



NEW JERSEY LAW REVISION COMMISSION

**Final Report
Relating to**

Uniform Limited Partnership Act

December 10, 2015

The work of the New Jersey Law Revision Commission is only a recommendation until enacted. Please consult the New Jersey statutes in order to determine the law of the State.

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Introduction

The New Jersey Law Revision Commission recommends the enactment of the Uniform Limited Partnership Act (ULPA 2001) as promulgated by the Uniform Law Commission with amendments through 2013. The Uniform Limited Partnership Act (ULPA) was first promulgated in 1916. Along with the Uniform Partnership Act, ULPA has been the basic law governing partnerships in the United States. The first revision of ULPA after 1916 occurred in 1976. There were further amendments in 1985; this version of the act became known as Revised Uniform Limited Partnership Act (RULPA). It is the 1976 act that is now part of New Jersey law.

Changes in modern business practices led the Uniform Law Commission (ULC) to update and modernize the RULPA beyond the 1976 and 1985 amendments. Thus, in 2001, ULC adopted a new, more flexible version of RULPA. In 2011 and 2013 amendments to ULPA (2001) were enacted as part of the Harmonization of Business Entity Acts project. These amendments harmonize the language in this act with similar provisions in the other uniform and model unincorporated entity acts.

The previous act, adopted in New Jersey, set guidelines for the organization of limited partnerships, defined the rights and liabilities of both limited and general partners, and provided rules for the registration of the partnership in the state of origin. The new ULPA does not change the basic structure of limited partnerships as defined in the prior act. But it does improve the capacity of limited partnerships both to do business and to serve the best interests of partners and third parties conducting business with the partnership. ULPA 2001 reflects modern business practices and represents a greater refinement of the scope and uses for limited partnerships. Modern businesses require ever greater sophistication from the legal forms governing their practices. ULPA 2001 recognizes modern day uses of limited partnerships by providing greater flexibility and protection to sophisticated groups seeking strongly entrenched, centralized management and persons requiring passive limited partners with little control over the partnership. ULPA 2001 is a stand-alone act and is not linked to the Uniform Partnership Act, as was the case with the prior uniform limited partnership acts under which the partnership statute provided the rules for issues not covered by the limited partnership statute. Thus, ULPA 2001 incorporates many provisions from UPA 1997 and some from the Uniform Limited Liability Company Act 2006. As a result, ULPA 2001 is more complex and substantively longer than its predecessor.

ULPA 2001 was drafted for a world in which limited liability partnerships (LLPs) and limited liability companies (LLCs) can meet many of the needs formerly met by limited partnerships. Therefore, ULPA 2001 targets two types of enterprises that are largely beyond the scope of LLPs and LLCs. First, ULPA 2001 includes provisions to meet the needs of

sophisticated, manager-entrenched commercial deals whose participants commit for the long term. Second, ULPA 2001 addresses the modern needs of estate planning arrangements, so-called “family limited partnerships.” In addressing these concerns, ULPA 2001 assumes that the people utilizing it will want both strong centralized, entrenched management, and passive investors or limited partners with little capacity to exit the entity. As a result, the act’s rules, and particularly its default rules, have been designed to reflect those assumptions.

A fundamental change from the previous act (ULPA with 1976 with 1985 amendments) involves the liability of limited partners and general partners for the partnership debts. Under the prior act, a limited partner could be held liable for the entity’s debts if the limited partner participated in the control of the business and a third party that transacted business with the partnership had the reasonable belief that the limited partner was a general partner. Under ULPA 2001, a limited partner cannot be held liable for the partnership debts even if the limited partner participates in the management and control of the limited partnership. General partners under the prior acts were jointly and severally liable for the debts, liabilities, and obligations of the partnership. This liability was complete, automatic and formally inescapable. Under ULPA 2001, however, limited liability limited partnership (LLLP) status is expressly available to provide a full liability shield to all general partners.

Another important change concerns a limited partner’s right to disassociate from the partnership. Under the prior acts, a limited partner could theoretically withdraw from the partnership on six months’ notice unless the partnership agreement specified different withdrawal events for a limited partner. Due to estate planning concerns, the ULPA 2001 default rule affords no right to disassociate as a limited partner before the termination of the limited partnership. The power to disassociate is expressly recognized, but the right to dissociate may be exercised only through the partnership agreement or those events listed in section 601(b) of the Act.

There are other important changes in ULPA 2001 For example, under the prior act, the duration of the limited partnership must be specified in the certificate of limited partnership. Under ULPA 2001, no duration limit is required and the default rule now creates a perpetual entity. However, the duration is subject to change via the partnership agreement. Also, under the prior act the use of a limited partner’s name in the entity’s name was prohibited except in unusual circumstances. Under ULPA 2001, this restriction is eliminated and, therefore a limited partner’s name may be incorporated into the business name of an entity created under this act. Further, under the prior act the dissolution of the partnership entity required the unanimous, written consent of all the partners. Under ULPA 2001, dissolution of the partnership only requires the consent of all the general partners and of the limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

Drafting Notes

The Commission consulted with members of a committee of the New Jersey State Bar Association who concurred with the recommendation for enactment of ULPA 2001. They suggested one change from the uniform text. Section 503 of ULPA 2001 provides (with significant text in bold):

(a) Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of **the contributions the limited partnership has received from each partner**, except to the extent necessary to comply with a transfer effective under Section 702 or charging order in effect under Section 703.

The current New Jersey provision, N.J.S. 42:2A-37 (based on the 1976 uniform text), provides (with significant text in bold):

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value (as stated in the limited partnership agreement) of **the contributions made by each partner to the extent they have been received by the partnership and have not been returned**.

Commentary to the ULPA makes it clear that no change in substance is intended. However, members of the Bar are concerned that the difference in language could be misinterpreted as indicating distributions are to be made based on original contributions even if some have been returned. The Law Revision Commission concurs.

As a result, the Commission recommends enactment of the ULPA 2001 with a single change to subsection (a) of section 503 as follows:

(a) Any distribution made by a limited partnership before its dissolution and winding up must be shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner to the extent they have been received by the partnership and have not been returned, except to the extent necessary to comply with a transfer effective under Section 702 or charging order in effect under Section 703.