

## **CHAPTER 45-10.2 UNIFORM LIMITED PARTNERSHIP ACT**

**45-10.2-01. (101) Citation.** This chapter may be cited as the North Dakota Uniform Limited Partnership Act (2001).

**45-10.2-02. (102) Definitions.** For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
  - b. In all other cases, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the limited partnership; or
    - (2) To a general partner or agent of the limited partnership authorized by the limited partnership to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Business" includes every trade, occupation, activity, and profession.
4. "Certificate of limited partnership" means the certificate referred to in section 45-10.2-23 and the certificate as amended or restated.
5. "Constituent limited partnership" means a constituent organization that is a limited partnership.
6. "Constituent organization" means an organization that is party to a merger.
7. "Contribution", except in the phrase "right of contribution", means any benefit provided by a person to a limited partnership:
  - a. In order to become a partner; or
  - b. In the capacity of the person as a partner.
8. "Converted organization" means the organization into which a converting organization converts pursuant to sections 45-10.2-94 through 45-10.2-99.
9. "Converting limited partnership" means a converting organization that is a limited partnership.
10. "Converting organization" means an organization that converts into another organization pursuant to section 45-10.2-94.
11. "Debtor in bankruptcy" means a person that is the subject of:

- a. An order of relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
  - b. A comparable order under federal, state, or foreign law governing insolvency.
12. "Distribution" means a transfer of money or other property from a limited partnership to a partner or to the transferee of the partner on account of a transferable interest owned by the transferee.
13. "Domestic organization" means an organization created under the laws of this state.
14. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
15. "Electronic communication" means any form of communication not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
16. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
17. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
18. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter together with the fees provided in section 45-10.2-109 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
19. "Foreign limited liability limited partnership" means a partnership formed by two or more persons under the laws of a jurisdiction other than this state:
  - a. Which is required by those laws to have one or more general partners and one or more limited partners;
  - b. Whose general partners have limited liability for the obligations of the foreign limited liability limited partnership under provisions similar to chapter 45-23;
  - c. For a purpose for which a limited liability limited partnership may be organized under chapter 45-23; and
  - d. Which is in good standing in its jurisdiction of origin.

20. "Foreign limited partnership" means a partnership formed by two or more persons under laws of a jurisdiction other than this state:
  - a. Which is required by those laws to have one or more general partners and one or more limited partners;
  - b. Whose general partners have personal liability for the obligations of the foreign limited partnership under provisions similar to this chapter;
  - c. For a purpose for which a limited partnership may be organized under this chapter; and
  - d. Which is in good standing in its jurisdiction of origin.
21. "Foreign organization" means an organization created under laws of a jurisdiction other than this state.
22. "General partner" means:
  - a. With respect to a limited partnership, a person:
    - (1) That becomes a general partner under section 45-10.2-37 and has not become dissociated as a general partner under section 45-10.2-57; or
    - (2) That was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 45-10.2-03 and has not become dissociated as a general partner under section 45-10.2-57; and
  - b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.
23. "Governing statute" means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, chapter 10-19.1;
    - (2) If a limited liability company, chapter 10-32;
    - (3) If a general partnership, chapters 45-12 through 45-21;
    - (4) If a limited partnership, this chapter;
    - (5) If a limited liability partnership, chapter 45-22; and
    - (6) If a limited liability limited partnership, chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
24. "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a partnership that is formed by two or more persons and which has one or more general partners and one or more limited partners:
  - a. Which is formed under chapter 45-23; or

- b. Which elects to become subject to chapter 45-23.
25. "Limited partner" means:
- a. With respect to a limited partnership, a person that:
    - (1) Becomes a limited partner under section 45-10.2-31 and has not become dissociated as a limited partner under section 45-10.2-55; or
    - (2) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 45-10.2-03 and has not become dissociated as a limited partner under section 45-10.2-55; and
  - b. With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.
26. "Limited partnership", except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership" means a partnership that is formed by two or more persons and which has one or more general partners and one or more limited partners:
- a. Which is formed under this chapter; or
  - b. Which elects to become subject to this chapter under section 45-10.2-03.
27. "Notice":
- a. Is given to a limited partnership:
    - (1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited partnership; or
    - (2) When given by a form of electronic communication consented to by a general partner of the limited partnership to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which a general partner of the limited partnership has consented to receive notice;
      - (b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited partnership has consented to receive notice;
      - (c) Posting on an electronic network on which a general partner of the limited partnership has consented to receive notice, together with separate notice to the limited partnership of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice; or
      - (d) Any other form of electronic communication by which a general partner of the limited partnership has consented to receive notice, when directed to the limited partnership.
  - b. Is given to a partner of the limited partnership:

- (1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited partnership; or
  - (2) When given by a form of electronic communication consented to by the partner to which the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
    - (c) Posting on an electronic network on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
    - (d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.
- c. Is given in all other cases:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last-known address of the person;
  - (3) When handed to the person;
  - (4) When left at the office of the person with a clerk or other person in charge of the office, or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
  - (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice;
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

- [1] The posting; or
  - [2] The giving of the separate notice; or
  - (d) Any other form of electronic communication, by which the person has consented to receive notice, when directed to the person; or
  - (6) When the method is fair and reasonable when all circumstances are considered.
- d. Is given when deposited in the United States mail with sufficient postage affixed.
  - e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.
  - f. Is deemed received when it is given.
28. "Organization":
- a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, and any other person subject to a governing statute; but
  - b. Excludes:
    - (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated under the laws of another jurisdiction; or
    - (2) Any nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.
29. "Organizational records" means:
- a. For a domestic or foreign general partnership, its partnership agreement;
  - b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;
  - c. For a domestic or foreign limited liability company, its articles of organization, bylaws or operating agreement, and any member-control agreement, or comparable records as provided in its governing statute;
  - d. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and
  - e. For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an ownership interest in it, or are members of it.
30. "Ownership interests" means for an organization which is:

- a. A corporation, its shares;
  - b. A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;
  - d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests; or
  - f. A limited liability limited partnership, its partnership interests.
31. "Partner" means a general or limited partner.
32. "Partnership agreement":
- a. Means the agreement of the partners, whether oral, implied, in a record, or in any combination, concerning the limited partnership; and
  - b. Includes the agreement as amended.
33. "Partnership interest" means the transferable interest of a partner.
34. "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.
35. "Personal liability" means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that coowns, has an ownership interest in, or is a member of the organization:
- a. By the governing statute of an organization solely by reason of the person coowning, having an ownership interest in, or being a member of the organization; or
  - b. By the organizational records of an organization under a provision of the governing statute of an organization authorizing those records to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons coowning, having an ownership interest in, or being a member of the organization.
36. "Principal executive office" means:
- a. An office from which the limited partnership conducts business; or
  - b. If the limited partnership has no office from which it conducts business, then the registered office of the limited partnership.
37. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
38. "Registered office" means the place in this state designated in the certificate of limited partnership or in the certificate of authority of a foreign limited partnership as the registered office.
39. "Required information" means the information that a limited partnership is required to maintain under section 45-10.2-13.
40. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state that:
    - (1) The record is signed by a person authorized to sign the record by this chapter, by the partnership agreement, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
41. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
42. "Surviving organization" means an organization into which one or more other organizations are merged and which:
- a. May preexist the merger; or
  - b. May be created by the merger.
43. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.
44. "Transferable interest" means the right of a partner to receive distributions.
45. "Transferee" means, except in section 45-10.2-45, a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.
46. "Vote" includes authorization by written action.
47. "Written action" means:
- a. A written record signed by all of the persons required to take the action; and
  - b. The counterparts of a written record signed by any of the persons taking the action described.
    - (1) Each counterpart constitutes the action of the person signing; and
    - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

**45-10.2-03. (1206) Application to existing relationships.**

- 1. After June 30, 2005, no person may use chapter 45-10.1 to form an entity.
- 2. Before January 1, 2006, this chapter governs only:
  - a. A limited partnership formed after June 30, 2005; and
  - b. Except as otherwise provided in subsection 4, a limited partnership formed under chapter 45-10.1 which elects, in the manner provided in its partnership

agreement or by law for amending the partnership agreement, to be subject to this chapter.

3. Except as otherwise provided in subsection 4, on and after January 1, 2006, this chapter governs:
  - a. Any limited partnership formed under chapter 45-10.1 which has not previously elected to be governed by this chapter and is still in existence on January 1, 2006; and
  - b. All limited partnerships, including each limited partnership formed under chapter 45-10.1 which has previously elected to become governed by this chapter.
4. With respect to a limited partnership formed before July 1, 2005, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:
  - a. Subsection 3 of section 45-10.2-07 does not apply and the limited partnership has whatever duration it had under the law applicable immediately before the limited partnership became subject to this chapter;
  - b. Sections 45-10.2-55 and 45-10.2-56 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before the limited partnership became subject to this chapter;
  - c. Subsection 4 of section 45-10.2-57 does not apply;
  - d. Subsection 5 of section 45-10.2-57 does not apply and a court has the same power to expel a general partner as the court had immediately before the limited partnership became subject to this chapter; and
  - e. Subsection 3 of section 45-10.2-66 does not apply and the connection between the dissociation of a person as a general partner and the dissolution of the limited partnership is the same as existed immediately before the limited partnership became subject to this chapter.

**45-10.2-04. (1207) Savings clause.** This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

**45-10.2-05. Legal recognition of electronic records and electronic signatures.** For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, then an electronic record satisfies the requirement;
4. If a provision requires a signature, then an electronic signature satisfies the requirement; and
5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede any provision of chapter 9-16.

**45-10.2-06. (103) Knowledge and notice.**

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
  - a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 27 of section 45-10.2-02;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3 or 4.
3. A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsections 4 and 9, the certificate is not notice of any other fact.
4. Subject to subsection 9, a person has notice of:
  - a. The dissociation of another person as a general partner ninety days after the effective date of a filed amendment to the certificate of limited partnership which states that the other person has dissociated or ninety days after the effective date of a filed statement of dissociation pertaining to the other person, whichever occurs first;
  - b. The dissolution of a limited partnership ninety days after the effective date of a filed amendment to the certificate of limited partnership stating that the limited partnership is dissolved;
  - c. The termination of a limited partnership ninety days after the effective date of a filed statement of termination;
  - d. The conversion of a limited partnership under sections 45-10.2-94 through 45-10.2-99 ninety days after the effective date of the filed articles of conversion; or
  - e. A merger under sections 45-10.2-100 through 45-10.2-103 ninety days after the effective date of the filed articles of merger.
5. A person notifies or gives a notification to another person by taking the steps provided in subsection 27 of section 45-10.2-02, whether or not the other person learns of it.
6. A person receives a notification as provided in subsection 27 of section 45-10.2-02.
7. Except as otherwise provided in subsection 8 and except as otherwise provided in subsection 27 of section 45-10.2-02, 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 for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

- a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
  - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
8. Knowledge, notice, or receipt of a notification of a fact relating to the limited partnership by a general partner is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. Knowledge, notice, or receipt of a notification of a fact relating to the limited partnership by a limited partner is not effective as knowledge by, notice to, or receipt of a notification by the limited partnership.
9. Notice otherwise effective under subsection 4 does not affect the power of a person to transfer real property held in the name of a limited partnership unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.
10. With respect to notice given by a form of electronic communication:
- a. Consent by a partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
  - b. An affidavit of a general partner or an authorized agent of the limited partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

**45-10.2-06.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited partnership formed under or governed by this chapter is subject to this reserved right.

**45-10.2-07. (104) Nature, purpose, and duration of entity.**

- 1. A limited partnership is an entity distinct from its partners.
- 2. A limited partnership may be organized under this chapter for any lawful purpose except banking or insurance.
- 3. A limited partnership has a perpetual duration unless otherwise provided in its certificate of limited partnership.

**45-10.2-08. (105) General powers.** A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

**45-10.2-09. (106 and 107) Governing law.**

1. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.
2. Unless displaced by particular provision of this chapter, the principles of law and equity supplement this chapter.

**45-10.2-10. Limited partnership name.**

1. The name of each limited partnership as set forth in the certificate of limited partnership:
  - a. Must be in the English language or in another language expressed in English letters or characters.
  - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
  - c. May contain the name of any partner.
  - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - e. May not contain a word or phrase that indicates or implies that the limited partnership:
    - (1) Is organized for a purpose other than:
      - (a) A lawful purpose for which a limited partnership may be organized under this chapter; or
      - (b) For a purpose stated in its certificate of limited partnership; or
    - (2) May not be organized under this chapter.
  - f. May not be the same as or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate of limited partnership a record in compliance with subsection 3, of:
      - (a) Another limited partnership;
      - (b) A corporation;
      - (c) A limited liability company;
      - (d) A limited liability partnership; or
      - (e) A limited liability limited partnership;
    - (2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11; or

- (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a limited partnership name is deceptively similar to another name for purposes of this chapter.
3. If the secretary of state determines a limited partnership name is deceptively similar to another name for purposes of this chapter, then the limited partnership name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. Subsection 3 does not affect the right of a limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date, to continue the use of its name.
5. This section and section 45-10.2-11 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other right to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section,

although its certificate of limited partnership may have been filed with the secretary of state.

8. A limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state as provided in section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited partnership pursuant to section 45-10.2-23 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited partnership that cannot reacquire the use of its limited partnership name shall adopt a new limited partnership name that complies with this section by refiling a certificate of limited partnership as provided in section 45-10.2-23; by amending its certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the limited partnership pursuant to section 45-10.2-108. If the new limited partnership name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
9. Subject to section 45-10.2-78, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

**45-10.2-11. Reserved name.**

1. The exclusive right to the use of a limited partnership name otherwise permitted by section 45-10.2-10 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved.
  - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
  - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing in the office of the secretary of state a notice of transfer, and specifying the name and address of the transferee.
4. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation.
5. The secretary of state may destroy all reserved name requests and the index thereof one year after expiration.

**45-10.2-12. (110) Effect of partnership agreement and nonwaivable provisions.**

1. Except as otherwise provided in subsection 2, 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, this chapter governs relations among the partners and between the partners and the partnership.
2. A partnership agreement may not:
  - a. Vary the power of a limited partnership under section 45-10.2-08 to sue, be sued, and defend in its own name;

- b. Vary the law applicable to a limited partnership under section 45-10.2-09;
- c. Vary the requirements of section 45-10.2-25;
- d. Vary the information required under section 45-10.2-13 or unreasonably restrict the right to information under section 45-10.2-34 or 45-10.2-43, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restrictions on use;
- e. Eliminate the duty of loyalty under section 45-10.2-44, but the partnership agreement may:
  - (1) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
  - (2) Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- f. Unreasonably reduce the duty of care under subsection 3 of section 45-10.2-44;
- g. Eliminate the obligation of good faith and fair dealing under subsection 2 of section 45-10.2-35 and subsection 4 of section 45-10.2-44, 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;
- h. Vary the power of a person to dissociate as a general partner under subsection 1 of section 45-10.2-58 except to require that the notice under subsection 1 of section 45-10.2-57 be in a record;
- i. Vary the power of a court to decree dissolution in the circumstances specified in section 45-10.2-67;
- j. Vary the requirement to wind up the business of a partnership as specified in section 45-10.2-68;
- k. Unreasonably restrict the right to maintain an action under sections 45-10.2-89 through 45-10.2-93;
- l. Restrict the right of a partner under subsection 1 of section 45-10.2-104 to approve a conversion or merger;
- m. Restrict the right of a general partner under subsection 2 of section 45-10.2-104 to consent to an amendment to the certificate of limited partnership which converts the limited partnership to a limited liability limited partnership; or
- n. Restrict rights under this chapter of a person other than a partner or a transferee.

**45-10.2-13. (111) Required information.** A limited partnership shall maintain at its principal executive office the following information:

- 1. A current list showing the full name and last-known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

2. A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;
3. A copy of any filed articles of conversion or merger;
4. A copy of the federal, state, and local income tax returns and reports of a limited partnership, if any, for the three most recent years;
5. A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;
6. A copy of any financial statement of the limited partnership for the three most recent years;
7. A copy of the three most recent annual reports delivered by the limited partnership to the secretary of state pursuant to section 45-10.2-108;
8. A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and
9. Unless contained in a partnership agreement made in a record, a record stating:
  - a. The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;
  - b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;
  - c. For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and
  - d. Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

**45-10.2-14. (112) Business transactions of partner with partnership.** A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

**45-10.2-15. (113) Dual capacity.** A person may be both a general partner and a limited partner.

1. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities.
2. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners.
3. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

**45-10.2-16. Registration of general partner.** A general partner must be registered separately with the secretary of state at the time of filing a certificate of limited partnership or the

application for certificate of authority of a foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited partnership;
4. Limited liability partnership;
5. Limited liability limited partnership;
6. General partnership; or
7. Any other organization that has a registration responsibility with the secretary of state.

**45-10.2-17. Registered office - Registered agent.** A limited partnership shall continuously maintain a registered agent in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, the address of that noncommercial registered agent.

**45-10.2-18. Change of registered office or agent - Resignation of registered agent - Change of name or address of registered agent.**

1. A limited partnership may change its registered office, change its registered agent, or state a change in the name of the registered agent as provided in chapter 10-01.1.
2. A registered agent of a limited partnership may resign as provided in chapter 10-01.1.

**45-10.2-19. Action without a meeting.** An action required or permitted to be taken or permitted to be taken at a meeting of the partners may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the partners entitled to vote on that action.

1. If the certificate of limited partnership or the partnership agreement so provides, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the partners entitled to vote on the action who own voting power equal to the voting power that would be required to take the same action at a meeting of the partners at which all partners entitled to vote on the action were present. After the adoption of the initial certificate of limited partnership or the initial partnership agreement, an amendment to the certificate of limited partnership or to the partnership agreement to permit written action to be taken by less than all partners entitled to vote on an action requires the approval of all partners entitled to vote on the amendment.
  - a. When written action is permitted to be taken by less than all partners entitled to vote on the action, all partners entitled to vote on the action must be notified immediately of its text and effective date.
  - b. Failure to provide the notice does not invalidate the written action.
  - c. A partner who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.

2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the partners entitled to vote on the action, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the general partner signing the certificate must so indicate if the action was taken under this section.

**45-10.2-20. Remote communications for partner meetings.**

1. This section must be construed and applied to:
  - a. Facilitate remote communication consistent with other applicable law; and
  - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the certificate of limited partnership or the partnership agreement and determined by the general partners:
  - a. A meeting of the partners may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
    - (1) If notice of the meeting is given to every holder of interests entitled to vote as would be required by the certificate of limited partnership or the partnership agreement for a meeting; and
    - (2) If the number of partnership interests held by the partners participating in the meeting would be sufficient to constitute a quorum at a meeting.
  - b. A partner not physically present in person or by proxy at a meeting of partners may by means of remote communication participate in a meeting of partners held at a designated place.
3. In any meeting of partners held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of partners held at a designated place in which one or more partners participate by means of remote communication under subdivision b of subsection 2:
  - a. The limited partnership shall implement reasonable measures to:
    - (1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a partner; and
    - (2) Provide each partner participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
      - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
      - (b) If allowed by the procedures governing the meeting, have the remarks of a partner heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
      - (c) If otherwise entitled, vote on matters submitted to the partners.

- b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the requirements of section 45-10.2-21 are met.
- 4. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the partner submitting the ballot, vote, authorization, or consent so long as the revocation is received by a general partner of the limited partnership at or before the meeting or before an action without a meeting is effective as provided in section 45-10.2-19.
- 5. A partner may waive notice of a meeting by means of authenticated electronic communication. Participation in a meeting by means of remote communication described in subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the partner objects:
  - a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
  - b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

**45-10.2-21. Consent and proxies of partners.**

- 1. At or before the meeting for which the appointment is to be effective, a partner may cast or authorize the casting of a vote:
  - a. By filing with a partner or agent authorized to tabulate votes a written appointment of a proxy which is signed by the partner.
  - b. By remote communication or authenticated electronic communication to a partner or agent authorized to tabulate votes, whether or not accompanied by written instructions of the partner, of an appointment of a proxy.
    - (1) The remote communication or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the partner. If it is reasonably concluded that the remote communication or authenticated electronic communication is valid, then the inspectors of election or, if there are no inspectors, then the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
    - (2) A proxy so appointed may vote on behalf of the partner, or otherwise participate, in a meeting by remote communication according to section 45-10.2-20 to the extent the partner appointing the proxy would have been entitled to participate by remote communication according to section 45-10.2-20 if the partner did not appoint the proxy.
  - c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
  - d. An appointment of a proxy for partnership interests held jointly by two or more partners is valid if signed or consented to by authenticated electronic communication by any one of the partners, unless the limited partnership receives from any of those partners written notice or authenticated electronic

communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the partnership interests or in the limited partnership. A partner who revokes a proxy is not liable in any way for damages, restitution, or other claim.
3. An appointment may be revoked at will, unless the appointment is coupled with an interest, in which case it may not be revoked except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:
  - a. Attending a meeting and voting in person; or
  - b. Signing and delivering to the partner or to a duly authorized agent of the partnership:
    - (1) A writing stating the appointment of the proxy is revoked; or
    - (2) A new appointment; or
  - c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the partner, of:
    - (1) A statement that the proxy is revoked; or
    - (2) A new appointment.
4. Revocation in either manner provided in subdivisions b and c of subsection 3 revokes all earlier proxy appointments and is effective:
  - a. When filed with a general partner or duly authorized agent of the limited partnership; or
  - b. When the remote communication or the authenticated electronic communication is received by a partner or by the duly authorized agent of the partnership.

The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the partner.
5. The death or incapacity of a person appointing a proxy does not affect the right of the limited partnership to accept the authority of the proxy, unless written notice of the death or incapacity is received by a partner or agent authorized to tabulate votes before the proxy exercises authority under that appointment.
6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a partner:
  - a. Then any one of them may vote the partnership interests on each item of business in accordance with specific instructions contained in the appointment; or
  - b. If no specific instructions are contained in the appointment with respect to voting the partnership interests on a particular item of business, then the

partnership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, then the partnership interests may not be voted.

7. Subject to section 45-10.2-22 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the limited partnership may accept a vote or action by the proxy as the action of the partner. The vote of a proxy is final, binding, and not subject to challenge. However, the proxy is liable to the partner or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
8. If a proxy is given authority by a partner to vote on less than all items of business considered at a meeting of partners, then the partner is considered to be present and entitled to vote by the proxy, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a partner who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

**45-10.2-22. Acceptance of partner act by the limited partnership.**

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a partner, then the limited partnership if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the partner.
2. Unless the certificate of limited partnership or partnership agreement provides otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a partner, then the limited partnership if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the partner if:
  - a. The partner is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
  - b. The name signed purports to be that of an administrator, guardian, or conservator representing the partner, and, if the limited partnership requests, evidence of fiduciary status acceptable to the limited partnership has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - c. The name signed purports to be that of a receiver or trustee in bankruptcy of the partner, and, if the limited partnership requests, evidence of this status acceptable to the limited partnership has been presented with respect to the vote, consent, waiver, or proxy appointment;
  - d. The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the partner, and, if the limited partnership requests, evidence acceptable to the limited partnership of the authority of the signatory to sign for the partner has been presented with respect to the vote, consent, waiver, or proxy appointment; or
  - e. Two or more persons hold the interests as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.
3. The limited partnership may reject a vote, consent, waiver, or proxy appointment if the partner or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on it or the authority of the signatory to sign for the partner.

4. The limited partnership or its agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the partner for the consequences of the acceptance or rejection.
5. Action of the limited partnership based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

**45-10.2-23. (201) Formation of limited partnership and certificate of limited partnership.**

1. In order for a limited partnership to be formed, a certificate of limited partnership must be filed with the secretary of state.
  - a. The certificate must state:
    - (1) The name of the limited partnership, which must comply with section 45-10.2-10;
    - (2) The general character of its business;
    - (3) The street address and mailing address of the principal executive office;
    - (4) The name, street address, and mailing address of each general partner;
    - (5) The name of the registered agent in this state as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state; and
    - (6) Any additional information required by sections 45-10.2-94 through 45-10.2-106.
  - b. A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in subsection 2 of section 45-10.2-12 in a manner inconsistent with that section.
2. A limited partnership is formed when the certificate of limited partnership is filed with the secretary of state or on the date specified in the certificate of limited partnership that is within ninety days after the filing of the certificate of limited partnership with the secretary of state.
3. Subject to subdivision b of subsection 1, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:
  - a. The partnership agreement prevails as to partners and transferees; and
  - b. The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

**45-10.2-24. (202) Amendment or restatement of certificate.**

1. In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to sections 45-10.2-100 through 45-10.2-106, articles of merger stating:

- a. The name of the limited partnership; and
  - b. The changes the amendment makes to the certificate as most recently amended or restated.
2. A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:
    - a. The change of name of the limited partnership;
    - b. The admission of a new general partner;
    - c. The dissociation of a person as a general partner; or
    - d. The appointment of a person to wind up the activities of the limited partnership under subsection 3 or 4 of section 45-10.2-68.
  3. A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:
    - a. Cause the certificate to be amended; or
    - b. If appropriate, deliver to the secretary of state for filing a statement of change pursuant to section 45-10.2-18 or a statement of correction pursuant to section 45-10.2-28.
  4. A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.
  5. A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.
  6. Subject to subsection 3 of section 45-10.2-27, an amendment or restated certificate is effective when filed by the secretary of state or on a date specified in the amendment or restated certificate that is within ninety days after the filing of the amendment or restated certificate with the secretary of state.
  7. A limited partnership shall report any change of address of the principal executive office to the secretary of state and need not file an amendment to a certificate of limited partnership.
  8. A limited partnership that files an amendment to change its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership.

**45-10.2-25. (204) Signing of records.**

1. Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:
  - a. An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

- b. An amendment to the certificate of limited partnership converting the limited partnership to a limited liability limited partnership must be signed by all general partners listed in the certificate.
- c. An amendment to the certificate of limited partnership designating as general partner a person admitted under subdivision b of subsection 3 of section 45-10.2-66 following the dissociation of a last general partner of a limited partnership must be signed by that person.
- d. An amendment to the certificate of limited partnership required by subsection 3 of section 45-10.2-68 following the appointment of a person to wind up the activities of the dissolved limited partnership must be signed by that person.
- e. Any other amendment to the certificate of limited partnership must be signed by:
  - (1) At least one general partner listed in the certificate;
  - (2) Each other person designated in the amendment as a new general partner; and
  - (3) Each person that the amendment indicates has dissociated as a general partner, unless:
    - (a) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
    - (b) The person has previously delivered to the secretary of state for filing a statement of dissociation.
- f. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subdivision of this subsection, the certificate must be signed in a manner that satisfies that subdivision.
- g. A statement of termination must be signed by a majority in interest of the general partners listed in the certificate of limited partnership or, if the certificate of a dissolved limited partnership lists no general partners, then by the person appointed pursuant to subsection 3 or 4 of section 45-10.2-68 to wind up the activities of the dissolved limited partnership.
- h. Articles of conversion must be signed by all of the general partners listed in the certificate of limited partnership.
- i. Articles of merger must be signed as provided in subsection 1 of section 45-10.2-102.
- j. Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate of limited partnership.
- k. A statement by a person pursuant to subdivision d of subsection 1 of section 45-10.2-59 stating that the person has dissociated as a general partner must be signed by that person.
- l. A statement of withdrawal by a person pursuant to section 45-10.2-36 must be signed by that person.

- m. A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.
  - n. Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.
2. Any person may sign by an attorney in fact any record to be filed pursuant to this chapter.

**45-10.2-26. (205) Signing and filing pursuant to judicial order.**

1. If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, then any other person that is aggrieved may petition the district court to order:
- a. The person to sign the record and deliver the record to the secretary of state for filing; or
  - b. The secretary of state to file the record unsigned.
2. If the person aggrieved under subsection 1 is not the limited partnership or foreign limited partnership to which the record pertains, then the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in the same action in combination or in the alternative.
3. A record filed unsigned pursuant to this section is effective without being signed.

**45-10.2-27. (206) Delivery to and filing of records by secretary of state and effective date.**

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and, except for an annual report, return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:
- a. For a statement of dissociation, send a copy of the filed statement:
    - (1) To the person which the statement indicates has dissociated as a general partner; and
    - (2) To the limited partnership;
  - b. For a statement of withdrawal, send a copy of the filed statement:
    - (1) To the person on whose behalf the record was filed; and
    - (2) If the statement refers to an existing limited partnership, to the limited partnership; and
  - c. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 45-10.2-109, the secretary of state shall send to the requester a certified copy of the requested record.

3. Except as otherwise provided in sections 45-10.2-18 and 45-10.2-28, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
  - a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
  - b. If the record specifies a delayed effective date within ninety days, then on the specified date.

**45-10.2-28. Correcting a filed record.** With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or
      - (b) By a person authorized to sign on behalf of that person;
    - (2) Set forth the name of the limited partnership that filed the record;
    - (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
    - (4) Identify the inaccuracy, error, or defect to be corrected; and
    - (5) Set forth a statement in corrected form of the portion of the record to be corrected.
  - b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
  - a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
  - b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
    - (1) On the date the statement of correction was filed:
      - (a) As to persons adversely affected by the correction; and
      - (b) For the purposes of subsections 3 and 4 of section 45-10.2-06; and

- (2) On the date the original record was filed as to all other persons and for all other purposes.

**45-10.2-29. (208) Liability for false information in filed record.** If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, then a person that suffers loss by reliance on the information may recover damages for the loss from:

1. A person that signed the record, or caused another to sign it on behalf of a person, and knew the information to be false at the time the record was signed; and
2. A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 45-10.2-24, file a petition pursuant to section 45-10.2-26, or deliver to the secretary of state for filing a statement of change pursuant to section 45-10.2-18 or a statement of correction pursuant to section 45-10.2-28.

**45-10.2-30. (209) Certificate of existence or authorization.**

1. The secretary of state, upon request and payment of the fee provided in section 45-10.2-109, shall furnish a certificate of existence for a limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state:
  - a. The name of the limited partnership;
  - b. That it was duly formed under the laws of this state and date of formation; and
  - c. Whether all fees and penalties due to the secretary of state under this chapter have been paid.
2. The secretary of state, upon request and payment of the fee provided in section 45-10.2-109, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:
  - a. The name of the foreign limited partnership;
  - b. That it is authorized to transact business in this state; and
  - c. Whether all fees and penalties due to the secretary of state under this chapter have been paid.
3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

**45-10.2-31. (301) Becoming a limited partner.** A person becomes a limited partner:

1. As provided in the partnership agreement;
2. As the result of a conversion or merger under sections 45-10.2-94 through 45-10.2-106; or

3. With the consent of all of the partners.

**45-10.2-32. (302) No right or power as limited partner to bind limited partnership.** A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

**45-10.2-33. (303) No liability as limited partner for limited partnership obligation.** An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

**45-10.2-34. (304) Right of limited partner and former limited partner to information.**

1. On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the principal executive office of the limited partnership. The limited partner need not have any particular purpose for seeking the information.
2. During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:
  - a. The limited partner seeks the information for a purpose reasonably related to an interest as a limited partner;
  - b. The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and
  - c. The information sought is directly connected to the purpose of the limited partner.
3. Within ten days after receiving a demand pursuant to subsection 2, the limited partnership in a record shall inform the limited partner that made the demand:
  - a. What information the limited partnership will provide in response to the demand;
  - b. When and where the limited partnership will provide the information; and
  - c. If the limited partnership declines to provide any demanded information, the reasons of the limited partnership for declining.
4. Subject to subsection 6, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the designated office of the limited partnership if:
  - a. The information pertains to the period during which the person was a limited partner;
  - b. The person seeks the information in good faith; and
  - c. The person meets the requirements of subsection 2.

5. The limited partnership shall respond to a demand made pursuant to subsection 4 in the same manner as provided in subsection 3.
6. If a limited partner dies, then section 45-10.2-65 applies.
7. The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.
8. A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.
9. Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the decision of the limited partner that the limited partnership knows.
10. A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 7 or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.
11. The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

**45-10.2-35. (305) Limited duties of limited partners.**

1. A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.
2. A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
3. A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the conduct of the limited partner furthers the interest of that limited partner.

**45-10.2-36. (306) Person erroneously believing self to be limited partner.**

1. Except as otherwise provided in subsection 2, a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the obligations of the enterprise by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:
  - a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or
  - b. Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

2. A person that makes an investment described in subsection 1 is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.
3. If a person makes a diligent effort in good faith to comply with subdivision a of subsection 1 and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, then the person has the right to withdraw from the enterprise pursuant to subdivision b of subsection 1 even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become coowners of the enterprise.

**45-10.2-37. (401) Becoming general partner.** A person becomes a general partner:

1. As provided in the partnership agreement;
2. Under subdivision b of subsection 3 of section 45-10.2-66 following the dissociation of the last general partner of a limited partnership;
3. As the result of a conversion or merger under sections 45-10.2-94 through 45-10.2-106; or
4. With the consent of all the partners.

**45-10.2-38. (402) General partner agent of limited partnership.**

1. Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the name of the partnership, for apparently carrying on in the ordinary course the activities of the limited partnership or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under subsection 4 of section 45-10.2-06 that the general partner lacked authority.
2. An act of a general partner which is not apparently for carrying on in the ordinary course the activities of the limited partnership or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all of the other partners.

**45-10.2-39. (403) Limited partnership liable for actionable conduct of general partner.**

1. A limited 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 general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.
2. If, in the course of the activities of the limited partnership or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, then the limited partnership is liable for the loss.

**45-10.2-40. (404) Liability of general partner.**

1. Except as otherwise provided in subsections 2 and 3, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.
2. A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.
3. An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership.
  - a. A general 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 general partner.
  - b. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required under subdivision b of subsection 2 of section 45-10.2-42 to become a limited liability limited partnership pursuant to chapter 45-23.

**45-10.2-41. (405) Actions by and against partnership and partners.**

1. To the extent not inconsistent with section 45-10.2-40, a general partner may be joined in an action against the limited partnership or named in a separate action.
2. A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from assets of a general partner unless there is also a judgment against the general partner.
3. A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 45-10.2-40, and:
  - a. A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
  - b. The limited partnership is a debtor in bankruptcy;
  - c. The general partner has agreed that the creditor need not exhaust limited partnership assets;
  - d. A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding:
    - (1) That limited partnership assets subject to execution are clearly insufficient to satisfy the judgment;
    - (2) That exhaustion of limited partnership assets is excessively burdensome; or
    - (3) That the grant of permission is an appropriate exercise of equitable powers of the court; or
  - e. Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

**45-10.2-42. (406) Management rights of general partner.**

1. Each general partner has equal rights in the management and conduct of the activities of the limited partnership. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.
2. The consent of each partner is necessary:
  - a. To amend the partnership agreement;
  - b. Subject to section 45-10.2-104, to amend the certificate of limited partnership to convert the limited partnership to a limited liability limited partnership; and
  - c. To sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the limited partnership, with or without the good will, other than in the usual and regular course of the activities of the limited partnership.
3. A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.
4. A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.
5. A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under subsection 3 or 4 constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.
6. A general partner is not entitled to remuneration for services performed for the partnership.

**45-10.2-43. (407) Right of general partner and former general partner to information.**

1. A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:
  - a. In the principal executive office of the limited partnership, required information; and
  - b. At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the activities and financial condition of the limited partnership.
2. Each general partner and the limited partnership shall furnish to a general partner:
  - a. Without demand, any information concerning the activities and financial condition of the limited partnership reasonably required for the proper exercise of the rights and duties of the general partner under the partnership agreement or this chapter; and
  - b. On demand, any other information concerning the activities of the limited partnership, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

3. Subject to subsection 5, on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection 1 at the location specified in subsection 1 if:
  - a. The information or record pertains to the period during which the person was a general partner;
  - b. The person seeks the information or record in good faith; and
  - c. The person satisfies the requirements imposed on a limited partner by subsection 2 of section 45-10.2-34.
4. The limited partnership shall respond to a demand made pursuant to subsection 3 in the same manner as provided in subsection 3 of section 45-10.2-34.
5. If a general partner dies, then section 45-10.2-65 applies.
6. The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.
7. A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.
8. A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection 6 or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.
9. The rights under this section do not extend to a person as transferee, but the rights under subsection 3 of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under subdivisions b and c of subsection 7 of section 45-10.2-57.

**45-10.2-44. (408) General standards of conduct of general partner.**

1. The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections 2 and 3.
2. A duty of loyalty of the general partner to the limited partnership and the other partners is limited to the following:
  - a. To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the activities of the limited partnership or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;
  - b. To refrain from dealing with the limited partnership in the conduct or winding up of the activities of the limited partnership as or on behalf of a party having an interest adverse to the limited partnership; and
  - c. To refrain from competing with the limited partnership in the conduct or winding up of the activities of the limited partnership.

3. Duty of care of a general partner to the limited partnership and the other partners in the conduct and winding up of the activities of a limited partnership is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.
4. A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.
5. A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because conduct of the general partner furthers the interest of that general partner.

**45-10.2-45. (409) Transfer of partnership property.**

1. Subject to the effect of a notification effective under subsections 4 and 9 of section 45-10.2-06, property held in the name of a limited partnership may be transferred by a record of transfer signed by a general partner in the limited partnership name.
2. If a transfer has been made to an initial transferee through a record of transfer effective under subsection 1, a limited partnership may recover the transferred limited partnership property:
  - a. From a transferee only if the limited partnership proves that signing the record of initial transfer did not bind the partnership under section 45-10.2-38; and
  - b. As to a subsequent transferee who gave value for the property, only if the limited partnership proves that the subsequent transferee knew or had received a notification that the person that signed the record of initial transfer lacked authority to bind the partnership.
3. A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property under subsection 2 from any earlier transferee of the property.
4. This section does not affect the power of a person dissociated as a general partner to bind a limited partnership under subsection 1 of section 45-10.2-60 and subsection 2 of section 45-10.2-70.

**45-10.2-46. (501) Form of contribution.** A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

**45-10.2-47. (502) Liability for contribution.**

1. The obligation of a partner to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the death of a partner, disability, or other inability to perform personally.
2. If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution that has not been made.
3. The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership that extends credit or otherwise

acts in reliance on an obligation described in subsection 1, without notice of any compromise under this subsection, may enforce the original obligation.

**45-10.2-48. (503) Sharing of distributions.** A distribution by a limited partnership 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.

**45-10.2-49. (504) Interim distributions.** A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

**45-10.2-50. (505) No distribution on account of dissociation.** A person does not have a right to receive a distribution on account of dissociation.

**45-10.2-51. (506) Distribution in kind.** A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to subsection 2 of section 45-10.2-75, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the share of distributions of the partner.

**45-10.2-52. (507) Right to distribution.** When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the obligation of the limited partnership to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

**45-10.2-53. (508) Limitation on distribution.**

1. A limited partnership may not make a distribution in violation of the partnership agreement.
2. A limited partnership may not make a distribution if after the distribution:
  - a. The limited partnership would not be able to pay its debts as they become due in the ordinary course of the activities of the limited partnership; or
  - b. The total assets of the limited partnership would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.
3. A limited partnership may base a determination that a distribution is not prohibited under subsection 2 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.
4. Except as otherwise provided in subsection 7, the effect of a distribution under subsection 2 is measured:
  - a. In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and
  - b. In all other cases, as of the date:

- (1) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or
  - (2) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.
5. Indebtedness of a limited partnership to a partner incurred by reason of a distribution made in accordance with this section is at parity with the indebtedness of the limited partnership to its general, unsecured creditors.
6. Indebtedness of a limited partnership, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection 2 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.
7. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

**45-10.2-54. (509) Liability for improper distributions.**

1. A general partner that consents to a distribution made in violation of section 45-10.2-53 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 45-10.2-44.
2. A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 45-10.2-53 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 45-10.2-53.
3. A general partner against which an action is commenced under subsection 1 may:
  - a. Implead in the action any other person that is liable under subsection 1 and compel contribution from the person; and
  - b. Implead in the action any person that received a distribution in violation of subsection 2 and compel contribution from the person in the amount the person received in violation of subsection 2.
4. An action under this section is barred if it is not commenced within two years after the distribution.

**45-10.2-55. (601) Dissociation as limited partner.**

1. A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.
2. A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:
  - a. The limited partnership has notice of the express will of a person to withdraw as a limited partner or on a later date specified by the person;
  - b. An event agreed to in the partnership agreement as causing the dissociation of a person as a limited partner;

- c. The expulsion of a person as a limited partner pursuant to the partnership agreement;
- d. The expulsion of a person as a limited partner by the unanimous consent of the other partners if:
  - (1) It is unlawful to carry on the activities of the limited partnership with the person as a limited partner;
  - (2) There has been a transfer of all of the transferable interest of the person in the limited partnership, other than a transfer for security purposes, or a court order charging the interest of the person, which has not been foreclosed;
  - (3) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is not revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
  - (4) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- e. On application by the limited partnership, the expulsion of the person as a limited partner by judicial order because:
  - (1) The person engaged in wrongful conduct that adversely and materially affected the activities of the limited partnership;
  - (2) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 45-10.2-35; or
  - (3) The person engaged in conduct relating to the activities of the limited partnership which make it not reasonably practicable to carry on the activities with the person as limited partner;
- f. In the case of a person who is an individual, the death of the person;
- g. In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the entire transferable interest in the limited partnership of the trust, but not merely by reason of the substitution of a successor trustee;
- h. In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the entire transferable interest of the estate in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- i. Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; and
- j. The participation by limited partnership in a conversion or merger under sections 45-10.2-94 through 45-10.2-106, if the limited partnership:
  - (1) Is not the converted or surviving organization; or

- (2) Is the converted or surviving organization but, as a result of the conversion or merger, the person ceases to be a limited partner.

**45-10.2-56. (602) Effect of dissociation as limited partner.**

1. Upon the dissociation of a person as a limited partner:
  - a. Subject to section 45-10.2-65, the person does not have further rights as a limited partner;
  - b. The obligation of a person for good faith and fair dealing as a limited partner under subsection 2 of section 45-10.2-35 continues only as to matters arising and events occurring before the dissociation; and
  - c. Subject to section 45-10.2-65 and sections 45-10.2-94 through 45-10.2-106, any transferable interest owned by the person in the capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.
2. The dissociation of a person as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

**45-10.2-57. (603) Dissociation as general partner.** A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

1. The limited partnership having notice of the express will of a person to withdraw as a general partner or on a later date specified by the person;
2. An event agreed to in the partnership agreement as causing the dissociation of a person as a general partner;
3. The expulsion of a person as a general partner pursuant to the partnership agreement;
4. The expulsion of a person as a general partner by the unanimous consent of the other partners if:
  - a. It is unlawful to carry on the activities of the limited partnership with the person as a general partner;
  - b. There has been a transfer of all or substantially all of the transferable interest of a person in the limited partnership, other than a transfer for security purposes, or a court order charging the interest of a person, which has not been foreclosed;
  - c. The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a general partner because it filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or
  - d. The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
5. On application by the limited partnership, the expulsion of a person as a general partner by judicial determination because:

- a. The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;
  - b. The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 45-10.2-44; or
  - c. The person engaged in conduct relating to the activities of the limited partnership which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;
6. The person:
- a. Becoming a debtor in bankruptcy;
  - b. Executing an assignment for the benefit of creditors;
  - c. Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the property of the person; or
  - d. Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the property of the person obtained without the consent or acquiescence of the person, or failing within ninety days after the expiration of a stay to have the appointment vacated;
7. In the case of a person who is an individual:
- a. The death of the person;
  - b. The appointment of a guardian or general conservator for the person; or
  - c. A judicial determination that the person has otherwise become incapable of performing the duties as a general partner under the partnership agreement;
8. In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the entire transferable interest of the trust in the limited partnership, but not merely by reason of the substitution of a successor trustee;
9. In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the entire transferable interest of the estate in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
10. Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or
11. The participation of the limited partnership in a conversion or merger under sections 45-10.2-94 through 45-10.2-106, if the limited partnership:
- a. Is not the converted or surviving organization; or
  - b. Is the converted or surviving organization but, as a result of the conversion or merger, the person ceases to be a general partner.

**45-10.2-58. (604) Power of a person to dissociate as a general partner - Wrongful dissociation.**

1. A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to subsection 1 of section 45-10.2-57.
2. The dissociation of a person as a general partner is wrongful only if:
  - a. It is in breach of an express provision of the partnership agreement; or
  - b. It occurs before the termination of the limited partnership and:
    - (1) The person withdraws as a general partner by express will;
    - (2) The person is expelled as a general partner by judicial determination under subsection 5 of section 45-10.2-57;
    - (3) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or
    - (4) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.
3. A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 45-10.2-89, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

**45-10.2-59. (605) Effect of dissociation as general partner.**

1. Upon the dissociation of a person as a general partner:
  - a. The right of the person to participate as a general partner in the management and conduct of the activities of the partnership terminates;
  - b. The duty of loyalty of the person as a general partner under subdivision c of subsection 2 of section 45-10.2-44 terminates;
  - c. The duty of loyalty of the person as a general partner under subdivisions a and b of subsection 2 of section 45-10.2-44 and duty of care under subsection 3 of section 45-10.2-44 continue only with regard to matters arising and events occurring before dissociation of the person as a general partner;
  - d. The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and
  - e. Subject to section 45-10.2-65 and sections 45-10.2-94 through 45-10.2-106, any transferable interest owned by the person immediately before dissociation in the capacity as a general partner is owned by the person as a mere transferee.
2. The dissociation of a person as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

**45-10.2-60. (606) Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.**

1. After a person is dissociated as a general partner and before the limited partnership is dissolved, or is converted or merged out of existence under sections 45-10.2-94 through 45-10.2-106, the limited partnership is bound by an act of the person if:
  - a. The act would have bound the limited partnership under section 45-10.2-38 before the dissociation; and
  - b. At the time the other party enters into the transaction:
    - (1) Less than two years have passed since the dissociation; and
    - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.
2. If a limited partnership is bound under subsection 1, then the person dissociated as a general partner which caused the limited partnership to be bound is liable:
  - a. To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection 1; and
  - b. If a general partner or another person dissociated as a general partner is liable for the obligation, then to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**45-10.2-61. (607) Liability to other persons of person dissociated as general partner.**

1. The dissociation of a person as a general partner does not of itself discharge the liability of a person as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections 2 and 3, the person is not liable for an obligation of a limited partnership incurred after dissociation.
2. A person whose dissociation as a general partner resulted in a dissolution and winding up of the activities of the limited partnership is liable to the same extent as a general partner under section 45-10.2-40 on an obligation incurred by the limited partnership under section 45-10.2-70.
3. A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the activities of the limited partnership is liable on a transaction entered into by the limited partnership after the dissociation only if:
  - a. A general partner would be liable on the transaction; and
  - b. At the time the other party enters into the transaction:
    - (1) Less than two years have passed since the dissociation; and
    - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.
4. By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.
5. A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the creditor of the limited partnership, with notice of the

dissociation of the person as a general partner but without the consent of the person, agrees to a material alteration in the nature or time of payment of the obligation.

**45-10.2-62. (701) Transferable interest of a partner.** The only interest of a partner that is transferable is the transferable interest of the partner. A transferable interest is personal property.

**45-10.2-63. (702) Transfer of the transferable interest of a partner.**

1. A transfer, in whole or in part, of the transferable interest of a partner:
  - a. Is permissible;
  - b. Does not by itself cause the dissociation of a partner or a dissolution and winding up of the activities of the limited partnership; and
  - c. Does not, as against the other partners or the limited partnership, entitle the transferee:
    - (1) To participate in the management or conduct of the activities of the limited partnership;
    - (2) To require access to information concerning the transactions of the limited partnership except as otherwise provided in subsection 3; or
    - (3) To inspect or copy the required information or the other records of the limited partnership.
2. A transferee has a right to receive, in accordance with the transfer:
  - a. Distributions to which the transferor would otherwise be entitled; and
  - b. Upon the dissolution and winding up of the activities of the limited partnership the net amount otherwise distributable to the transferor.
3. In a dissolution and winding up, a transferee is entitled to an account of the transactions of the limited partnership only from the date of dissolution.
4. Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.
5. A limited partnership need not give effect to the rights of a transferee under this section until the limited partnership has notice of the transfer.
6. A transfer of the transferable interest of a partner in the limited 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.
7. A transferee that becomes a partner with respect to a transferable interest is liable for the obligations of the transferor under sections 45-10.2-47 and 45-10.2-54. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

**45-10.2-64. (703) Rights of a creditor of partner or transferee.**

1. On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest.

- a. To the extent so charged, the judgment creditor has only the rights of a transferee.
  - b. 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 to give effect to the charging order.
  - c. A charging order constitutes a lien on the transferable interest of the judgment debtor.
2. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
  3. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment with request to the transferable interest of the judgment debtor.

**45-10.2-65. (704) Power of estate of deceased partner.** If a partner dies, then the personal representative or other legal representative of the deceased partner may exercise the rights of a transferee as provided in section 45-10.2-63 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 45-10.2-34.

**45-10.2-66. (801) Nonjudicial dissolution.** Except as otherwise provided in section 45-10.2-67, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

1. The happening of an event specified in the partnership agreement;
2. The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
3. After the dissociation of a person as a general partner:
  - a. If the limited partnership has at least one remaining general partner, then the consent to dissolve the limited partnership given within ninety days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or
  - b. If the limited partnership does not have a remaining general partner, then the passage of ninety days after the dissociation unless before the end of the period:
    - (1) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
    - (2) At least one person is admitted as a general partner in accordance with the consent;
4. The passage of ninety days after the dissociation of the last limited partner of the limited partnership, unless before the end of the period the limited partnership admits at least one limited partner; or
5. The issuing and filing of a notice of dissolution by the secretary of state under subsection 5 of section 45-10.2-108.

**45-10.2-67. (802) Judicial dissolution.** On application by a partner the district court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

**45-10.2-68. (803) Winding up.**

1. A limited partnership continues after dissolution only for the purpose of winding up its activities.
2. In winding up its activities, the limited partnership:
  - a. May:
    - (1) Amend its certificate of limited partnership to state that the limited partnership is dissolved;
    - (2) Preserve the limited partnership business or property as a going concern for a reasonable time;
    - (3) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
    - (4) Transfer the property of the limited partnership;
    - (5) Settle disputes by mediation or arbitration;
    - (6) File a statement of termination as provided in section 45-10.2-69; and
    - (7) Perform other necessary acts; and
  - b. Shall:
    - (1) Discharge the liabilities of the limited partnership;
    - (2) Settle and close the activities of the limited partnership; and
    - (3) Marshall and distribute the assets of the partnership.
3. If a dissolved limited partnership does not have a general partner, then a person to wind up the activities of the dissolved limited partnership may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:
  - a. Has the powers of a general partner under section 45-10.2-70; and
  - b. Shall promptly amend the certificate of limited partnership to state:
    - (1) That the limited partnership does not have a general partner;
    - (2) The name of the person that has been appointed to wind up the limited partnership; and
    - (3) The street and mailing address of the person.
4. On the application of any partner, the district court may order judicial supervision of the winding up, including the appointment of a person to wind up the activities of the dissolved limited partnership, if:

- a. A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection 3; or
- b. The applicant establishes other good cause.

**45-10.2-69. (203) Statement of termination.** A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

1. The name of the limited partnership; and
2. Any other information as determined by the general partners filing the statement or by a person appointed pursuant to subsection 3 or 4 of section 45-10.2-68.

**45-10.2-70. (804) Power of general partner and person dissociated as general partner to bind partnership after dissolution.**

1. A limited partnership is bound by an act of a general partner after dissolution which:
  - a. Is appropriate for winding up the activities of a limited partnership; or
  - b. Would have bound the limited partnership under section 45-10.2-38 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.
2. A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:
  - a. At the time the other party enters into the transaction:
    - (1) Less than two years have passed since the dissociation; and
    - (2) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and
  - b. The act:
    - (1) Is appropriate for winding up the activities of the limited partnership; or
    - (2) Would have bound the limited partnership under section 45-10.2-38 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

**45-10.2-71. (805) Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.**

1. If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under subsection 1 of section 45-10.2-70 by an act that is not appropriate for winding up the activities of the partnership, then the general partner is liable:
  - a. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
  - b. If another general partner or a person dissociated as a general partner is liable for the obligation, then to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

2. If a person dissociated as a general partner causes a limited partnership to incur an obligation under subsection 2 of section 45-10.2-70, then the person is liable:
  - a. To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
  - b. If a general partner or another person dissociated as a general partner is liable for the obligation, then to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

**45-10.2-72. (806) Known claims against dissolved limited partnership.**

1. A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection 2.
2. A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:
  - a. Specify the information required to be included in a claim;
  - b. Provide a mailing address to which the claim is to be sent;
  - c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant;
  - d. State that the claim will be barred if not received by the deadline; and
  - e. Unless the limited partnership has been at each moment during its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 45-10.2-40.
3. A claim against a dissolved limited partnership is barred if the requirements of subsection 2 are met and:
  - a. The claim is not received by the specified deadline; or
  - b. In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.
4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

**45-10.2-73. (807) Other claims against dissolved limited partnerships.**

1. A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.
2. The notice must:
  - a. Be published at least once in a newspaper of general circulation in the county in which the principal executive office of the dissolved limited partnership is located or, if it has none in this state, in the county in which the principal executive office of the limited partnership is or was last located;

- b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;
  - c. State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within five years after publication of the notice; and
  - d. Unless the limited partnership has been at each moment during its existence a limited liability limited partnership under chapter 45-23, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on section 45-10.2-40.
3. If a dissolved limited partnership publishes a notice in accordance with subsection 2, then the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:
  - a. A claimant that did not receive notice in a record under section 45-10.2-72;
  - b. A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
  - c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
4. A claim not barred under this section may be enforced:
  - a. Against the dissolved limited partnership, to the extent of its undistributed assets;
  - b. If the assets have been distributed in liquidation, then against a partner or transferee to the extent of the proportionate share of the claim of that person or the assets of the limited partnership distributed to the partner or transferee in liquidation, whichever is less, but the total liability of a person for all claims under this subdivision does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or
  - c. Against any person liable on the claim under section 45-10.2-40.

**45-10.2-74. (808) Liability of general partner and person dissociated as general partner when claim against limited partnership barred.** If a claim against a dissolved limited partnership is barred under section 45-10.2-72 or 45-10.2-73, then any corresponding claim under section 45-10.2-40 is also barred.

**45-10.2-75. (812) Disposition of assets - When contributions required.**

1. In winding up the activities of a limited partnership, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the obligations to creditors of the limited partnership, including, to the extent permitted by law, partners that are creditors.
2. Any surplus remaining after the limited partnership complies with subsection 1 must be paid in cash as a distribution.
3. If assets of a limited partnership are insufficient to satisfy all of its obligations under subsection 1, then with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership under chapter 45-23, the following rules apply:

- a. Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 45-10.2-61 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.
  - b. If a person does not contribute the full amount required under subdivision a with respect to an unsatisfied obligation of the limited partnership, then the other persons required to contribute by subdivision a on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.
  - c. If a person does not make the additional contribution required by subdivision b, then further additional contributions are determined and due in the same manner as provided in subdivision b.
4. A person that makes an additional contribution under subdivision b or c of subsection 3 may recover from any person whose failure to contribute under subdivision a or b of subsection 3 necessitated the additional contribution.
    - a. A person may not recover under this subsection more than the amount additionally contributed.
    - b. The liability of a person under this subsection may not exceed the amount the person failed to contribute.
  5. The estate of a deceased individual is liable for the obligations of the person under this section.
  6. An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce the obligation to contribute by a person under subsection 3.

**45-10.2-76. (901) Foreign limited partnership - Governing law.**

1. The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.
2. A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.
3. A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

**45-10.2-77. (905) Foreign limited partnership - Name.**

1. A foreign limited partnership whose name does not comply with section 45-10.2-10 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 45-10.2-10. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name shall comply with chapter 45-11.

After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the alternate name unless the foreign limited partnership is authorized under section 45-10.2-10 to transact business in this state under another name.

2. If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 45-10.2-10, then it may not thereafter transact business in this state until it complies with subsection 1 and obtains an amended certificate of authority.

**45-10.2-78. Foreign limited partnership - Admission of foreign limited partnership - Transacting business - Obtaining licenses and permits.** A foreign limited partnership may not:

1. Transact business in this state or obtain any license or permit required by this state until the foreign limited partnership obtains a certificate of authority from the secretary of state.
2. Transact in this state any business that is prohibited to a limited partnership organized under this chapter.
3. Be denied a certificate of authority because the laws of the jurisdiction of origin of the foreign limited partnership differ from the laws of this state.

**45-10.2-79. (902) Foreign limited partnership - Application for certificate of authority.**

1. A foreign limited partnership may apply for a certificate of authority to transact business or conduct activities in this state by delivering an application to the secretary of state for filing. The application must state:
  - a. The name of the foreign limited partnership and, if the name does not comply with section 45-10.2-10, then an alternate name adopted pursuant to subsection 1 of section 45-10.2-77;
  - b. The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
  - c. The general character of the business the foreign limited partnership proposes to transact in this state;
  - d. The street and mailing address of the principal executive office of the foreign limited partnership;
  - e. The name of the registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state;
  - f. The name, street address, and mailing address of each general partner of the foreign limited partnership; and
  - g. Whether the foreign limited partnership is a foreign limited liability limited partnership.
2. With the completed application, the foreign limited partnership shall deliver a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the publicly filed records of the foreign limited partnership in the state or other jurisdiction under whose law the foreign limited partnership is organized.

**45-10.2-80. (904) Foreign limited partnership - Filing of certificate of authority application.** If the secretary of state finds an application for a certificate of authority conforms to law and all fees have been paid, then the secretary of state shall:

1. Endorse on the application the word "filed" and the date of filing; and
2. File the application and the certificate of good standing or certificate of existence.

**45-10.2-81. Foreign limited partnership - Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign limited partnership is false when made or becomes false due to changed circumstances, or if the foreign limited partnership changes its name or purposes sought in this state, then the foreign limited partnership shall file with the secretary of state an application for an amended certificate of authority signed by at least one general partner correcting the statement and, in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.

1. In the case of a dissolution, a foreign limited partnership need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.
2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.
3. A foreign limited partnership shall report any change of address of the principal executive office to the secretary of state and need not file an application for amended certificate of authority.

**45-10.2-82. Foreign limited partnership - Registered agent - Registered office.** A foreign limited partnership authorized to transact business in this state shall continuously maintain a registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.

**45-10.2-83. Foreign limited partnership - Merger of foreign limited partnership authorized to transact business in this state.** If a foreign limited partnership authorized to transact business in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which the foreign limited partnership is organized, and the foreign limited partnership is not the surviving organization, then the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. Any foreign organization that is the surviving organization in a merger and which will continue to transact business in this state shall procure a certificate of authority if not previously authorized to transact business.

**45-10.2-84. Foreign limited partnership - Conversion of foreign limited partnership authorized to transact business in this state.** If a foreign limited partnership authorized to transact business in this state converts to another organization permitted by the laws of the jurisdiction under which the foreign limited partnership is organized, then the newly created organization resulting from the conversion shall, within thirty days after the conversion becomes effective, file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign

organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota laws applicable to the converted organization.

**45-10.2-85. Foreign limited partnership - Cancellation of certificate of authority - Effect of failure to have certificate.**

1. In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 45-10.2-27.
2. A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.
3. The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.
4. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason that the foreign limited partnership has transacted business in this state without a certificate of authority.
5. If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, then it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.
6. A foreign limited partnership that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without the certificate of authority in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly obtained a certificate of authority, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.
7. A foreign limited partnership that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not obtained a certificate of authority is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.
8. The civil penalties set forth in subsection 7 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited partnership or any of the general partners or agents of the foreign limited partnership have 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 the further transaction of the business of the foreign limited partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited partnership has otherwise complied with the provisions of this chapter.

**45-10.2-86. (903) Foreign limited partnership - Activities not constituting transacting business.**

1. Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this chapter include:
  - a. Maintaining, defending, and settling an action or proceeding;
  - b. Holding a meeting of its partners or carrying on any other activity concerning its internal affairs;
  - c. Maintaining accounts in financial institutions;
  - d. Maintaining offices or agencies for the transfer, exchange, and registration of the securities of the foreign limited partnership or maintaining trustees or depositories with respect to those securities;
  - e. Selling through independent contractors;
  - f. Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
  - g. Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
  - h. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
  - i. Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; and
  - j. Transacting business in interstate commerce.
2. For purposes of this section, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.
3. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

**45-10.2-87. Foreign limited partnership - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign limited partnership has failed to:
    - (1) Appoint and maintain a registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state;
    - (2) Maintain the registration of a general partner as required in section 45-10.2-16;
    - (3) File a report upon any change in the address of its principal executive office; or

- (4) File in the office of the secretary of state any amendment to its application for certificate of authority as specified in section 45-10.2-81; or
  - b. A misrepresentation has been made of any material matter in an application, report, affidavit, or other record submitted by the foreign limited partnership pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 45-10.1-108, no certificate of authority may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited partnership at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or if the foreign limited partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited partnership has failed to file the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent, to register a general partner as required by section 45-10.2-16, to file any amendment, or to correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice:
  - a. The authority of the foreign limited partnership to transact business in this state ceases; and
  - b. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered office of the foreign limited partnership, or if the foreign limited partnership has failed to maintain a registered office, then to its principal executive office.

**45-10.2-88. (908) Foreign limited partnership - Action by attorney general.** The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

**45-10.2-89. (1001) Direct action by partner.**

1. Subject to subsection 2, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting to the activities of the partnership, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement of this chapter or arising independently of the partnership relationship.
2. A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.
3. The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**45-10.2-90. (1002) Derivative action.** A partner may maintain a derivative action to enforce a right of a limited partnership if:

1. The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or
2. A demand would be futile.

**45-10.2-91. (1003) Proper plaintiff.** A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

1. That was a partner when the conduct giving rise to the action occurred; or
2. Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

**45-10.2-92. (1004) Pleading.** In a derivative action, the complaint must state with particularity:

1. The date and content of the demand of the plaintiff and the response to the demand by the general partners; or
2. Why demand should be excused as futile.

**45-10.2-93. (1005) Proceeds and expenses.**

1. Except as otherwise provided in subsection 2:
  - a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff; and
  - b. If the derivative plaintiff receives any proceeds, then the derivative plaintiff shall immediately remit them to the limited partnership.
2. If a derivative action is successful in whole or in part, then the court may award the plaintiff reasonable expenses, including reasonable fees for services of an attorney, from the recovery of the limited partnership.

**45-10.2-94. (1102) Conversion.**

1. An organization other than a limited partnership may convert to a limited partnership, and a limited partnership may convert to another organization other than a general partnership pursuant to this section and sections 45-10.2-95 through 45-10.2-99 and a plan of conversion, if:
  - a. The governing statute of the other organization authorizes the conversion;
  - b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and
  - c. The other organization complies with its governing statute in effecting the conversion.
2. For the purposes of sections 45-10.2-94 through 45-10.2-99, unless the context clearly indicates a different meaning is intended:
  - a. "Certificate of creation" means:

- (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;
  - (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
  - (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under this chapter;
  - (4) The filed registration if the converting organization is a limited liability partnership deemed to be established under chapter 45-22; or
  - (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.
- b. "Date of origin" means the date on which:
- (1) A corporation that is:
    - (a) The converting organization was incorporated; or
    - (b) The converted organization is deemed to be incorporated;
  - (2) A limited liability company that is:
    - (a) The converting organization was organized; or
    - (b) The converted organization is deemed to be organized;
  - (3) A general partnership that is the converting organization was formed;
  - (4) A limited partnership that is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed;
  - (5) A limited liability partnership that is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed; and
  - (6) A limited liability limited partnership that is:
    - (a) The converting organization was formed; or
    - (b) The converted organization is deemed to be formed.
- c. "Filed registration" means the registration of a limited liability partnership that has been filed with the secretary of state.
- d. "General partnership" shall mean an organization formed under chapters 45-13 through 45-21.
- e. "Organizational records" means for an organization that is:
- (1) A corporation, its articles of incorporation and bylaws;

- (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
  - (3) A limited partnership, its partnership agreement;
  - (4) A limited liability partnership, its partnership agreement; or
  - (5) A limited liability limited partnership, its partnership agreement.
- f. "Originating record" means for an organization that is:
- (1) A corporation, its articles of incorporation;
  - (2) A limited liability company, its articles of organization;
  - (3) A limited partnership, its certificate of limited partnership;
  - (4) A limited liability partnership, its registration; or
  - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

**45-10.2-95. Plan of conversion.** A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the conversion;
4. The manner and basis for converting each ownership interest in the converting organization into ownership interests in the converted organization, or in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed to be necessary or desirable.

**45-10.2-96. Plan of conversion approval and amendment.**

1. If the converting organization is a limited partnership, then:
  - a. Subject to section 45-10.2-104, a plan of conversion must be consented to by all of the partners of a converting limited partnership.
  - b. Subject to section 45-10.2-104 and any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting limited partnership may amend the planned conversion:
    - (1) As provided in the plan; and
    - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.
2. If the converting organization is not a limited partnership, then the approval and the amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

#### **45-10.2-97. Articles of conversion.**

1. Upon receiving the approval required by section 45-10.2-96, articles of conversion must be prepared in a record that must contain:
  - a. A statement that the converting organization is being converted into another organization, including:
    - (1) The name of the converting organization immediately before the filing of the articles of conversion;
    - (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
    - (3) The form of organization that the converted organization will be; and
    - (4) The jurisdiction of the governing statute of the converted organization;
  - b. A statement that the plan of conversion has been approved by the converting organization as provided in section 45-10.2-96;
  - c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
  - d. The plan of conversion without the organizational records;
  - e. A copy of the originating record of the converted organization; and
  - f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 45-10.2-99.
2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
  - a. If the converted organization is a domestic organization, then:
    - (1) The filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.
    - (2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.
  - b. If the converted organization is a foreign organization:
    - (1) That is transacting business or conducting activities in this state, then:
      - (a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.
      - (b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a

certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.

- (2) That is not transacting business or conducting activities in this state, then upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.
3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**45-10.2-98. Abandonment of conversion.**

1. If the articles of conversion have not been filed with the secretary of state, and:
  - a. If the converting organization is a limited partnership, then subject to section 45-10.2-104 and any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting limited partnership may abandon the planned conversion:
    - (1) As provided in the plan; and
    - (2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.
  - b. If the converting organization is not a limited partnership, then the abandonment of the plan of conversion must comply with its governing statute.
2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
  - a. The name of the converting organization;
  - b. The provision of this section under which the plan is abandoned; and
  - c. If the plan is abandoned:
    - (1) By the consent of all of the partners, then the text of the resolution abandoning the plan; or
    - (2) As provided in the plan, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

**45-10.2-99. Effective date of conversion - Effect.**

1. A conversion is effective when the filing requirements of subsection 2 of section 45-10.2-97 have been fulfilled or on a later date specified in the articles of conversion.
2. With respect to the effect of conversion on the converting organization and on the converted organization:

- a. An organization that has been converted as provided in sections 45-10.2-94 through 45-10.2-99 is for all purposes the same entity that existed before the conversion.
- b. Upon a conversion becoming effective:
  - (1) If the converted organization:
    - (a) Is a limited partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited partnership formed under this chapter; or
    - (b) Is not a limited partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;
  - (2) All property owned by the converting organization remains vested in the converted organization;
  - (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;
  - (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
  - (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization;
  - (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
  - (7) Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of sections 45-10.2-66 through 45-10.2-75.
3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan.
4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligations owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection.

**45-10.2-100. (1106) Merger.**

1. A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 45-10.2-101 through 45-10.2-103 and a plan of merger, if:
  - a. The governing statute of each of the other organizations authorizes the merger;

- b. The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
  - c. Each of the other organizations complies with its governing statute in effecting the merger.
2. For the purposes of sections 45-10.2-100 through 45-10.2-103, "originating record" means for an organization that is:
- a. A corporation, its articles of incorporation;
  - b. A limited liability company, its articles of organization;
  - c. A limited partnership, its certificate of limited partnership;
  - d. A limited liability partnership, its registration; and
  - e. A limited liability limited partnership, its certificate of limited liability limited partnership.
3. A plan of merger must be in a record and must include:
- a. The name and form of each constituent organization;
  - b. The name and form of the surviving organization and:
    - (1) If the surviving organization is to be created by the merger, then:
      - (a) A statement to that effect; and
      - (b) Its organizational record; or
    - (2) If the surviving organization is not to be created by the merger, then any amendments to be made to the organizational record of the surviving organization;
  - c. The terms and conditions of the merger;
  - d. The manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and
  - e. Any other provisions with respect to the proposed merger that are deemed to be necessary or desirable.

**45-10.2-101. (1107) Plan of merger approval - Amendment and abandonment.**

- 1. Subject to section 45-10.2-104, a plan of merger must be consented to by all the partners of a constituent limited partnership.
- 2. Subject to section 45-10.2-104 and any contractual rights, after a merger is approved, and at any time before a filing is made under section 45-10.2-102, a constituent limited partnership may amend the plan or abandon the planned merger:
  - a. As provided in the plan; and
  - b. Except as prohibited by the plan, with the same consent as was required to approve the plan.

**45-10.2-102. (1108) Articles of merger.**

1. After each constituent organization has approved a merger, articles of merger must be signed on behalf of:
  - a. Each preexisting constituent limited partnership, by each general partner listed in the certificate of limited partnership; and
  - b. Each other preexisting constituent organization, by an authorized representative.
2. The articles of merger must be accompanied by the plan of merger without organizational records and must include:
  - a. With respect to each constituent organization:
    - (1) Its name;
    - (2) Its form;
    - (3) The jurisdiction of its governing statute;
    - (4) A statement that the merger complies with its governing statute; and
    - (5) Any additional information required by the governing statute of any constituent organization.
  - b. With respect to the surviving organization:
    - (1) Its name;
    - (2) Its form;
    - (3) The jurisdiction of its governing statute;
    - (4) The date the merger is effective under its governing statute;
    - (5) If it is created by the merger, then:
      - (a) A statement to that effect; and
      - (b) The originating record that creates the organization;
    - (6) If it preexists the merger, then any amendments to its originating record provided for in the plan of merger; or
    - (7) If it is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office that the secretary of state may use for the purposes of subsection 2 of section 45-10.2-103.
3. The articles of merger must be filed in the office of the secretary of state.
4. A merger becomes effective under this chapter:
  - a. If the surviving organization is a limited partnership, upon the later of:
    - (1) Compliance with subsection 3; or

(2) Subject to subsection 3 of section 45-10.2-27, as specified in the articles of merger; or

b. If the surviving organization is not a limited partnership, then as provided by the governing statute of the surviving organization.

**45-10.2-103. (1109) Effect of merger.**

1. When a merger becomes effective:

- a. The surviving organization continues or comes into existence;
- b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- c. All property owned by each constituent organization that ceases to exist vests in the surviving organization;
- d. All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;
- e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued by the surviving organization as if the merger had not occurred;
- f. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
- g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;
- h. Except as otherwise agreed, if a constituent limited partnership ceases to exist, then the merger does not dissolve the limited partnership for the purposes of sections 45-10.2-66 through 45-10.2-75;
- i. If the surviving organization is created by the merger and:
  - (1) If it is a limited partnership, then the certificate of limited partnership becomes effective; or
  - (2) If it is an organization other than a limited partnership, then the organizational record that creates the organization becomes effective; and
- j. If the surviving organization preexists the merger, then any amendments provided for in the articles of merger for the organizational record that created the organization become effective.

2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection.

**45-10.2-104. (1110) Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status.**

1. If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, then approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:
  - a. The partnership agreement of the limited partnership provides for the approval of the conversion or merger with the consent of fewer than all the partners; and
  - b. The partner has consented to the provision of the partnership agreement.
2. An amendment to a certificate of limited partnership which converts the limited partnership to a limited liability limited partnership is ineffective without the consent of each general partner unless:
  - a. The partnership agreement of the limited partnership provides for the conversion with the consent of less than all the general partners; and
  - b. Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.
3. A partner does not give the consent required by subsection 1 or 2 merely by consenting to a provision of the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all the partners.

**45-10.2-105. (1111) Liability of general partner after conversion or merger.**

1. A conversion or merger under this chapter does not discharge any liability under sections 45-10.2-40 and 45-10.2-61 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:
  - a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
  - b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and
  - c. If a person is required to pay any amount under this subsection, then:
    - (1) The person has a right of contribution from each other person that was liable as a general partner under section 45-10.2-40 when the obligation was incurred and has not been released from the obligation under section 45-10.2-61; and
    - (2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligations were incurred.
2. In addition to any other liability provided by law:
  - a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

- (1) Does not have notice of the conversion or merger; and
  - (2) Reasonably believes that:
    - (a) The converted or surviving organization or business is the converting or constituent limited partnership;
    - (b) The converting or constituent limited partnership is not a limited liability limited partnership; and
    - (c) The person is a general partner in the converting or constituent limited partnership; and
- b. A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:
- (1) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and
  - (2) At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
    - (a) Does not have notice of the dissociation;
    - (b) Does not have notice of the conversion or merger; and
    - (c) Reasonably believes that:
      - [1] The converted or surviving organization or business is the converting or constituent limited partnership;
      - [2] The converting or constituent limited partnership is not a limited liability limited partnership; and
      - [3] The person is a general partner in the converting or constituent limited partnership.

**45-10.2-106. (1112) Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.**

1. An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:
  - a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 45-10.2-38; and
  - b. At the time the third party enters into the transaction, the third party:
    - (1) Does not have notice of the conversion or merger; and
    - (2) Reasonably believes that:

- (a) The converted or surviving organization or business is the converting or constituent limited partnership; and
  - (b) The person is a general partner in the converting or constituent limited partnership.
- 2. An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:
  - a. Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 45-10.2-38 if the person had been a general partner; and
  - b. At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:
    - (1) Does not have notice of the dissociation;
    - (2) Does not have notice of the conversion or merger; and
    - (3) Reasonably believes that:
      - (a) The converted or surviving organization or business is the converting or constituent limited partnership; and
      - (b) The person is a general partner in the converting or constituent limited partnership.
- 3. If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection 1 or 2, then the person is liable:
  - a. To the converted or surviving organization for any damage caused to the organization arising from the obligation; and
  - b. If another person is liable for the obligation, then to that other person for any damage caused to that other person arising from the liability.

**45-10.2-107. Service of process on a limited partnership or foreign limited partnership and on nonresident general partners.** Any process, notice, or demand required or permitted by law to be served on the limited partnership, foreign limited partnership, or general partner may be served as provided in section 10-01.1-13.

**45-10.2-108. Secretary of state - Annual report of limited partnership and foreign limited partnership.**

- 1. Each limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:
  - a. The name of the limited partnership or foreign limited partnership and the jurisdiction of origin.
  - b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the registered agent of the limited partnership or foreign limited partnership in this state at that address.

- c. The address of the principal executive office of the limited partnership or foreign limited partnership.
    - d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.
    - e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.
  2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as provided in subsection 40 of section 45-10.2-02 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may destroy any annual reports provided for in this section after the annual report is on file for six years.
  3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.
    - a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.
    - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
      - (1) If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
      - (2) If the report is filed before the deadlines provided in this subsection, then penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
  4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing to file an annual report that the certificate of limited partnership or certificate of authority of a foreign limited partnership is not in good standing and that the certificate of the limited partnership or the certificate of authority of the foreign limited partnership may be dissolved or revoked pursuant to subsection 5.
    - a. The secretary of state must mail notice of dissolution or revocation to the last registered agent at the last registered office.
    - b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, then the secretary of state will restore the certificate or certificate of authority of the limited partnership or foreign limited partnership to good standing.

5. A limited partnership that does not file an annual report, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily dissolved by operation of law.
  - a. The secretary of state shall note the dissolution of the certificate of limited partnership on the records of the secretary of state and shall give notice of the action to the dissolved limited partnership.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of the limited partnership.
6. A foreign limited partnership that does not file an annual report, within six months after the date established by subsection 3, forfeits the right to transact business in this state.
  - a. The secretary of state shall note the revocation of the certificate of authority of the foreign limited partnership on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of the foreign limited partnership.
7. A limited partnership that is dissolved for failure to file an annual report, or a certificate of authority of a foreign limited partnership that is forfeited for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 45-10.2-109. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

**45-10.2-109. Secretary of state - Fees for filing records.** The secretary of state shall charge and collect for:

1. Filing a certificate of limited partnership, one hundred ten dollars.
2. Filing a limited partnership amendment, forty dollars.
3. Filing articles of conversion of a limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited partnership statement of correction, forty dollars.
8. Filing a limited partnership dissolution, twenty-five dollars.

9. Filing a limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of name, ten dollars.
11. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited partnership name, ten dollars.
13. Filing a consent to use a deceptively similar name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, or a change of address of registered office by registered agent, the fee provided by section 10-01.1-03.
15. Filing a certificate of authority of foreign limited partnership, one hundred dollars.
16. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
17. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
18. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
19. Filing a certified statement of merger of foreign limited partnership, fifty dollars.
20. Filing a certified statement of conversion of foreign limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
21. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
22. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
    - (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
    - (2) After the dissolution of the limited partnership or the revocation of the certificate of authority of a foreign limited partnership, the reinstatement fee of one hundred dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108, or the annual report lacks sufficient payment as required by this subsection.

23. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
25. Furnishing a certificate of existence or authorization:
  - a. Fifteen dollars; and
  - b. Five dollars for a search of records.
26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:
  - a. The fee provided in section 54-09-04 for copying a record;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and
  - c. Five dollars for a search of records.

**45-10.2-110. Secretary of state - Duties.** The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. All records filed with the secretary of state under this chapter must be retained in that office until the records have been committed to microcopy, at which time the records may be destroyed.

**45-10.2-111. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

1. The secretary of state shall administer this chapter.
2. The secretary of state may propound to any limited partnership or foreign limited partnership subject to this chapter and to any partner any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
  - a. Any interrogatory must be answered within thirty days after mailing or within any additional time fixed by the secretary of state. Every answer to the interrogatory must be full and complete and be made in writing and under oath.
  - b. If an interrogatory is directed:
    - (1) To an individual, then the interrogatory must be answered by that individual;
    - (2) To a domestic limited partnership, then the interrogatory must be answered by a managing partner; or
    - (3) To a foreign limited partnership, then the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited partnership.
  - c. The secretary of state need not file any record to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers that disclose a violation of this chapter.

- e. Each general partner of a limited partnership or a resident partner or designated partner of a foreign limited partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection. Within thirty days after the service of the notice of denial, the limited partnership or the foreign limited partnership, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state. The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
  4. If the secretary of state involuntarily dissolves a limited partnership pursuant to section 45-10.2-108 or if the secretary of state revokes the certificate of authority of any foreign limited partnership and if reinstatement as provided in section 45-10.2-108 was denied for any reason, then the limited partnership or the foreign limited partnership, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of that court a petition including:
    - a. A copy of the certificate of limited partnership and a copy of the notice of dissolution given by the secretary of state; or
    - b. A copy of the certificate of authority of the foreign limited partnership and a copy of the notice of revocation given by the secretary of state.

The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

5. If the court order sought is one for reinstatement of a limited partnership that has been dissolved as provided in subsection 5 of section 45-10.2-108, or for reinstatement of the certificate of authority of a foreign limited partnership that has been revoked as provided in subsection 6 of section 45-10.2-108, then, together with any other actions the court deems proper, any such order which orders the reinstatement of the limited partnership or the reinstatement of the certificate of authority of a foreign limited partnership shall require the limited partnership or foreign limited partnership to:
  - a. File the most recent past-due annual report;
  - b. Pay the fees to the secretary of state for all past-due annual reports as provided in subsection 25 of section 45-10.2-109; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 25 of section 45-10.2-109.

**45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All copies of records filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing records or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

**45-10.2-113. Secretary of state - Confidential records.** Any social security number or federal tax identification number disclosed or contained in any record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any record is released to the public.

**45-10.2-114. Secretary of state - Forms to be furnished by the secretary of state.** Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state may furnish forms for all other records to be filed in the office of the secretary of state. However, the use of these records, unless otherwise specifically required by law, is not mandatory.

**45-10.2-115. Audit reports and audit of limited partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline.** Any limited partnership or foreign limited partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited partnership or foreign limited partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited partnership or foreign limited partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited partnership or foreign limited partnership required to submit an annual report under this section.

**45-10.2-116. (1201) Uniformity of application and construction.** In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**45-10.2-117. (1203) Relation to Electronic Signatures in Global and National Commerce Act.** This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but this chapter does not modify, limit, or supersede section 101 of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.