CHAPTER 41

Uniform Partnership Act

ARTICLE 1

General Provisions

**SECTION 33‑41‑10.** Short title.

 This chapter may be cited as the "Uniform Partnership Act."

HISTORY: 1962 Code Section 52‑1; 1952 Code Section 52‑1; 1950 (46) 1841.

**SECTION 33‑41‑20.** Definitions.

 As used in this chapter:

 (1) "Court" includes every court and judge having jurisdiction in the case;

 (2) "Business" includes every trade, occupation, or profession;

 (3) "Bankrupt" includes a bankrupt under the Federal Bankruptcy Act or an insolvent under any state insolvent act;

 (4) "Conveyance" includes every assignment, lease, mortgage, or encumbrance;

 (5) "Real property" includes land and any interest or estate in land; and

 (6) "Registered limited liability partnership" includes a partnership formed pursuant to an agreement governed by the laws of this State, registered under Section 33‑41‑1110 and complying with Sections 33‑41‑1120 and 33‑41‑1130.

HISTORY: 1962 Code Section 52‑2; 1952 Code Section 52‑2; 1950 (46) 1841; 1994 Act No. 448, Section 3.

**SECTION 33‑41‑30.** What constitutes "knowledge" or "notice" of a fact.

 (1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

 (2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice

 (a) states the fact to such person or

 (b) 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 his place of business or residence.

HISTORY: 1962 Code Section 52‑3; 1952 Code Section 52‑3; 1950 (46) 1841.

**SECTION 33‑41‑40.** Rules of construction; applicable rules of law; existing rights are not affected.

 (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

 (2) The law of estoppel shall apply under this chapter.

 (3) The law of agency shall apply under this chapter.

 (4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact substantially identical legislation.

 (5) This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this chapter takes effect.

HISTORY: 1962 Code Section 52‑4; 1952 Code Section 52‑4; 1950 (46) 1841.

**SECTION 33‑41‑50.** Rules for cases not provided for.

 In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern.

HISTORY: 1962 Code Section 52‑5; 1952 Code Section 52‑5; 1950 (46) 1841.

ARTICLE 3

Nature of Partnership

**SECTION 33‑41‑210.** "Partnership" defined; application to limited partnerships.

 A "partnership" is an association of two or more persons to carry on as co‑owners a business for profit and includes, for all purposes of the laws of this State, a registered limited liability partnership. However, any association formed under any other statute of this State or any statute adopted by authority, other than the authority of this State, is not a partnership under this chapter unless the association would have been a partnership in this State before the adoption of this chapter on February 13, 1950.

 This chapter shall apply to limited partnerships except insofar as the statutes relating to the partnerships are inconsistent with the provisions of this chapter.

HISTORY: 1962 Code Section 52‑11; 1952 Code Section 52‑11; 1950 (46) 1841; 1994 Act No. 448, Section 4.

**SECTION 33‑41‑220.** Determining existence of partnership.

 In determining whether a partnership exists, these rules shall apply:

 (1) Except as provided by Section 33‑41‑380 persons who are not partners as to each other are not partners as to third persons;

 (2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property or part ownership does not of itself establish a partnership, whether such co‑owners do or do not share any profit made by the use of the property;

 (3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived; and

 (4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment

 (a) as a debt by installments or otherwise,

 (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) as the consideration for the sale of the good will of a business or other property by installments or otherwise.

HISTORY: 1962 Code Section 52‑12; 1952 Code Section 52‑12; 1950 (46) 1841.

**SECTION 33‑41‑230.** Partnership property; acquisition and conveyance.

 (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

 (2) Unless the contrary intention appears property acquired with partnership funds is partnership property.

 (3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

 (4) 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.

HISTORY: 1962 Code Section 52‑13; 1952 Code Section 52‑13; 1950 (46) 1841.

ARTICLE 5

Relations of Partners to Persons Dealing With Partnership

**SECTION 33‑41‑310.** Partner's acts and agency; limitation of authority.

 (1) Every partner is an agent of the partnership for the purpose of its business and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.

 (2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

 (3) 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

 (a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

 (b) dispose of the good will of the business,

 (c) do any other act which would make it impossible to carry on the ordinary business of a partnership,

 (d) confess a judgment or

 (e) submit a partnership claim or liability to arbitration or reference.

 (4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

HISTORY: 1962 Code Section 52‑21; 1952 Code Section 52‑21; 1950 (46) 1841.

**SECTION 33‑41‑320.** Conveyances of real property of partnership.

 (1) When 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 under the provisions of paragraph (1) of Section 33‑41‑310 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 his authority.

 (2) When title to real property is in the name of the partnership a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 33‑41‑310.

 (3) When 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 under the provisions of paragraph (1) of Section 33‑41‑310, unless the purchaser or his assignee is a holder for value without knowledge.

 (4) When the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph (1) of Section 33‑41‑310.

 (5) When 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.

HISTORY: 1962 Code Section 52‑22; 1952 Code Section 52‑22; 1950 (46) 1841.

**SECTION 33‑41‑330.** Admission or representation by partner as evidence.

 An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

HISTORY: 1962 Code Section 52‑23; 1952 Code Section 52‑23; 1950 (46) 1841.

**SECTION 33‑41‑340.** Notice to or knowledge of partner.

 Notice to any partner of any matter relating to partnership affairs, the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his 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.

HISTORY: 1962 Code Section 52‑24; 1952 Code Section 52‑24; 1950 (46) 1841.

**SECTION 33‑41‑350.** Liability for wrongful act or omission of partner.

 When, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is cause to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

HISTORY: 1962 Code Section 52‑25; 1952 Code Section 52‑25; 1950 (46) 1841.

**SECTION 33‑41‑360.** Partnership is bound by partner's breach of trust.

 The partnership is bound to make good the loss:

 (1) When one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

 (2) When 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.

HISTORY: 1962 Code Section 52‑26; 1952 Code Section 52‑26; 1950 (46) 1841.

**SECTION 33‑41‑370.** Nature of partners' liability.

 (A) Except as provided by subsection (B), all partners are liable jointly and severally for everything chargeable to the partnership.

 (B) Subject to subsections (C) and (D), a partner in a registered limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, or otherwise, for debts, obligations, and liabilities chargeable to the partnership arising from negligence, wrongful acts, or misconduct committed while the partnership is a registered limited liability partnership and in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

 (C) Subsection (B) shall not affect the liability of a partner in a registered limited liability partnership for his own negligence, wrongful acts, or misconduct, or that of a person under his direct supervision and control.

 (D) Each individual who renders professional services on behalf of a registered limited liability partnership is liable for a negligent or wrongful act or omission in which he personally participates to the same extent as if he rendered the services as a sole practitioner. A partner of a registered limited liability partnership which renders professional services, as defined in Section 33‑19‑103(7), is not liable for the negligence, wrongful acts, misconduct, or omissions of other partners, agents, or employees of the registered limited liability partnership unless he is at fault in appointing, supervising, or cooperating with them.

HISTORY: 1962 Code Section 52‑27; 1952 Code Section 52‑27; 1950 (46) 1841; 1986 Act No. 533, Section 5; 1994 Act No. 448, Section 5.

**SECTION 33‑41‑380.** Liability as partner by estoppel.

 (1) When a person, by words spoken or written or by conduct, represents himself or consents to another representing him to anyone as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has, on the faith of such representation, given credit to the actual or apparent partnership and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

 When a partnership liability results, he is liable as though he were an actual member of the partnership. When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

 (2) When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact with respect to persons who rely upon the representation. When all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

HISTORY: 1962 Code Section 52‑28; 1952 Code Section 52‑28; 1950 (46) 1841.

**SECTION 33‑41‑390.** Liability of incoming partner.

 A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

HISTORY: 1962 Code Section 52‑29; 1952 Code Section 52‑29; 1950 (46) 1841.

ARTICLE 7

Relations of Partners to One Another

**SECTION 33‑41‑510.** Rules determining rights and duties of partners as to partnership.

 The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

 (1) each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied. Except as provided in Section 33‑41‑370(B), each partner shall contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;

 (2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property;

 (3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance;

 (4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made;

 (5) All partners have equal rights in the management and conduct of the partnership business;

 (6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the affairs;

 (7) No person can become a member of a partnership without the consent of all the partners; and

 (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

HISTORY: 1962 Code Section 52‑41; 1952 Code Section 52‑41; 1950 (46) 1841; 1994 Act No. 448, Section 6.

**SECTION 33‑41‑520.** Partnership books.

 The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership and every partner shall at all times have access to and may inspect and copy any of them.

HISTORY: 1962 Code Section 52‑42; 1952 Code Section 52‑42; 1950 (46) 1841.

**SECTION 33‑41‑530.** Duty of partners to give information.

 Partners shall 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 any partner under a legal disability.

HISTORY: 1962 Code Section 52‑43; 1952 Code Section 52‑43; 1950 (46) 1841.

**SECTION 33‑41‑540.** Partner is accountable as a fiduciary.

 (1) Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him 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 him of its property.

 (2) This section applies also to the representative of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representative of the last surviving partner.

HISTORY: 1962 Code Section 52‑44; 1952 Code Section 52‑44; 1950 (46) 1841.

**SECTION 33‑41‑550.** Right to formal accounting.

 Any partner shall have the right to a formal account as to partnership affairs:

 (1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners;

 (2) If the right exists under the terms of any agreement;

 (3) As provided by Section 33‑41‑540; or

 (4) Whenever other circumstances render it just and reasonable.

HISTORY: 1962 Code Section 52‑45; 1952 Code Section 52‑45; 1950 (46) 1841.

**SECTION 33‑41‑560.** Continuation of partnership beyond fixed term or particular undertaking.

 (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

 (2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

HISTORY: 1962 Code Section 52‑46; 1952 Code Section 52‑46; 1950 (46) 1841.

ARTICLE 9

Property Rights of Partner

**SECTION 33‑41‑710.** Extent of property rights.

 The property rights of a partner are:

 (1) His rights in specific partnership property;

 (2) His interest in the partnership; and

 (3) His right to participate in the management of the partnership.

HISTORY: 1962 Code Section 52‑51; 1952 Code Section 52‑51; 1950 (46) 1841.

**SECTION 33‑41‑720.** Nature of right in specific partnership property.

 (1) A partner is a co‑owner with his partners of specific partnership property, holding as a tenant in partnership.

 (2) The incidents of his tenancy are such that

 (a) a partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes but he has no right to possess such property for any other purpose without the consent of his partners,

 (b) 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,

 (c) a partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership and 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 the homestead or exemption laws,

 (d) on the death of a partner his right in specific partnership property vests in the surviving partner or partners, except when the deceased was the last surviving partner in which case his right in such property vests in his legal representative; but such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose and

 (e) a partner's right in specific partnership property is not subject to dower, curtesy or allowances to widows, heirs or next of kin.

HISTORY: 1962 Code Section 52‑52; 1952 Code Section 52‑52; 1950 (46) 1841.

**SECTION 33‑41‑730.** Nature of partner's interest in partnership.

 A partner's interest in the partnership is his share of the profits and surplus and is personal property.

HISTORY: 1962 Code Section 52‑53; 1952 Code Section 52‑53; 1950 (46) 1841.

**SECTION 33‑41‑740.** Effect of assignment of partner's interest in partnership.

 (1) The conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, to require any information or account of partnership transactions or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

 (2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all partners.

HISTORY: 1962 Code Section 52‑54; 1952 Code Section 52‑54; 1950 (46) 1841.

**SECTION 33‑41‑750.** Rights of creditor when partner is a judgment debtor; redemption of partner's interest.

 (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership and make all other orders, directions, accounts and inquiries which the debtor partner might have made or which the circumstances of the case may require.

 (2) The interest charged may be redeemed at any time before foreclosure or in case of a sale being directed by the court may be purchased without thereby causing a dissolution

 (a) with separate property, by any one or more of the partners or

 (b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

 (3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

HISTORY: 1962 Code Section 52‑55; 1952 Code Section 52‑55; 1950 (46) 1841.

ARTICLE 11

Dissolution or Winding Up

**SECTION 33‑41‑910.** "Dissolution" defined.

 The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

HISTORY: 1962 Code Section 52‑61; 1952 Code Section 52‑61; 1950 (46) 1841.

**SECTION 33‑41‑920.** Partnership is not terminated by dissolution.

 On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

HISTORY: 1962 Code Section 52‑62; 1952 Code Section 52‑62; 1950 (46) 1841.

**SECTION 33‑41‑930.** Causes of dissolution.

 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, when the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

 (3) By any event which 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 the decree of court under Section 33‑41‑940.

HISTORY: 1962 Code Section 52‑63; 1952 Code Section 52‑63; 1950 (46) 1841.

**SECTION 33‑41‑940.** Dissolution by decree of court.

 (1) On application by or for a partner the court shall decree a dissolution whenever

 (a) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

 (b) a partner becomes in any other way incapable of performing his part of the partnership contract,

 (c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

 (d) a partner wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

 (e) the business of the partnership can only be carried on at a loss or

 (f) other circumstances render a dissolution equitable.

 (2) On the application of the purchaser of a partner's interest under Section 33‑41‑740 or 33‑41‑750 the court shall decree a dissolution

 (a) after the termination of the specified term or particular undertaking or

 (b) at any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

HISTORY: 1962 Code Section 52‑64; 1952 Code Section 52‑64; 1950 (46) 1841.

**SECTION 33‑41‑950.** Effect of dissolution on partner's authority to act.

 Except so far as may be 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

 (a) when the dissolution is not by the act, bankruptcy or death of a partner or

 (b) when the dissolution is by such act, bankruptcy or death of a partner when Section 33‑41‑960 so requires; and

 (2) With respect to persons not partners, as declared in Sections 33‑41‑970 and 33‑41‑990.

HISTORY: 1962 Code Section 52‑65; 1952 Code Section 52‑65; 1950 (46) 1841.

**SECTION 33‑41‑960.** Liability of partner for acts of other partner upon dissolution.

 When the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by a partner acting for the partnership as if the partnership had not been dissolved unless:

 (1) the dissolution being by act of a partner, the partner acting for the partnership had knowledge of the dissolution;

 (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; or

 (3) the liability is for a debt, obligation, or liability for which the partner is not liable as provided in Section 33‑41‑370(B).

HISTORY: 1962 Code Section 52‑66; 1952 Code Section 52‑66; 1950 (46) 1841; 1994 Act No. 448, Section 7.

**SECTION 33‑41‑970.** Power of partner to bind partnership after dissolution.

 After dissolution a partner can bind the partnership, except as provided in Section 33‑41‑990.

 (1) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution; or

 (2) By any transaction which 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 the dissolution and had no knowledge or notice of the dissolution or

 (b) though he 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.

HISTORY: 1962 Code Section 52‑67; 1952 Code Section 52‑67; 1950 (46) 1841.

**SECTION 33‑41‑980.** Satisfying certain liability of partner.

 The liability of a partner under item (2) of Section 33‑41‑970 shall be satisfied out of partnership assets alone when such partner had been prior to the dissolution:

 (1) Unknown as a partner to the person with whom the contract is made; and

 (2) 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 his connection with it.

HISTORY: 1962 Code Section 52‑68; 1952 Code Section 52‑68; 1950 (46) 1841.

**SECTION 33‑41‑990.** When partnership is not bound by partner after dissolution.

 The partnership is in no case bound by any act of a partner after dissolution:

 (1) When the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs;

 (2) When the partner has become bankrupt; or

 (3) When 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 the dissolution and had no knowledge or notice of his want of authority or

 (b) had not extended credit to the partnership prior to the dissolution and, having no knowledge or notice of the acting partner's want of authority, the fact of such want of authority has not been advertised in the manner provided for advertising the fact of dissolution in item (2)(b) of Section 33‑41‑970.

HISTORY: 1962 Code Section 52‑69; 1952 Code Section 52‑69; 1950 (46) 1841.

**SECTION 33‑41‑1000.** Liability under Section 33‑41‑380 not affected.

 Nothing in Sections 33‑41‑970 to 33‑41‑990 shall affect the liability under Section 33‑41‑380 of any person who after dissolution represents himself or consents to another representing him as partner in a partnership engaged in carrying on business.

HISTORY: 1962 Code Section 52‑70; 1952 Code Section 52‑70; 1950 (46) 1841.

**SECTION 33‑41‑1010.** Effect of dissolution on existing liability of partner.

 (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

 (2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and 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.

 (3) When a person agrees to assume the existing obligations of a dissolved partnership the partners whose obligations have been assumed shall 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 obligations.

 (4) The individual property of a deceased partner must be liable for those obligations of the partnership incurred while he was a partner and for which he was liable under Section 33‑41‑370 but subject to the prior payment of his separate debts.

HISTORY: 1962 Code Section 52‑71; 1952 Code Section 52‑71; 1950 (46) 1841; 1994 Act No. 448, Section 8.

**SECTION 33‑41‑1020.** Right to wind up partnership affairs.

 Unless otherwise agreed the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, nor bankrupt, has the right to wind up the partnership affairs. But any partner, his legal representative or his assignee, upon cause shown, may obtain a winding up by the court.

HISTORY: 1962 Code Section 52‑72; 1952 Code Section 52‑72; 1950 (46) 1841.

**SECTION 33‑41‑1030.** Application of property upon dissolution not in contravention of agreement.

 When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartner 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 its 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 under item (2) of Section 33‑41‑1010, he shall receive in cash only the net amount due him from the partnership.

HISTORY: 1962 Code Section 52‑73; 1952 Code Section 52‑73; 1950 (46) 1841.

**SECTION 33‑41‑1040.** Rights of partners upon dissolution in contravention of agreement.

 When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

 (1) Each partner who has not caused dissolution wrongfully shall have

 (a) all the rights specified in Section 33‑41‑1030 and

 (b) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement;

 (2) The partners who had 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 his interest in the partnership at the dissolution, less any damages recoverable under item (1) (b) of this section and in like manner indemnify him against all present or future partnership liabilities; and

 (3) A partner who has caused the dissolution wrongfully shall have

 (a) if the business is not continued under the provisions of item (2) of this section all the rights of a partner under Section 33‑41‑1030, subject to item (1) (b) of this section, and

 (b) if the business is continued under item (2) of this section the right, as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him 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 shall not be considered.

HISTORY: 1962 Code Section 52‑74; 1952 Code Section 52‑74; 1950 (46) 1841.

**SECTION 33‑41‑1050.** Rights when partnership agreement is rescinded for fraud or misrepresentation.

 When 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 him for the purchase of an interest in the partnership and for any capital or advances contributed by him;

 (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 him 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.

HISTORY: 1962 Code Section 52‑75; 1952 Code Section 52‑75; 1950 (46) 1841.

**SECTION 33‑41‑1060.** Settlement of accounts between partners; rules for distribution.

 In settling accounts between the partners after dissolution the following rules must be observed, subject to any agreement to the contrary:

 (1) the assets of the partnership are:

 (a) the partnership property and

 (b) the contributions of the partners specified in item (4);

 (2) the liabilities of the partnership shall 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 item (1) to the satisfaction of the liabilities;

 (4) except as provided in Section 33‑41‑370(B):

 (a) the partners shall contribute, as provided by Section 33‑41‑510, the amount necessary to satisfy the liabilities; and

 (b) if any, but not all, of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall 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 shall have the right to enforce the contributions specified in item (4);

 (6) any partner or his legal representative shall have the right to enforce the contributions specified in item (4) to the extent of the amount which he has paid in excess of his share of the liability;

 (7) the individual property of a deceased partner must be liable for the contributions specified in item (4);

 (8) when partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as provided by law; and

 (9) when a partner has become bankrupt or his estate is insolvent the claims against his separate property must 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.

HISTORY: 1962 Code Section 52‑76; 1952 Code Section 52‑76; 1950 (46) 1841; 1994 Act No. 448, Section 9.

**SECTION 33‑41‑1070.** Liability of persons continuing business in certain cases.

 (1) 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) his 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.

 (2) 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.

 (3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in item (1) or (2) of this section, with the consent of the retired partners or the representative of the deceased partner but without any assignment of his right in partnership property the rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

 (4) 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.

 (5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of item (2) of Section 33‑41‑1040 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.

 (6) 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.

 (7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

 (8) When the business of a partnership after dissolution is continued under any conditions set forth in this section 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 on account of any consideration promised for such interest or for his right in partnership property.

 (9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

 (10) The use by the person or partnership continuing the business of the partnership name or the name of a deceased partner as part thereof shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

HISTORY: 1962 Code Section 52‑77; 1952 Code Section 52‑77; 1950 (46) 1841.

**SECTION 33‑41‑1080.** Rights of retiring partner or estate of deceased partner when business is continued.

 When any partner retires or dies and the business is continued under any of the conditions set forth in Section 33‑41‑1070 or item (2) of Section 33‑41‑1040, without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership. But the creditors of the dissolved partnership as against the separate creditors or the representatives of the retired or deceased partner shall have priority on any claim arising under this section, as provided by item (8) of Section 33‑41‑1070.

HISTORY: 1962 Code Section 52‑78; 1952 Code Section 52‑78; 1950 (46) 1841.

**SECTION 33‑41‑1090.** Accrual of right to an account.

 The right to an account of his interest shall accrue to any partner or his legal representative as against the winding up partners or 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.

HISTORY: 1962 Code Section 52‑79; 1952 Code Section 52‑79; 1950 (46) 1841.

ARTICLE 13

Formation, Governing, and Regulation of Registered Limited Liability Partnerships

Code Commissioner's Note

At the direction of the Code Commissioner, Sections 33‑41‑1110 through 33‑41‑1220 of 1994 Act No. 448, Section 10, were designated as a new Article 13 of Chapter 41, Title 33.

**SECTION 33‑41‑1110.** Application; renewal application; contents; execution; form; fee; registration; effect on status of subsequent change in information given.

 (A) To become and to continue as a registered limited liability partnership, a partnership shall file with the Secretary of State an application or a renewal application, as the case may be, stating the name of the partnership; the address of its principal office, if the partnership's principal office is not located in this State; the address of a registered office, and the name and address of a registered agent for service of process in this State, which the partnership will be required to maintain; the number of partners; a brief statement of the business in which the partnership engages, and that the partnership applies for status or renewal of its status, as the case may be, as a registered limited liability partnership.

 (B) The application or renewal application must be executed by a majority in interest of the partners or by one or more partners authorized to execute an application or renewal application.

 (C) The application or renewal application must be accompanied by a fee of one hundred dollars.

 (D) The Secretary of State shall register as a registered limited liability partnership and shall renew the registration of any registered limited liability partnership, any partnership that submits a completed application or renewal application with the required fee.

 (E) Registration is effective for one year after the date an application is filed unless voluntarily withdrawn pursuant to Section 33‑41‑1190. Registration, whether pursuant to an original application or a renewal application, as a registered limited liability partnership is renewed if during the sixty‑day period preceding the date the application or renewal application otherwise would have expired the partnership files with the Secretary of State a renewal application. A renewal application expires one year after the date an original application would have expired if the last renewal of the application had not occurred.

 (F) The status of a partnership as a registered limited liability partnership may not be affected by changes after the filing of an application or a renewal application in the information stated in the application or renewal application.

 (G) The Secretary of State may provide forms for application or for renewal of registration.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1120.** Name.

 The name of a registered limited liability partnership must contain the words "Registered Limited Liability Partnership" or the abbreviation "L.L.P." as the last words or letters of its name.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1130.** Liability insurance.

 (A)(1) A registered limited liability partnership shall carry at least $100,000 of liability insurance, beyond the amount of any applicable deductible, of a type that is designed to cover the kinds of negligence, wrongful acts, and misconduct for which liability is limited by Section 33‑41‑370(B) and which insures the partnership and its partners.

 (2) A registered limited liability partnership which renders professional services, as defined in Section 33‑19‑103(7), shall carry such additional insurance of the type described in item (1) of this subsection as may be required by the appropriate licensing authority. Professional service licensing authorities may prescribe additional insurance only on the profession as a whole, and not only on individual service providers.

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

 (C) A registered limited liability partnership is considered to be in compliance with subsection (A) if the partnership provides $100,000, or such higher amount as required by the appropriate licensing authority pursuant to subsection (A)(2), of funds specifically designated and segregated for the satisfaction of judgments against the partnership or its partners based on the kinds of negligence, wrongful acts, and misconduct for which liability is limited by Section 33‑41‑370(B) by:

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

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

 (D) Nothing in this section shall be construed to:

 (1) limit the amount of damages for which a:

 (a) registered limited liability partnership is liable with respect to the kinds of negligence, wrongful acts, or misconduct for which liability is limited by Section 37‑41‑370(B); or

 (b) partner of a registered limited liability partnership is liable under Section 33‑41‑370; or

 (2) constitute a determination of the adequacy of capitalization of a registered limited liability partnership for any purpose.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1140.** Powers granted to limited liability partnership.

 A limited liability partnership organized and existing under this chapter may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state or foreign country.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1150.** Foreign limited liability partnership; State law and jurisdiction; liability for rendering professional services in state on behalf of foreign limited liability partnership.

 (A) Subject to the Constitution of South Carolina and except as provided in subsection (B), the laws of the State or other jurisdiction under which a foreign limited liability partnership is organized shall govern the organization and internal affairs, the liability of partners for debts, obligations, and liabilities chargeable to the partnership, and the authority of partners of a foreign limited liability partnership transacting business in South Carolina.

 (B) A foreign limited liability partnership that has obtained a certificate of authority to transact business in South Carolina pursuant to Chapter 41 of Title 33 and its partners have no greater rights and privileges than a domestic limited liability partnership and its partners with respect to transactions and relationship with persons who are not members. The certificate of authority does not authorize the foreign limited liability partnership to exercise any powers or engage in any business in which a domestic limited liability partnership is forbidden to exercise or engage by the laws of this State.

 (C) An individual who renders professional services in this State on behalf of a foreign limited liability partnership is liable as set forth in Section 33‑41‑370(D).

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1160.** Foreign limited liability partnership application for certificate of authority; fee.

 (A) A foreign limited liability partnership may apply for a certificate of authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must set forth:

 (1) the name of the foreign limited liability partnership that satisfies the requirements of Section 33‑41‑1120;

 (2) the name of the state or country under which it is organized;

 (3) its date of organization;

 (4) the street address of its proposed registered office in this State and the name of its proposed registered agent at that office; and

 (5) a statement that the foreign limited liability partnership has liability insurance of the amount and type described in Section 33‑41‑1130(A)(1) or segregated funds as described in Section 33‑41‑1130(C) in an amount equal to or greater than the amount specified in Section 33‑41‑1130(A)(1).

 (B) The foreign limited liability partnership shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of limited liability partnership records in the state or country under which law it is organized.

 (C) If the foreign limited liability partnership renders "professional services" as defined in Section 33‑19‑103(7), the application required by subsection (A) must also contain a statement that:

 (1) all of its partners are licensed in one or more states to render the professional services which the foreign limited liability partnership practices and that one or more of its partners is licensed in South Carolina to render such professional services; and

 (2) the foreign limited liability partnership is in compliance with the requirements of Section 33‑41‑1130(A)(2); provided, however, that to the extent any such requirements are determined by reference to the number of licensed partners or individuals, such determination shall be made on the basis of the number of partners or individuals who render professional services in South Carolina.

 (D) The Secretary of State shall collect a fee of one hundred dollars when a foreign limited liability partnership delivers to him for filing an annual or renewal application for a certificate to transact business in this State.

 (E) By applying for a certificate of authority to transact business in this State, the foreign limited liability partnership agrees to be subject to the jurisdiction of the Department of Revenue and the South Carolina courts to determine its South Carolina tax liability, including withholding and estimated taxes, together with any related interest and penalties, if any. Registering is not an admission of tax liability.

HISTORY: 1994 Act No. 448, Section 10; 1995 Act No. 60, Section 2F.

**SECTION 33‑41‑1170.** Application for certificate of authority; filing; determination by Secretary of State; registration, duration and renewal.

 (A) If the Secretary of State finds that an application for a certificate of authority to transact business in this State conforms to the provisions of this article and all requisite fees have been paid, the Secretary shall:

 (1) endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

 (2) retain the signed original in the Secretary of State's files; and

 (3) return the duplicate copy to the person who filed it or the person's representative.

 (B) If the Secretary of State is unable to make the determination required for filing by subsection (A) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the Secretary of State subsequently determines that:

 (1) the documents as delivered conform to the filing provisions of this chapter; or

 (2) within twenty days after notification of nonconformance is given by the Secretary of State to the person who delivered the documents for filing for the person's representative, the documents are brought into conformance.

 (C) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subsection (B)(2), the documents shall not be filed.

 (D) A certificate of authority to transact business in this State is effective for one year after the date the application is filed unless voluntarily withdrawn pursuant to Section 33‑41‑1190. Registration, whether pursuant to an original application or a renewal application, as a registered limited liability partnership is renewed if, during the sixty‑day period preceding the date the application or renewal application otherwise would have expired, the partnership files with the Secretary of State a renewal application. A renewal application expires one year after the date an original application would have expired if the last renewal of the application had not occurred.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1180.** Application for certificate, articles of amendment, amended certificate.

 (A) The application for a foreign limited liability partnership's certificate of authority to transact business in this State is amended by filing articles of amendment with the Secretary of State signed by a person with authority to do so under the laws of the State or other jurisdiction of its formation. The articles of amendment shall set forth:

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

 (2) the date the original application for registration was filed; and

 (3) the amendment to the application for registration.

 (B) The application for a certificate to transact business in this State may be amended in any way, provided that the application, as amended, contains only provisions that may be lawfully contained in an application for a certificate to transact business in this State at the time of the amendment.

 (C) A foreign limited liability partnership authorized to transact business in South Carolina must obtain an amended certificate of authority from the Secretary of State if it changes:

 (1) its limited liability partnership name;

 (2) the street address of its registered office in this State or the name of its registered agent at that office; or

 (3) the state or country of its organization.

 An amended certificate of authorization must also be obtained if there is a false or erroneous statement in the original filed application for a certificate of authority.

 (D) The Secretary of State shall collect a fee of one hundred dollars when a foreign limited liability partnership delivers to him for filing an amendment to a certificate to transact business in this State.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1190.** Foreign limited liability partnership; cancellation of registration.

 (A) A foreign limited liability partnership authorized to transact business in this State may cancel its registration upon procuring from the Secretary of State a certificate of cancellation. In order to procure such certificate, the foreign limited liability partnership shall deliver to the Secretary of State an application for cancellation, which shall set forth:

 (1) the name of the foreign limited liability partnership and the state or other jurisdiction under the laws of which it is formed;

 (2) that the foreign limited liability partnership is not transacting business in this State;

 (3) that the foreign limited liability partnership surrenders its certificate of authority to transact business in this State;

 (4) that the foreign limited liability partnership revokes the authority of its registered agent for service of process in this State and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State may thereafter be made on such foreign limited liability partnership by service thereof upon the Secretary of State; and

 (5) an address to which a person may mail a copy of any process against the foreign limited liability partnership.

 (B) The application for cancellation shall be in the form and manner designated by the Secretary of State and shall be executed on behalf of the foreign limited liability partnership by a person with authority to do so under the laws of the State or other jurisdiction of its formation, or if the foreign limited liability partnership is in the hands of a receiver, trustee, or other court‑appointed fiduciary by that fiduciary.

 (C) A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability partnership with respect to causes of action arising out of the transaction of business in this State.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1200.** Effect of failure of foreign limited liability partnership to register.

 (A) A foreign limited liability partnership transacting business in this State may not maintain an action, suit, or proceeding in a court of this State until the Secretary of State has issued it a certificate of authority to transact business in this State.

 (B) The failure of a foreign limited liability partnership to register in this State does not:

 (1) impair the validity of any contract or act of the foreign limited liability partnership;

 (2) affect the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

 (3) prevent the foreign limited liability partnership from defending any action, suit, or proceeding in any court of this State.

 (C) A foreign limited liability partnership, by transacting business in this State without registration, appoints the Secretary of State as its agent for service of process with respect to a cause of action arising out of the transaction of business in this State.

 (D) A foreign limited liability partnership which transacts business in this State without a certificate of authority shall be liable to the State for the years or parts thereof during which it transacted business in this State without a certificate of authority in an amount equal to all fees which would have been imposed by this chapter upon that foreign limited liability partnership had it duly registered, and all penalties imposed by this chapter. The Attorney General may bring proceedings to recover all amounts due this State under the provisions of this section.

 (E) A foreign limited liability partnership which transacts business in this State without a certificate of authority shall be subject to a civil penalty, payable to the State of ten dollars per day, not to exceed one thousand dollars per year.

 (F) The civil penalty set forth in subsection (E) may be recovered in an action brought within a court by the Attorney General. Upon a finding by the court that a foreign limited liability partnership has transacted business in this State in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining further transactions of the business of the foreign limited liability partnership and the further exercise of any limited liability partnership's rights and privileges in this State. The foreign limited liability partnership shall be enjoined from transacting business in this State until all civil penalties plus any interest and court costs which the court may assess have been paid and until the foreign limited liability partnership has otherwise complied with the provisions of this article.

 (G) A partner of a foreign limited liability partnership is not liable for the debts and obligations of the limited liability partnership solely because the limited liability partnership transacted business in this State without registration.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1210.** Transacting business in state unlawful without certificate of authority; what constitutes transacting business.

 (A) A foreign limited liability partnership may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

 (B) The following activities, among others, do not constitute transacting business within the meaning of subsection (A):

 (1) maintaining, defending, or settling any proceeding;

 (2) holding meetings of the partners or carrying on other activities concerning internal affairs;

 (3) maintaining bank accounts;

 (4) selling through independent contractors;

 (5) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

 (6) creating or acquiring any indebtedness, mortgages, and security interests in real or personal property;

 (7) securing or collecting any debts or enforcing mortgages, security interests, or any other rights in property securing debts;

 (8) owning, without more, real or personal property;

 (9) conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of like nature; and

 (10) transacting business in interstate commerce.

 (C) A foreign limited liability partnership which renders a professional service is not required to obtain a certificate of authority to transact business in this State unless it maintains or intends to maintain an office in this State for the conduct of business or professional practice.

 (D) The list of activities in subsection (B) is not exhaustive.

HISTORY: 1994 Act No. 448, Section 10.

**SECTION 33‑41‑1220.** Powers of General Assembly as to regulations, amendment or repeal of statute.

 The General Assembly of South Carolina has power to provide regulations regarding Chapter 41 of this title and to amend or repeal all or any part of Chapter 41 of Title 33 or its regulations at any time; and all domestic and foreign limited liability partnerships subject to Chapter 41 of this title are governed by the amendment or repeal.

HISTORY: 1994 Act No. 448, Section 10.

ARTICLE 14

Mergers

**SECTION 33‑41‑1310.** Plan of merger; contents; approval; filing; notice of name change as to real property.

 (a) Pursuant to a plan of merger approved pursuant to subsection (c), a partnership may be merged with or into one or more partnerships, foreign partnerships, corporations, foreign corporations, limited liability companies, foreign limited liability companies, limited partnerships, foreign limited partnerships, or other domestic or foreign entities.

 (b) A plan of merger must include the:

 (1) name of each entity that is a party to the merger;

 (2) name of the surviving entity into which the other entities are to merge;

 (3) type of organization of the surviving entity;

 (4) terms and conditions of the merger;

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

 (6) street address of the surviving entity's principal place of business.

 (c) A plan of merger must be approved by:

 (1) all the partners or the number or percentage of the partners required for merger in the partnership agreement, in the case of a partnership or a domestic limited partnership that is a party to the merger;

 (2) all the members or the number or percentage of members specified in the operating agreement, in the case of a limited liability company that is a party to the merger;

 (3) the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized, in the case of a foreign limited liability company that is a party to the merger; or

 (4) the vote required for approval of a merger by the law of this State or of the state or foreign jurisdiction in which the entity is organized and, in the absence of that requirement, by all the owners of interests in the entity, in the case of any other entities that are parties to the merger.

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

 (e) Unless the surviving entity is a general partnership, the merger is effective upon the filing of the articles of merger with the Secretary of State or at a later date the articles may provide. Filing of the articles of merger is not required if the surviving entity is a general partnership. If the surviving entity is a general partnership, the merger is effective when the agreement is signed.

 (f)(1) If a partnership that owns real property in South Carolina is converted to another entity by articles of merger, the newly‑named surviving, acquiring, or reorganizing partnership must file a notice of that name change in the office of the register of deeds of the county in South Carolina in which the real property is located. If there is no office in that county, the notice of name change must be filed with the clerk of court of the county in which that real property is located.

 (2) The filing must be by:

 (i) affidavit executed in accordance with the provisions in Section 33‑1‑200 and containing the old and new names of the partnership and describing the real property owned by that partnership; or

 (ii) filing a certified copy of the articles of merger including a description of the real property; or

 (iii) a duly recorded deed of conveyance to the newly‑named surviving, acquiring, or reorganizing partnership.

 (3) The affidavit or filed articles must be duly indexed in the index of deeds.

 (4) The purpose of this subitem is to establish record notice pursuant to Chapter 7 of Title 30. Failure to make the required filing of a partnership name change does not affect the legality, force, effect, or enforceability as between the parties of any conveyance or other transaction involving real estate owned by the affected partnership that is made after the change in name.

HISTORY: 2004 Act No. 221, Section 2.

**SECTION 33‑41‑1320.** Effect of merger; service of process; liability for partnership obligations.

 (a) When a merger takes effect:

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

 (2) all property owned by each of the partnerships and other entities that are party to the merger vests in the surviving entity;

 (3) all debts, liabilities, and other obligations of each partnership or other entity that is party to the merger become the obligations of the surviving entity;

 (4) an action or proceeding pending by or against a partnership or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

 (5) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every partnership or other entity that is a party to the merger vest in the surviving entity.

 (b) Unless the surviving entity is a partnership, the Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the registered office. Upon receipt of process, the Secretary of State shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected pursuant to this subsection at the earliest of:

 (1) the date the entity receives the process, notice, or demand;

 (2) the date shown on the return receipt, if signed on behalf of the entity; or

 (3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

 (c) A partner of a merging partnership is liable for all obligations as a party to the merger for which the partner was personally liable before the merger.

 (d) Unless otherwise agreed, a merger of a partnership that is not the surviving entity in the merger does not require the partnership to wind up its business or pay its liabilities and distribute its assets pursuant to this chapter.

HISTORY: 2004 Act No. 221, Section 2.

**SECTION 33‑41‑1330.** Merger pursuant to other law.

 This article does not preclude a partnership from being merged pursuant to other law.

HISTORY: 2004 Act No. 221, Section 2.