



Aida S. Montano

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 332**

127th General Assembly  
(As Introduced)

**Reps. Wagoner and Combs, Webster, Seitz, Yates, Latta, J. McGregor, Hite, Stebelton, Oelslager**

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### **BILL SUMMARY**

- Adopts a version of the Revised Uniform Partnership Act (1997) as new R.C. Chapter 1776.<sup>1</sup> to govern new partnerships effective January 1, 2009, and existing partnerships that elect on and after that date to be governed by the Act and to govern all partnerships effective January 1, 2010. The chapter is cited as the "Ohio Uniform Partnership Act (1997)."

### **GENERAL PROVISIONS**

- Specifies the general rules that apply regarding a person's knowledge, notice, or receipt of notification of a fact.
- Generally provides that the partnership agreement, and the chapter to the extent not otherwise provided in the partnership agreement, governs the relations among the partners and between the partners and the partnership and specifies the provisions that the partnership agreement may not waive.
- Consolidates the provisions regarding the execution, filing, and recording of various statements and provides that the execution, amendment, or cancellation of a statement may be made by judicial order upon petition by an adversely affected person.
- Requires the appointment of a statutory agent for the service of any legal process, notice, or demand on a partnership that maintains an effective statement of partnership authority and provides the manner of that

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<sup>1</sup> Hereafter in the analysis referred to as "the chapter."

service, permits the service of legal process upon a partnership that has not filed a statement of partnership authority to be made on a partner, and provides the manner of service of legal process on a partner or liquidating trustee of a partnership.

### **NATURE OF PARTNERSHIP**

- States that a partnership is an entity distinct from its partners, provides that generally any association of two or more persons to carry on as co-owners a business for-profit forms a partnership whether or not the persons intend to form a partnership, and specifies the rules that apply in determining whether a partnership is formed.
- Provides that property acquired by a partnership is property of the partnership and not the property of the partners individually and specifies the manner in which property is acquired in order for it to be considered partnership property.
- Specifically permits a partner's contribution to be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or perform services and obligates a partner to perform any promise to make a contribution.

### **RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP**

- States that each partner is an agent of the partnership for the purpose of its business and specifies the circumstances under which an act of a partner binds the partnership.
- Provides the manner in which partnership property may be transferred and permits a partnership to recover partnership property from a transferee only if the instrument of initial transfer did not bind the partnership and the transferee knew or had notice that the person who executed the instrument lacked authority to bind the partnership.
- Authorizes a partnership to file a statement of partnership authority, specifies the circumstances under which a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership, and permits a person named in the statement of partnership authority to file a statement of denial of a fact, including a denial of the person's authority or status as a partner.

- Provides that a partnership is liable to another person for a partner's actionable conduct while acting in the ordinary course of the partnership business or with the partnership's authority, generally provides that all partners are liable jointly and severally for all partnership obligations, and provides that an obligation of a partnership incurred while it is a limited liability partnership is solely the partnership's obligation.
- Specifically permits actions to be brought against the partnership and any or all of the partners and precludes a judgment creditor of a partner from levying execution against the partner's assets to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim and certain conditions apply.
- Specifies the circumstances in which a purported partner is liable to any person to whom the partner's representation as a partner is made.

#### **RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP**

- Considers each partner to have an account that is credited with the partner's contributions and share of the profits and charged with an amount the partnership distributes to the partner and share of the losses and specifies a partner's rights and duties, including the right to have access to the partnership books and records and to be furnished any information concerning the partnership business and affairs.
- States that the only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care, specifies the aspects of those duties and the general standards of a partner's conduct, and requires a partner to exercise any rights consistent with the obligation of good faith and fair dealing.
- Permits a partnership to maintain an action against a partner for breach of the partnership agreement or violation of a duty to the partnership and permits a partner to maintain an action against the partnership or another partner to enforce the partner's rights.

#### **TRANSFEREES OR CREDITORS OF PARTNER**

- States that a partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred and that a partner's "economic interest" (share of profits and losses and right to receive

distributions) is personal property and the only transferable interest of a partner.

- Specifies the rights of a transferee of a partner's economic interest and provides that such a transfer does not entitle the transferee to participate in the conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy partnership books or records.
- Authorizes a court to charge a partner's economic interest to satisfy a judgment against a partner or a partner's transferee, permits an interest charged to be redeemed before foreclosure, and provides that the chapter does not deprive a partner of any right under the exemption laws with respect to the partner's interest in the partnership.

### **PARTNER'S DISSOCIATION**

- Specifies the events the occurrence of which cause a partner's dissociation from a partnership, including a partner's express will to withdraw, expulsion, becoming a debtor in bankruptcy, executing an assignment for the benefit of creditors, death, or a tribunal's determination of a partner's incapacity to perform duties under the partnership agreement, and specifies the effects of a partner's dissociation.
- Provides that a partner's dissociation is wrongful only if it is in breach of an express provision of the partnership agreement or, under certain conditions, if it occurs before the expiration of the partnership's definite term or the completion of a particular undertaking.

### **PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP**

- If a partner's dissociation does not result in a dissolution and winding up of the partnership business, requires the partnership to cause the dissociated partner's interest in the partnership to be purchased for a buyout price reduced by specified offsets including damages for wrongful dissociation, prescribes the procedures for payment of an estimated buyout price or deferred payment of the buyout price, and permits the dissociated partner to maintain an action against the partnership for the determination of the buyout price and any offsets.

- Specifies the period of time and the circumstances under which a dissociated partner may bind the partnership by entering into a transaction with another party and the circumstances under which a dissociated partner is liable as a partner to another party in a transaction entered into by the partnership, and provides that the continued use of the partnership name or a dissociated partner's name as part of thereof by partners continuing the business does not of itself make the dissociated partner liable for an obligation of those partners or that partnership.
- Permits a dissociated partner or the partnership to file a statement of dissociation.

### **WINDING UP OF PARTNERSHIP BUSINESS**

- Lists the events the occurrence of which cause a partnership to be dissolved and the partnership business wound up, provides that a partnership may continue after dissolution only for the purpose of winding up its business, permits all of the partners to waive the right to have the business wound up and the partnership terminated, and authorizes a court of common pleas on application and for good cause to order judicial supervision of the winding up.
- Provides that a partnership is bound by a partner's act after dissolution if the act is appropriate for winding up the business or the act would have bound the partnership before dissolution if the other party to the transaction did not have notice of the dissolution and provides that a partner is liable to the other partners for the partner's share of partnership liabilities.
- Permits a partner who has not wrongfully dissociated to file a statement of dissolution, which cancels a filed statement of partnership authority; requires the partnership assets and the partners' contributions to be applied to discharge partnership obligations to creditors, including partners who are creditors; and prescribes the procedures for the settlement of all partnership accounts upon winding up.

### **MERGERS, CONSOLIDATIONS, CONVERSIONS**

- Essentially retains the existing laws pertaining to the procedures for and effects of a partnership's merger or consolidation into a surviving or new domestic general partnership or into an entity other than a domestic

general partnership, the conversion of a domestic or foreign entity into a domestic partnership, and the conversion of a domestic partnership into a domestic or foreign entity; the rights and liabilities of former general partners, including a dissenting partner's right to demand the fair cash value of the partner's interests; and the rights of certain judgment creditors.

### **LIMITED LIABILITY PARTNERSHIP AND FOREIGN LIMITED LIABILITY PARTNERSHIP**

- Authorizes a partnership to become a limited liability partnership by filing a statement of qualification with the Secretary of State, requires the name of a limited liability partnership to contain specified phrases or abbreviations indicating the partnership as having limited liability, imposes limitations on the partnership's making distributions to partners, and specifies the liability for making wrongful distributions.
- Requires a foreign limited liability partnership to file a statement of foreign qualification with the Secretary of State prior to transacting any business in Ohio, prescribes the effects of a foreign limited liability partnership's failure to file that statement, lists the types of activities that do not constitute transacting business for the purpose of filing the statement of foreign qualification, and requires the name of a foreign limited liability partnership to end with specified phrases or abbreviations indicating the partnership as having limited liability.
- Requires a limited liability partnership and a foreign limited liability partnership authorized to transact business in Ohio to file an annual report with the Secretary of State and prescribes the procedures for the revocation of a statement of qualification upon failure to file the annual report.
- Provides the procedures for a limited partnership to become a limited liability partnership.

### **MISCELLANEOUS PROVISIONS**

- Provides that the chapter is to be applied and construed to effectuate the purpose to make uniform the law among the states enacting the Uniform Partnership Act (1997) and that the chapter does not affect any action or

proceeding that commences, and any right that accrues, before the date the partnership is governed by the chapter.

- Provides that the existing partnership laws, R.C. Chapter 1775. (Uniform Partnership Act), R.C. Chapter 1777. (Partnerships--frauds; fictitious names), and R.C. Chapter 1779. (Surviving partners) do not govern any partnership effective January 1, 2010, any partnership formed on or after January 1, 2009, or any partnership that elects to be governed by new R.C. Chapter 1776. on and after January 1, 2009.
- Provides that the chapter's provisions on the liability of partners to third parties apply to limit those partners' liability to third parties who did business with the partnership within one year before the partnership's election to be governed by the chapter only if the third party knows or receives notice of that partnership's election.
- Specifies the filing fees for the filing of specified statements or reports with the Secretary of State.
- Modifies the requirements pertaining to a partnership's registration of a trade name, or report of the use of a fictitious name, with the Secretary of State and the renewal of the registration or report.

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**CONTENT AND OPERATION**

**Overview of the bill**

The bill, by enacting new R.C. Chapter 1776., adopts a version of the Revised Uniform Partnership Act (1997) of the National Conference of Commissioners on Uniform State Laws, to be known as the "Ohio Uniform Partnership Act (1997)." Effective January 1, 2009, the Act governs new partnerships. Existing partnerships may elect to be governed by the Act. Effective January 1, 2010, all partnerships in Ohio are governed by the Act and will not be governed by the existing Ohio General Partnership Law (R.C. 1775., 1777., and 1779.). The Act does not affect the existing Limited Partnership Law (R.C. Chapter 1782.)

## GENERAL PROVISIONS

### Definitions

#### The bill

The bill defines the following terms as used in new R.C. Chapter 1776. that it creates (R.C. 1776.01):<sup>2</sup>

"Business" includes every trade, occupation, and profession.

"Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the U.S. Code, a comparable order under a successor statute of general application, or a comparable order under any federal, state, or foreign law governing insolvency.

"Constituent" means in a merger or consolidation, the domestic or foreign entity that merges into another entity, the entity into which another entity is merged, or an existing entity consolidated along with another entity into a new entity.

"Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner, or to a transferee of the partner.

"Domestic partnership" means a partnership formed under R.C. 1776.22 or a predecessor law.

"Economic interest" means a partner's share of the profits and losses of a partnership and the partner's right to receive distributions.

"Entity" means a for-profit corporation existing under the laws of Ohio or any other state or any of the following organizations existing under the laws of Ohio, the United States, or any other state: a business trust or association, a real estate investment trust, a common law trust, an unincorporated business or for-profit organization including a general or limited partnership, a limited liability company, or a nonprofit corporation.

"Foreign entity" means an entity formed under the laws of another state.

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<sup>2</sup> In the main part of the analysis, a particular term that is defined is in quotation marks the first time it is mentioned.

"Foreign limited liability partnership" means a partnership formed under laws other than the laws of Ohio and that has the status of a limited liability partnership under those laws.

"Limited liability partnership" means a partnership that files a statement of qualification under R.C. 1776.81 and does not have a similar statement in effect in any other jurisdiction.

"Liquidating trustee" means a person other than a partner, who carries out the winding up of a partnership.

"Partner" means a person admitted to a partnership as a partner.

"Partnership" means an association of two or more persons to carry on as co-owners a business for-profit formed under R.C. 1776.22, a predecessor law, or a comparable law of another jurisdiction.

"Partnership agreement" means the agreement among the partners concerning the partnership, whether written, oral, or implied. A partnership is not required to execute its partnership agreement, and is bound by its partnership agreement irrespective of whether the partnership executes the agreement. A partnership agreement includes amendments to the agreement.

"Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

"Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's economic interest and all management and other rights.

"Person" means an individual, corporation whether nonprofit or for-profit, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity in its own or any representative capacity, in each case whether domestic or foreign.

"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

"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, except that as used in R.C. 1776.68 to 1776.75 (see "**MERGERS, CONSOLIDATIONS, CONVERSIONS,**" below), "state" means the United States, any state, territory, insular possession or other political

subdivision of the United States, including the District of Columbia, any foreign country or nation, and any province, territory, or other political subdivision of a foreign country or nation.

"Statement" means a statement of correction or corrected statement under R.C. 1776.11, a statement of partnership authority under R.C. 1776.33, a statement of denial under R.C. 1776.34, a statement of dissociation under R.C. 1776.57, a statement of dissolution under R.C. 1776.65, a certificate of merger under R.C. 1776.70, a statement of qualification under R.C. 1776.81, a statement of foreign qualification under R.C. 1776.86, or an amendment or cancellation of any of the foregoing. All statements must be on forms the Secretary of State prescribes.

"Surviving" means, as applied to an entity, the constituent entity that is specified as the entity into which one or more other constituent entities are to be or have been merged.

"Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

"Tribunal" means a court, or if provided in the partnership agreement or otherwise agreed, an arbitrator, arbitration panel, or other tribunal.

### **Existing law**<sup>3</sup>

Existing law defines the following terms (R.C. 1775.01):

"Court" includes every court and judge having jurisdiction in the case.

"Business" is defined in the same manner as the bill.

"Person" includes individuals, partnerships, trustees, executors, administrators, other fiduciaries, corporations, and other associations.

"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency law.

"Conveyance" includes every assignment, lease, mortgage, or encumbrance.

"Real property" includes land and any interest or estate in land.

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<sup>3</sup> Unless otherwise indicated, "**Existing law**" in the analysis of the provisions of new R.C. Chapter 1776. refers to the existing "Ohio Uniform Partnership Act" (R.C. Chapter 1775.).

"Entity" is defined in the same manner as the bill and also includes a limited liability company.

### **Knowledge and notice**

#### **The bill**

The bill provides the following: (1) a "person" knows a fact if the person has actual knowledge of the fact, (2) a person has notice of a fact if the person knows of it, has received a notification of the fact, or has reason to know the fact exists from all of the facts known to the person at the time in question, (3) a person notifies or gives notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of that notification, and (4) a person receives a notification when the notification comes to the person's attention or is delivered at the person's place of business or at any other place the person holds out as a place for receiving communications. Except as otherwise provided in the following paragraph, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event, when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

A "partner's" knowledge, notice, or receipt of a notification of a fact relating to the "partnership" is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. (R.C. 1776.02.)

#### **Existing law**

A person has "knowledge" of a fact not only when the person has actual knowledge of the fact, but also when the person has knowledge of such other facts as in the circumstances shows bad faith. A person has "notice" of a fact when the person who claims the benefit of the notice states the fact to such person or delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at the person's place of business or residence. (R.C. 1775.02.)



Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to the partner's mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner (R.C. 1775.11).

### **Effect of partnership agreement**

Except as otherwise provided in the following paragraphs, the "partnership agreement" governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, R.C. Chapter 1776.<sup>4</sup> governs relations among the partners and between the partners and the partnership. (R.C. 1776.03(A).)

The partnership agreement may not do any of the following with respect to referenced provisions in the chapter (R.C. 1776.03(B)):

(1) Vary the rights and duties regarding the execution, filing, and recording of statements, except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records;

(3) Eliminate the duty of loyalty, but the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable, and all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care;

(5) Eliminate the obligation of good faith and fair dealing, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner, except to require the notice of withdrawal as a partner to be in writing;

(7) Vary the right of a "tribunal" to expel a partner for cause;

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<sup>4</sup> Hereafter referred to as "the chapter."

- (8) Vary the requirement to wind up the partnership business in specified cases;
- (9) Vary the law applicable to a "limited liability partnership";
- (10) Restrict rights of third parties under the chapter.

### **Supplemental principles of law**

#### **The bill**

Unless displaced by particular provisions of the chapter, the principles of law and equity supplement the chapter. If an obligation to pay interest under the chapter does not specify a rate of interest, the rate is that specified in R.C. 1343.03 (statutory rate of interest). No partnership and no person acting on behalf of a partnership may interpose the defense or make the claim of usury in any action or proceeding upon, or with reference to, any obligation of that partnership. The notes, bonds, other evidences of indebtedness, mortgages, pledges, and deeds of trust of a partnership cannot be set aside, impaired, or adjudged invalid by reason of anything contained in any laws prohibiting or otherwise pertaining to usury or regulating interest rates. No obligation of a partner to a partnership arising under a partnership agreement or a separate agreement or writing, and no note, instruction or other writing evidencing any such obligation of a partner, is subject to the defense of usury, and no partner may interpose the defense of usury with respect to any such obligation in any action. (R.C. 1776.04.)

#### **Existing law**

In any case not provided for in existing law, the rules of law and equity, including the law merchant, govern (R.C. 1775.04). The rule that statutes in derogation of the common law are to be strictly construed has no application to existing law. The law of estoppel applies to existing law. The law of agency applies to existing law, but if a provision of R.C. 5815.35 (liability of general partners when acting as fiduciary) conflicts with that law, the provision of that section controls. (R.C. 1775.03(A), (B), and (C).)

#### **Execution, filing, and recording of statements**

A "statement" may be filed in the Office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the Secretary of State's Office provided that it is accompanied by a form the Secretary of State prescribes for that purpose. Either filing has the effect provided in the chapter with respect to partnership "property" located in, or transactions that occur in, Ohio. A certified copy of a statement filed in the Office of the Secretary of State and recorded in the office of a county recorder in Ohio has the effect

provided for recorded statements in the chapter with respect to real property in the county in which recorded. A recorded statement that is not a certified copy of a statement filed in the Secretary of State's Office does not have the effect provided for recorded statements in the chapter.

The bill requires the following (R.C. 1776.05(C) and (E)):

(1) At least one partner or one person the partnership authorizes must execute any statement a partnership files. A partner, a person the partnership authorizes, or other person the chapter authorizes must execute other statements.

(2) An individual who executes a statement must personally declare, under penalty of perjury, that the contents of the statement are accurate.

(3) A person who files a statement pursuant to the chapter must promptly send a copy of that statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

A person authorized by the chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation (R.C. 1776.05(D)).

The Secretary of State (SOS) may collect a fee for filing or providing a certified copy of a statement, and the county recorder may collect a fee for recording a statement. When a partnership files its first statement with the SOS, the SOS must assign a unique identifying number to that partnership. Whenever a person files a statement relating to a partnership to which the SOS has assigned an identifying number or files a statement with a county recorder, the statement must include the identifying number assigned to the partnership. (R.C. 1776.05(F) and (G).)

### **Governing law**

Except as described below in this paragraph, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership. Ohio law governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a "limited liability partnership" and governs relations among the partners and between the partners and the partnership of any partnership other than a limited liability partnership if the partnership agreement, by its terms, provides that the laws of Ohio govern the partnership agreement. The

laws of a specified jurisdiction other than Ohio govern the relationship among the partners and between the partners and the partnership of any partnership other than a limited liability partnership, if the partnership agreement, by its terms, provides that the laws of that jurisdiction govern the partnership agreement and that jurisdiction allows that election. (R.C. 1776.06(A), (B), (C), and (D).)

A partnership governed by the chapter is subject to any amendment to or repeal of any or all of the sections in the chapter (R.C. 1776.06(E)).

**Statutory agent; service of process on partnership**

**Statutory agent--appointment, resignation, revocation of appointment**

Any partnership that maintains an effective statement of partnership authority under the chapter must maintain continuously in Ohio an agent for service of process on the partnership. The agent must be an individual who is a resident of Ohio, a domestic corporation, or a foreign corporation holding a license as a foreign corporation under the laws of Ohio. The SOS may not accept an original statement of partnership authority for filing unless the statement of partnership authority includes a written appointment of an agent as required and a written acceptance of the appointment signed by the designated agent. If the address of an agent changes from that stated in the records of the SOS, the partnership forthwith must file with the SOS an amendment to its statement of partnership authority setting forth the new address. (R.C. 1776.07(A), (B), and (D).)

If an agent dies, resigns, or moves outside of Ohio, the partnership must appoint forthwith another agent and file with the SOS an amendment to its statement of partnership authority appointing a new agent and including a written acceptance of the appointment that is signed by the designated agent. An agent may resign by filing a written and signed notice of resignation with the SOS on a form the SOS prescribes and mailing a copy of that notice to the partnership. The agent must mail the copy of the notice to the partnership at the current or last known address of its principal office on or prior to the date that the agent files the notice with the SOS. The notice must include the name of the partnership, the name and current address of the agent, the current or last known address, including the street and number or other particular description, of the partnership's principal office, a statement of the resignation of the agent, and a statement that a copy of the notice was provided to the partnership within the time and in the manner specified in this provision. The resigning agent's authority terminates 30 days after filing the notice with the SOS.

A partnership may revoke the appointment of its agent by filing with the SOS an amendment to its statement of partnership authority indicating that the

appointment of the former agent is revoked and that a new agent is appointed. A written acceptance signed by the new designated agent must accompany the filing. (R.C. 1776.07(C), (E), and (F).)

### **Service of process**

Any legal process, notice, or demand required or permitted by law to be served upon a partnership with an effective statement of partnership authority may be served upon the partnership as follows: (1) if its agent is an individual, by delivering a copy of the process, notice, or demand to the agent, or (2) if its agent is a corporation, by delivering a copy of the process, notice, or demand to the address of the agent in Ohio as contained in the records of the SOS. If its agent cannot be found or no longer has the address stated in the records of the SOS or the partnership has failed to maintain an agent as required, and the party, agent, or representative that desires service files with the SOS an affidavit stating that one of those circumstances exists and the most recent address of the partnership ascertained after a diligent search, then service upon the SOS as the agent of the partnership may be initiated by delivering to the Secretary four copies of the process, notice, or demand accompanied by a fee of \$5. The SOS forthwith must give notice of that delivery to the partnership at either its principal office as shown upon the SOS's records or at any different address specified in the affidavit of the party desiring service and must forward to the partnership at either address by certified mail, return receipt requested, a copy of the process, notice, or demand. Service upon the partnership is made when the SOS gives the notice and forwards the process, notice, or demand as set forth in the preceding sentence. (R.C. 1776.07(G).)

The SOS must keep a record of each process, notice, and demand that pertains to a partnership and that is delivered to the Secretary of State's Office under the above provisions or another law of Ohio that authorizes service upon the SOS in connection with a partnership. In that record, the SOS must record the time of each delivery of that type and the Secretary of State's subsequent action with respect to the process, notice, or demand. Nothing in the above provisions affects the right to serve process in any other manner now or hereafter provided by law. The provisions are an extension of, and not a limitation upon, the right otherwise existing of service of legal process. (R.C. 1776.07(H) and (I).)

### **Service of process on partnership that has not filed statement of partnership authority**

Service of legal process upon any partnership that has not filed a statement of partnership authority in Ohio and that is formed under Ohio laws or doing business in Ohio may be made by delivering a copy personally to any partner doing business in Ohio or by leaving it at a partner's dwelling house or usual place

of abode in Ohio or at a place of business of the partnership in Ohio. Nothing in this provision limits or affects the right to serve process in any other manner now or hereafter provided by law. This provision is an extension of, and not a limitation upon, the right otherwise existing of service of legal process. (R.C. 1776.08.)

**Service of process on a partner or liquidating trustee**

A partner or a "liquidating trustee" of a partnership that is formed under the laws of Ohio or that is doing business in Ohio may be served with process in the following manner in all civil actions or proceedings brought in Ohio involving or relating to the business of the partnership or a violation by the partner or the liquidating trustee of a duty to the partnership or any partner of the partnership, whether or not the partner or the liquidating trustee is a partner or a liquidating trustee at the time suit is commenced. A person who is a partner or liquidating trustee on the date on which the chapter first applies to the partnership pursuant to a voluntary election to be governed by the chapter or who thereafter becomes a partner or a liquidating trustee of a partnership, thereby consents to the appointment of each partner who has signed a statement of partnership authority as described below, and any agent named in a statement of partnership authority under that section, as that person's agent upon whom service of process may be made. Any process so served is of the same legal force and validity as if served upon the partner or liquidating trustee within Ohio.

In a written partnership agreement or other writing, a partner may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of Ohio courts, or the exclusivity of arbitration in a specified jurisdiction or in Ohio, and to be served with legal process in the manner prescribed in the partnership agreement or other writing. Nothing in the above provisions limits or affects the right to serve process in any other manner now or hereafter provided by law. Those provisions are an extension of, and not a limitation upon, the right otherwise existing of service of legal process. (R.C. 1776.10.)

**Execution, amendment, or cancellation by judicial order**

Any person who is adversely affected by the failure or refusal of a person to execute a statement as the chapter requires may petition the court of common pleas to direct the execution of that statement. If the court finds that the execution of the statement is proper and that a person has failed or refused to execute that statement as designated, the court must order the SOS to file an appropriate statement.

Any person who is adversely affected by the failure or refusal of another person to execute a partnership agreement or amendment when that person is designated to do so may petition the court of common pleas to direct the execution of the partnership agreement or amendment. If the court finds that the partnership agreement or amendment should be executed and that a designated person has failed or refused to do so, the court must enter an order granting appropriate relief. (R.C. 1776.11.)

### **Statement of correction; corrected statement**

#### **The bill**

Any statement filed with the SOS that is an inaccurate record of the action referred to in the statement, or that was defectively or erroneously executed, may be corrected by filing a statement of correction. The statement of correction must specify the inaccuracy or defect to be corrected, set forth the inaccurate or defective portion of the statement in corrected form, and be executed and filed as required. The statement of correction is effective as of the date the original statement was filed, except as to persons who are substantially and adversely affected by the correction, for whom the statement of correction is effective from its filing date. The filing fee for a statement of correction is \$50.

In lieu of filing a statement of correction as described in the preceding paragraph, a statement may be corrected by executing and filing a corrected statement with the SOS in the same manner as an original statement, and paying a fee equal to the fee payable for an original statement. The corrected statement must specify in its heading that it is a corrected statement, specify the inaccuracy or defect to be corrected, and set forth the entire statement in corrected form. A statement so corrected is effective as of the date the original statement was filed, except as to those who are substantially and adversely affected by the correction, for whom the corrected statement is effective from its filing date. (R.C. 1776.12 and 111.16(P).)

#### **Existing law**

If any statement in the application for registration of a *domestic limited liability partnership* was materially false when made or if any facts described have changed, thereby making the application inaccurate in any material respect, the domestic limited liability partnership must promptly file with the SOS a certificate correcting the application on a form prescribed by the SOS, and the certificate must be signed by one or more partners authorized by the partnership to execute such a statement of correction (R.C. 1776.61(G)).

## NATURE OF PARTNERSHIP

### Partnership as entity

#### The bill

The bill states that a partnership is an entity distinct from its partners. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification. Except as otherwise provided in the Revised Code or the partnership agreement, a partnership formed under the chapter has authority to engage in any activity in which a domestic corporation or a domestic limited liability company may lawfully engage and has the powers of a domestic corporation or domestic limited liability company. (R.C. 1776.21.)

#### Existing law

Existing law states that a partnership is an entity of two or more persons to carry on as co-owners a business for profit (same as the definition of "partnership" in the bill) and includes such an entity that has limited liability as provided in the law and that is registered as a domestic limited liability partnership. Any entity formed under any other statute of Ohio, or any statute adopted by authority, other than the authority of Ohio, is not a partnership under existing law, unless the entity would have been a partnership in Ohio prior to September 14, 1949, but existing law applies to limited partnerships except in so far as the statutes relating to these partnerships are inconsistent with the law. (R.C. 1775.05(A) and (B).)

### Formation of partnership

#### The bill

Except as otherwise described in the following sentence, any association of two or more persons to carry on as co-owners a "business" for-profit forms a partnership, whether or not the persons intend to form a partnership. An association formed under a statute not included in the chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under the chapter. (R.C. 1776.22(A) and (B).)

In determining whether a partnership is formed, the following rules apply (R.C. 1776.22(C)):

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



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

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment for any of the following: (a) a debt by installments or otherwise, (b) services as an independent contractor or wages or other compensation to an employee, (c) rent, (d) an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner, (e) interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral, or (f) the sale of the goodwill of a business or other property by installments or otherwise.

### **Existing law**

In determining whether a partnership exists, these rules apply (R.C. 1775.06):

(1) Except as provided by R.C. 1775.15 (liability for false representation), persons who are not partners as to each other are not partners as to third persons;

(2) Similar to (1) in "**The bill**," above, except that existing law also lists tenancy with a right of survivorship;

(3) Similar to (2) in "**The bill**," above;

(4) The receipt by a person of a share of the profits of a business is prima-facie evidence that the person is a partner in the business, but no such inference may be drawn if such profits were received in payment: (a) same as (3)(a) in "**The bill**," above, (b) as wages of an employee or rent to a landlord, (c) as an annuity to a widow or representative of a deceased partner, (d) as interest on a loan, though the amount of payment vary with the profits of the business, or (e) same as in (3)(f) in "**The bill**," above.

### **Partnership property**

#### **The bill**

Property acquired by a partnership is property of the partnership and not the property of the partners individually. Property is partnership property if the property is acquired in the name of the partnership or of one or more partners when the instrument transferring title to the property indicates that the transferee

holds the property in the capacity as a partner or that a partnership exists but without an indication of the name of the partnership.

Property is acquired in the name of the partnership by a "transfer" to the partnership in its name or to 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.

Property is presumed to be partnership property if purchased with partnership assets, even if it is not acquired as described in the second preceding paragraph. Property acquired in the name of one or more of the partners, when there is no 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 the use of partnership assets, is presumed to be separate property, even if used for partnership purposes. (R.C. 1776.23.)

### **Existing law**

All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property. Unless the contrary intention appears, property acquired with partnership funds is partnership property. Any estate in real property may be acquired in the partnership name. A conveyance to a partnership in the partnership name must recite that the grantee is a partnership. Title so acquired can be conveyed only in the partnership name. A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. (R.C. 1775.07.)

### **Form of contribution; liability for contribution**

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. A partner is obligated to the partnership to perform any promise to contribute cash, property, or services even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated, at the option of the partnership, to contribute cash equal to the value of the contribution that has not been made. The foregoing option is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the partnership may have against a partner under the partnership agreement or applicable law.

A partnership agreement may provide that the partnership interest of any partner who fails to make any required contribution is subject to specified penalties for, or specified consequences of, that failure. The penalty or

consequence may take the form of reducing or eliminating the defaulting partner's interest in the partnership, subordinating 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 by other partners of the amount necessary to meet the partner's commitment, a fixing of the value of the partner's partnership interest by appraisal or by formula and the redemption or sale of the partner's partnership interest at that value, or any other penalty or consequence. (R.C. 1776.24.)

## **RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP**

### **Partner as agent of partnership**

#### **The bill**

Both of the following govern the acts of a partner, subject to any statement of partnership authority under the bill (R.C. 1776.31):

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

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

#### **Existing law**

Existing law is similar to the bill (R.C. 1775.08(A) and (B)). It further provides that unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to: (1) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership, (2) dispose of the good will of the business, (3) do any other act that would make it impossible to carry on the ordinary business of a partnership, (4) confess a judgment, or (5) submit a partnership claim or liability to arbitration or reference. No act of a partner in contravention of a restriction on authority binds the partnership to persons having knowledge of the restriction. (R.C. 1775.08(C) and (D).)

## Transfer of partnership property

### The bill

Partnership property may be transferred as follows (R.C. 1776.32(A)):

(A) Partnership property held in the name of the partnership may be transferred by an instrument of transfer a partner executes in the partnership name, subject to any statement of partnership authority.

(B) Partnership property held in the name of one or more partners, when the instrument transferring the property to them indicates their capacity as partners or of the existence of a partnership but does not indicate the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

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

A partnership may recover partnership property from a transferee only if it proves that the execution of the instrument of initial transfer did not bind the partnership as described above in "Partner as agent of partnership" and that either of the following is true (R.C. 1776.32(B)):

(1) A subsequent transferee who gave value for property transferred as described in paragraph (A) or (B), above, knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) A transferee who gave value for property transferred as described above in (C) knew or had received a notification that the property was partnership property, and the person who executed the instrument of initial transfer lacked authority to bind the partnership.

A partnership may not recover partnership property from a subsequent transferee if, as described in (1) and (2), above, the partnership would not have been entitled to recover the property from any earlier transferee of the property.

If a person holds all interests of all partners in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document. (R.C. 1776.32(C) and (D).)

### *Existing law*

If title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded the partner's authority. If title to real property is in the name of the partnership, a conveyance executed by a partner, in the partner's own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner. If title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership, unless the purchaser, or the purchaser's assignee, is a holder for value, without knowledge. If the title to real property is in the name of one or more or all of the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in the partner's own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner. If the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property. (R.C. 1775.09.)

### *Statement of partnership authority*

A partnership may file a statement of partnership authority. Any statement so filed must include all of the following: (1) the name of the partnership, (2) the street address of the partnership's chief executive office and that of one office in Ohio, if such an office exists, (3) the names and mailing addresses of all of the partners or of an information agent the partnership appoints and maintains for the purpose described in the last sentence in this paragraph, and (4) the name and address of the agent for service of process and the signed acceptance of appointment. Any statement filed may state the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, the authority, including any limitations, that some or all of the partners have to enter into other transactions on behalf of the partnership, and any other matter. If a filed statement of partnership authority names an agent, that agent must maintain a list of the names and mailing addresses of all of the partners and make the list available to any person on request for good cause shown. (R.C. 1776.33(A) and (B).)

If a filed statement of partnership authority is executed and states the name of the partnership but does not contain all of the other information required as

described in the preceding paragraph, that statement operates as described in the following four paragraphs with respect to a person not a partner.

Except as described in the last paragraph, below, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows (R.C. 1776.33(D)):

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

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

A person not a partner is deemed to know of a limitation of a partner's authority to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property. (R.C. 1776.33(E).)

Except as otherwise described in the preceding four paragraphs and in "*Statement of dissociation*" and "*Statement of dissolution*," below, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, is filed with the SOS. (R.C. 1776.33(F) and (G).)

The fee for filing an initial statement of partnership authority is \$125 (R.C. 111.16(G)).

### **Statement of denial**

A partner, or other person that a filed statement of partnership authority names as a partner or included in a list of the names and addresses of all of the partners that an agent maintains, may file a statement of denial stating the name of

the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as described above. (R.C. 1776.34.) The fee for filing a statement of denial is \$50 (R.C. 111.16(N)(4)).

### **Partnership liable for partner's actionable conduct**

#### **The bill**

A partnership is liable for loss or injury caused to a person or for a penalty incurred as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership. A partnership is liable for the loss if, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and a partner misapplies the money or property. (R.C. 1776.35.)

#### **Existing law**

Existing law is similar to the first sentence in "**The bill**," above (R.C. 1775.12). Existing law provides that the partnership is bound to make good the loss if one partner acting within the scope of the partner's apparent authority receives money or property of a third person and misapplies it or if the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership (R.C. 1775.13(A) and (B)).

### **Partner's liability**

#### **The bill**

Except as described in this paragraph, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law. A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a partner. This provision applies notwithstanding anything inconsistent in the partnership agreement that existed before any vote required to become a limited liability partnership by filing a statement of qualification. (R.C. 1776.36.)

### Existing law

Subject to R.C. 5815.35 (liability of general partner when acting as fiduciary) and except with respect to a registered limited liability partnership, all partners are liable as follows: (1) jointly and severally for everything chargeable to the partnership; this joint and several liability is not subject to R.C. 2307.22 or 2314.36 with respect to a tort claim that otherwise is subject to either of those sections, and (2) jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract (R.C. 1775.14(A)). Existing law pertaining to the liability of a person admitted as a partner into an existing partnership is similar to the 2nd sentence in "The bill," above (R.C. 1775.16).

Existing law pertaining to liability of the partnership for an obligation incurred while the partnership is a registered limited liability partnership is similar to the bill, but the provision applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the filing of a registration application to become a domestic limited liability partnership. Existing law further provides that this liability: (1) does not affect the liability of a partner in a registered limited liability partnership for that partner's own negligence, wrongful acts, errors, omissions, or misconduct, including that partner's own negligence, wrongful acts, errors, omissions, or misconduct in directly supervising any other partner or any employee, agent, or representative of the partnership, and (2) does not affect the liability of a partner for liabilities imposed by R.C. Chapters 5735., 5739., 5743., and 5747. and R.C. 3734.908.

A partner in a registered limited liability partnership is not a proper party to an action or proceeding by or against a registered limited liability partnership with respect to any debt, obligation, or other liability of any kind described above, unless the partner is liable as described in the preceding paragraph. A registered limited liability partnership is liable out of partnership assets for partnership debts, obligations, and liabilities. The personal liability of a partner solely by reason of being such a partner, or acting or omitting to act in such capacity, of a registered limited liability partnership organized and registered under the laws of Ohio is determined only under the laws of Ohio. The only actions required of a registered limited liability partnership or of individual partners in such a partnership in order to avail themselves of the above limited liability provisions are those required by R.C. Chapter 1775. (R.C. 1775.14(B), (C), (D), (E), and (F).)

### Actions by and against partnership and partners

A partnership may sue and be sued in the name of the partnership. An action may be brought against the partnership and, to the extent not inconsistent with the provisions under "Partner's liability," above, any or all of the partners in



the same action or in separate actions. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner. (R.C. 1776.37(A), (B), and (C).)

A judgment creditor of a partner may not levy execution against the assets of a partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim as described above and any of the following apply: (1) a judgment based on the same claim was obtained against the partnership, and a writ of execution on the judgment was returned unsatisfied in whole or in part, (2) the partnership is a "debtor in bankruptcy," (3) the partner agreed that the creditor need not exhaust partnership assets, (4) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers, or (5) liability is imposed on the partner by law or contract independent of the existence of the partnership. (R.C. 1776.37(D).)

The above provisions apply to any partnership liability or obligation resulting from a representation by a partner or purported partner described below (R.C. 1776.37(E)).

### **Liability of purported partner**

#### **The bill**

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

If a person is represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same

manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are *jointly and severally liable*. (R.C. 1776.38(A) and (B).)

A person is not liable as a partner merely because the person is named by another in a statement of partnership authority. A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership. Except as described in the preceding paragraph, persons who are not partners as to each other are not liable as partners as to other persons. (R.C. 1776.38(C), (D), and (E).)

### **Existing law**

Existing law is similar to the first two paragraphs in "**The bill**," above, but refers to a person that *gives credit* (instead of *enters into a transaction*) to the partnership on the faith of the representation as a partner and the *joint liability* (instead of *joint and several liability*) of the person making the representation and the persons consenting to the representation (R.C. 1775.15).

An admission or representation made by any partner concerning partnership affairs within the scope of the partner's authority as conferred by the partnership law is evidence against the partnership (R.C. 1775.10).

## **RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP**

### **Partner's rights and duties**

#### **The bill**

Each partner is deemed to have an account to which both of the following apply: (1) the account is credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits, and (2) the account is charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partnership distributes to the partner and the partner's share of the partnership losses. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits. (R.C. 1776.41(A) and (B).)

A partnership must reimburse a partner for payments made and indemnify a partner for liabilities the partner incurs in the ordinary course of the business of the partnership or for the preservation of its business or property. A partnership must reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute. A payment or advance made by a partner that gives rise to a partnership obligation as described in this paragraph constitutes a loan to the partnership that accrues interest from the date of the payment or advance. (R.C. 1776.41(C), (D), and (E).)

Each partner has equal rights in the management and conduct of the partnership business. A partner may use or possess partnership property only on behalf of the partnership. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership. A person may become a partner only with the consent of all of the partners. (R.C. 1776.41(F), (G), (H), and (I).)

A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners. The above provisions do not affect the obligations of a partnership to other persons as described above. (R.C. 1776.41(J) and (K).)

### **Existing law**

The rights and duties of the partners in relation to the partnership must be determined, subject to any agreement between them, by similar rules as the bill, except for the following provisions in existing law that are different from the bill. Each partner must be repaid the partner's contribution, whether by way of capital or advances, to the partnership property. A partner must receive interest on the capital contributed by the partner only from the date when repayment should be made. (R.C. 1775.17(A) and (D).)

### **Distribution in kind**

A partner has no right to receive, and is not required to accept, a "distribution" in kind (R.C. 1776.42).

### **Partner's rights and duties with respect to information**

#### **The bill**

A partnership must keep its books and records, if any, at its chief executive office. A partnership must provide partners and their agents and attorneys access

to its books and records. It must provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished. (R.C. 1776.43(A) and (B).)

Each partner and the partnership must furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability, both of the following: (1) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or the chapter, and (2) on demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances. (R.C. 1776.43(C).)

### **Existing law**

The partnership books must be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner must at all times have access to and may inspect and copy any of them (R.C. 1775.18). Partners must render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability (R.C. 1775.19).

### **General standards of partner's conduct**

#### **The bill**

The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in the following paragraphs (R.C. 1776.44(A)).

A partner's duty of loyalty to the partnership and the other partners is limited to the following: (1) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity, (2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership, and (3) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership. (R.C. 1776.44(B).)

A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law (R.C. 1776.44(C)).

A partner must discharge duties to the partnership and the other partners pursuant to the chapter or under the partnership agreement and must exercise any rights consistent with the obligation of good faith and fair dealing. A partner does not violate a duty or obligation under the chapter or the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law. (R.C. 1776.44(C), (D), (E), and (F).)

The above provisions apply 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 (R.C. 1776.44(G)).

### **Existing law**

Every partner, other than a general partner of a limited partnership, must account to the partnership for any benefit and hold as trustee for it any profits derived by the partner without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by the partner of its property. This provision applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. (R.C. 1775.20.)

Any partner has the right to a formal account as to partnership affairs if the partner is wrongfully excluded from the partnership business or possession of its property by the partners, if the right exists under the terms of any agreement, as provided in the preceding paragraph, or whenever other circumstances render it just and reasonable (R.C. 1775.21).

Any partner who commits fraud in the affairs of the partnership is liable in damages to the parties injured by the fraud (R.C. 1777.01).

### **Actions by partnership and partners**

#### **The bill**

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. 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 enforce any of the following: (1) the partner's rights under the partnership agreement, (2) the partner's rights under the chapter, including: (a) the partner's general rights, rights with respect to information, and rights with respect to standards of conduct, (b) the partner's right on dissociation to have the partner's interest in the partnership purchased under the bill, or any other right pertaining to a partner's dissociation, and (c) the partner's right to compel a dissolution and winding up of the partnership business or enforce any other right pertaining to winding up the business, or (3) the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship. The above provisions do not govern the accrual of, and any time limitation on, a right of action for a remedy under this section. A right to an accounting upon dissolution and winding up does not revive a claim barred by law. (R.C. 1776.45.)

#### **Existing law**

If a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled: (1) to a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by the partner for the purchase of an interest in the partnership and for any capital or advances contributed by the partner, (2) to stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by the partner in respect of the partnership liabilities, and (3) to be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. (R.C. 1775.38.)

#### **Continuation of partnership beyond definite term or particular undertaking**

Under the bill, if a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a "partnership at will." If the partners, or those who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, the partners are presumed to have agreed that the partnership will continue. (R.C. 1776.46.)

Existing law is similar to the bill (R.C. 1775.22).

## TRANSFEREES AND CREDITORS OF PARTNER

### Partner not co-owner of partnership property; partner's economic interest in partnership

#### The bill

A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily (R.C. 1776.47). A partner's "economic interest" is personal property and is the only transferable interest of a partner in the partnership. (R.C. 1776.48.)

#### Existing law

A partner is co-owner with the partners of specific partnership property holding as a tenant in partnership (R.C. 1775.24(A)). The incidents of this tenancy are such that (R.C. 1775.24(B)):

(1) A partner, subject to existing law, and to any agreement between the partners, has an equal right with the partners to possess specific partnership property for partnership purposes; but has no right to possess the property for any other purpose without the consent of his partners;

(2) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property;

(3) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under exemption laws.

(4) On the death of a partner, the partner's right in specific partnership property vests in the surviving partners, unless the partner was the last surviving partner, in which case the right in the property vests in the partner's legal representative. The surviving partners have, or the legal representative of the last surviving partner has, no right to possess the partnership property for any but a partnership purpose. This provision is subject to the procedures set forth in R.C. Chapter 1779. (surviving partners).

(5) A partner's right in specific partnership property is not subject to dower, any statutory interest of a surviving spouse, heirs, or next of kin, or any allowance to a surviving spouse, minor children, or both a surviving spouse and

minor children, including, but not limited to, the allowance for support under R.C. 2106.13.

Existing law also provides that the property rights of a partner are the partner's rights in specific partnership property, the partner's interest in the partnership, and the partner's right to participate in the management (R.C. 1775.23). A partner's interest in the partnership is the partner's share of the profits and surplus, and the same is personal property (R.C. 1775.25) (see definition of "economic interest" in "Definitions," under "The bill," above).

### *Transfer of partner's economic interest*

#### *The bill*

A transfer, in whole or in part, of a partner's economic interest in the partnership is permissible and does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business. A transfer does not entitle the transferee, as against the other partners or the partnership, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records. A transferee of a partner's economic interest in the partnership has a right to receive, in accordance with the transfer, distributions to which the transferor otherwise would be entitled; to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and to seek a determination by a tribunal that it is equitable to wind up the partnership business. In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account to which all of the partners agreed.

Upon transfer, the transferor retains a partner's rights and duties other than the interest in distributions transferred. A partnership need not give effect to a transferee's rights until it has notice and reasonable proof of the transfer. A transfer of a partner's economic interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer. R.C. 1309.406 (discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective) and 1309.408 (restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective) do not apply to any partnership interest in a partnership formed under the chapter. (R.C. 1776.49.)



### **Existing law**

Existing law is similar to the first paragraph above in "**The bill**," except "assignee" is used instead of "transferee," and existing law does not provide that an assignee has the right to seek a determination by a tribunal that it is equitable to wind up the partnership business (R.C. 1775.26).

### **Partner's economic interest subject to charging order**

#### **The bill**

On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the economic interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require. A charging order constitutes a lien on the judgment debtor's economic interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee. At any time before foreclosure, an interest charged may be redeemed by the judgment debtor; one or more of the other partners by using property other than partnership property; or one or more of the other partners, with the consent of all of the partners whose interests are not so charged, by using partnership property.

Nothing in the chapter deprives a partner of any right under exemption laws with respect to the partner's interest in the partnership. The above provisions provide the exclusive remedy by which a judgment creditor of a partner, or partner's transferee, may satisfy a judgment out of the judgment debtor's economic interest in the partnership. (R.C. 1776.50.)

### **Existing law**

Existing law is similar to some of the provisions in the bill. It does not have provisions pertaining to: an application by a judgment creditor of a *partner's transferee* for a court to charge the economic interest of the judgment debtor, a charging order constituting a lien on the judgment debtor's economic interest, the purchaser at a foreclosure sale having the rights of a transferee, redemption by the judgment debtor, or the provisions being the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy judgment out of the judgment debtor's economic interest in the partnership. (R.C. 1775.27.)

## PARTNER'S DISSOCIATION<sup>5</sup>

### Events causing partner's dissociation

A partner is dissociated from a partnership upon the occurrence of any of the following events (R.C. 1776.51):

(1) The partnership has notice of the partner's express will to withdraw as a partner, on the date of the notice or on a later date the partner specifies;

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

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

(4) The partner's expulsion by the unanimous vote of the other partners because of any of the following: (a) it is unlawful to carry on the partnership business with that partner, (b) a transfer of all or substantially all of that partner's economic interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed, (c) a certificate of dissolution is not revoked or the charter or a right to conduct business is not reinstated within 90 days after the partnership notifies a corporate partner of its expulsion because the corporate partner filed a certificate of dissolution or the equivalent, had its charter revoked, or had its right to conduct business suspended by the jurisdiction of its incorporation, or (d) the partner is a partnership that has dissolved and is winding up its business.

(5) On application by the partnership or another partner, a tribunal determines any of the following is cause for expulsion: (a) the partner engaged in wrongful conduct that adversely and materially affects the partnership business, (b) the partner willfully or persistently committed a material breach of the partnership agreement or a duty owed to the partnership or the other partners pertaining to the general standards of conduct, or (c) the partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner.

(6) The partner's doing any of the following: (a) becoming a debtor in bankruptcy, (b) executing an assignment for the benefit of creditors, (c) seeking,

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<sup>5</sup> The bill's provisions on a partner's dissociation are new and do not have comparable provisions in existing law. Existing law is discussed in this part of the analysis to the extent that the law may address some of the issues covered by certain provisions in the bill dealing with a partner's dissociation by withdrawal, death, assignment of interests, or expulsion.

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 either the partner or all or substantially all of the partner's property that was obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated.

(7) Any of the following, 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 determination by a tribunal that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

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

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

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

**Partner's power to dissociate; wrongful dissociation**

A partner has the power to dissociate at any time, rightfully or wrongfully, by express will as described above. A partner's dissociation is wrongful only if either of the following applies to that dissociation: (1) it is in breach of an express provision of the partnership agreement or (2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking, if any of the following applies: (a) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under paragraphs (6) to (10) in "**Events causing partner's dissociation**," above, or wrongful dissociation under these provisions, (b) the partner is expelled by a determination by a tribunal as described above, (c) the partner is dissociated by becoming a debtor in bankruptcy, or (d) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated. A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The

liability is in addition to any other obligation of the partner to the partnership or to the other partners. (R.C. 1776.52.)

### **Effect of partner's dissociation**

If a partner's dissociation results in a dissolution and winding up of the partnership business, the provisions on winding up of the partnership's business apply. Otherwise, the provisions on a partner's dissociation when the business is not wound up apply.

Upon a partner's dissociation, all of the following apply: (1) the partner's right to participate in the management and conduct of the partnership business terminates, except to participate in the winding up of the partnership business, (2) the partner's duty to refrain from competing with the partnership in the partnership business terminates, and (3) the partner's duty to account to the partnership, to hold as trustee any property, benefit, or profit derived by the partner in the business, and to refrain from dealing with the partnership as or on behalf of a party having an interest adverse to the partnership of loyalty and the duty of care continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business. (R.C. 1776.53.)

## **PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP**

### **Purchase of dissociated partner's interest**

#### **The bill**

**Determination of buyout price; offsets.** When a partner is dissociated from a partnership and that dissociation does not result in a dissolution and winding up of the partnership business, the partnership must cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined as described in this paragraph. The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under the provisions pertaining to the settlement of partnership accounts upon winding up the partnership business as if, on the date of dissociation, both of the following occurred: (1) the partnership sold the assets at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and (2) the partnership completed a winding up of the partnership. Interest must be paid from the date of dissociation to the date of payment.

The partnership must reduce the buyout price paid to the partner by any damages for wrongful dissociation and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership. Interest must be assessed on any amount owed to the partnership from the date the amount owed is due to the date of payment. A partnership must indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner as described below. (R.C. 1776.54(A), (B), (C), and (D).)

**Payment of buyout price; deferred payment.** If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership must pay or cause to be paid, in cash to the dissociated partner, the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets described above. Notwithstanding this provision, if a deferred payment is authorized as described below or if the partnership determines that immediate payment of the buyout price would cause undue hardship to the business of the partnership, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

Any payment or tender required as described in the preceding paragraph must be accompanied by all of the following: (1) a statement of partnership assets and liabilities as of the date of dissociation, (2) the latest available partnership balance sheet and income statement, if any, (3) an explanation of how the estimated amount of the payment was calculated, (4) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any, or other terms of the obligation to purchase, and (5) if applicable, a brief explanation of the basis for the partnership's determination that immediate payment of the buyout price would cause undue hardship to the business of the partnership.

A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the tribunal that earlier payment will not cause undue hardship to the business of the partnership. Any deferred payment must be adequately secured and bear interest. (R.C. 1776.54(E), (F), (G), and (H).)

**Action against partnership.** A dissociated partner may maintain an action against the partnership to determine the buyout price of that partner's interest, any

offsets, or other terms of the obligation to purchase. Any action must be commenced within 120 days after the partnership tenders payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The tribunal must determine the buyout price of the dissociated partner's interest, any offset due, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized or if the partnership determines that immediate payment of the buyout price would cause undue hardship to the partnership, and the partner does not establish to the satisfaction of the tribunal that earlier payment will not cause undue hardship to the business of the partnership, the tribunal also must determine the security for payment and other terms of the obligation to purchase. The tribunal 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 tribunal finds equitable, against a party that the tribunal finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with the requirements for payment or tender. (R.C. 1776.54(I).)

### **Existing law**

When any partner retires or dies, and the business is continued under any of specified conditions without any settlement of accounts as between the partner or the partner's estate and the person or partnership continuing the business, unless otherwise agreed, the partner or legal representative as against such persons or partnership may have the value of the partner's interest at the date of dissolution ascertained and must receive as an ordinary creditor an amount equal to the value of the partner's interest in the dissolved partnership with interest, or, at the partner's or legal representative's option, in lieu of interest, the profits attributable to the use of the partner's right in the property of the dissolved partnership. The creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, have priority on any claim arising under this provision. (R.C. 1775.41.)

### **Dissociated partner's power to bind and liability to partnership**

#### **The bill**

For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership in a merger, is bound by any act of the dissociated partner that, as agent of the partnership, would have bound the partnership before dissociation only if, at the time of entering into the transaction all of the following were true: (1) the other party reasonably believed that the dissociated partner was then a partner, (2) the other party did not have notice of the partner's dissociation, and (3) the other party is not deemed to have had knowledge of a limitation of the

partner's authority to transfer real property in the partnership's name or notice after the statement of dissociation is filed. A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable as described in the preceding sentence. (R.C. 1776.55.)

### **Existing law**

When any new partner is admitted into an existing partnership, or when any partner retires and assigns, or the representative of the deceased partner assigns, the partner's rights in partnership property to two or more of the partners, or to one or more of the partners, and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business. When all but one partner retire and assign, or the representative of a deceased partner assigns, their rights in partnership property to the remaining partner who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business. When any partner retires or dies and the business of the dissolved partnership is continued as set forth above with the consent of the retired partners or the representative of the deceased partner, but without any assignment of the partner's right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business are as if such assignment had been made. When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business. (R.C. 1775.40(A), (B), (C), and (D).)

When any partner wrongfully causes a dissolution and the remaining partners continue the business either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business. When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business. (R.C. 1775.40(E) and (F).)

The liability of a third person becoming a partner in the partnership continuing the business to the creditors of the dissolved partnership must be satisfied out of partnership property only. When the business of a partnership after dissolution is continued under any conditions set forth above, the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased

partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or an account of any consideration promised for such interest or for his right in partnership property.

The above provisions do not modify any right of creditors to set aside any assignment on the ground of fraud. The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, does not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. (R.C. 1775.40(G), (H), (I), and (J).)

### **Dissociated partner's liability to other persons**

A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as described in the following sentence. A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership or a surviving partnership within two years after the partner's dissociation, only if the partner would have been liable for the obligation if the transaction had been entered into while the person was a partner and, at the time of entering into the transaction, all of the following were true: (1) the other party reasonably believed that the dissociated partner was then a partner and reasonably relied on that belief in entering into the transaction, (2) the other party did not have notice of the partner's dissociation, and (3) the other party is not deemed to have had knowledge of a limitation of the partner's authority to transfer real property in the partnership's name or notice after the statement of dissociation is filed.

By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation. A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation. (R.C. 1776.56.)

### **Statement of dissociation**

A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership. A statement of dissociation is a limitation on the authority of a dissociated partner to enter into transactions on behalf of the partnership. For the



purposes of the provisions pertaining to a dissociated partner's power to bind the partnership and liability to the partnership and to other persons, a person not a partner is deemed to have notice of a dissociation 90 days after a statement of dissociation is filed. (R.C. 1776.57.) The fee for filing a statement of dissociation is \$50 (R.C. 111.16(N)(4)).

### **Continued use of partnership name**

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business (R.C. 1776.58).

## **WINDING UP PARTNERSHIP BUSINESS**

### **Events causing dissolution and winding up of partnership business**

#### **The bill**

A partnership is dissolved, and the partnership's business must be wound up, only upon the occurrence of any of the following events (R.C. 1776.61)):

(1) In a partnership at will, the partnership's having notice from a partner of that partner's dissociation by the express will to withdraw immediately as a partner, or at a later date as specified by the partner;

(2) In a partnership for a definite term or particular undertaking, any of the following applies: (a) within 90 days after a partner's dissociation by death or otherwise under paragraphs (6) to (10) in "**Events causing partner's dissociation,**" above, or wrongful dissociation as described above, it is the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation following another partner's dissociation constitutes the former partner's expression of a will to wind up the partnership business, (b) it is the express will of all of the partners to wind up the partnership business, or (c) the term has expired or the undertaking is complete;

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

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of the winding up provisions;

(5) On application by a partner, a determination by a tribunal that any of the following is true: (a) the economic purpose of the partnership is likely to be unreasonably frustrated, (b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner, or (c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(6) On application by a transferee of a partner's economic interest, a tribunal determines that it is equitable to wind up the partnership business at either of the following times: (a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, or (b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer. (R.C. 1776.61.)

### Existing law

Existing law states that the dissolution of a partnership is the change in the relation of the partners caused by any partner's ceasing to be associated in the carrying on as distinguished from the winding up of the business (R.C. 1775.28). Dissolution is caused: (1) without violation of the agreement between the partners: (a) by the termination of the definite term or particular undertaking specified in the agreement, (b) by the express will of any partner when no definite term or particular undertaking is specified, (c) by the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking, or (d) by the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners, (2) in contravention of the agreement between the partners, if the circumstances do not permit a dissolution under these provisions, by the express will of any partner at any time, (3) by any event that makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership, (4) by the death of any partner, (5) by the bankruptcy of any partner or the partnership, or (6) by decree of court as described in the following paragraph. (R.C. 1775.30.)

On application by or for a partner the court must decree a dissolution whenever: (1) a partner has been declared an "incompetent person"<sup>6</sup> in any

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<sup>6</sup> "Incompetent person" means a person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or

judicial proceeding or is shown to be of unsound mind, (2) a partner becomes in any other way incapable of performing the partner's part of the partnership contract, (3) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business, (4) a partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts the partner's self in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with the partner, (5) the business of the partnership can only be carried on at a loss, or (6) other circumstances render a dissolution equitable.

On the application of the purchaser of a partner's interest, the court must decree a dissolution: (1) after the termination of the specified term or particular undertaking, (2) at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. (R.C. 1775.31.)

**Partnership continues after dissolution only for winding up of business**

**The bill**

Subject to the following paragraph, a partnership may continue after dissolution only for the purpose of winding up its business. The partnership is terminated when its business is completed.

At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event, both of the following apply: (1) the partnership must resume carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred, and (2) the dissolution does not affect the rights of a third party accruing under an act appropriate for winding up the business or arising out of conduct in reliance on the dissolution if those rights accrued or arose before the third party knew or received a notification of the waiver. (R.C. 1776.62.)

**Existing law**

On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed (R.C. 1775.29).

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property or fails to provide for the person's family or other persons for whom the person is charged by law to provide (R.C. 1775.31(A)).

## **Right to wind up partnership business**

### **The bill**

After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on the application of any partner, a partner's legal representative, or a transferee, the court of common pleas for good cause shown, may order judicial supervision of the winding up. The legal representative of the last surviving partner may wind up a partnership's business. A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge or make reasonable provision for the partnership's liabilities, distribute the assets of the partnership as described below, settle disputes by mediation or arbitration, and perform other necessary acts. (R.C. 1776.63.)

### **Existing law**

Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representatives of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs. Any partner, the partner's legal representative, or the partner's assignee, upon cause shown, may obtain winding up by the court. In case of the death of a partner, the right of the survivors to wind up is subject to R.C. 1779.01 to 1779.08<sup>7</sup> (surviving partners--appraisal of partnership assets, purchase of partnership property by survivors, assignment of interests, appointment of receiver, settlement of creditors' claims). (R.C. 1775.36.)

## **Partner's power to bind partnership after dissolution**

### **The bill**

Generally, a partnership is bound by a partner's act after dissolution under either of the following conditions: (1) the act is appropriate for winding up the partnership business, or (2) if the other party to the transaction did not have notice of the dissolution, the act of the partner as an agent of the partnership would have bound the partnership before dissolution (R.C. 1776.64).

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<sup>7</sup> These existing provisions will no longer be effective as of January 1, 2010, when new R.C. Chapter 1776. governs all partnerships (see "**Transition provisions**," below).

### *Existing law*

After dissolution a partner can bind the partnership except as described in the following paragraph: (1) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution, (2) by any transaction that would bind the partnership if dissolution had not taken place, provided the other party to the transaction: (a) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution, (b) though the other party had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place, or in each place if more than one, at which the partnership business was regularly carried on. The liability of a partner under (2), above, must be satisfied out of partnership assets alone when such partner had been prior to dissolution unknown as a partner to the person with whom the contract is made, or so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to the partner's connection with it.

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

The above provisions do not affect the liability for false representation of any person who after dissolution represents self or consents to another representing the person as a partner in a partnership engaged in carrying on business. (R.C. 1775.34.)

### *Statement of dissolution*

#### *The bill*

After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business. A statement of dissolution cancels a filed statement of partnership authority for the purposes of the authority of a partner to enter into transactions on behalf of the partnership and

is a limitation on such authority. For the purposes of the provisions pertaining to a partner acting as an agent of the partnership and a partner's power to bind the partnership after dissolution, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed. After filing and recording any appropriate statement of dissolution, a dissolved partnership may file, and as appropriate, record a statement of partnership authority that will operate with respect to a person not a partner as the authority of a partner to enter into transactions on behalf of the partnership or as a limitation of the partner's authority to transfer real estate in any transaction, whether or not the transaction is appropriate for winding up the partnership business. (R.C. 1776.65.)

The fee for filing a statement (certificate) of dissolution is \$50 (R.C. 111.16(N)(1)).

### **Existing law**

Except in so far as is necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership: (1) with respect to the partners when the dissolution is not by the act, bankruptcy, or death of a partner, or when the dissolution is by such act, bankruptcy, or death of a partner, in cases where the partner is liable to other partners for acts after dissolution as described below, or (2) with respect to persons not partners, as declared in the above provisions pertaining to a partnership being bound after dissolution. (R.C. 1775.32.)

### **Partner's liability to other partners after dissolution**

#### **The bill**

Generally, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred after dissolution. However, a partner who, with knowledge of the dissolution, incurs a partnership liability, under which the other party to the transaction did not have notice of the dissolution, by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability. (R.C. 1776.66.)

### **Existing law**

If the dissolution is caused by the act, death, or bankruptcy of a partner, generally, each partner is liable to the other partners for the partner's share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless: (1) the dissolution being by act of any partner, the

partner acting for the partnership had knowledge of the dissolution, or (2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy (R.C. 1775.33).

The dissolution of the partnership does not of itself discharge the existing liability of any partner. A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between the partner, the partnership creditor, and the person or partnership continuing the business. Such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business. If a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed must be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligation. Generally, the individual property of a deceased partner is liable for all obligations of the partnership incurred while the decedent was a partner but subject to the prior payment of the decedent's separate debts. (R.C. 1775.35.)

### **Settlement of accounts and contributions among partners**

#### **The bill**

In winding up a partnership's business, any assets of the partnership, including the contributions that the partners are required to make, must be applied to discharge or make reasonable provision for its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions as described below. Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership must make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account.

A partner must contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable. If a partner fails to contribute the required full amount, all of the other partners must contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable.

The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership. A partner or partner's legal representative may

recover from the other partners any contributions the partner has made to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally.

After the settlement of accounts, each partner must contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy, or make reasonable provision for, partnership obligations that were not known at the time of the settlement and for which the partner is personally liable. An assignee for the benefit of creditors of a partnership or a partner, or a person a court appoints to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership. (R.C. 1776.67.)

### **Existing law**

When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against the partners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge partnership liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement between the partner, the partnership creditor, and the person or partnership continuing the business, the expelled partner must receive in cash only the net amount due the partner from the partnership. (R.C. 1775.37(A).)

When dissolution is caused in contravention of the partnership agreement the rights of the partners are as follows (R.C. 1775.37(B)):

(1) Each partner who has not caused dissolution wrongfully has all the rights described in the 2nd preceding paragraph and the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement;

(2) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of the partner's interest in the partnership at the dissolution, less any damages recoverable under (1), above, and in like manner indemnify the partner against all present or future partnership liabilities;



(3) A partner who has caused the dissolution wrongfully has: (a) if the business is not continued, all the rights of a partner as described in the first paragraph, above, subject to any damages, or (b) if the business is continued, the right as against the partners and all claiming through them in respect of their interests in the partnership, to have the value of the partner's interest in the partnership, less any damages caused to the partners by the dissolution, ascertained and paid to in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership, but in ascertaining the value of the partner's interest the value of the good will of the business is not considered.

In settling accounts between the partners after dissolution, the following rules must be observed, subject to any agreement to the contrary (R.C. 1775.39):

(1) The assets of the partnership are the partnership property and the contributions of the partners described in (4), below.

(2) The liabilities of the partnership must rank in order of payment, as follows: (a) those owing to creditors other than partners, (b) those owing to partners other than for capital and profits, (c) those owing to partners in respect of capital, and (d) those owing to partners in respect of profits.

(3) The assets must be applied in the order of their declaration in (1), above, to the satisfaction of the liabilities.

(4) The partners must contribute, subject to the immunity from joint or several liability with respect to a registered limited liability partnership, the amount necessary to satisfy the liabilities described in (2), above, but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners must contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court may enforce the contributions described in (4), above.

(6) Any partner or the partner's legal representative may enforce those contributions to the extent of the amount that the partner has paid in excess of the partner's share of the liability.

(7) The individual property of a deceased partner is liable for the contributions described in (4), above.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors have priority on

partnership property, and separate creditors on individual property, saving the rights of lien or secured creditors.

(9) If a partner has become bankrupt or the partner's estate is insolvent, the claims against the partner's separate property rank in the following order: (a) those owing to separate creditors, (b) those owing to partnership creditors, and (c) those owing to partners by way of contribution.

The right to an account of the partner's interest accrues to any partner, or the partner's legal representative, as against the winding up partners, the surviving partners, or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. (R.C. 1775.42.)

## **MERGERS, CONSOLIDATIONS, CONVERSIONS**

The bill's provisions on mergers, consolidations, and conversions are essentially the same as in existing R.C. 1775.45 to 1775.56. Existing law is mentioned in the analysis only to the extent the differences are primary.

### **Merger or consolidation into surviving or new domestic general partnership**

Pursuant to a written agreement of merger between the "constituent entities," a "domestic partnership" and one or more additional domestic partnerships or other domestic or "foreign entities" may be merged into a "surviving" domestic partnership. Pursuant to a written agreement of consolidation between the constituent entities, two or more domestic or foreign entities may be consolidated into a new domestic partnership formed by that consolidation. When a constituent entity is formed or organized under the laws of any "state" other than Ohio or under any chapter of the Revised Code other than R.C. Chapter 1776., no merger or consolidation may occur unless permitted under the chapter of the Revised Code under which each domestic constituent entity exists and the laws under which each foreign constituent entity exists. (R.C. 1776.68(A).)

### **Required contents of agreement**

Any written agreement of merger or consolidation of constituent entities into a surviving or new domestic partnership must set forth all of the following (R.C. 1776.68(B)):

(1) The name and the form of entity of each constituent entity, the state under the laws of which each constituent entity exists, and the name of the surviving or new domestic partnership;

(2) In the case of a merger, that one or more specified constituent entities is being merged into a specified surviving domestic partnership, and, in the case of a consolidation, that the constituent entities are being consolidated into a new domestic partnership;

(3) All statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists;

(4) In the case of a consolidation, the partnership agreement of the new domestic partnership or a provision that the written partnership agreement of a specified constituent partnership, a copy of which partnership agreement must be attached to the agreement of consolidation, with any amendments that are set forth in the agreement of consolidation, must be the agreement of partnership of the new domestic partnership;

(5) In the case of a merger, any changes in the general partners of the surviving domestic partnership and, in the case of a consolidation, the general partners of the new domestic partnership or a provision specifying the general partners of one or more specified constituent partnerships that constitute the initial general partners of the new domestic partnership;

(6) The terms of the merger or consolidation, the mode of carrying the terms into effect, and the manner and basis of converting the interests or shares in the constituent entities into, or exchanging the interests or shares in the constituent entities for, any interests, evidences of indebtedness, other securities, cash, rights, any other property, or any combination of property of the surviving domestic partnership, the new domestic partnership, or any other entity. No such conversion or exchange may be effected if there are reasonable grounds to believe that the conversion or exchange would render the surviving or new domestic partnership unable to pay its obligations as they become due in the usual course of its affairs.

Under existing law, the written agreement of merger or consolidation also must include the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity, the surviving domestic partnership, or the new domestic partnership may be served (R.C. 1775.45(B)(5)).

#### **Permissive contents of agreement**

The written agreement of merger or consolidation of constituent entities into a surviving or new domestic partnership may set forth any of the following (R.C. 1776.68(C)):

(1) The effective date of the merger or consolidation, which date may be on or after the date of the filing of the certificate of merger or consolidation;

(2) A provision authorizing one or more of the constituent entities to abandon the proposed merger or consolidation prior to filing the certificate of merger or consolidation by action of the partners of a constituent partnership, the directors of a constituent corporation, or the comparable representatives of any other constituent entity;

(3) In the case of a merger, any amendments to the partnership agreement of the surviving domestic partnership, or a provision that the written partnership agreement of a specified constituent partnership other than the surviving domestic partnership, with any amendments that are set forth in the agreement of merger, will be the partnership agreement of the surviving domestic partnership;

(4) A statement of, or a statement of the method of determining, the fair value of the assets to be owned by the surviving domestic partnership;

(5) The parties to the agreement of merger or consolidation in addition to the constituent entities;

(6) Any additional provision necessary or desirable with respect to the proposed merger or consolidation.

### **Notice and vote**

To effect the merger or consolidation, the agreement of merger or consolidation must be adopted by the partners of each constituent domestic partnership, including the surviving domestic partnership in the case of a merger, and must be adopted by or otherwise authorized by or on behalf of each other constituent entity in accordance with the laws under which it exists. All partners, whether or not they are entitled to vote or act, must be given written notice of any meeting of the general partners of a constituent domestic partnership or of any proposed action by the general partners of a constituent domestic partnership, which meeting or action is to adopt an agreement of merger or consolidation. The notice must be given either by mail at the address on the records of the partnership or in person. Unless the partnership agreement provides a shorter or longer period, the notice must be given not less than seven and not more than 60 days before the meeting or the effective date of the action. The notice must be accompanied by a copy or a summary of the material provisions of the agreement of merger or consolidation.

The unanimous vote or action of the partners or such different number or proportion as provided in writing in the partnership agreement is required to adopt

an agreement of merger or consolidation. If the agreement would effect or authorize any action that under any applicable provision of law or the partnership agreement could be effected or authorized only pursuant to a specified vote or action of the partners, or of any class or group of partners, the same vote or action as required to effect that change or authorize that action is required to adopt or approve the agreement of merger or consolidation. An agreement of merger or consolidation is not effective against a person who would continue to be or who would become a general partner of a partnership that is the surviving or new entity in a merger or consolidation unless that person specifically agrees in writing either to continue or to become, as the case may be, a general partner of the partnership that is the surviving or new entity. (R.C. 1776.68(D), (E), and (F).)

### **Abandonment or amendment of agreement**

At any time before the filing of the certificate of merger or consolidation, if the agreement of merger or consolidation so authorizes, the partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity may abandon the merger or consolidation by the same vote or action as was required to adopt the agreement (R.C. 1776.68(G)(1)). The agreement of merger or consolidation may contain a provision authorizing less than all of the partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement at any time before the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement of merger or consolidation by the partners of any constituent domestic partnership, only with the approval of all of the partners may an agreement be amended to do any of the following (R.C. 1776.68(G)(2)):

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by partners of the constituent domestic partnership in conversion of, or in exchange for, their interests;

(2) Alter or change any term of the partnership agreement of the surviving or new domestic partnership, except for alterations or changes that could be adopted by those partners by the terms of the partnership agreement of the surviving or new domestic partnership as would be in effect after the merger or consolidation;

(3) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the partners or any class or group of partners of the constituent domestic partnership.

**Merger or consolidation into entity other than domestic general partnership**

Pursuant to a written agreement of merger or consolidation between the constituent entities, a domestic partnership and one or more additional domestic or foreign entities may merge into a surviving entity other than a domestic partnership, or a domestic partnership together with one or more additional domestic or foreign entities may consolidate into a new entity, other than a domestic partnership, that is formed by the consolidation. No merger or consolidation may be carried out unless it is permitted by the Revised Code chapter under which each domestic constituent entity exists and by the laws under which each foreign constituent entity exists. (R.C. 1776.69(A).)

**Required contents of agreement**

Any written agreement of any merger or consolidation must set forth all of the following (R.C. 1776.69(B)):

(1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(2) In the case of a merger, that one or more specified constituent domestic partnerships and other specified constituent entities will be merged into a specified surviving foreign entity or surviving domestic entity other than a domestic partnership, or, in the case of a consolidation, that the constituent entities will be consolidated into a new foreign entity or a new domestic entity other than a domestic partnership;

(3) If the surviving or new entity is a foreign partnership, all statements and matters that would be required as described above if the surviving or new entity were a domestic partnership;

(4) The name and the form of entity of the surviving or new entity, the state under the laws of which the surviving entity exists or the new entity is to exist, and the location of the principal office of the surviving or new entity;

(5) Any additional statements and matters required to be set forth in an agreement of merger or consolidation by the laws under which each constituent entity exists and, in the case of a consolidation, the new entity is to exist;

(6) If the surviving or new entity is a foreign entity, the consent of the surviving or new foreign entity to be sued and served with process in Ohio and the irrevocable appointment of the Secretary of State as its agent to accept service of process in any proceeding in Ohio to enforce against the surviving or new foreign entity any obligation of any constituent domestic partnership or to enforce the rights of a dissenting partner of any constituent domestic partnership;

(7) If the surviving or new entity is a foreign corporation that desires to transact business in Ohio as a foreign corporation, a statement to that effect, together with a statement regarding the appointment of a statutory agent and service of any process, notice, or demand upon that statutory agent or the Secretary of State, as required when a foreign corporation applies for a license to transact business in Ohio;

(8) If the surviving or new entity is a foreign limited partnership that desires to transact business in Ohio as a foreign limited partnership, a statement to that effect, together with all of the information required under R.C. 1782.49 when a foreign limited partnership registers to transact business in Ohio;

(9) If the surviving or new entity is a foreign limited liability company that desires to transact business in Ohio as a foreign limited liability company, a statement to that effect, together with all of the information required under R.C. 1705.54 when a foreign limited liability company registers to transact business in Ohio;

(10) If the surviving or new entity is a foreign limited liability partnership that desires to transact business in Ohio as a foreign limited liability partnership, a statement to that effect, together with all of the information required under R.C. 1775.64 when a foreign limited liability partnership registers to transact business in Ohio.

#### **Permitted contents of agreement**

The written agreement of merger or consolidation also may set forth any additional provision permitted by the laws of any state under the laws of which any constituent entity exists, consistent with the laws under which the surviving entity exists or the new entity is to exist (R.C. 1776.69(C)).

#### **Notice and vote**

To effect the merger or consolidation, the partners of each constituent domestic partnership must adopt an agreement of merger or consolidation in the same manner and with the same notice to and vote or action of partners or of a particular class or group of partners as described above with respect to the merger or consolidation into a surviving or new domestic partnership. The agreement of merger or consolidation also must be approved or otherwise authorized by or on behalf of each constituent entity in accordance with the laws under which it exists. An agreement of merger or consolidation is not effective against a person who would continue to be or who would become a general partner of a partnership that is the surviving or new entity in a merger or consolidation unless that person

specifically agrees in writing either to continue or to become, as the case may be, a general partner of the surviving or new entity. (R.C. 1776.69(D).)

**Abandonment or amendment of agreement**

At any time before filing the certificate of merger or consolidation, if the agreement of merger or consolidation permits, the partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity may abandon the merger or consolidation (R.C. 1776.69(E)(1)). The agreement of merger or consolidation may authorize less than all of the partners of any constituent partnership, the directors of any constituent corporation, or the comparable representatives of any other constituent entity to amend the agreement of merger or consolidation at any time before the filing of the certificate of merger or consolidation, except that, after the adoption of the agreement of merger or consolidation by the partners of any constituent domestic partnership, only with the approval of all the partners may any agreement of merger or consolidation be amended to do any of the following (R.C. 1776.69(E)(2)):

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by partners of the constituent domestic partnership in conversion of or in exchange for their interests;

(2) If the surviving or new entity is a partnership, alter or change any term of the partnership agreement of the surviving or new partnership, except for alterations or changes that could be adopted by those partners by the terms of the partnership agreement of the surviving or new partnership as would be in effect after the merger or consolidation;

(3) If the surviving or new entity is a corporation or any other entity other than a partnership, alter or change any term of the articles or comparable instrument of the surviving or new corporation or entity, except for alterations or changes that otherwise could be adopted by the directors or comparable representatives of the surviving or new corporation or entity;

(4) Alter or change any other terms and conditions of the agreement of merger or consolidation if any of the alterations or changes, alone or in the aggregate, would materially adversely affect the partners or any class or group of partners of the constituent domestic partnership.



**Filing of certificate or merger or consolidation; other documents**

Upon the adoption by each constituent entity of an agreement of merger or consolidation, the resulting entity must file a certificate of merger or consolidation with the Secretary of State (SOS), *unless the only constituent entities that are domestic entities are partnerships, and in the case of a consolidation, the resulting entity is a domestic partnership, in which case the filing of a certificate of merger is optional* (the italicized provision is not in existing R.C. 1775.47). Any certificate shall be on a form the SOS prescribes, signed by an authorized representative of each constituent entity, and set forth only the information required in the following provisions. (R.C. 1776.70(A).) The certificate of merger or consolidation must set forth all of the following (R.C. 1776.70(B)(1)):

(1) The name and the form of entity of each constituent entity and the state under the laws of which each constituent entity exists;

(2) A statement that each constituent entity has complied with all of the laws under which it exists and that the laws permit the merger or consolidation;

(3) The name and mailing address of the person or entity that is to provide, in response to any written request made by a shareholder, partner, or other equity holder of a constituent entity, a copy of the agreement of merger or consolidation;

(4) The effective date of the merger or consolidation, which date must be on or after the date of the filing of the certificate;

(4) The signature of the representative or representatives authorized to sign the certificate on behalf of each constituent entity and the office held or the capacity in which the representative is acting;

(6) A statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that each person who signed the certificate on behalf of each entity is authorized to do so;

(7) In the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity;

(8) The name and form of the surviving entity in the case of a merger or the name and form of the new entity in the case of a consolidation;

(9) In the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in Ohio, the name and address of the statutory agent upon whom any process, notice, or demand may be served;

(10) In the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served.

In the case of a consolidation into a new domestic corporation, limited liability company, or limited partnership, the articles of incorporation, the articles of organization, or the certificate of limited partnership of the new domestic entity must be filed with the certificate of consolidation. In the case of a merger into a domestic corporation, limited liability company, or limited partnership, any amendments to the articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity must be filed with the certificate of merger. If the surviving or new entity is a foreign entity that desires to transact business in Ohio as a foreign corporation, limited liability company, limited partnership, or *limited liability partnership* (not in existing R.C. 1775.47(B)(4)), the certificate of merger or consolidation must be accompanied by the required information as described in paragraphs (7), (8), (9), or (10) in "*Required contents of agreement*" under "*Merger or consolidation into entity other than domestic general partnership*," above. If a domestic corporation or a foreign corporation licensed to transact business in Ohio is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a domestic corporation or a foreign corporation that is to be licensed to transact business in Ohio, the certificate of merger or consolidation must be accompanied by the affidavits, receipts, certificates, or other evidence required by R.C. 1701.86(H), with respect to each domestic constituent corporation, and by the affidavits, receipts, certificates, or other evidence required by R.C. 1703.17(C) or (D), with respect to each foreign constituent corporation licensed to transact business in Ohio. (R.C. 1776.70(B)(2), (3), (4), and (5).)

If any constituent entity in a merger or consolidation is organized or formed under the laws of a state other than Ohio or under any chapter of the Revised Code other than R.C. Chapter 1776., there also must be filed in the proper office all documents that are required to be filed in connection with the merger or consolidation by the laws of that state or by that chapter.

Upon the filing of a certificate of merger or consolidation and other filings as described above, or at any later date that the certificate of merger or consolidation specifies, the merger or consolidation is effective, subject to the limitation that no conversion or exchange of interests or shares is to be effected if there are reasonable grounds to believe that the conversion or exchange would render the surviving or new domestic partnership unable to pay its obligations. *If domestic partnerships are the only domestic entities that are constituent entities or the resulting entity in a merger or consolidation, and the agreement of merger or consolidation provides for a means of determining when the merger becomes*

*effective, other than based upon the filing of a certificate of merger, the merger becomes effective at the time determined in accordance with the agreement of merger or consolidation* (italicized provision is not in existing R.C. 1775.47). (R.C. 1776.70(C) and (D).)

Upon request and payment of the specified fee, the SOS must furnish a certificate setting forth the name and form of entity of each constituent entity and the states under the laws of which each constituent entity existed prior to the merger or consolidation, the name and the form of entity of the surviving or new entity and the state under the laws of which the surviving entity exists or the new entity is to exist, the date of filing of the certificate of merger or consolidation with the SOS, and the effective date of the merger or consolidation. This certificate of the SOS, or a copy of the certificate of merger or consolidation certified by the SOS, may be filed for record in the office of the recorder of any county in Ohio and, if filed, must be recorded in the records of deeds for that county. For that recording, the county recorder must charge and collect the same fee as in the case of deeds. (R.C. 1776.70(E).)

***Effect of merger or consolidation; rights of former general partner; action to set aside; laws of other states***

***Effect of merger or consolidation***

When a merger or consolidation becomes effective, all of the following apply (R.C. 1776.71(A)):

(1) The separate existence of each constituent entity other than the surviving entity in a merger ceases, except that whenever a conveyance, assignment, transfer, deed, or other instrument or act is necessary to vest property or rights in the surviving or new entity, the partners, officers, or other authorized representatives of the respective constituent entities must execute, acknowledge, and deliver those instruments and do those acts. For these purposes, the existence of the constituent entities and the authority of their respective partners, officers, directors, or other representatives continue notwithstanding the merger or consolidation.

(2) In a consolidation, the new entity exists when the consolidation becomes effective. If the new entity is a domestic partnership, its original partnership agreement is the written partnership agreement that is contained in or provided for in the agreement of consolidation.

(3) In a merger in which the surviving entity is a partnership, the written partnership agreement of the surviving partnership that is in effect immediately

prior to the time the merger becomes effective is its partnership agreement after the merger except as otherwise provided in the agreement of merger.

(4) The surviving or new entity possesses all of the following, and all of the following are vested in the surviving or new entity without any further act or deed: (a) except to the extent limited by the mandatory provisions of applicable law: (i) all assets and property of every description of each constituent entity, and every interest in the assets and property of each constituent entity, wherever the assets, property, and interests are located; title to any real estate or any interest in real estate that was vested in any constituent entity does not revert and is not in any way impaired by reason of the merger or consolidation, and (ii) the rights, privileges, immunities, powers, franchises, and authority, whether of a public or private nature, of each constituent entity, and (b) all obligations belonging to or due to each constituent entity.

(5) The surviving or new entity is liable for all the obligations of each constituent entity, including liability to dissenting partners, dissenting shareholders, or other dissenting equity holders. Any claim existing or any action or proceeding pending by or against any constituent entity may be prosecuted to judgment with right of appeal as if the merger or consolidation had not taken place, or the surviving or new entity may be substituted in place of any constituent entity.

(6) All the rights of creditors of each constituent entity are preserved unimpaired, and all liens upon the property of any constituent entity are preserved unimpaired, on only the property affected by those liens immediately before the effective date of the merger or consolidation. When a partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, the former general partner is deemed to have dissociated as of that effective date of the merger or consolidation, and the former general partner's liability to third parties is determined in accordance with the provisions dealing with a dissociated partner's liability to other persons. The filing of a certificate of merger from which it is clear that the former general partner is no longer a general partner has the effect provided by the filing of a statement of dissociation.

The last two sentences in the preceding paragraph modify existing law, which provides that if a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, then the former general partner has no liability for any obligation incurred after the merger or consolidation except to the extent that a former creditor of the constituent partnership in which the former general partner was a general partner extends credit to the surviving or new entity reasonably believing

that the former general partner continued as a general partner of the surviving or new entity. (R.C. 1775.48(A)(6).)

### **Rights of former general partner**

When a general partner of a constituent partnership is not a general partner of the entity surviving or the new entity resulting from the merger or consolidation, unless that general partner agrees otherwise in writing, the surviving or new entity must indemnify the general partner against all present or future liabilities of the constituent partnership of which the general partner was a general partner. Any amount payable, pursuant to a dissenting partner's demand for fair cash value of the partner's interests, to a partner of the constituent partnership in which that general partner was a partner is a present liability of that constituent partnership. (R.C. 1776.71(B).)

### **Other provisions**

In the case of a merger of a constituent domestic partnership into a foreign surviving corporation, limited liability company, limited partnership, or limited liability partnership that is not licensed or registered to transact business in Ohio, or a consolidation of a constituent domestic partnership into a new foreign corporation, limited liability company, limited partnership, or limited liability partnership when the surviving or new entity intends to transact business in Ohio and the certificate of merger or consolidation is accompanied by the required information pertaining to procuring a license or registration to transact business in Ohio, then on the effective date of the merger or consolidation the surviving or new entity is considered to have complied with the requirements for procuring a license or for registration to transact business in Ohio as a foreign corporation, limited liability company, or limited partnership, as the case may be. In such a case, a copy of the certificate of merger or consolidation certified by the SOS constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company or foreign limited partnership.

Any action to set aside any merger or consolidation on the ground that any section of the Revised Code applicable to the merger or consolidation has not been complied with must be brought within 90 days after the effective date of the merger or consolidation or forever be barred.

When an entity is organized or existing under the laws of any state other than Ohio, the above provisions are subject to the laws of that state or in which the entity has property. (R.C. 1776.71(C), (D), and (E).)

### **Conversion of domestic or foreign entity into domestic partnership**

Pursuant to a written declaration of conversion, a domestic or foreign entity other than a domestic partnership may be converted into a domestic partnership if that conversion is permitted by any section of the Revised Code or the laws under which the converting entity exists. However, no conversion or exchange described in the following paragraphs may be effected if there are reasonable grounds to believe that the conversion or exchange would render the converted partnership unable to pay its obligations as they become due in the usual course of its affairs. (R.C. 1776.72(A) and (B)(2).)

#### **Required contents of declaration**

The written declaration of conversion must set forth all of the following (R.C. 1776.72(B)(1)):

(1) The name and form of entity that is being converted, the name of the entity into which the entity is being converted, and the jurisdiction of formation of the converting entity;

(2) If the converted entity is a limited liability partnership, the converted entity's registration application;

(3) The partnership agreement of the converted domestic partnership or a provision that the written agreement of the converting entity, a copy of which must be attached to the declaration of conversion, with any amendments that are set forth in the declaration of conversion, is the agreement of the resulting converted domestic partnership;

(4) The general partners of the converted partnership;

(5) All statements and matters required to be set forth in an instrument of conversion by the laws under which the converting entity exists;

(6) The terms of the conversion, the mode of carrying those terms into effect, and the manner and basis of converting the interests or shares of the converting entity into, or exchanging the interests or shares in the converting entity for, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, evidences of indebtedness, other securities, cash, rights, or any other property of the converted partnership.

#### **Permitted contents of declaration**

The written declaration of conversion may set forth any of the following: (1) the effective date of the conversion, to be on or after the date of the filing of

the certificate of conversion, (2) a provision authorizing the converting entity to abandon the proposed conversion by an action that is taken prior to the filing of the certificate of conversion, (3) a statement of, or a statement of the method to be used to determine, the fair value of the assets owned by the converting entity at the time of the conversion, (4) the parties to the declaration of conversion in addition to the converting entity, or (5) any additional provision necessary or desirable with respect to the proposed conversion or the converted entity. (R.C. 1776.72(C).)

### **Other provisions**

At any time before the filing of the certificate of conversion, the conversion may be abandoned by any representatives authorized to do so by the declaration of conversion, or by the same vote as was required to adopt the declaration of conversion. Unless the converted entity is a limited liability partnership, each person that will be a partner of the partnership that is the converted entity specifically must agree in writing to be a partner in the partnership that is the converted entity. (R.C. 1776.72(D) and (E).)

### **Conversion of domestic partnership into domestic or foreign entity**

A domestic partnership may be converted into a domestic or foreign entity other than a domestic partnership pursuant to a written declaration of conversion if that conversion is permitted by the chapter of the Revised Code or by the laws under which the converted entity will exist. However, no conversion or exchange described in the following paragraphs may be effected if there are reasonable grounds to believe that the conversion or exchange would render the converted entity unable to pay its obligations as the obligations become due in the usual course of its affairs. (R.C. 1776.73(A) and (B)(2).)

### **Required contents of declaration**

The written declaration of conversion must set forth all of the following (R.C. 1776.73(B)(1)):

(1) The name and form of entity that is being converted, the name of the entity into which the entity will be converted, the form of the converted entity, and the jurisdiction of formation of the converted entity;

(2) If the converted entity is a domestic entity, the complete terms of all documents required under the applicable chapter of the Revised Code to form the converted entity;

(3) If the converted entity is a foreign entity, all of the following: (a) the complete terms of all documents required under the law governing the converted entity's formation, (b) the consent of the converted entity to be sued and served

with process in Ohio, and the irrevocable appointment of the SOS as the agent of the converted entity to accept service of process in Ohio to enforce against the converted entity any obligation of the converting partnership or to enforce the rights of a dissenting partner of the converting partnership, and (c) if the converted entity desires to transact business in Ohio, the information required to qualify or be licensed under the applicable chapter of the Revised Code.

(4) All other statements and matters required to be set forth in the declaration of conversion by the applicable chapter of the Revised Code if the converted entity is a domestic entity, or by the laws under which the converted entity will be formed, if the converted entity is a foreign entity;

(5) The terms of the conversion, the mode of carrying those terms into effect, and the manner and basis of converting the interests of shares of the converting partnership into, or exchanging the interests in the converting partnership for, interests, evidences of indebtedness, other securities, cash, rights, or any other property or any combination of interests, evidences of indebtedness, other securities, cash, rights, or any other property of the converted entity.

#### **Permitted contents of declaration**

The written declaration of conversion may set forth any of the following: (1) the effective date of the conversion, to be on or after the filing date of the certificate of conversion, (2) a provision authorizing the converting partnership to abandon the proposed conversion by an action of the partners of the converting partnership that is taken prior to filing the certificate of conversion, (3) a statement of, or a statement of the method to be used to determine, the fair value of the assets owned by the converting partnership at the time of the conversion, (4) a listing of the parties to the declaration of conversion, in addition to the converting entity, or (5) any additional provision necessary or desirable with respect to the proposed conversion or the converted entity. (R.C. 1776.73(C).)

#### **Notice and vote**

No declaration of conversion is effective unless adopted by the partners. Each partner, whether or not entitled to vote or act, must be given written notice of any meeting of partners of a partnership or any proposed action by the partners that is to adopt a declaration of conversion. The notice must be given to the partners either as provided in writing in the partnership agreement, by mail at the address of each partner as it appears on the records of the partnership, or in person. Unless the partnership agreement provides a shorter or longer period, notice must be given not less than seven nor more than 60 days before the meeting or the effective date of the action. A copy or a summary of the material provisions of the declaration of conversion shall accompany the notice.



The unanimous vote or action of the partners of a converting partnership, or a different number or proportion as provided in writing in the partnership agreement, is required to adopt a declaration of conversion. If the declaration of conversion would effect or authorize any action that under any applicable law or the partnership agreement could be effected or authorized only pursuant to a specified vote or action of the partners or a class or group of partners, the same vote or action as would be required to effect that change or authorize that action is necessary to adopt or approve the declaration of conversion. (R.C. 1776.73(D), (E), and (F).)

### **Abandonment or amendment of declaration**

At any time before the filing of the certificate of conversion, the conversion may be abandoned by all of the partners of the converting partnership or by any representatives authorized to do so by the declaration of conversion, or by the same vote as was required to adopt the declaration of conversion (R.C. 1776.73(G)(1)). The declaration of conversion may contain a provision authorizing less than all of the partners to amend the declaration of conversion at any time before the filing of the certificate of conversion, except that after the partners adopt the declaration of conversion, approval of all of the partners is necessary to amend the declaration of conversion to do any of the following (R.C. 1776.73(G)(2)):

(1) Alter or change the amount or kind of interests, shares, evidences of indebtedness, other securities, cash, rights, or any other property to be received by the partners of the converting partnership in conversion of, or exchange for, their interests;

(2) Alter or change any term of the organizational documents of the converted entity except for alterations or changes that are adopted with the vote or action of the persons the vote or action of which would be required for the alteration or change after the conversion;

(3) Alter or change any other terms and conditions of the declaration of conversion if any of the alterations or changes, alone or in the aggregate, materially and adversely would affect the partners or any class or group of partners of the converting partnership.

### **Certificate of conversion**

Upon the adoption of a declaration of conversion as described above, or at a later time as authorized by the declaration of conversion, a certificate of conversion that is signed by an authorized representative of the converting entity must be filed by the authorized representative with the SOS. The certificate must

be on a form prescribed by the SOS and must set forth only the information described in the following paragraphs.

The certificate of conversion must set forth all of the following: (1) the name and the form of entity of the converting entity and the state under the laws of which the converting entity exists, (2) a statement that the converting entity has complied with all of the laws under which it exists and that those laws permit the conversion, (3) the name and mailing address of the person or entity that is to provide a copy of the declaration of conversion in response to any written request made by a shareholder, partner, or member of the converting entity, (4) the effective date of the conversion, which date may be on or after the date of the filing of the certificate of conversion, (5) the signature of the representative or representatives authorized to sign the certificate on behalf of the converting entity and the office held or the capacity in which the representative is acting, (6) a statement that the declaration of conversion is authorized on behalf of the converting entity and that each person who has signed the certificate on behalf of the converting entity is authorized to do so, (7) the name and the form of the converted entity and the state under the laws of which the converted entity will exist, and (8) if the converted entity is a foreign entity that will not be licensed in this state, the name and address of the statutory agent upon whom any process, notice, or demand may be served.

In the case of a conversion into a new domestic corporation, limited liability company, limited partnership, or other partnership, any organizational document that would be filed upon the creation of the converted entity must be filed with the certificate of conversion. If the converted entity is a foreign entity that desires to transact business in Ohio, the certificate of conversion must be accompanied by the required information necessary to transact business in Ohio. If a domestic corporation or a foreign corporation licensed to transact business in Ohio is the converting entity, the certificate of conversion must be accompanied by the affidavits, receipts, certificates, or other evidence required by R.C. 1701.86(H) with respect to a converting domestic corporation, or by the affidavits, receipts, certificates, or other evidence required by R.C. 1703.17(C) or (D) with respect to a foreign corporation. If the converting entity or the converted entity is organized or formed under the laws of a state other than Ohio or under any chapter of the Revised Code other than this chapter, all documents required to be filed in connection with the conversion by the laws of that state or that chapter also must be filed in the proper office. (R.C. 1776.74(A), (B), and (C).)

Upon the filing of a certificate of conversion and other required filings as described above, or at any later date that the certificate of conversion specifies, the conversion is effective, subject to the limitation that no conversion may be effected if there are reasonable grounds to believe that the conversion would

render the converted entity unable to pay its obligations as the obligations become due in the usual course of the converted entity's affairs. Upon request and payment of the fee of \$25, the SOS must furnish a certificate setting forth all of the following: (a) the name and form of entity of the converting entity and the state under the laws of which it existed prior to the conversion, (b) the name and the form of entity of the converted entity and the state under the law of which it will exist, and (c) the date of filing of the certificate of conversion with the SOS and the effective date of the conversion. The certificate of the SOS or a copy of the certificate of conversion certified by the SOS may be filed for record in the office of the recorder of any county in Ohio and, if filed, must be recorded in the records of deeds for that county. For the recording, the county recorder must charge and collect the same fee as in the case of deeds. (R.C. 1776.74(D), (E), and (F) and R.C. 111.16(K)(2).)

### **Effects of conversion**

Upon a conversion becoming effective, all of the following apply (R.C. 1776.75(A)):

- (1) The converting entity is continued in the converted entity.
- (2) The converted entity exists, and the converting entity ceases to exist.
- (3) The converted entity possesses both of the following and both of the following continue in the converted entity without any further act or deed: (a) except to the extent limited by requirements of applicable law, both of the following: (i) all assets and property of every description of the converting entity and every interest in the assets and property of the converting entity, wherever the assets, property, and interests are located; title to any real estate or any interest in real estate that was vested in the converting entity does not revert or in any way is impaired by reason of the conversion, and (ii) the rights, privileges, immunities, powers, franchises, and authority, whether of a public or a private nature, of the converting entity, and (b) all obligations belonging or due to the converting entity.
- (4) All the rights of creditors of the converting entity are preserved unimpaired, and all liens upon the property of the converting entity are preserved unimpaired. A general partner of a converting partnership who is not a general partner of the resulting entity is not liable for any obligation incurred after the conversion except for either of the following: (a) if the converted entity is a partnership, to the extent that a creditor of the converting partnership extends credit to the converted entity, reasonably believing that the former general partner continues as a general partner of the converted entity, or (b) *if the converted entity is not a partnership then to the extent of the liability of a partner who dissociates without resulting in a dissolution or winding up of the partnership business,*

*deeming for purpose of this provision that a certificate of conversion constitutes a statement of dissociation* (italicized provision is not in existing R.C. 1775.56).

If a general partner of a converting partnership is not a general partner of the resulting entity, unless that general partner agrees otherwise in writing, the converted entity must indemnify the general partner against all present or future liabilities of the converting partnership of which the general partner was a general partner. Liabilities of the converting partnership include any amount payable, pursuant to a dissenting partner's demand for fair cash value of the partner's interests, to a partner of the converting partnership.

In the case of a conversion into a foreign corporation, limited liability company, or limited liability partnership that is not licensed or registered to transact business in Ohio, if the converted entity intends to transact business in Ohio and the certificate of conversion is accompanied by the information required for procuring a license or registration to transact business in Ohio, on the effective date of the conversion the converted entity is considered to have complied with the requirements for procuring a license or registration to transact business in Ohio as a foreign corporation, limited liability company, limited partnership, or limited liability partnership as the case may be. A copy of the certificate of conversion certified by the SOS constitutes the license certificate prescribed for a foreign corporation or the application for registration prescribed for a foreign limited liability company, foreign limited partnership, or foreign limited liability partnership.

Any action to set aside a conversion on the grounds of noncompliance with a section of the Revised Code that is applicable to the conversion is forever barred unless that action is brought within 90 days after the effective date of the conversion. In the case of a converting or converted entity organized or existing under the laws of any state other than Ohio, the above provisions are subject to the laws of the state under which that entity exists or in which it has property. (R.C. 1776.75(B), (C), (D), and (E).)

**Partner entitled to relief as dissenting partner; liability of general partner of constituent partnership**

Unless otherwise provided in writing in the partnership agreement of a constituent domestic partnership, all of the following are entitled to relief as dissenting partners: (1) partners of a domestic partnership that is being merged or consolidated into a surviving or new entity, domestic or foreign, (2) in the case of a merger into a domestic partnership, partners of the surviving domestic partnership who are entitled to vote or act on the adoption of an agreement of merger, but only as to the interests so entitling them to vote or act, and (3) partners of a domestic partnership that is converting into a converted entity.

Unless otherwise expressly agreed to in writing, a general partner of any constituent partnership is liable to the partners of the constituent partnership for any amount payable to them pursuant to a dissenting partner's demand for fair cash value of the partner's interests, as if the amount payable were an existing liability of the constituent partnership at the time of the merger, consolidation, or conversion. (R.C. 1776.76.)

**Dissenting partner's demand for fair cash value of interests; filing of complaint**

A partner of a domestic partnership is entitled to relief as a dissenting partner with respect to the proposals described above only as the following provisions provide (R.C. 1776.77(A)).

**Demand for fair cash value of interests**

When a proposal of merger, consolidation, or conversion is submitted to the partners at a meeting, a partner may be a dissenting partner only if that partner is a record holder of the partnership interests as to which the partner seeks relief as of the date fixed for the determination of partners entitled to notice of the meeting, and has not voted those interests in favor of the proposal. Not later than ten days after the date on which a vote on a proposal for merger, or consolidation, or conversion is taken at the meeting of the partners, a dissenting partner must deliver to the partnership a written demand for payment of the fair cash value of the interests to which the dissenting partner seeks relief. If the proposal of merger, consolidation, or conversion is submitted to the partners for written approval or other action without a meeting, a partner may be a dissenting partner only if on the date the request for approval or action is sent to the partners entitled to act or approve the partner is a record holder of those interests of the partnership to which the partner seeks relief and the partner did not indicate approval of the proposal in the partner's capacity as a holder of those interests. Not later than 15 days after the date on which the request for approval of or action on the proposal is sent to the partners, the dissenting partner must deliver to the partnership a written demand for payment of the fair cash value of the interests to which the partner seeks relief. The demand in both cases above must state the dissenting partner's address, the number and class of interests, and the amount the dissenting partner claims as the fair cash value of those interests.

In any merger or consolidation, a demand served on the involved constituent domestic partnership constitutes service on the surviving entity or the new entity, whether that demand is served before, on, or after the effective date of the merger or consolidation. In any conversion, a demand served on the converting domestic partnership constitutes service on the converted entity, whether that demand is served before, on, or after the effective date of the conversion. (R.C. 1776.77(B), (C), and (D).)

### **Certificated and uncertificated interests**

When the interests as to which a dissenting partner seeks relief are represented by certificates, and the domestic partnership sends the dissenting partner a request for certificates representing those interests, within 15 days from the date on which the request is sent, the dissenting partner must deliver to the partnership the requested certificates. The partnership must endorse a legend on each certificate to the effect that the partner has made a demand for the fair cash value of the interests the certificate represents. The partnership promptly must return the endorsed certificates to the dissenting partner. At the option of the partnership, the partnership may terminate a partner's rights as a dissenting partner by sending a written notice to the dissenting partner within 20 days after the lapse of the 15-day period if the partner fails to deliver the certificates, unless a court for good cause shown otherwise directs. A partnership's request is not an admission that the holder of the interest is entitled to relief. If an interest represented by a certificate that contains a legend is transferred, each new certificate issued must bear a similar legend and the name of the original dissenting holder of those interests. Upon receiving a demand for payment from a dissenting partner who is a record holder of uncertificated interests, the partnership must make an appropriate notation of the demand for payment in its records. When an uncertificated interest for which a dissenting partner demands payment is to be transferred, any writing to evidence that transfer must bear the legend required for certificated interests. A transferee of interests who receives an endorsed certificate or an uncertificated interest with a notation acquires only those rights in the partnership as the original partner holding those interests had immediately after the service of a demand for payment of the fair cash value of the interests. (R.C. 1776.77(E).)

### **Filing of complaint; termination of right to fair cash value of interests**

Unless the partnership agreement of the constituent domestic partnership provides a reasonable basis for determining and paying the fair cash value of the interests for which a dissenting partner seeks relief, or unless the partnership and the dissenting partner have come to an agreement on the fair cash value of the interests, the dissenting partner or the partnership, which may be the surviving or new entity in the case of a merger or consolidation, or the converted entity in the case of a conversion, within 90 days after the service of the dissenting partner's demand, may file a complaint in the court of common pleas of the county in which the principal office of the partnership that issued the interests is located or was located when the partners adopted the proposal of merger, consolidation, or conversion. *The complaint must be filed in the court of common pleas of Franklin County if the domestic partnership does not have, or did not have at the time of the demand, its principal office in Ohio* (italicized provision is not in existing R.C.

1775.50). Other dissenting partners, within that 90-day period, may join as plaintiffs or may be joined as defendants, and any two or more proceedings may be consolidated.

The right and obligation of a dissenting partner to receive fair cash value and to sell the interests to which the dissenting partner seeks relief, and the right and obligation of the domestic partnership to purchase those interests and to pay the fair cash value of them, terminate under any of the following circumstances: (1) the dissenting partner does not comply with the above provisions, unless the partnership waives that failure, (2) the partnership abandons the merger, consolidation, or conversion or is finally enjoined or prevented from carrying it out, or the partners rescind their adoption or approval of the merger, consolidation, or conversion, (3) the dissenting partner withdraws the demand, with the consent of the partnership, or (4) the partnership agreement does not provide a reasonable basis for determining and paying the dissenting partner the fair cash value of the dissenting partner's interest, the partnership and the dissenting partner have not agreed upon the fair cash value of the interest, and neither the dissenting partner nor the partnership has filed or joined in a complaint filed in court within the above-described period.

Unless otherwise provided in the partnership agreement, from the time the dissenting partner gives a demand until either the termination of the rights and obligations arising from it or the purchase of the interests by the partnership, all other rights accruing from those interests, including voting or distribution rights, are suspended. If, during the suspension, any distribution is paid in money upon interests of that class, or any dividend, distribution, or interest is paid in money upon any securities issued in extinguishment of, or in substitution for, that interest, the holder of record must be paid as a credit upon the fair cash value of the interests an amount equal to the dividend, distribution, or interest that would have been payable upon those interests or securities, if not for the suspension. If the right to receive the fair cash value is terminated other than by the purchase of the interests by the partnership, all rights of the dissenting partner must be restored and all distributions that would have been made if not for the suspension must be made to the holder of record of the interests at the time of termination. (R.C. 1776.77(F), (G), and (H).)

**Complaint by dissenting partner for fair cash value of interests; determination of fair cash value**

When authorized as described above, a dissenting partner or a partnership may file a complaint demanding the relief described below. Any complaint must contain a brief statement of the facts, including the vote or action by the partners and the facts entitling the dissenting partner to the relief demanded. No answer to a complaint is required. Upon the filing of a complaint, the court, on motion of

the petitioner, must enter an order fixing a date for a hearing and require a copy of the complaint, a notice of the filing, and the date for the hearing be given to the respondent or defendant pursuant to the Rules of Civil Procedure. On the date fixed for the hearing, the court must determine from the complaint and from evidence either party submits whether the dissenting partner is entitled to be paid the fair cash value of any interests and, if so, the number and class of those interests. The court may appoint one or more persons as appraisers to receive evidence and to recommend a decision on the amount of the fair cash value if the court finds that the dissenting partner is entitled to the payment of the cash value of interests. The appraisers have the power and authority as the order of their appointment specifies. The court must make a finding as to the fair cash value of the interests and render judgment against the partnership for the payment of it, with interest at a rate and from a date as the court considers equitable. The court must assess or apportion the costs of the proceeding, including reasonable compensation to the appraisers to be fixed by the court, as the court considers equitable. The proceeding is a special proceeding and final orders in it may be vacated, modified, or reversed on appeal pursuant to the Rules of Appellate Procedure and, to the extent not in conflict with those rules, to R.C. Chapter 2505. If, during the pendency of any proceeding described above, a suit or proceeding is instituted to enjoin or otherwise to prevent the carrying out of the action as to which the partner has dissented, the instituted proceeding must be stayed until the final determination of the other suit or proceeding. Unless any provision dealing with the termination of the right and obligation of a dissenting partner to receive, or the right and obligation of the domestic partnership to pay, the fair cash value of the dissenting partner's interests applies, the fair cash value of the interests that the parties agree upon or fix must be paid within 30 days after the date of final determination of value or the consummation of the merger, consolidation, or conversion, whichever occurs last, provided that in the case of holders of interests represented by certificates, payment must be made only upon and simultaneously with the surrender to the domestic partnership of the certificates representing the interests for which the payment is made. (R.C. 1776.78(A).)

If the proposal of merger, consolidation, or conversion is submitted to the partners of the partnership for a vote at a meeting, the fair cash value as to those partners must be determined as of the day before the day on which the vote is taken. If the proposal is submitted to the partners for written approval or other action, the fair cash value as to those partners must be determined as of the day prior to the day on which the request for the approval or action is sent. The fair cash value of an interest for purposes of the above provisions is the amount that a willing seller who is under no compulsion to sell would be willing to accept and that a willing buyer who is under no compulsion to purchase would be willing to pay. In no case may the fair cash value paid to any partner exceed the amount specified in that partner's demand. The computation of the fair cash value must



exclude any appreciation or depreciation in value resulting from the merger, consolidation, or conversion. (R.C. 1776.78(B) and (C).)

### **Rights of certain judgment creditors**

When a domestic partnership is a constituent entity to a merger or consolidation that has become effective, and that domestic partnership is not the surviving or resulting entity of the merger or consolidation, or a domestic partnership is the converting entity in a conversion, a judgment creditor of a partner of that domestic partnership may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the surviving or resulting entity of the merger, consolidation, or conversion unless any of the following applies (R.C. 1776.79):

(1) The claim is for an obligation of the domestic partnership for which the partner is liable as the chapter provides and any of the following is true: (a) a judgment based on the same claim entered was against the surviving or resulting entity of the merger or consolidation and a writ of execution on the judgment was returned unsatisfied in whole or in part, (b) the surviving or resulting entity of the merger or consolidation or the entity resulting from the conversion is a debtor in bankruptcy, (c) the partner agreed that the creditor need not exhaust the assets of a domestic partnership that was not the surviving or resulting entity of the merger, consolidation, or conversion, or (d) the partner agreed that the creditor need not exhaust the assets of the surviving or resulting entity of the merger or consolidation or the entity resulting from the conversion.

(2) A court grants permission to the judgment creditor to levy execution against the assets of the partner based on a finding that the assets of the surviving or resulting entity of the merger, consolidation, or conversion that are subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of the assets of the surviving or resulting entity is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

(3) Liability is imposed on the partner by law or contract independent of the existence of the surviving or resulting entity of the merger, consolidation, or conversion.

## **LIMITED LIABILITY PARTNERSHIP**

### **Statement of qualification**

#### **The bill**

A partnership may become a limited liability partnership pursuant to the following provisions. Any terms and conditions by which a partnership becomes a

limited liability partnership must be approved by the vote necessary to amend the partnership agreement except when the partnership agreement expressly considers obligations to contribute to the partnership, in which case the required vote is the vote necessary to amend those provisions. After that approval, a partnership may become a limited liability partnership by filing with the SOS a statement of qualification. The statement must contain all of the following: (1) the name of the partnership, (2) the street address of the partnership's chief executive office and, if the partnership's chief executive office is not in Ohio, the street address of any office in Ohio, (3) if the partnership does not have an office in Ohio, the name and street address of the partnership's agent for service of process, (4) a statement that the partnership elects to be a limited liability partnership, and (5) any deferred effective date. The agent of a limited liability partnership for service of process must be an individual who is a resident of, or other person authorized to do business in, Ohio.

The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled by the filing of a statement of cancellation or revoked for failure to file an annual report with the SOS when due or pay the required filing fee. The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification. The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership. An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. The filing fee for a statement of cancellation (withdrawal) is \$50. (R.C. 1776.81(A) to (H) and R.C. 111.16(N)(3).)

Notwithstanding any contrary provisions of the chapter, a domestic partnership having the status of a registered limited liability partnership under predecessor law has the status of a limited liability partnership under the chapter as of the date the chapter governs that partnership, which is on or after the first day of January, 2009, but not later than the first day of January, 2010. To the extent the partnership has not filed a statement of qualification, the latest application or renewal application filed by that partnership under the predecessor law constitutes a statement of qualification under the above provisions. (R.C. 1776.81(I).)

### **Existing law**

To become a domestic limited liability partnership, a partnership must file with the SOS a *registration* application on a form prescribed by the SOS that contains only the specified information that are similar to (1) to (5) in the 1st

paragraph under "*The bill*," above, and in addition, a brief statement of the business in which the partnership engages (R.C. 1775.61(A)).

Existing law's provision pertaining to the appointment of a statutory agent upon whom service of process, notice, or demand may be served is similar to the bill. The law requires the registration application to be executed by a majority in interest of the partners or by one or more partners authorized by the partnership to execute a registration application<sup>8</sup> and requires the application to be accompanied by a fee of \$125. Existing law specifically requires the SOS to register as a registered limited liability partnership, any partnership that submits a completed registration application with the required fee. The effective date of the status of a limited liability partnership is similar to the bill, and its status as such is not adversely affected by *minor* errors or subsequent changes in the information provided. (R.C. 1775.61(B), (C), (D), (E), and (F) and R.C. 111.16(F).)

Registration as a domestic limited liability partnership ceases if either of the following occurs: (1) the registration is voluntarily withdrawn by filing with the SOS, on a form prescribed by the SOS, a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized by the partnership to execute a withdrawal notice, or (2) the registration is canceled by the SOS for failure to timely file its biennial report.<sup>9</sup> (R.C. 1775.61(H).)

### *Name of limited liability partnership*

#### *The bill*

The name of a limited liability partnership must contain "registered limited liability partnership," "registered partnership having limited liability," "limited liability partnership," "R.L.L.P.," "P.L.L.," "L.L.P.," "RLLP," "PLL," or "LLP" (R.C. 1776.82).

#### *Existing law*

The name of a domestic registered limited liability partnership must contain the words "registered partnership having limited liability" or "limited liability

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<sup>8</sup> Under the bill's general provisions on "*Execution, filing, and recording of statements*," above, at least one partner or one person the partnership authorizes must execute any statement a partnership files.

<sup>9</sup> Under the bill's general provisions on "*Execution, filing, and recording of statements*," above, a person authorized to file a statement may cancel the statement by filing a statement of cancellation naming the partnership, identifying the statement, and stating the substance of the cancellation.

partnership," or the abbreviation "P.L.L.," "PLL", "L.L.P.," or "LLP" as the last words or letters of its name. The name of a domestic registered limited liability partnership or foreign limited liability partnership must be distinguishable upon the records in the Office of the Secretary of State from all of the following: (1) the name of any other limited liability partnership registered in that Office pursuant to existing law, whether domestic or foreign, (2) the name of any domestic corporation that is formed under R.C. Chapter 1701. or 1702. or any foreign corporation that is registered pursuant to R.C. Chapter 1703., (3) the name of any limited liability company registered in that Office pursuant to R.C. Chapter 1705., whether domestic or foreign, (4) the name of any limited partnership registered in that Office pursuant to R.C. Chapter 1782., whether domestic or foreign, or (5) any trade name the exclusive right to which is at the time in question registered in that Office of the Secretary of State pursuant to R.C. Chapter 1329. (R.C. 1775.62(A) and (C).)

### **Annual report; revocation of statement of qualification**

#### **The bill**

A limited liability partnership and a "foreign limited liability partnership" authorized to transact business in Ohio must file an annual report in the Office of the Secretary of State. The fee for filing an annual report is \$25. The report must contain all of the following: (1) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed, (2) the street address of the partnership's chief executive office and, if the partnership's chief executive office is not in Ohio, the street address of any office of the partnership in Ohio, and (3) if the partnership does not have an office in Ohio, the name and street address of the partnership's current agent for service of process. A partnership must file an annual report between January 1 and April 1 of each year that follows the calendar year in which the partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in Ohio.

The SOS may revoke the statement of qualification of any partnership that fails to file an annual report when due or pay the required filing fee. The SOS must provide the partnership at least 60 days' written notice of the intent to revoke, mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that the partnership failed to file, the unpaid fee, and the effective date of the revocation. The revocation is not effective if the partnership files the annual report and pays the fee before the effective date of the revocation. A revocation affects only a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

A partnership whose statement of qualification is revoked may apply to the SOS for reinstatement within two years after the effective date of the revocation. The application for reinstatement must state the name of the partnership, the effective date of the revocation, and that the ground for revocation either did not exist or has been corrected. A reinstatement relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred. (R.C. 1776.83 and 111.16(I)(2).)

### **Existing law**

A domestic limited liability partnership or foreign registered limited liability partnership must, biennially during the month of July in odd-numbered years, file a report with the Office of the SOS verifying and, if necessary, updating, as of the 30th day of June of that year, the information contained in the applicable registration application. The report must be made on a form prescribed and furnished by the SOS and signed by a majority in interest of the partners or by one or more partners authorized by the partnership to execute the report.

If a domestic limited liability partnership or foreign registered limited liability partnership fails to file the report, the SOS must give notice of the failure by certified mail to the last known address of the partnership or its statutory agent. If the report is not filed within 30 days after the mailing of the notice, the SOS must, upon the expiration of that period, cancel the registration of the partnership, give notice of the cancellation to the partnership by regular mail to the last known address of the partnership or its statutory agent, and make a notation of the cancellation on the SOS's records. A domestic limited liability partnership or foreign registered limited liability partnership whose registration has been canceled may be reinstated by filing an application for reinstatement, together with the required report or reports, and by paying the reinstatement fee of \$25. The SOS must inform the Tax Commissioner of all cancellations and reinstatements under these provisions. (R.C. 1775.63.)

### **Limitations on distributions; liability for wrongful distribution**

A limited liability partnership may not make a distribution to a partner to the extent that at the time of the distribution and after giving effect to the distribution, all liabilities of the limited liability partnership exceed the fair value of the assets of the partnership, other than liabilities to partners on account of their economic interests and liabilities for which the recourse of creditors is limited to specified property. The fair value of property that is subject to a liability for which the recourse of creditors is limited must be included in the assets of the limited liability partnership only to the extent that the fair value of that property exceeds that liability. For purposes of this provision, the term "distribution" does

not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

A partner of a limited liability partnership who receives a distribution in violation of the above prohibition is liable to the partnership for the amount of that distribution. The above provisions do not affect any obligation or liability of a partner of a limited liability partnership under an agreement or other applicable law for the amount of a distribution. (R.C. 1776.84.)

### **When a limited partnership may become a limited liability limited partnership**

A limited partnership may become a limited liability limited partnership by doing all of the following: (1) obtaining approval of the terms and conditions of the limited partnership becoming a limited liability limited partnership by the vote necessary to amend the limited partnership agreement; when a limited partnership agreement expressly considers contribution obligations, the required vote is the vote necessary to amend those provisions, (2) filing a statement of qualification as described above, and (3) complying with the name requirements described above. A limited liability limited partnership continues to be the same entity that existed before the filing of a statement of qualification. The provisions relieving a partner of a limited liability partnership of personal liability for an obligation of the partnership and permitting an action to be brought against the partnership and generally against any or all of the partners apply to both general and limited partners of a limited liability limited partnership. (R.C. 1782.64.)

## **FOREIGN LIMITED LIABILITY PARTNERSHIP**

### **Law governing foreign limited liability partnership**

#### **The bill**

The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership. A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of Ohio. A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in Ohio as a limited liability partnership. (R.C. 1776.85.)

### **Existing law**

Except as otherwise provided in the Ohio Constitution, the organization and internal affairs of a foreign limited liability partnership and the liability of the partners for the debts, obligations, or other liabilities of any kind of, or chargeable to, the foreign limited liability partnership are governed by the laws of the state under which the foreign limited liability partnership is organized. Existing law defines "foreign limited liability partnership" in a similar manner as the bill. (R.C. 1775.05(C) and (D).)

### **Statement of foreign qualification**

#### **The bill**

A foreign limited liability partnership must file a statement of foreign qualification with the SOS prior to transacting any business in Ohio. The statement must contain all of the following: (1) the name of the foreign limited liability partnership, which name must satisfy the requirements of the state or other jurisdiction under whose law it is formed and must end with "registered limited liability partnership," "limited liability partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP," (2) the street address of the partnership's chief executive office and, if the partnership's chief executive office is not in Ohio, the street address of any partnership office in Ohio, (3) if there is no office of the partnership in Ohio, the name and street address of the partnership's agent for service of process, (4) any deferred effective date, and (5) evidence of existence in its jurisdiction of origin. The agent of a foreign limited liability company for service of process shall be an individual who is a resident of, or another person authorized to do business in, Ohio.

The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled by the filing of a statement of cancellation or revoked for failure to file an annual report with the SOS when due or pay the required filing fee. An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. The filing fee for a statement of cancellation (withdrawal) is \$50. (R.C. 1776.86.)

### **Existing law**

Before transacting business in Ohio, a foreign limited liability partnership must file with the SOS a *registration* application on a form prescribed by the SOS that contains only the specified information that are similar to clauses (1) to (3)

and (5) in the 1st paragraph under "***The bill***," above, and in addition, a brief statement of the business in which the partnership engages. Existing law requires the application to be accompanied by a fee of \$125 and specifically requires the SOS to register as a registered foreign limited liability partnership any foreign limited liability partnership that submits a completed registration application with the required fee. (R.C. 1775.64(A), (B), and (D) and R.C. 111.16(F).)

The name of a foreign limited liability partnership doing business in Ohio must contain one of the following as the last words or letters of its name: (1) the words "registered limited liability partnership" or "limited liability partnership," (2) the abbreviation "P.L.L.," "PLL," "L.L.P.," or "LLP," or (3) other similar words or abbreviations that are required or authorized by the laws of the state where the partnership was formed (R.C. 1775.62(B)).

Every registered foreign limited liability partnership must appoint and maintain a statutory agent upon whom any process, notice, or demand may be served. The agent must be an individual who is a resident of Ohio, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, Ohio. (R.C. 1775.65(A)(1).)

A foreign limited liability partnership transacting business in Ohio must comply with the name, correction, and reporting requirements set forth above with respect to domestic limited liability partnerships and must comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership engages. Registration as a foreign limited liability partnership ceases if the registration is voluntarily withdrawn by filing with the SOS, on a form prescribed by the SOS, a written withdrawal notice signed by one or more partners authorized by the partnership to execute a withdrawal notice.<sup>10</sup> (R.C. 1775.64(C) and (E).)

### **Effect of failure to qualify**

#### **The bill**

A foreign limited liability partnership transacting business in Ohio may not maintain an action or proceeding in Ohio unless it has in effect a statement of foreign qualification. The failure of a foreign limited liability partnership to have a statement of foreign qualification that is in effect does not impair the validity of any contract or act of that partnership or preclude it from defending an action or proceeding in Ohio. A limitation on personal liability of a partner is not waived or

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<sup>10</sup> For the bill's comparable provisions, see "**Execution, filing, and recording of statements**," above.



otherwise affected by transacting business in Ohio without a statement of foreign qualification. If a foreign limited liability partnership transacts business in Ohio without a statement of foreign qualification, the SOS is its agent for service of process with respect to a right of action arising out of that transaction of business. (R.C. 1776.87.)

### **Existing law**

A foreign limited liability partnership, by transacting business in Ohio without registration, appoints the SOS as its agent for service of process with respect to causes of action arising out of the transaction of business in Ohio. The failure of a foreign limited liability partnership to register with the SOS or to appoint and maintain a statutory agent does not affect the liability of the partners, impair the validity of any contract or act of the foreign limited liability partnership, or prevent the foreign limited liability partnership from defending any action or proceeding in Ohio. Existing law has a similar provision as the bill preventing a foreign limited liability partnership from maintaining an action or proceeding in an Ohio court until it has registered with the SOS. (R.C. 1775.65(A)(2) and (B).)

### **Activities not constituting transacting business**

Activities of a foreign limited liability partnership that do not constitute transacting business for the purpose of the requirement to file a statement of foreign qualification include all of the following: (1) maintaining, defending, or settling an action or proceeding, (2) holding meetings of its partners or carrying on any other activity concerning its internal affairs, (3) maintaining bank accounts, (4) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities, (5) selling through independent contractors, (6) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside Ohio before they become contracts, (7) creating or acquiring indebtedness, with or without a mortgage or other security interest in property, (8) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired, (9) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions, and (10) transacting business in interstate commerce.

For purposes of the requirement to file a statement of foreign qualification, the ownership in Ohio of income-producing real property or tangible personal property, other than property excluded under the preceding paragraph, constitutes transacting business in Ohio. The above provisions do not apply in determining the contacts or activities that may subject a foreign limited liability partnership to

service of process, taxation, or regulation under any other law of Ohio. (R.C. 1776.88.)

### **Action by Attorney General**

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in Ohio that is in violation of the prohibition against engaging in any business or exercising any power that a partnership may not engage in or exercise in Ohio as a limited liability partnership (R.C. 1776.89).

## **MISCELLANEOUS PROVISIONS**

### **Uniformity of application and construction**

The bill states that the chapter must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of the chapter among states enacting the Uniform Partnership Act (1997) except where it expressly differs substantially from that Act (R.C. 1776.90).

Existing law states that that law must be interpreted and construed so as to effectuate the general purpose to make the law of Ohio uniform with the law of those states that enact similar legislation (R.C. 1775.03(D)).

### **Short title**

R.C. Chapter 1776. may be cited as the "Ohio Uniform Partnership Act (1997)" (R.C. 1776.91).

### **Applicability**

Prior to the January 1, 2010, R.C. Chapter 1776. governs the following partnerships: a partnership formed on or after the January 1, 2009, except a partnership that is continuing the business of a dissolved partnership under existing R.C. 1775.40; or a partnership formed before January 1, 2009, that elects pursuant to be governed by R.C. Chapter 1776. as described in the following paragraph. On and after the January 1, 2010, R.C. Chapter 1776. governs all partnerships.

On and after the January 1, 2009, but prior to January 1, 2010, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by R.C. Chapter 1776. The provisions of the chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who did business with the partnership within one year before the partnership's election

to be governed by the chapter only if the third party knows or has received a notification of the partnership's election to be so governed. (R.C. 1776.95.)

### **Savings clause**

The bill states that R.C. Chapter 1776. does not affect any action or proceeding that commences, or any right that accrues, before the date the partnership is governed by the chapter as determined above (R.C. 1776.96).

Existing law states that it does not impair the obligations of any contract existing on September 14, 1949, or affect any action or proceedings begun or right accrued before such date (R.C. 1775.03(E)).

### **Transition provisions**

#### **Existing partnership laws**

R.C. Chapter 1775. is the current Uniform Partnership Law. R.C. Chapter 1777. governs fraud in partnership affairs, the certificate required if a firm name is fictitious or does not include all partners, the new certificate on change in membership, the effect of failure to file the required certificate, the county recorder's register of partnerships, and copies of county recorders' entries as evidence. R.C. Chapter 1779. governs the surviving partners' application to the probate court for an appraisal of the partnership assets or the administration of a deceased partner's estate, the purchase of partnership property by the surviving partners and related assignments of interest, the appointment of a receiver if the surviving partners refuse to purchase partnership property, the settlement of creditors' claims, and a partner's separate composition or compromise with a creditor and its effect on the other partners' rights and duties.

#### **The bill**

The bill provides that existing R.C. Chapters 1775., 1777., and 1779. do not govern any partnership on and after the January 1, 2010 and do not govern any partnership that is formed on or after the January 1, 2009. New R.C. Chapter 1776. governs any partnership formed on or after January 1, 2009. R.C. Chapters 1775., 1777., and 1779. do not govern any partnership that elects to be governed by new R.C. Chapter 1776. pursuant to the procedures for voluntary election described in "**Applicability**," above, on and after the date the partnership elects to be governed by the new Chapter. (R.C. 1775.66, 1777.07, and 1779.12.)

## Joint debtors

### The bill

A joint debtor may make a separate composition or compromise with any creditor. Any composition or compromise must be a full and effectual discharge to the debtor who makes it, but only to that person, from all liability to the creditor with whom it is made, according to its terms. A debtor who makes such a composition or compromise may take from the creditor a note or memorandum in writing exonerating the debtor from all individual liability incurred by reason of the joint debt. That note or memorandum may be given in evidence to bar the creditor's right of recovery against the debtor. If joint liability is by judgment in a court of record in Ohio, on production to and filing of the note or memorandum with the clerk of the court, the clerk must discharge the judgment of record as far as the compromising debtor is concerned.

A compromise or composition with one joint debtor may not discharge other joint debtors or impair the right of the creditor to proceed against other joint debtors who have not been discharged. A joint debtor who is proceeded against may counterclaim against the creditor for any demand that could have been asserted as a counterclaim had the suit by the creditor been brought against all of the joint debtors. A compromise or discharge of one joint debtor does not prevent the other joint debtors from availing themselves of any defense, except that they may not set up the discharge of one debtor as a discharge of the others unless it appears that all were intended to be discharged. The discharge of one debtor is deemed a payment to the creditor equal to the proportionate liability of the discharged debtor. A compromise or composition by a joint debtor with a creditor does not affect any right the other joint debtors have to call on the discharged debtor for that person's ratable portion of the joint debt. (R.C. 2307.30.)

### Existing law

Existing R.C. 1779.11 applies the provisions pertaining to an individual partner making a separate composition or compromise with any creditor of the partnership (existing R.C. 1779.09 and 1779.10) to other joint debtors who individually may compound or compromise for their joint indebtedness, with the same effect in reference to creditors and to joint debtors of the individual so compromising as is provided in those provisions in reference to partners. These provisions with respect to joint debtors are similar to the bill and are relocated to R.C. Chapter 2307. (civil actions).

## Registration of trade names; fictitious names

### The bill

**Trade name.** Subject to the laws pertaining to the registration of trade names, any person may register with the SOS, on a form prescribed by the SOS, any trade name under which the person is operating, setting forth all of the following: (1) the name and business address of the applicant for registration and any of the following that is applicable: (a) if the applicant is a general partnership, the name and address of *at least one partner or the identifying number the SOS assigns to the partnership upon the filing of its first statement under the bill* (modified from existing law) or (b) if the applicant is a limited partnership, a corporation, professional association, limited liability company, or other entity, the form of the entity and the state under the laws of which it was formed, (2) the trade name to be registered, (3) the general nature of the business conducted by the applicant, and (4) the length of time during which the trade name has been used by the applicant in business operations in Ohio (R.C. 1329.01(B)).

**Fictitious name.** Any person who does business under a fictitious name and who has not registered and does not wish to register the fictitious name as a trade name or who cannot do so because the name is not available for registration must report the use of the fictitious name to the SOS, on a form prescribed by the SOS, setting forth all of the following: (1) the name and business address of the user and any of the following that is applicable: (a) if the user is a general partnership, the name and address of *at least one partner or the identifying number the SOS assigns to the partnership upon the filing of the first statement under the bill* (modified from existing law) or (b) if the user is a limited partnership, a corporation, professional association, limited liability company, or other entity, the form of the entity and the state under whose laws it was formed, (2) the fictitious name being used, and (3) the general nature of the business conducted by the user (R.C. 1329.01(D)).

### Existing law

**Trade name.** Subject to the laws pertaining to the registration of trade names, any person may register with the SOS, on a form prescribed by the SOS, any trade name under which the person is operating, setting forth all of the following: the name and business address of the applicant for registration and any of the following that is applicable: (a) if the applicant is a general partnership, the names and residence addresses of all of the partners, (b) *if the applicant is a limited partnership existing prior to July 1, 1994, that has not registered with the SOS pursuant to R.C. Chapter 1782., the name of the Ohio county in which its certificate of limited partnership or application for registration as a foreign limited partnership is filed* (deleted by the bill), or (c) if the applicant is a limited

partnership to which the preceding clause (b) does not apply or is a corporation, professional association, limited liability company, or other entity, the form of the entity and the state under the laws of which it was formed; and the information described above in (2), (3), and (4) in the bill under "**Trade name**" (R.C. 1329.01(B)).

**Fictitious name.** Any person who does business under a fictitious name and who has not registered and does not wish to register the fictitious name as a trade name or who cannot do so because the name is not available for registration must report the use of the fictitious name to the SOS, on a form prescribed by the SOS, setting forth all of the following: the name and business address of the user and any of the following that is applicable: (a) if the user is a general partnership, the names and residence addresses of all the partners, (b) *if the user is a limited partnership existing prior to July 1, 1994, that has not been registered with the SOS pursuant to R.C. Chapter 1782., the name of the Ohio county in which its certificate of limited partnership or application for registration as a foreign limited partnership is filed* (deleted by the bill), or (c) if the user is a limited partnership to which the preceding clause (b) does not apply or is a corporation, professional association, limited liability company, or other entity, the form of the entity and the state under whose laws it was formed; and the information described above in (2) and (3) in the bill under "**Fictitious name**" (R.C. 1329.01(D)).

**Effective term of registration of trade name or report of fictitious name; expiration notice**

Under the bill, registration of a trade name or report of a fictitious name is effective for a term of five years from the date of registration or report. Upon application filed within six months prior to the expiration of such term, on a form furnished by the SOS, the registration or report may be renewed at the end of each five-year period for a like term, provided that a general partnership must renew its registration or report whenever *any partner named* on its registration or report *ceases to be a partner* (as modified from existing law) (R.C. 1329.04).

Under existing law, upon application filed within six months prior to the expiration of the five-year term, on a form furnished by the SOS, the registration or report may be renewed at the end of each five-year period for a like term, provided that a general partnership must renew its registration or report whenever there has been a change in the listing of partners on its registration or report and a limited partnership must renew its registration or report when a change occurs in the listing of its general partners on its registration or report (R.C. 1329.04).

**Exempted interests and rights**

Existing law permits every person who is domiciled in Ohio to hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order. One type of exempt property is the person's right in specific partnership property, as exempted by R.C. 1775.24(B)(3). The bill adds to the type of exempt property *the person's rights in a partnership pursuant to R.C. 1776.50, except as otherwise set forth in that section with respect to a court's order charging a partner's or transferee's economic interest in a partnership to satisfy a judgment against the partner or transferee.* (R.C. 2319.66(A)(14).)

**Other provisions**

Existing R.C. 1782.20(B), not affected by the bill, pertains to the execution and filing of a certificate of disclaimer of general partner status when a filed certificate of limited partnership inaccurately refers to the partner as a general partner. That partner may subsequently file a certificate of cancellation of the disclaimer of general partner status found to be materially false or inaccurate (R.C. 1782.20(D)). The current filing fee for that certificate of cancellation is \$50 (R.C. 111.16(N)(4)).

The bill provides that the filing fee for the statement of disclaimer of general partner status is \$50 (R.C. 111.16(N)(4)).

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**HISTORY**

ACTION	DATE
Introduced	10-02-07

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