest, the payment, less interest, is the redemption price unless the transferee within one year after the date of the written notice commences an action to determine the redemption price.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.612. ACTION TO DETERMINE TRANSFEREE'S REDEMPTION PRICE. (a) A transferee may maintain an action against a partnership to determine the redemption price of the transferee's interest.

(b) The court shall determine the redemption price of the transferee's interest and accrued interest and enter judgment for payment or refund.

(c) If the court finds that the partnership failed to make payment or otherwise acted arbitrarily, vexatiously, or not in good faith, the court may assess against the partnership in an amount the court finds equitable:

(1) reasonable attorney's fees; and

(2) fees and expenses of appraisers or other experts for a party to the action.

(d) The redemption of a transferee's interest under Sections 152.611(a) and (b) may be deferred as determined by the court if the partnership establishes to the satisfaction of the court that failure to defer redemption will cause undue hardship to the partnership business.

Source Law:

TRPA 7.01(r) and (s)

(r) Suit by Transferee. A transferee may maintain an action against a partnership to determine the redemption price of the transferee's interest. The court shall determine the redemption price of the transferee's interest and accrued interest and enter judgment for payment or refund. If the court finds that the partnership acted arbitrarily, vexatiously, or not in good faith, including failure to make payment, the court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against the partnership.

(s) Deferral of Transferee Redemption. The redemption of a transferee's interest under Subsections (n) and (o) may be deferred as determined by the court if the partnership establishes to the satisfaction of the court that failure to

defer redemption will cause undue hardship to the business of the partnership.

Revisor's Note:

No substantive change is intended.

(Sections 152.613-152.700 reserved for expansion)

SUBCHAPTER I. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Revised Law:

Sec. 152.701. EFFECT OF EVENT REQUIRING WINDING UP. On the occurrence of an event requiring winding up of a partnership business under Section 11.051 or 11.057:

(1) the partnership continues until the winding up of its business is completed, at which time the partnership is terminated; and

(2) the relationship among the partners is changed as provided by this subchapter.

Source Law:

TRPA 2.06(b)

(b) Effect of Occurrence of Event Requiring a Winding Up. On the occurrence of an event requiring a winding up of a partnership under Section 8.01, the partnership continues as provided by Section 8.03, but the relationship among the partners is changed as provided by Sections 8.02, 8.03, 8.04, 8.05, and 8.06.

TRPA 8.02

Art. 6132b-8.02. Partnership Continues After Occurrence of Event Requiring Winding Up

A partnership continues after the occurrence of an event requiring winding up until the winding up of its business is completed, at which time the partnership is terminated.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.702. PERSONS ELIGIBLE TO WIND UP PARTNERSHIP BUSINESS. (a) After the occurrence of an event requiring a winding up of a partnership business, the partnership business may be wound up by:

(1) the partners who have not withdrawn;

(2) the legal representative of the last surviving partner;

or

(3) a person appointed by the court to carry out the winding up under Subsection (b).

(b) On application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 152.608, a court, for good cause, may appoint a person to carry out the winding up and may make an order, direction, or inquiry that the circumstances require.

Source Law:

TRPA 8.03(a)

(a) Persons Authorized to Wind Up. After the occurrence of an event requiring a winding up:

(1) the partners who have not withdrawn may wind up a partnership's business;

(2) the legal representative of the last surviving partner may wind up a partnership's business; or

(3) on application of a partner, a partner's legal representative or transferee, or a withdrawn partner whose interest is not redeemed under Section 7.01(k), a court, for good cause, may appoint a person to carry out the winding up and may make an order, direction, or inquiry that the circumstances require.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.703. RIGHTS AND DUTIES OF PERSON WINDING UP PARTNERSHIP BUSINESS. (a) To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and for and on behalf of the partnership, a person winding up a partnership's business may take the actions specified in Sections 11.052, 11.053, and 11.055.

(b) Section 11.052(a)(2) shall not be applicable to a partnership.

Source Law:

TRPA 8.03(b)

(b) Authorized Actions. To the extent appropriate for winding up, as soon as reasonably practicable, and in the name of and for and on behalf of the partnership, a person winding up a partnership's business may:

(1) prosecute and defend civil, criminal, or administrative suits;

(2) settle and close the partnership's business;

(3) dispose of and convey the partnership's property;

(4) satisfy or provide for the satisfaction of the partnership's liabilities;

(5) distribute to the partners any remaining property of the partnership; and

(6) perform any other necessary act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.704. BINDING EFFECT OF PARTNER'S ACTION AFTER EVENT REQUIRING WINDING UP. After the occurrence of an event requiring winding up of the partnership business, a partnership is bound by a partner's act that:

(1) is appropriate for winding up; or

(2) would bind the partnership under Sections 152.301 and 152.302 before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred.

Source Law:

TRPA 8.05

Art. 6132b-8.05. Partner's Power to Bind Partnership After Occurrence of Event Requiring Winding Up

After the occurrence of an event requiring winding up, a partnership is bound by a partner's act that:

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

(2) would bind the partnership under Section 3.02 before the occurrence of the event requiring winding up, if the other party to the transaction does not have notice that an event requiring winding up has occurred.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.705. PARTNER'S LIABILITY TO OTHER PARTNERS AFTER EVENT REQUIRING WINDING UP. (a) Except as provided by Subsection (b), after occurrence of an event requiring winding up of the partnership business the losses with respect to which a partner must contribute under Section 152.708(a) include losses from a liability incurred under Section 152.704.

(b) A partner who incurs, with notice that an event requiring a winding up of the partnership business has occurred, a partnership liability under Section 152.704(2) by an act that is not appropriate for winding up is liable to the partnership for a loss caused to the partnership arising from that liability.

Source Law:

TRPA 8.04(a) and (b)

(a) Liability of All Partners for Losses. Except as provided by Subsection (b), after occurrence of an event requiring winding up the losses with respect to which a partner must contribute under Section 8.06(c) include losses from any liabilities incurred under Section 8.05.

(b) Individual Liability of Acting Partner for Losses. A partner who, with notice that an event requiring a winding up has occurred, incurs a partnership liability under Section 8.05(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for a loss caused to the partnership arising from that liability.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.706. DISPOSITION OF ASSETS. (a) In winding up the partnership business, the property of the partnership, including any required contributions of the partners under Sections 152.707 and 152.708, shall be applied to discharge its obligations to creditors, including partners who are creditors other than in the partners' capacities as partners.

(b) A surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Section 152.707.

Source Law:

TRPA 8.06(a)

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

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.707. SETTLEMENT OF ACCOUNTS. (a) Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business.

(b) In settling accounts among the partners, the partnership interest of a withdrawn partner that is not redeemed under Subchapter H is credited with a share of any profits for the period after the partner's withdrawal but is charged with a share of losses for that period only to the extent of profits credited for that period.

(c) The profits and losses that result from the liquidation of the partnership property must be credited and charged to the partners' capital accounts.

(d) The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance in the partner's capital account. Except as provided by Section 152.304(b) or 152.801, a partner shall contribute to the partnership an amount equal to that partner's negative balance in the partner's capital account.

Source Law:

TRPA 8.06(b)

(b) Settlement of Accounts Among Partners. Each partner is entitled to a settlement of all partnership accounts on winding up the partnership business. In settling accounts among the partners, the partnership interest of a withdrawn partner that is not redeemed under Section 7.01 is credited with a share of any profits for the period after the partner's withdrawal but

is charged with a share of losses for that period only to the extent of profits credited for that period, and the profits and losses that result from the liquidation of the partnership property must be credited and charged to the partners' capital accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance in the partner's capital account. Except as provided by Section 3.07 or 3.08(a), a partner shall contribute to the partnership an amount equal to that partner's negative balance in the partner's capital account.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.708. CONTRIBUTIONS TO DISCHARGE OBLIGATIONS. (a) Except as provided by Sections 152.304(b) and 152.801, to the extent not taken into account in settling the accounts among partners under Section 152.707:

(1) each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with partnership property without recourse to individual partners;

(2) if a partner fails to contribute, the other partners shall contribute the additional amount necessary to satisfy the partnership obligations in the proportions in which the partners share partnership losses; and

(3) a partner or partner's legal representative may enforce or recover from the other partners, or from the estate of a deceased partner, contributions the partner or estate makes to the extent the amount contributed exceeds that partner's or the estate's share of the partnership obligations.

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

(c) The following persons may enforce the obligation of a partner or the estate of a deceased partner to contribute to a partnership:

(1) the partnership;

(2) an assignee for the benefit of creditors of a partnership or a partner; or

(3) a person appointed by a court to represent creditors of a partnership or a partner.

Source Law:

TRPA 8.06(c), (d) and (e)

(c) Contribution to Satisfy Obligations. Except as provided by Section 3.07 or 3.08(a), to the extent not taken into account in settling the accounts among partners under Subsection (b):

(1) each partner must contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations, excluding liabilities that creditors have agreed may be satisfied only with partnership property without recourse to individual partners;

(2) if a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations; and

(3) a partner or partner's legal representative may enforce or recover from the other partners, or from the estate of a deceased partner, contributions the partner or estate makes to the extent the amount contributed exceeds that partner's or the estate's share of the partnership obligations.

(d) Liability of Deceased Partner's Estate. The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(e) Enforcement of Obligation of Estate of Deceased Partner. The partnership, an assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner may enforce the obligation of a partner or the estate of a deceased partner to contribute to a partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.709. CONTINUATION OF PARTNERSHIP. (a) If all the partners in a partnership for a definite term or for a particular undertaking or for which the partnership agreement provides for winding up on a specified event agree to continue the partnership business notwithstanding the expiration of the term, the completion of the undertaking, or the occurrence of the event, as appropriate, other than the withdrawal of a partner, the partnership is continued and the partnership agreement is considered amended to provide that the expiration, the completion, or the occurrence of the event did not result in an event requiring the winding up of the partnership business.

(b) A continuation of the business for 90 days by the partners or those who habitually acted in the business during the term or undertaking or preceding the event, without a settlement or liquidation of the partnership business and without objection from a partner, is prima facie evidence of agreement by all partners to continue the business under Subsection (a).

(c) The continuation of the business by the other partners or by those who habitually acted in the business before the notice under Section 11.057(b), other than the partner giving the notice, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership under Section 11.057(b).

(d) To approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of all the partners as specified in Section 11.057(2) or (3), prior to completion of the winding up process, all the partners must agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

(e) To approve a revocation under Section 11.151 by a partnership of a voluntary decision to wind up pursuant to the express will of a majority-in-interest of the partners as specified in Section 11.057(1), prior to completion of the winding up process, a majority-in-interest of the partners must agree in writing to revoke the voluntary decision to wind up and to continue the business of the partnership.

Source Law:

TRPA 4.07(a) and (b)

(a) Continuation by Express Agreement. If all the partners in a partnership for a definite term or a particular undertaking or for which the partnership agreement provides for winding up on a specified event agree to continue the business of the partnership despite the expiration of the term, the completion of the undertaking, or the occurrence of the event, other than the withdrawal of a partner, the partnership is continued and the partnership agreement is considered amended to provide that the expiration, the completion, or the occurrence of the event did not result in an event requiring the winding up of the partnership business.

(b) Continuation by Action. A continuation of the business for 90 days by the partners or those who habitually acted in the business during the term or undertaking or preceding the event, without a settlement or liquidation of the partnership business and without objection from a partner, is prima facie evidence of agreement by all partners to continue the business.

TRPA 8.01(q)

(g) Notice from Partner if No Term or Undertaking; Option to Continue. If a partnership is not for a definite term or a particular undertaking and its partnership agreement does not provide for a specified event requiring a winding up, a request for winding up the partnership from a partner, other than a partner who has agreed not to withdraw, requires a winding up 60 days after the date of the partnership's receipt of notice of the request or at a later date as specified by the notice, unless a majority-in-interest of the partners agree to continue the partnership. The continuation of the business by the other partners or by those who habitually acted in the business before the notice, other than the partner giving the notice, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement to continue the partnership.

Revisor's Note:

No substantive change is intended. Subsections (d) and (e) of the revised law clarify that the partners may elect to revoke a prior voluntary decision to wind up, which was implicit in the source law. These subsections (c) and (d) specify what approvals are needed to revoke.

Revised Law:

Sec. 152.710. REINSTATEMENT. To approve a reinstatement of a partnership under Section 11.202, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to reinstate and continue the business of the partnership.

Source Law:

New.

Revisor's Note:

The revised law is added to specify what approval is needed to reinstate a partnership under Section 11.202 after it has completed the winding up of its business and affairs.

(Sections 152.711-152.800 reserved for expansion)

SUBCHAPTER J. LIMITED LIABILITY PARTNERSHIPS

Revised Law:

Sec. 152.801. LIABILITY OF PARTNER. (a) Except as provided by Subsection (b), a partner in a limited liability partnership is not personally liable, directly or indirectly, by contribution, indemnity, or otherwise, for a debt or obligation of the partnership incurred while the partnership is a limited liability partnership.

(b) A partner in a limited liability partnership is not personally liable for a debt or obligation of the partnership arising from an error, omission, negligence, incompetence, or malfeasance committed by another partner or representative of the partnership while the partnership is a limited liability partnership and in the course of the partnership business unless the first partner:

(1) was supervising or directing the other partner or representative when the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative;

(2) was directly involved in the specific activity in which the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative; or

(3) had notice or knowledge of the error, omission, negligence, incompetence, or malfeasance by the other partner or representative at the time of the occurrence and then failed to take reasonable action to prevent or cure the error, omission, negligence, incompetence, or malfeasance.

(c) Sections 2.101(1), 152.305, and 152.306 do not limit the effect of Subsection (a) in a limited liability partnership.

(d) In this section, "representative" includes an agent, servant, or employee of a limited liability partnership.

(e) Subsections (a) and (b) do not affect:

(1) the liability of a partnership to pay its debts and obligations from partnership property;

(2) the liability of a partner, if any, imposed by law or contract independently of the partner's status as a partner; or

(3) the manner in which service of citation or other civil process may be served in an action against a partnership.

(f) This section controls over the other parts of Chapter 152 and the other partnership provisions regarding the liability of partners of a limited liability partnership, the chargeability of the partners for the debts and obligations of the partnership, and the obligations of the partners regarding contributions and indemnity.

Source Law:

TRPA 3.08(a)(1)-(a)(5)

(a) Liability of Partner. (1) Except as provided in Subsection (a)(2), a partner in a registered limited liability partnership is not individually liable, directly or indirectly, by contribution, indemnity, or otherwise, for debts and

obligations of the partnership incurred while the partnership is a registered limited liability partnership.

(2) A partner in a registered limited liability partnership is not individually liable, directly or indirectly, by contribution, indemnity, or otherwise, for debts and obligations of the partnership arising from errors, omissions, negligence, incompetence, or malfeasance committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or a representative of the partnership not working under the supervision or direction of the first partner unless the first partner:

(A) was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative; or

(B) had notice or knowledge of the errors, omissions, negligence, incompetence, or malfeasance by the other partner or representative at the time of occurrence and then failed to take reasonable steps to prevent or cure the errors, omissions, negligence, incompetence, or malfeasance.

(3) Subsections (a)(1) and (a)(2) do not affect:

(A) the liability of a partnership to pay its debts and obligations out of partnership property;

(B) the liability of a partner, if any, imposed by law or contract independently of the partner's status as a partner; or

(C) the manner in which service of citation or other civil process may be served in an action against a partnership.

(4) In this subsection, "representative" includes an agent, servant, or employee of a registered limited liability partnership.

(5) In the case of a registered limited liability partnership, Subsection (a) prevails over the other parts of this Act regarding the liability of partners, their chargeability for the debts and obligations of the partnership, and their obligations regarding contributions and indemnity.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.802. REGISTRATION. (a) In addition to complying with Sections 152.803 and 152.804, a partnership, to become a limited liability partnership, must file an application with the secretary of state in accordance with Chapter 4 and this section. The application must:

(1) set out:

(A) the name of the partnership;

(B) the federal tax identification number of the partnership;

(C) the street address of the partnership's principal office in this state or outside of this state, as applicable; and

(D) the number of partners at the date of application; and

(2) contain a brief statement of the partnership's business.

(b) The application must be signed by:

(1) a majority-in-interest of the partners; or

(2) one or more partners authorized by a majority-in-interest of the partners.

(c) A partnership is registered as a limited liability partnership by the secretary of state on:

(1) the date on which a completed initial or renewal application is filed in accordance with Chapter 4; or

(2) a later date specified in the application.

(d) A registration is not affected by subsequent changes in the partners of the partnership.

(e) The registration of a limited liability partnership is effective until the first anniversary of the date of registration or a later effective date, unless the application is:

(1) withdrawn or revoked at an earlier time; or

(2) renewed in accordance with Subsection (g).

(f) A registration may be withdrawn by filing a withdrawal notice with the secretary of state in accordance with Chapter 4. A withdrawal notice terminates the status of the partnership as a limited liability partnership from the date on which the notice is filed or a later date specified in the notice, but not later than the expiration date under Subsection (e). A withdrawal notice must:

(1) contain:

(A) the name of the partnership;

(B) the federal tax identification number of the partnership;

(C) the date of registration of the partnership's last application under this subchapter; and

(D) the current street address of the partnership's principal office in this state and outside this state, if applicable; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

(g) An effective registration may be renewed before its expiration by filing an application with the secretary of state in accordance with Chapter 4. A renewal application filed under this subsection continues an effective

registration for one year after the date the registration would otherwise expire. The renewal application must contain:

and (1) current information required for an initial application;

(2) the most recent date of registration of the partnership.

(h) The secretary of state may remove from its active records the registration of a partnership the registration of which has:

(1) been withdrawn or revoked; or

(2) expired and not been renewed.

(i) The secretary of state is not responsible for determining whether a partnership is in compliance with the requirements of Section 152.804(a).

(j) A document filed under this subchapter may be amended by filing an application for amendment of registration with the secretary of state in accordance with Chapter 4 and this subsection. The application for amendment must:

(1) contain:

(A) the name of the partnership;

(B) the tax identification number of the partnership;

(C) the identity of the document being amended;

(D) the date on which the document being amended was filed;

(E) a reference to the part of the document being amended; and

(F) the amendment or correction; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

Source Law:

TRPA 3.08(b)(1), (2), (4), (5), (6), (7), (8), (11) and (14)

(b) Registration. (1) In addition to complying with subsections (c) and (d)(1), to become a registered limited liability partnership, a partnership must file with the secretary of state an application stating:

(A) the name of the partnership;

(B) the federal tax identification number of the partnership;

(C) the street address of the partnership's principal office in this state and outside this state, as applicable;

(D) the number of partners at the date of application; and

(E) in brief, the partnership's business.

(2) The application must be executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

* * *

(4) A partnership is registered as a registered limited liability partnership on filing a completed initial or renewal application, in duplicate with the required fee, or on a later date specified in the application. A registration is not affected by later changes in the partners of the partnership.

(5) An initial application filed under this subsection and registered by the secretary of state expires one year after the date of registration or later effective date unless earlier withdrawn or revoked or unless renewed in accordance with Subdivision (7).

(6) A registration may be withdrawn by filing in duplicate with the secretary of state a written withdrawal notice executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. A withdrawal notice must include the name of the partnership, the federal tax identification number of the partnership, the date of registration of the partnership's last application under this section, and a current street address of the partnership's principal office in this state and outside this state, if applicable. A withdrawal notice terminates the status of the partnership as a registered limited liability partnership as of the date of filing the notice or a later date specified in the notice, but not later than the expiration date under Subdivision (5).

(7) An effective registration may be renewed before its expiration by filing in duplicate with the secretary of state an application containing current information of the kind required in an initial application and the most recent date of registration of the partnership. The renewal application must be accompanied by a fee of \$200 for each partner on the date of renewal. A renewal application filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

(8) The secretary of state may remove from its active records the registration of a partnership whose registration has been withdrawn or revoked or has expired and not been renewed.

* * *

(11) A document filed under this subsection may be amended or corrected by filing in duplicate with the secretary of state articles of amendment executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. The articles of amendment must contain the name of the partnership, the tax identification number of the partnership, the identity of the document being amended, the date on which the document being amended was filed, the part of the document being amended, and the amendment or correction. Two copies of the articles of amendment must be filed, accompanied by a fee of \$10 plus, if the amendment increases the number of partners, \$200 for each partner added by amendment of the number of partners.

* * *

(14) The secretary of state is not responsible for determining if a partnership is in compliance with the requirements of Subsection (d)(1).

Revisor's Note:

No substantive change is intended. TRPA 3.08(b)(7)'s requirement that the renewal application for an effective registration be accompanied by a fee of \$200 for each partner is contained in Section 4.158.

Revised Law:

Sec. 152.803. NAME. The name of a limited liability partnership must comply with Section 5.063.

Source Law:

TRPA 3.08(c)

(c) Name. A registered limited liability partnership's name must contain the words "registered limited liability partnership" or the abbreviation "L.L.P." as the last words or letters of its name.

Revisor's Note:

See Revisor's Note to Section 5.063.

Revised Law:

Sec. 152.804. INSURANCE OR FINANCIAL RESPONSIBILITY. (a) A limited liability partnership must:

(1) carry at least \$100,000 of liability insurance of a kind that is designed to cover the kind of error, omission, negligence, incompetence, or malfeasance for which liability is limited by Section 152.801(b); or

(2) provide \$100,000 specifically designated and segregated for the satisfaction of judgments against the partnership for the kind of error, omission, negligence, incompetence, or malfeasance for which liability is limited by Section 152.801(b) by:

(A) deposit of cash, bank certificates of deposit, or United States Treasury obligations in trust or bank escrow;

(B) a bank letter of credit; or

(C) insurance company bond.

(b) If the limited liability partnership is in compliance with Subsection (a), the requirements of this section may not be admissible or be made known to the jury in determining an issue of liability for or extent of:

(1) the debt or obligation in question; or

(2) damages in question.

(c) If compliance with Subsection (a) is disputed:

(1) compliance must be determined separately from the trial or proceeding to determine:

- (A) the partnership debt or obligation in question;
- (B) the amount of the debt or obligation; or
- (C) partner liability for the debt or obligation; and

(2) the burden of proof of compliance is on the person claiming limitation of liability under Section 152.801(b).

Source Law:

TRPA 3.08(d)

(d) Insurance or Financial Responsibility. (1) A registered limited liability partnership must:

(A) carry at least \$100,000 of liability insurance of a kind that is designed to cover the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(2); or

(B) provide \$100,000 of funds specifically designated and segregated for the satisfaction of judgments against the partnership based on the kinds of errors, omissions, negligence, incompetence, or malfeasance for which liability is limited by Subsection (a)(2) by:

(i) deposit in trust or in bank escrow of cash, bank certificates of deposit, or United States Treasury obligations; or

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

(2) If the registered limited liability partnership is in compliance with Subdivision (1), the requirements of this subsection shall not be admissible or in any way be made known to the jury in determining an issue of liability for or extent of the debt or obligation or damages in question.

(3) If compliance with Subdivision (1) is disputed:

(A) compliance must be determined separately from the trial or proceeding to determine the partnership debt or obligation in question, its amount, or partner liability for the debt or obligation; and

(B) the burden of proof of compliance is on the person claiming limitation of liability under Subsection (a)(2).

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.805. LIMITED PARTNERSHIP. A limited partnership may become a limited liability partnership by complying with applicable provisions of Chapter 153.

Source Law:

TRPA 3.08(e)

(e) Limited Partnership. A limited partnership may become a registered limited liability partnership by complying with

applicable provisions of the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes) and its subsequent amendments.

Revisor's Note:

No substantive change is intended.

(Sections 152.806-152.900 reserved for expansion)

SUBCHAPTER K. FOREIGN LIMITED LIABILITY PARTNERSHIPS

Revised Law:

Sec. 152.901. GENERAL. (a) A foreign limited liability partnership is subject to Section 2.101 with respect to its activities in this state to the same extent as a domestic limited liability partnership.

(b) A foreign limited liability partnership may not be denied registration because of a difference between the laws of the state under which the partnership is formed and the laws of this state.

Source Law:

TRPA 10.01(b) and (c)

(b) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the laws of the state under which it is formed and the laws of Texas.

(c) With respect to its activities in Texas, a foreign limited liability partnership is subject to Section 3.01 as if it were a domestic registered limited liability partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.902. NAME. The name of a foreign limited liability partnership must:

- (1) satisfy the requirements of the state of formation; and
- (2) comply with Section 5.063.

Source Law:

TRPA 10.02(a)(1)

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

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

Revisor's Note:

See Revisor's Note to Section 5.063.

Revised Law:

Sec. 152.903. ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS. Without excluding other activities that do not constitute transacting business in this state, a foreign limited liability partnership is not considered to be transacting business in this state for purposes of this code because it carries on in this state one or more of the activities listed by Section 9.251.

Source Law:

TRPA 10.04

Art. 6132b-10.04. Activities Not Constituting Transacting Business

Without excluding other activities that do not constitute transacting business in Texas, a foreign limited liability partnership is not considered to be transacting business in Texas for purposes of this Act because it carries on in Texas any one or more of the following activities:

- (1) maintaining or defending any action, suit, or administrative or arbitration proceeding, effecting settlement of the action, suit, or proceeding, or settling claims or disputes to which it is a party;
- (2) holding meetings of its partners or carrying on other activities concerning its internal affairs;
- (3) maintaining bank accounts;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of partnership interests issued by it or appointing or maintaining trustees or depositories with relation to ownership interests in it;
- (5) effecting sales through independent contractors;
- (6) creating as borrower or lender or acquiring indebtedness or mortgages or other security interests in real or personal property;
- (7) securing or collecting debts due to it or enforcing rights in property securing such debts;
- (8) transacting business in interstate commerce;
- (9) conducting an isolated transaction completed within 30 days of the date of initiation of the transaction and not in the course of a number of repeated similar transactions;
- (10) exercising the powers of executor or administrator of the estate of a nonresident decedent under ancillary letters issued by a Texas court, or exercising the powers of trustee under the will of a nonresident decedent, or under a trust created by one or more nonresidents of Texas or by one or more foreign corporations or limited partnerships, if the exercise of those powers in any of these cases will not involve activities that would be considered to constitute the transacting of business

in Texas in the case of a foreign corporation or foreign limited partnership acting in its own right;

(11) acquiring, in transactions outside Texas or in interstate commerce, debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting principal and interest payments on those debts, enforcing or adjusting rights in property securing those debts, taking any actions necessary to preserve and protect the interest of the mortgagee in that security, or a combination of these transactions; or

(12) investing in or acquiring, in transactions outside Texas, royalties and other nonoperating mineral interests, and the execution of division orders, contracts of sale, and other instruments incidental to the ownership of nonoperating mineral interests.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.904. REGISTERED AGENT. A foreign limited liability partnership subject to this chapter shall maintain a registered office and registered agent in this state in accordance with Chapter 5.

Source Law:

TRPA 10.05

Art. 6132b-10.05. Registered Agent

(a) A foreign limited liability partnership subject to this Act shall have and maintain in Texas:

(1) a registered office, which need not be a place of its business in Texas; and

(2) a registered agent for service of process on the foreign limited liability partnership, which may be:

(A) an individual who is a resident of Texas and whose business office is the same as the foreign limited liability partnership's registered office; or

(B) a domestic corporation or a foreign corporation that has a certificate of authority to transact business in Texas and a business office the same as the foreign limited liability partnership's registered office.

(b) A foreign limited liability partnership subject to this Act may change its registered office, its registered agent, or both, by paying the filing fee and filing with the secretary of state a statement and a duplicate copy of the statement, which need not be an executed original or a photocopy of an executed original. The statement must contain:

(1) the name of the foreign limited liability partnership;

(2) the street address of its registered office;

(3) the street address to which its registered office is to be changed, if applicable;

- (4) the name of its registered agent;
- (5) the name of its successor registered agent, if applicable;
- (6) a provision that the street address of its registered office and the street address of the business office of its registered agent, as changed, will be the same; and
- (7) a provision that the change was authorized by the foreign limited liability partnership.

(c) The statement required by Subsection (b) must be executed on behalf of the foreign limited liability partnership by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of all applicable filing fees, shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification.

(d) On the filing of the statement by the secretary of state, the change of address of the registered office, the appointment of a new registered agent, or both, as the case may be, become effective.

(e) Filing of the statement amends the statement of foreign qualification regarding the information required by Section 10.02(a)(5).

(f) A registered agent of a foreign limited liability partnership may resign by giving written notice to the foreign limited liability partnership and to the secretary of state. Notice must be given to the foreign limited liability partnership at its last known address and to the last known address of the attorney or other individual at whose request the registered agent was appointed for the foreign limited liability partnership. Notice, together with a duplicate copy, which need not be an executed original or a photocopy of an executed original, must be given to the secretary of state within 10 days after the date of mailing or delivery of the notice to the foreign limited liability partnership and attorney or individual. The notice to the secretary of state must include the last known address of the foreign limited liability partnership, the statement that written notice of resignation has been given to the foreign limited liability partnership, and the date that the notice was given.

(g) On compliance with the requirements for giving written notice under Subsection (f), the appointment of an agent terminates on the 31st day after the date of receipt of the notice by the secretary of state. If the secretary of state finds that the written notice conforms to this section, the secretary of state shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. A fee is not required for the filing of a resignation under Subsection (f).

(h) The location of the registered office in Texas for a foreign limited liability partnership may be changed from one address to another by paying the filing fee to the secretary of state and filing with the secretary of state a statement and a duplicate copy, which need not be an executed original or a photocopy of an executed original. The statement must contain:

(1) the name of the foreign limited liability partnership represented by the registered agent;

(2) the address at which the registered agent has maintained the registered office;

(3) the new address at which the registered agent will maintain the registered office; and

(4) a statement that written notice of the change has been given to the foreign limited liability partnership at least 10 days before the date of the filing.

(i) The statement required by Subsection (h) must be signed by the registered agent or, if the registered agent is a corporation, by an officer of the corporation. If the registered agent is simultaneously filing statements for more than one foreign limited liability partnership, each statement may contain a facsimile signature in the execution. If the secretary of state finds that the statement conforms to this section, the secretary of state, on receipt of the filing fee, shall file it in accordance with Section 10.02(k) as if it were an amendment to the statement of foreign qualification. The address of the registered office of the foreign limited liability partnership is changed on the filing of the statement by the secretary of state. Filing of the statement amends the statement of foreign qualification regarding the information required by Section 10.02(a)(5) and no further action is required under Section 10.02(k).

(j) Each partner and the registered agent of a foreign limited liability partnership registered in Texas are agents of the foreign limited liability partnership on whom may be served any process, notice, or demand required or permitted by law to be served on the foreign limited liability partnership.

(k) The secretary of state is an agent of the foreign limited liability partnership on whom any process, notice, or demand may be served if:

(1) a foreign limited liability partnership registered in Texas fails to appoint or maintain a registered agent in Texas;

(2) its registered agent cannot with reasonable diligence be found at the registered office;

(3) its registration is canceled; or

(4) a foreign limited liability partnership transacts business in Texas without having registered under Section 10.02.

(1) Service on the secretary of state of any process, notice, or demand shall be made by delivering duplicate copies of the process, notice, or demand to the secretary of state, assistant secretary of state, or any clerk having charge of the corporation department of the secretary of state's office. If any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately forward one of the copies by registered mail addressed to the foreign limited liability partnership at its principal office in the state under which the foreign limited liability partnership is formed as shown on the statement of foreign qualification. Service

had in this manner on the secretary of state is returnable in not less than 30 days.

(m) The secretary of state shall keep a record of all processes, notices, and demands served on the secretary of state under this section and shall record the time of the service and the action taken with reference to each.

(n) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served on a foreign limited liability partnership in another manner permitted by law.

Revisor's Note:

No substantive change is intended. The substantive provisions in the source law are contained in Chapter 5.

Revised Law:

Sec. 152.905. STATEMENT OF FOREIGN QUALIFICATION. (a) Before transacting business in this state, a foreign limited liability partnership must file an application for registration in accordance with this section and Chapters 4 and 9.

(b) The application must be signed by:

- (1) a majority-in-interest of the partners; or
- (2) one or more partners authorized by a majority-in-interest of the partners.

(c) A partnership is registered as a foreign limited liability partnership on:

- (1) the date on which a completed initial or renewal statement of foreign qualification is filed with the secretary of state in accordance with Chapter 4; or
- (2) a later date specified in the statement.

(d) A registration is not affected by subsequent changes in the partners of the partnership.

(e) The registration of a foreign limited liability partnership is effective until the first anniversary of the date after the date of registration or a later effective date, unless the statement is:

- (1) withdrawn or revoked at an earlier time; or
- (2) renewed in accordance with Section 152.908.

Source Law:

TRPA 10.02(a), (b), (d) and (e)

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

- (1) the name of the foreign limited liability partnership which satisfies the requirements of the state under whose laws it is formed and ends with "Registered Limited Liability

Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP";

(2) the federal tax identification number of the partnership;

(3) the state where it is formed, the date of initial registration as a limited liability partnership under the laws of the state of formation, and a statement that, as of the date of filing, the foreign limited liability partnership exists as a valid limited liability partnership under the laws of the state of its formation;

(4) the street address of the partnership's chief executive office and, if different, the street address of any other office of the partnership in Texas;

(5) the address of the registered office and the name and address of the registered agent for service of process required to be maintained by Section 10.05;

(6) a statement that the secretary of state is appointed the agent of the foreign limited liability partnership for service of process under the circumstances set forth in Section 10.05(k);

(7) the number of partners at the date of the statement; and

(8) in brief, the partnership's business.

(b) The statement of qualification must be executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners.

* * *

(d) A partnership is registered as a foreign limited liability partnership on filing a completed initial or renewal statement of foreign qualification, in duplicate with the required fee, or on a later date specified in the statement. A registration is not affected by later changes in the partners of the partnership.

(e) An initial statement of foreign qualification filed under this subsection and registered by the secretary of state expires one year after the date of registration or later effective date unless earlier withdrawn or revoked or unless renewed in accordance with Subsection (g).

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.906. CANCELLATION OF REGISTRATION. (a) A registration may be canceled by filing a certificate of cancellation.

(b) The certificate of cancellation must:

(1) contain:

(A) the federal tax identification number of the partnership; and

(B) the date of effectiveness of the partnership's last application for registration under this subchapter; and

(2) be signed by:

(A) a majority-in-interest of the partners; or

(B) one or more partners authorized by a majority-in-interest of the partners.

Source Law:

TRPA 10.02(f)

(f) A registration may be withdrawn by filing in duplicate with the secretary of state a written withdrawal notice executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of partners. A withdrawal notice must include the name of the partnership, the federal tax identification number of the partnership, the date of registration of the partnership's last statement of foreign qualification under this section, and a current street address of the partnership's principal office in this state or outside this state, if applicable. . . .

Revisor's Note:

Section 152.906 uses the term "certificate of cancellation," rather than "withdrawal notice," as referenced in TRPA 10.02(f). The source law's requirement of including the street address of the partnership's principal office in the certificate of cancellation has been omitted in the revised law.

Revised Law:

Sec. 152.907. EFFECT OF CERTIFICATE OF CANCELLATION. A certificate of cancellation terminates the registration of the partnership as a foreign limited liability partnership as of the date on which the notice is filed or a later date specified in the notice, but not later than the expiration date under Section 152.905(e).

Source Law:

TRPA 10.02(f)

(f) . . . A withdrawal notice terminates the status of the partnership as a foreign limited liability partnership as of the date of filing the notice or a later date specified in the notice, but not later than the expiration date under Subsection (e).

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.908. RENEWAL OF REGISTRATION. (a) An effective registration may be renewed before its expiration by filing a renewal application for registration with the secretary of state in accordance with Chapter 4.

(b) The renewal application must contain:

(1) current information required for an initial statement of qualification; and

(2) the most recent date of registration of the partnership.

(c) An application for registration filed under this section continues an effective registration for one year after the date the registration would otherwise expire.

Source Law:

TRPA 10.02(g)

(g) An effective registration may be renewed before its expiration by filing in duplicate with the secretary of state a statement of foreign qualification containing current information of the kind required in an initial statement of qualification and the most recent date of registration of the partnership. The renewal statement of qualification must be accompanied by a fee of \$200 for each partner in this state on the date of renewal, not to exceed \$750. A renewal statement of foreign qualification filed under this section continues an effective registration for one year after the date the effective registration would otherwise expire.

Revisor's Note:

No substantive change is intended. The TRPA fee requirement is set forth in Section 4.158.

Revised Law:

Sec. 152.909. ACTION BY SECRETARY OF STATE. The secretary of state may remove from its active records the registration of a foreign limited liability partnership the registration of which has:

- (1) been withdrawn or revoked; or
- (2) expired and not been renewed.

Source Law:

TRPA 10.02(h)

(h) The secretary of state may remove from its active records the registration of a foreign limited liability partnership whose registration has been withdrawn or revoked or has expired and not been renewed.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.910. EFFECT OF FAILURE TO QUALIFY. (a) A foreign limited liability partnership that transacts business in this state without being registered is subject to Subchapter B, Chapter 9.

(b) A partner of a foreign limited liability partnership is not liable for a debt or obligation of the partnership solely because the partnership transacted business in this state without being registered.

Source Law:

TRPA 10.03(a), (b) and (c)

(a) A foreign limited liability partnership transacting business in Texas may not maintain an action, suit, or

proceeding in Texas unless it has registered in Texas and paid to the secretary of state all amounts owing under Section 10.02.

(b) The failure of a foreign limited liability partnership to register in Texas does not impair:

(1) the validity of a contract or act of the foreign limited liability partnership;

(2) the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(3) defense by the foreign limited liability partnership of any action, suit, or proceeding in any Texas court.

(c) A partner of a foreign limited liability partnership is not liable for the debts and obligations of the foreign limited liability partnership solely because the foreign limited liability partnership transacted business in Texas without registration.

Revisor's Note:

As with other foreign filing entities, the revised law makes foreign limited liability partnerships subject to the civil penalty and late filing fee provided in Subchapter B, Chapter 9.

Revised Law:

Sec. 152.911. AMENDMENT. (a) A document filed under this subchapter may be amended by filing with the secretary of state an application for amendment of registration in accordance with Chapter 4.

(b) The application for amendment must contain:

(1) the name of the partnership;

(2) the tax identification number of the partnership;

(3) the identity of the document being amended;

(4) a reference to the date on which the document being amended was filed;

(5) the part of the document being amended; and

(6) the amendment or correction.

Source Law:

TRPA 10.02(k)

(k) A document filed under this section may be amended or corrected by filing in duplicate with the secretary of state articles of amendment The articles of amendment must contain the name of the partnership, the tax identification number of the partnership, the identity of the document being amended, the date on which the document being amended was filed, the part of the document being amended, and the amendment or correction. Two copies of the articles of amendment must be filed, accompanied by a fee of \$10 and, if the amendment increases the number of partners, a fee of \$200

for each partner in this state added by amendment, not to exceed \$750.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.912. EXECUTION OF APPLICATION FOR AMENDMENT. The application for amendment must be signed by:

- (1) a majority-in-interest of the partners; or
- (2) one or more partners authorized by a majority-in-interest of the partners.

Source Law:

TRPA 10.02(k)

(k) A document filed under this section may be amended or corrected by filing in duplicate with the secretary of state articles of amendment executed by a majority-in-interest of the partners or by one or more partners authorized by a majority-in-interest of the partners. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 152.913. EXECUTION OF STATEMENT OF CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT. A statement filed by a foreign limited liability partnership in accordance with Section 5.202 must be signed by:

- (1) a majority-in-interest of the partners; or
- (2) one or more partners authorized by a majority-in-interest of the partners.

Source Law:

TRPA 10.05(c)

(c) The statement required by Subsection (b) must be executed on behalf of the foreign limited liability partnership by a majority-in-interest of the partners or by one or more of the partners authorized by a majority-in-interest of the partners. . . .

Revisor's Note:

No substantive change is intended.

CHAPTER 153. LIMITED PARTNERSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law:

Sec. 153.001. DEFINITION. In this chapter, "other limited partnership provisions" means the provisions of Title 1 and Chapters 151 and 154, to the extent applicable to limited partnerships.

Source Law:

New

Revisor's Note:

This definition has been added for the purposes of referencing the other provisions of the Code applicable to limited partnerships.

Revised Law:

Sec. 153.002. CONSTRUCTION. (a) This chapter and the other limited partnership provisions shall be applied and construed to effect its general purpose to make uniform the law with respect to limited partnerships among states that have similar laws.

(b) The rule that a statute in derogation of the common law is to be strictly construed does not apply to this chapter and the other limited partnership provisions.

Source Law:

TRLPA 13.01(a) and (b)

13.01. (a) This Act shall be applied and construed to effect its general purpose to make uniform the law with respect to limited partnerships among states that have similar laws.

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

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.003. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), in a case not provided for by this chapter and the other limited partnership provisions, the provisions of Chapter 152 governing partnerships that are not limited partnerships and the rules of law and equity govern.

(b) The powers and duties of a limited partner shall not be governed by a provision of Chapter 152 that would be inconsistent with the nature and role of a limited partner as contemplated by this chapter.

(c) A limited partner shall not have any obligation or duty of a general partner solely by reason of being a limited partner.

Source Law:

TRLPA 13.03(a)

Sec. 13.03. (a) In any case not provided for by this Act, the applicable statute governing partnerships that are not limited partnerships and the rules of law and equity, including the law merchant, govern.

Revisor's Note:

Sections 153.003(b) and (c) are new subsections necessitated by the organizational scheme of the Code. Section 153.003(a) carries forward the rule from TRLPA Section 13.03 that the law governing general partnerships applies in a case not provided

for by the limited partnership statute. This concept is sometimes referred to as "linkage" of the limited partnership act to the law governing general partnerships. The Code defines "partner" in Chapter 1 to include both general and limited partners. A literal application of this definition, along with the linkage provision in Section 153.003(a), would cause the provisions of Chapter 152 governing general partnerships to apply to limited partners as well as general partners where Chapter 153 governing limited partnerships was silent on an issue. Some of these provisions clearly should not apply to limited partners. Thus, the language in Section 153.003(b) has been added to make it clear that Chapter 152 governing general partnerships does not apply to limited partners if it would be inconsistent with the nature and role of a limited partner as contemplated by Chapter 153 governing limited partnerships. Section 153.003(c) clarifies that a limited partner does not have any obligation or duty of a general partner solely by reason of being a limited partner.

Revised Law:

Sec. 153.004. NONWAIVABLE TITLE 1 PROVISIONS. (a) Except as provided by this section, the following provisions of Title 1 may not be waived or modified in the partnership agreement of a limited partnership:

(1) Chapter 1, if the provision is used to interpret a provision or define a word or phrase contained in a section listed in this subsection;

(2) Chapter 2, other than Section 2.104(c)(2), 2.104(c)(3), or 2.113;

(3) Chapter 3, other than Subchapters C and E of that chapter and Section 3.151 (provided, that in all events a partnership agreement may not validly waive or modify Sections 153.551 and 153.552); or

(4) Chapter 4, 5, 10, 11, or 12, other than Section 11.058.

(b) A provision listed in Subsection (a) may be waived or modified in the partnership agreement if the provision that is waived or modified authorizes the limited partnership to waive or modify the provision in the limited partnership's governing documents.

(c) A provision listed in Subsection (a) may be modified in the partnership agreement if the provision that is modified specifies:

(1) the person or group or persons who are entitled to approve a modification; or

(2) the vote or other method by which a modification is required to be approved.

Source Law:

New

Revisor's Note:

Section 153.004, a provision similar to Section 152.002(b)(9), lists the provisions of Title 1 that may not be validly waived or modified by the partners in a limited partnership, subject to specifically enumerated exceptions.

Revised Law:

Sec. 153.005. WAIVER OR MODIFICATION OF RIGHTS OF THIRD PARTIES. A provision in this title or in that part of Title 1 applicable to a limited partnership that grants a right to a person, other than a general partner, a limited partner, or assignee of a partnership interest in a limited partnership, may be waived or modified in the partnership agreement of the limited partnership only if the person consents to the waiver or modification.

Source Law:

New

Revisor's Note:

This provision is similar to Section 101.054 for limited liability companies and is included for purposes of consistency.

(Sections 153.006-153.050 reserved for expansion)

SUBCHAPTER B. SUPPLEMENTAL PROVISIONS REGARDING AMENDMENT TO
CERTIFICATE OF FORMATION

Revised Law:

Sec. 153.051. REQUIRED AMENDMENT TO CERTIFICATE OF FORMATION. (a) A general partner shall file a certificate of amendment reflecting the occurrence of one or more of the following events not later than the 30th day after the date on which the event occurred:

- (1) the admission of a new general partner;
- (2) the withdrawal of a general partner;
- (3) a change in the name of the limited partnership; or
- (4) except as provided by Section 5.202, a change in:

(A) the address of the registered office; or

(B) the name or address of the registered agent of the limited partnership.

(b) A general partner who becomes aware that a statement in a certificate of formation was false when made or that a matter described in the certificate has changed, making the certificate false in any material respect, shall promptly amend the certificate to make it accurate.

Source Law:

TRLPA 2.02(b), (c) & (e)

(b) A general partner shall file a certificate of amendment reflecting the occurrence of one or more of the following events not later than the 30th day after the date of the occurrence of the event:

- (1) the admission of a new general partner;
- (2) the withdrawal of a general partner;
- (3) a change in the name of the limited partnership; or

(4) except as provided by Subsection (b) or (h) of Section 1.06 of this Act, a change in the address of the registered office or a change in the name or address of the registered agent of the limited partnership.

(c) A general partner who becomes aware that a statement in a certificate of limited partnership was false when made or that a matter described in the certificate has changed, making the certificate false in any material respect, shall promptly amend the certificate to make it accurate.

* * *

(e) Unless otherwise provided by this Act, a certificate of amendment is effective when filed with the secretary of state or at a later date or time specified in the certificate if there has been substantial compliance with the requirements of this section.

Revisor's Note:

Section 2.02(e) of TRLPA provides that, unless otherwise provided, a certificate of amendment is effective if there is "substantial compliance" with the requirements of Section 2.02. In an effort to standardize provisions, the applicable Code provisions (Chapter 3 and Subchapter B of Chapter 153) do not carryover the "substantial compliance" concept. This concept is made obsolete by the simplified form of certificate of formation.

Revised Law:

Sec. 153.052. DISCRETIONARY AMENDMENT TO CERTIFICATE OF FORMATION.

(a) A certificate of formation may be amended at any time for a proper purpose as determined by the general partners.

(b) A certificate of formation may be amended to state the name, mailing address, and street address of the business or residence of each person winding up the limited partnership's affairs if, after an event requiring the winding up of a limited partnership but before the limited partnership is reconstituted or a certificate of cancellation is filed as provided by Section 153.451:

(1) the certificate of formation has been amended to reflect the withdrawal of all general partners; or

(2) a person who is not shown on the certificate of formation as a general partner is carrying out the winding up of a limited partnership's affairs.

(c) If the certificate of formation is amended under Subsection (b), each person winding up the limited partnership's affairs shall execute and file the certificate of amendment. A person winding up the partnership's affairs is not subject to liability as a general partner because of the filing of the certificate of amendment.

(d) A general partner who is not winding up the limited partnership's affairs is not required to execute and file a certificate of amendment as provided by this section.

Source Law:

TRLPA 2.02(d) and (f)

(d) A certificate of limited partnership may be amended at any time for any other proper purpose determined by the general partners.

* * *

(f) If after the dissolution of a limited partnership but before the limited partnership is either reconstituted or a certificate of cancellation is filed as provided in Section 2.03 of this Act,

(i) the certificate of limited partnership has been amended to reflect the withdrawal of all general partners, then the certificate of limited partnership may be amended to state the name, the mailing address and the street address of the business or residence of each person winding up the limited partnership's affairs, each of whom shall execute and file the certificate of amendment, and each of whom is not subject to liability as a general partner by reason of the amendment, or

(ii) winding up of a limited partnership's affairs is being carried out by a person who is not shown on the certificate of limited partnership as a general partner, then the certificate of limited partnership may be amended to add the name, the mailing address and the street address of the business or residence of each person winding up the limited partnership's affairs, each of whom shall execute and file the certificate of amendment, and each of whom is not subject to liability as a general partner by reason of the amendment.

A general partner who is not winding up the limited partnership's affairs need not execute a certificate of amendment that is executed and filed as provided by this section.

Revisor's Note:

No substantive change is intended. The revised law uses the term "certificate of formation" rather than "certificate of limited partnership".

(Sections 153.053-153.100 reserved for expansion)

SUBCHAPTER C. LIMITED PARTNERS

Revised Law:

Sec. 153.101. ADMISSION OF LIMITED PARTNERS. (a) In connection with the formation of a limited partnership, a person acquiring a limited partnership interest becomes a limited partner on the later of:

(1) the date on which the limited partnership is formed; or

(2) the date stated in the records of the limited partnership as the date on which the person becomes a limited partner or, if that date is not stated in those records, the date on which the person's admission is first reflected in the records of the limited partnership.

(b) After a limited partnership is formed, a person who acquires a partnership interest directly from the limited partnership becomes a new limited partner on:

(1) compliance with the provisions of the partnership agreement governing admission of new limited partners; or

(2) if the partnership agreement does not contain relevant admission provisions, the written consent of all partners.

(c) After formation of a limited partnership, an assignee of a partnership interest becomes a new limited partner as provided by Section 153.253(a).

(d) A person may be a limited partner unless the person lacks capacity apart from this chapter and the other limited partnership provisions.

Source Law:

TRLPA 3.01(a), (b) and (c)

Sec. 3.01. (a) In connection with the formation of a limited partnership, a person acquiring a limited partnership interest becomes a limited partner on the latter of:

(1) the date of formation of the limited partnership; or

(2) the date stated in the records of the limited partnership as the date that the person becomes a limited partner or, if no date is stated in those records, on the date that the person's admission is first reflected in the records of the limited partnership.

(b) After the formation of a limited partnership, a person becomes a new limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, on compliance with the provisions of the partnership agreement governing admission of new limited partners or, if the partnership agreement contains no relevant admission provisions, on the written consent of all partners; and

(2) in the case of an assignee of a partnership interest, as provided by Subsection (a) of Section 7.04 of this Act.

(c) Any person may be a limited partner unless the person lacks capacity apart from this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.102. LIABILITY TO THIRD PARTIES. (a) a limited partner is not liable for the obligations of a limited partnership unless:

(1) the limited partner is also a general partner; or

(2) in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business.

(b) If the limited partner participates in the control of the business, the limited partner is liable only to a person who transacts business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

Source Law:

TRLPA 3.03(a) and (d)

Sec. 3.03. (a) Except as provided by Subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner does participate in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based on the limited partner's conduct, that the limited partner is a general partner.

* * *

(d) A limited partner who knowingly permits that limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by Subdivision (1) of Section 1.03 of this Act is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

Revisor's Note:

Sec. 153.102 contains the same TRLPA standard for determining when a limited partner is liable for the obligations of a limited partnership, with one exception. TRLPA 3.03(d) provides that a limited partner who knowingly permits the use of that limited partner's name in the name of the limited partnership is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner. This provision was not included in Sec. 153.102 or elsewhere in the Code. The reasons for its deletion are primarily two-fold: (i) first, it was felt to be an arcane provision that was a trap for the unwary limited partner and served no useful purpose in protecting creditors; and (ii) shareholders and limited liability company members do not lose their limited liability if their names appear in the names of a corporation or limited liability company, respectively, and there does not appear to be any overriding public policy rationale for treating limited partners differently.

Revised Law:

Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and Sections 153.102, 153.104, and 153.105, a limited partner does not participate in the control of the business because the limited partner has or has acted in one or more of the following capacities or possesses or exercises one or more of the following powers:

(1) acting as:

limited partnership; (A) a contractor for or an agent or employee of the

general partner; (B) a contractor for or an agent or employee of a

(C) an officer, director, or stockholder of a corporate general partner;

(D) a partner of a partnership that is a general partner of the limited partnership; or

(E) a member or manager of a limited liability company that is a general partner of the limited partnership;

(2) acting in a capacity similar to that described in Subdivision (1) with any other person that is a general partner of the limited partnership;

(3) consulting with or advising a general partner on any matter, including the business of the limited partnership;

(4) acting as surety, guarantor, or endorser for the limited partnership, guaranteeing or assuming one or more specific obligations of the limited partnership, or providing collateral for borrowings of the limited partnership;

(5) calling, requesting, attending, or participating in a meeting of the partners or the limited partners;

(6) winding up the business of a limited partnership under Chapter 11 and Subchapter K of this chapter;

(7) taking an action required or permitted by law to bring, pursue, settle, or otherwise terminate a derivative action in the right of the limited partnership;

(8) serving on a committee of the limited partnership or the limited partners; or

(9) proposing, approving, or disapproving, by vote or otherwise, one or more of the following matters:

(A) the dissolution or winding up of the limited partnership;

(B) an election to reconstitute the limited partnership or continue the business of the limited partnership;

(C) the sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, an asset of the limited partnership;

(D) the incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(E) a change in the nature of the business of the limited partnership;

(F) the admission, removal, or retention of a general partner;

(G) the admission, removal, or retention of a limited partner;

(H) a transaction or other matter involving an actual or potential conflict of interest;

(I) an amendment to the partnership agreement or certificate of formation;

(J) if the limited partnership is qualified as an investment company under the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required by that Act or the rules and regulations of the Securities and Exchange Commission under that Act, to be approved by the holders of beneficial interests in an investment company, including:

(i) electing directors or trustees of the investment company;

(ii) approving or terminating an investment advisory or underwriting contract;

(iii) approving an auditor; and

(iv) acting on another matter that that Act requires to be approved by the holders of beneficial interests in the investment company;

(K) indemnification of a general partner under Chapter 8 or otherwise;

(L) any other matter stated in the partnership agreement;

(M) the exercising of a right or power granted or permitted to limited partners under this code and not specifically enumerated in this section; or

(N) the merger or conversion of a limited partnership.

Source Law:

TRLPA 3.03(b)

(b) For the purposes of this section, a limited partner does not participate in the control of the business by virtue of the limited partner's having or acting in one or more of the following capacities or possessing or exercising one or more of the following powers:

(1) acting as a contractor for or an agent or employee of the limited partnership or of a general partner, an officer, director, or stockholder of a corporate general partner, a partner of a partnership that is a general partner of the limited partnership, a member or manager of a limited liability company that is a general partner of the limited partnership, or in a similar capacity with any other person that is a general partner;

(2) consulting with or advising a general partner on any matter, including the business of the limited partnership;

(3) acting as surety, guarantor, or endorser for the limited partnership, to guarantee or assume one or more specific obligations of the limited partnership, or to provide collateral for borrowings of the limited partnership;

(4) calling, requesting, attending, or participating in a meeting of the partners or the limited partners;

(5) winding up a limited partnership under Section 8.04 of this Act;

(6) taking any action required or permitted by law to bring, or pursue, or settle or otherwise terminate a derivative action in the right of the limited partnership;

(7) serving on a committee of the limited partnership or the limited partners; or

(8) proposing, approving, or disapproving, by vote or otherwise, one or more of the following matters:

(A) the dissolution and winding up of the limited partnership or an election to reconstitute the limited partnership or an election to continue the business of the limited partnership;

(B) the sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, an asset or assets of the limited partnership;

(C) the incurring, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(D) a change in the nature of the business of the limited partnership;

(E) the admission, removal, or retention of a general partner;

(F) the admission, removal, or retention of a limited partner;

(G) a transaction or other matter involving an actual or potential conflict of interest;

(H) an amendment to the partnership agreement or certificate of limited partnership;

(I) if the limited partnership is qualified as an investment company under the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required by the Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company including:

(i) electing directors or trustees of the investment company;

(ii) approving or terminating investment advisory or underwriting contracts;

(iii) approving auditors; and

(iv) acting on any other matters that the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.) requires to be approved by the holders of beneficial interests in the investment company;

(J) indemnification of a general partner under Article 11 of this Act;

(K) any other matter stated in the partnership agreement;

(L) exercising a right or power granted or permitted to limited partners under this Act and not specifically enumerated in this subsection; or

(M) the merger of a limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.104. ENUMERATION OF ACTIONS NOT EXCLUSIVE. The enumeration in Section 153.103 does not mean that a limited partner who has acted or acts in another capacity or possesses or exercises another power constitutes participation by that limited partner in the control of the business of the limited partnership.

Source Law:

TRLPA 3.03(c)

(c) The enumeration in Subsection (b) of this section does not mean that having or acting in other capacities or possessing or exercising other powers by a limited partner constitutes participation by that limited partner in the control of the business of the limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.105. CREATION OF RIGHTS. Sections 153.103 and 153.104 do not create rights of limited partners. Rights of limited partners may be created only by:

- (1) the certificate of formation;
- (2) the partnership agreement;
- (3) other sections of this chapter; or
- (4) the other limited partnership provisions.

Source Law:

TRLPA 3.03(e)

(e) This section does not create rights of limited partners. Those rights may be created only by the certificate, partnership agreement, or other sections of this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.106. ERRONEOUS BELIEF OF CONTRIBUTOR BEING LIMITED PARTNER. Except as provided by Section 153.109, a person who erroneously but in good faith believes that the person has made a contribution to and has become a limited partner in a limited partnership is not liable as a general partner or otherwise obligated because of making or attempting to make the contribution,

receiving distributions from the partnership, or exercising the rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person:

(1) causes an appropriate certificate of formation or certificate of amendment to be signed and filed;

(2) files or causes to be filed with the secretary of state a written statement in accordance with Section 153.107; or

(3) withdraws from participation in future profits of the enterprise by executing and filing with the secretary of state a certificate declaring the person's withdrawal under this section.

Source Law:

TRLPA 3.04(a)

Sec. 3.04. (a) Except as provided by Subsection (c) of this section, a person who erroneously but in good faith believes that the person has made a contribution to and has become a limited partner in a limited partnership is not liable as a general partner or otherwise obligated by reason of making or attempting to make the contribution, receiving distributions from the partnership, or exercising the rights of a limited partner if, within a reasonable time after ascertaining the mistake, the person:

(1) causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed;

(2) files or causes to be filed with the secretary of state in accordance with Subsection (a) of Section 2.07 of this Act a written statement or

(3) withdraws from participation in future profits of the enterprise by executing and filing with the secretary of state a certificate declaring the person's withdrawal under this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.107. STATEMENT REQUIRED FOR LIABILITY PROTECTION. (a) A written statement filed under Section 153.106(2) must be entitled "Filing under Section 153.106(2), Business Organizations Code," and contain:

(1) the name of the partnership;

(2) the name and mailing address of the person signing the written statement; and

(3) a statement that:

(A) the person signing the written statement acquired a limited partnership interest in the partnership;

(B) the person signing the written statement has made an effort to cause a general partner of the partnership to file an accurate certificate of formation required by the code and the general partner has failed or refused to file the certificate; and

(C) the statement is being filed under Section 153.106(2) and the person signing the written statement is claiming status as a limited partner of the partnership named in the document.

(b) The statement is effective for 180 days.

(c) A statement filed under Section 153.106(2) may be signed by more than one person claiming limited partnership status under this section and Sections 153.106, 153.108, and 153.109.

Source Law:

TRLPA 3.04(a)(2), (b) and (e)
Sec. 3.04. (a)

(2) files or causes to be filed with the secretary of state in accordance with Subsection (a) of Section 2.07 of this Act a written statement entitled "Filing Pursuant to Subdivision (2) of Subsection (a) of Section 3.04, Texas Revised Limited Partnership Act" containing:

(A) the name of the partnership;

(B) the name and mailing address of the person signing the written statement;

(C) a statement that the person signing the written statement acquired a limited partnership interest in the partnership;

(D) a statement that the person signing the written statement has made an effort to cause a general partner of the partnership to file an accurate certificate of limited partnership required by this Act and that the general partner has failed or refused to do so; and

(E) a statement that the written statement is being filed pursuant to this subdivision and that the person signing the written statement is claiming status as a limited partner of the partnership named in the writing; or

* * *

(b) A written statement filed under Subdivision (2) of Subsection (a) of this section is effective for 180 days. . . .

* * *

(e) More than one person claiming limited partnership status under this section may sign a written statement filed under Subdivision (2) of Subsection (a) of this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.108. REQUIREMENTS FOR LIABILITY PROTECTION FOLLOWING EXPIRATION OF STATEMENT. (a) If a certificate described by Section 153.106(1) has not been filed before the expiration of the 180-day period described by Section 153.107(b), the person filing the statement has no further protection from liability under Section 153.106(2) unless the person complies with this section. To be protected under Section 153.106 the person must, not later than the 10th day after the date of expiration of the 180-day period:

(1) withdraw under Section 153.106(3); or

(2) bring an action under Section 153.554 to compel the execution and filing of a certificate of formation or amendment.

(b) If an action is brought within the applicable period and is diligently prosecuted to conclusion, the person bringing the action continues to be protected from liability under Section 153.106(2) until the action is finally decided adversely to that person.

(c) This section and Sections 153.106, 153.107, and 153.109 do not protect a person from liability that arises under Sections 153.102-153.105.

Source Law:

TRLPA 3.04(b) and (d)

(b) . . . If a certificate described by Subdivision (1) of Subsection (a) of this section has not been filed on or before the expiration of the 180-day period, the person filing the statement has no further protection from liability under Subdivision (2) of Subsection (a) and to be protected under this section must, within 10 days after the date of expiration of the 180-day period, withdraw under Subdivision (3) of Subsection (a) of this section or bring an action under Section 2.05 of this Act to compel the execution and filing of a certificate of limited partnership or amendment. If an action is brought within the applicable period and is diligently prosecuted to conclusion, the person bringing it continues to be protected from liability under Subdivision (2) of Subsection (a) until the action is finally decided adversely to that person. This section does not protect a person from liability that arises under Section 3.03 of this Act.

* * *

(d) This section does not protect a person from liability that arises under Section 3.03 of this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.109. LIABILITY OF ERRONEOUS CONTRIBUTOR. Regardless of whether Sections 153.106, 153.107, and 153.108 apply, a person who makes a contribution in the circumstances described by Section 153.106 is liable as a general partner to a third party who transacts business with the partnership before an action taken under Section 153.106 if:

(1) the contributor has knowledge or notice that no certificate has been filed or that the certificate inaccurately referred to the contributor as a general partner; and

(2) the third party reasonably believed, based on the contributor's conduct, that the contributor was a general partner at the time of the transaction and extended credit to the partnership in reasonable reliance on the credit of the contributor.

Source Law:

TRLPA 3.04(c)

(c) A person who makes a contribution in the circumstances described by Subsection (a) of this section is liable as a general partner, whether or not Subsection (a) or (b) of this section would otherwise apply, to any third party who transacts business with the partnership before the taking of an action under Subsection (a) if:

(1) the contributor knew or should have known that no certificate has been filed or that the certificate inaccurately referred to the contributor as a general partner; and

(2) the third party reasonably believed, based on the contributor's conduct, that the contributor was a general partner at the time of the transaction and extended credit to the partnership in reasonable reliance on the credit of the contributor.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.110. WITHDRAWAL OF LIMITED PARTNER. A limited partner may withdraw from a limited partnership only at the time or on the occurrence of an event specified in a written partnership agreement. The withdrawal of the partner must be made in accordance with that agreement.

Source Law:

TRLPA 6.03

Sec. 6.03. A limited partner may withdraw from a limited partnership only at the time or on the occurrence of events specified in a partnership agreement and in accordance with that partnership agreement.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.111. DISTRIBUTION ON WITHDRAWAL. Except as otherwise provided by Section 153.210 or the partnership agreement, on withdrawal a withdrawing limited partner is entitled to receive, not later than a reasonable time after withdrawal, the fair value of that limited partner's interest in the limited partnership as of the date of withdrawal.

Source Law:

TRLPA 6.04

Sec. 6.04. Except as otherwise provided by this article or the partnership agreement, on withdrawal any withdrawing limited partner is entitled to receive, within a reasonable time after withdrawal, the fair value of that limited partner's interest in the limited partnership as of the date of withdrawal.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.112. RECEIPT OF WRONGFUL DISTRIBUTION. A limited partner who receives a distribution that is not permitted under Section 153.210 is not required to return the distribution unless the limited partner knew that the distribution violated the prohibition of Section 153.210. This section does not affect an obligation of the limited partner under the partnership agreement or other applicable law to return the distribution.

Source Law:

TRLPA 6.07(b)

(b) A limited partner who receives a distribution that is not permitted under Subsection (a) of this section has no liability under this Act to return the distribution unless the limited partner knew that the distribution violated the prohibition of Subsection (a). This subsection does not affect any obligation of the limited partner under the partnership agreement or other applicable law to return the distribution.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.113. POWERS OF ESTATE OF LIMITED PARTNER WHO IS DECEASED OR INCAPACITATED. If a limited partner who is an individual dies or a court adjudges the limited partner to be incapacitated in managing the limited partner's person or property, the limited partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the limited partner's rights and powers to settle the limited partner's estate or administer the limited partner's property, including the power of an assignee to become a limited partner under the partnership agreement.

Source Law:

TRLPA 7.05

Sec. 7.05. If a limited partner who is an individual dies or a court of competent jurisdiction adjudges the limited partner to be incompetent to manage that limited partner's person or property, the limited partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the limited partner's rights and powers to settle the limited partner's estate or administer the limited partner's property, including the power under the partnership agreement of an assignee to become a limited partner.

Revisor's Note:

No substantive change is permitted.

(Sections 153.114-153.150 reserved for expansion)

SUBCHAPTER D. GENERAL PARTNERS

Revised Law:

Sec. 153.151. ADMISSION OF ADDITIONAL GENERAL PARTNERS. (a) After a limited partnership is formed, additional general partners may be admitted:

(1) in the manner provided by a written partnership agreement; or

(2) if a written partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

(b) A person may be a general partner unless the person lacks capacity apart from this chapter.

Source Law:

TRLPA 4.01(a) and (b)

Sec. 4.01. (a) After the formation of a limited partnership, additional general partners may be admitted as provided in a written partnership agreement or, if a written partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

(b) Any person may be a general partner unless the person lacks capacity apart from this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.152. GENERAL POWERS AND LIABILITIES OF GENERAL PARTNER. (a) Except as provided by this chapter, the other limited partnership provisions, or a partnership agreement, a general partner of a limited partnership:

(1) has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners; and

(2) has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

(b) Except as provided by this chapter or the other limited partnership provisions, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to a person other than the partnership and the other partners.

Source Law:

TRLPA 4.03(a) and (b)

Sec. 4.03. (a) Except as provided by this Act or a partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided by this Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as provided by this Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.153. POWERS AND LIABILITIES OF PERSON WHO IS BOTH GENERAL PARTNER AND LIMITED PARTNER. A person who is both a general partner and a limited partner:

(1) has the rights and powers and is subject to the restrictions and liabilities of a general partner; and

(2) except as otherwise provided by the partnership agreement, this chapter, or the other limited partnership provisions, has the rights and powers and is subject to the restrictions and liabilities, if any, of a limited partner to the extent of the general partner's participation in the partnership as a limited partner.

Source Law:

TRLPA 4.04

Sec. 4.04. . . . 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 otherwise provided by the partnership agreement or this Act, has the rights and powers, and is subject to the restrictions and liabilities, if any, of a limited partner to the extent of the general partner's participation in the partnership as a limited partner.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.154. CONTRIBUTIONS BY AND DISTRIBUTIONS TO GENERAL PARTNER. A general partner of a limited partnership may make a contribution to, be allocated profits and losses of, and receive a distribution from the limited partnership as a general partner, a limited partner, or both.

Source Law:

TRLPA 4.04

Sec. 4.04. A general partner of a limited partnership may make contributions to, be allocated profits and losses of, and receive distributions from the limited partnership as a general partner, a limited partner, or both. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.155. WITHDRAWAL OF GENERAL PARTNER. (a) A person ceases to be a general partner of a limited partnership on the occurrence of one or more of the following events of withdrawal:

(1) the general partner withdraws as a general partner from the limited partnership as provided by Subsection (b);

(2) the general partner ceases to be a general partner of the limited partnership as provided by Section 153.252(b);

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

(4) unless otherwise provided by a written partnership agreement, or with the written consent of all partners, the general partner:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary bankruptcy petition;

(C) becomes the subject of an order for relief or is declared insolvent in a federal or state bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under law;

(E) files a pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the type described by Paragraphs (A)-(D); or

(F) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties;

(5) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the expiration of:

(A) 120 days after the date of the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under law if the proceeding has not been previously dismissed;

(B) 90 days after the date of the appointment, without the general partner's consent, of a trustee, receiver, or liquidator of the general partner or of all or a substantial part of the general partner's properties if the appointment has not previously been vacated or stayed; or

(C) 90 days after the date of expiration of a stay, if the appointment has not previously been vacated;

(6) the death of a general partner;

(7) a court adjudicating a general partner who is an individual mentally incompetent to manage the general partner's person or property;

(8) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the commencement of winding up activities intended to conclude in the termination of a trust that is a general partner, but not merely the substitution of a new trustee;

(9) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the commencement of winding up activities of a separate partnership that is a general partner;

(10) unless otherwise provided by a written partnership agreement or with the written consent of all partners, the:

(A) filing of a certificate of termination or its equivalent for an entity, other than a nonfiling entity or a foreign nonfiling entity, that is a general partner; or

(B) termination or revocation of the certificate of formation or its equivalent of an entity, other than a nonfiling entity or a foreign nonfiling entity, that is a general partner and the expiration of 90 days after the date of notice to the entity of termination or revocation without a reinstatement of its certificate of formation or its equivalent; or

(11) the distribution by the fiduciary of an estate that is a general partner of the estate's entire interest in the limited partnership.

(b) A general partner may withdraw at any time from a limited partnership and cease to be a general partner under Subsection (a) by giving written notice to the other partners.

Source Law:

TRLPA 4.02(a)

Sec. 4.02. (a) A person ceases to be a general partner of a limited partnership on the occurrence of any of the following events of withdrawal:

(1) the general partner withdraws as a general partner from the limited partnership as provided by Section 6.02 of this Act;

(2) the general partner ceases to be a general partner of the limited partnership as provided by Section 7.02 of this Act;

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

(4) unless otherwise provided in a written partnership agreement, or with the written consent of all partners, the general partner:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary bankruptcy petition;

(C) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding;

(D) files a petition or answer seeking for the general partner a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law;

(E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in a proceeding of the type described in Paragraphs (A) through (D) of this subdivision; or

(F) 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 a written partnership agreement or with the written consent of all partners, 120 days expire after the date of the commencement of a proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law if the proceeding has not been previously dismissed, or 90 days expire after the

date of the appointment, without the general partner's consent or acquiescence, of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties if the appointment has not previously been vacated or stayed, or 90 days expire after the date of expiration of a stay, if the appointment has not previously been vacated;

(6) in the case of a general partner who is a natural person:

(A) the general partner's death; or

(B) the entry by a court of competent jurisdiction adjudicating the general partner mentally incompetent to manage the general partner's person or property;

(7) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a trust, the commencement of winding up activities intended to conclude in the termination of the trust, but not merely the substitution of a new trustee;

(8) unless otherwise provided in a written partnership agreement or with the written consent of all partners in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) unless otherwise provided in a written partnership agreement or with the written consent of all partners 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 and the expiration of 90 days after the date of notice to the corporation of revocation without a reinstatement of its charter; or

(10) in the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

TRLPA 6.02(a)

Sec. 6.02. (a) A general partner may withdraw at any time from a limited partnership and cease to be a general partner under the provisions of Subsection (a) of Section 4.02 of this Act, by giving written notice to the other partners. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.156. NOTICE OF EVENT OF WITHDRAWAL. A general partner who is subject to an event that with the passage of the specified period becomes an event of withdrawal under Section 153.155(a)(4) or (5) shall notify the other partners of the event not later than the 30th day after the date on which the event occurred.

Source Law:

TRLPA 4.02(b)

(b) A general partner who suffers an event that with the passage of the specified period becomes an event of withdrawal under Subdivision (4) or (5) of Subsection (a) of this section

shall notify the other partners of the event within 30 days after the date of occurrence of the event of withdrawal.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.157. WITHDRAWAL OF GENERAL PARTNER IN VIOLATION OF PARTNERSHIP AGREEMENT. Unless otherwise provided by the partnership agreement, a withdrawal by a general partner of a partnership for a definite term or particular undertaking before the expiration of that term or completion of that undertaking is a breach of the partnership agreement.

Source Law:

TRLPA 6.02(a)

Sec. 6.02. (a) A Unless otherwise provided by the partnership agreement, in the case of a partnership for a definite term or particular undertaking, a withdrawal by a general partner before the expiration of that term or completion of that undertaking is a breach of the partnership agreement.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.158. EFFECT OF WITHDRAWAL. (a) Unless otherwise provided by a written partnership agreement and subject to the liability created under Section 153.162, if a general partner ceases to be a general partner under Section 153.155, the remaining general partner or partners, or, if there are no remaining general partners, a majority-in-interest of the limited partners in a vote that excludes any limited partnership interest held by the withdrawing general partner, may:

(1) convert that general partner's partnership interest to that of a limited partner; or

(2) pay to the withdrawn general partner in cash, or secure by bond approved by a court of competent jurisdiction, the value of that partner's partnership interest minus the damages caused if the withdrawal constituted a breach of the partnership agreement.

(b) Until an action described by Subsection (a) is taken, the owner of the partnership interest of the withdrawn general partner has the status of an assignee under Subchapter F, Section 153.113, and Section 153.555.

(c) If there are no remaining general partners following the withdrawal of a general partner, the partnership may be reconstituted.

Source Law:

TRLPA 6.02(b) and (e)

(b) Unless otherwise provided by a written partnership agreement and subject to the liability created under Subsection (a) of this section, if a general partner ceases to be a general partner under Section 4.02 of this Act, then the remaining general partner or partners or, if there are no remaining general partners, then the limited partners, at the option of a majority in interest of the limited partners in a

vote that excludes any limited partner's interest held by the withdrawing general partner, may:

(1) convert that general partner's partnership interest to that of a limited partner; or

(2) pay to the withdrawn general partner in cash, or secure by bond approved by a court of competent jurisdiction, the value of that partner's partnership interest less the damages caused if the withdrawal constituted a breach of the partnership agreement.

Until one of the actions under Subdivision (1) or (2) of this subsection is taken, the owner of the partnership interest of the withdrawn general partner has the status of an assignee under Article VII of this Act.

* * *

(e) If there are no remaining general partners following the withdrawal of a general partner, the partnership may be reconstituted under Section 8.03 of this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.159. CONVERSION OF PARTNERSHIP INTEREST AFTER WITHDRAWAL. If the partners convert the partnership interest under Section 153.158(a)(1), the limited partnership interest may be reduced pro rata with all other partners to provide compensation, an interest in the partnership, or both, to a replacement general partner.

Source Law:

TRLPA 6.02(c)

(c) If the partners act under Subdivision (1) of Subsection (b) of this section, the limited partnership interest may be reduced pro rata with all other partners to provide compensation or an interest in the partnership, or both, to a replacement general partner,

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.160. EFFECT OF CONVERSION OF PARTNERSHIP INTEREST. (a) After an amendment to the certificate of formation reflecting the general partner's withdrawal as a general partner is filed under Section 153.051, the withdrawing general partner:

(1) may vote as a limited partner in all matters, to the same extent as the members of the class of limited partners having the least voting rights with respect to the matter on which the vote is taken; and

(2) may not vote on the admission and compensation of a general partner who replaces the withdrawing general partner.

(b) If the general partner's withdrawal violates the partnership agreement, the general partner does not have voting rights.

Source Law:

TRLPA 6.02(c)

(c) . . . and after the filing of an amendment to the certificate under Section 2.02 of this Act reflecting the general partner's withdrawal as a general partner, the withdrawing general partner is entitled to vote as a limited partner in all matters, to the same extent as the members of the class of limited partners having the least voting rights with respect to the matter on which the vote is taken, but may not vote on the admission and compensation of any general partner replacing the withdrawing general partner. If the general partner's withdrawal violates the partnership agreement, the general partner has no voting rights.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.161. LIABILITY OF GENERAL PARTNER FOR DEBT INCURRED AFTER EVENT OF WITHDRAWAL. (a) Unless otherwise provided by a written partnership agreement and subject to the liability created under Section 153.162, a general partner who ceases to be a general partner under Section 153.155 is not personally liable in the partner's capacity as a general partner for partnership debt incurred after that partner ceases to be a general partner unless the applicable creditor at the time the debt was incurred reasonably believed that the partner remained a general partner.

(b) A creditor of the partnership has reason to believe that a partner remains a general partner if:

(1) the creditor had no knowledge or notice of the general partner's withdrawal and:

(A) was a creditor of the partnership at the time of the general partner's withdrawal; or

(B) had extended credit to the partnership within two years before the date of withdrawal; or

(2) the creditor had known that the partner was a general partner in the partnership before the general partner's withdrawal and had no knowledge or notice of the withdrawal and the general partner's withdrawal had not been advertised in a newspaper of general circulation in each place at which the partnership business was regularly conducted.

Source Law:

TRLPA 6.02(d)

(d) Unless otherwise provided by a written partnership agreement and subject to the liability created under Subsection (a) of this section, a general partner who ceases to be a general partner under Section 4.02 of this Act is not personally liable as a general partner for any partnership debt incurred after that partner ceases to be a general partner unless the applicable creditor at the time the partnership debt is incurred reasonably believed that the partner remained a general partner. A creditor of the partnership has a reasonable basis for believing that a partner remains a general partner if:

(1) the creditor was a creditor of the partnership at the time of the general partner's withdrawal or had extended credit to the partnership within two years before the withdrawal and had no knowledge or notice of the general partner's withdrawal; or

(2) the creditor had known that the general partner was a general partner in the partnership before withdrawal and had no knowledge or notice of the withdrawal, and the fact of withdrawal had not been advertised in a newspaper of general circulation in each place at which the partnership business was regularly conducted.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.162. LIABILITY FOR WRONGFUL WITHDRAWAL. (a) If a general partner's withdrawal from a limited partnership violates the partnership agreement, the partnership may recover damages from the withdrawing general partner for breach of the partnership agreement, including the reasonable cost of obtaining replacement of the services the withdrawn partner was obligated to perform.

(b) In addition to pursuing any remedy available under applicable law, the partnership may effect the recovery of damages under Subsection (a) by offsetting those damages against the amount otherwise distributable to the withdrawing general partner, reducing the limited partner interest into which the withdrawing general partner's interest may be converted under Section 153.158(a)(1), or both.

Source Law:

TRLPA 6.02(a)

Sec. 6.02. (a) . . . If the general partner's withdrawal violates the partnership agreement, the partnership may recover damages from the withdrawing general partner, including the reasonable cost of obtaining replacement of the services the withdrawn partner was obligated to perform, for breach of the partnership agreement. The partnership may, in addition to pursuing any remedies otherwise available under applicable law, effect that recovery by offsetting those damages against the amount otherwise distributable to the withdrawing general partner, reducing the limited partner interest into which the withdrawing general partner's interest may be converted under Subdivision (1) of Subsection (b) of this section, or both.

. . .

Revisor's Note:

No substantive change is intended.

(Sections 153.163-153.200 reserved for expansion)

SUBCHAPTER E. FINANCES

Revised Law:

Sec. 153.201. FORM OF CONTRIBUTION. The contribution of a limited partner may consist of a tangible or intangible benefit to the limited partnership or other property of any kind or nature, including:

(1) cash;

- (2) a promissory note;
- (3) services performed;
- (4) a contract for services to be performed; and
- (5) another interest in or security of the limited partnership, another domestic or foreign limited partnership, or other entity.

Source Law:

TRLPA 5.01

Sec. 5.01. The contribution of a limited partner may consist of any tangible or intangible benefit to the limited partnership or other property of any kind or nature, including cash, a promissory note, services performed, a contract for services to be performed, other interests in or securities of the limited partnership, or interests in or securities of any other limited partnership, domestic or foreign, or other entity.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.202. ENFORCEABILITY OF PROMISE TO MAKE CONTRIBUTION. (a) A promise by a limited partner to make a contribution to, or pay cash or transfer other property to, a limited partnership is not enforceable unless the promise is in writing and signed by the limited partner.

(b) Except as otherwise provided by the partnership agreement, a partner or the partner's legal representative or successor is obligated to the limited partnership to perform an enforceable promise to make a contribution to or pay cash or transfer other property to a limited partnership, notwithstanding the partner's death, disability, or other change in circumstances.

(c) If a partner or a partner's legal representative or successor does not make a contribution or other payment of cash or transfer of other property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that partner or the partner's legal representative or successor is obligated, at the option of the limited partnership, to pay to the partnership an amount of cash equal to the portion of the agreed value, as stated in the partnership agreement or in the partnership records required to be kept under Sections 153.551 and 153.552, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

(d) A partnership agreement may provide that the partnership interest of a partner who fails to make a payment of cash or transfer of other property to the partnership, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences, which may include:

- (1) a reduction of the defaulting partner's percentage or other interest in the limited partnership;
- (2) subordination of the partner's partnership interest to the interest of nondefaulting partners;
- (3) a forced sale of the partner's partnership interest;

- (4) forfeiture of the partner's partnership interest;
- (5) the lending of money to the defaulting partner by other partners of the amount necessary to meet the defaulting partner's commitment;
- (6) a determination of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the partnership interest at that value; or
- (7) another penalty or consequence.

Source Law:

TRLPA 5.02(a), (b) and (c)

Sec. 5.02. (a) A promise by a limited partner to make a contribution to, or otherwise pay cash or transfer property to, a limited partnership is not enforceable unless set out in writing and signed by the limited partner.

(b) Except as otherwise provided by the partnership agreement, a partner or the partner's legal representative or successor is obligated to the limited partnership to perform an enforceable promise to make a contribution to or otherwise pay cash or transfer property to a limited partnership, notwithstanding the partner's death, disability, or other change in circumstances. If a partner or a partner's legal representative or successor does not make a contribution or other payment of cash or transfer of property required by the enforceable promise, whether as a contribution or with respect to a contribution previously made, that partner or the partner's legal representative or successor is obligated, at the option of the limited partnership, to pay to the partnership an amount of cash equal to that portion of the agreed value, as stated in the partnership agreement or in the partnership records required to be kept under Section 1.07 of this Act, of the contribution represented by the amount of cash that has not been paid or the value of the property that has not been transferred.

(c) A partnership agreement may provide that the partnership interest of a partner who fails to make a payment of cash or transfer of property to the partnership, whether as a contribution or with respect to a contribution previously made, required by an enforceable promise is subject to specified consequences. A consequence may take the form of a reduction of the defaulting partner's percentage or other interest in the limited partnership, subordination of the partner's partnership interest to that of nondefaulting partners, a forced sale of the partner's partnership interest, forfeiture of the partner's partnership interest, the lending of money to the defaulting partner by other partners of the amount necessary to meet the defaulting partner's commitment, a determination of the value of the defaulting partner's partnership interest by appraisal or by formula and redemption or sale of the partnership interest at that value, or other penalty or consequence.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.203. RELEASE OF OBLIGATION TO PARTNERSHIP. Unless otherwise provided by the partnership agreement, the obligation of a partner or the

legal representative or successor of a partner to make a contribution, pay cash, transfer other property, or return cash or property paid or distributed to the partner in violation of this chapter or the partnership agreement may be compromised or released only by consent of all of the partners.

Source Law:

TRLPA 5.02(d)

(d) Unless otherwise provided by the partnership agreement, the obligation of a partner or a partner's legal representative or successor to make a contribution or otherwise pay cash or transfer property or to return cash or property paid or distributed to the partner in violation of this Act or the partnership agreement may be compromised or released only by consent of all of the partners. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.204. ENFORCEABILITY OF OBLIGATION. (a) Notwithstanding a compromise or release under Section 153.203, a creditor of a limited partnership who extends credit or otherwise acts in reasonable reliance on an obligation described by Section 153.203 may enforce the original obligation if:

(1) the obligation is reflected in a document signed by the partner; and

(2) the document is not amended or canceled to reflect the compromise or release.

(b) Notwithstanding the compromise or release, a general partner remains liable to persons other than the partnership and the other partners, as provided by Sections 153.152(a)(2) and 153.152(b).

Source Law:

TRLPA 5.02(d)

(d) Notwithstanding the compromise or release, a creditor of a limited partnership who extends credit or otherwise acts in reasonable reliance on that obligation, after the partner signs a writing that reflects the obligation and before the writing is amended or canceled to reflect the compromise or release, may enforce the original obligation. A general partner, however, remains liable to persons other than the partnership and the other partners, as provided by Subsection (b) of Section 4.03 of this Act, notwithstanding the compromise or release. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.205. REQUIREMENTS TO ENFORCE CONDITIONAL OBLIGATION. (a) An obligation of a limited partner of a limited partnership that is subject to a condition may be enforced by the partnership creditor described by Section 153.204 only if the condition is satisfied or waived by or with respect to the limited partner.

(b) A conditional obligation of a limited partner of a limited partnership includes a contribution payable on a discretionary call of the limited partnership before the time the call occurs.

Source Law:

TRLPA 5.02(d)

(d) A conditional obligation may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by the applicable limited partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership before the time the call occurs.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.206. ALLOCATION OF PROFITS AND LOSSES. (a) The profits and losses of a limited partnership shall be allocated among the partners in the manner provided by a written partnership agreement.

(b) If a written partnership agreement does not provide for the allocation of profits and losses, the profits and losses shall be allocated:

(1) in accordance with the current percentage or other interest in the partnership stated in partnership records of the kind described by Section 153.551(a); or

(2) if the allocation of profits and losses is not provided for in partnership records of the kind described by Section 153.551(a), in proportion to capital accounts.

Source Law:

TRLPA 5.03

Sec. 5.03. The profits and losses of a limited partnership shall be allocated among the partners in the manner provided by a written partnership agreement. If a written partnership agreement does not otherwise provide, the profits and losses shall be allocated in accordance with the then current percentage or other interest in the partnership stated in partnership records of the kind described in Subsection (a) of Section 1.07 of this Act. If the allocation of profits and losses is not provided by a written partnership agreement or in partnership records of the kind described in Subsection (a) of Section 1.07, profits and losses shall be allocated in proportion to capital accounts.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.207. RIGHT TO DISTRIBUTION. Subject to Section 153.210, when a partner becomes entitled to receive a distribution, the partner has with respect to the distribution the status of and is entitled to all remedies available to a creditor of the limited partnership.

Source Law:

TRLPA 6.06

Sec. 6.06. Subject to Sections 6.07 and 8.05 of this Act, at the time that a partner becomes entitled to receive a distribution, with respect to the distribution, that partner has the status of and is entitled to all remedies available to a creditor of the limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.208. SHARING OF DISTRIBUTIONS. (a) A distribution of cash or another asset of a limited partnership shall be made to a partner in the manner provided by a written partnership agreement.

(b) If a written partnership agreement does not provide otherwise, a distribution that is a return of capital shall be made on the basis of the agreed value, as stated in the partnership records required to be maintained under Section 153.551(a), of the contribution made by each partner to the extent that the contribution has not been returned. A distribution that is not a return of capital shall be made in proportion to the allocation of profits as determined under Section 153.206.

(c) Unless otherwise defined by a written partnership agreement, in this section, "return of capital" means a distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contribution to the partnership as reduced by a prior distribution that was a return of capital.

Source Law:

TRLPA 1.02(13)

(13) "Return of capital" means, unless otherwise provided in a written partnership agreement, any distribution to a partner to the extent that the partner's capital account, immediately after the distribution, is less than the amount of that partner's contribution to the partnership as reduced by prior distributions that were a return of capital.

TRLPA 5.04

Sec. 5.04. Distributions of cash or other assets of a limited partnership shall be made to the partners in the manner provided by a written partnership agreement. If a written partnership agreement does not otherwise provide, distributions that are a return of capital shall be made on the basis of the agreed value, as stated in the partnership records required to be kept under Subsection (a) of Section 1.07 of this Act, of the contributions made by each partner to the extent that the contributions have not been returned, and distributions that are not a return of capital shall be made in proportion to the allocation of profits as determined under Section 5.03 of this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.209. INTERIM DISTRIBUTIONS. Except as otherwise provided by this section and Section 153.210, a partner is entitled to receive a distribution from a limited partnership to the extent and at the time or on the occurrence of an event specified in the partnership agreement before:

- (1) the partner withdraws from the partnership; and
- (2) the winding up of the partnership business.

Source Law:

TRLPA 6.01

Sec. 6.01. Except as otherwise provided by this article, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the winding up of the partnership to the extent and at the times or on the occurrence of the events specified in the partnership agreement.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.210. LIMITATION ON DISTRIBUTION. A limited partnership may not make a distribution to a partner if immediately after giving effect to the distribution and despite any compromise of a claim referred to by Sections 153.203 and 153.204, all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets. The fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets for purposes of this subsection only to the extent that the fair value of that property exceeds that liability.

Source Law:

TRLPA 6.07(a)

Sec. 6.07. (a) A limited partnership may not make a distribution to its partners to the extent that, immediately after giving effect to the distribution and despite any compromise of a claim referred to in Subsection (d) of Section 5.02 of this Act, all liabilities of the limited partnership, other than liabilities to partners with respect to their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the partnership assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the partnership assets only to the extent that the fair value of that property exceeds that liability.

Revisor's Note:

No substantive change is intended.

(Sections 153.211-153.250 reserved for expansion)

SUBCHAPTER F. PARTNERSHIP INTEREST

Revised Law:

Sec. 153.251. ASSIGNMENT OF PARTNERSHIP INTEREST. (a) Except as otherwise provided by the partnership agreement, a partnership interest is assignable wholly or partly.

(b) Except as otherwise provided by the partnership agreement, an assignment of a partnership interest:

- (1) does not dissolve a limited partnership;
- (2) does not entitle the assignee to become, or to exercise rights or powers of, a partner; and
- (3) entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items and to receive distributions to which the assignor was entitled to the extent those items are assigned.

Source Law:

TRLPA 7.02(a)(1)-(3)

Sec. 7.02. (a) Unless otherwise provided by the partnership agreement:

- (1) a partnership interest is assignable in whole or in part;
- (2) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become, or to exercise rights or powers of, a partner;
- (3) an assignment entitles the assignee to be allocated income, gain, loss, deduction, credit, or similar items, and to receive distributions, to which the assignor was entitled, to the extent those items are assigned; and

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.252. RIGHTS OF ASSIGNOR. (a) Except as otherwise provided by the partnership agreement, until the assignee becomes a partner, the assignor partner continues to be a partner in the limited partnership. The assignor partner may exercise any rights or powers of a partner, except to the extent those rights or powers are assigned.

(b) Except as otherwise provided by the partnership agreement, on the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general partner may be terminated by the affirmative vote of a majority-in-interest of the limited partners.

Source Law:

TRLPA 7.02(a)(4)

(4) until the assignee becomes a partner, the assignor partner continues to be a partner and to have the power to exercise any rights or powers of a partner, except to the extent those rights or powers are assigned; however, on the assignment by a general partner of all of the general partner's rights as a general partner, the general partner's status as a general

partner may be terminated by the affirmative vote of a majority in interest of the limited partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.253. RIGHTS OF ASSIGNEE. (a) An assignee of a partnership interest, including the partnership interest of a general partner, may become a limited partner if and to the extent that:

- (1) the partnership agreement provides; or
- (2) all partners consent.

(b) An assignee who becomes a limited partner, to the extent of the rights and powers assigned, has the rights and powers and is subject to the restrictions and liabilities of a limited partner under a partnership agreement and this code.

Source Law:

TRLPA 7.04(a) and (b)

Sec. 7.04. (a) An assignee of a partnership interest, including an assignee of the partnership interest of a general partner, may become a limited partner if and to the extent that:

- (1) the partnership agreement provides; or
- (2) all partners consent.

(b) An assignee who becomes 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 a partnership agreement and this Act. . . .

Revisor's Note:

No substantive change is intended. The last sentence of TRLPA 7.04(b) has been included in Sec. 153.254.

Revised Law:

Sec. 153.254. LIABILITY OF ASSIGNEE. (a) Until an assignee of the partnership interest in a limited partnership becomes a partner, the assignee does not have liability as a partner solely as a result of the assignment.

(b) Unless otherwise provided by a written partnership agreement, an assignee who becomes a limited partner:

- (1) is liable for the obligations of the assignor to make contributions as provided by Sections 153.202-153.204;
- (2) is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and that could not be ascertained from a written partnership agreement; and
- (3) is not liable for the obligations of the assignor under Sections 153.105, 153.112, and 153.162.

Source Law:

TRLPA 7.02(b)

(b) Until an assignee of the partnership interest in a limited partnership becomes a partner, the assignee has no liability as a partner solely as a result of the assignment.

TRLPA 7.04(b)

(b) Unless otherwise provided by a written partnership agreement, an assignee who becomes a limited partner also is liable for the obligations of the assignor to make contributions as provided by Section 5.02 of this Act, but is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from a written partnership agreement and is not liable for the obligations of his assignor under Article 6.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.255. LIABILITY OF ASSIGNOR. Regardless of whether an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under Subchapter E and Sections 153.105, 153.112, and 153.162.

Source Law:

TRLPA 7.04(c)

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under Articles 5 and 6 of this Act.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.256. CHARGE IN PAYMENT OF JUDGMENT CREDITOR. (a) On application to a court by a judgment creditor of a partner or other owner of a partnership interest, the court may:

- (1) charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest;
- (2) appoint a receiver for the debtor partner's share of the partnership's profits and other money payable or that becomes payable to the debtor partner with respect to the limited partnership; and
- (3) make other orders, directions, and inquiries that the circumstances of the case require.

(b) To the extent that the partnership interest is charged in the manner provided by Subsection (a), the judgment creditor has only the rights of an assignee of the partnership interest.

(c) The partnership interest charged may be:

- (1) redeemed at any time before foreclosure; or

(2) in case of a sale directed by the court, and without constituting an event requiring winding up, purchased:

(A) by one or more of the general partners with separate property of any general partner; or

(B) with respect to partnership property, by one or more of the general partners whose interests are not charged, on the consent of all general partners whose interests are not charged and a majority in interest of the limited partners, excluding limited partnership interests held by a general partner whose interest is charged.

(d) The remedies provided by Subsection (a) are exclusive of other remedies that may exist, including remedies under laws of this state applicable to partnerships without limited partners.

Source Law:

TRLPA 7.03(a), (b) and (c)

Sec. 7.03. (a) On application to a court of competent jurisdiction by a judgment creditor of a partner or of any other owner of a partnership interest, the court may charge the partnership interest of the partner or other owner with payment of the unsatisfied amount of the judgment, with interest, may then or later appoint a receiver of the debtor partner's share of the partnership's profits and of any other money payable or that becomes payable to the debtor partner with respect to the partnership, and may make all other orders, directions, and inquiries that the circumstances of the case require. To the extent that the partnership interest is charged in this manner, the judgment creditor has only the rights of an assignee of the partnership interest.

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

(1) with separate property of any general partner, by any one or more of the general partners; or

(2) with respect to partnership property, by any one or more of the general partners whose interests are not charged, on the consent of all general partners whose interests are not charged and a majority in interest of the limited partners, excluding limited partnership interests held by any general partner whose interest is charged.

(c) The remedies provided by Subsection (a) of this section are exclusive of others that may exist, including remedies under laws of this state applicable to partnerships without limited partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.257. EXEMPTION LAWS APPLICABLE TO PARTNERSHIP INTEREST NOT AFFECTED. Section 153.256 does not deprive a partner of the benefit of an exemption law applicable to that partner's partnership interest.

Source Law:

TRLPA 7.03(d)

(d) This section does not deprive any partner of the benefit of any exemption laws applicable to that partner's partnership interest.

Revisor's Note:

No substantive change is intended.

(Sections 153.258-153.300 reserved for expansion)

SUBCHAPTER G. REPORTS

Revised Law:

Sec. 153.301. PERIODIC REPORT. The secretary of state may require a domestic limited partnership or a foreign limited partnership registered to transact business in this state to file a report not more than once every four years as required by this subchapter.

Source Law:

TRLPA 13.05(a)

Sec. 13.05. (a) The secretary of state may require a domestic limited partnership or a foreign limited partnership authorized to transact business in this state to file a report as required by this section. The report may not be required to be filed more than once every four years. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.302. FORM AND CONTENTS OF REPORT. (a) The report must:

(1) include:

(A) the name of the limited partnership;

(B) the state or territory under the laws of which the limited partnership is formed;

(C) the address of the registered office of the limited partnership in this state and the name of the registered agent at that address;

(D) the address of the principal office in the United States where records are to be kept or made available under Sections 153.551 and 153.552; and

(E) the name, mailing address, and street address of the business or residence of each general partner;

(2) be made on a form adopted by the secretary of state for that purpose; and

(3) be signed on behalf of the limited partnership by at least one general partner.

(b) The information contained in the report must be given as of the date of the execution of the report.

Source Law:

TRLPA 13.05(a) and (b)

Sec. 13.05. (a) . . . The report must include:

(1) the name of the limited partnership and the state or territory under the laws of which it is organized;

(2) the address of the registered office of the limited partnership in this state and the name of the registered agent at that address;

(3) the address of the principal office in the United States where records are to be kept or made available under Section 1.07 of this Act; and

(4) the name, mailing address, and street address of the business or residence of each general partner.

(b) The report must be made on a form adopted by the secretary of state for that purpose, and the information contained in the report must be given as of the date of the execution of the report. The report must be signed on behalf of the limited partnership by at least one general partner. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.303. FILING FEE. The filing fee for the report is as provided by Chapter 4.

Source Law:

TRLPA 13.05(b)

(b) . . . The filing fee for the report is \$50.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.304. DELIVERY OF REPORT. The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed under Section 153.305.

Source Law:

TRLPA 13.05(c)

(c) The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed by the secretary of state stating that the report is due. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.305. ACTION BY SECRETARY OF STATE. (a) The secretary of state shall send a notice that the report required by Section 153.301 is due.

(b) The notice must be:

(1) addressed to the limited partnership; and

(2) mailed to:

(A) the registered office of the limited partnership;

(B) the last known address of the limited partnership as it appears on record in the office of the secretary of state; or

(C) any other known place of business of the limited partnership.

(c) The secretary of state shall include with the notice a copy of a report form to be prepared and filed as provided by this subchapter.

Source Law:

TRLPA 13.05(c) and (d)

(c) The report must be delivered to the secretary of state not later than the 30th day after the date on which notice is mailed by the secretary of state stating that the report is due. The notice shall be addressed to the limited partnership and mailed to:

(1) the registered office of the limited partnership;

(2) the last known address of the limited partnership as it appears on record in the office of the secretary of state; or

(3) any other known place of business of the limited partnership.

(d) Along with the notice that the report is due, the secretary of state shall mail to the limited partnership copies of a report form to be prepared and filed as provided by this section. Two copies of the report shall be delivered to the secretary of state. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.306. EFFECT OF FILING REPORT. (a) If the secretary of state finds that the report complies with this subchapter, the secretary shall:

(1) accept the report for filing;

(2) acknowledge to the limited partnership of the filing of the report; and

(3) update the records of the secretary of state's office to reflect:

(A) a reported change in the address of the registered office, principal office, or the business or residence address of a general partner; and

(B) a reported change in the name of the registered agent.

(b) The filing of a report under Section 153.301 does not relieve the limited partnership of the requirement to file an amendment to the certificate of formation required under Section 153.051 or 153.052, except that the limited partnership is not required to file an amendment to change the information specified in Subsection (a)(3).

Source Law:

TRLPA 13.05(d) and (e)

(d) . . . If the secretary of state finds that the report complies with this section, the secretary shall:

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

(2) notify the limited partnership of the filing of the report; and

(3) update the records of the secretary of state's office to reflect:

(A) address changes reported for the registered office, principal office, and the business or residence address of a general partner; and

(B) a reported change in the name of the registered agent.

(e) The filing of a report under this section does not relieve the limited partnership of the requirement to file an amendment to the certificate of limited partnership required under Section 2.02 of this Act, except that the limited partnership is not required to file an amendment to change the registered office or agent.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.307. EFFECT OF FAILURE TO FILE REPORT. (a) A domestic or foreign limited partnership that fails to file a report under Section 153.301 when the report is due forfeits the limited partnership's right to transact business in this state. A forfeiture under this section takes effect without judicial ascertainment.

(b) When the right to transact business has been forfeited under this section, the secretary of state shall note that the right to transact business has been forfeited and the date of forfeiture on the record kept in the secretary's office relating to the limited partnership.

Source Law:

TRLPA 13.06(a) and (b)

Sec. 13.06. (a) A domestic or foreign limited partnership that fails to file a report required under Section 13.05 of this Act when due forfeits its right to transact business in this state.

(b) A forfeiture under this section takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation that the right to transact business has been forfeited together with the date of forfeiture. . . .

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.308. NOTICE OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS. Notice of the forfeiture under Section 153.307 shall be mailed to the limited partnership at:

- (1) the registered office of the limited partnership;
- (2) the last known address of the limited partnership; or
- (3) any other place of business of the limited partnership.

Source Law:

TRLPA 13.06(b)

(b) . . . Notice of the forfeiture shall be mailed to the limited partnership at:

- (1) the registered office of the limited partnership;
- (2) the last known address of the limited partnership; or
- (3) any other place of business of the limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.309. EFFECT OF FORFEITURE OF RIGHT TO TRANSACT BUSINESS. (a) Unless the right of the limited partnership to transact business is revived in accordance with Section 153.310:

- (1) the limited partnership may not maintain an action, suit, or proceeding in a court of this state; and
- (2) a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising from the transaction of business by the limited partnership in this state.

(b) The forfeiture of the right to transact business in this state does not:

- (1) impair the validity of a contract or act of the limited partnership; or
- (2) prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.

(c) This section and Sections 153.307 and 153.308 do not affect the liability of a limited partner to the limited partnership.

Source Law:

TRLPA 13.06(c) and (d)

(c) Unless the right of the limited partnership to transact business is revived in accordance with Section 13.07 of this Act, the limited partnership may not maintain an action, suit, or proceeding in a court of this state, and a successor or assignee of the limited partnership may not maintain an action, suit, or proceeding in a court of this state on a right, claim, or demand arising out of the transaction of business by the limited partnership in this state. The forfeiture of the right to transact business in this state does not impair the validity of a contract or act of the limited partnership and does not prevent the limited partnership from defending an action, suit, or proceeding in a court of this state.

(d) This section does not affect the liability of a limited partner in the limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.310. REVIVAL OF RIGHT TO TRANSACT BUSINESS. (a) A limited partnership that forfeits the right to transact business in this state as provided by Section 153.309 may be relieved from the forfeiture by filing the required report not later than the 120th day after the date of mailing of the notice of forfeiture under Section 153.308, accompanied by the filing fees as provided by Chapter 4.

(b) If a limited partnership complies with Subsection (a), the secretary of state shall:

(1) revive the right of the limited partnership to transact business in this state;

(2) cancel the note regarding the forfeiture; and

(3) note the revival and the date of revival on the record kept in the secretary's office relating to the limited partnership.

Source Law:

TRLPA 13.07(a) and (b)

Sec. 13.07. (a) A limited partnership that forfeits the right to transact business in this state as provided by Section 13.06 of this Act may be relieved from the forfeiture by filing the required report not later than the 120th day after the date of mailing of the notice of forfeiture under Section 13.06(b) of this Act, together with:

(1) the filing fee; and

(2) a late fee in an amount equal to the lesser of:

(A) \$25 for each month or fractional part of a month that has elapsed since the date of the notice of forfeiture; or

(B) \$100.

(b) If a limited partnership complies with Subsection (a) of this section, the secretary of state shall revive the right of the limited partnership to transact business in this state, cancelling the notation regarding the forfeiture and noting the revival and the date of revival on the record kept in the secretary's office relating to the limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.311. CANCELLATION OF CERTIFICATE OR REGISTRATION AFTER FORFEITURE. (a) The secretary of state may cancel the certificate of formation of a domestic limited partnership, or the registration of a foreign limited partnership, if the limited partnership:

(1) forfeits its right to transact business in this state under Section 153.307; and

(2) fails to revive that right under Section 153.310.

(b) Cancellation of the certificate or registration takes effect without judicial ascertainment.

(c) The secretary of state shall note the cancellation and the date of cancellation on the record kept in the secretary's office relating to the limited partnership.

(d) On cancellation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner to the limited partnership.

Source Law:

TRLPA 13.08(a) and (b)

Sec. 13.08. (a) The secretary of state may cancel the certificate of a limited partnership, or the registration of a foreign limited partnership, if the limited partnership forfeits its right to transact business in this state under Section 13.06 of this Act and fails to revive that right under Section 13.07 of this Act. The cancellation takes effect without judicial ascertainment. The secretary of state shall enter on the record kept in the secretary's office relating to the limited partnership a notation of the cancellation and the date of cancellation.

(b) On cancellation, the status of the limited partnership is changed to inactive according to the records of the secretary of state. The change to inactive status does not affect the liability of a limited partner of the limited partnership.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.312. REINSTATEMENT OF CERTIFICATE OF FORMATION OR REGISTRATION. (a) A limited partnership the certificate of formation or registration of which has been canceled as provided by Section 153.311 may be

relieved of the cancellation by filing the report required by Section 153.301, accompanied by the filing fees provided by Chapter 4.

(b) If the limited partnership pays the fees required by Subsection (a), the secretary of state shall:

(1) reinstate the certificate or registration of the limited partnership without judicial ascertainment;

(2) change the status of the limited partnership to active; and

(3) note the reinstatement on the record kept in the secretary's office relating to the limited partnership.

(c) If the name of the limited partnership is not available at the time of reinstatement, the secretary of state shall require the limited partnership as a precondition to reinstatement to:

(1) file an amendment to the partnership's certificate of formation; or

(2) in the case of a foreign limited partnership, amend its application for registration to adopt an assumed name for use in this state.

Source Law:

TRLPA 13.09(a) and (b)

Sec. 13.09. (a) A limited partnership whose certificate or registration has been canceled as provided by Section 13.08 of this Act may be relieved of the cancellation by filing the report required by Section 13.05, together with the filing fee for the report, a late fee of \$100, and a reinstatement fee of \$100.

(b) If the limited partnership complies with the fees required by Subsection (a) of this section, the secretary of state shall reinstate the certificate or registration of the limited partnership without judicial ascertainment. The secretary shall change the status of the limited partnership to active and note the reinstatement on the record kept in the secretary's office relating to the limited partnership. If the name of the limited partnership is not available at the time of reinstatement, the secretary shall require the limited partnership to file an amendment to its certificate or application or adopt an assumed name for use in this state as a precondition to reinstatement.

Revisor's Note:

No substantive change is intended.

(Sections 153.313-153.350 reserved for expansion)

SUBCHAPTER H. LIMITED PARTNERSHIP AS LIMITED LIABILITY PARTNERSHIP

Revised Law:

Sec. 153.351. REQUIREMENTS. A limited partnership is a limited liability partnership and a limited partnership if the partnership:

(1) registers as a limited liability partnership:

(A) as permitted by its partnership agreement; or

(B) if its partnership agreement does not include a provision for becoming a limited liability partnership, with the consent of partners required to amend its partnership agreement;

(2) complies with Subchapter J, Chapter 152; and

(3) complies with Chapter 5.

Source Law:

TRLPA 2.14(a)

Sec. 2.14. (a) A limited partnership is a registered limited liability partnership as well as a limited partnership if it:

(1) registers as a registered limited liability partnership as provided by Section 3.08(b), Texas Revised Partnership Act, as permitted by its partnership agreement or, if its partnership agreement does not include provisions for becoming a registered limited liability partnership, with the consent of partners required to amend its partnership agreement;

(2) complies with Section 3.08(d), Texas Revised Partnership Act; and

(3) has as the last words or letters of its name the words "Limited Partnership" or the abbreviation "Ltd." followed by the words "registered limited liability partnership" or the abbreviation "L.L.P."

Revisor's Note:

No substantive change is intended, except as described in the Revisor's Note to Section 5.055.

Revised Law:

Sec. 153.352. APPLICABILITY OF OTHER REQUIREMENTS. For purposes of applying Section 152.802 to a limited partnership:

(1) an application to become a limited liability partnership or to withdraw a registration must be signed by at least one general partner; and

(2) other references to a partner mean a general partner only.

Source Law:

TRLPA 2.14(b)

(b) In applying Section 3.08(b), Texas Revised Partnership Act, to a limited partnership:

(1) an application to become a registered limited liability partnership or to withdraw a registration must be executed by at least one general partner; and

(2) all other references to partners mean general partners only.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.353. LAW APPLICABLE TO PARTNERS. If a limited partnership is a limited liability partnership, Section 152.801 applies to a general partner and to a limited partner who is liable under other provisions of this chapter for the debts or obligations of the limited partnership.

Source Law:

TRLPA 2.14(c)

(c) If a limited partnership is a registered limited liability partnership, Section 3.08(a), Texas Revised Partnership Act, applies to its general partners and to any of its limited partners who, under other provisions of this Act, are liable for the debts or obligations of the limited partnership.

Revisor's Note:

No substantive change is intended.

(Sections 153.354-153.400 reserved for expansion)

SUBCHAPTER I. DERIVATIVE ACTIONS

Revised Law:

Sec. 153.401. RIGHT TO BRING ACTION. A limited partner may bring an action in a court on behalf of the limited partnership to recover a judgment in the limited partnership's favor if:

(1) all general partners with authority to bring the action have refused to bring the action; or

(2) an effort to cause those general partners to bring the action is not likely to succeed.

Source Law:

TRLPA 10.01

Sec. 10.01. A limited partner may bring an action in a court of competent jurisdiction in the right of the limited partnership to recover a judgment in the limited partnership's favor if all 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.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.402. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a limited partner when the action is brought and:

(1) must have been a limited partner at the time of the transaction that is the subject of the action; or

(2) the person's status as a limited partner must have arisen by operation of law or under the terms of the partnership agreement from a person who was a limited partner at the time of the transaction.

Source Law:

TRLPA 10.02

Sec. 10.02. In a derivative action, the plaintiff must be a limited partner at the time of bringing the action and:

(1) must have been a limited partner at the time of the transaction that is the subject of the action; or

(2) must have had status as a limited partner arise by operation of law or under the terms of the partnership agreement from a person who was a limited partner at the time of the transaction.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.403. PLEADING. In a derivative action, the complaint must contain with particularity:

(1) the effort, if any, of the plaintiff to secure initiation of the action by a general partner; or

(2) the reasons for not making the effort.

Source Law:

TRLPA 10.03

Sec. 10.03. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.404. SECURITY FOR EXPENSES OF DEFENDANTS. (a) In a derivative action, the court may require the plaintiff to give security for the reasonable expenses incurred or expected to be incurred by a defendant in the action, including reasonable attorney's fees.

(b) The court may increase or decrease at any time the amount of the security on a showing that the security provided is inadequate or excessive.

(c) If a plaintiff is unable to give security, the plaintiff may file an affidavit in accordance with the Texas Rules of Civil Procedure.

(d) Except as provided by Subsection (c), if a plaintiff fails to give the security within a reasonable time set by the court, the court shall dismiss the suit without prejudice.

(e) The court, on final judgment for a defendant and on a finding that suit was brought without reasonable cause against the defendant, may require the plaintiff to pay reasonable expenses, including reasonable attorney's fees, to the defendant, regardless of whether security has been required.

Source Law:

TRLPA 10.04

Sec. 10.04. In a derivative action, the court having jurisdiction may, in its discretion, require the plaintiff or plaintiffs to give security for the reasonable expenses, including reasonable attorney's fees, incurred or expected to be incurred by one or more of the defendants in defense of the action. The court may, in its discretion at any time, increase or decrease the amount of the security on a showing that the security provided is inadequate or excessive. If the plaintiff is unable to give security, the plaintiff may file an affidavit in accordance with the Texas Rules of Civil Procedure, [See Vernon's Ann.Rules Civ.Proc., rule 145.] and those rules control. If the plaintiff fails to give the security within a reasonable time set by the court, the court, except as provided by the immediately preceding sentence, shall dismiss the suit without prejudice. The court may, on final judgment for one or more defendants and a finding that the suit was brought without reasonable cause against those defendants, require the plaintiff to pay reasonable expenses, including reasonable attorney's fees, to those defendants, whether or not security has been required.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.405. EXPENSES OF PLAINTIFF. If a derivative action is successful, wholly or partly, or if anything is received by the plaintiff because of a judgment, compromise, or settlement of the action or claim constituting a part of the action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to a party identified by the court the remainder of the proceeds received by the plaintiff.

Source Law:

TRLPA 10.05

Sec. 10.05. If a derivative action is successful, in whole or part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of the action or claim constituting a portion of the action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the parties identified by the court the remainder of the proceeds received by the plaintiff.

Revisor's Note:

No substantive change is intended.

(Sections 153.406-153.450 reserved for expansion)

SUBCHAPTER J. CANCELLATION OF CERTIFICATE OF FORMATION

Revised Law:

Sec. 153.451. CERTIFICATE OF CANCELLATION. (a) A certificate of formation shall be canceled by filing a certificate of cancellation with the secretary of state in accordance with Chapter 4:

business;

- (1) on the completion of the winding up of the partnership

- (2) when there are no limited partners; or

- (3) subject to Subsection (b), on a merger or conversion as provided by Chapter 10.

(b) If a limited partnership formed under this code is not one of the surviving or resulting domestic limited partnerships or other entities in a merger or conversion, the certificate of merger or conversion filed under Chapter 10 is sufficient, without a filing under this section, to cancel the certificate of formation of the nonsurviving limited partnership.

(c) To approve a reinstatement of a limited partnership under Section 11.202, all of the remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to reinstate and continue the business of the limited partnership.

(d) To approve a revocation under Section 11.151 by a limited partnership of a voluntary decision to wind up as specified in Section 11.058(a), prior to filing the certificate of cancellation required by Section 53.451, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to revoke the voluntary decision to wind up and continue the business of the limited partnership.

Source Law:

TRLPA 2.03(a) and (c)

Sec. 2.03. (a) A certificate of limited partnership shall be canceled by paying the filing fee and filing a certificate of cancellation with the secretary of state:

- (1) on the completion of the winding up of the partnership;

- (2) when there are no limited partners; or

- (3) subject to Subsection (c) of this section, on a merger or conversion as provided by Subsection (b) of Section 2.11 of this Act or Subsection (c) of Section 2.15 of this Act.

(c) If, in the case of merger or conversion, one or more limited partnerships formed under this Act are not the surviving or resulting domestic limited partnership or partnerships or other entity or entities, the certificate of merger or conversion filed under Subsection (d) of Section 2.11 or Subsection (e) of Section 2.15 of this Act is sufficient, without a filing under this section, to cancel the certificate of limited partnership of those nonsurviving limited partnerships.

Revisor's Note:

No substantive change is intended, except that subsection (c) is added to specify what approval is needed to reinstate a limited partnership under Section 11.202 after filing of the certificate of cancellation.

Revised Law:

Sec. 153.452. CONTENTS OF CERTIFICATE OF CANCELLATION. A certificate of cancellation must contain:

- (1) the name of the limited partnership;

- of formation;
- (2) the date of the filing of the partnership's certificate of formation;
 - (3) the reason for filing the certificate of cancellation;
 - (4) the future effective date or a certain time of cancellation if cancellation is not effective on the filing of the certificate; and
 - (5) other proper information as determined by the person filing the certificate of cancellation.

Source Law:

TRLPA 2.03(b)

(b) A certificate of cancellation must contain:

- (1) the name of the limited partnership;
- (2) the date of the filing of its certificate of limited partnership;
- (3) the reason for filing the certificate of cancellation;
- (4) the future effective date or time, which shall be a date or time certain, of cancellation if it is not to be effective on the filing of the certificate; and
- (5) any other information determined proper by the person filing the certificate of cancellation.

Revisor's Note:

No substantive change is intended.

(Sections 153.453-153.500 reserved for expansion)

SUBCHAPTER K. SUPPLEMENTAL WINDING UP AND TERMINATION PROVISIONS

Revised Law:

Sec. 153.501. CONTINUATION WITHOUT WINDING UP. (a) The limited partnership may cancel an event requiring winding up as specified in Section 11.051(1) or (3) if, not later than the 90th day after the event, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, agree in writing to continue the business of the limited partnership.

(b) The limited partnership may revoke an event requiring winding up as specified in Section 11.058(2) if:

(1) there remains at least one general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partners and those remaining general partners carry on the business; or

(2) not later than one year after the event, all remaining partners, or another group or percentage of partners specified in the partnership agreement:

(A) agree in writing to continue the business of the limited partnership in writing; and

(B) to the extent that they desire or if there are no remaining general partners, agree to the appointment of one or more new general partners.

(c) The appointment of one or more new general partners under Subsection (b)(2)(B) is effective from the date of withdrawal.

(d) To approve a revocation under Section 11.151 by a limited partnership of a voluntary decision to wind up as specified in Section 11.058(1), prior to filing the certificate of cancellation required by Section 153.451, all remaining partners, or another group or percentage of partners as specified by the partnership agreement, must agree in writing to revoke the voluntary decision to wind up and continue the business of the limited partnership.

Source Law:

TRLPA 8.01(1) and (3)

(1) the occurrence of events specified in the partnership agreement to cause dissolution unless within 90 days after the event causing the dissolution, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership;

(3) an event of withdrawal of a general partner, unless:

(A) there remains at least one general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner or general partners, and that general partner or those general partners do so; or

(B) within 90 days after the event of withdrawal, all remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree in writing to continue the business of the limited partnership and, to the extent that they desire or if there are no remaining general partners, agree to the appointment, effective as of the date of withdrawal, of one or more new general partners; or

Revisor's Note:

Section 8.01(3) of the TRLPA provides that the business of a limited partnership may be continued upon the occurrence of an event of withdrawal of a general partner under certain circumstances, including if the remaining partners (or another group or percentage of partners as specified by the partnership agreement) agree within 90 days after the event of withdrawal. Section 153.501(b)(2) carries over the same concept, except to extend the time afforded the remaining partners (or group or percentage of partners) to one year. The short 90 day period was thought necessary prior to the IRS "check-the-box" rules to retain the partnership's "flow through" tax status. With the adoption of the check-the-box rules, a more flexible time period of one year is advisable to prevent an unintended, forced winding up, especially when the partners are unaware that a corporate general partner's certificate of formation has been forfeited or terminated.

Subsection (c) of the revised law is added to specify what approval is needed under Section 11.151 to revoke a voluntary decision to wind up as specified in Section 11.058(1). That approval must be obtained before the certificate of

cancellation is filed in accordance with Section 153.451.
Subsection (c) clarifies what was implicit in the source law.

Revised Law:

Sec. 153.502. WINDING UP PROCEDURES. (a) Except as provided by the partnership agreement, the winding up of the partnership's affairs shall be accomplished by:

- (1) the general partners;
- (2) if there are no general partners, the limited partners or a person chosen by the limited partners; or
- (3) a person appointed by the court to carry out the winding up under Subsection (b).

(b) On application of a partner or a partner's legal representative or transferee, a court, on cause shown, may wind up the limited partnership's affairs and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

Source Law:

TRLPA 8.04(a)

Sec. 8.04. (a) Except as provided in the partnership agreement, on the dissolution of a limited partnership, the partnership's affairs shall be wound up as soon as reasonably practicable, and the winding up shall be accomplished by the general partners who have not wrongfully dissolved a limited partnership or, if there are none who have not wrongfully dissolved the partnership, by the limited partners or a person chosen by the limited partners. In addition, a court of competent jurisdiction, on cause shown, may wind up the limited partnership's affairs on application of any partner or the partner's legal representative or assignee and, in connection with the winding up, may appoint a person to carry out the liquidation and may make all other orders, directions, and inquiries that the circumstances require.

Revisor's Note:

TRLPA 8.04(a) specifically provides that the winding up of a limited partnership can be accomplished only by general partners who have not wrongfully dissolved the limited partnership. Sec. 153.502 does not contain such language, since Sec. 153.155 provides that a person ceases to be a general partner of a limited partnership upon the occurrence of, among other things, such person's withdrawal as a general partner (which includes a wrongful withdrawal).

Revised Law:

Sec. 153.503. POWERS OF PERSON CONDUCTING WIND UP. (a) After an event requiring the winding up of a limited partnership and until the filing of a certificate of cancellation as provided by Sections 153.451 and 153.452, unless a written partnership agreement provides otherwise, a person winding up the limited partnership's business in the name of and on behalf of the limited partnership may take the actions specified in Sections 11.052 and 11.053.

(b) The acts described by Subsection (a) do not create a liability for a limited partner that did not exist before an action to wind up the business of the partnership was taken.

Source Law:

TRLPA 8.04(b) and (c)

(b) On the dissolution of a limited partnership and until the filing of a certificate of cancellation as provided by Section 2.03 of this Act, unless a written partnership agreement provides otherwise, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership:

- (1) prosecute and defend civil, criminal, or administrative suits;
- (2) settle and close the limited partnership's business;
- (3) dispose of and convey the limited partnership's property for cash, unless a written partnership agreement permits a transfer on noncash terms;
- (4) discharge or make reasonable provision to pay the limited partnership's liabilities; and
- (5) distribute to the partners any remaining assets of the limited partnership.

(c) The acts described in Subsection (b) of this section do not create liability of limited partners that did not exist before the actions to wind up the affairs of the partnership were taken.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.504. DISPOSITION OF ASSETS. On the winding up of a limited partnership, its assets shall be paid or transferred as follows:

- (1) to the extent otherwise permitted by law, to creditors, including partners who are creditors other than solely because of the application of Section 153.207 for the payment or the making of reasonable provision for payment to satisfy the liabilities of the limited partnership;
- (2) unless otherwise provided by the partnership agreement, to partners and former partners to satisfy the partnership's liability for distributions under Section 153.111 or 153.209; and
- (3) unless otherwise provided by the partnership agreement, to partners first for the return of their capital and second with respect to their partnership interests, in the proportions provided by Sections 153.208(a) and (b).

Source Law:

TRLPA 8.05

Sec. 8.05. On the winding up of a limited partnership, its assets shall be paid or transferred as follows:

- (1) to the extent otherwise permitted by law, to creditors, including partners who are creditors other than solely as a result of the application of Section 6.06 of this Act, in satisfaction of liabilities of the limited partnership, whether

by payment or the making of reasonable provision for payment thereof;

(2) unless otherwise provided by the partnership agreement, to partners and former partners in satisfaction of the partnership's liability for distributions under Section 6.01 of this Act or payments under Section 6.04 of this Act; and

(3) unless otherwise provided by the partnership agreement, to partners first for the return of their capital and second with respect to their partnership interests, in the proportions provided by Section 5.04 of this Act.

Revisor's Note:

No substantive change is intended.

(Sections 153.505-153.550 reserved for expansion)

SUBCHAPTER L. MISCELLANEOUS PROVISIONS

Revised Law:

Sec. 153.551. RECORDS. (a) A domestic limited partnership shall maintain the following records in its principal office in the United States or make the records available in that office not later than the fifth day after the date on which a written request under Section 153.552(a) is received:

(1) a current list that states:

(A) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

(B) the last known street address of the business or residence of each general partner;

(C) the percentage or other interest in the partnership owned by each partner; and

(D) if one or more classes or groups are established under the partnership agreement, the names of the partners who are members of each specified class or group;

(2) a copy of:

(A) the limited partnership's federal, state, and local information or income tax returns for each of the partnership's six most recent tax years;

(B) the partnership agreement and certificate of formation; and

(C) all amendments or restatements;

(3) copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners;

(4) an executed copy of any powers of attorney under which the partnership agreement, certificate of formation, and all amendments or restatements to the agreement and certificate have been executed;

(5) unless contained in the written partnership agreement, a written statement of:

(A) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each partner;

(B) the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make in the future as an additional contribution;

(C) the date on which additional contributions are to be made or the date of events requiring additional contributions to be made;

(D) events requiring the limited partnership to be dissolved and its affairs wound up; and

(E) the date on which each partner in the limited partnership became a partner; and

(6) books and records of the accounts of the limited partnership.

(b) A limited partnership shall maintain its records in written form or in another form capable of being converted to written form in a reasonable time.

(c) A limited partnership shall keep in its registered office in this state and make available to a partner on reasonable request the street address of its principal office in the United States in which the records required by this section are maintained.

Source Law:

TRLPA 1.07(a), (b) and (c)

Sec. 1.07. (a) A domestic limited partnership shall keep and maintain the following records in its principal office in the United States or make them available in that office within five days after the date of receipt of a written request under Subsection (d) of this section:

(1) a current list that states:

(A) the name and mailing address of each partner, separately identifying in alphabetical order the general partners and the limited partners;

(B) the last known street address of the business or residence of each general partner;

(C) the percentage or other interest in the partnership owned by each partner; and

(D) if one or more classes or groups are established in or under the partnership agreement, the names of the partners who are members of each specified class or group;

(2) copies of the limited partnership's federal, state, and local information or income tax returns for each of the partnership's six most recent tax years;

(3) a copy of the partnership agreement and certificate of limited partnership, all amendments or restatements, executed copies of any powers of attorney under which the partnership agreement, certificate of limited partnership, and all amendments or restatements to the agreement and certificate

have been executed, and copies of any document that creates, in the manner provided by the partnership agreement, classes or groups of partners;

(4) unless contained in the written partnership agreement, a written statement of:

(A) the amount of the cash contribution and a description and statement of the agreed value of any other contribution made by each partner, and the amount of the cash contribution and a description and statement of the agreed value of any other contribution that the partner has agreed to make in the future as an additional contribution;

(B) the times at which additional contributions are to be made or events requiring additional contributions to be made;

(C) events requiring the limited partnership to be dissolved and its affairs wound up; and

(D) the date on which each partner in the limited partnership became a partner; and

(5) books and records of account of the limited partnership.

(b) A limited partnership shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(c) A limited partnership shall keep in its registered office in Texas and make available to partners on reasonable request the street address of its principal United States office in which the records required by this section are maintained or will be available.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.552. EXAMINATION OF RECORDS AND INFORMATION. (a) On written request stating a proper purpose, a partner or an assignee of a partnership interest may examine and copy, in person or through a representative, records required to be kept under Section 153.551 and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.

(b) The records requested under Subsection (a) may be examined and copied at a reasonable time and at the partner's sole expense.

(c) On written request by a partner or an assignee of a partnership interest, the partnership shall provide to the requesting partner or assignee without charge copies of:

(1) the partnership agreement and certificate of formation and all amendments or restatements; and

(2) any tax return described by Section 153.551(a)(2). (d) A request made under Subsection (c) must be made to:

(1) the person who is designated to receive the request in the partnership agreement at the address designated in the partnership agreement; or

(2) if there is no designation, a general partner at the partnership's principal office in the United States.

Source Law:

TRLPA 1.07(d) and (e)

(d) A partner or an assignee of a partnership interest, on written request stating the purpose, may examine and copy, in person or by the partner's or assignee's representative, at any reasonable time, for any proper purpose, and at the partner's expense, records required to be kept under this section and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person to examine and copy.

(e) On the written request by any partner or an assignee of a partnership interest made to the person and address designated in the partnership agreement or, if there is no designation, to a general partner at the partnership's principal United States office, the partnership shall provide to the requesting partner or assignee without charge true copies of:

(1) the partnership agreement and certificate of limited partnership and all amendments or restatements; and

(2) any of the tax returns described in Subdivision (2) of Subsection (a) of this section.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.553. EXECUTION OF CERTAIN FILINGS. (a) Each certificate required by this code to be filed by a limited partnership with the secretary of state shall be executed as follows:

(1) an initial certificate of formation must be signed as provided in Section 3.004(b)(1), except for an initial certificate of formation signed by a person under Section 153.106(1);

(2) a certificate of amendment or restated certificate of formation must be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a new general partner, unless signed and filed by a person under Section 153.052(b), 153.052(c), or 153.106(1), but the certificate of amendment need not be signed by a withdrawing general partner;

(3) a certificate of cancellation must be signed by all general partners participating in the winding up of the limited partnership's business or, if no general partners are winding up the limited partnership's business, by all nonpartner liquidators or, if the limited partners are winding up the limited partnership's business, by a majority-in-interest of the limited partners;

(4) a certificate of merger filed on behalf of a domestic limited partnership must be signed as provided by Chapter 10;

(5) a certificate filed under Section 10.251 must be signed by the person designated by the court; and

(6) a certificate of correction must be signed by at least one general partner.

(b) Any person may sign a certificate or partnership agreement or amendment or restated certificate by an attorney in fact. A power of attorney relating to the signing of a certificate or partnership agreement or amendment or restated certificate by an attorney in fact:

(1) is not required to be sworn to, verified, or acknowledged;

(2) is not required to be filed with the secretary of state; and

(3) shall be retained with the partnership records under Sections 153.551 and 153.552.

(c) The execution of a certificate by a general partner or the execution of a written statement by a person under Section 153.106(2) is an oath or affirmation, under a penalty of perjury, that, to the best of the executing party's knowledge and belief, the facts stated in the certificate or statement are true.

Source Law:

TRLPA 2.04(a), (b) and (c)

Sec. 2.04. (a) Each certificate required by this article to be filed with the secretary of state shall be executed in the following manner:

(1) an initial certificate of limited partnership or a certificate of conversion must be signed by all general partners, except for an initial certificate of limited partnership signed and filed by a person under Subdivision (1) of Subsection (a) of Section 3.04 of this Act;

(2) a certificate of amendment or restated certificate must be signed by at least one general partner and by each other general partner designated in the certificate of amendment as a new general partner, unless signed and filed by a person under Subsection (f) of Section 2.02 of this Act or under Subdivision (1) of Subsection (a) of Section 3.04 of this Act, but the certificate of amendment need not be signed by a withdrawing general partner;

(3) a certificate of cancellation must be signed by all general partners participating in the winding up of the limited partnership's affairs or, if no general partners are winding up the limited partnership's affairs, then by all non-partner liquidators, or, if the limited partners are winding up the limited partnership's affairs, by a majority in interest of the limited partners;

(4) a certificate of merger filed on behalf of a domestic limited partnership must be signed as provided in Subsection (d), Section 2.11 of this Act;

(5) a certificate filed under Section 2.06 of this Act must be signed by the person designated by the court; and

(6) a certificate of correction must be signed by at least one general partner.

(b) Any person may sign a certificate or partnership agreement or amendment or restated certificate by an attorney in fact. A power of attorney relating to the signing of a certificate or partnership agreement or amendment or restated certificate by an attorney in fact need not be sworn to, verified, or acknowledged, and need not be filed with the secretary of state, but shall be retained with the partnership records under Section 1.07 of this Act.

(c) The execution of a certificate by a general partner or the execution of a written statement by a person under Subdivision (2) of Subsection (a) of Section 3.04 of this Act constitutes an oath or affirmation, under the penalties for perjury, that, to the best of the executing party's knowledge and belief, the facts stated in the certificate or statement are true.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.554. EXECUTION, AMENDMENT, OR CANCELLATION BY JUDICIAL ORDER. (a) If a person fails or refuses to execute or file a certificate as required by this chapter or Title 1 or to execute a partnership agreement, another person adversely affected by the failure or refusal may petition a court to direct the execution or filing of the certificate or the execution of the partnership agreement, as appropriate.

(b) If the court finds that the execution or filing of the certificate is proper and that a person required to execute or file the certificate has failed or refused to execute or file the certificate, the court shall order the secretary of state to record an appropriate certificate.

(c) The judicial remedy described by Subsection (b) is not a limit on the rights of a person to file a written statement under Section 153.106(2).

(d) If the court finds that the partnership agreement should be executed and that a person required to execute the partnership agreement has failed or refused to execute the agreement, the court shall enter an order granting appropriate relief.

(e) If a court enters an order in favor of the adversely affected person requesting relief under this section, the court shall award to that person reasonable expenses, including reasonable attorney's fees.

Source Law:

TRLPA 2.05(a), (b) and (c)

Sec. 2.05. (a) If a person required by this Act to execute or file a certificate fails or refuses to do so, another person adversely affected by that failure or refusal may petition a court of competent jurisdiction to direct the execution or filing of the certificate. If the court finds that the execution or filing of the certificate is proper and that a person required to execute or file the certificate has failed or refused to do so, the court shall order the secretary of state to record an appropriate certificate. This judicial remedy is not a limit on the rights of a person to file a written statement under Subdivision (2) of Subsection (a) of Section 3.04 of this Act.

(b) If a person required to execute a partnership agreement fails or refuses to do so, another person adversely affected by

that failure or refusal may petition a court of competent jurisdiction to direct the execution of the partnership agreement. If the court finds that the partnership agreement should be executed and that a person required to do so has failed or refused to do so, the court shall enter an order granting appropriate relief.

(c) If a court enters an order in favor of the adversely affected person requesting relief under this section, the court shall award to that person reasonable expenses, including reasonable attorney's fees.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 153.555. PERMITTED TRANSFER IN CONNECTION WITH RACETRACK LICENSE. The following transfer relating to a limited partnership is not a prohibited transfer that violates Section 6.12(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes):

(1) a transfer by a general partnership of its assets to a limited partnership, the corporate general partner of which is controlled by the partners of the general partnership; or

(2) a transfer by a limited partnership of the beneficial use of or interest in any of its rights, privileges, or assets to a local development corporation incorporated before January 31, 1993, under Subchapter D, Chapter 431, Transportation Code.

Source Law:

TRLPA 7.06

Sec. 7.06. A transfer by a general partnership of its assets to a limited partnership, the corporate general partner of which is controlled by the partners of the general partnership, or by a limited partnership of the beneficial use of or interest in any of its rights, privileges, or assets to a local development corporation incorporated before January 31, 1993, pursuant to Section 4A, Texas Transportation Corporation Act (Article 15281, Vernon's Texas Civil Statutes), is not a prohibited transfer in violation of Section 6.12(a), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

Revisor's Note:

No substantive change is intended.

CHAPTER 154. PROVISIONS APPLICABLE TO BOTH GENERAL
AND LIMITED PARTNERSHIPS

SUBCHAPTER A. PARTNERSHIP INTERESTS

Revised Law:

Sec. 154.001. NATURE OF PARTNER'S PARTNERSHIP INTEREST. (a) A partner's partnership interest is personal property for all purposes.

(b) A partner's partnership interest may be community property under applicable law.

(c) A partner is not a co-owner of partnership property.

Source Law:

TRPA 5.01

Art. 6132b-5.01. Partner's Interest in Partnership Property not Transferable

A partner is not a co-owner of partnership property and does not have an interest that can be transferred, either voluntarily or involuntarily, in partnership property.

TRPA 5.02(a)

(a) Personal Property. A partner's partnership interest is personal property for all purposes. A partner's partnership interest may be community property under applicable law.

TRLPA 7.01

Sec. 7.01. A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 154.002. TRANSFER OF INTEREST IN PARTNERSHIP PROPERTY PROHIBITED. A partner does not have an interest that can be transferred, voluntarily or involuntarily, in partnership property.

Source Law:

TRPA 5.01

Art. 6132b-5.01. Partner's Interest in Partnership Property not Transferable

A partner is not a co-owner of partnership property and does not have an interest that can be transferred, either voluntarily or involuntarily, in partnership property.

TRLPA 7.01

Sec. 7.01. A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Revisor's Note:

No substantive change is intended.

(Sections 154.003-154.100 reserved for expansion)

SUBCHAPTER B. PARTNERSHIP AGREEMENT

Revised Law:

Sec. 154.101. CLASS OR GROUP OF PARTNERS. (a) A written partnership agreement may establish or provide for the future creation of additional classes or groups of one or more partners that have certain express relative rights, powers, and duties, including voting rights. The future creation of additional classes or groups may be expressed in the partnership agreement or at the time of creation of the class or group.

(b) The rights, powers, or duties of a class or group of partners may be senior to those partners of an existing class or group.

Source Law:

TRPA 4.01(1)

(1) Classes or Groups of Partners. A written partnership agreement may establish classes or groups of one or more partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation of additional classes or groups of partners having certain relative rights, powers, and duties, including voting rights, expressed in the partnership agreement or at the time of creation of the class or group. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of partners.

TRLPA 3.02(a)

Sec. 3.02. (a) A written partnership agreement may establish classes or groups of one or more limited partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation, in the manner provided in the partnership agreement, of additional classes or groups of limited partners having certain relative rights, powers, or duties, including voting rights, expressed either in the partnership agreement or at the time of creation. The rights, powers, or duties of a class or group may be senior to those of one or more existing classes or groups of limited partners.

TRLPA 4.05(a)

Sec. 4.05. (a) A written partnership agreement may establish classes or groups of one or more general partners having certain expressed relative rights, powers, and duties, including voting rights, and may provide for the future creation of additional classes or groups of general partners having certain relative rights, powers, and duties, including voting rights, expressed in the partnership agreement or at the time of creation of the class or group. The rights, powers, or duties may be senior to those of one or more existing classes or groups of general partners.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 154.102. PROVISIONS RELATING TO VOTING. A written partnership agreement that grants or provides for granting a right to vote to a partner may contain a provision relating to:

- (1) giving notice of the time, place, or purpose of a meeting at which a matter is to be voted on by the partners;
- (2) waiver of notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or

(7) other matters relating to the exercise of the right to vote.

Source Law:

TRPA 4.01(m)

(m) Voting Rights. A written partnership agreement that grants or provides for granting to a partner a right to vote may contain provisions relating to:

- (1) giving notice of the time, place, or purposes of a meeting at which a matter is to be voted on by the partners;
- (2) waiver of notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or
- (7) any other matter relating to the exercise of the right to vote.

TRLPA 3.02(b)

(b) A written partnership agreement that grants or makes provision for granting to any of its limited partners a right to vote may contain provisions relating to:

- (1) notice of the time, place, or purpose of a meeting at which a matter is to be voted on by any limited partners;
- (2) waiver of a notice;
- (3) action by consent without a meeting;
- (4) the establishment of a record date;
- (5) quorum requirements;
- (6) voting in person or by proxy; or
- (7) any other matter relating to the exercise of the right to vote.

TRLPA 4.05(b)

(b) A written partnership agreement that grants or makes provision for granting to any of its general partners a right to vote may contain provisions relating to giving notice of the time, place, or purpose of a meeting at which a matter is to be voted on by any general partners, waiver of notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter relating to the exercise of the right to vote.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 154.103. NOTICE OF ACTION BY CONSENT WITHOUT A MEETING. (a) Prompt notice of the taking of an action under a partnership agreement that may be taken without a meeting by consent of fewer than all of the partners shall be given to a partner who has not given written consent to the action.

(b) For purposes of this section, the "taking of an action" includes:

(1) amending the partnership agreement; or

(2) creating under the partnership agreement a class of partners that did not previously exist.

Source Law:

TRPA 4.01(n)

(n) Notice of Nonunanimous Action. (1) Prompt notice of the taking of an action under an agreement that requires consent of fewer than all of the partners and that may be taken without a meeting shall be given to the partners who have not consented in writing to the action.

(2) For the purposes of this section, the taking of an action includes amending the partnership agreement or creating, under provisions of the partnership agreement, a class of partner that did not previously exist.

TRLPA 3.02(c) and (d)

(c) Prompt notice of the taking of an action under an agreement that requires less than unanimous written consent of the limited partners and that may be taken without a meeting shall be given to the limited partners who have not consented in writing to the taking of the action.

(d) For the purposes of this section, the taking of an action includes amending the limited partnership agreement or creating, under provisions of the partnership agreement, a class of limited partnership interests that was not previously outstanding.

Revisor's Note:

No substantive change is intended.

(Sections 154.104-154.200 reserved for expansion)

SUBCHAPTER C. PARTNERSHIP TRANSACTIONS AND RELATIONSHIPS

Revised Law:

Sec. 154.201. BUSINESS TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP. Except as otherwise provided by the partnership agreement, a partner may lend money to and transact other business with the partnership. Subject to other applicable law, a partner has the same rights and obligations with respect to those matters as a person who is not a partner.

Source Law:

TRPA 4.01(k)

(k) Partner Transaction of Business with Partnership. A partner may lend money to or transact other business with a partnership and, subject to other applicable law, has the same

rights and obligations with respect to that matter as a person who is not a partner.

TRLPA 1.10

Sec. 1.10. Except as otherwise provided by the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect to those matters as a person who is not a partner.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 154.202. EFFECT OF PARTNER CHANGE ON RELATIONSHIP BETWEEN PARTNERSHIP AND CREDITORS. The relationships between a partnership and its creditors are not affected by the:

- (1) withdrawal of a partner; or
- (2) addition of a new partner.

Source Law:

TRPA 2.06(c)

(c) Effect of Withdrawal on Relation Between Creditor and Partnership. Relationships between a partnership and its creditors are not affected by the withdrawal of a partner or by the addition of a new partner.

Revisor's Note:

No substantive change is intended.

Revised Law:

Sec. 154.203. DISTRIBUTIONS IN KIND. (a) Except as provided by the partnership agreement, a partner, regardless of the nature of the partner's contribution, is not entitled to demand or receive from a partnership a distribution in any form other than cash.

(b) Except as provided by the partnership agreement, a partner may not be compelled to accept a disproportionate distribution of an asset in kind from a partnership to the extent that the percentage portion of assets distributed to the partner exceeds the percentage of those assets that equals the percentage in which the partner shares in distributions from the partnership.

Source Law:

TRPA 4.02

Art. 6132b-4.02. Distribution in Kind

A partner does not have a right to receive, and may not be required to accept, a distribution in kind.

TRLPA 6.05

Sec. 6.05. Except as provided by the partnership agreement, a partner, regardless of the nature of the partner's contribution, may not demand or receive a distribution from a limited partnership in any form other than cash. Except as otherwise provided by the partnership agreement, a partner may

not be compelled to accept a disproportionate distribution of an asset in kind from a limited partnership to the extent that the percentage portion of any assets distributed to the partner exceeds the percentage of those assets that equals the percentage in which the partner shares in distributions from the limited partnership.

Revisor's Note:

No substantive change is intended.